

City of Lubbock, Texas
Regular City Council Meeting
May 10, 2022

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

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.

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

1:30 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 Items 2.2. and 2.3. on the Work Session Agenda, shall complete the sign-up form provided at the meeting, no later than 1:30 p.m. on May 10, 2022. Citizen Comments provide 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. Adopt-a-Park

 2. 2. Downtown Parking Taskforce

 2. 3. Continuing American Rescue Plan Act (ARPA) Discussion

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. Pump Station 7 Appraisal

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. Memorial Center Block 2 L 3

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 honor of the West Texas Cycling "Ride of Silence" on May 18.

4. 3. 2. Presentation of a Proclamation recognizing May as Mental Health Awareness Month

4. 3. 3. Employee Recognition - Steven Nelson named the 2022 Floodplain Manager of the Year, by the Texas Floodplain Management Association

4. 4. **Board Recognitions:**
Animal Services Advisory Board
Deborah Deary
Jessica Smith
Greg Taylor

Citizens Traffic Commission

Skyler Sherrod

Civic Lubbock Inc. Board of Directors

Christi Cage

Junked Vehicle Compliance Board

Sheila Powell

Park and Recreation Board

Dr. William Pasewark Jr.

4. 5. Presentation of the Lubbock 101 Class of 2022 Graduation Ceremony

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 May 10, 2022. Citizen Comments provide 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. April 12, 2022 Regular City Council 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. **Budget Ordinance Amendment 2nd Reading - Finance:** Consider Budget Ordinance No. 2022-00069, Amendment 22, amending the FY 2021-22 Budget for municipal purposes respecting the Operating Budget for Lubbock Economic Development Alliance (LEDA) and Market Lubbock, Inc. (MLI) – Visit Lubbock and Sports Authority; providing for filing; and providing for a savings clause.
 7. 2. **Budget Ordinance Amendment 2nd Reading - Finance:** Consider Budget Ordinance No. 2022-00070, Amendment 23, amending the FY 2021-22 Budget for municipal purposes respecting the Airport Capital Fund to appropriate funding for Capital Improvement Project 92619 Construct Federal Inspection Services Facility; providing for filing; and providing for a savings clause.

7. 3. **Budget Ordinance Amendment 2nd Reading - Finance:** Consider Budget Ordinance No. 2022-O0071, Amendment 24, amending the FY 2021-22 Budget for municipal purposes respecting the Parks Capital Fund to establish Capital Improvement Projects 92761, ARPA Parks-Walking Trails, 92763 ARPA Parks-PLaygrounds, 92764, ARPA Parks-Cattail Removal/Dredging, 92765, ARPA Parks-Pickleball Facility, 92766, ARPA Parks-Simmons Parking Lot/Lake 6 Restroom, 92767, ARPA Parks-Tom Martin Youth Sports Complex (TMYSC) Junior Field Lights, 92768, ARPA Parks-Restroom Replacement/Renovations, and the General Capital Fund to establish Capital Improvement Project 92762, Homelessness-ARPA; providing for filing; and providing for a savings clause.
7. 4. **Budget Ordinance Amendment 2nd Reading - Finance:** Consider Budget Ordinance No. 2022-O0072, Amendment 25, amending the FY 2021-22 Budget for municipal purposes respecting the General Fund and the General Capital Fund to appropriate funding for Capital Improvement Project 8633, Comprehensive Plan Implementation; providing for filing; and providing for a savings clause
7. 5. **Budget Ordinance Amendment 1st Reading - Finance:** Consider Budget Ordinance Amendment 26, amending the FY 2021-22 Budget for municipal purposes respecting Civil Service Positions; providing for filing; and providing for a savings clause.
7. 6. **Resolution - Planning:** Consider a resolution authorizing the Mayor to execute Amendment No. 3 to Contract 14462, with Kendig Keast Collaborative, Inc., for development of a Unified Development Code.
7. 7. **Ordinance 2nd Reading - Right-of-Way:** Consider Ordinance No. 2022-O0073, abandoning and closing a portion of a utility easement and a portion of an access easement, located in Lot 4A, Spectra Lubbock Southwest Addition to the City of Lubbock, Lubbock County, Texas.
7. 8. **Ordinance 2nd Reading - Right-of-Way:** Consider Ordinance No. 2022-O0074, abandoning and closing portions of right-of-way, located in Blocks 13 and 14, Woodlawn Addition to the City of Lubbock, Lubbock County, Texas.
7. 9. **Ordinance 2nd Reading - Right-of-Way:** Consider Ordinance No. 2022-O0076, abandoning and closing a Water Line and Sewer Line Easement, located on un-subdivided land in Section 11, Block A, Lubbock County, Texas.
7. 10. **Ordinance 2nd Reading - Right-of-Way:** Consider Ordinance No. 2022-O0077, abandoning and closing a stormwater drainage and impoundment easement, a drainage easement, and a water and sewer line easement, located in Tract A, Lubbock County Expo Center Addition to the City of Lubbock, Lubbock County, Texas.

7. 11. **Resolution - Engineering:** Consider a resolution authorizing the Mayor to execute Change Order No. 3 to Contract 15325 with Red River Construction Company, for the construction of the Southeast Water Reclamation Plant, Plant 3 Improvements Project.
7. 12. **Resolution - Engineering:** Consider a resolution ratifying the act of the City Manager and authorizing the Mayor to execute Amendment No. 1 to License Agreement No. 16521, by and between the City of Lubbock, and Chloe Douglas, a selected winner of the 2022 Storm Drain Art Project.
7. 13. **Resolution - Engineering:** Consider a resolution ratifying the act of the City Manager and authorizing the Mayor to execute Amendment No. 1 to License Agreement No. 16523, by and between the City of Lubbock, and Libby Wagner, a selected winner of the 2022 Storm Drain Art Project.
7. 14. **Resolution - Engineering:** Consider a resolution ratifying the act of the City Manager and authorizing the Mayor to execute Amendment No. 1 to License Agreement No. 16520, by and between the City of Lubbock, and Adrian Diaz, a selected winner of the 2022 Storm Drain Art Project.
7. 15. **Resolution - Engineering:** Consider a resolution ratifying the act of the City Manager and authorizing the Mayor to execute Amendment No. 1 to License Agreement No. 16524, by and between the City of Lubbock, and Mystie Do, a selected winner of the 2022 Storm Drain Art Project.
7. 16. **Resolution - Engineering:** Consider a resolution ratifying the act of the City Manager and authorizing the Mayor to execute Amendment No. 1 to License Agreement No. 16522, by and between the City of Lubbock, and Kaysha Byrd, a selected winner of the 2022 Storm Drain Art Project.
7. 17. **Resolution - Engineering:** Consider a resolution ratifying the act of the City Manager and authorizing the Mayor to execute Amendment No. 1 to License Agreement No. 16525, by and between the City of Lubbock, and Taylor Wright, a selected winner of the 2022 Storm Drain Art Project.
7. 18. **Resolution - Public Works:** Consider a resolution authorizing the Mayor to execute an Advanced Funding Agreement (AFA), Contract 16547, by and between the City of Lubbock, and the State of Texas acting through the Texas Department of Transportation (TxDOT), for US 84 (Avenue Q) from US 62 (19th Street) to US 82 (Marsha Sharp Freeway), for installation of medians, sidewalks, ADA ramps, bulb-outs, and illumination along the route.

7. 19. **Resolution - Public Works:** Consider a resolution authorizing the Mayor to execute an Interlocal Agreement, by and between the City of Lubbock, and the Texas Department of Transportation, for the Texas Department of Transportation (TxDOT) Urban Street Turnback Program related to portions of 19th Street/Idalou Road - US 62 from Memphis Avenue to just East of IH-27, and portions of Avenue Q (US 84) from US 82 (Marsha Sharp Freeway) to 34th Street located within the city limits of the City of Lubbock, Texas
7. 20. **Resolution - Business Development:** Consider a resolution approving a Downtown Grant Program (Permittable) expenditure of Market Lubbock, Inc., to be provided to Paper Cut, LLC, located at 1211 Avenue F, pursuant to Article IV, Section 5 of the Amended and Restated Bylaws of the Market Lubbock Development Corporation.
7. 21. **Resolution - Business Development:** Consider a resolution approving a Downtown Grant Program (Permittable) expenditure of Market Lubbock, Inc., to be provided to Discovery Healthcare Consulting Group, located at 1500 Broadway, 10th Floor, pursuant to Article IV, Section 5 of the Amended and Restated Bylaws of the Market Lubbock Development Corporation.
7. 22. **Resolution - Public Health Services:** Consider a resolution authorizing the Mayor to execute Amendment No. 1 to the Department of State Health Services Contract No. HHS001120300005, under the STD/HIV-DIS Prevention Services Grant Program, by and between the City of Lubbock, and the State of Texas Department of State Health Services (DSHS), and all related documents, for funding from the HIV/STD Program of the Texas DSHS.
7. 23. **Resolution - Public Health Services:** Consider a resolution authorizing the Mayor to execute Amendment No. 2 to the Department of State Health Services (DSHS) Contract No. HHS000812700012, and all related documents, by and between the City of Lubbock, and the State of Texas acting by and through DSHS, to provide funding for COVID-19 activities.
7. 24. **Ordinance 2nd Reading - Community Development:** Consider Ordinance No. 2022-O0075, amending Article 2.03 of the Code of Ordinances of the City of Lubbock, with regard to the Composition; Appointment and Terms of the Members of the Community Development and Services Board; providing a savings clause and providing for publication.
7. 25. **Resolution - Community Development:** Consider a resolution authorizing the Mayor to execute Community Development Funding Contract 16577, and all related documents, with Catholic Charities, Diocese of Lubbock, to provide Education assistance to qualified low-to-moderate income persons and families through the Community Development Block Grant (CDBG) administered by the U.S. Department of Housing and Urban Development (HUD).

7. 26. **Resolution - Facilities Management:** Consider a resolution authorizing the Mayor to execute Contract 16482, with Henthorn Commercial, Inc., for construction and renovation of the Lubbock Public Health and Community Development Facility.
7. 27. **Resolution - Public Transit Services:** Consider a resolution authorizing the Mayor to execute an interlocal agreement, with Texas Tech University, for campus bus service.
7. 28. **Resolution - Public Transit Services:** Consider a resolution authorizing the Mayor to execute a Services Agreement, with Swiftly, Inc., to provide real time vehicle tracking for the Citibus fleet through software, as a service subscription.
7. 29. **Resolution - Information Technology:** Consider a resolution authorizing the Mayor to execute Purchase Order 33001616, to ThinkGard, LLC, for Managed Backup and Disaster Recovery as a Service (DRaaS) Solution with discounted pricing and backup hardware included.
7. 30. **Resolution - Parks and Recreation:** Consider a resolution authorizing the Mayor to execute on behalf of the City of Lubbock an Agreement Termination and Release to the License Agreement dated September 26, 2002, Resolution No. 2002-R0394 with the Friends of Legacy Play Village, Community Playground Corporation.
7. 31. **Resolution - Parks and Recreation:** Consider a resolution authorizing and ratifying the acts of the Deputy City Manager, in executing a Senior Center Operations Contract, and all related documents, with the South Plains Association of Governments (SPAG), for funds passed through the Texas Health and Human Services (HHS), to pay for operation of senior citizen program sites.
7. 32. **Resolution - Lubbock Fire Rescue:** Consider a resolution authorizing the Mayor to execute Contract 16548, by and between the City of Lubbock, and Jahnke & Sons Construction, Inc. dba WHP Trainingtowers, for the construction of the Lubbock Fire Rescue Training Complex.
7. 33. **Resolution - City Manager:** Consider a resolution authorizing the Mayor to execute an American Rescue Plan Act (ARPA) Funding Agreement, by and between the City of Lubbock, and StarCare Specialty Health System, for the construction of infrastructure that will serve as a center for behavioral crisis.
7. 34. **Resolution - City Manager:** Consider a resolution authorizing the Mayor to execute American Rescue Plan Act (ARPA) Agreement No. 16515, by and between the City of Lubbock, and South Plains College, for healthcare training scholarships.
7. 35. **Resolution - City Manager:** Consider a resolution authorizing the Mayor to execute City of Lubbock, ARPA Funding Agreement No. 16528, by and between the City of Lubbock, and Lubbock Habitat for Humanity, for the construction of infrastructure to serve an affordable housing development in a qualified census tract,

7. 36. **Resolution - City Manager:** Consider a resolution authorizing the Mayor to execute, for and on behalf of the City of Lubbock, a Health District Agreement Pursuant to the authority of Chapter 121 of the Texas Health and Safety Code, thereby creating the Lubbock County Health District.
7. 37. **Resolution - City Manager:** Consider a resolution authorizing the Mayor to execute an amendment to Section 6, Paragraph H of the Commitment Agreement, by and between the City of Lubbock, and the Lubbock Entertainment and Performing Arts Association, dated January 25, 2018, allowing for additional time to begin construction of a parking area.

8. **Regular Agenda**

8. 1. **Ordinance Single Reading - Finance:** Consider the adoption of an ordinance of the City of Lubbock, Texas, authorizing the issuance and sale of City of Lubbock, Texas, Tax Note, Series 2022; levying a tax in payment thereof; and enacting other provisions relating to the subject.
8. 2. **Ordinance 2nd Reading - Planning:** Consider Ordinance No. 2022-O0078, pursuant to Chapter 43 of the Texas Local Government Code, for annexation of the property located south of 122nd Street and east of Frankford Avenue, containing approximately 5.0 acres, out of Section 24, Block E-2, Lubbock County, Texas, and commonly identified by the Lubbock Central Appraisal District Reference Number R68745.
8. 3. **Resolution - City Council:** Consider a resolution creating a Downtown Parking Task Force, appointing its members, and establishing its scope of review and duties.
8. 4. **Resolution - City Manager:** Consider a resolution outlining that there is a homelessness issue within the city of Lubbock and supporting the formation of a local Continuum of Care.

Information

Agenda Item

Board Recognitions:

Animal Services Advisory Board

Deborah Deary

Jessica Smith

Greg Taylor

Citizens Traffic Commission

Skyler Sherrod

Civic Lubbock Inc. Board of Directors

Christi Cage

Junked Vehicle Compliance Board

Sheila Powell

Park and Recreation Board

Dr. William Pasewark Jr.

Item Summary

Fiscal Impact

Staff/Board Recommending

Attachments

No file(s) attached.



Information

Agenda Item

April 12, 2022 Regular City Council Meeting

Item Summary

April 12, 2022 Regular City Council Meeting

Fiscal Impact

None

Staff/Board Recommending

Rebecca Garza, City Secretary

Attachments

4.12.2022

CITY OF LUBBOCK
REGULAR CITY COUNCIL MEETING
April 12, 2022
1:30 P. M.

The City Council of the City of Lubbock, Texas met in regular session on the 12th of April, 2022, in City Council Chambers, Citizens Tower, 1314 Avenue K, Lubbock, Texas at 1:30 p.m.

1:33 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 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

Absent: Council Member Juan A. Chadis

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

- *Citizen Comments 1; 2.1-2.3; Executive Session; 4.1-4.2; 4.3.4; 4.3.1-4.3.3; Citizen Comments 5; 6.1; 7.1-7.38; 8.1; 8.21; 8.20; 8.2-8.5; 8.7; 8.9-8.14; 8.6; 8.8; 8.15-8.19.*
- *Item No. 8.8 was amended*

- 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 2.1 and 2.3 on the Work Session Agenda, shall complete the sign-up form provided at the meeting, no later than 1:30 p.m. on April 12, 2022. 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.**

No one appeared to speak.

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

- 2. 1. Lubbock Public Libraries Update and Technology Grants Overview**

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

Stacy McKenzie, director of library services, gave a presentation and update on Lubbock Public Libraries operations and current library projects and answered questions from City Council. Additionally, Ms. McKenzie presented on the recently awarded Texas Digital Navigators Grant

and Emergency Connectivity Fund Grant, gave an overview of the projects that are being developed and administered using those funds, and answered questions from City Council.

2. 2. Unified Development Code (UDC) Update

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

Bryan Isham, director of planning, gave an update on the Unified Development Code (UDC) as it relates to the adoption process and timeline and answered questions from City Council.

2. 3. Continuing American Rescue Plan Act (ARPA) Discussion

Jarrett Atkinson, city manager, gave a presentation on American Rescue Plan Act (ARPA) funds as they relate to the City of Lubbock and answered questions from City Council. Topics discussed included: an update on the ledger, available balances, the status of projects that have been approved, and the status of projects currently in development.

Erik Rejino, assistant city manager; and James Brown, director of information technology, gave comments on the status of the broadband expansion project and answered questions from City Council. Mr. Rejino gave additional comments on the status of the job training projects currently in development and answered questions from City Council.

Bill Howerton, deputy city manager, gave comments on the status of the affordable housing program, small business relief fund, non-profit assistance program, the arts funding program, and the City of Lubbock/Lubbock County public health district partnership 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 2:41 p.m. and reconvened in Executive Session under the provisions of Section 551, Texas Government Code. City Council reconvened in open session at 4:30 p.m., and the meeting was called to order at 5:10 p.m.

3. 1. Hold an executive session in accordance with the 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. Civic Park License Agreement

3. 1. 2. Block 5, Section 10, AB 445, Tract 1

3. 1. 3. Canyon Park - Block 1 and Block 2

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. Civic Park License Agreement
3. 2. 2. Block 5, Section 10, AB 445, Tract 1
3. 2. 3. Canyon Park - Block 1 and Block 2
3. 3. Hold an executive session in accordance with the Texas Government Code Section 551.074, to discuss personnel matters, regarding the duties, responsibilities, and/or appointments to the Junked Vehicle Compliance Board, Lake Alan Henry Board of Appeals, and the Water Board of Appeals.

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

City Council reconvened at 4:30 p.m.

4. Ceremonial Items

4. 1. Invocation

Lead Pastor Clayton Walker, The City Church, 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 honor of the Lubbock High Wrestling Team State Winners

Council Member Jeff Griffith presented a special recognition in honor of the Lubbock High Wrestling Team State winners. Head Coach Richard Leal and athletes June An, Keagan Davis, Mahogany Casel, and Zach Casias were in attendance to receive this recognition.

4. 3. 2. Presentation of a Special Recognition in celebration of the Lubbock Christian High School Girls Basketball Team's State Tournament Win

Council Member Latrelle Joy presented a special recognition in celebration of the Lubbock Christian High School Girls Basketball Team's State Tournament win. Head Coach Brad Crow gave comments and thanked City Council for the recognition and the community for their support throughout the season. Coach Crow also introduced the following athletes and

coaches who were in attendance to receive this recognition: Raegan Lee, Reese Bruington, Lindley Bruington, Madison Morin, Abbie Crow, Paige Parker, Brooke Hooten, Callie Roberts, Briley Pelham, Sarah Haverdink, Drew Grellhesl, Lexi Caddell, Hagan Bennett, Skylar Simmons, and Assistant Coach Brad Rogers.

- 4.3. 3. Presentation of a Special Recognition observing and celebrating the 90th Birthday of the Veterans of Foreign Wars (VFW) service organization.

Mayor Pro Tem Steve Massengale presented a special recognition observing and celebrating the 90th birthday of the Veterans of Foreign Wars (VFW) service organization. Benny Guerrero, commander of the Ancile "A1" White VFW Post 2466, gave comments on the importance of the VFW and its mission, and thanked City Council and the Lubbock community for their continued support.

- 4.3. 4. Presentation of a Special Recognition in Honor of Firefighter Matt Dawson

Mayor Daniel M. Pope and Shaun Fogerson, fire chief, presented a special recognition in honor of Firefighter Matt Dawson, celebrating his retirement from Lubbock Fire Rescue. Mr. Dawson gave comments, thanked City Council for the special recognition, and expressed his gratitude for the support his Lubbock Fire Rescue colleagues and the Lubbock community have provided to him and his family throughout the last two years.

Call to Order

The meeting was called to order at 5:10 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 April 12, 2022. 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.**

No one appeared to speak.

6. Minutes

- 6.1. February 15, 2022 Special City Council Meeting - Electric Utility Board
February 23, 2022 Special City Council Meeting - Lubbock Economic Development Alliance
March 8, 2022 Regular City Council Meeting

Motion by Council Member Randy Christian, seconded by Council Member Latrelle Joy to approve the February 15, 2022 Special City Council Meeting - Electric Utility Board minutes; the February 23, 2022 Special City Council Meeting - Lubbock Economic Development Alliance minutes; and the March 8, 2022 Regular City Council Meeting minutes.

Vote: 6 - 0 Motion carried

Other: Council Member Juan A. Chadis (ABSENT)

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 Council Member Latrelle Joy, seconded by Mayor Pro Tem Steve Massengale to approve items 7.1-7.38.

Vote: 6 - 0 Motion carried

Other: Council Member Juan A. Chadis (ABSENT)

7. 1. **Budget Ordinance Amendment 2nd Reading - Finance:** Ordinance No. 2022-O0035, Amendment 17, amending the FY 2021-22 budget for municipal purposes respecting the General Capital Fund to Establish Capital Improvement Projects 8670 Small Business Grant-ARPA, 8671 Non-Profit Grants-ARPA, and 8672 Arts Grants-ARPA; providing for filing; and providing for a savings clause.
7. 2. **Budget Ordinance Amendment 1st Reading - Finance:** Ordinance No. 2022-O0044, Amendment 18, amending the FY 2021-22 Budget for municipal purposes respecting the Grant Fund to accept and appropriate funding from the Texas State Library and Archives Commission and the Federal Communications Commission; providing for filing; and providing for a savings clause.
7. 3. **Budget Ordinance Amendment 1st Reading - Finance:** Ordinance No. 2022-O0045, Amendment 19, amending the FY 2021-22 Budget for municipal purposes respecting the Water Capital Fund to Establish Capital Improvement Project 8673 Water/Wastewater Analysis; providing for filing; and providing for a savings clause.
7. 4. **Budget Ordinance Amendment 1st Reading - Finance:** Ordinance No. 2022-O0046, Amendment 20, amending the FY 2021-22 Budget for municipal purposes respecting the Lubbock Power & Light Capital Program; providing for filing; and providing for a savings clause.
7. 5. **Budget Ordinance Amendment 1st Reading - Finance:** Ordinance No. 2022-O0047, Amendment 21, amending the FY 2021-22 Budget for municipal purposes respecting the General Fund and General Capital Fund to establish Capital Improvement Project 92760, Avenue Q TAP and to appropriate funding for Capital Improvement Project 92737, 114th Street, Quaker Avenue to Indiana Avenue; providing for filing; and providing for a savings clause.

7. 6. **Resolution - Finance:** Resolution No. 2022-R0161 giving Notice of Intent to enter into and execute a Tax Abatement Agreement with Leprino Foods, with said notice to be given to the presiding officers of each taxing unit having jurisdiction in assessing taxes on the property located at 4301 East 19th Street and 4502 East 4th Street.
7. 7. **Ordinance 2nd Reading - Right-of-Way:** Ordinance No. 2022-O0037, abandoning and closing portions of North Avenue B and East Queens Street, and reserving an Underground Utility Easement, located in Blocks 1, 2, and 4, of Riverlawn Addition, Section 15, Block AK, Lubbock County, Texas.
7. 8. **Ordinance 2nd Reading - Right-of-Way:** Ordinance No. 2022-O0036, abandoning and closing three alleys located in Blocks 2 and 4, Riverlawn Addition, in the Pharr Addition, and adjacent to the Boone Addition, Section 15, Block AK, and reserving two underground utility easements, in Lubbock County, Texas.
7. 9. **Ordinance 1st Reading - Right-of-Way:** Ordinance No. 2022-O0048, abandoning and closing an Underground Utility Easement, located in Block 228, Original Town of Lubbock Addition to the City of Lubbock, Lubbock County, Texas.
7. 10. **Ordinance 1st Reading - Right-of-Way:** Ordinance No. 2022-O0049, abandoning and closing a portion of an alley right-of-way, located in Section 41, Block AK, and beting between Lots 16-21, Jetland Terrace Addition to the City of Lubbock, Lubbock County, Texas.
7. 11. **Ordinance 1st Reading - Right-of-Way:** Ordinance No. 2022-O0050, abandoning and closing portions of an underground utility easement and a down guy easement, located in Tract A6, High Plains Addition to the City of Lubbock, Lubbock County, Texas.
7. 12. **Resolution - Right-of-Way:** Resolution No. 2022-R0162 authorizing the Mayor to execute a Commercial Real Estate Sales Contract between the City of Lubbock and Marc Shipton, for the sale of unimproved lots at 9902 Milwaukee Avenue, 9908 Milwaukee Avenue, and 6514 100th Street.
7. 13. **Resolution - Engineering:** Resolution No. 2022-R0163 authorizing the Mayor to execute License Agreement No. 16522 with Kaysha Byrd, a selected winner of the 2022 Storm Drain Art Project.
7. 14. **Resolution - Engineering:** Resolution No. 2022-R0164 authorizing the Mayor to execute License Agreement No. 16521, with Chloe Douglas, a selected winner of the 2022 Storm Drain Art Project.
7. 15. **Resolution - Engineering:** Resolution No. 2022-R0165 authorizing the Mayor to execute License Agreement No. 16520, with Adrian Diaz, a selected winner of the 2022 Storm Drain Art Project.

- 7. 16. **Resolution - Engineering:** Resolution No. 2022-R0166 authorizing the Mayor to execute License Agreement No. 16524, with Mystie Do, a selected winner of the 2022 Storm Drain Art Project.
- 7. 17. **Resolution - Engineering:** Resolution No. 2022-R0167 authorizing the Mayor to execute License Agreement No. 16523, with Libby Wagner, a selected winner of the 2022 Storm Drain Art Project.
- 7. 18. **Resolution - Engineering:** Resolution No. 2022-R0168 authorizing the Mayor to execute License Agreement No. 16525, with Taylor Wright, a selected winner of the 2022 Storm Drain Art Project.
- 7. 19. **Resolution - Building Safety:** Resolution No. 2022-R0169 ratifying the acts of the City Manager in executing an Interlocal Agreement with Texas Tech University to provide construction plan review, permitting, and inspection services for an education complex to be located on Texas Tech University property.
- 7. 20. **Ordinance 2nd Reading - Business Development:** Ordinance No. 2022-O0043, amending and adopting the Northwest Passage Public Improvement District 2022 Amended and Restated Service and Assessment Plan; reviewing classifications for the methods of assessing special benefits for the services and improvements of property in the Northwest Passage Public Improvement District; approving, adopting and filing with the City Secretary the updated 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.
- 7. 21. **Resolution - Business Development:** Resolution No. 2022-R0170 authorizing the Mayor to execute Public Works Contract 16456, with Intercon Demolition, for the demolition of the Lubbock Business Center building at 1301 Broadway.
- 7. 22. **Resolution - Business Development:** Resolution No. 2022-R0171 authorizing the Mayor to execute Contract 16310, with West Texas Services, Inc. dba Tom's Tree Place, for landscape maintenance services in the Quincy Park Public Improvement District (PID).
- 7. 23. **Resolution - Business Development:** Resolution No. 2022-R0172 authorizing the Mayor to execute Contract 16509, with West Texas Services, Inc. dba Tom's Tree Place, for services related to an electrical project in the North Point Public Improvement District (PID).
- 7. 24. **Resolution - City Manager:** Resolution No. 2022-R0173 to suspend for forty-five (45) days the effective date proposed by Atmos Energy Corporation - West Texas Division, to increase rates under the Gas Reliability Infrastructure Program (GRIP).
- 7. 25. **Resolution - City Manager:** Resolution No. 2022-R0174 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 2022 Mayor's Marathon.

7. 26. **Resolution - Public Health Services:** Resolution No. 2022-R0175 authorizing the Mayor to execute a Letter of Affiliation, and all related documents, by and between the City of Lubbock and the University of Texas Health Science Center at Houston, on behalf of its School of Public Health's Gaining Equity in Training for Public Health Informatics and Technology (GET PHIT) Program, for the purpose of placing students in public health informatics internships at the City of Lubbock Health Department.
7. 27. **Resolution - Aviation:** Resolution No. 2022-R0176 authorizing the Mayor to execute Purchase Order 25101438, with ADB Safegate Americas, LLC, for location and directional lighted signs at Lubbock Preston Smith International Airport.
7. 28. **Resolution - Information Technology:** Resolution No. 2022-R0177 authorizing the Mayor to execute Amendment No. 1 to Contract 15678, with Bohannon Huston, Inc., for digital orthophotography and other GIS data acquisition.
7. 29. **Resolution - Information Technology:** Resolution No. 2022-R0178 authorizing the Mayor to execute Purchase Order 33100037, with Dell Marketing, LLC, for two PowerEdge MX7000 Server Chassis and PowerEdge MX750C Servers, to increase cybersecurity of the City's voice and data networks.
7. 30. **Resolution - Parks and Recreation:** Resolution No. 2022-R0179 authorizing the Mayor to execute a Lease Agreement, by and between the City of Lubbock and Mackenzie Park Playground, Inc. d/b/a Joyland Amusement Park, regarding the lease of certain real property located in Mackenzie Park.
7. 31. **Resolution - Libraries:** Resolution No. 2022-R0180 authorizing the Mayor to execute, for and on behalf of the City of Lubbock, Sole Source Service Contract 16327, with Baker & Taylor, for collectionHQ Software, for the collection development of library materials.
7. 32. **Resolution - Libraries:** Resolution No. 2022-R0181 authorizing the Mayor to execute a Grant Agreement, and related documents, by and between the City of Lubbock and the Texas State Library & Archives Commission, for the receipt of Grant Funds from the Texas Digital Navigators Grant Program.
7. 33. **Resolution - Libraries:** Resolution No. 2022-R0182 authorizing the City Council to accept funding from the Emergency Connectivity Fund (ECF) from the Federal Communications Commission (FCC), on behalf of the Lubbock Public Libraries, and authorizing the Mayor to execute any documents to purchase mobile devices and mobile service for those devices to be checked out through the Lubbock Public Library System.
7. 34. **Resolution - Lubbock Fire Rescue:** Resolution No. 2022-R0183 authorizing the Mayor to execute Purchase Order 10025154, with DACO Fire Equipment, for the acquisition of structural firefighting protective clothing.

7. 35. **Ordinance 2nd Reading - Planning (District 2):** Ordinance No. 2022-O0038, for Zone Case 0335-D, a request of Elida and Rudy Morin, for a Specific Use for an Event Center on property zoned Commercial District (C-4), at 1819 East Broadway, located east of Martin Luther King Jr. Boulevard and north of East Broadway, Gearhart Addition, Block 2, Lots 22-23.
7. 36. **Ordinance 2nd Reading - Planning (District 4):** Ordinance No. 2022-O0039, for Zone Case 1223-G, a request of Frontage Estates, LP for 50 Yard Line Land PTRSHP, LTD, for a zone change from General Retail District (C-3) to High-Density Apartment District (A-2), at 2549 South Loop 289, located south of South Loop 289 and west of University Avenue, Times Square Addition, Lot 1-B-2, and the northwest corner of Lot 1-A.
7. 37. **Ordinance 2nd Reading - Planning (District 4):** Ordinance No. 2022-O0040, for Zone Case 3458, a request of Delta Land Surveying and Engineering for HTS Management LLC, for a zone change from Transition District (T) to Commercial District (C-4), at 3101 114th Street, located south of 114th Street and east of Indiana Avenue, on 6.32 acres of unplatted land out of Block E2, Section 21.
7. 38. **Ordinance 2nd Reading - Planning (District 5):** Ordinance No. 2022-O0041, for Zone Case 3439-A, a request of Hugo Reed and Associates, Inc. for Outkick Investment Partners, LLC, for a zone change from Local Retail District (C-2) to Family Apartment District (A-1), generally located south of 104th Street and west of Milwaukee Avenue, on 1.5 acres of unplatted land out of Block AK, Section 22.

8. **Regular Agenda**

8. 1. **Board Appointments - City Secretary:** Consider appointments to the Animal Services Advisory Board, Audit & Investment Committee, Capital Improvements Advisory Committee, Citizens Traffic Commission, Civic Lubbock, Inc. Board of Directors, Junked Vehicle Compliance Board, Keep Lubbock Beautiful Advisory Committee, Lake Alan Henry Board of Appeals, Park and Recreation Board, Public Transit Advisory Board, Veterans Advisory Committee, and the Water Board of Appeals.

Animal Services Advisory Board: Motion by Mayor Pro Tem Steve Massengale, seconded by Council Member Jeff Griffith, to reappoint Melissa Pierce and Katherine Wilkerson; appoint Deborah Deary to replace Alison Andrukonis; appoint Jessica Smith to replace Deaon Bryant; and appoint Greg Taylor to replace Bill Howerton.

Vote: 6-0 Motion carried

Other: Council Member Juan A. Chadis (ABSENT)

Audit & Investment Committee: Motion by Mayor Pro Tem Steve Massengale, seconded by Council Member Latrelle Joy, to reappoint Brandon Kidd.

Vote: 6-0 Motion carried

Other: Council Member Juan A. Chadis (ABSENT)

Capital Improvements Advisory Committee: Motion by Mayor Pro Tem Steve Massengale, seconded by Council Member Jeff Griffith, to reappoint Andy Bean, Jonathan Hill, and Thomas Payne.

Vote: 6-0 Motion carried

Other: Council Member Juan A. Chadis (ABSENT)

Citizens Traffic Commission: Motion by Council Member Randy Christian, seconded by Mayor Pro Tem Steve Massengale, to appoint Skyler Sherrod to replace Leslie Landeros.

Vote: 6-0 Motion carried

Other: Council Member Juan A. Chadis (ABSENT)

Civic Lubbock, Inc. Board of Directors: Motion by Council Member Randy Christian, seconded by Council Member Jeff Griffith, to appoint Christi Cage to replace Vernita Woods-Holmes.

Vote: 6-0 Motion carried

Other: Council Member Juan A. Chadis (ABSENT)

Junked Vehicle Compliance Board: Motion by Council Member Latrelle Joy, seconded by Council Member Jeff Griffith, to reappoint David Houser; and appoint Sheila Powell to replace Deborah Ward.

Vote: 6-0 Motion carried

Other: Council Member Juan A. Chadis (ABSENT)

Keep Lubbock Beautiful Advisory Committee: Motion by Council Member Latrelle Joy, seconded by Council Member Jeff Griffith, to reappoint Sonya Garcia, Christopher Mendez, and Carmesha Williams; and appoint Kim Davis to replace Mike Truelove.

Vote: 6-0 Motion carried

Other: Council Member Juan A. Chadis (ABSENT)

Lake Alan Henry Board of Appeals: Motion by Council Member Latrelle Joy, seconded by Mayor Pro Tem Steve Massengale, to reappoint Cristofer Howe and Marisa Allison-Scheef; appoint Shannon Hansen to replace Tim Gragson; and appoint Kristyn Sorenson to replace Christopher Seiler.

Vote: 6-0 Motion carried

Other: Council Member Juan A. Chadis (ABSENT)

Park and Recreation Board: Motion by Council Member Jeff Griffith, seconded by Council

Member Latrelle Joy, to reappoint Daniel Bunye and Margarita Olivarez; and appoint William Pasewark to replace Craig Wells.

Vote: 6-0 Motion carried

Other: Council Member Juan A. Chadis (ABSENT)

Public Transit Advisory Board: Motion by Council Member Jeff Griffith, seconded by Council Member Latrelle Joy, to reappoint Anne Polk; and appoint Naomi Coture to replace Dr. Robert McKenzie.

Vote: 6-0 Motion carried

Other: Council Member Juan A. Chadis (ABSENT)

Veteran's Advisory Committee: Motion by Council Member Shelia Patterson Harris, seconded by Council Member Jeff Griffith, to reappoint Norman Bearden, Benny Guerrero, Dalton Keel, and Steve Oien; and appoint Aaron Johnson to replace Linda Murphy.

Vote: 6-0 Motion carried

Other: Council Member Juan A. Chadis (ABSENT)

Water Board of Appeals: Motion by Council Member Shelia Patterson Harris, seconded by Mayor Pro Tem Steve Massengale, to reappoint Brent Clifford and Donald Stubbs.

Vote: 6-0 Motion carried

Other: Council Member Juan A. Chadis (ABSENT)

- 8. 2. Public Hearing - Planning (District 1):** Ordinance No. 2022-O0052, for Zone Case 3081-C, a request of SK Architecture Group for JKLM Investments, for a zone change from Garden Office District (GO) to High-Density Apartment District (A-2), at 1801 Main Street, located west of Avenue R and south of Main Street, Overton Addition, Block 120, Lots 1 and 2, and consider an ordinance.

Bryan Isham, director of planning, gave a presentation and answered questions from City Council.

Mayor Pope opened the public hearing at 6:18 p.m.

No one appeared to speak in favor or opposition.

Mayor Pope closed the public hearing at 6:24 p.m.

Motion by Council Member Jeff Griffith, seconded by Mayor Pro Tem Steve Massengale to approve Ordinance No. 2022-O0052.

Vote: 6 - 0 Motion carried

Other: Council Member Juan A. Chadis (ABSENT)

- 8. 3. Public Hearing - Planning (District 1):** Ordinance No. 2022-O0053, for Zone Case 3460, a request of OJD Engineering, LLC for Lyndal & Leslie Hurst, for a zone change from Transition District (T) and Single-Family District (R-1) to General Retail District (C-3), at 2402 North Quaker Avenue, located south of Clovis Road and east of North Quaker Avenue, on 9.03 acres of unplatted land out of Block A, Section 13, and consider an ordinance.

Bryan Isham, director of planning, gave a presentation and answered questions from City Council.

Mayor Pope opened the public hearing at 6:18 p.m.

Don Seals, with OJD Engineering, appeared to speak in favor.

No one appeared to speak in opposition.

Mayor Pope closed the public hearing at 6:24 p.m.

Motion by Council Member Jeff Griffith, seconded by Mayor Pro Tem Steve Massengale to approve Ordinance No. 2022-O0053.

Vote: 6 - 0 Motion carried

Other: Council Member Juan A. Chadis (ABSENT)

- 8. 4. Public Hearing - Planning (District 2):** Ordinance No. 2022-O0054, for Zone Case 3029-A, request of M & M Homes, Inc., for a zone change from Single-Family District (R-1) to Two-Family District (R-2), at 2937 East Cornell Street, Donlon Addition, Block 1, and consider an ordinance.

Bryan Isham, director of planning, gave a presentation and answered questions from City Council.

Mayor Pope opened the public hearing at 6:18 p.m.

Gilbert Arredondo, with M&M Homes, appeared to speak in favor.

No one appeared to speak in opposition.

Mayor Pope closed the public hearing at 6:24 p.m.

Motion by Council Member Jeff Griffith, seconded by Mayor Pro Tem Steve Massengale to approve Ordinance No. 2022-O0054.

Vote: 6 - 0 Motion carried

Other: Council Member Juan A. Chadis (ABSENT)

- 8. 5. Public Hearing - Planning (District 2):** Ordinance No. 2022-O0055, for Zone Case 3462, a request of Ganatra Holdings, LLC and Ganatra Investments, LLC, for a zone change from Transition District (T) to High-Density Apartment District (A-2), generally located east of University Avenue and south of 106th Street, on 3.18 acres of unplatted land out of Block E, Section 10, and consider an ordinance.

Bryan Isham, director of planning, gave a presentation and answered questions from City Council.

Mayor Pope opened the public hearing at 6:18 p.m.

No one appeared to speak in favor or opposition.

Mayor Pope closed the public hearing at 6:24 p.m.

Motion by Council Member Jeff Griffith, seconded by Mayor Pro Tem Steve Massengale to approve Ordinance No. 2022-O0055.

Vote: 6 - 0 Motion carried

Other: Council Member Juan A. Chadis (ABSENT)

- 8. 6. Public Hearing - Planning (District 2):** Ordinance No. 2022-O0063, for Zone Case 3463, a request of West Texas Engineering, LLC for Tigris Development, LLC, for a zone change from Transition District (T) to High-Density Apartment District (A-2), generally located east of University Avenue and north of 114th Street on 30.57 acres of unplatted land out of Block E, Section 10, and consider an ordinance.

Bryan Isham, director of planning, gave a presentation and answered questions from City Council. Jarrett Atkinson, city manager; and Victor Roden, with West Texas Engineering, LLC, gave comments and answered questions from City Council.

Mayor Pope opened the public hearing at 6:18 p.m.

Victor Roden, with West Texas Engineering, LLC, appeared to speak in favor.

No one appeared to speak in opposition.

Mayor Pope closed the public hearing at 6:24 p.m.

Motion by Council Member Jeff Griffith, seconded by Mayor Pro Tem Steve Massengale to approve Ordinance No. 2022-O0063.

Vote: 6 - 0 Motion carried

Other: Council Member Juan A. Chadis (ABSENT)

- 8. 7. Public Hearing - Planning (District 4):** Ordinance No. 2022-O0056, for Zone Case 2508-Q, a request of AMD Engineering, LLC for Red Canyon Development, LLC, for a zone change from General Retail District (C-3) to Local Retail District (C-2) Specific Use for a self-storage facility, at 11211 Indiana Avenue, located east of Indiana and north of 114th Street, on 4.52 acres of unplatted land out of Block E-2, Section 19, and consider an ordinance.

Bryan Isham, director of planning, gave a presentation and answered questions from City Council.

Mayor Pope opened the public hearing at 6:18 p.m.

Will Stephens, with AMD Engineering, appeared to speak in favor.

No one appeared to speak in opposition.

Mayor Pope closed the public hearing at 6:24 p.m.

Motion by Council Member Jeff Griffith, seconded by Mayor Pro Tem Steve Massengale to approve Ordinance No. 2022-O0056.

Vote: 6 - 0 Motion carried

Other: Council Member Juan A. Chadis (ABSENT)

- 8. 8. Public Hearing - Planning (District 4):** Ordinance No. 2022-O0064, for Zone Case 3104-A, a request of Centerline Engineering & Consulting, LLC for T Market Properties, LLC-Series Five, for a zone change from Transition District (T) and Apartment-Medical District (AM) to General Retail District (C-3) and Garden Office District (GO), generally located west of Quaker Avenue and south of 124th Street, on 2.67 acres of unplatted land out of Block E-2, Section 23, and consider an ordinance.

This item was amended.

Bryan Isham, director of planning, gave a presentation and answered questions from City Council. Justin Cantwell, with Centerline Engineering; Kristen Sager, planning and zoning manager; Mike Keenum, division director of engineering/city engineer; and Chad Weaver, city attorney, gave comments and answered questions from City Council.

Mayor Pope opened the public hearing at 6:18 p.m.

Justin Cantwell, with Centerline Engineering, appeared to speak in favor.

No one appeared to speak in opposition.

Mayor Pope closed the public hearing at 6:24 p.m.

Motion by Mayor Pro Tem Steve Massengale, seconded by Council Member Latrelle Joy to approve Ordinance No. 2022-O0064 with the following amendment:

- to approve a zone change from Transition District (T) and Apartment Medical District (AM) to Local Retail District (C-2) and Garden Office (GO).

Vote: 6 - 0 Motion carried

Other: Council Member Juan A. Chadis (ABSENT)

- 8. 9. Public Hearing - Planning (District 5):** Ordinance No. 2022-O0057, for Zone Case 2416-C, a request of Fullingim Bros Enterprises for AFP Rockridge 2019, LLC, for a zone change from General Retail District (C-3) to Commercial District (C-4) with a Specific Use for a bar, at 5217 82nd Street, Suite 205, located west of Slide Road and south of 82nd Street, Heald Addition, Tract B-2-A, and consider an ordinance.

Bryan Isham, director of planning, gave a presentation and answered questions from City Council.

Mayor Pope opened the public hearing at 6:18 p.m.

No one appeared to speak in favor or opposition.

Mayor Pope closed the public hearing at 6:24 p.m.

Motion by Council Member Jeff Griffith, seconded by Mayor Pro Tem Steve Massengale to approve Ordinance No. 2022-O0057.

Vote: 6 - 0 Motion carried

Other: Council Member Juan A. Chadis (ABSENT)

- 8. 10. Public Hearing - Planning (District 5):** Ordinance No. 2022-O0058, for Zone Case 2916-C, a request of AMD Engineering, LLC for LCDEV, LLC, for a zone change from General Retail District (C-3) to Local Retail District (C-2) with a Specific Use for a Self-Storage Facility, generally located south of 82nd Street and west of Upland Avenue, on 3.97 acres of unplatted land out of Block AK, Section 26, and consider an ordinance.

Bryan Isham, director of planning, gave a presentation and answered questions from City Council.

Mayor Pope opened the public hearing at 6:18 p.m.

Will Stephens, with AMD Engineering, appeared to speak in favor.

No one appeared to speak in opposition.

Mayor Pope closed the public hearing at 6:24 p.m.

Motion by Council Member Jeff Griffith, seconded by Mayor Pro Tem Steve Massengale to approve Ordinance No. 2022-O0058.

Vote: 6 - 0 Motion carried

Other: Council Member Juan A. Chadis (ABSENT)

- 8. 11. Public Hearing - Planning (District 5):** Ordinance No. 2022-O0059, for Zone Case 3058-B, a request of Hugo Reed and Associates, Inc. for Red Spike Development, LLC, for a zone change from Single-Family District (R-1) Specific Use for Residential Estates to Reduced Setback Single-Family District (R-1A), at 6802, 6804, 6911, and 6913 51st Street; 5002 Prentiss Avenue, 5002 and 5014 Quincy Avenue, located south of 50th Street and west of Pontiac Avenue, Westmont Addition, Lots 1, 2, 6, 27, 33, 35, and 36, and consider an ordinance.

Bryan Isham, director of planning, gave a presentation and answered questions from City Council.

Mayor Pope opened the public hearing at 6:18 p.m.

Terry Holeman, with Hugo Reed and Associates, appeared to speak in favor.

No one appeared to speak in opposition.

Mayor Pope closed the public hearing at 6:24 p.m.

Motion by Council Member Jeff Griffith, seconded by Mayor Pro Tem Steve Massengale to approve Ordinance No. 2022-O0059.

Vote: 6 - 0 Motion carried

Other: Council Member Juan A. Chadis (ABSENT)

- 8. 12. Public Hearing - Planning (District 5):** Ordinance No. 2022-O0060, for Zone Case 3058-C, a request of Hugo Reed and Associates, Inc. for Red Spike Development, LLC, for a zone change from Single-Family District (R-1) Specific Use for Residential Estates and High-Density Apartment District (A-2) to Family Apartment District (A-1), generally located north of 50th Street and west of Milwaukee Avenue, on 31.9 acres of unplatted land out of Block AK, Section 38, and consider an ordinance.

Bryan Isham, director of planning, gave a presentation and answered questions from City Council. Terry Holeman, with Hugo Reed and Associates, gave comments and answered questions from City Council.

Mayor Pope opened the public hearing at 6:18 p.m.

Terry Holeman, with Hugo Reed and Associates, appeared to speak in favor.

No one appeared to speak in opposition.

Mayor Pope closed the public hearing at 6:24 p.m.

Motion by Council Member Jeff Griffith, seconded by Mayor Pro Tem Steve Massengale to approve Ordinance No. 2022-O0060.

Vote: 6 - 0 Motion carried

Other: Council Member Juan A. Chadis (ABSENT)

- 8. 13. Public Hearing - Planning (District 5):** Ordinance No. 2022-O0061, for Zone Case 3058-D, a request of Hugo Reed and Associates, Inc. for Red Spike Development, LLC, for a zone change from High-Density Apartment District (A-2) to Local Retail District (C-2), generally located on the north and south sides of 50th Street, west of Milwaukee Avenue, on 8.1 acres of unplatted land out of Block AK, Section 35 and Section 38, and consider an ordinance.

Bryan Isham, director of planning, gave a presentation and answered questions from City Council.

Mayor Pope opened the public hearing at 6:18 p.m.

Terry Holeman, with Hugo Reed and Associates, appeared to speak in favor.

No one appeared to speak in opposition.

Mayor Pope closed the public hearing at 6:24 p.m.

Motion by Council Member Jeff Griffith, seconded by Mayor Pro Tem Steve Massengale to approve Ordinance No. 2022-O0061.

Vote: 6 - 0 Motion carried

Other: Council Member Juan A. Chadis (ABSENT)

- 8. 14. Public Hearing - Planning (District 6):** Ordinance No. 2022-O0062, for Zone Case 2538-BB, a request of Hugo Reed & Associates, Inc. for Hideaway West, LLC, for a zone change from Transition District (T) and Single-Family District (R-1) to Reduced Setback Single-Family District (R-1A), generally located east of Alcove Avenue and south of 4th Street, on 80.538 acres of unplatted land out of Block D-6, Section 1, and consider an ordinance.

Bryan Isham, director of planning, gave a presentation and answered questions from City Council. Jarrett Atkinson, city manager; and Terry Holeman, with Hugo Reed and Associates, gave comments and answered questions from City Council.

Mayor Pope opened the public hearing at 6:18 p.m.

Terry Holeman, with Hugo Reed and Associates, appeared to speak in favor.

No one appeared to speak in opposition.

Mayor Pope closed the public hearing at 6:24 p.m.

Motion by Council Member Jeff Griffith, seconded by Mayor Pro Tem Steve Massengale to approve Ordinance No. 2022-O0062.

Vote: 6 - 0 Motion carried

Other: Council Member Juan A. Chadis (ABSENT)

- 8. 15. Resolution - Planning:** Resolution No. 2022-R0184 terminating the Chapter 212 Agreement related to property located south of 122nd Street and east of Frankford Avenue, containing approximately 5 acres out of Section 24, Block E-2, Lubbock County, Texas, and identified by the Lubbock Central Appraisal District Reference Numbers R68662 and R317247, and authorizing City staff to develop annexation documents for the subject property.

Bryan Isham, director of planning, gave a presentation and answered questions from City Council.

Motion by Council Member Jeff Griffith, seconded by Mayor Pro Tem Steve Massengale to approve Resolution No. 2022-R0184.

Vote: 6 - 0 Motion carried

Other: Council Member Juan A. Chadis (ABSENT)

- 8. 16. Public Hearing - Planning:** Ordinance No. 2022-O0065, pursuant to Chapter 43 of the Texas Local Government Code, for a request for annexation from Canyon Rock Development, LLC, to annex property located south of 122nd Street and east of Frankford Avenue, containing approximately 5 acres, out of Section 24, Block E-2, Lubbock County, Texas, and commonly identified by the Lubbock Central Appraisal District Reference Numbers R68662 and R317247.

Bryan Isham, director of planning, gave a presentation and answered questions from City Council.

Mayor Daniel M. Pope, read into the record, the following statement: "The Local Government Code requires a public hearing for the City Council to consider the annexation of property. At this time, I will open the public hearing in regard to the annexation of an area of approximately 5 acres, out of Section 24, Block E-2, Lubbock County, Texas, and commonly identified by the Lubbock Central Appraisal District reference numbers R68662 and R317247."

Mayor Pope opened the public hearing at 6:56 p.m.

No one appeared to speak in favor or opposition.

Mayor Pope closed the public hearing at 6:57 p.m.

Motion by Council Member Jeff Griffith, seconded by Mayor Pro Tem Steve Massengale to approve Ordinance No. 2022-O0065.

Vote: 6 - 0 Motion carried

Other: Council Member Juan A. Chadis (ABSENT)

- 8. 17. Public Hearing - Planning:** Ordinance No. 2022-O0066, for a request for annexation, from Mona Lewis and Cody Kinsey, as Trustee of the Kinsey 2015 Real Estate Trust, to annex an area of approximately 124.511 acres, adjacent to the northwestern city limits of the City of Lubbock, north of 4th Street and east of Upland Avenue.

Bryan Isham, director of planning, gave a presentation and answered questions from City Council. Mike Keenum, division director of engineering/city engineer; and Jerry Hart, with R2M Engineering, representing the proponents, gave comments and answered questions from City Council.

Mayor Daniel M. Pope, read into the record, the following statement: "The Local Government Code requires a public hearing for the City Council to consider the annexation of property. At this time, I will open the public hearing in regard to the annexation of an area of approximately 124.511 acres, adjacent to the northwestern city limits of the City of Lubbock, north of 4th Street and east of Upland Avenue."

Mayor Pope opened the public hearing at 6:59 p.m.

Jerry Hart, with R2M Engineering, representing the proponents, appeared to speak in favor. Carter Lionel, with Xcel Energy, appeared to speak on this item.

No one appeared to speak in opposition.

Mayor Pope closed the public hearing at 7:01 p.m.

Motion by Mayor Pro Tem Steve Massengale, seconded by Council Member Jeff Griffith to approve Ordinance No. 2022-O0066.

Vote: 6 - 0 Motion carried

Other: Council Member Juan A. Chadis (ABSENT)

- 8. 18. Public Hearing - Planning:** Ordinance No. 2022-O0067, for a request for annexation from JDR Family, LP, to annex an area of approximately 76.15 acres, adjacent to the northwestern city limits of the City of Lubbock, north of Erskine Street and west of North Milwaukee Avenue.

Bryan Isham, director of planning, gave a presentation and answered questions from City Council.

Mayor Daniel M. Pope, read into the record, the following statement: "The Local Government

Code requires a public hearing for the City Council to consider the annexation of property. At this time, I will open the public hearing in regard to the annexation of an area of approximately 76.15 acres, adjacent to the northwestern city limits of the City of Lubbock, north of Erskine Street and west of North Milwaukee Avenue."

Mayor Pope opened the public hearing at 7:06 p.m.

No one appeared to speak in favor or opposition.

Mayor Pope closed the public hearing at 7:07 p.m.

Motion by Mayor Pro Tem Steve Massengale, seconded by Council Member Latrelle Joy to approve Ordinance No. 2022-O0067.

Vote: 6 - 0 Motion carried

Other: Council Member Juan A. Chadis (ABSENT)

- 8. 19. Ordinance 1st reading - Engineering:** Ordinance No. 2022-O0068, amending Chapter 41, Impact Fees; adopting an updated impact fee study; updating roadway impact fee collection rates; and adding a section for annexed areas.

Mike Keenum, division director of engineering/city engineer, gave a presentation and answered questions from City Council.

Motion by Council Member Shelia Patterson Harris, seconded by Council Member Randy Christian to approve Ordinance No. 2022-O0068.

Vote: 6 - 0 Motion carried

Other: Council Member Juan A. Chadis (ABSENT)

- 8. 20. Ordinance 2nd Reading - Finance:** Ordinance No. 2022-O0042, designating the Leprino Foods Reinvestment Zone within the City of Lubbock, as authorized by Chapter 312, Tax Code; describing the boundaries of said zone; describing the eligibility of said zone for commercial-industrial tax abatement; providing a saving clause and providing for publication.

Cheryl Brock, director of financial planning & analysis, gave comments and answered questions from City Council.

Motion by Mayor Pro Tem Steve Massengale, seconded by Council Member Randy Christian to approve Ordinance No. 2022-O0042.

Vote: 6 - 0 Motion carried

Other: Council Member Juan A. Chadis (ABSENT)

- 8. 21. Ordinance Single Reading - Finance:** Ordinance No. 2022-O0051, providing for the issuance of City of Lubbock, Texas, Water and Wastewater System Revenue Bonds, in one or more series; providing for the award of the sale thereof in accordance with specified parameters; approving an official statement; approving execution of a purchase contract; and enacting other provisions relating thereto.

Matt Boles, managing director with RBC Capital Markets, gave a presentation and answered questions from City Council. Blu Kostelich, chief financial officer, gave comments and answered questions from City Council.

Motion by Council Member Jeff Griffith, seconded by Council Member Latrelle Joy to approve Ordinance No. 2022-O0051.

Vote: 6 - 0 Motion carried

Other: Council Member Juan A. Chadis (ABSENT)

7:13 P.M. CITY COUNCIL ADJOURNED

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

The April 12, 2022 Regular City Council Meeting minutes were approved by the City Council on the 10th day of May, 2022.

DANIEL M. POPE, MAYOR

ATTEST:

Rebecca Garza, City Secretary

Information

Agenda Item

Budget Ordinance Amendment 2nd Reading - Finance: Consider Budget Ordinance No. 2022-O0069, Amendment 22, amending the FY 2021-22 Budget for municipal purposes respecting the Operating Budget for Lubbock Economic Development Alliance (LEDA) and Market Lubbock, Inc. (MLI) – Visit Lubbock and Sports Authority; providing for filing; and providing for a savings clause.

Item Summary

On April 26, 2022, the City Council approved the first reading of the ordinance.

- I. Amend the FY 2021-22 Lubbock Economic Development Alliance, Inc. Operating Budget as shown in Exhibit A.
- II. Amend the FY 2021-22 Market Lubbock, Inc. (MLI – Visit Lubbock and Sports Authority Operating Budget as shown in Exhibit B.

Fiscal Impact

Included in Item Summary

Staff/Board Recommending

D. Blu Kostelich, Chief Financial Officer.

Attachments

Budget Amendment 22
Exhibit A
Exhibit B

ORDINANCE NO. _____

AN ORDINANCE AMENDING THE FY 2021-22 BUDGET FOR MUNICIPAL PURPOSES RESPECTING THE OPERATING BUDGET FOR LUBBOCK ECONOMIC DEVELOPMENT ALLIANCE AND MARKET LUBBOCK INC. (MLI) – VISIT LUBBOCK AND SPORTS AUTHORITY; 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 #22) for municipal purposes, as follows:

- I. Amend the FY 2021-22 Lubbock Economic Development Alliance, Inc. Operating Budget as shown in Exhibit A.
- II. Amend the FY 2021-22 MLI – Visit Lubbock and Sports Authority Operating Budget as shown in Exhibit B.

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

Exhibit A
Lubbock Economic Development Alliance, Inc.
Proposed Revised Budget
Fiscal Year 2021-22

	Approved Budget FY 21-22	Proposed Revised Budget FY 21-22
REVENUES		
Sales Tax Funding	\$ 7,344,980	\$ 7,344,980
Investment Income	32,000	32,000
Grant from Market Lubbock, Inc.	1,000,000	1,000,000
Lease Income	39,000	39,000
Lubbock Business Park TIF Reimbursement	0	405,386 ¹
Sale of Inventory	0	-
Other Income		5,000,000 ²
Total Revenue Sources	8,415,980	13,821,366
Utilization of Non-Cash Assets - Land	2,531,448	2,531,448
Utilization of Net Assets	3,949,020	6,235,220 ³
TOTAL REVENUES	\$ 14,896,448	\$ 22,588,034
EXPENSES		
PERSONNEL		
Compensation	1,296,800	1,322,600
Employee Benefits	330,100	335,880
PERSONNEL SUBTOTAL	1,626,900	1,658,480 ⁴
ADMINISTRATIVE		
Bank Charges	300	300
Pre-employment	3,000	3,000
Repairs & Maintenance	7,500	7,500
Repairs & Maintenance - Business Parks	180,000	180,000
Professional Services	184,400	184,400
Meeting Expense	17,500	17,500
Insurance	40,300	40,300
Miscellaneous	12,000	12,000
Professional Memberships/Dues/Subscriptions/Licenses	154,400	154,400
Travel/Training	92,900	92,900
ADMINISTRATIVE SUBTOTAL	692,300	692,300
OFFICE		
Office Supplies	21,500	21,500
Office Equipment Rental	9,000	9,000
Office Rent	119,500	119,500
Telephone	26,000	26,000
Postage	3,000	3,000
OFFICE SUBTOTAL	179,000	179,000
MARKETING AND SALES		
Promotions/Advertising	683,000	683,000
Meeting Expense	31,000	31,000
Travel	104,000	104,000
MARKETING AND SALES SUBTOTAL	818,000	818,000
BUSINESS INCENTIVES/SPECIAL PROJECTS		
Special Projects	1,176,500	1,176,500
Non-Cash Incentives - Land	2,531,448	2,531,448
Direct Business Incentives	1,500,000	1,500,000
BUSINESS INCENTIVES/SPECIAL PROJECTS SUBTOTAL	5,207,948	5,207,948
CAPITAL COSTS		
Furniture, Fixtures & Equipment	25,300	25,300
Miscellaneous Land Purchases	5,272,000	5,272,000
Lubbock Business Park & Railport	1,075,000	8,735,006 ⁵
CAPITAL COSTS SUBTOTAL	6,372,300	14,032,306
TOTAL EXPENSES	\$ 14,896,448	\$ 22,588,034

Exhibit A
Lubbock Economic Development Alliance, Inc.
Schedule of Explanation for Selected Accounts
Proposed Revised Budget
Fiscal Year 2021-22

	Approved 2021-22	Proposed Revised 2021-22	Difference	Explanation
REVENUES				
1 Lubbock Business Park TIF Reimbursement	0	405,386	405,386	At the time that the budget was prepared LEDA expected the N. Ivory Street at Lubbock Business Park to be completed and the TIF reimbursed funds to be received, but the construction on the roadway continued into the current fiscal year.
2 Other Income	39,000	5,039,000	5,000,000	Lubbock County has agreed to provide funding from their allocation of ARPA funds toward the improvements of East 19th Street adjacent to Leprino Foods.
3 Utilization of Net Assets	3,949,020	6,235,220	2,286,200	Infrastructure improvements associated with the Leprino Foods facility east of Loop 289 require additional funding for the effluent water line. Also N. Nutmeg and E. Hunter Streets were completed in the current fiscal year rather than in the past one.
EXPENSES				
PERSONNEL				
4 Compensation	1,296,800	1,322,600	25,800	Recently filled positions have required higher than anticipated compensation to acquire talent.
Employee Benefits	330,100	335,880	5,780	Increase associated with increased compensation
Total Compensation & Benefits	1,626,900	1,658,480	31,580	Total budgeted increase of 1.94%.
5 Lubbock Business Park & Railport	1,075,000	8,735,006	7,660,006	Infrastructure projects associated with winning the Leprino Foods project include the construction of an effluent water line and the reconstruction of E. 19th St. to meet the company's requirements. Additionally, a portion of the construction in Lubbock Business Park was delayed from the prior year and occurred in this fiscal year.

Exhibit B
Visit Lubbock
(Convention and Visitors Bureau and Lubbock Sports)
Proposed Revised Budget
Fiscal Year 2021-22

	Approved Budget 2021-22	Approved CVB 2021-22	Approved Sports 2021-22	Proposed Revised Budget 2021-22	Proposed Revised CVB 2021-22	Proposed Revised Sports 2021-22
REVENUES						
Hotel/Motel Tax Revenue	3,821,559	2,882,071	939,488	3,821,559	2,882,071	939,488
HOT True-Up - CVB/LSA	-	-	-	1,058,748 ¹	798,467	260,281
Investment Income	26,000	19,760	6,240	26,000	19,760	6,240
Sale of Promotional Items	1,500	1,500		1,500	1,500	
Advertising Income	-			-		
Events Trust Fund Reimbursement	145,000		145,000	145,000		145,000
Event Revenue	61,500		61,500	61,500		61,500
PPP Loan Proceeds		-	-			
Total Revenue Sources	4,055,559	2,903,331	1,152,228	5,114,307	3,701,798	1,412,509
Utilization of Net Assets	798,041	606,511	191,530	(0) ²	-	-
Grant from CVB		(309,792)	309,792	-	(338,258)	338,258
TOTAL REVENUES	\$ 4,853,600	\$ 3,200,050	\$ 1,653,550	\$ 5,114,307	\$ 3,363,540	\$ 1,750,768
EXPENSES						
PERSONNEL						
Compensation	\$ 1,115,700	882,800	232,900	1,137,700 ³	900,400	237,300
Employee Benefits	\$ 269,400	220,570	48,830	274,200 ³	224,410	49,790
PERSONNEL SUBTOTAL	1,385,100	1,103,370	281,730	1,411,900 ³	1,124,810	287,090
ADMINISTRATIVE						
Bank Charges	1,000	760	240	1,000	760	240
Automobile	5,500	4,180	1,320	5,500	4,180	1,320
Pre-Employment	1,000	760	240	1,000	760	240
Member Dues/Subscriptions	64,500	49,020	15,480	64,500	49,020	15,480
Miscellaneous Expense	5,000	3,800	1,200	5,000	3,800	1,200
Professional Services	163,900	131,200	32,700	163,900	131,200	32,700
Insurance/Workers Comp.	12,600	9,500	3,100	12,600	9,500	3,100
Repairs and Maintenance	3,000	2,280	720	3,000	2,280	720
Capital Asset Purchase	37,000	28,120	8,880	37,000	28,120	8,880
Business Meetings	2,500	1,900	600	2,500	1,900	600
ADMINISTRATIVE SUBTOTAL	296,000	231,520	64,480	296,000	231,520	64,480
OFFICE						
Postage and Shipping	5,000	3,800	1,200	5,000	3,800	1,200
Rent	107,200	81,500	25,700	107,200	81,500	25,700
Storage Fees	3,000	2,280	720	3,000	2,280	720
Supplies	25,000	19,000	6,000	25,000	19,000	6,000
Telephone	26,000	19,760	6,240	26,000	19,760	6,240
OFFICE SUBTOTAL	166,200	126,340	39,860	166,200	126,340	39,860
MARKETING/SALES						
Industry Conventions	82,000	62,320	19,680	94,000 ⁴	71,440	22,560
Incentives	226,000	226,000	-	226,000	226,000	-
Convention and Sports Sales	687,000	322,500	364,500	744,000 ⁵	379,500	364,500
Servicing Items	65,000	49,400	15,600	65,000	49,400	15,600
Site Tours	120,700	110,700	10,000	120,700	110,700	10,000
Marketing	1,174,000	892,300	281,700	1,273,907 ⁶	968,229	305,678
Public Relations	90,600	75,600	15,000	90,600	75,600	15,000
Sports Servicing	561,000	-	561,000	626,000 ⁷	-	626,000
MARKETING/SALES SUBTOTAL	3,006,300	1,738,820	1,267,480	3,240,207	1,880,869	1,359,338
TOTAL OPERATING EXPENSE	\$ 4,853,600	\$ 3,200,050	\$ 1,653,550	\$ 5,114,307	\$ 3,363,539	1,750,768
	\$ -	\$ -	\$ -	\$ -	\$ 1	\$ (0)

Exhibit B
Visit Lubbock
Schedule of Explanation for Selected Accounts
Proposed Revised Budget
Fiscal Year 2021-22

		Approved	Proposed		
		2021-22	2021-22	Difference	Explanation
REVENUES					
1	HOT True-Up - CVB/LSA	-	1,058,748	1,058,748	FY 2020-2021 Hotel Occupancy True-Up received in November 2021
2	Utilization of Net Assets	798,041	(0)	(798,041)	Able to eliminate use of net assets with True-Up received Helps Visit Lubbock & Lubbock Sports meet the cash reserve policy.
EXPENSES					
PERSONNEL					
3	Compensation	1,115,700	1,137,700	22,000	Recently filled positions have required higher than anticipated compensation to acquire talent.
	Employee Benefits	269,400	274,200	4,800	Increase associated with increased compensation
	PERSONNEL SUBTOTAL	1,385,100	1,411,900	26,800	Total increase of 1.93%
4	Industry Conventions	82,000	94,000	12,000	Restore industry meetings closer to pre-Covid amounts to allow sales and marketing personnel to receive training, industry networking & new trend information.
5	Convention and Sports Sales	687,000	744,000	57,000	Continental Amateur Baseball Association (CABA) 18U Baseball bid fee and increase for trade shows for staff to get more events.
6	Marketing	1,174,000	1,273,907	99,907	Restoring budget for Visitor Guide demand, monitoring tools, influencer partnerships and various promotional guides for groups.
7	Sports Servicing	561,000	626,000	65,000	Secured 2022 and 2023 USA Boxing events that require deposits in the current year on facilities and NJCAA Region V Baseball that also requires facility rental and various other smaller events.

Information

Agenda Item

Budget Ordinance Amendment 2nd Reading - Finance: Consider Budget Ordinance No. 2022-O0070, Amendment 23, amending the FY 2021-22 Budget for municipal purposes respecting the Airport Capital Fund to appropriate funding for Capital Improvement Project 92619 Construct Federal Inspection Services Facility; providing for filing; and providing for a savings clause.

Item Summary

On April 26, 2022, the City Council approved the first reading of the ordinance.

Amend Capital Improvement Project 92619, Construct Federal Inspection Services Facility, and increase appropriation by \$852,000 from \$2,750,000 to \$3,602,000. The additional funding will be from the Coronavirus Aid Relief and Economic Securities Act funds.

Fiscal Impact

Included in Item Summary

Staff/Board Recommending

D. Blu Kostelich, Chief Financial Officer.

Attachments

Budget Amendment 23

ORDINANCE NO. _____

AN ORDINANCE AMENDING THE FY 2021-22 BUDGET FOR MUNICIPAL PURPOSES RESPECTING THE AIRPORT CAPITAL FUND TO APPROPRIATE FUNDING FOR CAPITAL IMPROVEMENT PROJECT 92619 CONSTRUCT FEDERAL INSPECTION SERVICES FACILITY; 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 #23) for municipal purposes, as follows:

- I. Amend Capital Improvement Project 92619, Construct Federal Inspection Services Facility, and increase appropriation by \$852,000 from \$2,750,000 to \$3,602,000. The additional funding will be from the Coronavirus Aid Relief and Economic Securities Act funds.

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

Information

Agenda Item

Budget Ordinance Amendment 2nd Reading - Finance: Consider Budget Ordinance No. 2022-O0071, Amendment 24, amending the FY 2021-22 Budget for municipal purposes respecting the Parks Capital Fund to establish Capital Improvement Projects 92761, ARPA Parks-Walking Trails, 92763 ARPA Parks-Playgrounds, 92764, ARPA Parks-Cattail Removal/Dredging, 92765, ARPA Parks-Pickleball Facility, 92766, ARPA Parks-Simmons Parking Lot/Lake 6 Restroom, 92767, ARPA Parks-Tom Martin Youth Sports Complex (TMYSC) Junior Field Lights, 92768, ARPA Parks-Restroom Replacement/Renovations, and the General Capital Fund to establish Capital Improvement Project 92762, Homelessness-ARPA; providing for filing; and providing for a savings clause.

Item Summary

On April 26, 2022, the first reading of the ordinance was amended to reflect the following changes.

Originally, Budget Amendment 24 established one Capital Improvement Project for the Parks and Recreation department. It has since been divided into eight individual projects.

1. Establish Capital Improvement Project 92761, ARPA Parks-Walking Trails, and appropriate funding in the amount of \$1,200,000. Funding will be from the American Rescue Plan Act funds.
2. Establish Capital Improvement Project 92763, ARPA Parks-Playground, and appropriate funding in the amount of \$1,100,000. Funding will be from the American Rescue Plan Act funds.
3. Establish Capital Improvement Project 92764, ARPA Parks-Cattail Removal/Dredging, and appropriate funding in the amount of \$1,900,000. Funding will be from the American Rescue Plan Act funds.
4. Establish Capital Improvement Project 92765, ARPA Parks-Pickleball Facility, and appropriate funding in the amount of \$1,100,000. Funding will be from the American Rescue Plan Act funds.
5. Establish Capital Improvement Project 92766, ARPA Parks-Simmons Parking Lot/Lake 6 Restrooms, and appropriate funding in the amount of \$500,000. Funding will be from the American Rescue Plan Act funds.
6. Establish Capital Improvement Project 92767, ARPA Parks-Tom Martin Youth Sports Complex (TMYSC) Junior Field Lights, and appropriate funding in the amount of \$300,000. Funding will be from the American Rescue Plan Act funds.
7. Establish Capital Improvement Project 92768, ARPA Parks-Restroom Replacement/Renovations, and appropriate funding in the amount of \$900,000. Funding will be from the American Rescue Plan Act funds.
8. Establish Capital Improvement Project 92762, Homelessness-ARPA, and appropriate funding in the amount of \$3,500,000. Funding will be from the American Rescue Plan Act funds.

Fiscal Impact

Included in Item Summary

Staff/Board Recommending

D. Blu Kostelich, Chief Financial Officer.



Attachments

Budget Amendment 24

ORDINANCE NO. _____

AN ORDINANCE AMENDING THE FY 2021-22 BUDGET FOR MUNICIPAL PURPOSES RESPECTING THE PARKS CAPITAL FUND TO ESTABLISH CAPITAL IMPROVEMENT PROJECT 92761, ARPA PARKS-WALKING TRAILS, 92763 ARPA PARKS-PLAYGROUNDS, 92764, ARPA PARKS-CATTAIL REMOVAL/DREDGING, 92765, ARPA PARKS-PICKLEBALL FACILITY, 92766, ARPA PARKS-SIMMONS PARKING LOT/LAKE 6 RESTROOM, 92767, ARPA PARKS-TOM MARTIN YOUTH SPORTS COMPLEX (TMYSC) JUNIOR FIELD LIGHTS, AND 92768, ARPA PARKS-RESTROOM REPLACEMENT/ RENOVATIONS AND THE GENERAL CAPITAL FUND TO ESTABLISH CAPITAL IMPROVEMENT PROJECT 92762, HOMELESSNESS-ARPA; 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 #24) for municipal purposes, as follows:

- I. Establish Capital Improvement Project 92761, ARPA Parks-Walking Trails, and appropriate funding in the amount of \$1,200,000. Funding will be from the American Rescue Plan Act funds.
- II. Establish Capital Improvement Project 92763, ARPA Parks-Playground, and appropriate funding in the amount of \$1,100,000. Funding will be from the American Rescue Plan Act funds.
- III. Establish Capital Improvement Project 92764, ARPA Parks-Cattail Removal/Dredging, and appropriate funding in the amount of \$1,900,000. Funding will be from the American Rescue Plan Act funds.
- IV. Establish Capital Improvement Project 92765, ARPA Parks-Pickleball Facility, and appropriate funding in the amount of \$1,100,000. Funding will be from the American Rescue Plan Act funds.
- V. Establish Capital Improvement Project 92766, ARPA Parks-Simmons Parking Lot/Lake 6 Restrooms, and appropriate funding in the amount of \$500,000. Funding will be from the American Rescue Plan Act funds.

- VI. Establish Capital Improvement Project 92767, ARPA Parks-Tom Martin Youth Sports Complex (TMYSC) Junior Field Lights, and appropriate funding in the amount of \$300,000. Funding will be from the American Rescue Plan Act funds.
- VII. Establish Capital Improvement Project 92768, ARPA Parks-Restroom Replacement/Renovations, and appropriate funding in the amount of \$900,000. Funding will be from the American Rescue Plan Act funds.
- VIII. Establish Capital Improvement Project 92762, Homelessness-ARPA, and appropriate funding in the amount of \$3,500,000. Funding will be from the American Rescue Plan Act funds.

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

Information

Agenda Item

Budget Ordinance Amendment 2nd Reading - Finance: Consider Budget Ordinance No. 2022-O0072, Amendment 25, amending the FY 2021-22 Budget for municipal purposes respecting the General Fund and the General Capital Fund to appropriate funding for Capital Improvement Project 8633, Comprehensive Plan Implementation; providing for filing; and providing for a savings clause

Item Summary

On April 26, 2022, the City Council approved the first reading of the ordinance.

1. Amend Capital Improvement Project 8633, Comprehensive Plan Implementation, and appropriate funding in the amount of \$70,000, from \$665,000 to \$735,000. Funding will be from the General Fund balance.
2. Increase the Transfer to Capital in General Fund by \$70,000, from \$22,407,115 to \$22,477,115.

Fiscal Impact

Included in Item Summary

Staff/Board Recommending

D. Blu Kostelich, Chief Financial Officer

Attachments

Budget Amendment 25

ORDINANCE NO. _____

AN ORDINANCE AMENDING THE FY 2021-22 BUDGET FOR MUNICIPAL PURPOSES RESPECTING THE GENERAL FUND AND THE GENERAL CAPITAL FUND TO APPROPRIATE FUNDING FOR CAPITAL IMPROVEMENT PROJECT 8633, COMPREHENSIVE PLAN IMPLEMENTATION; 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 #25) for municipal purposes, as follows:

- I. Amend Capital Improvement Project 8633, Comprehensive Plan Implementation, and appropriate funding in the amount of \$70,000, from \$665,000 to \$735,000. Funding will be from the General Fund fund balance.
- II. Increase Transfer to Capital in General Fund by \$70,000, from \$22,407,115 to \$22,477,115.

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

Information

Agenda Item

Budget Ordinance Amendment 1st Reading - Finance: Consider Budget Ordinance Amendment 26, amending the FY 2021-22 Budget for municipal purposes respecting Civil Service Positions; providing for filing; and providing for a savings clause.

Item Summary

Exhibit A of the FY 2021-22 Adopted Budget, as passed by City Council on September 14, 2021, and amended on February 22, 2022, is hereby amended a second time to replace Page 197 of said Exhibit A, entitled "Police – Job Grade Summary," with the second amended Page 197, which is attached hereto and made a part of this ordinance for all purposes (the "Second Amendment") as it relates to the civil service positions. In accordance with Section 2.06.109 of the Code of Ordinances of the City of Lubbock, the civil service positions, as set forth in the Second Amendment, are hereby established by Ordinance.

Fiscal Impact

Included in Item Summary

Staff/Board Recommending

D. Blu Kostelich, Chief Financial Officer

Attachments

Budget Amendment 26
Exhibit A

ORDINANCE NO. _____

AN ORDINANCE AMENDING THE FY 2021-22 BUDGET FOR MUNICIPAL PURPOSES RESPECTING CIVIL SERVICE POSITIONS; 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 #26) for municipal purposes, as follows:

Exhibit A of the FY 2021-22 Adopted Budget, as passed by City Council on September 14, 2021 and amended on February 22, 2022, is hereby amended a second time to replace page 197 of said Exhibit A, entitled "Police – Job Grade Summary," with the second amended page 197, which is attached hereto and made a part of this ordinance for all purposes (the "Second Amendment") as it relates to the civil service positions. In accordance with Section 2.06.109 of the Code of Ordinances of the City of Lubbock, the civil service positions, as set forth in the Second Amendment, are hereby established by Ordinance.

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:

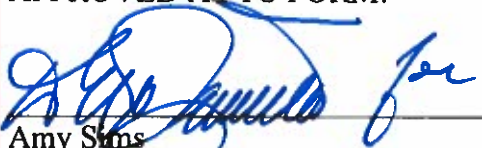
Rebecca Garza
City Secretary

APPROVED AS TO CONTENT:



D. Blu Kostelich
Chief Financial Officer

APPROVED AS TO FORM:



Amy Sims
Deputy City Attorney

Police - Job Grade Summary

Exhibit A

CLASSIFIED/SWORN JOB GRADE SUMMARY	GRADE	Actual	Actual	Actual	Budget	Amended	Change
		FY 2018-19	FY 2019-20	FY 2020-21	FY 2021-22	FY 2021-22	from Budget
Police Chief	143	1	1	1	1	1	-
Assistant Police Chief	PCS6	3	3	3	3	3	-
Deputy Police Chief/Police Captain	PCS5	8	8	7	7	7	-
Police Lieutenant	PCS4	18	18	19	19	19	-
Police Sergeant	PCS3	58	60	66	68	68	-
Police Detective/Corporal	PCS2	75	77	79	79	71	(8)
Patrol Officer	PCS1	204	283	277	255	263	8
Police Entry Level II	PNCE2	76	-	-	-	-	-
Police Entry Level 1-B	PNCE1B	-	3	13	13	13	-
TOTAL CLASSIFIED SWORN JOB GRADE SUMMARY		443	453	465	445	445	-

NON-CLASSIFIED NON-SWORN JOB GRADE SUMMARY	GRADE	Actual	Actual	Budget	Budget	Amended	Change
		FY 2018-19	FY 2019-20	FY 2020-21	FY 2021-22	FY 2021-22	from Budget
Administrative Assistant	112	7	7	8	7	7	-
Communications Center Coordinator	126	1	1	1	1	1	-
Communications Shift Supervisor	123	3	3	6	6	6	-
Communications Training & Dev Coordinator	125	1	1	-	-	-	-
Crime Analyst	119	2	2	2	4	4	-
Fleet Services Unit Supervisor	119	-	-	-	1	1	-
Fleet Services Unit Attendant	116	-	-	-	2	2	-
Forensic Laboratory Manager	127	-	-	-	1	1	-
Forensic Specialist i	123	1	2	2	7	7	-
Juvenile Services Coordinator	121	1	1	1	1	1	-
Laborer	108	1	1	1	1	1	-
Lead Administrative Assistant	115	1	1	2	3	3	-
Management Assistant	122	2	2	2	2	2	-
Parking Control Officer	108	6	6	6	6	6	-
Property and Evidence Unit Supervisor	121	-	-	-	1	1	-
Property Room Attendant	113	4	4	4	4	4	-
Public Information Officer	123	1	1	1	5	5	-
Public Information Specialist	119	1	1	1	-	-	-
Public Safety Call Taker	112	1	1	-	-	-	-
Public Safety Dispatcher I	114	28	28	28	28	28	-
Public Safety Dispatcher II	116	14	14	15	15	15	-
Public Service Officer	110	15	15	13	13	13	-
Records System Manager	126	1	1	1	1	1	-
Records System Operator	115	16	15	15	15	15	-
Records System Shift Supervisor	118	4	4	3	3	3	-
Sex Offender Registration Coordinator	117	1	1	1	1	1	-
TOTAL NON-CLASSIFIED NON-SWORN JOB GRADE SUMMARY		112	112	113	128	128	-
TOTAL JOB GRADE SUMMARY		555	565	578	573	573	-

Information

Agenda Item

Resolution - Planning: Consider a resolution authorizing the Mayor to execute Amendment No. 3 to Contract 14462, with Kendig Keast Collaborative, Inc., for development of a Unified Development Code.

Item Summary

"Plan Lubbock 2040", the City's Comprehensive Plan, was adopted by the City Council in December 2018. This plan contains a framework, of goals, action, and timeframes for the City of Lubbock to implement in order to support the vision expressed in the document. The first goal on the implementation chapter of this plan is to "revise the zoning and subdivision ordinance in order to implement the Comprehensive Plan recommendations." It recommends a Unified Development Code (UDC) to combine all regulations and standards into a single, cohesive and comprehensive document.

This project will include the review, rewrite, and unification of the zoning and subdivision regulations, sign regulations, drainage regulations, and design and historic district standards, manufactured homes and recreational vehicle parks requirements, and various ancillary development-related regulations.

On May 28, 2019, the City Council entered into an agreement with Kendig Keast Collaborative (KKC) of Sugarland, Texas, for the development of the Unified Development Code in an amount not to exceed \$567,747. The proposed contract was 22 months in length, with options for extension. However, due to COVID-19, in person meetings and public gatherings had to be restricted, which postponed events planned for public participation to provide input on the UDC.

Therefore, on February 23, 2021, the City Council approved a 6-month extension on the contract with KKC, ending September 2021, at no additional cost to the City of Lubbock. Based on guidance from the UDC Subcommittee and the ongoing review of the current draft, the City Council approved a second 6-month extension to the contract with KKC, at an additional cost of \$77,120, ending March 2022. City staff executed a 2-month extension on the contract with KKC, ending May 28, 2022, at no additional cost to the City of Lubbock.

Now, based on guidance from the UDC Subcommittee and the ongoing review of the current draft, staff is requesting a 12-month extension to the contract with KKC, at an additional cost of \$70,000, ending April 28, 2023.

\$370,000 was appropriated in FY 2018-19 in Capital Improvement Project 8633, Comprehensive Plan Implementation, with an additional \$255,000 appropriated in FY 2019-20.

Staff recommends approval of this contract extension.

Fiscal Impact

This extension will add \$70,000 to the contract, and will be funded in Capital Improvement Project 8633, Comprehensive Plan Implementation.

Staff/Board Recommending

Jesica McEachern, Assistant City Manager

Attachments

Resolution - UDC Amendment No. 3

Agreement for UDC Amendment No. 3

Contract Extension for UDC Amendment No. 3

Budget 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, Amendment No. 3 to Contract No. 14462 between the City of Lubbock and Kendig Keast Collaborative for professional services for a Unified Development Code. 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 3
To Agreement Between
The City of Lubbock, TX
And
Kendig Keast Collaborative**

THIS IS THE THIRD AMENDMENT TO THE AGREEMENT, Contract No. 14462, dated and entered into the 28th day of May 2019 by and between the City of Lubbock ("City") and Kendig Keast Collaborative ("Consultant"), an Illinois Corporation, collectively (the "Parties") for providing professional services related to a Unified Development Code ("Project").

WITNESSETH:

WHEREAS, the Parties executed Amendment No. 1 to the agreement on February 23, 2021 for additional time for the completion of the Project and Amendment No. 2 on September 14, 2021 for additional services and time related to the development of the Project.

WHEREAS, now the Parties have need to continue services as set forth in "Exhibit A", attached hereto and incorporated herein, for the completion of the Project for an additional year for an amount not to exceed seventy thousand dollars and NO/100 (\$70,000.00).

WHEREAS, all other portions of the original Agreement shall remain in place and are not altered by this amendment.

NOW, THEREFORE, the City and Consultant agree to the terms of this THIRD AMENDMENT:

IN WITNESS HEREOF, the parties have executed this Agreement as of this ____ day of ____ 2022.

CITY OF LUBBOCK

Daniel M. Pope, Mayor

KENDIG KEAST COLLABORATIVE

Bret C. Keast, AICP
Chief Executive Officer


ATTEST:

Rebecca Garza, City Secretary

APPROVED AS TO CONTENT:


Bryan Isham, Director of Planning

APPROVED AS TO FORM:


Kelli Leisure, Assistant City Attorney



KENDIG KEAST
COLLABORATIVE

EXHIBIT "A"

1415 Highway 6 South – Suite A300 | Sugar Land, TX 77478
Phone: 281.242.2960

April 6, 2022

Jesica McEachern
Assistant City Manager
1625 13th St.
Lubbock, TX 79401

Re: Contract Amendment #3 –Contract Extension and Additional Work

Dear Jesica:

Based on telephone conversations Brian Mabry has had with City staff, this letter outlines a proposed contract amendment for the Unified Development Code (UDC) project. The UDC was executed on May 28, 2019 and amended in February 2021 to extend the time of performance of the project to September 2021. It was again amended in September 2021 to extend the time of performance of the project to March 2022 and to provide an additional fee to KKC of \$77,120. We propose to amend the time of performance of the contract and the scope of the contract again, as outlined below.

Scope Amendment

The contract amendment in September 2021 created a new Task 5.5: *UDC Committee Meetings and Associated Research, Drafting, and Presentations*. This present amendment proposes to continue the work of this Task, where KKC staff prepares for, attends, and follows up on weekly meetings of the UDC Subcommittee until UDC adoption, which we now anticipate to take place in April 2023.

Compensation.

Six months after the contract amendment for \$77,120, KKC has billed almost exactly halfway through Task 5.5, *UDC Committee Meetings and Associated Research, Drafting, and Presentations*, with \$38,486 having been billed and \$38,634 remaining. In other words, KKC has billed an average of about \$6,400 per month from this task.

If the project is extended another year, ending on April 28, 2023, and our pace or work remains the same with meetings, together with preparation and follow up, and considering that we have about 6 months' worth of fee remaining in Task 5.5, then KKC would need another \$38,400 (\$6,400 x 6 months) in fee to continue for another year. The UDC Subcommittee meetings may cease at any time at the discretion of the City's Project Director. KKC will not bill for meetings that do not take place.

Task 6, *Public Review and Comment*, originally had a total budget of \$90,122 and included public meetings, responding to comments, and things of that nature. KKC only has \$4,330 left in that task to bill, having billed \$85,791. Certainly if the project were extended up to a year, then there will be more comments to address. Work on this project began in June 2019, so over 34 months, KKC has billed an average of about \$2,500 per month. To extend the project another year, and having about 1.75 months left in the budget for this task, we would need \$25,625 in additional fee (10.25 months x \$2,500).

www.kendigkeast.com

EXHIBIT "A"

Jesica McEachern, Assistant City Manager
April 6, 2022
Page 2 of 3

In summary, to continue at KKC's current scope and pace of work for another year on the UDC project, KKC needs a total additional fee of \$64,025.

Rates for Onsite Visits

Most of the activities for Task 5.5 have taken place virtually. If the City requests in-person site visits from KKC, beyond the trips that remain in the original contract, then the following fees apply, inclusive of direct expenses and labor.

Principal-in-Charge 1 Day / 1 Night Trip plus full day's work.....	\$2,439
Project Manager 1 Day / 1 Night Trip plus full day's work.....	\$1,939
Principal-in-Charge 2 Days / 2 Night Trip plus full days' work	\$4,039
Project Manager 2 Day / 2 Night Trip plus full days' work.....	\$3,434

If it is acceptable, please sign in the space provided on the next page and return one signed original for our files. We appreciate the opportunity to continue to work on this project for Lubbock.

Respectfully,



Bret C. Keast, AICP
CEO | Owner

EXHIBIT "A"

Jesica McEachern, Assistant City Manager
April 6, 2022
Page 3 of 3

APPROVAL OF UNIFIED DEVELOPMENT CODE CONTRACT AMENDMENT

Signature

Typed Name and Title

Date Signed

City of Lubbock, TX
Capital Project
Project Cost Detail
May 10, 2022

Capital Project Number:	8633
Capital Project Name:	Comprehensive Plan Implementation

<i>Encumbered/Expended</i>	Budget
Contract 14462 Unified Development Code	\$ 567,747
Contract 14462 Amendment 2	77,120
enCodePlus, LLC Licensing Fees	16,750
Printing, Advertising, and Meetings	1,889
<i>Agenda Items, May 10, 2022</i>	
Contract 14462 Amendment 3	70,000
<i>Encumbered/Expended To Date</i>	733,506
Estimated Costs for Remaining Appropriation	
Misc. Costs	1,494
<i>Remaining Appropriation</i>	1,494
Total Appropriation	\$ 735,000

Information

Agenda Item

Ordinance 2nd Reading - Right-of-Way: Consider Ordinance No. 2022-O0073, abandoning and closing a portion of a utility easement and a portion of an access easement, located in Lot 4A, Spectra Lubbock Southwest Addition to the City of Lubbock, Lubbock County, Texas.

Item Summary

On April 26, 2022, 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 portion of a utility easement and a portion of an access easement (CCFN# 2006044435) located in Lot 4A, Spectra Lubbock Southwest Addition, and being commonly known as 6301 82nd Street, Lot 4A. The closures are to accommodate the development of a future office building.

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

Fiscal Impact

None

Staff/Board Recommending

Jesica McEachern, Assistant City Manager

Attachments

Ordinance - Utility Easement and Access Easement
Exhibit A - Lot 4A - Spectra Lubbock Southwest Addition
Map - Lot 4A - Spectra Lubbock Southwest Addition

ORDINANCE NO. _____

AN ORDINANCE ABANDONING AND CLOSING A PORTION OF AN UTILITY EASEMENT AND A PORTION OF AN ACCESS EASEMENT, LOCATED IN LOT 4A, SPECTRA LUBBOCK SOUTHWEST ADDITION TO THE CITY OF LUBBOCK, LUBBOCK COUNTY, TEXAS, ACCORDING TO THE MAP, PLAT AND/OR DEDICATION DEED THEREOF RECORDED IN CCFN 2006044435, OF THE OFFICIAL 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 easements hereinafter described in the body of this Ordinance are 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 easements as hereinafter described shall BE and the same are hereby closed, vacated and abandoned for easement purposes and for public use, such easements 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 _____, 2022.

Passed by the City Council on second reading this _____ day of _____, 2022.

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

Ord.A&C-ACE & UE, Spectra Lubbock Southwest Addition
4.11.22

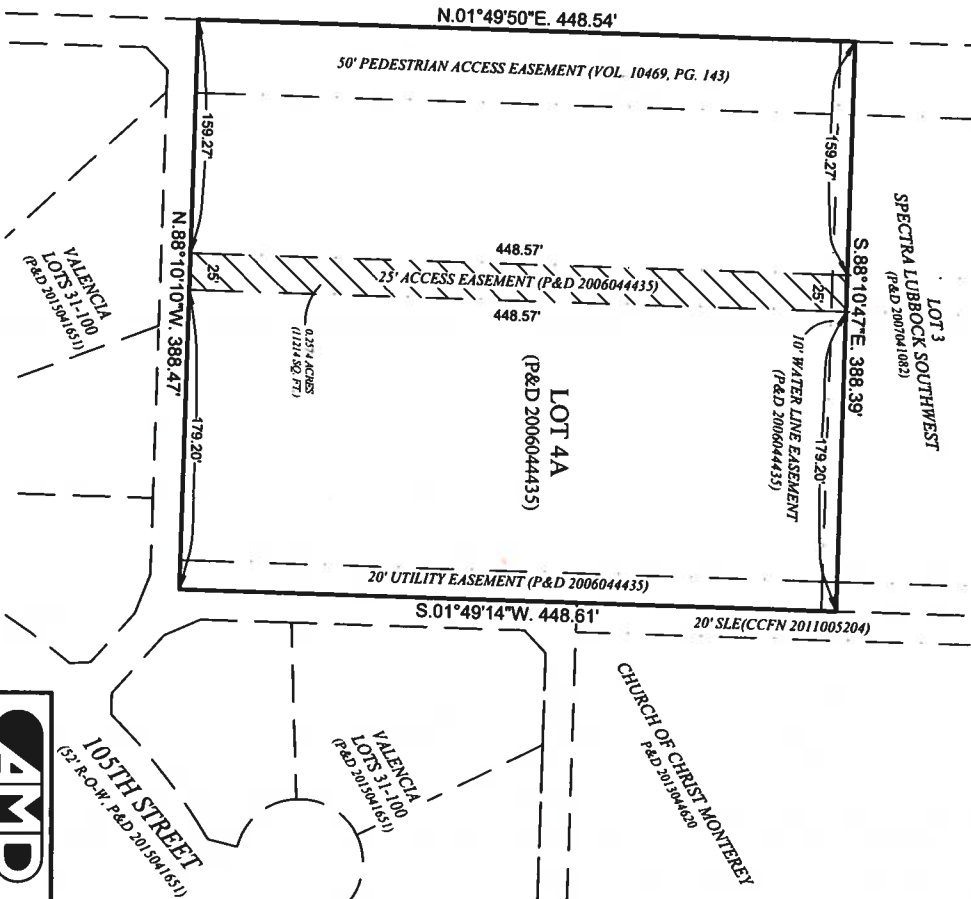
Exhibit A

A CLOSURE OF A PORTION OF A
25' ACCESS EASEMENT,
LOCATED IN LOT 4-A,
SPECTRA LUBBOCK SOUTHWEST,
AN ADDITION TO THE CITY OF LUBBOCK,
LUBBOCK COUNTY, TEXAS
(DEDICATED IN LOT 1-3, LOT 4-A AND 4-B,
SPECTRA LUBBOCK SOUTHWEST, AN
LUBBOCK COUNTY, TEXAS ACCORDING TO THE MAP/PLAT
AND OR DEDICATION DEED RECORDED IN COUNTY CLERKS
FILE NUMBER 200604435 OF THE OFFICIAL PUBLIC RECORDS
OF LUBBOCK COUNTY, TEXAS)

LEGEND:
SCALE: 1" = 100'
0' 25' 50' 100' 200'
CCFN = COUNTY CLERKS FILE NUMBER
R-O-W = RIGHT-OF-WAY
SLE = SEWER LINE EASEMENT
BEARINGS ARE RELATIVE TO THE TEXAS COORDINATE SYSTEM OF 1983
(2011), TEXAS NORTH CENTRAL ZONE



WAL-MART REAL ESTATE
BUSINESS TRUST
(P&D 2007041082)



AMD
CIVIL ENGINEERING
LAND SURVEYING
AMD Engineering, LLC
6515 68th Street, Suite 300
Lubbock, TX 79424
Phone: 806-771-5976
Fax: 806-771-7625
TBP&S Reg. # 10178500
Accuracy - Efficiency - Integrity
PREPARED FOR: BETTENDOUGH HOMES
JOB NUMBER: 210237
© 2022 ALL RIGHTS RESERVED
B.A.M.

Exhibit B

A CLOSURE OF A PORTION OF A
20' UTILITY EASEMENT,
LOCATED IN LOT 4A,
SPECTRA LUBBOCK SOUTHWEST,
AN ADDITION TO THE CITY OF LUBBOCK,
LUBBOCK COUNTY, TEXAS

(DEDICATED IN LOT 1,3, LOT 4A AND 4B,
SPECTRA LUBBOCK SOUTHWEST, AN
LUBBOCK COUNTY, TEXAS ACCORDING TO THE MAP/PLAT
AND OR DEDICATION DEED RECORDED IN COUNTY CLERKS
FILE NUMBER 200604435 OF THE OFFICIAL PUBLIC RECORDS
OF LUBBOCK COUNTY, TEXAS)

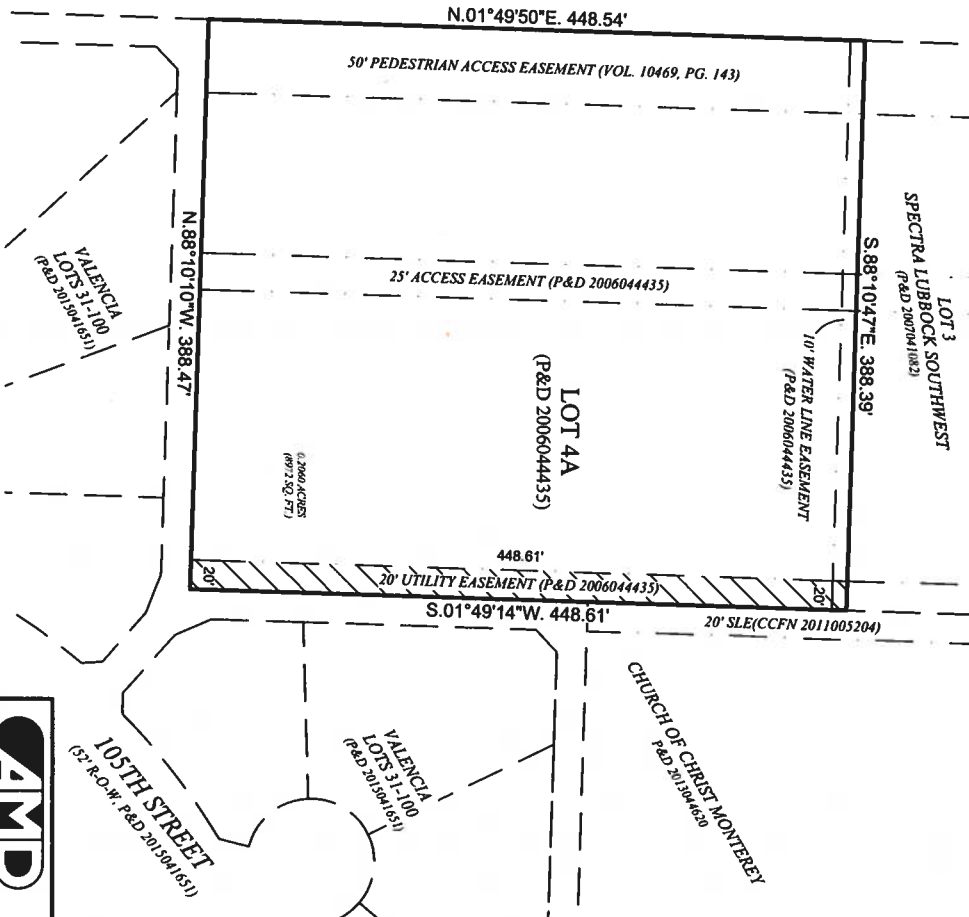


LEGEND:
SCALE: 1" = 100'



CCFN = COUNTY CLERKS FILE NUMBER
R.O.W = RIGHT-OF-WAY
SLE = SEWER LINE EASEMENT
BEARINGS ARE RELATIVE TO THE TEXAS COORDINATE SYSTEM OF 1983
(2011), TEXAS NORTH CENTRAL ZONE

WAL-MART REAL ESTATE
BUSINESS TRUST
(P&D 2007041082)



AMd

CIVIL ENGINEERING
LAND SURVEYING

AMd Engineering, LLC
6515 68th Street, Suite 300
Lubbock, TX 79424

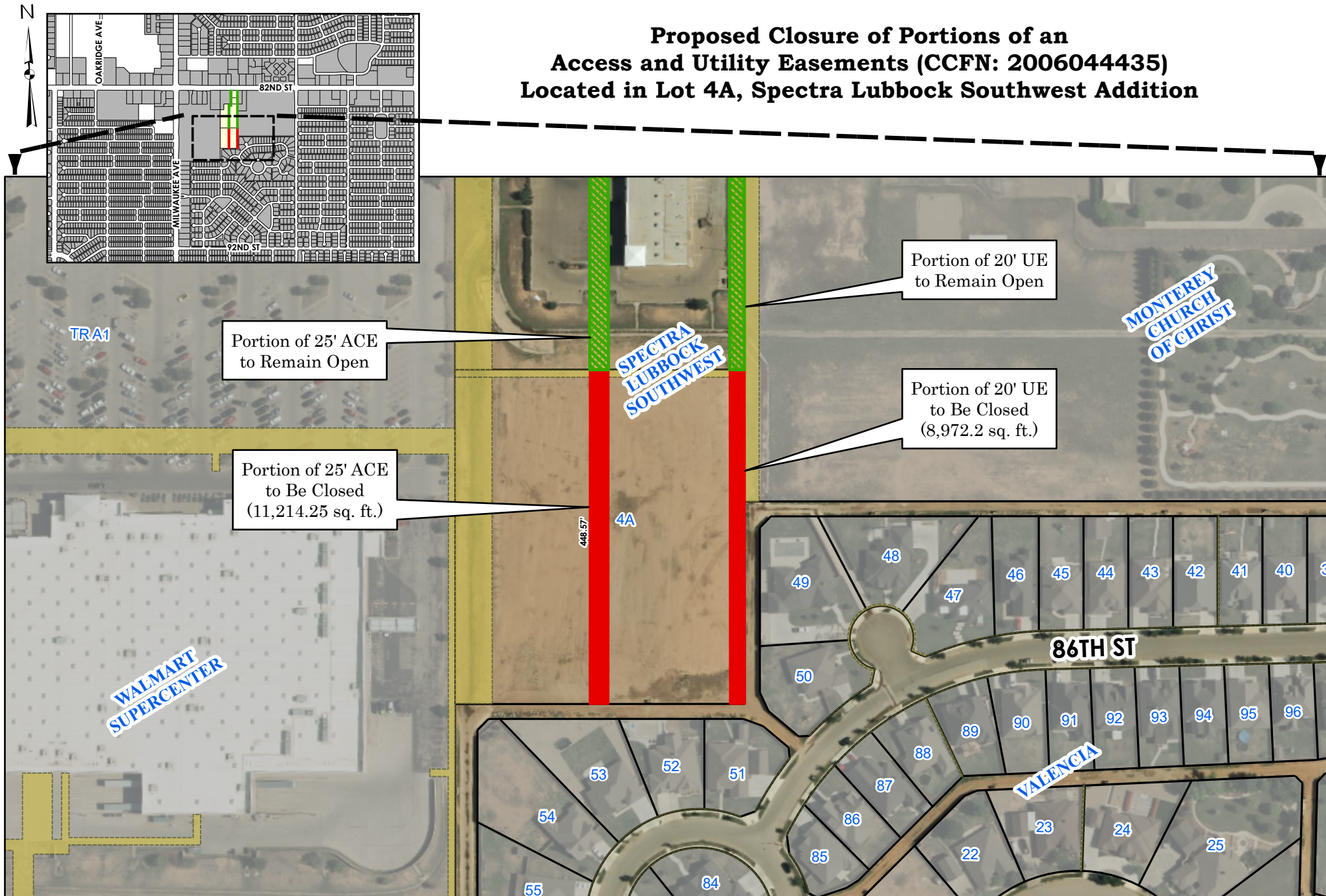
Phone: 806-771-5976
Fax: 806-771-7625
TBP-ELS Reg. # 10178500

PREPARED FOR: BETENBOUGH HOMES

Accuracy - Efficiency - Integrity

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**Proposed Closure of Portions of an
Access and Utility Easements (CCFN: 2006044435)
Located in Lot 4A, Spectra Lubbock Southwest Addition**



0 100 200 300 400 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.



Digital Orthophotography - 2021

Information

Agenda Item

Ordinance 2nd Reading - Right-of-Way: Consider Ordinance No. 2022-O0074, abandoning and closing portions of right-of-way, located in Blocks 13 and 14, Woodlawn Addition to the City of Lubbock, Lubbock County, Texas.

Item Summary

On April 26, 2022, 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 50-foot wide portion of 29th Street and a 15-foot wide portion of a dedicated alley located in Woodlawn Addition between Memphis Avenue and Louisville Avenue. The total area of the street and alley right-of-way being closed is 39,325 square feet. The site is owned by the Lubbock Independent School District and is developed as Overton Elementary School. No water or wastewater utility lines are located underneath this right-of-way. Staff recommends waiving the fees for abandoning and closing these portions of right-of-way, due to the Lubbock Independent School District being a non-profit governmental public school system.

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

Fiscal Impact

None

Staff/Board Recommending

Jesica McEachern, Assistant City Manager

Attachments

Ordinance - Portions of ROW- Block 13 and 14 - Woodlawn Addition

Exhibit A - Map - Blocks 13 and 14 - Woodlawn Addition

ORDINANCE NO. _____

AN ORDINANCE ABANDONING AND CLOSING PORTIONS OF RIGHT-OF-WAY, LOCATED IN BLOCKS 13 & 14, WOODLAWN ADDITION TO THE CITY OF LUBBOCK, 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 right-of-way hereinafter described in the body of this Ordinance is no longer needed for right-of-way purposes and for public use; and it would be in the public interest to close, vacate and abandon the same for 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 right-of-way as hereinafter described shall BE and the same is hereby closed, vacated and abandoned for right-of-way purposes and for public use, such 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 and reservation of an easement, 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 _____, 2022.

Passed by the City Council on second reading this _____ day of _____, 2022.

DANIEL M. POPE, MAYOR

ATTEST:

Rebecca Garza, City Secretary

APPROVED AS TO CONTENT:



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

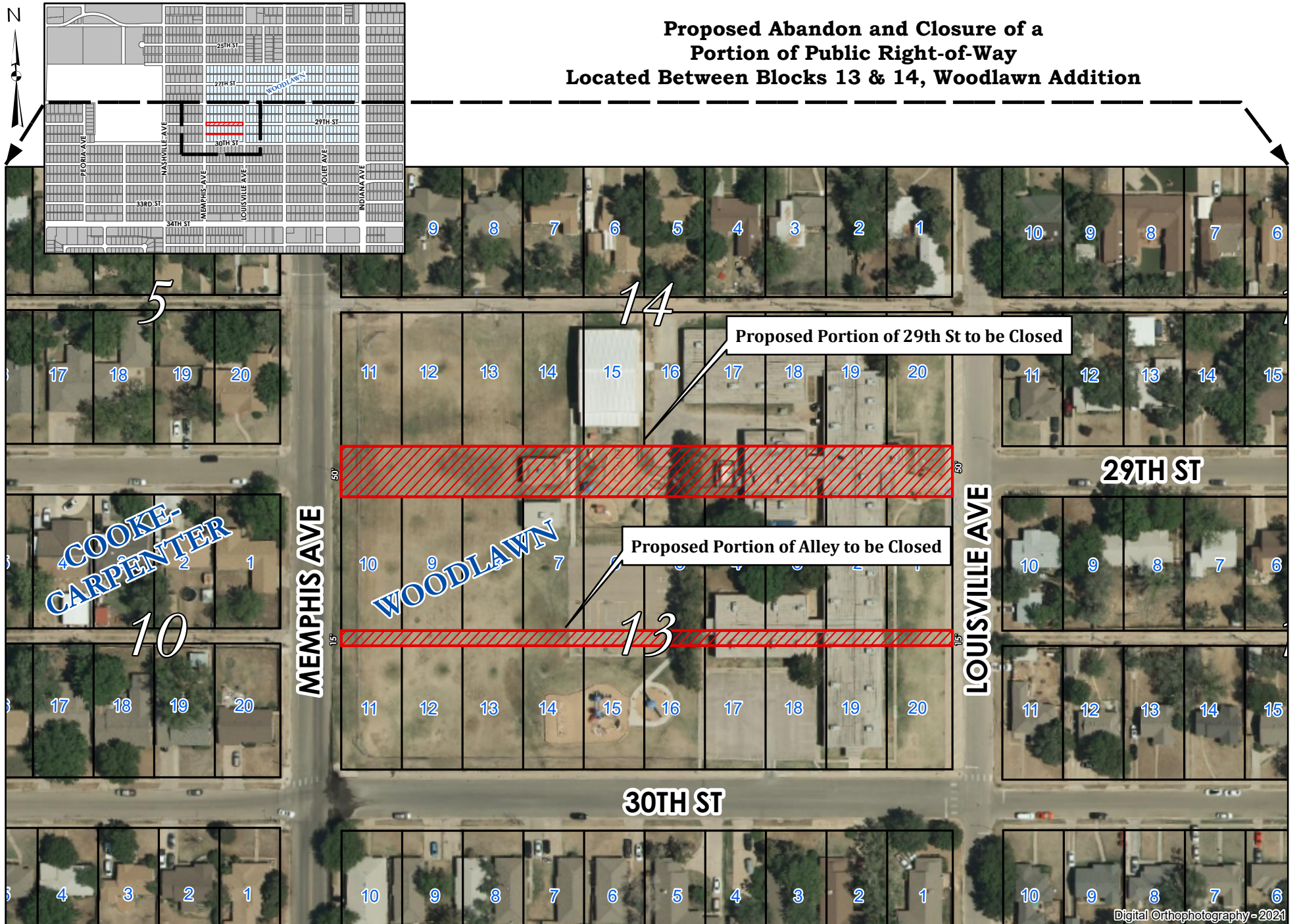
APPROVED AS TO FORM:



Ryan Brooke, Assistant City Attorney

Ord.A&C-ROW, Blocks 13 & 14, Woodlawn Addition
3.29.22

Proposed Abandon and Closure of a Portion of Public Right-of-Way Located Between Blocks 13 & 14, Woodlawn Addition



0 100 200 400 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.

Information

Agenda Item

Ordinance 2nd Reading - Right-of-Way: Consider Ordinance No. 2022-O0076, abandoning and closing a Water Line and Sewer Line Easement, located on un-subdivided land in Section 11, Block A, Lubbock County, Texas.

Item Summary

On April 26, 2022, 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 20-foot Underground Water Line and Sewer Line Easement, located on un-subdivided land in Section 11, Block A, Lubbock County. This closure is directly south of the Lubbock County Expo property, and north of Loop 289. The total area of the easement being closed is 15,127 square feet.

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

Fiscal Impact

None

Staff/Board Recommending

Jesica McEachern, Assistant City Manager

Attachments

Water and Sewer Line Easement - Section 11, Block A

Exhibit A - Section 11, Block A - CCFN 2021026925

Map - Section 11, Block A - CCFN 2021026925

ORDINANCE NO. _____

AN ORDINANCE ABANDONING AND CLOSING A WATER AND SEWER LINE EASEMENT, LOCATED ON UNSUBDIVIDED LAND IN SECTION 11, BLOCK A, LUBBOCK COUNTY, TEXAS, ACCORDING TO THE MAP, PLAT AND/OR DEDICATION DEED THEREOF RECORDED IN CCFN 2021026925, OF THE OFFICIAL 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 easements 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 _____, 2022.

Passed by the City Council on second reading this _____ day of _____, 2022.

DANIEL M. POPE, MAYOR

ATTEST:

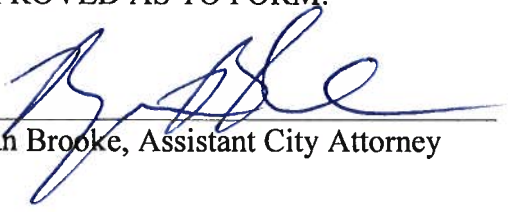
Rebecca Garza, City Secretary

APPROVED AS TO CONTENT:



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

APPROVED AS TO FORM:



Ryan Brooke, Assistant City Attorney

Ord.A&C-Water and Sewer Line Easement, Section 11, Block A
4.11.22

WATER LINE AND SEWER LINE EASEMENT

THE STATE OF TEXAS §
 §
COUNTY OF LUBBOCK §

That LUBBOCK COUNTY EXPO CENTER, INC., a Texas nonprofit corporation, herein called "GRANTOR", for and in consideration of the sum of TEN AND NO/100 DOLLARS (\$10.00) to GRANTOR in hand paid by the CITY OF LUBBOCK, a Home Rule Municipal Corporation of Lubbock County, Texas, the receipt and sufficiency of which is hereby acknowledged and confessed, and for the further good and valuable consideration in benefits accruing and to accrue to the remainder of GRANTOR'S property, has by these presents GRANTED, BARGAINED, SOLD AND CONVEYED and by these presents does GRANT, BARGAIN, SELL AND CONVEY unto the CITY OF LUBBOCK, its legal representatives, successors and assigns, for the use of the public as a perpetual and permanent water line and sewer line easement, the free and uninterrupted use, liberty and passage in, along, on, over, upon, under and across all that property lying and being situated in the County of Lubbock, State of Texas, and being more particularly described in Exhibit "A" attached hereto and incorporated herein by reference, together with the rights of ingress, egress and regress at any and all times to accomplish the following purposes: allowing, but not limited to, constructing, reconstructing, repairing and perpetually maintaining a water line and sewer line, which easement includes at all times and seasons the right of ingress, egress and regress of motor vehicles and personnel engaged in such construction and repair. Said property described herein is not used, claimed or occupied as business or residential homestead.

In order to assure the said CITY OF LUBBOCK, its successors and assigns of continuing access and enjoyment of said easement, GRANTOR does hereby expressly agree not to erect, build or otherwise allow to be constructed any building or like permanent structure over the said property heretofore described; and should such building or structure be erected, it is understood that the said CITY OF LUBBOCK shall have the right to remove said building or structure from the premises.

TO HAVE AND TO HOLD the above described premises together with all and singular the rights and appurtenances thereto in anywise belonging perpetually unto the CITY OF LUBBOCK, its successors and assigns for so long as the public uses the same for the purposes herein granted.

It is further understood and agreed that this easement is executed upon the condition that upon completion of the said water line and sewer line described herein, the premises will be restored to substantially the same condition as the same were prior to such construction, without cost to GRANTOR, its heirs and assigns. Upon restoration, GRANTOR herein, its heirs and assigns shall be allowed the use of the surface of the easement area for any and all purposes, save and except for the erection thereon of any permanent buildings or structures.

Executed this 13 day of May, 2021.

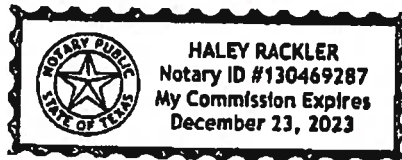
LUBBOCK COUNTY EXPO CENTER, INC., a
Texas nonprofit corporation

By: [Signature]
Printed Name: Randy Jordan
Title: Chairman

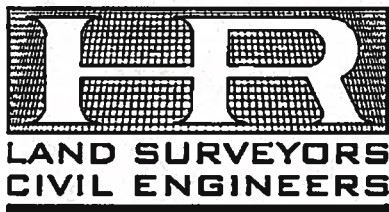
STATE OF TEXAS

COUNTY OF LUBBOCK

Acknowledged before me, the undersigned notary on this 13 day of May, 2021,
by Randy Jordan, Chairman of LUBBOCK COUNTY EXPO CENTER, INC., a Texas
nonprofit corporation, in the capacity therein stated.



Haley Rackler
Notary Public, State of Texas



HUGO REED AND ASSOCIATES, INC.

1601 AVENUE N / LUBBOCK, TEXAS 79401 / 806/763-5642 / FAX 806/763-3891
TEXAS REGISTERED ENGINEERING FIRM F-780
TEXAS LICENSED SURVEYING FIRM 100676-00

EXHIBIT "A"

METES AND BOUNDS DESCRIPTION of a 0.3473 acre tract of land located in Section 11, Block A, Lubbock County, Texas, being a portion of that 125.42 acre tract described under County Clerk File Number 2020000812, Official Public Records of Lubbock County, Texas, said 0.3473 acre tract being further described as follows:

BEGINNING at a point in the Southern boundary of an 80.001 acre tract as described under County Clerk File Number (CCFN) 2021017477 of the Official Public Records of Lubbock County, Texas (OPRLCT), for the Northeast corner of this tract, which bears N. 01°43'25" E. a distance of 903.90 feet and S. 87°55'04" E. a distance of 2120.71 feet from the Southwest corner of Section 11, Block A, Lubbock County, Texas, from whence a 1/2" iron rod with cap marked "HUGO REED & ASSOC." found at the Southeast corner of said 80.001 acre tract bears S. 87°55'04" W. a distance of 537.87 feet;

THENCE S. 02°01'35" W. a distance of 756.35 feet to a point in the North right-of-way line of Loop 289, as described in Volume 682, Page 145, of the Deed Records of Lubbock County, Texas, in the Southern boundary of a 125.42 acre tract described under CCFN 2020000812, OPRLCT, for the Southeast corner of this tract;

THENCE N. 87°55'04" W., along the North right-of-way line of said Loop 289 and the Southern boundary of said 125.42 acre tract, a distance of 20.00 feet to a point for the Southwest corner of this tract;

THENCE N. 02°01'35" E., a distance of 756.35 feet to a point in the Southern boundary of said 80.001 acre tract, for the Northwest corner of this tract;

THENCE S. 87°55'04" E., along the Southern boundary of said 80.001 acre tract, a distance of 20.00 feet to the Point of Beginning.

Contains: 15,127 square feet

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

Surveyed on the ground,
May 13, 2021

Robert A. Christopher
Registered Professional Land Surveyor No. 5167
Licensed State Land Surveyor
State of Texas



FILED AND RECORDED

OFFICIAL PUBLIC RECORDS

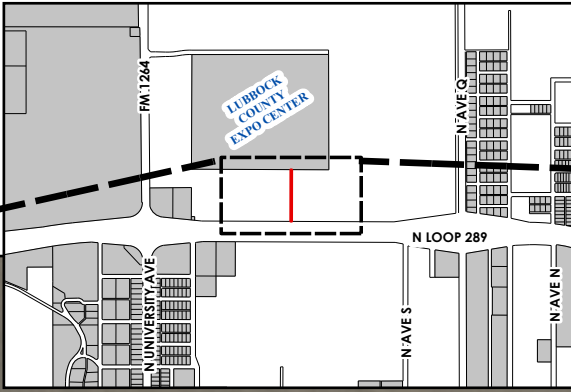


Kelly Pinion

Kelly Pinion, County Clerk
Lubbock County, TEXAS
05/01/2021 02:19 PM
FEE: \$34.00
2021026925



**Proposed Closure of a 20' Underground Water Line
and Sanitary Sewer Line Easement
Located on Unsubdivided Land in Section 11, Block A**



TRA

Proposed 20' Underground Water Line and
Sanitary Sewer Line Easement
To Be Closed (15,127 sq. ft.)
CCFN: 2021026925

20' UWE & SSE
Proposed To Be Closed
by Separate Request

35' OPE to Remain Open

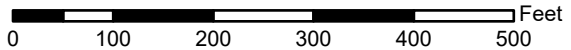
UNSUBDIVIDED

A-11

10' UUE to Remain Open

10' UUE to Remain Open

N LOOP 289



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.



Digital Orthophotography - 2021

Information

Agenda Item

Ordinance 2nd Reading - Right-of-Way: Consider Ordinance No. 2022-O0077, abandoning and closing a stormwater drainage and impoundment easement, a drainage easement, and a water and sewer line easement, located in Tract A, Lubbock County Expo Center Addition to the City of Lubbock, Lubbock County, Texas.

Item Summary

On April 26, 2022, 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 stormwater drainage and impoundment easement, a drainage easement, and a water and sewer line easement, located in Tract A, Lubbock County Expo Center Addition to the City of Lubbock, Lubbock County, Texas. These easements will be reconfigured with site grading and cut and fill plans for the development of the Lubbock County Expo Center. The total area of the three easements being closed is 701,101 square feet.

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

Fiscal Impact

None

Staff/Board Recommending

Jesica McEachern, Assistant City Manager

Attachments

Ordinance Utility and Drainage Easements - Tract A

Exhibit A - Tract A - CCFN 2021026924

Map - Tract A - CCFN 2021026924

ORDINANCE NO. _____

AN ORDINANCE ABANDONING AND CLOSING A STORMWATER DRAINAGE AND IMPOUNDMENT EASEMENT, A DRAINAGE EASEMENT, AND A WATER AND SEWER LINE EASEMENT, LOCATED IN TRACT A, LUBBOCK COUNTY EXPO CENTER ADDITION TO THE CITY OF LUBBOCK, LUBBOCK COUNTY, TEXAS, ACCORDING TO THE MAP, PLAT AND/OR DEDICATION DEED THEREOF RECORDED IN CCFN 2021026924, OF THE OFFICIAL 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 easements hereinafter described in the body of this Ordinance are 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 easements as hereinafter described shall BE and the same are hereby closed, vacated and abandoned for easement purposes and for public use, such easements 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 _____, 2022.

Passed by the City Council on second reading this _____ day of _____, 2022.

DANIEL M. POPE, MAYOR

ATTEST:

Rebecca Garza, City Secretary

APPROVED AS TO CONTENT:



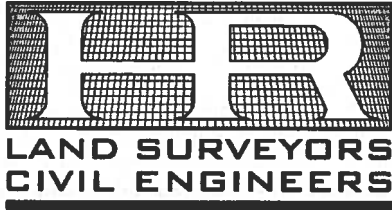
Michael Keenum, P.E., Division Director of Engineering/City Engineer

APPROVED AS TO FORM:



Ryan Brooke, Assistant City Attorney

Ord.A&C-Easements, Tract A, Lubbock County Expo Center
4.11.22



HUGO REED AND ASSOCIATES, INC.
1801 AVENUE N / LUBBOCK, TEXAS 79401 / 806/763-5642 / FAX 806/763-3891
TEXAS REGISTERED ENGINEERING FIRM F-760
TEXAS LICENSED SURVEYING FIRM 100676-00

LEGAL DESCRIPTION OF VARIOUS EASEMENT'S TO BE CLOSED:

All of that "STORMWATER DRAINAGE AND IMPOUNDMENT EASEMENT" being situated at the Southeast corner of Tract "A", Lubbock County Expo Center, an addition to the City of Lubbock, Lubbock County, Texas, according to the map, plat and/or dedication deed thereof recorded under County Clerk File Number 2021026924 of the Official Public Records of Lubbock County, Texas, said easement being granted by said plat of Lubbock County Expo Center.

All of that "80' DRAINAGE EASEMENT" being situated within Tract "A", Lubbock County Expo Center, an addition to the City of Lubbock, Lubbock County, Texas, according to the map, plat and/or dedication deed thereof recorded under County Clerk File Number 2021026924 of the Official Public Records of Lubbock County, Texas, said easement being granted by said plat of Lubbock County Expo Center.

All of that "20' WATER & SEWER LINE ESM'T" being situated within Tract "A", Lubbock County Expo Center, an addition to the City of Lubbock, Lubbock County, Texas, according to the map, plat and/or dedication deed thereof recorded under County Clerk File Number 2021026924 of the Official Public Records of Lubbock County, Texas, said easement being granted by said plat of Lubbock County Expo Center.



Digital Orthophotography - May 2021

Information

Agenda Item

Resolution - Engineering: Consider a resolution authorizing the Mayor to execute Change Order No. 3 to Contract 15325 with Red River Construction Company, for the construction of the Southeast Water Reclamation Plant, Plant 3 Improvements Project.

Item Summary

On August 11, 2020, the City Council awarded contract 15325 to Red River Construction Company in the amount of \$7,257,052, for the construction of the Southeast Water Reclamation Plant (SEWRP) Plant 3 Improvements Project. The work of the project includes replacement of rotating mechanisms in two secondary clarifiers, replacement of underground and overhead air piping, construction of a return activated sludge pumping station, and associated electrical improvements.

On January 26, 2021, City Council authorized Change Order No. 1 for emergency repairs on a 36-inch influent pipe in the amount of \$391,736.14 with 91-day contract extension.

On September 9, 2021, City Council authorized Change Order No. 2 for eleven contract modifications in the amount of \$308,243.89, with a 119-day contract extension that incorporated additional air valves for sludge pumps, modifications of the non-potable water piping network, dewatering of the aeration basins and modifications to the aeration diffuser grid.

Change Order No. 3 will incorporate six proposed contract modifications, including coating on the aeration basin influent pipe, replacement of existing valves, addition of new Return Activated Sludge (RAS) pumps, additional pumping and cleaning of clarifiers, and an epoxy injection credit. Staff and the Consulting Engineer negotiated Change Order No. 3 with Red River Construction Company in the amount of \$103,024.94 with 39 days of additional time for construction.

Fiscal Impact

Change Order No. 3 in the amount of \$103,024.94, is funded in Capital Improvement Project 92444, SEWRP Improvements Plant 3.

Staff/Board Recommending

Jesica McEachern, Assistant City Manager

Attachments

Resolution

Change Order No.3

Original Contract

Change Order No.1

Change Order No.2
Location Exhibit
CIP Spreadsheet
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. 03 to that certain Contract No. 15325 by and between the City of Lubbock and Red River Construction for the Southeast Water Reclamation Project – Plant 3 Improvements, and related documents. Said Change Order No. 03 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: 15325	Contractor: Red River Construction
Change Order No: 3	Contract Title: SEWRP – Plant 3 Improvements Project
Bid/RFP No: 20-15325-CM	Project No: 92444.9242.30000

“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):

Per attached backup material, this Change Order #2 includes the following items: Item 1) Coating of the 30-inch aeration basin influent pipe in the piping gallery at a cost of +\$23,715.53. Item 2) Replacement of existing WAS check valve at a cost of +\$10,208.33 and 2 additional days of construction time. Item 3) Pulling two new RAS pumps to unclog the impellers of unexpected material five times at a cost of +\$28,060.82 and 7 additional days of construction time. Item 4) Additional pumping and cleaning of the two Plant 3 primary clarifiers at a cost of +\$98,373.59 and 30 additional days of construction time. Item 5) Transport of two RAS pumps to Smith Pump Co. for examination, and subsequent repair at a cost of +\$42,666.67. Item 6) Epoxy injection credit of -\$100,000.00.

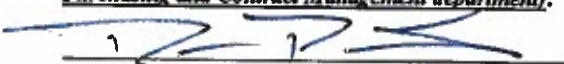
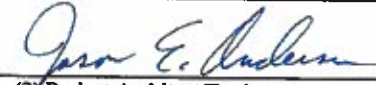



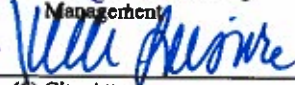
Where the Change Order is negotiated, the Change Order must be fully documented and itemized as to costs, including material quantities, material costs, taxes, insurance, employee benefits, other related costs, profit and overhead. Where certain unit prices are contained in the initial Contract, no deviations 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:	\$7,257,052.00
B.	AMOUNT OF THIS CHANGE ORDER: Note: Council approval required if (+/-) \$50,000	\$103,024.94
	COST CENTER: 92444 ACCOUNT: 9242.30000	
C.	PERCENT OF CONTRACT VALUE THIS CHANGE ORDER (B/A)	1.42%
D.	AMOUNT OF PREVIOUS CHANGE ORDERS:	\$699,977.03
E.	TOTAL AMOUNT OF ALL CHANGE ORDERS (B+D)	\$803,001.97
F.	PERCENT OF CONTRACT OF ALL CHANGE ORDERS (E/A): (25% maximum)	11.07%
G.	NEW CONTRACT AMOUNT (A+E):	\$8,060,053.97

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	4/19/22 Date	 (2) Project Architect/Engineer	04/08/22 Date
 (3) Owner's Representative	04/20/2022 Date	 (4) Director of Purchasing & Contract Management	4.20.2022 Date
 (5) Capital Project Manager	4/20/22 Date	 (6) City Attorney	4-21-22 Date

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 #: _____			

April 8, 2022

Mr. Zoltan Fekete, P.E.
Senior Engineer
City of Lubbock, Texas
1314 Avenue K
Lubbock, TX 79401

Subject: SEWRP Plant 3 Improvements Project
Change Order #3

Dear Mr. Fekete:

Attached with this letter is documentation for Change Order #3.

Item	Description	Cost Impact	Time Impact	Status
1	Coating of the 30-inch aeration basin influent pipe in the piping gallery	+\$23,715.53	No Time	Recommended by Carollo
2	Replacement of existing WAS check valve	+\$10,208.33	2 days	Recommended by Carollo
3	Pulling two new RAS pumps to unclog the impellers of unexpected material five times, plus additional budget to pull the two pumps two more times (if needed)	+\$28,060.82	7 days	Recommended by Carollo
4	Additional pumping and cleaning of the two Plant 3 primary clarifiers	+\$98,373.59	30 days	Recommended by Carollo
5	Transport of two RAS pumps to Smith Pump Co. for examination, and subsequent repair	+\$42,666.67	No Time	Recommended as modified by Carollo
6	<u>Credit</u> for not epoxy injecting interior concrete surfaces of the existing secondary clarifiers	-\$100,000.00	No Time	Recommended by Carollo
Total Contract Impacts from CO #1 PCOs:		+\$103,024.94	+39 days	

Items recommended for inclusion with Change Order #3 are described in more detail as follows:

Item 1

TCEQ 217 Subchapter M, §217.329 lists required color-coding for pipes in a wastewater treatment facility. The exposed 30-inch influent pipe for the three Plant 3 aeration basins is not painted the required color, and the WWTP has been cited by TCEQ for this in the past. WWTP staff has requested the pipe be painted the required color to meet the requirements of TCEQ 217, and to avoid future citations.

Red River Construction (RRC) has proposed \$23,715.53 for their coatings subcontractor to coat the 30-inch diameter pipe. The Engineer and RPR have reviewed the request, and have found the cost to be in line with what would be expected.

The following documents are attached to support Item 1:

1. Potential Change Order (PCO) #016 dated November 24, 2021 from Health Staffeld of RRC with the proposal and cost backup for the additional work.
2. PCO #016 Response from Jason Anderson of Carollo Engineers with the Engineer's response to the proposal.

Item 2

During construction an existing WAS discharge line check valve was relocated from the east end of the aeration basin piping gallery to the west end of the gallery, along with an existing WAS pump. The check valve was later determined by WWTP staff to be in need of replacement.

RRC proposed a cost of \$10,208.33 and an additional 2 days of contract time to replace the check valve. The Engineer and RPR have reviewed the proposal, and have found the cost and effort to be in line with what would be expected, and also agree with the request for a 2-day contract time extension associated with this additional work.

The following documents are attached to support Item 2:

1. PCO #017 dated February 17, 2022 from Health Staffeld of RRC with the proposal and cost backup for the additional work.
2. PCO #017 Response from Jason Anderson of Carollo Engineers with the Engineer's response to the proposal.

Item 3

The Plant 3 Improvements Project includes new a pair of new return activated sludge (RAS) pumps associated with each secondary clarifier. The arrangement of the secondary clarifiers and RAS piping, along with the site constraints required the use of vertical turbine solids handling (VTSH) pumps. The new pumps are capable of passing a 3.6-inch spherical object. The pumps ran perfectly for approximately two months, but then began to experience issues with reduced flow, and ultimately one of the two pumps installed in Phase 1 construction experienced a stoppage. The pump was pulled and found to be completely clogged with long stringy fibrous material and trash, none of which should be found in RAS. It was later determined that the fine screens at the Headworks had not been functioning for some time, and flow was being bypassed to the coarse screen, allowing material that would not normally make it past the Headworks to end up in the primary clarifiers, aeration basins, secondary clarifiers, and ultimately, the RAS pump suction headers. RAS Pumps 3 and 4, as installed for Phase 1 construction, were pulled and sent to Smith Pump Company in Waco for disassembly and

evaluation. RAS Pumps 1 and 2 were installed in place of Pumps 3 and 4. In the weeks following, Pumps 1 and 2 continued to experience reduced flow, but now that it was understood what was the cause of the flow reduction the pumps would be pulled and cleaned, then reinstalled. This has been done a total of five times to date.

RRC proposed a cost of \$28,060.82 and an additional 7 days of contract time for pulling the pumps five times. RRC also provided a quote of \$4,485.94 for each additional instance of pulling the pumps, which would be included in a future Change Order if needed. The Engineer and RPR have reviewed the proposal, and have found the cost and effort to be in line with what would be expected (with corrections to the totals as made by the Engineer), and also agree with the request for a 7-day contract time extension associated with this additional work.

The following documents are attached to support Item 3:

1. PCO #019 dated March 8 from Health Staffeld of RRC, and corrected by Carollo Engineers, with the proposal and cost backup for the additional work.
2. PCO #019 Response from Jason Anderson of Carollo Engineers with the Engineer's response to the proposal.

Item 4

In relation to the issues experienced with trash and rags plugging the new RAS pumps, the Contractor was requested to prepare a proposal to dewater and clean out the existing Plant 3 primary clarifier distribution box, and the two primary clarifiers. Restoring the full capacity of the two primary clarifiers will help to prevent the problematic material from being passed on from the primary clarifiers, and creating further problems in the downstream systems.

RRC proposed a cost of \$98,373.59 and an additional 30 days of contract time for the additional work associated with cleaning the primary clarifiers and related structures. The Engineer and RPR have reviewed the proposal, and have found the cost and effort to be in line with what would be expected, and also agree with the request for a 30-day contract time extension associated with this additional work.

The following documents are attached to support Item 4:

1. PCO #020 dated March 25, 2022 from Health Staffeld of RRC with the proposal and cost backup for the additional work.
2. PCO #020 Response from Jason Anderson of Carollo Engineers with the Engineer's response to the proposal.

Item 5

As described in Item 3, RAS Pumps 3 and 4 were pulled and transported to Smith Pump Company in Waco. Smith Pump Company disassembled both pumps, and produced a condition assessment report, including recommendations for repair of the pumps. The motors were

shipped separately from Waco to the Smith Pump Company motor shop in Dallas. The cost for shipping, examination, and repair quoted by Smith Pump Company is \$36,020.83.

RRC proposed a cost of \$42,666.67 for the transportation, examination, repair work and reinstallation associated with RAS pumps 3 and 4. The proposal also requested a 30-day extension to the contract time. The Engineer and RPR have reviewed the proposal, and have found the cost and effort to be in line with what would be expected, but do not find a basis for requesting a 30-day contract time extension associated with this additional work.

The following documents are attached to support Item 5:

1. PCO #021 dated March 6, 2022 from Health Staffeld of RRC with the proposal and cost backup for the additional work.
2. PCO #021 Response from Jason Anderson of Carollo Engineers with the Engineer's response to the proposal.

Item 6

The Plant 3 Improvements Project specified the interior concrete surfaces of the existing concrete basins would require repair of cracks with epoxy injection. After dewatering the existing basins, the concrete was found to be in excellent condition. Because of the condition of the concrete, epoxy injection has been reconsidered, and a credit for epoxy injection was requested by the Owner.

RRC proposes a credit of \$100,000.00 for not performing epoxy injection of cracks on the interior concrete surfaces of the existing concrete basins. The Engineer and RPR have reviewed the proposal, and have found the credit to be in line with what would be expected.

The following documents are attached to support Item 6:

1. PCO #022 dated March 6, 2022 from Health Staffeld of RRC with the proposal and cost backup for the additional work.
2. PCO #022 Response from Jason Anderson of Carollo Engineers with the Engineer's response to the proposal.

Mr. Zoltan Fekete, P.E.
Senior Engineer
City of Lubbock, Texas
April 8, 2022
Page 5

The change in contract price associated with items 1 through 11 is summarized below:

- Original contract price : \$7,257,052.00
- Net increase in price of this change order: +\$103,024.94
- Contract price with all approved change orders: \$8,060,053.97
- Original contract time: 600 Days to Final Completion
- Net increase of time with this change order: +39 days
- Contract time with all approved change orders: 849 days to Final Completion

After you have had a chance to review this information, we are available to discuss any questions or comments, at your convenience. Please contact, Jason Anderson, or myself with any questions.

Thank you for the opportunity to provide construction phase services for the City of Lubbock. We look forward to continuing to work with you and City staff on this project through its successful completion.

Sincerely,

CAROLLO ENGINEERS, INC.



Hani E. Michel, P.E.
Project Manager

JEA:jea

cc: Josh Kristinek, P.E.
Mary Gonzales
Mark Aaron Carpenter
Jason Anderson, P.E.

REVISED

**PROPOSAL SUBMITTAL FORM
UNIT PRICE PROPOSAL CONTRACT**

DATE: June 10, 2020

PROJECT NUMBER: **RFP 20-15325-CM Southeast Water Reclamation Plant - Plant 3 Improvements Project**

Proposal of Red River Construction Co. (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 **Southeast Water Reclamation Plant - Plant 3 Improvements Project** 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 below. The price to cover all expenses incurred in performing the work required under the contract documents.

ITEM	DESCRIPTION	QTY (+/-)	U/M	UNIT COST	EXTENDED COST
1	All Work as defined in the Contract Documents for Construction except those items listed separately below	1	LS	3,690,000	
2	Mobilization, Demobilization, and Stormwater Pollution Prevention Plan	1	LS	500,000	
3a	All Work as defined in the Contract Documents for Aeration Basin and Secondary Clarifier Structural Repair as defined in Section 03926	240	CU FT	200	48,000
3b	All Work as defined in the Contract Documents for Aeration Basin and Secondary Clarifier Crack Injection with Epoxy as defined in Section 03931	3000	LF	38	228,000 114,000
4	Bid for the development, design, and implementation of a trench safety system as required by OSHA and for the assumption of responsibility by such said system	1	LS	143,800	
5	Secondary clarifier equipment as defined in Section 11355A	1	LS	610,900	

REVISED

ITEM	DESCRIPTION	QTY (+/-)	U/M	UNIT COST	EXTENDED COST
6	RAS pump equipment as defined in Section 11312D	1	LS	484,500	
7	Pre-negotiated Bid Price for scum pump equipment and pre-rotation chambers as defined in Section 11313F	1	LS	124,562	124,562
8	Pre-negotiated Bid Price for rotary lobe pump equipment as defined in Section 11312R	1	LS	56,590	56,590
9	Total Price for remainder of the Work for Pre-negotiated Items 7 and 8, as defined in Section 01000, Item 40.04	1	LS	63,800	
10	Motor control centers as defined in Section 16444	1	LS	83,200	
11	Add/Deduct – Final Adjustment to Bid, but not including previous Bid Items 1 through 10	1	LS	0	
Total (Items 1-11)				\$ 5,919,352	
				6,033,352	

Add Alternate:

12	Stainless steel aeration piping, valves, and associated supports	1	LS	1,337,700	
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PROPOSED CONSTRUCTION TIME:

1. Contractors proposed CONSTRUCTION TIME for completion:

TOTAL CONSECUTIVE CALENDAR DAYS: 540 (to Substantial Completion Milestones 1 and 2)

TOTAL CONSECUTIVE CALENDAR DAYS: 600 (to Final Completion)

(not to exceed 560 days to Substantial Completion / 600 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 (NTP)" of the Owner, to substantially complete the work within **560 Consecutive Calendar Days** following NTP, and to finally complete the project within a total contract time of **600 Consecutive Calendar Days** as stipulated in the specification and other contract documents. Offeror hereby further agrees to pay to Owner as liquidated damages the sum of **\$2,500** for each consecutive calendar day in excess of the time to substantial completion for the work as defined in Specification Section 01140, and the sum of **\$1,500** for each


January 26, 2021

RESOLUTION

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

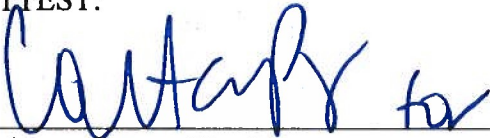
THAT the Mayor of the City of Lubbock is hereby authorized and directed to execute for and on behalf of the City of Lubbock, Change Order No. 01 to that certain Contract No. 15325 by and between the City of Lubbock and Red River Construction, for SEWRP – Plant 3 Improvements Project, per Bid # 20-15325-CM, 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 January 26, 2021.



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: 15325	Contractor: Red River Construction
Change Order No: 1	Contract Title: SEWRP – Plant 3 Improvements Project
Bid/RFP No: 20-15325-CM	Project No: 92444.9242.30000

"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:

Per attached backup material, this Change Order #1 includes the following items: Item 1) Setup of emergency bypass pumping and bypass pumping for two months at a cost of \$233,487.81 and 49 additional days. Item 2) Reduction in the size of the Engineer's on-site trailer and reduction in office equipment requirements at a credit of \$2,616.66. Item 3) Emergency replacement of 50 year old 39" and 30" Prestressed Concrete Cylinder Pressure (PCCP) pipe with 36" PS75 and 30" PVC C-900 pipe at a cost of \$160,864.99 and 42 additional days of construction time.




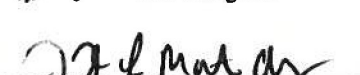
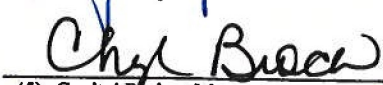
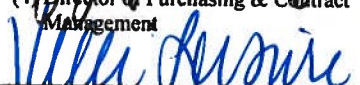
Where the Change Order is negotiated, the Change Order must be fully documented and itemized as to costs, including material quantities, material costs, taxes, insurance, employee benefits, other related costs, profit and overhead. Where certain unit prices are contained in the initial Contract, no deviations 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:	\$7,257,052.00
B.	AMOUNT OF THIS CHANGE ORDER: Note: Council approval required if (+/-) \$50,000	\$391,736.14
	COST CENTER: 92444 ACCOUNT: 9242.30000	
C.	PERCENT OF CONTRACT VALUE THIS CHANGE ORDER (B/A)	5.40%
D.	AMOUNT OF PREVIOUS CHANGE ORDERS:	\$0.00
E.	TOTAL AMOUNT OF ALL CHANGE ORDERS (B+D)	\$391,736.14
F.	PERCENT OF CONTRACT OF ALL CHANGE ORDERS (E/A): (25% maximum)	5.40%
G.	NEW CONTRACT AMOUNT (A+E):	\$7,648,788.14

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	12/22/20 Date	 (2) Project Architect/Engineer	12/22/20 Date
 (3) Owner's Representative	12/20/2020 Date	 (4) Director of Purchasing & Contract Management	12/20/20 Date
 (5) Capital Project Manager	1-11-21 Date	 (6) City Attorney	1-11-21 Date

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

 (7) Mayor	1/26/2021 Date	 (8) City Secretary	1/26/2021 Date
Council Date: January 26, 2021	Agenda Item #: 6.1.5	Resolution #: 2021-R0030	

December 21, 2020

Mr. Zoltan Fekete, P.E.
Senior Engineer
City of Lubbock, Texas
1314 Avenue K
Lubbock, TX 79401

Subject: SEWRP Plant 3 Improvements Project
Change Order #1

Dear Mr. Fekete:

Attached with this letter is documentation for Change Order #1.

Item	Description	Cost Impact	Time Impact	Status
1	Setup of emergency bypass pumping, and emergency bypass pumping for two months	+\$233,487.81	49 days	Recommended by Carollo
2	Reduction in the size of the Engineer's on-site trailer, and reduction in office equipment requirements	-\$2,616.66	No Time	Recommended by Carollo
3	Emergency replacement of 50-yr old 39" and 30" PCCP pipe with 36" and 30" C900 PVC pipe	+\$160,864.99	42 days	Recommended by Carollo
Total Contract Impacts from CO #1 PCOs:		+\$391,736.14	+91 days	

Items recommended for inclusion with Change Order #1 are described in more detail as follows:

Item 1

In late October, 2020 Red River Construction Company, Inc. (RRC) was excavating between Plant 3 Secondary Clarifiers 1 and 2 to locate the 39-inch aeration basin influent line that runs between the clarifiers, and ultimately to locate the 18-inch return activated sludge (RAS) lines that the project requires tie-in of, which are located at an elevation deeper than the aeration basin influent line. The RRC excavator had not yet exposed the 39-inch pipe when water began to well up from the pipe and fill the excavation. RRC immediately formed a berm around the hole to contain the water, and began putting available pumps in place to dewater the hole, and pump to the adjacent RAS splitter box. RRC enlisted a subcontractor to set up larger pumps and piping required to bypass pump the flow from the primary clarifiers upstream of the aeration basins, to the aeration basins. It was more than two weeks before RRC was able to stop flow from the primary clarifiers, stop backflow from the aeration basins, and pump the excavation dry to see the condition of the pipe. Photos are included that show the condition of the pipe, which had seven large holes in the pipe crown within the length of the excavation alone. The bypass pumping required attendance around the clock by RRC personnel.

RRC is requesting \$233,487.81 and an additional 49 days of contract time for additional work required to install the bypass pumping, attend the pumping activities, and for the cost of the pumps, piping, and diesel fuel. The Engineer and RPR have reviewed the request, and have found the cost and effort to be in line with what would be expected.

The following documents are attached to support Item 1:

1. Potential Change Order (PCO) #1 dated November 11, 2020 from Dean Porter of RRC with the proposal and cost backup for the unforeseen work.
2. PCO #1 Response from Jason Anderson of Carollo Engineers with the Engineer's response to the proposal.

Item 2

Through Specification Section 01500 – Temporary Facilities and Controls, the Plant 3 Improvement Project included a requirement for RRC to provide an on-site trailer for use by the Engineer, with office furniture, and office equipment. It was decided after construction began that a smaller trailer than specified would be sufficient, and that there would be no need for the printer/copier, but that a single Dell Tablet Computer would be desired. Based upon this information, RRC determined the savings resulting from the smaller trailer, and substitution of the printer/copier with a tablet computer, proposing a credit back to the City of \$2,616.66. The Engineer and RPR have reviewed the proposal, and have found the credit to be in line with what would be expected.

The following documents are attached to support Item 2:

1. PCO #2 dated December 4, 2020 as submitted by Carollo Engineers.
2. PCO #2 Response from Dean Porter of RRC with the proposal for the credit back to the City.
3. PCO #2 Proposal Approval from Jason Anderson of Carollo Engineers.

Item 3

The Plant 3 Improvements Project did not intend any change to the influent piping to the aeration basins, or any of the piping from the primary clarifiers. Based upon the conditions found that required bypass pumping as presented in PCO #1, it was determined that the 39-inch C301 wire-wrapped pre-stressed concrete cylinder pipe (PCCP) pipe would need to be replaced to allow the Project to continue. 39-inch PCCP is no longer manufactured by companies that produce PCCP pipe. As such, it was recommended by the Engineer that the 39-inch PCCP pipe be replaced with the readily-available 36-inch C900 PVC pipe. The City of Lubbock even had enough 36-inch C900 PVC pipe in inventory that RRC would only need to purchase the ductile iron fittings required for bends, and replacement of the wye where the 30-inch PCCP pipes from the two primary clarifiers join.

Mr. Zoltan Fekete, P.E.
Senior Engineer
City of Lubbock, Texas
December 21, 2020
Page 3

Given the condition of the 39-inch PCCP pipe, and given that the 30-inch PCCP pipe from each primary clarifier was also 50 years old, the Engineer and Contractor both recommended replacing the pipe all the way back to each primary clarifier. This pipe replacement would ultimately reduce the cost and time required, as a fitting allowing transition from C900 PVC to PCCP would be very expensive and have a very long lead time. Therefore, RRC also purchased the fittings and C900 PVC pipe required to completely replace the old PCCP pipe between the primary clarifiers and the aeration basins.

The cost of purchase and installation of the new C900 PVC piping and fittings totals \$370,264.99. However, there is \$209,400 of 24-inch ductile iron RAS piping in the RRC Schedule of Values that will no longer be required once the new 36-inch C900 PVC pipe is in place. With the credit for the 24-inch RAS piping, RRC is requesting \$160,864.99 and an additional 42 days of contract time for the cost and effort required to replace the PCCP pipe with C900 PVC pipe. The Engineer and RPR have reviewed the proposal, and have found the cost and effort to be in line with what would be expected.

The following documents are attached to support Item 3:

1. PCO #3 dated December 8, 2014 as submitted by Dean Porter of RRC with the proposal and cost backup for the unforeseen work.
2. PCO #3 Response from Jason Anderson of Carollo Engineers with the Engineer's response to the proposal.

Mr. Zoltan Fekete, P.E.
Senior Engineer
City of Lubbock, Texas
December 21, 2020
Page 4

The change in contract price associated with items 1 through 3 is summarized below:

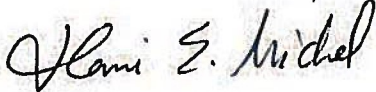
- Original contract price : \$7,257,052
- Net increase in price of this change order: +\$391,736.14
- Contract price with all approved change orders: \$7,648,788.14
- Original contract time: 600 Days to Final Completion
- Net increase of time with this change order: +91 days
- Contract time with all approved change orders: 691 days to Final Completion

After you have had a chance to review this information, we are available to discuss any questions or comments, at your convenience. Please contact, Jason Anderson, or myself with any questions.

Thank you for the opportunity to provide construction phase services for the City of Lubbock. We look forward to continuing to work with you and City staff on this project through its successful completion.

Sincerely,

CAROLLO ENGINEERS, INC.



Hani E. Michel, P.E.
Project Manager

JEA:jea

cc: Josh Kristinek, P.E.
Mary Gonzales
Mark Aaron Carpenter
Jason Anderson, P.E.

PCO # 1

SEWRP Plant 3 Improvements
Capital Improvements Program



Printed 12/18/2020, Page 1 of 2

Bypass pumping due to deterioration in the Primary Clarifier Effluent Lines

Type: Request for Proposal
Contract: 15325
Contractor: Red River Construction Co
ISO Currency Code: USD

Submitted : 11/18/2020
Submitted To: Carollo Engineers
Status: Closed
Priority: Critical

Created By: Red River Construction Co., Dean Porter
Created: 11/18/2020

Change Date: 10/21/2020
Schedule ID:
Not to Exceed \$: 250,000.00
Set: Mechanical

Approved Thru Last: 0.00
Amount Added: 233,487.81
New Approved Amount: 233,487.81
Current Contract Duration: 600
Days Added: 49
New Contract Duration: 649

Proposed Design Change Summary:

Locate leaks and set up bypass pumping for Primary Clarifier Effluent to the Aeration Basins to keep train online up to 3.5 MGD. Continue bypass pumping until leaks are repaired and line is put back in service.

References

Drawing 00G06	PROPOSED PROCESS SCHEMATIC - RAS / WAS/ SCUM	39" PRI EFF line is shown between the Secondary Clarifiers	Published
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DESCRIPTION OF PROPOSED MODIFICATION

PROJECT: Southeast Water Reclamation Plant - Plant 3 Improvements
 OWNER: City of Lubbock
 CONTRACTOR: RED RIVER CONSTRUCTION CO.
 ENGINEER: Carollo Engineers
 REFERENCE: Bypass pumping due to the Primary Clarifier Effluent
line deterioration from gases - Drawing 00G06

PROJECT NUMBER
RFP 20-15325-CM
348
8900B.10
 Date: Nov. 18, 2020

The Contractor proposes to make the following additions, modifications, or deletions to the Work described in the Contract Documents:

Initial Bypass Pumping & Setup thru 11/7/2020

During our process of field verifying the piping for the project, the 39" primary clarifier effluent line blew out while we were digging up the 18" RAS line at the secondary clarifier #2. We immediately began a program of pumping out the area to try to find out the problem. Unfortunately, the plant had no where to relocate the flow and we set up a bypass system to help. The initial findings were that the 39" line had deteriorated in the top section of the pipe and a series of holes were found. Bypass pumping was not part of this contract nor was any work on the 39" line. Therefore, we feel this is a change in conditions for the project and the costs thru November 7th were as follows:

1 lt	Temporary piping @Aeration	4,355.10	\$4,355.10
1 lt	6" Bypass Pump	1,950.42	\$1,950.42
2 ea	12" Bypass Pumps	7,941.88	\$15,883.76
1 lt	12" HDPE Bypass Pipe & System Setup		\$14,613.76
1 ea	Trench Box		\$2,710.58
1 lot	Fuel		\$2,438.58
1 lot	Small Tools and Miscellaneous		\$1,159.25
1 lot	Pickup		\$755.90
1 lot	Temporary Housing		\$850.00
374 hrs	Labor	25.00	\$9,350.00
187 hrs	Equipment Operator	30.00	\$5,610.00
188 hrs	Supervision	43.75	\$8,225.00
	47% Labor Burden		\$10,896.95
	Subtotal:		\$78,799.30
	Contractor's Fee		\$11,819.90
	Bonds and Insurance		\$1,359.29
	Total:		\$91,978.49

We also request a 3 week time extension to the Contract due to the additional work.

Additional Bypass Pumping starting 11/8/2020

In addition to the above, the bypass pumping will remain in service with a flow up to 3 MGD until the 39" goes back in service. This will require full time servicing as follows (per month):

2 ea	12" Bypass Pumps	7,941.88	\$15,883.76
1 lot	Fuel		\$3,960.48
1 lot	Small Tools and Miscellaneous		\$1,141.00
1 lot	Pickup		\$755.90
1 lot	Misc. tools and handling equipment		\$4,480.00
1 lot	Temporary Housing		\$850.00
448 hrs	Labor	25.00	\$11,200.00
224 hrs	Equipment Operator	30.00	\$6,720.00
112 hrs	Supervision	43.75	\$4,900.00
	47% Labor Burden		\$10,725.40
	Subtotal:		\$60,616.54
	Contractor's Fee		\$9,092.48
	Bonds and Insurance		\$1,045.64
	Total:		\$70,754.66 per month
			\$19,233.69 per week
			\$4,670.76 per day

We also request a 4 week time extension per 28 day month to the Contract due to the additional work.

Prepared by Red River Construction Co.

By: _____

Dean Porter, President

PCO # 2

SEWRP Plant 3 Improvements
Capital Improvements Program



Printed 12/18/2020, Page 1 of 2

Substitution of the Engineer's Field Office Trailer and Office Equipment

Type: Request for Proposal
Contract: 15325
Contractor: Red River Construction Co.
ISO Currency Code: USD

Submitted : 12/04/2020
Submitted To: Dean Porter, Red River
Construction Co.
Revision Date:
Status: Closed
Priority: Normal

Created By: Carollo Engineers, Jason Anderson
Created: 12/02/2020

Change Date: 12/04/2020
Schedule ID:
Not to Exceed \$: 0.00
Set:

Approved Thru Last: 233,487.81
Amount Added: -2,616.66
New Approved Amount: 230,871.15
Current Contract Duration: 649
Days Added: 0
New Contract Duration: 649

Proposed Design Change Summary:

Specification Section 01500 - Temporary Facilities and Controls, Part 1, 1.12 Contractor Field Offices and Sheds, C. Engineers field office specifies the requirements for a 10 ft by 46 ft trailer for use by the Engineer in the field, including janitorial services, office furniture, refrigerator, etc.

In this same section, 1.13 Field Office Data Service and Equipment specifies Internet service requirements, and provision of a printer/scanner.

In lieu of the larger trailer, it is acceptable to the Engineer to provide a much smaller trailer as readily available. In lieu of the printer, the Engineer requests a single Dell Tablet Computer be provided. This computer will remain the property of the Engineer/City of Lubbock. The specifications for this tablet are attached.

The Engineer requests a proposal for the Dell Tablet Computer, and a credit, as appropriate, for the reduced requirements specified in Section 01500 1.12 and 1.13.

DESCRIPTION OF PROPOSED ORDER #2

PROJECT: Southeast Water Reclamation Plant - Plant 3 Improvements
OWNER: City of Lubbock
CONTRACTOR: RED RIVER CONSTRUCTION CO.
ENGINEER: Carollo Engineers
REFERENCE: PCO#2 Provide Dell Tablet Computer in lieu of Copier
and smaller office.

PROJECT NUMBER
RFP 20-15325-CM
348
8900B.10
Date: Dec. 8, 2020

The Contractor proposes to make the following additions, modifications, or deletions to the Work described in the Contract Documents:

The cost will be as follows:

1 ea	Delete Copier	(2,124.75)	(\$2,124.75)
1 ea	Delete Copier Supplies	(1,098.46)	(\$1,098.46)
1 ea	Dell Latitude 7200 PC 2 in 1 Tablet	1,545.22	\$1,545.22
1 ea	Downsize Office Trailer	(900.00)	(\$900.00)
0 hrs	Labor	25.00	\$0.00
0 hrs	Equipment Operator	30.00	\$0.00
0 hrs	Welder	35.00	\$0.00
0 hrs	Supervision	43.75	\$0.00
	47% Labor Burden		\$0.00
		Subtotal:	(\$2,577.99)
	Bonds and Insurance		(\$38.67)
		Total:	(\$2,616.66)

Prepared by Red River Construction Co.

By:


Dean Porter, President

PCO # 3

SEWRP Plant 3 Improvements
Capital Improvements Program



Printed 12/18/2020, Page 1 of 1

Emergency 39" pipeline replacement from Primary Clarifiers to Aeration Basins

Type: Request for Proposal
Contract: 15325
Contractor: Red River Construction Co.
ISO Currency Code: USD

Submitted : 12/08/2020
Submitted To: Carollo Engineers
Status: Closed
Priority: Critical
Due Date: 12/15/2020

Created By: Red River Construction Co., Dean Porter
Created: 12/08/2020

Change Date:

Schedule ID:

Not to Exceed \$: 370,000.00

Set: Civil

Approved Thru Last:	230,871.15
Amount Added:	160,864.99
New Approved Amount:	391,736.14
Current Contract Duration:	649
Days Added:	42
New Contract Duration:	691

Proposed Design Change Summary:

39" concrete pressure pipe deteriorated over 50 years of service and blew out in numerous locations. Replace it with 36" PVC pipe. Replace 30" Primary Clarifier feeders to the 39" with 30" PVC pipe. Modify the new RAS pump discharges to dump into the 36" line directly. Remove 39" pipe where possible and fill line under the existing transformers. Provide staircase over new tie-in in Aeration Basin Gallery.

Files

Pipeline CO.pdf	113.31 KB
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DESCRIPTION OF PROPOSED MODIFICATION

PROJECT: Southeast Water Reclamation Plant - Plant 3 Improvements

OWNER: City of Lubbock

CONTRACTOR: RED RIVER CONSTRUCTION CO.

ENGINEER: Carollo Engineers

REFERENCE: Replacing the 39" Primary Effluent line due to
deterioration from gases - Drawing 00G06

PROJECT NUMBER

RFP 20-15325-CM

348

8900B.10

Date: Dec. 8, 2020

The Contractor proposes to make the following additions, modifications, or deletions to the Work described in the Contract Documents:

39" & 30" Pipe Replacement

Replace 39" Primary Effluent in the Aeration Basin Gallery thru the 39" wye and to the Primary Clarifiers via 30" PVC. This is based on relocating tee in the gallery and rotating it toward the north wall including reusing the existing piping. A new pipe from the tee thru the north wall will be installed in a cored hole thru the wall. Wall sealed with Linkseals. An aluminum stairs over the pipe will be installed. The 39" pipe will be replaced with 36" PVC pipe from the City. New fittings with MJ restraints will be installed by Red River. Pipe will reduce after the wye down to 30" PVC. Pipe will have a gradual slope from the Gallery pipe to the wye. Final elevation changes to Clarifier outlets will be adjusted by 45 bends. Existing 39" & 24" piping under transformer pads will be filled with flowable fill. The 24" will be capped/plugged with concrete. Most of the rest of the 39" & 30" pipe will be demoed during replacement. The 24" RAS line that was to be demoed and filled has been deleted. The 12" RAS Pump Discharge lines will connect directly to the new 36" pipeline. The cost will be as follows:

160 lf	30" PVC pipe	131.00	\$20,960.00
5 ea	30" MJ 45 Bends	2,349.60	\$11,748.00
1 ea	36" MJ Wye	15,288.00	\$15,288.00
1 ea	36" MJ x PE DI pipe LL=12'	8,221.20	\$8,221.20
2 ea	36"x30" MJ Reducers	2,586.00	\$5,172.00
6 ea	36" MJ Restraining Glands	1,750.00	\$10,500.00
12 ea	30" MJ Restraining Glands	806.00	\$9,672.00
1 ea	36" Flange Coupling Adapter	4,734.00	\$4,734.00
2 ea	30" Steel Flanges w/P401 repair kits	943.00	\$1,886.00
2 ea	36x12 Tapping Saddles	2,855.46	\$5,710.92
1 ea	36" Flange Bolt & Gaskets Sets	987.00	\$987.00
4 ea	30" Flange Bolt & Gaskets Sets	806.00	\$3,224.00
1 lot	Miscellaneous pipe supplies		\$6,425.16
300 cy	Embedment	45.00	\$13,500.00
1 lot	Flowable fill & Blocking		\$4,760.00
1 lot	42" Core thru wall		\$8,200.00
1 lot	Linkseals		\$1,260.00
2 ea	Epoxy Grout Seal Walls @Primary	460.00	\$920.00
1 lot	Alum Crossover Staircase		\$17,676.00
1 lot	Trucking and Haul-off		\$3,660.00
2 mo	Excavator	6,100.00	\$12,200.00
2 mo	Backhoe	2,250.00	\$4,500.00
2 mo	Loader	3,000.00	\$6,000.00
2 mo	Trench Compactor	3,300.00	\$6,600.00
2 mo	Trench Boxes	2,400.00	\$4,800.00
2 mo	Air compressor & Hammer	650.00	\$1,300.00
1 lot	Tampers		\$1,200.00
1 lot	Pickups		\$3,023.60
1 lot	Storage Van		\$200.00
1 lot	Equipment Maintenance		\$4,620.00
1 lot	Fuel, Oil, Grease		\$7,700.00
1 lot	Small Tools and Miscellaneous Rentals		\$4,822.50
1 lot	Temporary Housing		\$11,220.00
1348 hrs	Labor	25.00	\$33,700.00
642 hrs	Equipment Operator	30.00	\$19,260.00
24 hrs	Welder	35.00	\$840.00
240 hrs	Supervision	43.75	\$10,500.00
	47% Labor Burden		\$30,221.00
	Subtotal:		\$317,211.38
	Contractor's Fee		\$47,581.71
	Bonds and Insurance		\$5,471.90
	Total:		\$370,264.99
	Item 1.009 Delete 24" RAS line thru Bypass Tee w/temp. plug		(\$48,100.00)
	Item 1.010 Delete Rotate 24" RAS 90 bend		(\$7,000.00)
	Item 1.012 Delete Abandon 24" RAS with grout		(\$14,300.00)
	Item 1.015 Delete 24" RAS line		(\$140,000.00)
	GRAND TOTAL:		\$160,864.99

We also request a six week time extension to the Contract due to the additional work. Pricing does not include revegetation or other landscaping.

Prepared by Red River Construction Co.

By: 
Dean Porter, President

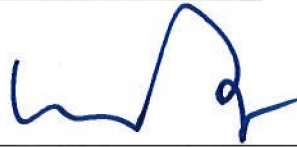
Resolution No. 2021-R0371
Item No. 7.12
September 28, 2021

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. 02 to that certain Contract No. 15325 by and between the City of Lubbock and Red River Construction for the Southeast Water Reclamation Project – Plant 3 Improvements, and related documents. Said Change Order No. 02 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 September 28, 2021.



DANIEL M. POPE, MAYOR

ATTEST:



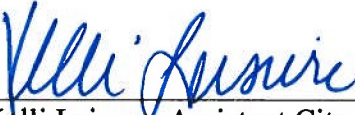
Rebecca Garza, City Secretary

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: 15325	Contractor: Red River Construction
Change Order No: 2	Contract Title: SEWRP – Plant 3 Improvements Project
Bid/RFP No: 20-15325-CM	Project No: 92444.9242.30000

"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):

Per attached backup material, this Change Order #2 includes the following items: Item 1) Four additional combination air valves at the RAS pumps at a cost of +\$15,556.21. Item 2) Relocation of existing and proposed WAS pumps at a cost of +\$76,918.62 and +7 days. Item 3) New Plant 3 NPW loop at a cost of +\$99,581.72 and +45 days. Item 4) Additional dewatering pumps for aeration basin exploratory work at a cost of +\$12,476.19. Item 5) Additional dewatering pumps for aeration basin exploratory work beyond Item 4 at a cost of +\$19,857.33, and +7 days. Item 6) Concrete coating credit of -\$300,000.00. Item 7) Additional electrical junction boxes at a cost of +\$3,721.26. Item 8) Piping and installation to reconnect existing aeration grid to new aeration lateral piping at a cost of +\$308,015.43 and +45 days. Item 9) Additional work associated with the NPW line at a cost of +\$46,559.87 and +10 days. Item 10) NPW piping modification at EPS-1 at a cost of +\$10,596.44 and +2 days. Item 11) Potable RAS pump seal water at a cost of +\$14,960.82 and +3 days.

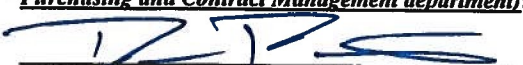


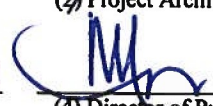

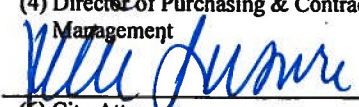
Where the Change Order is negotiated, the Change Order must be fully documented and itemized as to costs, including material quantities, material costs, taxes, insurance, employee benefits, other related costs, profit and overhead. Where certain unit prices are contained in the initial Contract, no deviations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

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

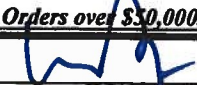
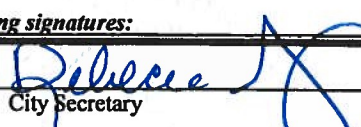
ITEM	DESCRIPTION	AMOUNT
A.	ORIGINAL CONTRACT VALUE:	\$7,257,052.00
B.	AMOUNT OF THIS CHANGE ORDER: Note: Council approval required if (+/-) \$50,000	\$308,243.89
	COST CENTER: 4545 ACCOUNT: 92444.9242.30000	
C.	PERCENT OF CONTRACT VALUE THIS CHANGE ORDER (B/A)	4.25%
D.	AMOUNT OF PREVIOUS CHANGE ORDERS:	\$391,736.14
E.	TOTAL AMOUNT OF ALL CHANGE ORDERS (B+D)	\$699,980.03
F.	PERCENT OF CONTRACT OF ALL CHANGE ORDERS (E/A): (25% maximum)	9.65%
G.	NEW CONTRACT AMOUNT (A+E):	\$7,957,032.03

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	8/31/21 Date	 (2) Project Architect/Engineer	8/31/21 Date
 (3) Owner's Representative	09/08/2021 Date	 (4) Director of Purchasing & Contract Management	9.08.2021 Date
 (5) Capital Project Manager	9/8/21 Date	 (6) City Attorney	9-9-21 Date

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

 (7) Mayor	9/28/2021 Date	 (8) City Secretary	9/28/2021 Date
Council Date: September 28, 2021		Agenda Item #: 7.12	
		Resolution #: 2021-R0371	

August 31, 2021

Mr. Zoltan Fekete, P.E.
Senior Engineer
City of Lubbock, Texas
1314 Avenue K
Lubbock, TX 79401

Subject: SEWRP Plant 3 Improvements Project
Change Order #2

Dear Mr. Fekete:

Attached with this letter is documentation for Change Order #2.

Item	Description	Cost Impact	Time Impact	Status
1	Four additional combination air valves, one per RAS pump	+\$15,556.21	No Time	Recommended as modified by Carollo
2	Relocation of existing and proposed WAS pumps	+\$76,918.62	7 days	Recommended as modified by Carollo
3	New Plant 3 NPW loop	+\$99,581.72	45 days	Recommended by Carollo
4	Additional dewatering pumps for aeration basin exploratory work	+\$12,476.19	No Time	Recommended by Carollo
5	Additional dewatering pumps for aeration basin exploratory work beyond Item 4	+\$19,857.33	7 days	Recommended by Carollo
6	Credit for not coating interior concrete surfaces of the existing secondary clarifiers	-\$300,000.00	No Time	Recommended by Carollo
7	Additional electrical junction boxes	+\$3,721.26	No Time	Recommended by Carollo
8	Piping and installation to reconnect existing aeration grid to new aeration lateral piping and drops	+\$308,015.43	45 days	Recommended by Carollo
9	Additional work associated with the NPW line	+\$46,559.87	10 days	Recommended as modified by Carollo
10	NPW piping modification at EPS1	+\$10,596.44	2 days	Recommended as modified by Carollo
11	Substitution of potable water for NPW for RAS pump seal water	+\$14,960.82	3 days	Recommended as modified by Carollo
Total Contract Impacts from CO #2 PCOs:		+\$308,243.89	+119 days	

Items recommended for inclusion with Change Order #2 are described in more detail as follows:

Item 1

During the submittal process the Engineer identified four combination air valves that were not shown on the Drawings. These valves were to be located upstream of each check valve on the four RAS pumps to ensure opening of the check valve would not be hindered by air binding upon pump startup.

RRC is requesting \$15,556.21 and an additional 7 days of contract time for additional work required to purchase and install the four valves. The Engineer and RPR have reviewed the request, and have found the cost and effort to be in line with what would be expected, but do not find a basis for requesting a contract time extension associated with these additional valves.

The following documents are attached to support Item 1:

1. Potential Change Order (PCO) #005 dated February 23, 2021 from Heath Staffeld of RRC with the proposal and cost backup for the additional work.
2. PCO #005 Response from Jason Anderson of Carollo Engineers with the Engineer's response to the proposal.

Item 2

During construction a suggestion was made by SEWRP Staff that WAS pumps that have always been at the east end of the aeration basin gallery could be moved to the location previously occupied by the RAS pumps near the access stairway at the west end of the aeration basin gallery. This relocation is much better for operation and maintenance access, particularly given that replacement of the aeration basin influent line under Change Order No. 1 resulted in a 36-inch pipe crossing the gallery, thereby requiring the addition of a stairway to allow the pipe to be crossed to access the east end of the aeration basin gallery. The relocation of the WAS pumps also shortens the WAS discharge line, allows the pumps to be oriented in a way providing much better access for maintenance, and places the WAS flow meter in a better location for use and maintenance.

The Engineer provided sketches to RRC to help develop an approach and a cost for relocation of the WAS pumps. Based upon this information, RRC proposed a cost of \$76,918.62 and an additional 21 days of contract time for the additional work. The Engineer and RPR have reviewed the proposal, and have found the cost and effort to be in line with what would be expected, but do not find a basis for requesting a 21-day contract time extension associated with this additional work. After further consideration, 7 days contract time extension was deemed appropriate.

The following documents are attached to support Item 2:

1. PCO #006 dated April 21, 2021 from Heath Staffeld of RRC with the proposal and cost backup for the additional work.

2. PCO #006 Response from Jason Anderson of Carollo Engineers with the Engineer's response to the proposal.

Item 3

The Plant 3 Improvements Project did not intend any change to the non-potable water (NPW) service lines serving Plant 3. NPW service is required for hose valve stations near the new RAS pump station, and secondary clarifiers, and for the spray bars in the new scum pump stations. It was understood that NPW water had not been available to the final clarifiers in Plant 3 for some time, but the project assumed the service could be re-established from the Plant 3 Effluent Pump Station. RRC performed exploratory digging to locate the NPW piping. No live pipe could be located. Eventually, a large plug made up of IFAS media was removed in the main NPW line connecting from the Plant 4 Effluent Pump Station. Ultimately it was determined that the only practical way to re-establish NPW service in Plant 3 was to install a new NPW loop. RRC was requested to submit a proposal for constructing a new NWP loop in Plant 3.

RRC proposed a cost of \$99,581.72 and an additional 45 days of contract time for the additional work. The Engineer and RPR have reviewed the proposal, and have found the cost and effort to be in line with what would be expected, and also agree with the request for a 45-day contract time extension associated with this additional work.

The following documents are attached to support Item 3:

1. PCO #007 dated April 27, 2021 from Heath Staffeld of RRC with the proposal and cost backup for the additional work.
2. PCO #007 Response from Jason Anderson of Carollo Engineers with the Engineer's response to the proposal.

Item 4

The Plant 3 Improvements Project requires each of the three existing aeration basins be dewatered to allow installation of new aeration piping to the existing aeration grids. RRC began dewatering Basin 1 first. There were instances of the basin being dewatered to a certain point on a Friday, only to return on Monday morning to find the basin filled with water again. This discovery led to the need to employ additional pumps to allow pumping that would overcome whatever inflow was happening.

RRC proposed a cost of \$12,476.19 for the additional work associated with procurement and installation of additional pumps. The Engineer and RPR have reviewed the proposal, and have found the cost and effort to be in line with what would be expected.

The following documents are attached to support Item 4:

1. PCO #008 dated May 5, 2021 from Heath Staffeld of RRC with the proposal and cost backup for the additional work.

2. PCO #008 Response from Jason Anderson of Carollo Engineers with the Engineer's response to the proposal.

Item 5

The Plant 3 Improvements Project requires each of the three existing aeration basins be dewatered to allow installation of new aeration piping to the existing aeration grids. After additional pumping efforts associated with PCO #008 RRC continued to find the aeration basin re-filling with water, and no apparent point of leakage could be found. This continued issue led to the need to employ additional 6-inch, 4-inch, and 3-inch pumps to allow pumping that would overcome the inflow that was being experienced.

RRC proposed a cost of \$19,857.33 for the additional work associated with procurement and installation of additional pumps. If pumping would need to be continued after the first week, the cost was proposed at \$12,821.40 per week. The proposal also requested a 7-day extension to the contract time. The Engineer and RPR have reviewed the proposal, and have found the cost and effort to be in line with what would be expected, and also agree with the request for a 7-day contract time extension associated with this additional work.

The following documents are attached to support Item 5:

1. PCO #009 dated May 5, 2021 from Heath Staffeld of RRC with the proposal and cost backup for the additional work.
2. PCO #009 Response from Jason Anderson of Carollo Engineers with the Engineer's response to the proposal.

Item 6

The Plant 3 Improvements Project specified the interior concrete surfaces of the existing secondary clarifiers be coated with an elastomeric polyurethane coating. After dewatering Secondary Clarifier No. 2, the concrete was found to be in excellent condition. Because of the condition of the concrete, the coating of the concrete was reconsidered, and a credit to not coat the concrete was requested.

RRC proposed a credit of \$300,000.00 for not coating the interior concrete surfaces of the existing secondary clarifiers. The Engineer and RPR have reviewed the proposal, and have found the credit to be in line with what would be expected.

The following documents are attached to support Item 6:

1. PCO #010 dated May 5, 2021 from Heath Staffeld of RRC with the proposal and cost backup for the additional work.
2. PCO #010 Response from Jason Anderson of Carollo Engineers with the Engineer's response to the proposal.

Item 7

Relocation of the WAS pumps as recommended in Item 2 of this Change Order No. 2 resulted in two existing electrical junction boxes being in conflict with relocated WAS pump suction piping. To address this issue, a pair of new junction boxes were proposed by RRC. The wiring from the existing boxes will be extended to the new boxes that will be mounted below the WAS pipe.

RRC proposed a cost of \$3,721.26 for the additional work associated with procurement and installation of the new junction boxes. The Engineer and RPR have reviewed the proposal, and have found the cost and effort to be in line with what would be expected.

The following documents are attached to support Item 7:

1. PCO #011 dated July 19, 2021 from Heath Staffeld of RRC with the proposal and cost backup for the additional work.
2. PCO #011 Response from Jason Anderson of Carollo Engineers with the Engineer's response to the proposal.

Item 8

The Plant 3 Improvements Project did not intend any change to the existing aeration basin diffuser grids, other than reconnection of the grids to the new aeration lateral piping. The new piping reduces the number of drops to the aeration grids from 28 per basin to six per basin, thereby preparing for application of future dissolved oxygen control when Plant 3 is converted to biological nutrient removal (BNR). Details for how the connection from the new drops to the existing aeration grid were not provided, as it was expected that what the Contractor found upon dewatering the basin could impact the approach taken. Once the first of the three aeration basins was successfully dewatered RRC was able to work with the Engineer and the diffuser manufacturer Sanitaire to develop the approach for reconnecting the aeration grid.

RRC proposed a cost of \$308,015.43 and an additional 90 days of contract time for the additional work. The Engineer and RPR have reviewed the proposal, and have found the cost and effort to be in line with what would be expected, but do not find a basis for requesting a 90-day contract time extension associated with this additional work, as the work was a part of the original scope of work. After further consideration, 45 days contract time extension was deemed appropriate, or 15 days per basin as the Contractor could not have fully understood the effort required until the conditions were known upon basin dewatering.

The following documents are attached to support Item 8:

1. PCO #012.2 dated August 24, 2021 from Dean Porter of RRC with the proposal and cost backup for the additional work.
2. PCO #012.2 Response from Jason Anderson of Carollo Engineers with the Engineer's response to the proposal.

Item 9

As noted for Item 3, the Plant 3 Improvements Project did not intend any change to the non-potable water (NPW) service lines serving Plant 3. NPW service is required for hose valve stations near the new RAS pump station, and secondary clarifiers, and for the spray bars in the new scum pump stations. It was understood that NPW water had not been available to the final clarifiers in Plant 3 for some time, but the project assumed the service could be re-established from the Plant 3 Effluent Pump Station. RRC performed exploratory digging to locate the NPW piping. No live pipe could be located. Eventually, a large plug made up of IFAS media was removed in the main NPW line connecting from the Plant 4 Effluent Pump Station, requiring removal of an existing valve, and extensive flushing of the line. A new connection was made, and a blow-off connection and valve was installed to aid WWTP staff if future problems are encountered. The NWP line has also required hand excavation under existing duct banks, locating of additional duct banks, and installation of flowable fill.

RRC proposed a cost of \$46,559.87 and an additional 17 days of contract time for the additional work. The Engineer and RPR have reviewed the proposal, and have found the cost and effort to be in line with what would be expected, but do not find a basis for requesting a 17-day contract time extension associated with this additional work. After further consideration, 10 days contract time extension was deemed appropriate.

The following documents are attached to support Item 9:

1. PCO #013 dated July 29, 2021 from Dean Porter of RRC with the proposal and cost backup for the additional work.
2. PCO #013 Response from Jason Anderson of Carollo Engineers with the Engineer's response to the proposal.

Item 10

As noted for Item 3, the Plant 3 Improvements Project did not intend any change to the non-potable water (NPW) service lines serving Plant 3, but a new NPW loop is needed to allow the new systems to function properly. As part of the new NPW loop a new pipe has been installed from the discharge of the existing NPW pump at the Plant 3 Effluent Pump Station. This pipe was run straight from the pump discharge at an elevation approximately 5 feet above the slab. The City staff has requested this pipe be lowered so that it may be stepped over, rather than ducked under, for improved safety when performing maintenance activities in the pump station area.

RRC proposed a cost of \$10,596.44 and an additional 4 days of contract time for the additional work. The Engineer and RPR have reviewed the proposal, and have found the cost and effort to be in line with what would be expected, but do not find a basis for requesting a 4-day contract time extension associated with this additional work. After further consideration, 2 days contract time extension was deemed appropriate.

The following documents are attached to support Item 10:

1. PCO #014 dated July 30, 2021 from Dean Porter of RRC with the proposal and cost backup for the additional work.
2. PCO #014 Response from Jason Anderson of Carollo Engineers with the Engineer's response to the proposal.

Item 11

The Plant 3 Improvements Project includes new return activated sludge (RAS) pumps, with two pumps dedicated to each secondary clarifier. The new pumps are vertical turbine solids handling pumps (VTSH) that have allowed complete replacement of the existing RAS pumps, and offer improved maintenance access and improved process control. The RAS pumps are critical to the treatment process. As with other types of pumps, VTSH pumps have shaft seals that require seal water to keep them clean and lubricated. It is common to provide non-potable seal water to pumps in a wastewater application, and the design intent was to provide NPW to the pump seals. Given the experience on the project with the NPW piping, and the plugging that was cleared in the existing NPW line as described in Item 9, the pump manufacturer, Flowserve, has recommended that the VTSH pump seal water to be provided be potable water rather than NPW. After further consideration, the Engineer agrees that given the critical nature of the RAS pumps to the treatment process, and the investment associated with this type of pump it would be best to avoid potential issues that might be associated with the use of NPW as seal water, and instead provide a backflow preventer and new 1-inch potable water service line from an available potable water line near the Plant 3 blower building.

RRC proposed a cost of \$14,960.82 and an additional 7 days of contract time for the additional work. The Engineer and RPR have reviewed the proposal, and have found the cost and effort to be in line with what would be expected, but do not find a basis for requesting a 7-day contract time extension associated with this additional work. After further consideration, 3 days contract time extension was deemed appropriate.

The following documents are attached to support Item 11:

1. PCO #015 dated August 4, 2021 from Dean Porter of RRC with the proposal and cost backup for the additional work.
2. PCO #015 Response from Jason Anderson of Carollo Engineers with the Engineer's response to the proposal.

Mr. Zoltan Fekete, P.E.
Senior Engineer
City of Lubbock, Texas
August 31, 2021
Page 8

The change in contract price associated with items 1 through 11 is summarized below:

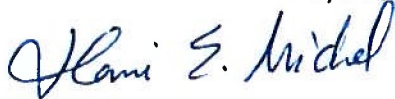
- Original contract price : \$7,257,052
- Net increase in price of this change order: +\$308,243.89
- Contract price with all approved change orders: \$7,957,032.03
- Original contract time: 600 Days to Final Completion
- Net increase of time with this change order: +119 days
- Contract time with all approved change orders: 810 days to Final Completion

After you have had a chance to review this information, we are available to discuss any questions or comments, at your convenience. Please contact, Jason Anderson, or myself with any questions.

Thank you for the opportunity to provide construction phase services for the City of Lubbock. We look forward to continuing to work with you and City staff on this project through its successful completion.

Sincerely,

CAROLLO ENGINEERS, INC.



Hani E. Michel, P.E.
Project Manager

JEA:jea

cc: Josh Kristinek, P.E.
Mary Gonzales
Mark Aaron Carpenter
Jason Anderson, P.E.



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.

Southeast Water Reclamation Plant Plant 3 Improvements

**City of Lubbock
Capital Project
Project Cost Detail
May 10, 2022**

Capital Project Number:	92444
Capital Project Name:	SEWRP Improvements Plant 3

	Budget
<i>Encumbered/Expended</i>	
Staff Time	\$23,426
Advertising for RFQ, RFP	2,201
Professional Services Contract 13422 with Carollo Engineers	643,431
Professional Services Contract with PSC for Clarifier Design	49,900
Payment to UCA for emergency repairs at Headworks	888,859
Contract with Dowtech Contractors for Clarifier Repair	324,000
Contract 15325 with Red River Construction, Co.,	7,257,052
Contract with Carollo Engineers for EOR/RPR Services	646,120
Contract with Wunderlich Malic for SCADA Integration	88,850
Change Order 1 to Contract 15325 with Red River	391,736
Change Order 2 to Contract 15325 with Red River	308,244
<i>Agenda Item May 10, 2020</i>	
Change Order 3 to Contract 15325 with Red River	103,025
<i>Encumbered/Expended To Date</i>	10,726,844
<i>Estimated Cost for Remaining Appropriation</i>	
SEWRP Improvements	404,423
<i>Remaining Appropriation</i>	404,423
Total Appropriation	\$11,131,267

Managing Department **Public Works Engineering**

Project Manager **John Turpin**

Project Classification **Infrastructure Improvements**

Project Status **Approved**



Project Scope

Design and construction of Southeast Water Reclamation Plant (SEWRP) improvements. The improvements will be constructed in several phases. Phase I includes upgrades to the influent pump station and the influent lift station. Phase II includes the design and construction of improvements associated to upgrade Plant 4 for biological nutrient removal, filtration, and ultraviolet disinfection. Phase III includes the design and construction of improvements to solids handling. Phase IV includes upgrades to Plant 3 for biological nutrient removal. The improvements will produce stream quality effluent, which will be discharged into the North Fork of the Double Mountain Fork of the Brazos River for potential reuse.

This capital project is associated with Phase IV upgrades to Plant 3 for biological nutrient removal treatment process.

FY 17-18 - Construction rehabilitation of secondary clarifier and airheaders.

Project Justification

Water planning and water management are City Council priorities. One of the objectives of the Strategic Water Supply Plan adopted by the City Council in 2007 is to utilize the City's effluent as a valuable water resource asset. The project improves the waste water treatment facilities so that the plant can produce a consistent supply of stream quality discharge for discharge into the North Fork of the Double Mountain Fork of the Brazos River.

Project History

Phase I, Influent Lift Station has been completed and Phase II, Plant 4 Improvements is currently under construction. Phase III is expected to begin design in FY 2016-17.

\$1.0 million was appropriated in the FY 2016-17 Budget, Ord. No. 2016-O0135, October 1, 2016.

\$1.5 million was appropriated in the FY 2017-18 Budget, Ord. No. 2017-O0111, October 1, 2017.

<i>Appropriation Detail</i>	Appropriation to Date	Unappropriated Planning Years						Total Project Amount
		FY 2017-18	FY 2018-19	FY 2019-20	FY 2020-21	FY 2021-22	FY 2022-23	
Construction	0	1,500,000	1,000,000	0	0	15,000,000	0	17,500,000
Design and Engineering	1,000,000	0	0	0	0	0	0	1,000,000
Total Project Appropriation	1,000,000	1,500,000	1,000,000	0	0	15,000,000	0	18,500,000

<i>Funding Detail</i>	Funding to Date	Unappropriated Planning Years						Total Funding
		FY 2017-18	FY 2018-19	FY 2019-20	FY 2020-21	FY 2021-22	FY 2022-23	
FY 2011 Tax and Waterworks CO's	307,251	0	0	0	0	0	0	307,251
FY 2017 Wastewater Revenue CO's	692,749	0	0	0	0	0	0	692,749
FY 2018 Water/Wastewater Cash	0	1,500,000	0	0	0	0	0	1,500,000
FY 2019 Water/Wastewater Cash	0	0	1,000,000	0	0	0	0	1,000,000
FY 2022 Water/Wastewater Revenue CO's	0	0	0	0	0	15,000,000	0	15,000,000
Total Funding Sources	1,000,000	1,500,000	1,000,000	0	0	15,000,000	0	18,500,000

<i>Operating Budget Impact</i>	Unappropriated Planning Years						Total Impact
	FY 2017-18	FY 2018-19	FY 2019-20	FY 2020-21	FY 2021-22	FY 2022-23	
No Impact Anticipated	0	0	0	0	0	0	0
Total Operating Budget Impact	0	0	0	0	0	0	0

Information

Agenda Item

Resolution - Engineering: Consider a resolution ratifying the act of the City Manager and authorizing the Mayor to execute Amendment No. 1 to License Agreement No. 16521, by and between the City of Lubbock, and Chloe Douglas, a selected winner of the 2022 Storm Drain Art Project.

Item Summary

In an effort to promote the importance of the role of community involvement necessary to keep all water systems within the City clean and free of chemicals, debris, and other harmful pollutants, the City hosted the 2022 Storm Drain Art Contest. As a contest winner, Chloe Douglas will be installing selected, winning artwork onto a City-designated storm drain in Downtown Lubbock.

Amendment No. 1 will extend the dates of access to City property for the completion of the storm drain artwork due to inclement weather on April 22, 2022, causing the cancelation of the Earth Day on Broadway Festival.

Fiscal Impact

None

Staff/Board Recommending

Jesica McEachern, Assistant City Manager

Attachments

Resolution
Amendment 1
Original 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 approve and ratify the signatures of the City Manager or his designee and execute for and on behalf of the City of Lubbock, Amendment No. 1 to the License Agreement No. 16521 for the installation of artwork as part of the City of Lubbock 2022 Storm Drain Art Contest, by and between the City of Lubbock and Chloe Douglas, 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
Chloe Douglas**

THIS IS THE FIRST AMENDMENT TO THE AGREEMENT, Contract No. 16521, dated and entered into the 12th day of April 2022 by and between the City of Lubbock ("City") and Chloe Douglas. ("Licensee"), for the installation of artwork as part of the City of Lubbock 2022 Storm Drain Art Contest ("Project").

WITNESSETH:

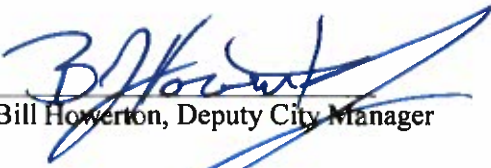
WHEREAS, due to inclement weather during the time agreed upon for the installation of the Project, the City and Licensee agree to extend the dates of access to City property for the completion of the Project.

NOW, THEREFORE, the City and Licensee agree to the terms of this FIRST AMENDMENT:

The dates of Licensee's access to City property for the completion of the Project, as set forth in Section 4 of the Agreement, shall be extended to April 30, 2022. All other portions of the original Agreement shall remain in place and are not altered by this amendment.

IN WITNESS HEREOF, the parties have executed this Agreement as of this ____ day of _____ 2022.

CITY OF LUBBOCK



Bill Howerton, Deputy City Manager

APPROVED AS TO CONTENT:



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



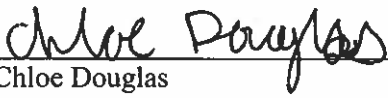
Jesica McEachern, Assistant City Manager

APPROVED AS TO FORM:



Kelli Leisure, Assistant City Attorney

LICENSEE

By: 
Chloe Douglas

April 12, 2022

RESOLUTION

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

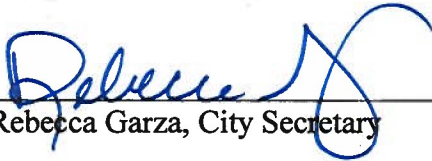
THAT the Mayor of the City of Lubbock is hereby authorized and directed to execute for and on behalf of the City of Lubbock, a License Agreement and related documents regarding certain designated rights of way for the purpose of installation and display of artwork, by and between the City of Lubbock and Chloe Douglas, of Lubbock, Texas, a selected winner of the 2022 Storm Drain Art Project. 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 April 12, 2022.



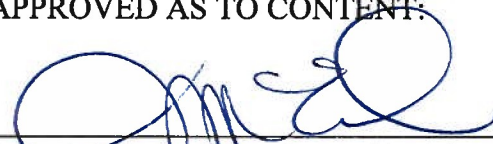
DANIEL M. POPE, MAYOR

ATTEST:



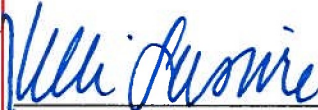
Rebecca Garza, City Secretary

APPROVED AS TO CONTENT:



Jessica McEachern, Assistant City Manager

APPROVED AS TO FORM:



Kelli Leisure, Assistant City Attorney

LICENSE AGREEMENT

THIS LICENSE Agreement No. 16521, entered into this 12th day of April, 2022, by and between the City of Lubbock, Texas, a Texas Home Rule Municipal Corporation ("City") through its Stormwater Compliance Department, and Chloe Douglas ("Licensee").

WITNESSETH

WHEREAS, in an effort to promote the importance of the role of community involvement necessary to keep all water systems within the City clean and free of chemicals, debris, and other harmful pollutants, the City hosted the 2022 Storm Drain Art Contest ("Contest"); and,

WHEREAS, the Licensee submitted artwork for the Contest and said artwork was chosen as a winning entry of the Contest; and,

WHEREAS, as a Contest winner, the Licensee will be installing their selected, winning artwork onto a City-designated storm drain in downtown Lubbock; and,

WHEREAS, the City desires to promote and enhance cultural arts within the City and its cultural arts district downtown, and finds that it is in the public interest and so promotes cultural arts for Licensee to install and display their artwork.

NOW, THEREFORE, in consideration of the terms and conditions hereinafter set forth, to be kept and performed by the respective parties, IT IS AGREED AS FOLLOWS:

1. LICENSE GRANTED

In consideration of the mutual covenants and terms of this License, and of other good and valuable consideration, the City hereby grants, upon the terms and conditions set forth in this License, a license to Licensee for the sole purpose of installing and displaying Licensee's selected artwork on a City-designated storm drain in downtown Lubbock. Storm drains and any associated right-of-way with, and around the drains, throughout the City are owned by the City.

The design to be installed by Licensee for the installation of their artwork is depicted in Exhibit "A", attached hereto and incorporated herein. Further, the location of the Licensee's artwork design to be installed at the City-designated storm drain shall be as depicted and described in Exhibit "B", attached hereto and incorporated herein.

2. LICENSE TERM

The term of this license shall be for 30 days beginning on the date of the execution of this

License by the City and ending on the thirtieth day, unless renewed or terminated sooner as provided in this License (the "Primary Term").

3. OWNERSHIP OF ARTWORK AND INSTALLATION

Any and all original artwork and design selected during the Contest and submitted by Licensee, installation of said artwork and design, and as painted and located on any part of City property shall be considered property of the City, ownership rights of the City include, but are not limited to; a non-exclusive right to the artwork design of Licensee, the installation of the artwork, non-exclusive rights of reproduction, duplication, or distribution, and any and all other non-exclusive rights to Licensee's artwork and design submitted and installed in conjunction with the Contest. All ownership rights granted to the City shall survive the termination of this License.

4. ACCESS

During the term of this License, and any renewals thereof, the City grants the Licensee access to the City-designated storm drain attached hereto as Exhibit "B" for the purpose of installing and painting the selected design attached hereto as Exhibit "A", during the dates of April 21-22, 2022. In the event of any inclement weather, emergency, any other act of God, or other unforeseen circumstances not within the control of the City, Licensee and City will coordinate other dates for installation of artwork.

5. CITY-PROVIDED EQUIPMENT

The Licensee agrees that only city-provided paint and equipment depicted on Exhibit "C", attached hereto and incorporated herein, shall be the only paint and equipment used by Licensee for the painting and installation of Licensee's artwork.

6. COMPLIANCE WITH APPLICABLE LAWS

The Licensee shall comply with all applicable federal, state and local laws, statutes, ordinances, rules and regulations relating, in any way, manner or form, to the activities under this License, and any amendments thereto during the course of installing and painting the Licensee's artwork on City property.

7. INDEMNITY AND RELEASE

LICENSEE SHALL INDEMNIFY, RELEASE, 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 LICENSEE, RELATED TO THE PERFORMANCE, OPERATIONS OR OMISSIONS UNDER THIS LICENSE AND/OR THE USE OR OCCUPATION OF CITY OWNED PROPERTY. THE INDEMNITY OBLIGATION PROVIDED HEREIN SHALL SURVIVE THE EXPIRATION OR TERMINATION OF THIS LICENSE.

8. NOTICE

Any notice required or permitted to be given herein must be given in writing and must be personally delivered, delivered by telephone facsimile, or mailed by prepaid certified or registered mail to the party to whom such notice or communication is directed at the address of such party as follows:

Licensee:
Attn: Chloe Douglas
5208 11th Street, Apt. 205
Lubbock, TX 79416
Telephone: 432-924-6617

Any such notice or other communication shall deemed to have been given (whether actually received or not) on the date it is personally delivered or, if mailed, on the third day, after it is mailed. Any party may change its address for purposes of this License by giving notice of such change to all other parties pursuant to this section.

9. ASSIGNABILITY

This license is personal to Licensee. Licensee shall not assign or sublet this license, without the consent of City. Any attempt to assign or sublet this license, without the consent of City, shall terminate the license granted herein.

10. RELATIONSHIP OF THE PARTIES

The relationship between the City and Licensee is at all times solely that of licensor and licensee, and may not be deemed, in any event, a partnership or a joint venture.

11. CONSTRUCTION AND VENUE

THIS LICENSE SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS. THIS CONTRACT IS PERFORMABLE IN LUBBOCK COUNTY, TEXAS. THE PARTIES HERETO HEREBY IRREVOCABLY

CONSENT TO THE SOLE AND EXCLUSIVE JURISDICTION AND VENUE OF THE COURTS OF COMPETENT JURISDICTION OF THE STATE OF TEXAS, COUNTY OF LUBBOCK, FOR THE PURPOSES OF ALL LEGAL PROCEEDINGS ARISING OUT OF OR RELATING TO THIS LICENSE OR THE ACTIONS THAT ARE CONTEMPLATED HEREBY.

12. SEVERABILITY

If any provision of this License is ever held to be invalid or ineffective by any court of competent jurisdiction with respect to any person or circumstance, the remainder of this License, and the application of such provision to persons and/or circumstances other than those with respect to which it is held invalid or ineffective, shall not be affected thereby.

13. LICENSES SUPERSEDED

This License constitutes the parties' sole License and supersedes any prior understandings or written or oral agreement between the parties with respect to the subject matter hereof.

14. ENTIRE AGREEMENT

This Contract, including Exhibit "A" through "C" attached hereto, contains the entire agreement between the City and Licensee, and there are no other written or oral promises, conditions, warranties, or representations relating to or affecting the matters contemplated herein.

15. BINDING EFFECT

This License shall inure to the benefit of and be binding upon the parties hereto, their respective successors, heirs, devisees, and assigns.

16. TIME OF ESSENCE

Time is of the essence in this License and all obligations shall be performed in a timely manner.

17. TERMINATION OF LICENSE

License may be terminated for any reason, by the City upon ten (10) days written notice to Licensee.

18. 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.

19. 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.

20. TEXAS GOVERNMENT CODE CHAPTER 2274.

By entering into this Agreement, Licensee verifies that: (1) it does not, and will not for the duration of the contract, have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association or (2) the verification required by Section 2274.002 of the Texas Government Code does not apply to the contract. If Licensee is a company with 10 or more full-time employees and if this Agreement has a value of at least \$100,000 or more, Licensee verifies that, pursuant to Texas Government Code Chapter 2274, it does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and will not discriminate during the term of the contract against a firearm entity or firearm trade association.

21. Licensee represents and warrants that: (1) it does not, and will not for the duration of the contract, boycott energy companies or (2) the verification required by Section 2274.002 of the Texas Government Code does not apply to the contract. If Licensee is a company with 10 or more full-time employees and if this Agreement has a value of at least \$100,000 or more, Licensee verifies that, pursuant to Texas Government Code Chapter 2274, it does not boycott energy companies; and will not boycott energy companies during the term of the Agreement. This verification is not required for an agreement where a governmental entity determines that these requirements are inconsistent with the governmental entity's constitutional or statutory duties related to the issuance, incurrence, or management of debt obligations or the deposit, custody, management, borrowing, or investment of funds.

22. 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.

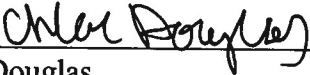
To the extent Subchapter J, Chapter 552, Government Code applies to this agreement, Contractor agrees to: (1) preserve all contracting information related to the contract as provided by the records retention requirements applicable to the governmental body for the duration of the contract; (2) promptly 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.

IN WITNESS WHERE OF, the parties hereto have executed this License the day and year first above written.


EXECUTED and effective as of the date of the execution by the City of Lubbock.

CITY OF LUBBOCK, TEXAS

BY: 
DANIEL M. POPE, MAYOR

BY: 
Chloe Douglas
Contest Winner in the City of Lubbock 2022
Storm Drain Art Contest

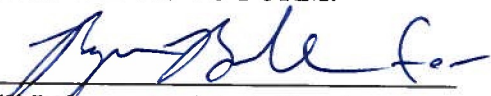
ATTEST:


Rebecca Garza, City Secretary

APPROVED AS TO CONTENT:


Jessica McEachern, Assistant City Manager

APPROVED AS TO FORM:


Kelli Leisure, Assistant City Attorney

Information

Agenda Item

Resolution - Engineering: Consider a resolution ratifying the act of the City Manager and authorizing the Mayor to execute Amendment No. 1 to License Agreement No. 16523, by and between the City of Lubbock, and Libby Wagner, a selected winner of the 2022 Storm Drain Art Project.

Item Summary

In an effort to promote the importance of the role of community involvement necessary to keep all water systems within the City clean and free of chemicals, debris, and other harmful pollutants, the City hosted the 2022 Storm Drain Art Contest. As a contest winner, Libby Wagner will be installing selected, winning artwork onto a City-designated storm drain in Downtown Lubbock.

Amendment No. 1 will extend the dates of access to City property for the completion of the storm drain artwork due to inclement weather on April 22, 2022, causing the cancelation of the Earth Day on Broadway Festival.

Fiscal Impact

None

Staff/Board Recommending

Jesica McEachern, Assistant City Manager

Attachments

Resolution
Amendment 1
Original 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 approve and ratify the signatures of the City Manager or his designee and execute for and on behalf of the City of Lubbock, Amendment No. 1 to the License Agreement No. 16523 for the installation of artwork as part of the City of Lubbock 2022 Storm Drain Art Contest, by and between the City of Lubbock and Libby Wagner, 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
Libby Wagner**

THIS IS THE FIRST AMENDMENT TO THE AGREEMENT, Contract No. 16523, dated and entered into the 12th day of April 2022 by and between the City of Lubbock ("City") and Libby Wagner. ("Licensee"), for the installation of artwork as part of the City of Lubbock 2022 Storm Drain Art Contest ("Project").

WITNESSETH:

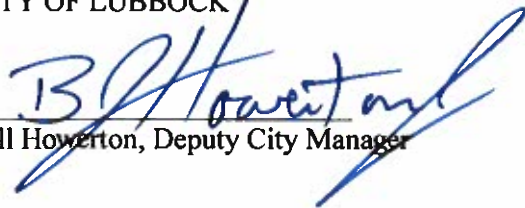
WHEREAS, due to inclement weather during the time agreed upon for the installation of the Project, the City and Licensee agree to extend the dates of access to City property for the completion of the Project.

NOW, THEREFORE, the City and Licensee agree to the terms of this FIRST AMENDMENT:

The dates of Licensee's access to City property for the completion of the Project, as set forth in Section 4 of the Agreement, shall be extended to April 30, 2022. All other portions of the original Agreement shall remain in place and are not altered by this amendment.

IN WITNESS HEREOF, the parties have executed this Agreement as of this 22nd day of April 2022.

CITY OF LUBBOCK


Bill Howerton, Deputy City Manager

APPROVED AS TO CONTENT:


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

Blaque Witzner

Jesica McEachern, Assistant City Manager

APPROVED AS TO FORM:

Kelli Leisure

Kelli Leisure, Assistant City Attorney

LICENSEE

By:

Libby Wagner

April 12, 2022

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 License Agreement and related documents regarding certain designated rights of way for the purpose of installation and display of artwork, by and between the City of Lubbock and Libby Wagner, of Lubbock, Texas, a selected winner of the 2022 Storm Drain Art Project. 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 April 12, 2022.



DANIEL M. POPE, MAYOR

ATTEST:



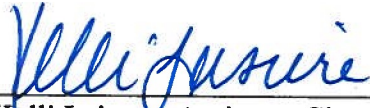
Rebecca Garza, City Secretary

APPROVED AS TO CONTENT:



Jessica McEachern, Assistant City Manager

APPROVED AS TO FORM:



Kelli Leisure, Assistant City Attorney

LICENSE AGREEMENT

THIS LICENSE Agreement No. 16523, entered into this 12th day of April, 2022, by and between the City of Lubbock, Texas, a Texas Home Rule Municipal Corporation ("City") through its Stormwater Compliance Department, and Libby Wagner ("Licensee").

WITNESSETH

WHEREAS, in an effort to promote the importance of the role of community involvement necessary to keep all water systems within the City clean and free of chemicals, debris, and other harmful pollutants, the City hosted the 2022 Storm Drain Art Contest ("Contest"); and,

WHEREAS, the Licensee submitted artwork for the Contest and said artwork was chosen as a winning entry of the Contest; and,

WHEREAS, as a Contest winner, the Licensee will be installing their selected, winning artwork onto a City-designated storm drain in downtown Lubbock; and,

WHEREAS, the City desires to promote and enhance cultural arts within the City and its cultural arts district downtown, and finds that it is in the public interest and so promotes cultural arts for Licensee to install and display their artwork.

NOW, THEREFORE, in consideration of the terms and conditions hereinafter set forth, to be kept and performed by the respective parties, IT IS AGREED AS FOLLOWS:

1. LICENSE GRANTED

In consideration of the mutual covenants and terms of this License, and of other good and valuable consideration, the City hereby grants, upon the terms and conditions set forth in this License, a license to Licensee for the sole purpose of installing and displaying Licensee's selected artwork on a City-designated storm drain in downtown Lubbock. Storm drains and any associated right-of-way with, and around the drains, throughout the City are owned by the City.

The design to be installed by Licensee for the installation of their artwork is depicted in Exhibit "A", attached hereto and incorporated herein. Further, the location of the Licensee's artwork design to be installed at the City-designated storm drain shall be as depicted and described in Exhibit "B", attached hereto and incorporated herein.

2. LICENSE TERM

The term of this license shall be for 30 days beginning on the date of the execution of this

License by the City and ending on the thirtieth day, unless renewed or terminated sooner as provided in this License (the "Primary Term").

3. OWNERSHIP OF ARTWORK AND INSTALLATION

Any and all original artwork and design selected during the Contest and submitted by Licensee, installation of said artwork and design, and as painted and located on any part of City property shall be considered property of the City, ownership rights of the City include, but are not limited to; a non-exclusive right to the artwork design of Licensee, the installation of the artwork, non-exclusive rights of reproduction, duplication, or distribution, and any and all other non-exclusive rights to Licensee's artwork and design submitted and installed in conjunction with the Contest. All ownership rights granted to the City shall survive the termination of this License.

4. ACCESS

During the term of this License, and any renewals thereof, the City grants the Licensee access to the City-designated storm drain attached hereto as Exhibit "B" for the purpose of installing and painting the selected design attached hereto as Exhibit "A", during the dates of April 21-22, 2022. In the event of any inclement weather, emergency, any other act of God, or other unforeseen circumstances not within the control of the City, Licensee and City will coordinate other dates for installation of artwork.

5. CITY-PROVIDED EQUIPMENT

The Licensee agrees that only city-provided paint and equipment depicted on Exhibit "C", attached hereto and incorporated herein, shall be the only paint and equipment used by Licensee for the painting and installation of Licensee's artwork.

6. COMPLIANCE WITH APPLICABLE LAWS

The Licensee shall comply with all applicable federal, state and local laws, statutes, ordinances, rules and regulations relating, in any way, manner or form, to the activities under this License, and any amendments thereto during the course of installing and painting the Licensee's artwork on City property.

7. INDEMNITY AND RELEASE

LICENSEE SHALL INDEMNIFY, RELEASE, 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 LICENSEE, RELATED TO THE PERFORMANCE, OPERATIONS OR OMISSIONS UNDER THIS LICENSE AND/OR THE USE OR OCCUPATION OF CITY OWNED PROPERTY. THE INDEMNITY OBLIGATION PROVIDED HEREIN SHALL SURVIVE THE EXPIRATION OR TERMINATION OF THIS LICENSE.

8. NOTICE

Any notice required or permitted to be given herein must be given in writing and must be personally delivered, delivered by telephone facsimile, or mailed by prepaid certified or registered mail to the party to whom such notice or communication is directed at the address of such party as follows:

Licensee:

Attn: Libby Wagner

2912 21st Street

Lubbock, TX 79410

Telephone: 443-631-2333

Any such notice or other communication shall be deemed to have been given (whether actually received or not) on the date it is personally delivered or, if mailed, on the third day, after it is mailed. Any party may change its address for purposes of this License by giving notice of such change to all other parties pursuant to this section.

9. ASSIGNABILITY

This license is personal to Licensee. Licensee shall not assign or sublet this license, without the consent of City. Any attempt to assign or sublet this license, without the consent of City, shall terminate the license granted herein.

10. RELATIONSHIP OF THE PARTIES

The relationship between the City and Licensee is at all times solely that of licensor and licensee, and may not be deemed, in any event, a partnership or a joint venture.

11. CONSTRUCTION AND VENUE

THIS LICENSE SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS. THIS CONTRACT IS PERFORMABLE IN LUBBOCK COUNTY, TEXAS. THE PARTIES HERETO HEREBY IRREVOCABLY

CONSENT TO THE SOLE AND EXCLUSIVE JURISDICTION AND VENUE OF THE COURTS OF COMPETENT JURISDICTION OF THE STATE OF TEXAS, COUNTY OF LUBBOCK, FOR THE PURPOSES OF ALL LEGAL PROCEEDINGS ARISING OUT OF OR RELATING TO THIS LICENSE OR THE ACTIONS THAT ARE CONTEMPLATED HEREBY.

12. SEVERABILITY

If any provision of this License is ever held to be invalid or ineffective by any court of competent jurisdiction with respect to any person or circumstance, the remainder of this License, and the application of such provision to persons and/or circumstances other than those with respect to which it is held invalid or ineffective, shall not be affected thereby.

13. LICENSES SUPERSEDED

This License constitutes the parties' sole License and supersedes any prior understandings or written or oral agreement between the parties with respect to the subject matter hereof.

14. ENTIRE AGREEMENT

This Contract, including Exhibit "A" through "C" attached hereto, contains the entire agreement between the City and Licensee, and there are no other written or oral promises, conditions, warranties, or representations relating to or affecting the matters contemplated herein.

15. BINDING EFFECT

This License shall inure to the benefit of and be binding upon the parties hereto, their respective successors, heirs, devisees, and assigns.

16. TIME OF ESSENCE

Time is of the essence in this License and all obligations shall be performed in a timely manner.

17. TERMINATION OF LICENSE

License may be terminated for any reason, by the City upon ten (10) days written notice to Licensee.

18. 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.

19. 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.

20. TEXAS GOVERNMENT CODE CHAPTER 2274.

By entering into this Agreement, Licensee verifies that: (1) it does not, and will not for the duration of the contract, have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association or (2) the verification required by Section 2274.002 of the Texas Government Code does not apply to the contract. If Licensee is a company with 10 or more full-time employees and if this Agreement has a value of at least \$100,000 or more, Licensee verifies that, pursuant to Texas Government Code Chapter 2274, it does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and will not discriminate during the term of the contract against a firearm entity or firearm trade association.

21. Licensee represents and warrants that: (1) it does not, and will not for the duration of the contract, boycott energy companies or (2) the verification required by Section 2274.002 of the Texas Government Code does not apply to the contract. If Licensee is a company with 10 or more full-time employees and if this Agreement has a value of at least \$100,000 or more, Licensee verifies that, pursuant to Texas Government Code Chapter 2274, it does not boycott energy companies; and will not boycott energy companies during the term of the Agreement. This verification is not required for an agreement where a governmental entity determines that these requirements are inconsistent with the governmental entity's constitutional or statutory duties related to the issuance, incurrence, or management of debt obligations or the deposit, custody, management, borrowing, or investment of funds.

22. 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.

IN WITNESS WHERE OF, the parties hereto have executed this License the day and year first above written.

EXECUTED and effective as of the date of the execution by the City of Lubbock.

CITY OF LUBBOCK, TEXAS


BY: 
DANIEL M. POPE, MAYOR

BY: 
Libby Wagner
Contest Winner in the City of Lubbock 2022
Storm Drain Art Contest

ATTEST:


Rebecca Garza, City Secretary

APPROVED AS TO CONTENT:


Jessica McEachern, Assistant City Manager

APPROVED AS TO FORM:

A handwritten signature in blue ink, appearing to read "Kelli Leisure", written over a horizontal line.

Kelli Leisure, Assistant City Attorney

Information

Agenda Item

Resolution - Engineering: Consider a resolution ratifying the act of the City Manager and authorizing the Mayor to execute Amendment No. 1 to License Agreement No. 16520, by and between the City of Lubbock, and Adrian Diaz, a selected winner of the 2022 Storm Drain Art Project.

Item Summary

In an effort to promote the importance of the role of community involvement necessary to keep all water systems within the City clean and free of chemicals, debris, and other harmful pollutants, the City hosted the 2022 Storm Drain Art Contest. As a contest winner, Adrian Diaz will be installing selected, winning artwork onto a City-designated storm drain in Downtown Lubbock.

Amendment No. 1 will extend the dates of access to City property for the completion of the storm drain artwork due to inclement weather on April 22, 2022, causing the cancelation of the Earth Day on Broadway Festival.

Fiscal Impact

None

Staff/Board Recommending

Jesica McEachern, Assistant City Manager

Attachments

Resolution
Amendment 1
Original 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 approve and ratify the signatures of the City Manager or his designee and execute for and on behalf of the City of Lubbock, Amendment No. 1 to the License Agreement No. 16520 for the installation of artwork as part of the City of Lubbock 2022 Storm Drain Art Contest, by and between the City of Lubbock and Adrian Diaz, 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
Adrian Diaz**

THIS IS THE FIRST AMENDMENT TO THE AGREEMENT, Contract No. 16520, dated and entered into the 12th day of April 2022 by and between the City of Lubbock ("City") and Adrian Diaz. ("Licensee"), for the installation of artwork as part of the City of Lubbock 2022 Storm Drain Art Contest ("Project").

WITNESSETH:


WHEREAS, due to inclement weather during the time agreed upon for the installation of the Project, the City and Licensee agree to extend the dates of access to City property for the completion of the Project.

NOW, THEREFORE, the City and Licensee agree to the terms of this FIRST AMENDMENT:

The dates of Licensee's access to City property for the completion of the Project, as set forth in Section 4 of the Agreement, shall be extended to April 30, 2022. All other portions of the original Agreement shall remain in place and are not altered by this amendment.

IN WITNESS HEREOF, the parties have executed this Agreement as of this ____ day of _____ 2022.

CITY OF LUBBOCK


Bill Howerton, Deputy City Manager

APPROVED AS TO CONTENT:


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



Jesica McEachern, Assistant City Manager

APPROVED AS TO FORM:



Kelli Leisure, Assistant City Attorney

LICENSEE

By: Adrian Diaz
Adrian Diaz

Type text here

April 12, 2022

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 License Agreement and related documents regarding certain designated rights of way for the purpose of installation and display of artwork, by and between the City of Lubbock and Adrian Diaz, of Lubbock, Texas, a selected winner of the 2022 Storm Drain Art Project. 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 April 12, 2022.



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

LICENSE AGREEMENT

THIS LICENSE Agreement No. 16520, entered into this 12th day of April, 2022, by and between the City of Lubbock, Texas, a Texas Home Rule Municipal Corporation ("City") through its Stormwater Compliance Department, and Adrian Diaz ("Licensee").

WITNESSETH

WHEREAS, in an effort to promote the importance of the role of community involvement necessary to keep all water systems within the City clean and free of chemicals, debris, and other harmful pollutants, the City hosted the 2022 Storm Drain Art Contest ("Contest"); and,

WHEREAS, the Licensee submitted artwork for the Contest and said artwork was chosen as a winning entry of the Contest; and,

WHEREAS, as a Contest winner, the Licensee will be installing their selected, winning artwork onto a City-designated storm drain in downtown Lubbock; and,

WHEREAS, the City desires to promote and enhance cultural arts within the City and its cultural arts district downtown, and finds that it is in the public interest and so promotes cultural arts for Licensee to install and display their artwork.

NOW, THEREFORE, in consideration of the terms and conditions hereinafter set forth, to be kept and performed by the respective parties, IT IS AGREED AS FOLLOWS:

1. LICENSE GRANTED

In consideration of the mutual covenants and terms of this License, and of other good and valuable consideration, the City hereby grants, upon the terms and conditions set forth in this License, a license to Licensee for the sole purpose of installing and displaying Licensee's selected artwork on a City-designated storm drain in downtown Lubbock. Storm drains and any associated right-of-way with, and around the drains, throughout the City are owned by the City.

The design to be installed by Licensee for the installation of their artwork is depicted in Exhibit "A", attached hereto and incorporated herein. Further, the location of the Licensee's artwork design to be installed at the City-designated storm drain shall be as depicted and described in Exhibit "B", attached hereto and incorporated herein.

2. LICENSE TERM

The term of this license shall be for 30 days beginning on the date of the execution of this

License by the City and ending on the thirtieth day, unless renewed or terminated sooner as provided in this License (the "Primary Term").

3. OWNERSHIP OF ARTWORK AND INSTALLATION

Any and all original artwork and design selected during the Contest and submitted by Licensee, installation of said artwork and design, and as painted and located on any part of City property shall be considered property of the City, ownership rights of the City include, but are not limited to; a non-exclusive right to the artwork design of Licensee, the installation of the artwork, non-exclusive rights of reproduction, duplication, or distribution, and any and all other non-exclusive rights to Licensee's artwork and design submitted and installed in conjunction with the Contest. All ownership rights granted to the City shall survive the termination of this License.

4. ACCESS

During the term of this License, and any renewals thereof, the City grants the Licensee access to the City-designated storm drain attached hereto as Exhibit "B" for the purpose of installing and painting the selected design attached hereto as Exhibit "A", during the dates of April 21-22, 2022. In the event of any inclement weather, emergency, any other act of God, or other unforeseen circumstances not within the control of the City, Licensee and City will coordinate other dates for installation of artwork.

5. CITY-PROVIDED EQUIPMENT

The Licensee agrees that only city-provided paint and equipment depicted on Exhibit "C", attached hereto and incorporated herein, shall be the only paint and equipment used by Licensee for the painting and installation of Licensee's artwork.

6. COMPLIANCE WITH APPLICABLE LAWS

The Licensee shall comply with all applicable federal, state and local laws, statutes, ordinances, rules and regulations relating, in any way, manner or form, to the activities under this License, and any amendments thereto during the course of installing and painting the Licensee's artwork on City property.

7. INDEMNITY AND RELEASE

LICENSEE SHALL INDEMNIFY, RELEASE, 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 LICENSEE, RELATED TO THE PERFORMANCE, OPERATIONS OR OMISSIONS UNDER THIS LICENSE AND/OR THE USE OR OCCUPATION OF CITY OWNED PROPERTY. THE INDEMNITY OBLIGATION PROVIDED HEREIN SHALL SURVIVE THE EXPIRATION OR TERMINATION OF THIS LICENSE.

8. NOTICE

Any notice required or permitted to be given herein must be given in writing and must be personally delivered, delivered by telephone facsimile, or mailed by prepaid certified or registered mail to the party to whom such notice or communication is directed at the address of such party as follows:

Licensee:
Attn: Adrian Diaz
404 N. Dover
Lubbock, TX 79416
Telephone: 806-642-9184

Any such notice or other communication shall be deemed to have been given (whether actually received or not) on the date it is personally delivered or, if mailed, on the third day, after it is mailed. Any party may change its address for purposes of this License by giving notice of such change to all other parties pursuant to this section.

9. ASSIGNABILITY

This license is personal to Licensee. Licensee shall not assign or sublet this license, without the consent of City. Any attempt to assign or sublet this license, without the consent of City, shall terminate the license granted herein.

10. RELATIONSHIP OF THE PARTIES

The relationship between the City and Licensee is at all times solely that of licensor and licensee, and may not be deemed, in any event, a partnership or a joint venture.

11. CONSTRUCTION AND VENUE

THIS LICENSE SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS. THIS CONTRACT IS PERFORMABLE IN LUBBOCK COUNTY, TEXAS. THE PARTIES HERETO HEREBY IRREVOCABLY

CONSENT TO THE SOLE AND EXCLUSIVE JURISDICTION AND VENUE OF THE COURTS OF COMPETENT JURISDICTION OF THE STATE OF TEXAS, COUNTY OF LUBBOCK, FOR THE PURPOSES OF ALL LEGAL PROCEEDINGS ARISING OUT OF OR RELATING TO THIS LICENSE OR THE ACTIONS THAT ARE CONTEMPLATED HEREBY.

12. SEVERABILITY

If any provision of this License is ever held to be invalid or ineffective by any court of competent jurisdiction with respect to any person or circumstance, the remainder of this License, and the application of such provision to persons and/or circumstances other than those with respect to which it is held invalid or ineffective, shall not be affected thereby.

13. LICENSES SUPERSEDED

This License constitutes the parties' sole License and supersedes any prior understandings or written or oral agreement between the parties with respect to the subject matter hereof.

14. ENTIRE AGREEMENT

This Contract, including Exhibit "A" through "C" attached hereto, contains the entire agreement between the City and Licensee, and there are no other written or oral promises, conditions, warranties, or representations relating to or affecting the matters contemplated herein.

15. BINDING EFFECT

This License shall inure to the benefit of and be binding upon the parties hereto, their respective successors, heirs, devisees, and assigns.

16. TIME OF ESSENCE

Time is of the essence in this License and all obligations shall be performed in a timely manner.

17. TERMINATION OF LICENSE

License may be terminated for any reason, by the City upon ten (10) days written notice to Licensee.

18. 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.

19. 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.

20. TEXAS GOVERNMENT CODE CHAPTER 2274.

By entering into this Agreement, Licensee verifies that: (1) it does not, and will not for the duration of the contract, have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association or (2) the verification required by Section 2274.002 of the Texas Government Code does not apply to the contract. If Licensee is a company with 10 or more full-time employees and if this Agreement has a value of at least \$100,000 or more, Licensee verifies that, pursuant to Texas Government Code Chapter 2274, it does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and will not discriminate during the term of the contract against a firearm entity or firearm trade association.

21. Licensee represents and warrants that: (1) it does not, and will not for the duration of the contract, boycott energy companies or (2) the verification required by Section 2274.002 of the Texas Government Code does not apply to the contract. If Licensee is a company with 10 or more full-time employees and if this Agreement has a value of at least \$100,000 or more, Licensee verifies that, pursuant to Texas Government Code Chapter 2274, it does not boycott energy companies; and will not boycott energy companies during the term of the Agreement. This verification is not required for an agreement where a governmental entity determines that these requirements are inconsistent with the governmental entity's constitutional or statutory duties related to the issuance, incurrence, or management of debt obligations or the deposit, custody, management, borrowing, or investment of funds.

22. 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.

IN WITNESS WHERE OF, the parties hereto have executed this License the day and year first above written.


EXECUTED and effective as of the date of the execution by the City of Lubbock.

CITY OF LUBBOCK, TEXAS

BY:


DANIEL M. POPE, MAYOR

BY:


Adrian Diaz

Contest Winner in the City of Lubbock 2022
Storm Drain Art Contest

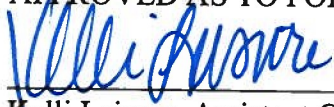
ATTEST:


Rebecca Garza, City Secretary

APPROVED AS TO CONTENT:


Jessica McEachern, Assistant City Manager

APPROVED AS TO FORM:



Kelli Leisure, Assistant City Attorney

Information

Agenda Item

Resolution - Engineering: Consider a resolution ratifying the act of the City Manager and authorizing the Mayor to execute Amendment No. 1 to License Agreement No. 16524, by and between the City of Lubbock, and Mystie Do, a selected winner of the 2022 Storm Drain Art Project.

Item Summary

In an effort to promote the importance of the role of community involvement necessary to keep all water systems within the City clean and free of chemicals, debris, and other harmful pollutants, the City hosted the 2022 Storm Drain Art Contest. As a contest winner, Mystie Doe will be installing selected, winning artwork onto a City-designated storm drain in Downtown Lubbock.

Amendment No. 1 will extend the dates of access to City property for the completion of the storm drain artwork due to inclement weather on April 22, 2022, causing the cancelation of the Earth Day on Broadway Festival.

Fiscal Impact

None

Staff/Board Recommending

Jesica McEachern, Assistant City Manager

Attachments

Resolution
Amendment 1
Original 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 approve and ratify the signatures of the City Manager or his designee and execute for and on behalf of the City of Lubbock, Amendment No. 1 to the License Agreement No. 16524 for the installation of artwork as part of the City of Lubbock 2022 Storm Drain Art Contest, by and between the City of Lubbock and Mystie Do, 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
Mystie Do**

THIS IS THE FIRST AMENDMENT TO THE AGREEMENT, Contract No. 16524, dated and entered into the 12th day of April 2022 by and between the City of Lubbock ("City") and Mystie Do. ("Licensee"), for the installation of artwork as part of the City of Lubbock 2022 Storm Drain Art Contest ("Project").

WITNESSETH:

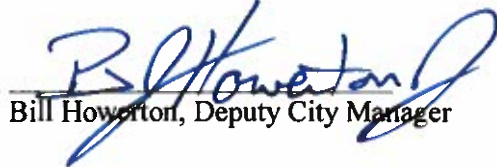
WHEREAS, due to inclement weather during the time agreed upon for the installation of the Project, the City and Licensee agree to extend the dates of access to City property for the completion of the Project.

NOW, THEREFORE, the City and Licensee agree to the terms of this FIRST AMENDMENT:

The dates of Licensee's access to City property for the completion of the Project, as set forth in Section 4 of the Agreement, shall be extended to April 30, 2022. All other portions of the original Agreement shall remain in place and are not altered by this amendment.

IN WITNESS HEREOF, the parties have executed this Agreement as of this 22nd day of April 2022.

CITY OF LUBBOCK


Bill Howerton, Deputy City Manager

APPROVED AS TO CONTENT:


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

Brooke Witcher for
Jesica McEachern, Assistant City Manager

APPROVED AS TO FORM:

Kelli Leisure
Kelli Leisure, Assistant City Attorney

LICENSEE

Mystie Do

By: _____

Mystie Do

April 12, 2022

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 License Agreement and related documents regarding certain designated rights of way for the purpose of installation and display of artwork, by and between the City of Lubbock and Mystie Do, of Lubbock, Texas, a selected winner of the 2022 Storm Drain Art Project. 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 April 12, 2022.



DANIEL M. POPE, MAYOR

ATTEST:



Rebecca Garza, City Secretary

APPROVED AS TO CONTENT:



Jesica McEachern, Assistant City Manager

APPROVED AS TO FORM:



Kelli Leisure, Assistant City Attorney

LICENSE AGREEMENT

THIS LICENSE Agreement No. 16524, entered into this 12th day of April, 2022, by and between the City of Lubbock, Texas, a Texas Home Rule Municipal Corporation (“City”) through its Stormwater Compliance Department, and Mystie Do (“Licensee”).

WITNESSETH

WHEREAS, in an effort to promote the importance of the role of community involvement necessary to keep all water systems within the City clean and free of chemicals, debris, and other harmful pollutants, the City hosted the 2022 Storm Drain Art Contest (“Contest”); and,

WHEREAS, the Licensee submitted artwork for the Contest and said artwork was chosen as a winning entry of the Contest; and,

WHEREAS, as a Contest winner, the Licensee will be installing their selected, winning artwork onto a City-designated storm drain in downtown Lubbock; and,

WHEREAS, the City desires to promote and enhance cultural arts within the City and its cultural arts district downtown, and finds that it is in the public interest and so promotes cultural arts for Licensee to install and display their artwork.

NOW, THEREFORE, in consideration of the terms and conditions hereinafter set forth, to be kept and performed by the respective parties, IT IS AGREED AS FOLLOWS:

1. LICENSE GRANTED

In consideration of the mutual covenants and terms of this License, and of other good and valuable consideration, the City hereby grants, upon the terms and conditions set forth in this License, a license to Licensee for the sole purpose of installing and displaying Licensee’s selected artwork on a City-designated storm drain in downtown Lubbock. Storm drains and any associated right-of-way with, and around the drains, throughout the City are owned by the City.

The design to be installed by Licensee for the installation of their artwork is depicted in Exhibit “A”, attached hereto and incorporated herein. Further, the location of the Licensee’s artwork design to be installed at the City-designated storm drain shall be as depicted and described in Exhibit “B”, attached hereto and incorporated herein.

2. LICENSE TERM

The term of this license shall be for 30 days beginning on the date of the execution of this

License by the City and ending on the thirtieth day, unless renewed or terminated sooner as provided in this License (the "Primary Term").

3. OWNERSHIP OF ARTWORK AND INSTALLATION

Any and all original artwork and design selected during the Contest and submitted by Licensee, installation of said artwork and design, and as painted and located on any part of City property shall be considered property of the City, ownership rights of the City include, but are not limited to; a non-exclusive right to the artwork design of Licensee, the installation of the artwork, non-exclusive rights of reproduction, duplication, or distribution, and any and all other non-exclusive rights to Licensee's artwork and design submitted and installed in conjunction with the Contest. All ownership rights granted to the City shall survive the termination of this License.

4. ACCESS

During the term of this License, and any renewals thereof, the City grants the Licensee access to the City-designated storm drain attached hereto as Exhibit "B" for the purpose of installing and painting the selected design attached hereto as Exhibit "A", during the dates of April 21-22, 2022. In the event of any inclement weather, emergency, any other act of God, or other unforeseen circumstances not within the control of the City, Licensee and City will coordinate other dates for installation of artwork.

5. CITY-PROVIDED EQUIPMENT

The Licensee agrees that only city-provided paint and equipment depicted on Exhibit "C", attached hereto and incorporated herein, shall be the only paint and equipment used by Licensee for the painting and installation of Licensee's artwork.

6. COMPLIANCE WITH APPLICABLE LAWS

The Licensee shall comply with all applicable federal, state and local laws, statutes, ordinances, rules and regulations relating, in any way, manner or form, to the activities under this License, and any amendments thereto during the course of installing and painting the Licensee's artwork on City property.

7. INDEMNITY AND RELEASE

LICENSEE SHALL INDEMNIFY, RELEASE, 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 LICENSEE, RELATED TO THE PERFORMANCE, OPERATIONS OR OMISSIONS UNDER THIS LICENSE AND/OR THE USE OR OCCUPATION OF CITY OWNED PROPERTY. THE INDEMNITY OBLIGATION PROVIDED HEREIN SHALL SURVIVE THE EXPIRATION OR TERMINATION OF THIS LICENSE.

8. NOTICE

Any notice required or permitted to be given herein must be given in writing and must be personally delivered, delivered by telephone facsimile, or mailed by prepaid certified or registered mail to the party to whom such notice or communication is directed at the address of such party as follows:

Licensee:

Attn: Mystie Do

4422 26th Street

Lubbock, TX 79410

Telephone: 806-392-1629

Any such notice or other communication shall be deemed to have been given (whether actually received or not) on the date it is personally delivered or, if mailed, on the third day, after it is mailed. Any party may change its address for purposes of this License by giving notice of such change to all other parties pursuant to this section.

9. ASSIGNABILITY

This license is personal to Licensee. Licensee shall not assign or sublet this license, without the consent of City. Any attempt to assign or sublet this license, without the consent of City, shall terminate the license granted herein.

10. RELATIONSHIP OF THE PARTIES

The relationship between the City and Licensee is at all times solely that of licensor and licensee, and may not be deemed, in any event, a partnership or a joint venture.

11. CONSTRUCTION AND VENUE

THIS LICENSE SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS. THIS CONTRACT IS PERFORMABLE IN LUBBOCK COUNTY, TEXAS. THE PARTIES HERETO HEREBY IRREVOCABLY

CONSENT TO THE SOLE AND EXCLUSIVE JURISDICTION AND VENUE OF THE COURTS OF COMPETENT JURISDICTION OF THE STATE OF TEXAS, COUNTY OF LUBBOCK, FOR THE PURPOSES OF ALL LEGAL PROCEEDINGS ARISING OUT OF OR RELATING TO THIS LICENSE OR THE ACTIONS THAT ARE CONTEMPLATED HEREBY.

12. SEVERABILITY

If any provision of this License is ever held to be invalid or ineffective by any court of competent jurisdiction with respect to any person or circumstance, the remainder of this License, and the application of such provision to persons and/or circumstances other than those with respect to which it is held invalid or ineffective, shall not be affected thereby.

13. LICENSES SUPERSEDED

This License constitutes the parties' sole License and supersedes any prior understandings or written or oral agreement between the parties with respect to the subject matter hereof.

14. ENTIRE AGREEMENT

This Contract, including Exhibit "A" through "C" attached hereto, contains the entire agreement between the City and Licensee, and there are no other written or oral promises, conditions, warranties, or representations relating to or affecting the matters contemplated herein.

15. BINDING EFFECT

This License shall inure to the benefit of and be binding upon the parties hereto, their respective successors, heirs, devisees, and assigns.

16. TIME OF ESSENCE

Time is of the essence in this License and all obligations shall be performed in a timely manner.

17. TERMINATION OF LICENSE

License may be terminated for any reason, by the City upon ten (10) days written notice to Licensee.

18. 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.

19. 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.

20. TEXAS GOVERNMENT CODE CHAPTER 2274.

By entering into this Agreement, Licensee verifies that: (1) it does not, and will not for the duration of the contract, have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association or (2) the verification required by Section 2274.002 of the Texas Government Code does not apply to the contract. If Licensee is a company with 10 or more full-time employees and if this Agreement has a value of at least \$100,000 or more, Licensee verifies that, pursuant to Texas Government Code Chapter 2274, it does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and will not discriminate during the term of the contract against a firearm entity or firearm trade association.

21. Licensee represents and warrants that: (1) it does not, and will not for the duration of the contract, boycott energy companies or (2) the verification required by Section 2274.002 of the Texas Government Code does not apply to the contract. If Licensee is a company with 10 or more full-time employees and if this Agreement has a value of at least \$100,000 or more, Licensee verifies that, pursuant to Texas Government Code Chapter 2274, it does not boycott energy companies; and will not boycott energy companies during the term of the Agreement. This verification is not required for an agreement where a governmental entity determines that these requirements are inconsistent with the governmental entity's constitutional or statutory duties related to the issuance, incurrence, or management of debt obligations or the deposit, custody, management, borrowing, or investment of funds.

22. 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.

IN WITNESS WHERE OF, the parties hereto have executed this License the day and year first above written.

EXECUTED and effective as of the date of the execution by the City of Lubbock.

CITY OF LUBBOCK, TEXAS

BY: _____

DANIEL M. POPE, MAYOR

BY: _____

Mystie Do

Contest Winner in the City of Lubbock 2022
Storm Drain Art Contest

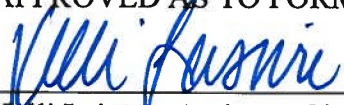
ATTEST:

Rebecca Garza, City Secretary

APPROVED AS TO CONTENT:

Jesica McEachern, Assistant City Manager

APPROVED AS TO FORM:



Kelli Leisure, Assistant City Attorney

Information

Agenda Item

Resolution - Engineering: Consider a resolution ratifying the act of the City Manager and authorizing the Mayor to execute Amendment No. 1 to License Agreement No. 16522, by and between the City of Lubbock, and Kaysha Byrd, a selected winner of the 2022 Storm Drain Art Project.

Item Summary

In an effort to promote the importance of the role of community involvement necessary to keep all water systems within the City clean and free of chemicals, debris, and other harmful pollutants, the City hosted the 2022 Storm Drain Art Contest. As a contest winner, Kaysha Byrd will be installing selected, winning artwork onto a City-designated storm drain in Downtown Lubbock.

Amendment No. 1 will extend the dates of access to City property for the completion of the storm drain artwork due to inclement weather on April 22, 2022, causing the cancelation of the Earth Day on Broadway Festival.

Fiscal Impact

None

Staff/Board Recommending

Jesica McEachern, Assistant City Manager

Attachments

Resolution
Amendment 1
Original 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 approve and ratify the signatures of the City Manager or his designee and execute for and on behalf of the City of Lubbock, Amendment No. 1 to the License Agreement No. 16522 for the installation of artwork as part of the City of Lubbock 2022 Storm Drain Art Contest, by and between the City of Lubbock and Kaysha Byrd, 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
Kaysha Byrd**

THIS IS THE FIRST AMENDMENT TO THE AGREEMENT, Contract No. 16522, dated and entered into the 12th day of April 2022 by and between the City of Lubbock ("City") and Kaysha Byrd. ("Licensee"), for the installation of artwork as part of the City of Lubbock 2022 Storm Drain Art Contest ("Project").

WITNESSETH:

WHEREAS, due to inclement weather during the time agreed upon for the installation of the Project, the City and Licensee agree to extend the dates of access to City property for the completion of the Project.

NOW, THEREFORE, the City and Licensee agree to the terms of this FIRST AMENDMENT:

The dates of Licensee's access to City property for the completion of the Project, as set forth in Section 4 of the Agreement, shall be extended to April 30, 2022. All other portions of the original Agreement shall remain in place and are not altered by this amendment.

IN WITNESS HEREOF, the parties have executed this Agreement as of this ____ day of _____ 2022.

CITY OF LUBBOCK


Bill Howerton, Deputy City Manager

APPROVED AS TO CONTENT:



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



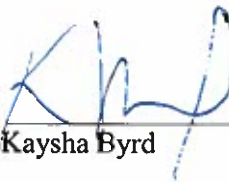
Jesica McEachern, Assistant City Manager

APPROVED AS TO FORM:



Kelli Leisure, Assistant City Attorney

LICENSEE

By: 

Kaysha Byrd

April 12, 2022

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 License Agreement and related documents regarding certain designated rights of way for the purpose of installation and display of artwork, by and between the City of Lubbock and Kaysha Byrd, of Abernathy, Texas, a selected winner of the 2022 Storm Drain Art Project. 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 April 12, 2022.



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

LICENSE AGREEMENT

THIS LICENSE Agreement No. 16522, entered into this 12th day of April, 2022, by and between the City of Lubbock, Texas, a Texas Home Rule Municipal Corporation ("City") through its Stormwater Compliance Department, and Kaysha Byrd ("Licensee").

WITNESSETH

WHEREAS, in an effort to promote the importance of the role of community involvement necessary to keep all water systems within the City clean and free of chemicals, debris, and other harmful pollutants, the City hosted the 2022 Storm Drain Art Contest ("Contest"); and,

WHEREAS, the Licensee submitted artwork for the Contest and said artwork was chosen as a winning entry of the Contest; and,

WHEREAS, as a Contest winner, the Licensee will be installing their selected, winning artwork onto a City-designated storm drain in downtown Lubbock; and,

WHEREAS, the City desires to promote and enhance cultural arts within the City and its cultural arts district downtown, and finds that it is in the public interest and so promotes cultural arts for Licensee to install and display their artwork.

NOW, THEREFORE, in consideration of the terms and conditions hereinafter set forth, to be kept and performed by the respective parties, IT IS AGREED AS FOLLOWS:

1. LICENSE GRANTED

In consideration of the mutual covenants and terms of this License, and of other good and valuable consideration, the City hereby grants, upon the terms and conditions set forth in this License, a license to Licensee for the sole purpose of installing and displaying Licensee's selected artwork on a City-designated storm drain in downtown Lubbock. Storm drains and any associated right-of-way with, and around the drains, throughout the City are owned by the City.

The design to be installed by Licensee for the installation of their artwork is depicted in Exhibit "A", attached hereto and incorporated herein. Further, the location of the Licensee's artwork design to be installed at the City-designated storm drain shall be as depicted and described in Exhibit "B", attached hereto and incorporated herein.

2. LICENSE TERM

The term of this license shall be for 30 days beginning on the date of the execution of this

License by the City and ending on the thirtieth day, unless renewed or terminated sooner as provided in this License (the "Primary Term").

3. OWNERSHIP OF ARTWORK AND INSTALLATION

Any and all original artwork and design selected during the Contest and submitted by Licensee, installation of said artwork and design, and as painted and located on any part of City property shall be considered property of the City, ownership rights of the City include, but are not limited to; a non-exclusive right to the artwork design of Licensee, the installation of the artwork, non-exclusive rights of reproduction, duplication, or distribution, and any and all other non-exclusive rights to Licensee's artwork and design submitted and installed in conjunction with the Contest. All ownership rights granted to the City shall survive the termination of this License.

4. ACCESS

During the term of this License, and any renewals thereof, the City grants the Licensee access to the City-designated storm drain attached hereto as Exhibit "B" for the purpose of installing and painting the selected design attached hereto as Exhibit "A", during the dates of April 21-22, 2022. In the event of any inclement weather, emergency, any other act of God, or other unforeseen circumstances not within the control of the City, Licensee and City will coordinate other dates for installation of artwork.

5. CITY-PROVIDED EQUIPMENT

The Licensee agrees that only city-provided paint and equipment depicted on Exhibit "C", attached hereto and incorporated herein, shall be the only paint and equipment used by Licensee for the painting and installation of Licensee's artwork.

6. COMPLIANCE WITH APPLICABLE LAWS

The Licensee shall comply with all applicable federal, state and local laws, statutes, ordinances, rules and regulations relating, in any way, manner or form, to the activities under this License, and any amendments thereto during the course of installing and painting the Licensee's artwork on City property.

7. INDEMNITY AND RELEASE

LICENSEE SHALL INDEMNIFY, RELEASE, 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 LICENSEE, RELATED TO THE PERFORMANCE, OPERATIONS OR OMISSIONS UNDER THIS LICENSE AND/OR THE USE OR OCCUPATION OF CITY OWNED PROPERTY. THE INDEMNITY OBLIGATION PROVIDED HEREIN SHALL SURVIVE THE EXPIRATION OR TERMINATION OF THIS LICENSE.

8. NOTICE

Any notice required or permitted to be given herein must be given in writing and must be personally delivered, delivered by telephone facsimile, or mailed by prepaid certified or registered mail to the party to whom such notice or communication is directed at the address of such party as follows:

Licensee:
Attn: Kaysha Byrd
209 South Avenue D
Abernathy, TX 79311
Telephone: 806-782-8172

Any such notice or other communication shall be deemed to have been given (whether actually received or not) on the date it is personally delivered or, if mailed, on the third day, after it is mailed. Any party may change its address for purposes of this License by giving notice of such change to all other parties pursuant to this section.

9. ASSIGNABILITY

This license is personal to Licensee. Licensee shall not assign or sublet this license, without the consent of City. Any attempt to assign or sublet this license, without the consent of City, shall terminate the license granted herein.

10. RELATIONSHIP OF THE PARTIES

The relationship between the City and Licensee is at all times solely that of licensor and licensee, and may not be deemed, in any event, a partnership or a joint venture.

11. CONSTRUCTION AND VENUE

THIS LICENSE SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS. THIS CONTRACT IS PERFORMABLE IN LUBBOCK COUNTY, TEXAS. THE PARTIES HERETO HEREBY IRREVOCABLY

CONSENT TO THE SOLE AND EXCLUSIVE JURISDICTION AND VENUE OF THE COURTS OF COMPETENT JURISDICTION OF THE STATE OF TEXAS, COUNTY OF LUBBOCK, FOR THE PURPOSES OF ALL LEGAL PROCEEDINGS ARISING OUT OF OR RELATING TO THIS LICENSE OR THE ACTIONS THAT ARE CONTEMPLATED HEREBY.

12. SEVERABILITY

If any provision of this License is ever held to be invalid or ineffective by any court of competent jurisdiction with respect to any person or circumstance, the remainder of this License, and the application of such provision to persons and/or circumstances other than those with respect to which it is held invalid or ineffective, shall not be affected thereby.

13. LICENSES SUPERSEDED

This License constitutes the parties' sole License and supersedes any prior understandings or written or oral agreement between the parties with respect to the subject matter hereof.

14. ENTIRE AGREEMENT

This Contract, including Exhibit "A" through "C" attached hereto, contains the entire agreement between the City and Licensee, and there are no other written or oral promises, conditions, warranties, or representations relating to or affecting the matters contemplated herein.

15. BINDING EFFECT

This License shall inure to the benefit of and be binding upon the parties hereto, their respective successors, heirs, devisees, and assigns.

16. TIME OF ESSENCE

Time is of the essence in this License and all obligations shall be performed in a timely manner.

17. TERMINATION OF LICENSE

License may be terminated for any reason, by the City upon ten (10) days written notice to Licensee.

18. 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.

19. 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.

20. TEXAS GOVERNMENT CODE CHAPTER 2274.

By entering into this Agreement, Licensee verifies that: (1) it does not, and will not for the duration of the contract, have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association or (2) the verification required by Section 2274.002 of the Texas Government Code does not apply to the contract. If Licensee is a company with 10 or more full-time employees and if this Agreement has a value of at least \$100,000 or more, Licensee verifies that, pursuant to Texas Government Code Chapter 2274, it does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and will not discriminate during the term of the contract against a firearm entity or firearm trade association.

21. Licensee represents and warrants that: (1) it does not, and will not for the duration of the contract, boycott energy companies or (2) the verification required by Section 2274.002 of the Texas Government Code does not apply to the contract. If Licensee is a company with 10 or more full-time employees and if this Agreement has a value of at least \$100,000 or more, Licensee verifies that, pursuant to Texas Government Code Chapter 2274, it does not boycott energy companies; and will not boycott energy companies during the term of the Agreement. This verification is not required for an agreement where a governmental entity determines that these requirements are inconsistent with the governmental entity's constitutional or statutory duties related to the issuance, incurrence, or management of debt obligations or the deposit, custody, management, borrowing, or investment of funds.

22. 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.

IN WITNESS WHERE OF, the parties hereto have executed this License the day and year first above written.

EXECUTED and effective as of the date of the execution by the City of Lubbock.

CITY OF LUBBOCK, TEXAS

BY: 

DANIEL M. POPE, MAYOR

BY: 

Kaysha Byrd

Contest Winner in the City of Lubbock 2022
Storm Drain Art Contest

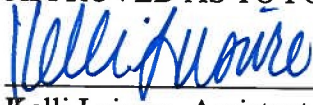
ATTEST:


Rebecca Garza, City Secretary

APPROVED AS TO CONTENT:


Jessica McEachern, Assistant City Manager

APPROVED AS TO FORM:



Kelli Leisure, Assistant City Attorney

Information

Agenda Item

Resolution - Engineering: Consider a resolution ratifying the act of the City Manager and authorizing the Mayor to execute Amendment No. 1 to License Agreement No. 16525, by and between the City of Lubbock, and Taylor Wright, a selected winner of the 2022 Storm Drain Art Project.

Item Summary

In an effort to promote the importance of the role of community involvement necessary to keep all water systems within the City clean and free of chemicals, debris, and other harmful pollutants, the City hosted the 2022 Storm Drain Art Contest. As a contest winner, Taylor Wright will be installing selected, winning artwork onto a City-designated storm drain in Downtown Lubbock.

Amendment No. 1 will extend the dates of access to City property for the completion of the storm drain artwork due to inclement weather on April 22, 2022, causing the cancelation of the Earth Day on Broadway Festival.

Fiscal Impact

None

Staff/Board Recommending

Jesica McEachern, Assistant City Manager

Attachments

Resolution
Amendment 1
Original 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 approve and ratify the signatures of the City Manager or his designee and execute for and on behalf of the City of Lubbock, Amendment No. 1 to the License Agreement No. 16525 for the installation of artwork as part of the City of Lubbock 2022 Storm Drain Art Contest, by and between the City of Lubbock and Taylor Wright, 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

ccdcs/RES.Amend #1 to Storm Drain Contest License 16525
4.26.22

**Amendment 1
To Agreement Between
The City of Lubbock, TX
And
Taylor Wright**

THIS IS THE FIRST AMENDMENT TO THE AGREEMENT, Contract No. 16525, dated and entered into the 12th day of April 2022 by and between the City of Lubbock ("City") and Taylor Wright. ("Licensee"), for the installation of artwork as part of the City of Lubbock 2022 Storm Drain Art Contest ("Project").

WITNESSETH:


WHEREAS, due to inclement weather during the time agreed upon for the installation of the Project, the City and Licensee agree to extend the dates of access to City property for the completion of the Project.

NOW, THEREFORE, the City and Licensee agree to the terms of this FIRST AMENDMENT:

The dates of Licensee's access to City property for the completion of the Project, as set forth in Section 4 of the Agreement, shall be extended to April 30, 2022. All other portions of the original Agreement shall remain in place and are not altered by this amendment.

IN WITNESS HEREOF, the parties have executed this Agreement as of this 22nd day of Apr. 2022.

CITY OF LUBBOCK


Bill Howerton, Deputy City Manager

APPROVED AS TO CONTENT:


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

Made with for

Jesica McEachern, Assistant City Manager

APPROVED AS TO FORM:

Kelli Leisure

Kelli Leisure, Assistant City Attorney

LICENSEE

By:

Taylor Wright

Taylor Wright

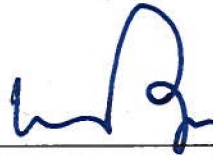
April 12, 2022

RESOLUTION

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

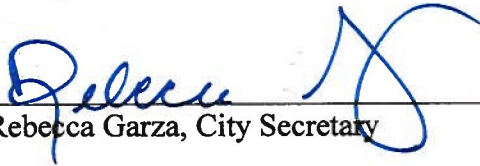
THAT the Mayor of the City of Lubbock is hereby authorized and directed to execute for and on behalf of the City of Lubbock, a License Agreement and related documents regarding certain designated rights of way for the purpose of installation and display of artwork, by and between the City of Lubbock and Taylor Wright, of Lubbock, Texas, a selected winner of the 2022 Storm Drain Art Project. 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 April 12, 2022.



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

LICENSE AGREEMENT

THIS LICENSE Agreement No. 16525, entered into this 12th day of April, 2022, by and between the City of Lubbock, Texas, a Texas Home Rule Municipal Corporation ("City") through its Stormwater Compliance Department, and Taylor Wright ("Licensee").

WITNESSETH

WHEREAS, in an effort to promote the importance of the role of community involvement necessary to keep all water systems within the City clean and free of chemicals, debris, and other harmful pollutants, the City hosted the 2022 Storm Drain Art Contest ("Contest"); and,

WHEREAS, the Licensee submitted artwork for the Contest and said artwork was chosen as a winning entry of the Contest; and,

WHEREAS, as a Contest winner, the Licensee will be installing their selected, winning artwork onto a City-designated storm drain in downtown Lubbock; and,

WHEREAS, the City desires to promote and enhance cultural arts within the City and its cultural arts district downtown, and finds that it is in the public interest and so promotes cultural arts for Licensee to install and display their artwork.

NOW, THEREFORE, in consideration of the terms and conditions hereinafter set forth, to be kept and performed by the respective parties, IT IS AGREED AS FOLLOWS:

1. LICENSE GRANTED

In consideration of the mutual covenants and terms of this License, and of other good and valuable consideration, the City hereby grants, upon the terms and conditions set forth in this License, a license to Licensee for the sole purpose of installing and displaying Licensee's selected artwork on a City-designated storm drain in downtown Lubbock. Storm drains and any associated right-of-way with, and around the drains, throughout the City are owned by the City.

The design to be installed by Licensee for the installation of their artwork is depicted in Exhibit "A", attached hereto and incorporated herein. Further, the location of the Licensee's artwork design to be installed at the City-designated storm drain shall be as depicted and described in Exhibit "B", attached hereto and incorporated herein.

2. LICENSE TERM

The term of this license shall be for 30 days beginning on the date of the execution of this

License by the City and ending on the thirtieth day, unless renewed or terminated sooner as provided in this License (the "Primary Term").

3. OWNERSHIP OF ARTWORK AND INSTALLATION

Any and all original artwork and design selected during the Contest and submitted by Licensee, installation of said artwork and design, and as painted and located on any part of City property shall be considered property of the City, ownership rights of the City include, but are not limited to; a non-exclusive right to the artwork design of Licensee, the installation of the artwork, non-exclusive rights of reproduction, duplication, or distribution, and any and all other non-exclusive rights to Licensee's artwork and design submitted and installed in conjunction with the Contest. All ownership rights granted to the City shall survive the termination of this License.

4. ACCESS

During the term of this License, and any renewals thereof, the City grants the Licensee access to the City-designated storm drain attached hereto as Exhibit "B" for the purpose of installing and painting the selected design attached hereto as Exhibit "A", during the dates of April 21-22, 2022. In the event of any inclement weather, emergency, any other act of God, or other unforeseen circumstances not within the control of the City, Licensee and City will coordinate other dates for installation of artwork.

5. CITY-PROVIDED EQUIPMENT

The Licensee agrees that only city-provided paint and equipment depicted on Exhibit "C", attached hereto and incorporated herein, shall be the only paint and equipment used by Licensee for the painting and installation of Licensee's artwork.

6. COMPLIANCE WITH APPLICABLE LAWS

The Licensee shall comply with all applicable federal, state and local laws, statutes, ordinances, rules and regulations relating, in any way, manner or form, to the activities under this License, and any amendments thereto during the course of installing and painting the Licensee's artwork on City property.

7. INDEMNITY AND RELEASE

LICENSEE SHALL INDEMNIFY, RELEASE, 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 LICENSEE, RELATED TO THE PERFORMANCE, OPERATIONS OR OMISSIONS UNDER THIS LICENSE AND/OR THE USE OR OCCUPATION OF CITY OWNED PROPERTY. THE INDEMNITY OBLIGATION PROVIDED HEREIN SHALL SURVIVE THE EXPIRATION OR TERMINATION OF THIS LICENSE.

8. NOTICE

Any notice required or permitted to be given herein must be given in writing and must be personally delivered, delivered by telephone facsimile, or mailed by prepaid certified or registered mail to the party to whom such notice or communication is directed at the address of such party as follows:

Licensee:

Attn: Taylor Wright

4507 71st Street, Apt. 711

Lubbock, TX 79424

Telephone: 832-655-2684

Any such notice or other communication shall be deemed to have been given (whether actually received or not) on the date it is personally delivered or, if mailed, on the third day, after it is mailed. Any party may change its address for purposes of this License by giving notice of such change to all other parties pursuant to this section.

9. ASSIGNABILITY

This license is personal to Licensee. Licensee shall not assign or sublet this license, without the consent of City. Any attempt to assign or sublet this license, without the consent of City, shall terminate the license granted herein.

10. RELATIONSHIP OF THE PARTIES

The relationship between the City and Licensee is at all times solely that of licensor and licensee, and may not be deemed, in any event, a partnership or a joint venture.

11. CONSTRUCTION AND VENUE

THIS LICENSE SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS. THIS CONTRACT IS PERFORMABLE IN LUBBOCK COUNTY, TEXAS. THE PARTIES HERETO HEREBY IRREVOCABLY

CONSENT TO THE SOLE AND EXCLUSIVE JURISDICTION AND VENUE OF THE COURTS OF COMPETENT JURISDICTION OF THE STATE OF TEXAS, COUNTY OF LUBBOCK, FOR THE PURPOSES OF ALL LEGAL PROCEEDINGS ARISING OUT OF OR RELATING TO THIS LICENSE OR THE ACTIONS THAT ARE CONTEMPLATED HEREBY.

12. SEVERABILITY

If any provision of this License is ever held to be invalid or ineffective by any court of competent jurisdiction with respect to any person or circumstance, the remainder of this License, and the application of such provision to persons and/or circumstances other than those with respect to which it is held invalid or ineffective, shall not be affected thereby.

13. LICENSES SUPERSEDED

This License constitutes the parties' sole License and supersedes any prior understandings or written or oral agreement between the parties with respect to the subject matter hereof.

14. ENTIRE AGREEMENT

This Contract, including Exhibit "A" through "C" attached hereto, contains the entire agreement between the City and Licensee, and there are no other written or oral promises, conditions, warranties, or representations relating to or affecting the matters contemplated herein.

15. BINDING EFFECT

This License shall inure to the benefit of and be binding upon the parties hereto, their respective successors, heirs, devisees, and assigns.

16. TIME OF ESSENCE

Time is of the essence in this License and all obligations shall be performed in a timely manner.

17. TERMINATION OF LICENSE

License may be terminated for any reason, by the City upon ten (10) days written notice to Licensee.

18. 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.

19. 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.

20. TEXAS GOVERNMENT CODE CHAPTER 2274.

By entering into this Agreement, Licensee verifies that: (1) it does not, and will not for the duration of the contract, have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association or (2) the verification required by Section 2274.002 of the Texas Government Code does not apply to the contract. If Licensee is a company with 10 or more full-time employees and if this Agreement has a value of at least \$100,000 or more, Licensee verifies that, pursuant to Texas Government Code Chapter 2274, it does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and will not discriminate during the term of the contract against a firearm entity or firearm trade association.

21. Licensee represents and warrants that: (1) it does not, and will not for the duration of the contract, boycott energy companies or (2) the verification required by Section 2274.002 of the Texas Government Code does not apply to the contract. If Licensee is a company with 10 or more full-time employees and if this Agreement has a value of at least \$100,000 or more, Licensee verifies that, pursuant to Texas Government Code Chapter 2274, it does not boycott energy companies; and will not boycott energy companies during the term of the Agreement. This verification is not required for an agreement where a governmental entity determines that these requirements are inconsistent with the governmental entity's constitutional or statutory duties related to the issuance, incurrence, or management of debt obligations or the deposit, custody, management, borrowing, or investment of funds.

22. 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.

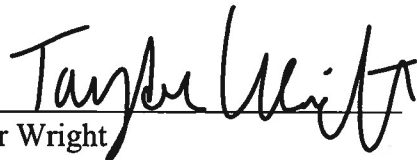
To the extent Subchapter J, Chapter 552, Government Code applies to this agreement, Contractor agrees to: (1) preserve all contracting information related to the contract as provided by the records retention requirements applicable to the governmental body for the duration of the contract; (2) promptly 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.

IN WITNESS WHERE OF, the parties hereto have executed this License the day and year first above written.

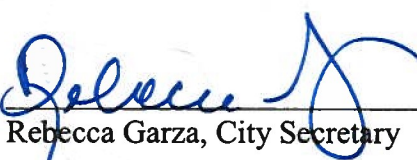
EXECUTED and effective as of the date of the execution by the City of Lubbock.

CITY OF LUBBOCK, TEXAS

BY: 
DANIEL M. POPE, MAYOR

BY: 
Taylor Wright
Contest Winner in the City of Lubbock 2022
Storm Drain Art Contest

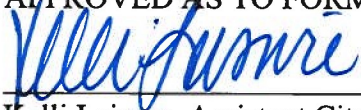
ATTEST:


Rebecca Garza, City Secretary

APPROVED AS TO CONTENT:


Jessica McEachern, Assistant City Manager

APPROVED AS TO FORM:



Kelli Leisure, Assistant City Attorney

Information

Agenda Item

Resolution - Public Works: Consider a resolution authorizing the Mayor to execute an Advanced Funding Agreement (AFA), Contract 16547, by and between the City of Lubbock, and the State of Texas acting through the Texas Department of Transportation (TxDOT), for US 84 (Avenue Q) from US 62 (19th Street) to US 82 (Marsha Sharp Freeway), for installation of medians, sidewalks, ADA ramps, bulb-outs, and illumination along the route.

Item Summary

The Lubbock Metropolitan Planning Organization (MPO) approved the use of Category 9 (CAT 9) "Transportation Alternatives Program" for the construction of US 84 (Avenue Q) from US 62(19th Street) to US 82 (Marsha Sharp Freeway). This is an Advanced Funding Agreement between the City of Lubbock and TxDOT, which will allocate Federal funds for that purpose. The costs will be allocated based on 80% Federal funding with the remaining 20% of City funding. The total cost of the CAT 9 funding is \$2,500,000, with TxDOT funding \$2,000,000 and the City funding \$500,000.

The CAT 9 funding for this AFA is only a portion of the overall construction cost of the total project at \$8,400,000 for US 84 (Avenue Q) from US 82 (Marsha Sharp Freeway) to 34th street. The overall project will involve a pavement mill and inlay, as well as medians, bulb-outs, sidewalks, ADA ramps and Illumination. The rest of the funding will be agreed upon in the "Turn Back Program" agreement between the City of Lubbock and TxDOT. There is no further anticipated City funding needed beyond the \$500,000 at this time for this project.

Fiscal Impact

This contract in the amount of \$500,000, is funded in Capital Improvements Project 92760, Ave Q TAP.

Staff/Board Recommending

Jesica McEachern, Assistant City Manager
L. Wood Franklin P.E., Division Director of Public Works

Attachments

Resolution
AFA Contract
Budget 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, an Advance Funding Agreement, Contract No. 16547, by and between the City of Lubbock and the State of Texas acting through the Texas Department of Transportation (TxDOT) for the installation of medians, sidewalks, ADA ramps, bulb-outs, and illumination of US 84 (Avenue Q) from US 62 (19th Street) to US 82 (Marsha Sharp Freeway). 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.

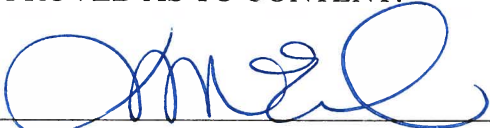
Passed by the City Council on _____.

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

TxDOT:				Federal Highway Administration:	
CSJ #	0053-18-048			CFDA No.	20.205
District #	LBB 05	AFA ID	Z00003029	CFDA Title	Highway Planning and Construction
Code Chart 64 #	25650				
Project Name	Ave Q TAP				
<i>AFA Not Used For Research & Development</i>					

STATE OF TEXAS §

COUNTY OF TRAVIS §

**ADVANCE FUNDING AGREEMENT
FOR A TRANSPORTATION ALTERNATIVES
SET-ASIDE (TASA) PROGRAM PROJECT
MPO-Selected On-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 Ave Q TAP (Project), and

WHEREAS, the Texas Transportation Commission (Commission) passed Minute Order Number 116073 (MO) dated August 31, 2021 awarding funding for TASA projects in the TASA Program Call of the Lubbock MPO, including Project, and

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CSJ #	0053-18-048			CFDA No.	20.205
District #	LBB 05	AFA ID	Z00003029	CFDA Title	Highway Planning and Construction
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WHEREAS, the governing body of the Local Government has approved entering into this Agreement by resolution or ordinance dated {enter date of resolution}, which is attached to and made a part of this Agreement as Attachment C, Resolution or Ordinance. A map showing the Project location appears in Attachment A, 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 medians, sidewalk, ADA ramps, bulb-outs, and illumination on US 84 (Avenue Q) from US 62 (19th Street) to the US 82 (Marsha Sharp Freeway).
- 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 B, Project Budget Estimate and Source of Funds (Attachment B).

- 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.

TxDOT:				Federal Highway Administration:	
CSJ #	0053-18-048			CFDA No.	20.205
District #	LBB 05	AFA ID	Z00003029	CFDA Title	Highway Planning and Construction
Code Chart 64 #	25650				
Project Name	Ave Q TAP			<i>AFA Not Used For Research & Development</i>	

- B. The total estimated project cost as shown in Attachment B 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 B. Attachment B 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 B and for overruns in excess of the amount specified in Attachment B to be paid by the Local Government. If the Project was State-selected, the State may apply a portion of any excess program funds to cover all or a portion of any overrun based on criteria provided by 43 Tex. Admin. Code §11.411(d).
- G. The budget in Attachment B 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 B. 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 B for plan review. At least 60 days prior to the date set for receipt of the construction bids, Local Government shall

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Code Chart 64 #	25650				
Project Name	Ave Q TAP			<i>AFA Not Used For Research & Development</i>	

remit its remaining local match as specified in Attachment B 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 B and 100 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;

TxDOT:				Federal Highway Administration:	
CSJ #	0053-18-048			CFDA No.	20.205
District #	LBB 05	AFA ID	Z00003029	CFDA Title	Highway Planning and Construction
Code Chart 64 #	25650				
Project Name	Ave Q TAP			AFA Not Used For Research & Development	

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 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

TxDOT:				Federal Highway Administration:	
CSJ #	0053-18-048			CFDA No.	20.205
District #	LBB 05	AFA ID	Z00003029	CFDA Title	Highway Planning and Construction
Code Chart 64 #	25650				
Project Name	Ave Q TAP			AFA Not Used For Research & Development	

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 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 **State** 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 **State**. 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

TxDOT:				Federal Highway Administration:	
CSJ #	0053-18-048			CFDA No.	20.205
District #	LBB 05	AFA ID	Z00003029	CFDA Title	Highway Planning and Construction
Code Chart 64 #	25650				
Project Name	Ave Q TAP			AFA Not Used For Research & Development	

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 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.

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- 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 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

TxDOT:				Federal Highway Administration:	
CSJ #	0053-18-048			CFDA No.	20.205
District #	LBB 05	AFA ID	Z00003029	CFDA Title	Highway Planning and Construction
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- 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 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

TxDOT:				Federal Highway Administration:	
CSJ #	0053-18-048			CFDA No.	20.205
District #	LBB 05	AFA ID	Z00003029	CFDA Title	Highway Planning and Construction
Code Chart 64 #	25650				
Project Name	Ave Q TAP			AFA Not Used For Research & Development	

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 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:

TxDOT:				Federal Highway Administration:	
CSJ #	0053-18-048			CFDA No.	20.205
District #	LBB 05	AFA ID	Z00003029	CFDA Title	Highway Planning and Construction
Code Chart 64 #	25650				
Project Name	Ave Q TAP			<i>AFA Not Used For Research & Development</i>	

Local Government:	State:
City of Lubbock ATTN: City of Engineer P.O. Box 2000 Lubbock, TX 79457	Texas Department of Transportation ATTN: Director of Contract Services 125 E. 11 th 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: Lubbock District Director TP&D
135 Slaton Rd
Lubbock, TX 79404-5201

All invoicing, payment, and project inquiries must include the following information:

County: Lubbock
Local Government: City of Lubbock
CSJ No.: 0053-18-048
Project Name: Ave Q TAP
Highway or Roadway: US 84

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

TxDOT:				Federal Highway Administration:	
CSJ #	0053-18-048			CFDA No.	20.205
District #	LBB 05	AFA ID	Z00003029	CFDA Title	Highway Planning and Construction
Code Chart 64 #	25650				
Project Name	Ave Q TAP			<i>AFA Not Used For Research & Development</i>	

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.

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.

TxDOT:				Federal Highway Administration:	
CSJ #	0053-18-048			CFDA No.	20.205
District #	LBB 05	AFA ID	Z00003029		
Code Chart 64 #	25650				
Project Name	Ave Q TAP			<i>AFA Not Used For Research & Development</i>	

- 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 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).

TxDOT:				Federal Highway Administration:	
CSJ #	0053-18-048			CFDA No.	20.205
District #	LBB 05	AFA ID	Z00003029	CFDA Title	Highway Planning and Construction
Code Chart 64 #	25650				
Project Name	Ave Q TAP			<i>AFA Not Used For Research & Development</i>	

- 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).
- 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.
- 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

TxDOT:				Federal Highway Administration:	
CSJ #	0053-18-048			CFDA No.	20.205
District #	LBB 05	AFA ID	Z00003029	CFDA Title	Highway Planning and Construction
Code Chart 64 #	25650				
Project Name	Ave Q TAP			<i>AFA Not Used For Research & Development</i>	

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 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

TxDOT:				Federal Highway Administration:	
CSJ #	0053-18-048			CFDA No.	20.205
District #	LBB 05	AFA ID	Z00003029	CFDA Title	Highway Planning and Construction
Code Chart 64 #	25650				
Project Name	Ave Q TAP			<i>AFA Not Used For Research & Development</i>	

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>
 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.
- 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.

TxDOT:				Federal Highway Administration:	
CSJ #	0053-18-048			CFDA No.	20.205
District #	LBB 05	AFA ID	Z00003029	CFDA Title	Highway Planning and Construction
Code Chart 64 #	25650				
Project Name	Ave Q TAP			<i>AFA Not Used For Research & Development</i>	

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 STATE OF TEXAS

Signature

Kenneth Stewart

Typed or Printed Name

Director of Contract Services

Typed or Printed Title

Date

THE LOCAL GOVERNMENT

Signature

Daniel M. Pope

Typed or Printed Name

Mayor

Typed or Printed Title

Date

ATTEST:

Rebecca Garza, City Secretary

Date

APPROVED AS TO CONTENT:

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

Date

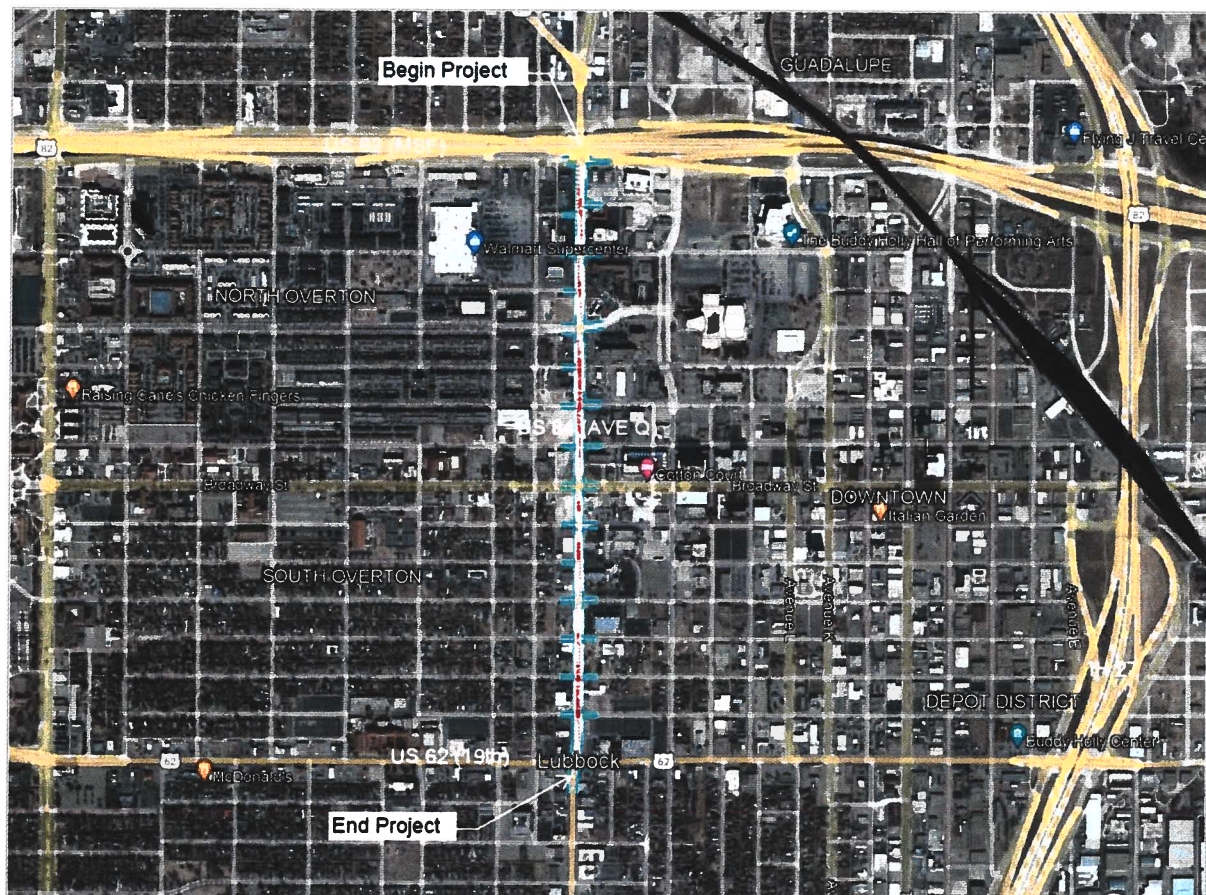
APPROVED AS TO FORM:

Kelli Leisure, Assistant City Attorney

Date

TxDOT:				Federal Highway Administration:	
CSJ #	0053-18-048			CFDA No.	20.205
District #	LBB 05	AFA ID	Z00003029	CFDA Title	Highway Planning and Construction
Code Chart 64 #	25650				
Project Name	Ave Q TAP			AFA Not Used For Research & Development	

**ATTACHMENT A
PROJECT LOCATION MAP**



CSJ #	0053-18-048	Project Name:	Ave Q TAP	AFA ID:	Z00003029
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ATTACHMENT B
PROJECT ESTIMATE AND SOURCE OF FUNDS
State Performs PE Work or Hires Consultant / State Lets Project for Construction

Work Performed by Local Government ("LG")									
Description of Project Costs to be Incurred	Total Project Cost Estimate	Federal Participation Includes percentage for TDC apportionment on MPO-selected projects where applicable		State Participation Includes authorized EDC amounts		Local Government Participation Includes authorized EDC reduction			
		%	Cost	%	Cost	%	Cost		
Planning/Maps/Education/Non-CST	\$0	0%	\$0	0%	\$0	0%	\$0		
Preliminary Engineering	\$0	0%	\$0	0%	\$0	0%	\$0		
Environmental Cost	\$0	0%	\$0	0%	\$0	0%	\$0		
Right of Way	\$0	0%	\$0	0%	\$0	0%	\$0		
Utilities	\$0	0%	\$0	0%	\$0	0%	\$0		
Construction Cost	\$								
Construction Engineering Cost	\$								
Eligible In-Kind Contribution Value	\$								
Total Construction Value (sum of construction cost and in-kind value)	\$0	0%	\$0	0%	\$0	0%	\$0		
Work by LG Subtotal	\$0		\$0		\$0		\$0		
Work Performed by the State (Local Participation paid up front by LG to TxDOT)									
Preliminary Engineering ¹	\$0	0%	\$0	0%	\$0	0%	\$0		
Environmental Cost ¹	\$0	0%	\$0	0%	\$0	0%	\$0		
Right of Way ³	\$0	0%	\$0	0%	\$0	0%	\$0		
Utilities ²	\$0	0%	\$0	0%	\$0	0%	\$0		
Construction Cost ²	\$2,500,000								
Eligible In-Kind Contribution Value	\$								
Total Construction Value (sum of construction cost and in-kind value)	\$2,500,000	80%	\$2,000,000	0%	\$0	20%	\$500,000		
Work by State Subtotal	\$2,500,000		\$2,000,000		\$0		\$500,000		
Direct and Indirect State Costs Incurred for Review, Inspection, Administration & Oversight									

CSJ #	0053-18-048	Project Name:	Ave Q TAP	AFA ID:	Z00003029
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Description of Project Costs to be Incurred	Total Project Cost Estimate	Federal Participation		State Participation		Local Government (LG) Participation	
		Includes percentage for TDC apportionment on MPO-selected projects where applicable		Includes authorized EDC amount		Includes authorized EDC reduction	
		%	Cost	%	Cost	%	Cost
Preliminary Engineering ¹	\$87,500	80%	\$70,000	20%	\$17,500	0%	\$0
Environmental Cost ¹	\$18,750	80%	\$15,000	20%	\$3,750	0%	\$0
Right of Way ¹	\$0	0%	\$0	0%	\$0	0%	\$0
Utilities ¹	\$18,750	80%	\$15,000	20%	\$3,750	0%	\$0
Construction ²	\$118,000	80%	\$94,400	20%	\$23,600	0%	\$0
Direct State Costs Subtotal	\$243,000	80%	\$194,400	20%	\$48,600	0%	\$0
Indirect State Cost	\$72,500		\$0	100%	72,500		\$0
TOTAL PARTICIPATION	\$2,815,500		\$2,194,400		\$121,100		\$500,000
In-kind Contribution Credit Applied						0%	\$0
TOTAL REMAINING PARTICIPATION AFTER IN-KIND CONTRIBUTION							\$500,000

- The estimated total participation by Local Government is \$500,000, fixed price amount. The State is responsible for any overruns.
- Total estimated payment by Local Government to State is \$500,000.
- ¹Local Government's first payment of \$0.00 is due to State within 30 days from execution of this contract.
- ²Local Government's second payment of \$500,000 is due to State within 60 days prior to the Construction contract being advertised for bids.
- ³If ROW is to be acquired by State, Local Government's share of property cost will be due prior to acquisition.
- The local match must be 20% or greater and may include eligible in-kind contributions, EDC adjustments, or TDCs if authorized as part of project selection.
- 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 \$2,194,400.

TxDOT:				Federal Highway Administration:	
CSJ #	0053-18-048			CFDA No.	20.205
District #	LBB 05	AFA ID	Z00003029	CFDA Title	Highway Planning and Construction
Code Chart 64 #	25650				
Project Name	Ave Q TAP			<i>AFA Not Used For Research & Development</i>	

ATTACHMENT C
RESOLUTION OF LOCAL GOVERNMENT

**City of Lubbock, TX
Capital Project
Project Cost Detail
May 10, 2022**

Capital Project Number:	92670
Capital Project Name:	Ave. Q TAP

	<u>Budget</u>
<i>Encumbered/Expended</i>	\$ -
 <i>Agenda Item May 10, 2022</i>	
Avenue Q Advanced Funding Agreement	500,000
<i>Encumbered/Expended to Date</i>	<u>500,000</u>
 <i>Estimated Costs for Remaining Appropriation</i>	
Miscellaneous	-
<i>Remaining Appropriation</i>	<u>-</u>
Total Appropriation To Date	<u><u>\$ 500,000</u></u>

Information

Agenda Item

Resolution - Public Works: Consider a resolution authorizing the Mayor to execute an Interlocal Agreement, by and between the City of Lubbock, and the Texas Department of Transportation, for the Texas Department of Transportation (TxDOT) Urban Street Turnback Program related to portions of 19th Street/Idalou Road - US 62 from Memphis Avenue to just East of IH-27, and portions of Avenue Q (US 84) from US 82 (Marsha Sharp Freeway) to 34th Street located within the city limits of the City of Lubbock, Texas

Item Summary

On January 11, 2022, City Council executed a resolution approving the transfer of a portion of US 62 (19th Street) and a portion of U.S. Highway 84 (Avenue Q), from the Texas Department of Transportation (TxDOT) to the City of Lubbock, upon completion of specific construction obligations. This resolution references a future agreement that would delineate each obligation of both parties prior to transference of the roadway segments from the State of Texas to the City.

This item is an Interlocal Agreement between TxDOT and the City to clearly define, the limits of transfer to the City as well as the requirements of both parties to reach final transference and acceptance of the roadways on the Turnback Program to the City.

The City will receive final transfer of the roadway when all obligations are met by the state as defined in the Interlocal Agreement. The construction obligations of this agreement are defined in section 3.02 and are as follows:

Portions of 19th Street - Construct all improvements as identified in the City of Lubbock final approved plan set for US 62 from Memphis Avenue to just East of IH-27, as set forth in Exhibit "B" (Digital Exhibit). No reduction in the scope of construction improvements may be performed without the express written consent of the City of Lubbock.

The 19th Street set of plans has already been signed off on by the City Engineer and approved for construction. TxDOT has received bids for 19th Street and will begin construction in the late spring of 2022.

Portions of Avenue Q - Construct all pavement improvements on US 84 (Avenue Q) from US 82 (Marsha Sharp Freeway) to 34th Street, including a mill and overlay of the entire roadway within these limits per plans and specifications approved by the City of Lubbock prior to letting of construction documents as set forth in Exhibit "C" (Digital Exhibit), to be included and become part of this Agreement after approval by the City.

Portions of Avenue Q - Construct all infrastructure improvements on US 84 (Avenue Q) from US 82 (Marsha Sharp Freeway) to US 62 (19th Street), including the addition of medians, improvement of

ADA Ramps, addition of bulb-outs, traffic signal upgrade and removals, Illumination improvements, striping and signage per plans and specifications approved by the City of Lubbock prior to letting of construction documents, as set for in Exhibit “C” (Digital Exhibit), to be included and become part of this Agreement after approval by the City.

Additional requirements beyond the new construction are clearly defined in Section 3 of this agreement.

Fiscal Impact

The City will be responsible for the perpetual maintenance of the roadways, once they are conveyed to the City. The maintenance will be funded within the Street Maintenance Program.

Staff/Board Recommending

Jesica McEachern, Assistant City Manager

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

Attachments

Turnback Resolution for Interlocal Agreement

Turnback Agreement 1.1

Exhibit A- Limits of Ownership Exhibit

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 Interlocal Agreement for the TxDOT Urban Street Turnback Program related to portions of 19th Street/Idalou Road - US 62 from Memphis Avenue to just East of IH-27, and portions of Avenue Q - US 84 from US 82 (Marsha Sharp Freeway) to 34th Street located within the city limits of the City of Lubbock, Texas, 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:



Ryan Brooke, Assistant City Attorney

RES. Interlocal Agrmt-TxDOT Turnback-Ave. Q & 19th
4.25.22

**INTERLOCAL AGREEMENT
FOR THE TxDOT URBAN STREET
TURNBACK PROGRAM**

STATE OF TEXAS

§

§

COUNTY OF LUBBOCK

§

THIS INTERLOCAL AGREEMENT FOR THE TxDOT URBAN STREET TURNBACK PROGRAM (hereinafter referred to as "Agreement") is effective as of the 10th day of May, 2022 ("hereinafter referred to as the Effective Date"), by and between the City of Lubbock, Texas (hereinafter referred to as "City"), a Texas Home Rule Municipality, and the State of Texas, by and through the Texas Department of Transportation (hereinafter referred to as "TxDOT"), a State Agency. This Agreement is entered into by the City and TxDOT pursuant to the authority granted by the provisions of the Interlocal Cooperation Act, Texas Government Code, Chapter 791 and Texas Transportation Code, Section 221.002. This Agreement is intended to further the purpose of the Interlocal Cooperation Act and Transportation Code to cooperate and agree on maintenance responsibility for State Highways inside City limits.

WITNESSETH

WHEREAS, the State of Texas, by and through the Texas Department of Transportation has proposed through the Urban Street Turnback Program that certain state highways located within the incorporated city limits of various cities of population over 50,000 in the State of Texas be conveyed to those cities with the understanding that thereafter the city alone would accept full responsibility to repair and maintain said highways; and

WHEREAS, TxDOT specifically proposed to the City of Lubbock the transfer of approximately 11.5 centerline roadway miles within the City of Lubbock, together with all structures, fixtures, and appurtenances thereto, as depicted and set forth in Exhibit "A" hereto (Portions of 19th Street/Idalou Road - US 62 from Memphis Avenue to just East of IH-27, and Portions of Avenue Q - US 84 from US 82 (Marsha Sharp Freeway) to 34th Street) ("Subject Roadways"); and

WHEREAS, TxDOT and the City have identified the roadways to be conveyed to the City of Lubbock, as well as specific obligations set forth herein to be followed by TxDOT and the City before formal request and acceptance of said roadways and all rights-of-way in connection therewith, as well as all surface and subsurface infrastructure on, under, over, and attendant to said roadways and rights-of-way, the descriptions of which shall be revised and substituted herein upon completion of certain obligations required hereby; and

WHEREAS, TxDOT and City further desire to undertake all necessary activities and obligations to effectuate the transfer of the Subject Roadways to the City in exchange for TxDOT's completion of necessary obligations as described herein prior to City's formal request and acceptance of said roadways.

ARTICLE I PURPOSE

1.01 The purpose of this Agreement is to establish the terms and conditions for City to formally request the conveyance, and further to accept and assume all maintenance and repair of the Subject Roadways.

ARTICLE II OBLIGATIONS OF CITY

2.01 Pursuant to this Agreement, and conditioned upon satisfactory performance by TxDOT of all obligations set forth herein, City shall formally request title to, and assume and takeback the maintenance responsibility for, the Subject Roadways.

2.02 Unless and until TxDOT shall complete and satisfy all other conditions precedent to the conveyance, City shall be under no obligation to accept rights, title, or interests in the Subject Roadways.

ARTICLE III OBLIGATIONS OF TxDOT

3.01 Pursuant to this Agreement, TxDOT shall, as consideration for the City's obligations hereunder in connection with the Subject Roadways prior to the City's request for Transfer of Right of Way instrument from the State of Texas to the City hereof:

- a. provide City with updated Right-of-Way maps with complete deed references, and any surveys from which said descriptions were derived, of the Subject Roadways;
- b. provide City an updated inventory of all infrastructure located on, under, over, or attendant to the Subject Roadways;
- c. provide City copies of all instruments evidencing an interest burdening or otherwise attendant to the Subject Roadways, including but not limited to underground utility easements, railroad crossings, traffic control signals and signage, and advertisement space, and further shall assign to City, in a form acceptable to the City, all rights and interests held by TxDOT under or otherwise pursuant to said burdening interests;
- d. provide copies of all permits issued by TxDOT inside the Subject Roadways;
- e. provide a current inventory of all personal property, if any, located on the Subject Roadways;
- f. provide copies of all current service, maintenance, or other agreements relating to the Subject Roadways, as well as an accounting of any payments or work outstanding under said agreements;

- g. provide copies of all invoices for maintenance or repairs incurred by TxDOT for the Subject Roadways in the twenty-four (24) months preceding the effective date of this Agreement;
- h. provide copies of all previous infrastructure inspections, environmental assessments, geotechnical reports, studies, or analyses made on, or relating to, the Subject Roadways; and
- i. remove all highway designation signs, and re-route roadway designations to on-system roadways within thirty (30) days of the execution of the Transfer of Right of Way instrument from the State of Texas to the City.

3.02 Pursuant to this Agreement, TxDOT shall, as consideration for the City's obligations hereunder in connection with the Subject Roadways prior to the City's request for Transfer of Right of Way instrument from the State of Texas to the City hereof;

- a. **Portions of 19th Street** - Construct all improvements as identified in the City of Lubbock final approved plan set for US 62 from Memphis Avenue to just East of IH-27 as set forth in Exhibit "B" (Digital Exhibit). No reduction in the scope of construction improvements may be performed without the express written consent of the City of Lubbock. All existing illumination fixtures will be updated to LED bulbs from West Loop 289 to East Loop 289 along 19th St.
- b. **Portions of Avenue Q** - Construct all pavement improvements on US 84 (Avenue Q) from US 82 (Marsha Sharp Freeway) to 34th Street including a mill and overlay of the entire roadway within these limits per plans and specifications approved by the City of Lubbock prior to letting of construction documents as set forth in Exhibit "C" (Digital Exhibit), to be included and become part of this Agreement after approval by the City.
- c. **Portions of Avenue Q** - Construct all infrastructure improvements on US 84 (Avenue Q) from US 82 (Marsha Sharp Freeway) to US 62 (19th Street) this work includes the addition of medians, improvement of ADA Ramps, addition of bulb-outs, traffic signal upgrade and removals, Illumination improvements, striping and signage per plans and specifications approved by the City of Lubbock prior to letting of construction documents as set forth in Exhibit "C" (Digital Exhibit), to be included and become part of this Agreement after approval by the City.

3.03 Prior to the City's and final acceptance of the Subject Roadways, TxDOT shall, at TxDOT's expense, deliver to City:

- a. Transfer of Right of Way instrument conveying title to the Subject Roadways, free and clear of all liens;
- b. a bill of sale with warranties to title conveying title, free and clear of all liens, to any personal property located on the Subject Roadways;
- c. assignments of any leases to or on the Subject Roadways;
- d. assignment to the City of any of the following items as they relate to the Subject Roadways or their repair, maintenance, or operation:
 - 1. licenses or permits;
 - 2. warranties or guarantees;

3. evidence that the person executing this Agreement is legally capable and authorized to bind TxDOT.

ARTICLE IV DISCLOSURES

4.01 To the best of TxDOT's knowledge and belief, and except as otherwise set forth in the Agreement, TxDOT is not aware of

- a. any subsurface: structures, pits, waste, springs, or improvements;
- b. pending or threatened litigation, condemnation, or assessment affecting the Subject Roadways;
- c. any environmental hazards or conditions that affect or are otherwise located on or under the Subject Roadways;
- d. whether the Subject Roadways have been used for the storage or disposal of hazardous materials or toxic waste, a dump site or landfill, or any underground tanks or containers;
- e. any material physical defects in the Subject Roadways; or
- f. any condition in the Subject Roadways that violates any law or ordinance.

ARTICLE V DESIGNATION OF REPRESENTATIVES

5.01 City hereby appoints the City of Lubbock Division Director of Public Works, or his/her designee, (hereinafter referred to as "Director") as its designated representative under this Agreement. The Director shall be the City's primary point of contact.

5.02 TxDOT hereby appoints the District Engineer or his/her designee, (hereinafter referred to as "District Engineer") as its designated representative under this Agreement. TxDOT's District Engineer shall be the primary point of contact for TxDOT.

ARTICLE VI DEFAULT & TERMINATION

6.01 In the event of a material breach of this Agreement, the non-breaching party shall give the breaching party written notice of such breach which shall detail the nature of the breach. The party receiving the notice of breach shall be given thirty (30) days to cure the breach. If the breach is not corrected to the reasonable satisfaction of the non-breaching party by the end of the thirty (30) day period, the non-breaching party may give written notice of termination of this Agreement to the breaching party and seek to recover damages not to exceed the amount obligated by the non-breaching party for this Agreement.

6.02 The City may terminate this Agreement, for any reason or convenience, upon thirty (30) days written notice to TxDOT.

6.03 In the event of an uncured breach(es) of any term and/or provision of this Agreement in accordance with the provisions of 6.01 herein, the City shall be entitled to exercise

any right or remedy available to it by this Agreement, at law, equity, or otherwise, including without limitation, termination of this Agreement and assertion of an action for damages and/or injunctive relief. The exercise of any right or remedy shall not preclude the concurrent or subsequent exercise of any right or remedy and all rights and remedies shall be cumulative.

ARTICLE VII PRIOR AGREEMENTS SUPERSEDED

7.01 This Agreement, including the exhibits, constitute the entire Agreement of the Parties regarding the subject matter of this Agreement and supersede all previous agreements and understandings, whether written or oral, relating to such subject matter.

ARTICLE VIII ASSIGNMENT OR TRANSFER OF INTEREST

8.01 Neither Party may assign its rights, privileges and obligations under this Agreement, in whole or in part, without the prior written consent of the other party. Any attempt to assign without such approval shall be void.

ARTICLE IX LEGAL CONSTRUCTION

9.01 In case any one or more of the provisions contained in this Agreement shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, such invalid, illegal or unenforceable provision shall not affect any other provision hereof and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

ARTICLE X TEXAS LAW TO APPLY

10.01 This Agreement shall be construed under and in accordance with the laws of the State of Texas and all obligations of the Parties created hereunder are performable in Lubbock County, Texas.

ARTICLE XI AMENDMENT

11.01 No amendment, modification or alteration of the terms hereof shall be binding unless the same be in writing, dated subsequent to the date hereof and be duly executed by the Parties hereto.

ARTICLE XII NOTICES

12.01 All notices required to be given under this Agreement shall be in writing and either shall be personally served against a written receipt therefore or given by certified mail or

registered mail, return receipt requested, postage prepaid and addressed to the proper party at the address which appears below, or at such other address as the Parties hereto may hereafter designate in accordance herewith, unless a provision of this Agreement designates another party and provides a different address. All notices given by mail shall be deemed to have been given at the time of deposit in the United States mail and shall be effective from such date.

If to TxDOT: Steven Warren, P.E.
District Engineer
Texas Department of Transportation
135 Slaton Road
Lubbock, Texas 79404

If to City: L. Wood Franklin, P.E.
Division Director of Public Works
City of Lubbock
P.O. Box 2000
Lubbock, Texas 79457

ARTICLE XIII FORCE MAJEURE

13.01 Neither Party shall be responsible for delays or lack of performance by such entity or its officials, agents or employees which result from acts beyond that entity's reasonable control, including acts of God, strikes or other labor disturbances or delays by federal or state officials in issuing necessary regulatory approvals and/or licenses. In the event of any delay or failure excused by this Article XII, the time of delivery or of performance shall be extended for a reasonable time period to compensate for delay.

ARTICLE XIV MULTIPLE COUNTERPARTS

14.01 This Agreement may be executed in separate identical counterparts by the Parties hereto and each counterpart, when so executed and delivered, shall constitute an original instrument and all such separate identical counterparts shall constitute but one and the same instrument.

ARTICLE XV ASSIGNMENT

15.01 Neither Party shall assign or transfer its interest in this Agreement or any portion thereof without the written consent of the other Party. Any attempt to transfer, pledge or otherwise assign shall be void and shall confer no rights upon any third person or party.

EXECUTED ON THIS 10th DAY OF MAY, 2022.

CITY OF LUBBOCK

TEXAS DEPARTMENT OF
TRANSPORTATION

DANIEL M. POPE, MAYOR



STEVEN WARREN, P.E., DISTRICT
ENGINEER

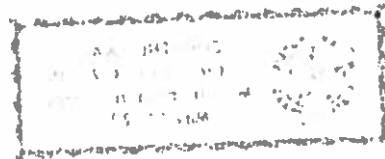
ATTEST:

Rebecca Garza, City Secretary

APPROVED AS TO CONTENT:



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



APPROVED AS TO FORM:



Ryan Brooke, Assistant City Attorney

ACKNOWLEDGMENTS

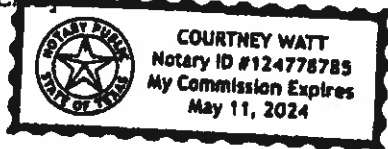
STATE OF TEXAS §

COUNTY OF LUBBOCK §

BEFORE ME, the undersigned authority, a Notary Public in and for said County and State, on this day personally appeared **STEVEN WARREN**, District Engineer for the Texas Department of Transportation Lubbock District, on behalf of the Texas Department of Transportation and the Texas Transportation Commission, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he/she executed the same for the purposes and consideration therein expressed and stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this 24th day of April, 2022.

[SEAL]



[Signature]
Notary Public for the
State of Texas

STATE OF TEXAS §

COUNTY OF LUBBOCK §

BEFORE ME, the undersigned, a Notary Public in and for Lubbock County, Texas, on this day personally appeared **DANIEL M. POPE**, Mayor of the City of Lubbock, Texas, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that s/he executed the same for the purposes and consideration therein expressed, and in the capacity therein stated.

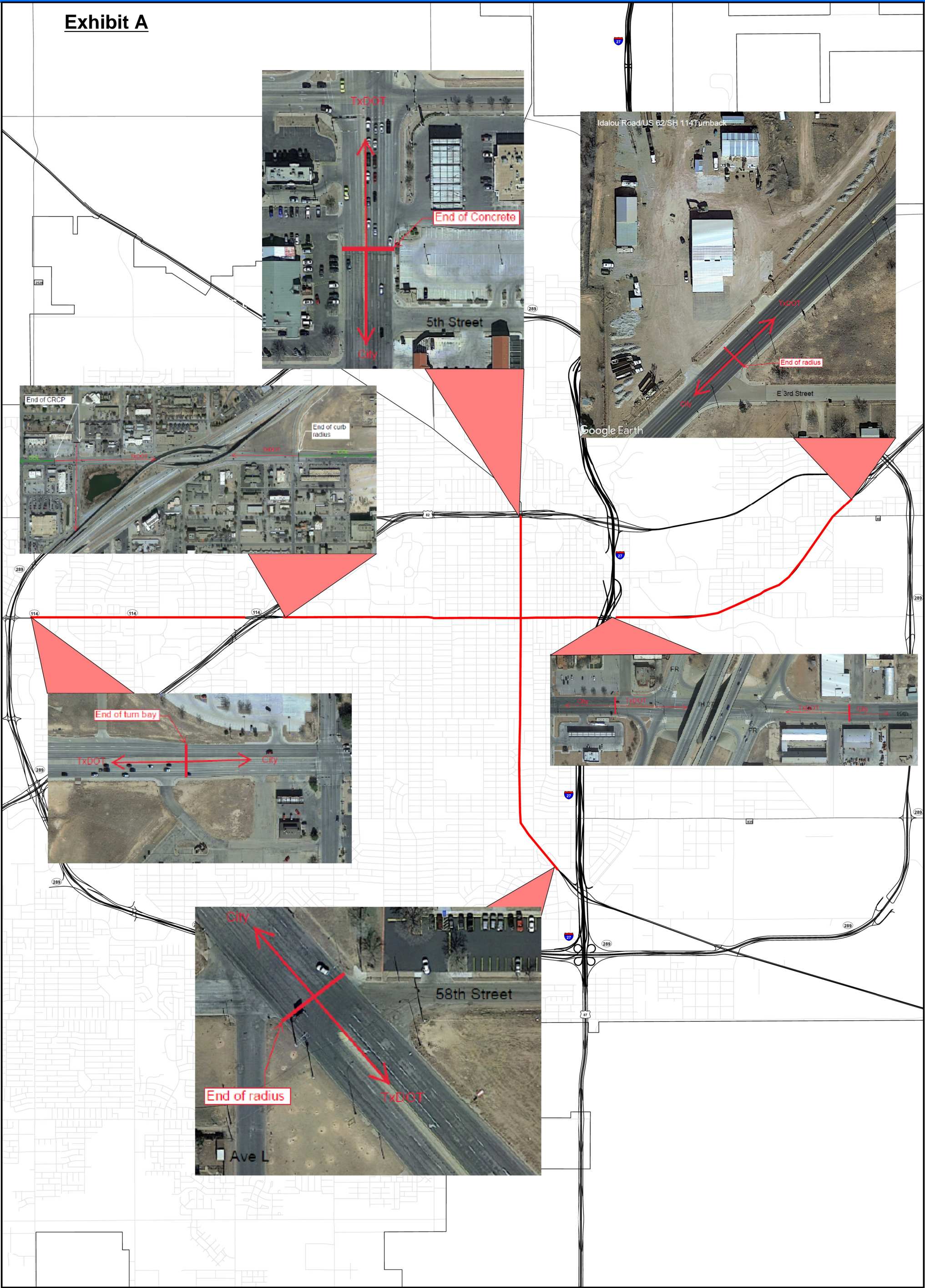
GIVEN UNDER MY HAND AND SEAL OF OFFICE, this _____ day of _____, 2022.

[SEAL]

Notary Public for the
State of Texas

CITY TURNBACK MAP

Exhibit A



0 1.5 3
Miles

Texas Department of Transportation
TP&D Mapping Lubbock District
4/20/2022

Copyright 2022
Texas Department of Transportation
Notice
This map was produced for internal use
within the Texas Department of Transportation.
Accuracy is limited to the validity of available
data as of December 31, 2014.



Information

Agenda Item

Resolution - Business Development: Consider a resolution approving a Downtown Grant Program (Permittable) expenditure of Market Lubbock, Inc., to be provided to Paper Cut, LLC, located at 1211 Avenue F, pursuant to Article IV, Section 5 of the Amended and Restated Bylaws of the Market Lubbock Development Corporation.

Item Summary

Paper Cut, LLC is renovating their property at 1211 Avenue F, which is located within the Downtown Tax Increment Financing District boundary, as designated by the City of Lubbock. The scope of the permittable project includes a new roof, new parking lot, HVAC, plumbing, framing, electrical, and door and window replacement.

The cost of the project is estimated to be \$253,300, and the requested grant amount is \$25,330. The Market Lubbock, Inc. Board of Directors approved this amount at their April 27, 2022 Board Meeting, and recommend approval by the City Council.

Fiscal Impact

The total cost of the project is estimated to be \$253,300, with \$25,330 to be paid upon completion with the requested grant.

Staff/Board Recommending

Jesica McEachern, Assistant City Manager
Market Lubbock, Inc. Board of Directors

Attachments

Resolution
Market Lubbock Resolution
Market Lubbock Support Documentation

RESOLUTION

WHEREAS, pursuant to Article IV, Section 5 of the Amended and Restated Bylaws of the Market Lubbock Economic Development Corporation (the "Corporation"), the City Council of the City of Lubbock (the "City Council"), as the Corporation's authorizing unit, has the authority to approve all programs and expenditures of the Corporation; and

WHEREAS, the City Council finds that it is in the best interest of the public to approve the program or expenditure, as proposed to the City Council by the Corporation, as set forth in Exhibit "A" attached hereto and incorporated herein by reference; **NOW THEREFORE:**

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

THAT the Downtown Permittable Grant program or expenditure of the Corporation, in the amount set forth in Exhibit "A" attached hereto and incorporated herein by reference, to be provided to Paper Cut, LLC is hereby approved pursuant to Section 5 of the Amended and Restated Bylaws of the Corporation.

Passed by the City Council on _____.

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

**RESOLUTION APPROVING PAPER CUT, L.L.C.
AT 1211 AVENUE F
DOWNTOWN PERMITTABLE GRANT**

THE STATE OF TEXAS

COUNTY OF LUBBOCK

At a regular meeting of the Board of Directors of MARKET LUBBOCK ECONOMIC DEVELOPMENT CORPORATION, INC., a Texas nonprofit corporation (MLI), on Wednesday, April 27, 2022, held in conformity with the bylaws, after due notice as therein provided, a quorum being present and acting, the following resolution was unanimously adopted:

WHEREAS, MLI presented to members of the Board the proposal of a possible Economic Development Grant and Contract to Paper Cut, LLC, which served as an office for Caprock Printing and Form, started by the Hester family, for decades. Aside from remodel work in 1974, not much has changed over the past 40 to 50 years. Due to history of the buildings that make up this property, part of Paper Cut's goal has been to preserve and pay homage to the story of this building. Being the original home office for Caprock, they felt it fitting to renovate it as a modern, industrial office building, which used modern style and finishes, while uncovering and showcasing some of the old character of the building. Great Palins Rentals, a rapidly growing equipment rental company headquartered here in Lubbock, will move in upon completion of the renovation. The property at 1211 Avenue F is located within the downtown TIF.

The scope of the permissible work will include a new roof, new parking lot, HVAC, plumbing, framing, electrical, doors and windows totaling \$253,300 in permissible expenses. The terms and conditions of such Economic Development Grant and Contract, other than the normal terms and conditions applicable to all such Economic Development Grant and Contracts by the Corporation, are described generally as follows, to wit:

Grant Paper Cut, L.L.C. a Downtown Permissible Grant totaling \$25,330 for the project at 1211 Avenue F, which is located within the Downtown TIF, once proof of payment has been submitted.

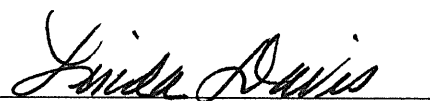
WHEREAS, The Board of Directors of MLI finds that an Economic Development Grant and Contract offering the incentive for providing assistance for renovations to their property, meet and comply with the qualifications and purposes of the Corporation for the granting of such Economic Development Grants and Contracts.

Upon Motion by Director, Mr. James Conwright and Seconded by Director, Mr. Walter Cathey.

IT WAS RESOLVED that MLI offer and, if accepted by Recipient, enter into an Economic Grant and Contract with Paper Cut, L.L.C., for improvements to the property at 1211 Avenue F, Lubbock, Texas. This Economic Development Grant and Contract will be on the normal terms and conditions of such Downtown Grant Program and Contract offered by MLI to existing businesses and business prospects and authorize the CEO to enter into and execute all documents related to the Economic Grant and Contract.



John Osborne, President & CEO



Linda Davis, Secretary

MARKET LUBBOCK, INC. – DOWNTOWN GRANT PROGRAM



**1211 Avenue F
(Paper Cut, L.L.C.)**

TOTAL PERMITTABLE SCOPE OF WORK = \$253,300

PERMITTABLE GRANT = \$25,330



**Downtown Grant Program
Presented to MLI Board
April 27, 2022**

Project 1211 Ave F (Permittable)

Paper Cut, L.L.C. is making improvements to their property at 1211 Ave F, located in the Downtown TIF.

Paper Cut, L.L.C. includes George Hardberger and Theresa Atiee. George is no stranger to the downtown revitalization effort. He has renovated multiple properties downtown, including his own home in The Deport District.

The property at 1211 Ave F served as an office for Caprock Printing and Forms, started by the Hester family, for decades. Aside from some remodel work in 1974, not much has changed over the past 40-50 years. Due to the long history of the buildings that make up this property, part of Paper Cut's goal has been to preserve and pay homage to the story of this building. Being the original home office for Caprock, they felt it fitting to renovate it as a modern, industrial office building, that used modern style and finishes, while uncovering and showcasing some of the old character of the building. Great Plains Rentals, a rapidly growing equipment rental company headquartered here in Lubbock, will move in upon completion of the renovation.

The scope of permittable work will include a new roof, new parking lot, HVAC, plumbing, framing, electrical, doors and windows totaling \$253,300 in permittable expenses.

The MLI Board is being asked to consider a Downtown Permittable Grant for Paper Cut, L.L.C. totaling \$25,330 at 1211 Ave F.



Downtown Grant - Application

The information requested on this form will be used by Market Lubbock, Inc. for analysis of your project.

MLI CONTACT INFORMATION

Jorge Quirino - Director of Downtown & Special Projects Phone: 806.749.4500
Market Lubbock, Inc.
1500 Broadway, Sixth Floor, Lubbock, TX 79401 Email: jorge@marketlubbock.org

Date Initial Application Submitted (Due prior to start of construction or permits assigned) 07/26/21

Projected Project Start Date 03/01/22

Project Property Address 1211 Ave. F
Property LCAD R# R111722, R111742, and R111768

GENERAL INFORMATION

Company Name Paper Cut, L.L.C.
Street Address 1602 Texas Ave.
City, State, Zip Lubbock, TX 79401

Contact George Hardberger
Title
Phone 806-548-1451
Email ghardberger@gmail.com

INFORMATION ABOUT THE PROJECT

Property Ownership: Own ☒ Lease ☐

Grant Type: Permittable ☒ Façade ☐

Project Summary Scope

Renovate office building and repave parking lot.

Summary of Expenses (detailed bids attached)	Projected	MLI Approved
Permittable	\$253,300	\$25,330
TOTAL	\$253,300	\$25,330

Final bids will be used to calculate the project cost and grant amount.

COMPANY BACKGROUND

List any person or entity that has at least 5% ownership in the Applicant Company:

Name	Percent	Name	Percent
George Hardberger	50%		
Theresa Atiee	50%		

Is the firm registered with the Secretary of State's Office to do business in Texas?

Yes ☒

Are you in good standing with the State of Texas?

Yes ☒

If you answered "No" to either of the above two questions, please explain

Is the firm and/or principals delinquent on any federal, state or local tax obligations?

No ☒

Has the company or principals of the company had prior bankruptcies or lawsuits?

No ☒

If you answered "Yes" to either of the above two questions, please explain

APPLICANT'S CHECKLIST:

Initial application received by MLI prior to the start of construction and/or before permits are assigned ☒

All remaining documents must be received and an application packet presented to the MLI Board no more than three months after the initial application is received by MLI. ☐

Contact Brianna Gerardi, City Director of Development bgerardi@mylubbock.us , to determine:

Does the scope of work meet downtown standards and guidelines? ☐

Are permits required for any aspect of the scope of work? ☐

Are public improvements required? ☐

Documents Required for Final Grant Application

Copies of City permits, if applicable ☐

Detailed/Itemized Bids ☐

Before Pictures ☐

Copy of building's current certificate of occupancy (request at orr@mylubbock.us) ☐

Architectural Renderings (if applicable) ☐

Architectural Plans (if applicable) ☐

After Completion of Construction

Certificate of Occupancy or Similar City Document Approving Completion (*Applicant responsible for final scope of work matching approved scope*) ☐

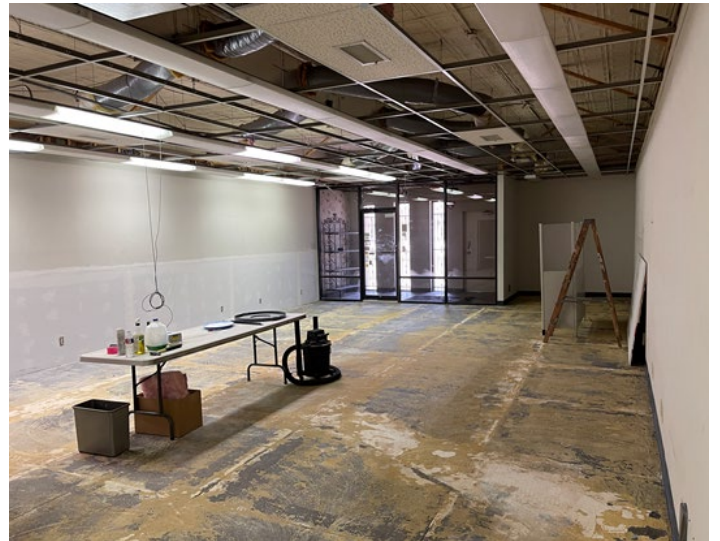
Proof of Payment:

PAID Invoices (must reference the approved project) ☐

Processed Checks, Bank or Credit Card Statements matching PAID invoices (legible copies) ☐

Signature (not required for electronic submittals): George Hardberger per email

Date: 26-Jul-21



1211 Ave F - Permittable
Scope of Work - Various Sub-Contractors
(Self-General Contracting by Applicant)

Scope	Contractor	Description	Cost
Asbestos Survey	Allen Enviro	Asbestos survey	\$1,500
Architect	BH Drafting Architecture	engineering plans	\$5,500
Roof West Texas Roofing	West TX Roofing	All new roof, demo old roof, new insulation, new TPO roof, wall caps	\$43,000
Demo	Sherwood	Demo	\$9,450
Exterior paint	Sherwood	New paint on exterior of building	\$10,000
Exterior metal	Sherwood	Architectural metal screen structure SW corner of building	\$15,000
Parking lot	Mesker	Cover parking lot with new asphlat and coating, striping	\$50,000
Floors	Concrete Innovations	Refinish concrete floors in entire building	\$13,000
HVAC	Red E	2 new 5 ton HVAC units, new ducting, returns, supply boots	\$22,000
Electric	Voltec	All new electric throughout building, new panel, plugs, switches, boxes, puck lights	\$17,000
Framing/drywall	Sansom Const	Metal framing interior office walls and celings in offices for privacy + sheetrock	\$25,000
Paint	George Duque	New interior tape, bed, texture, two color paint	\$15,000
Windows ext.	Glassops	4 ~44"x66" new exterior commerical grade windows	\$4,700
Office Glass	Glassops	Commercial glass walls in conference room - 1 84"x108" with door, 1 84"x108" without	\$5,500
Fixtures - lighting	Collect	12 - Hallway hanging fixtures, 3 - conference/reception/entry fixtures	\$5,000
Bathrooms - tile	Sherwood	White tile 4' high - material and install	\$3,500
Bathroom fixtures	Sherwood	New plumbing stops, 2 toilets, 2 sinks + fixtures, tankless water heater	\$4,000
Brick/block	Brick Lyfe	Filling old windows with block brick, repointing interior side of exterior walls	\$4,150
TOTAL			\$253,300

PERMIT INSPECTION HISTORY REPORT (COMM-130939-2021) FOR CITY OF LUBBOCK

Permit Type: Commercial Building	Application Date: 10/11/2021	Owner:
Work Class: Alterations	Issue Date: 11/30/2021	Parcel: 41364
Status: Issued	Expiration Date: 08/08/2022	Address: 1211 AVE F LUBBOCK, TX 79401
	IVR Number: 279077	Subdivision: ORIGINAL TOWN LUBBOCK

Scheduled Date	Actual Start Date	Inspection Type	Inspection No.	Inspection Status	Primary Inspector	Reinspection Required?	Complete
12/01/2021	12/01/2021	Framing	FR-666061-2021	Partial Pass	Chad Price I-2369	Yes	Incomplete
		Checklist Item	COMMENTS		Approved		
		General Comments	Exterior studs		Yes		
12/02/2021	12/02/2021	Framing	FR-666701-2021	Partial Pass	Jimmy Pope I-3716	Yes	Incomplete
		Reinspection of FR-666061-2021					
		Checklist Item	COMMENTS		Approved		
		General Comments	Exterior		Yes		
		NOTES	Created By	TEXT	Created Date		
			Victor Jimenez	ext/windows	12/02/2021		
12/07/2021	12/07/2021	Framing	FR-668146-2021	Partial Pass	Chad Price I-2369	Yes	Incomplete
		Reinspection of FR-666701-2021					
		Checklist Item	COMMENTS		Approved		
		General Comments	Fur out at front of building		Yes		
		NOTES	Created By	TEXT	Created Date		
			Victor Jimenez	ext/windows	12/02/2021		
02/04/2022	02/04/2022	Building Final	FN-689829-2022	Canceled	Jimmy Pope I-3716	Yes	Complete
		Checklist Item	COMMENTS		Approved		
		General Comments	Exterior front only		Yes		
02/07/2022	02/07/2022	Building Final	FN-690590-2022	Passed	Jimmy Pope I-3716	No	Complete
		Reinspection of FN-689829-2022					
		Checklist Item	COMMENTS		Approved		
		General Comments	Exterior front only		Yes		
02/04/2022	02/04/2022	Framing	FR-689830-2022	Passed	Jimmy Pope I-3716	No	Complete
		Reinspection of FR-668146-2021					
		Checklist Item	COMMENTS		Approved		
		General Comments	Exterior front only		Yes		
		NOTES	Created By	TEXT	Created Date		
			Victor Jimenez	ext/windows	12/02/2021		
			Samuel Hurt	full	02/03/2022		

February 07, 2022

1314 Ave K, Lubbock, TX 79401

Page 1 of 1

ZONING APPROVED: *[Signature]*
DATE: 10/18/21

ATTENTION:
SIGNS, THEIR SIZES AND LOCATIONS THAT
MAY APPEAR ON THESE PLANS ARE NOT
APPROVED. THEY ARE REQUIRED TO BE
SUBMITTED AS SEPARATE PERMITS.

EVERGREEN & CONIFEROUS SPECIES OF
TREES ARE PROHIBITED IN THE PARKWAY.
PARKWAY IRRIGATION SYSTEMS
ADJACENT TO PUBLIC STREETS SHALL
NOT SPRAY ON ADJACENT STREETS OR
GUTTERS

FAÇADE REMODEL ONLY
ALTC - COMM-130939-2021
FOR ALL INSPECTIONS CALL
775-3159 OR 775-3174

CITY OF LUBBOCK JOB SET
ACCEPTED FOR CONSTRUCTION
SUBJECT TO THE BUILDING CODE
AND/OR FIELD INSPECTIONS

ADDRESS: 1211 AVE F
DATE: 4/12/2021 BY: LH

BLDG: LH
ELEC: -
PLBG/MECH.: -
ZONING: DE
WATER: ok
TYPE OF CONST.: U-B
SQ. FT.: 975.1
OCCUPANCY: 3

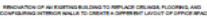


COMM-130939-2021

04.04.2022

[illegible][illegible][illegible]

6. **DO NOT** COVER, COLLECT, AND/OR GRAB FROM ANY ACCESSIBLE LAYERS, SHALL BE RELOCATED OR CHANGED COVERED. THERE SHALL BE NO SHARP OR ACCESSIBLE OBJECTS OR SURFACES UNDER LAYERS.
7. **MAINTAIN** CROSS SLOPE AT WALKWAYS IN THE ACCESSIBLE PATH OF TRAVEL. SHALL NOT EXCEED 2% (F.A.S. 403.3).
8. **FLUSH** CONTROLS THAT ARE NOT USED OR DAMAGED SHALL BE LOCATED TO THE SAME SIDE OF THE WALKWAY.
9. **ALL** **NEW** AND **RE-CONSTRUCTED** OUTLETS AND **UNDER** **DRUM** **OR** **DISCONNECTED** **WALL** **SHALL** **BE** **INSTALLED** **NOT** **LESS** **THAN** **1/2"** **TO** **CONTROL** **OF** **OUTLET** **KEEPING** **THE** **OUTLET** **UNDER** **THE** **REAR** **WHEEL** **LAUNCHER**.
10. **ALL** **RE-DOOR** **SHALL** **BE** **PROVEN** **FROM** **THE** **INSIDE** **WITHOUT** **THE** **USE** **OF** **ANY** **OF** **APPLIANCE** **REPAIR** **OR** **REPAIR** **TEST** **BEFORE** **THE** **USE** **OF** **THE** **WALKWAY** **SHALL** **BE** **PROVEN** **FROM** **THE** **INSIDE** **WITHOUT** **THE** **USE** **OF** **ANY** **OF** **APPLIANCE** **REPAIR** **OR** **REPAIR** **TEST** **BEFORE** **THE** **USE** **OF** **THE** **WALKWAY** **SHALL** **BE** **PROVEN** **FROM** **THE** **INSIDE** **WITHOUT** **THE** **USE** **OF** **ANY** **OF** **APPLIANCE** **REPAIR** **OR** **REPAIR** **TEST** **BEFORE** **THE** **USE** **OF** **THE** **WALKWAY** **SHALL** **BE** **PROVEN** **FROM** **THE** **INSIDE** **WITHOUT** **THE** **USE** **OF** **ANY** **OF** **APPLIANCE** **REPAIR** **OR** **REPAIR** **TEST** **BEFORE** **THE** **USE** **OF** **THE** **WALKWAY** **SHALL** **BE** **PROVEN** **FROM** **THE** **INSIDE** **WITHOUT** **THE** **USE** **OF** **ANY** **OF** **APPLIANCE** **REPAIR** **OR** **REPAIR** **TEST** **BEFORE** **THE** **USE** **OF** **THE** **WALKWAY** **SHALL** **BE** **PROVEN** **FROM** **THE** **INSIDE** **WITHOUT** **THE** **USE** **OF** **ANY** **OF** **APPLIANCE** **REPAIR** **OR** **REPAIR** **TEST** **BEFORE** **THE** **USE** **OF** **THE** **WALKWAY** **SHALL** **BE** **PROVEN** **FROM** **THE** **INSIDE** **WITHOUT** **THE** **USE** **OF** **ANY** **OF** **APPLIANCE** **REPAIR** **OR** **REPAIR** **TEST** **BEFORE** **THE** **USE** **OF** **THE** **WALKWAY** **SHALL** **BE** **PROVEN** **FROM** **THE** **INSIDE** **WITHOUT** **THE** **USE** **OF** **ANY** **OF** **APPLIANCE** **REPAIR** **OR** **REPAIR** **TEST** **BEFORE** **THE** **USE** **OF** **THE** **WALKWAY** **SHALL** **BE** **PROVEN** **FROM** **THE** **INSIDE** **WITHOUT** **THE** **USE** **OF** **ANY** **OF** **APPLIANCE** **REPAIR** **OR** **REPAIR** **TEST** **BEFORE** **THE** **USE** **OF** **THE** **WALKWAY** **SHALL** **BE** **PROVEN** **FROM** **THE** **INSIDE** **WITHOUT** **THE** **USE** **OF** **ANY** **OF** **APPLIANCE** **REPAIR** **OR** **REPAIR** **TEST** **BEFORE** **THE** **USE** **OF** **THE** **WALKWAY** **SHALL** **BE** **PROVEN** **FROM** **THE** **INSIDE** **WITHOUT** **THE** **USE** **OF** **ANY** **OF** **APPLIANCE** **REPAIR** **OR** **REPAIR** **TEST** **BEFORE** **THE** **USE** **OF** **THE** **WALKWAY** **SHALL** **BE** **PROVEN** **FROM** **THE** **INSIDE** **WITHOUT** **THE** **USE** **OF** **ANY** **OF** **APPLIANCE** **REPAIR** **OR** **REPAIR** **TEST** **BEFORE** **THE** **USE** **OF** **THE** **WALKWAY** **SHALL** **BE** **PROVEN** **FROM** **THE** **INSIDE** **WITHOUT** **THE** **USE** **OF** **ANY** **OF** **APPLIANCE** **REPAIR** **OR** **REPAIR** **TEST** **BEFORE** **THE** **USE** **OF** **THE** **WALKWAY** **SHALL** **BE** **PROVEN** **FROM** **THE** **INSIDE** **WITHOUT** **THE** **USE** **OF** **ANY** **OF** **APPLIANCE** **REPAIR** **OR** **REPAIR** **TEST** **BEFORE** **THE** **USE** **OF** **THE** **WALKWAY** **SHALL** **BE** **PROVEN** **FROM** **THE** **INSIDE** **WITHOUT** **THE** **USE** **OF** **ANY** **OF** **APPLIANCE** **REPAIR** **OR** **REPAIR** **TEST** **BEFORE** **THE** **USE** **OF** **THE** **WALKWAY** **SHALL** **BE** **PROVEN** **FROM** **THE** **INSIDE** **WITHOUT** **THE** **USE** **OF** **ANY** **OF** **APPLIANCE** **REPAIR** **OR** **REPAIR** **TEST** **BEFORE** **THE** **USE** **OF** **THE** **WALKWAY** **SHALL** **BE** **PROVEN** **FROM** **THE** **INSIDE** **WITHOUT** **THE** **USE** **OF** **ANY** **OF** **APPLIANCE** **REPAIR** **OR** **REPAIR** **TEST** **BEFORE** **THE** **USE** **OF** **THE** **WALKWAY** **SHALL** **BE** **PROVEN** **FROM** **THE** **INSIDE** **WITHOUT** **THE** **USE** **OF** **ANY** **OF** **APPLIANCE** **REPAIR** **OR** **REPAIR** **TEST** **BEFORE** **THE** **USE** **OF** **THE** **WALKWAY** **SHALL** **BE** **PROVEN** **FROM** **THE** **INSIDE** **WITHOUT** **THE** **USE** **OF** **ANY** **OF** **APPLIANCE** **REPAIR** **OR** **REPAIR** **TEST** **BEFORE** **THE** **USE** **OF** **THE** **WALKWAY** **SHALL** **BE** **PROVEN** **FROM** **THE** **INSIDE** **WITHOUT** **THE** **USE** **OF** **ANY** **OF** **APPLIANCE** **REPAIR** **OR** **REPAIR** **TEST** **BEFORE** **THE** **USE** **OF** **THE** **WALKWAY** **SHALL** **BE** **PROVEN** **FROM** **THE** **INSIDE** **WITHOUT** **THE** **USE** **OF** **ANY** **OF** **APPLIANCE** **REPAIR** **OR** **REPAIR** **TEST** **BEFORE** **THE** **USE** **OF** **THE** **WALKWAY** **SHALL** **BE** **PROVEN** **FROM** **THE** **INSIDE** **WITHOUT** **THE** **USE** **OF** **ANY** <

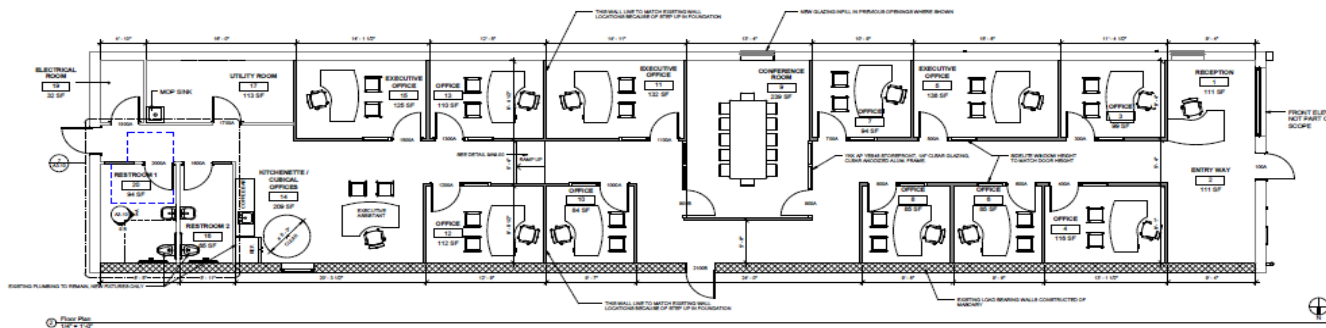
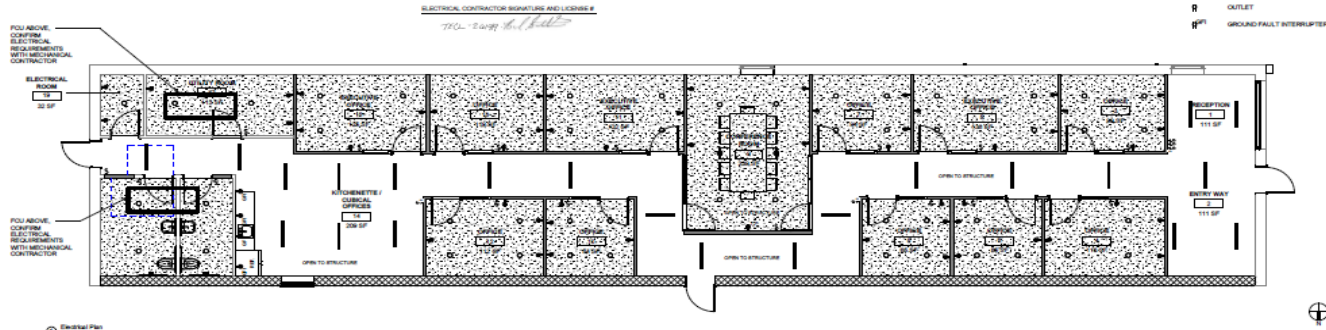


- 2010 Fire Code Local Amendments & Ordinance
- 2010 Building Code Local Amendments & Ordinance
- 2010 International Building Code
- 2010 Energy Conservation Code Local Amendments & Ordinance
- 2010 Fuel Gas Code Local Amendments & Ordinance
- 2010 Electrical Code Local Amendments & Ordinance
- 2010 National Electrical Code Amendments & Ordinance
- 2010 Plumbing Code Local Amendments & Ordinance
- 2010 International Energy Conservation Code

PROJECT:	(01) OFFICE BUILDING RENOVATION
LOCATION:	(02) AVE F, LUMBURGO, TO 7541
TOTAL EXISTING BUILDING AREA:	3,296 SF
OCCUPANCY:	6 (BUSINESS)
TYPE OF CONSTRUCTION:	TYPE III (MAINTENANCE) LOAD BEARING WALLS AND BOLD ROOF
PROTECTION:	NONE
1. LUMBURGO AREA (PER TABLE 101, IBC 2014):	15,000 SF
2. LUMBURGO HEIGHT (PER TABLE 101, IBC 2014):	80' HIGH, 5 STORY
OCCUPANCY	
1. LUMBURGO 1,200 SF TOTAL	
2. LUMBURGO 1,100 SF PER PERSON + 50.0 GROSS (OFFICE/CLERICAL)	
3. LUMBURGO 1,100 SF PER PERSON + 100.0 GROSS (CONFERENCE ROOM)	
TOTAL OCCUPANCY = 48 GROSS	

GENERAL	
COVER SHEET	\$1.00
BOOK ANALYSIS	\$1.32
ACCESSIBILITY STANDARDS	\$3.00
ACCESSIBILITY STANDARDS	\$3.10
ARCHITECTURE	
SITE PLAN	\$2.00
FLOOR PLAN & ELEC. PLAN	\$2.21
MECHANICAL LAYOUT	\$2.25
ROOF PLAN	\$3.15
ELEVATIONS	\$3.00
WALL AND ROOF DETAIL	\$3.15
DOOR SCHEDULE	\$2.00
INTERIOR DETAILS	\$3.00

An aerial photograph showing a dense urban area with a grid street pattern. A large highway interchange is visible on the right side, with multiple lanes and overpasses. A curved road or canal runs along the bottom right. The buildings are small and closely packed, with some larger structures interspersed. The overall color palette is dominated by the grey of the roads and the brown/tan of the buildings and surrounding land.



Information

Agenda Item

Resolution - Business Development: Consider a resolution approving a Downtown Grant Program (Permittable) expenditure of Market Lubbock, Inc., to be provided to Discovery Healthcare Consulting Group, located at 1500 Broadway, 10th Floor, pursuant to Article IV, Section 5 of the Amended and Restated Bylaws of the Market Lubbock Development Corporation.

Item Summary

Discovery Healthcare Consulting Group is renovating their 10th Floor space in the McDougal Building at 1500 Broadway, which is located within the Downtown Tax Increment Financing District Boundary, as designated by the City of Lubbock. The scope of the permittable project includes structural, electrical, plumbing, HVAC, glass, doors and painting.

The cost of the project is estimated to be \$988,103, and the requested grant amount is \$98,810. The Market Lubbock, Inc. Board of Directors approved this amount at their April 27, 2022 Board Meeting, and recommend approval by the City Council.

Fiscal Impact

The total cost of the project is estimated to be \$988,103, with \$98,810 to be paid upon completion with the requested grant.

Staff/Board Recommending

Jesica McEachern, Assistant City Manager
Market Lubbock, Inc. Board of Directors

Attachments

Resolution
Market Lubbock Resolution
Market Lubbock Support Documentation

RESOLUTION

WHEREAS, pursuant to Article IV, Section 5 of the Amended and Restated Bylaws of the Market Lubbock Economic Development Corporation (the "Corporation"), the City Council of the City of Lubbock (the "City Council"), as the Corporation's authorizing unit, has the authority to approve all programs and expenditures of the Corporation; and

WHEREAS, the City Council finds that it is in the best interest of the public to approve the program or expenditure, as proposed to the City Council by the Corporation, as set forth in Exhibit "A" attached hereto and incorporated herein by reference; **NOW THEREFORE:**

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

THAT the Downtown Permittable Grant program or expenditure of the Corporation, in the amount set forth in Exhibit "A" attached hereto and incorporated herein by reference, to be provided to Discovery Healthcare Consulting Group is hereby approved pursuant to Section 5 of the Amended and Restated Bylaws of the Corporation.

Passed by the City Council on _____.

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

**RESOLUTION APPROVING DISCOVERY HEALTHCARE CONSULTING GROUP
AT 1500 BROADWAY, 10th FLOOR
DOWNTOWN PERMITTABLE GRANT**

THE STATE OF TEXAS

COUNTY OF LUBBOCK

At a regular meeting of the Board of Directors of MARKET LUBBOCK ECONOMIC DEVELOPMENT CORPORATION, INC., a Texas nonprofit corporation (MLI), on Wednesday, April 27, 2022, held in conformity with the bylaws, after due notice as therein provided, a quorum being present and acting, the following resolution was unanimously adopted:

WHEREAS, MLI presented to members of the Board the proposal of a possible Economic Development Grant and Contract to Discovery Healthcare Consulting Group, which is renovating the 10th floor of the McDougal Properties building at 1500 Broadway, located in the Downtown TIF. Discovery Healthcare Consulting Group, LLC has more than 200 combined years of experience in healthcare reimbursement from the perspective of the provider, the consultant and the state and federal administrative contractors. In providing support and preparation of Medicare/Medicaid accounting and consulting solutions, they have experience with all types of provider settings impacting cost-based and prospective payment methodologies, including Large Academic Medical Centers, For-Profit and Nonprofit Hospitals, Children's Hospitals, Rural Community Hospitals and Clinics and Critical Access Hospitals

The scope of permissible work will include structural, electrical, plumbing, HVAC, glass, doors and painting totaling \$988,103 in permissible expenses.

The terms and conditions of such Economic Development Grant and Contract, other than the normal terms and conditions applicable to all such Economic Development Grant and Contracts by the Corporation, are described generally as follows, to wit:

Grant Discovery Healthcare Consulting Group a Downtown Permissible Grant totaling \$98,810 for the project at 1500 Broadway, 10th Floor, which is located within the Downtown TIF, once proof of payment has been submitted.

WHEREAS, The Board of Directors of MLI finds that an Economic Development Grant and Contract offering the incentive for providing assistance for renovations to their property, meet and comply with the qualifications and purposes of the Corporation for the granting of such Economic Development Grants and Contracts.

Upon Motion by Director, Mr. James Conwright and Seconded by Director, Mr. Walter Cathey.

IT WAS RESOLVED that MLI offer and, if accepted by Recipient, enter into an Economic Grant and Contract with Discovery Healthcare Consulting Group, for improvements to the property at 1500 Broadway, 10th Floor, Lubbock, Texas. This Economic Development Grant and Contract will be on the normal terms and conditions of such Downtown Grant Program and Contract offered by MLI to existing businesses and business prospects and authorize the CEO to enter into and execute all documents related to the Economic Grant and Contract.



John Osborne, President & CEO



Linda Davis, Secretary

MARKET LUBBOCK, INC. – DOWNTOWN GRANT PROGRAM



1500 Broadway, 10th Floor
(Discovery Healthcare Consulting Group)

TOTAL PERMITTABLE SCOPE OF WORK = \$917,823

PERMITTABLE GRANT = \$91,782



**Downtown Grant Program
Presented to MLI Board
April 27, 2022**

Project 1500 Broadway, 10th Floor (Permittable)

Discovery Healthcare Consulting Group is renovating the 10th floor of the McDougal Properties building at 1500 Broadway, located in the Downtown TIF.

Discovery Healthcare Consulting Group, LLC (DHCG) has more than 200 combined years of experience in healthcare reimbursement from the perspective of the provider, the consultant and the state and federal administrative contractors. In providing support and preparation of Medicare/Medicaid accounting and consulting solutions, they have experience with all types of provider settings impacting cost-based and prospective payment methodologies, including:

- Large Academic Medical Centers
- For-Profit and Nonprofit Hospitals
- Children's Hospitals
- Rural Community Hospitals and Clinics
- Critical Access Hospitals

The scope of permittable work will include structural, electrical, plumbing, HVAC, glass, doors and painting totaling \$917,823 in permittable expenses.

The MLI Board is being asked to consider a Downtown Permittable Grant for Discovery Healthcare Consulting Group totaling \$91,782 at 1500 Broadway, 10th Floor.



Downtown Grant - Application

The information requested on this form will be used by Market Lubbock, Inc. for analysis of your project.

MLI CONTACT INFORMATION

Jorge Quirino - Director of Downtown & Special Projects Phone: 806.749.4500
 Market Lubbock, Inc.
 1500 Broadway, Sixth Floor, Lubbock, TX 79401 Email: jorge@marketlubbock.org

Date Initial Application Submitted (Due prior to start of construction or permits assigned) **08/19/21**

Projected Project Start Date **Fall 2021**

Project Property Address **1500 Broadway Suite 1000**
 Property LCAD R# **107414 (10th Floor)**

GENERAL INFORMATION

Company Name	Discovery Healthcare Consulting Group	Contact	Shonna Cannaday
Street Address	1500 Broadway Suite 200A	Title	Partner
City, State, Zip	Lubbock, TX 79413	Phone	806.776.0603
		Email	shonnac@dhcg.com

INFORMATION ABOUT THE PROJECT

Property Ownership: Own ☐ Lease ☒ Grant Type: Permittable ☒ Façade ☐

Project Summary Scope

We will be renovating the 10th floor of the McDougal building. We will have two company's occupying the full floor.....one being a healthcare accounting/attest/consulting firm for hospitals throughout TX and other states and the other being a management services company for Home Health/Hospice facilities throughout TX and other states. We will be bringing 50-60 employees downtown and creating new positions in the process.



Summary of Expenses (detailed bids attached)	Projected	MLI Approved
Dennard Estimate - 10th Floor Remodel	\$767,624	\$76,762
Lanie Kiatta - Designer	\$200	\$20
Seventeen Services - Plans/Renderings	\$21,975	\$2,198
Yates Flooring	\$33,671	\$3,367
Vernon's Window Tint	\$10,032	\$1,003
Double T Cable	\$11,200	\$1,120
Gailey's Fire Sprinklers	\$31,393	\$3,139
Dimensional Impact - Lobby Elevator	\$4,137	\$414
Dennard Addition	\$24,989	\$2,499
Gailey Addition	\$1,300	\$130
Blue Layer Electrical Wiring	\$9,601	\$960
Signage - Slate Group	\$1,702	\$170
TOTAL	\$917,823	\$91,782

Final bids will be used to calculate the project cost and grant amount.

COMPANY BACKGROUND

List any person or entity that has at least 5% ownership in the Applicant Company:

Name	Percent	Name	Percent
Brandon Durbin	72%	Brent Fuller	18%

Is the firm registered with the Secretary of State's Office to do business in Texas? **Yes** 
 Are you in good standing with the State of Texas? **Yes** 

If you answered "No" to either of the above two questions, please explain

N/A

Is the firm and/or principals delinquent on any federal, state or local tax obligations?

No 

Has the company or principals of the company had prior bankruptcies or lawsuits?

No 

If you answered "Yes" to either of the above two questions, please explain

N/A

APPLICANT'S CHECKLIST:

Initial application received by MLI prior to the start of construction and/or before permits are assigned ☒

All remaining documents must be received and an application packet presented to the MLI Board no more than three months after the initial application is received by MLI. ☐

Contact Brianna Gerardi, City Director of Development bgerardi@mylubbock.us , to determine:

Does the scope of work meet downtown standards and guidelines? ☐

Are permits required for any aspect of the scope of work? ☐

Are public improvements required? ☐

Documents Required for Final Grant Application

Copies of City permits, if applicable ☐

Detailed/Itemized Bids ☐

Before Pictures ☐

Copy of building's current certificate of occupancy (request at orr@mylubbock.us) ☐

Architectural Renderings (if applicable) ☐

Architectural Plans (if applicable) ☐

After Completion of Construction

Certificate of Occupancy or Similar City Document Approving Completion (*Applicant responsible for final scope of work matching approved scope*) ☐

Proof of Payment:

PAID Invoices (must reference the approved project) ☐

Processed Checks, Bank or Credit Card Statements matching PAID invoices (legible copies) ☐

Signature (not required for electronic submittals): Shonna Cannaday

Date: 8/19/2021

1500 Broadway, 10th Floor – Before Pictures





CITY OF LUBBOCK
ALTERATIONS COMMERCIAL BUILDING

Friday, November 12, 2021 3:33PM

Page 1 of 3

<u>Date Entered</u>	<u>Date Expires</u>	<u>Permit Type/Number</u>	<u>Project Number</u>
12-Nov-2021	11-May-2022	COMM-130442-2021	

Parcel

PIN: 41237

Address: 1500 BROADWAY

Zip: 79401

Units:

Subdivision: ORIGINAL TOWN LUBBOCK

Legal Detail: ORIG T LUBBOCK BLK 98 TR A & BLK 114 & ALLEYS & BLK 128 L 1-5 16-20 & ALLEYS

<u>Zone</u>	<u>Type of Construction</u>	<u>Occupancy</u>
	II-B	B

Proposed Development

437 - COMMERCIAL ADDITIONS /ALTERATIONS

MIN. FINISHED FLOOR ELEV. Not Determined PER TABLE 403.1. 7.3, 2009 IRC AMENDMENTS.

FLOOD PLAIN?

ORIG T LUBBOCK BLK 98 TR A & BLK 11

DESCRIPTION: Demo on 10th floor without a permit observed.

COMMENTS: See MISC-407208-2019 and COMM-081644-2019

COMMENTS: See MISC-407208-2019 and COMM-081644-2019

DESCRIPTION: Demo on 10th floor without a permit observed.

CORRECTIVEACTION:

COMMENTS:

RECOMMENDATION:

TO REQUEST INSPECTIONS CALL (806)775-3159 OR (806)775-3174 FOR BUILDING INSPECTION AND (806)775-2589 FOR WATER UTILITIES.

Project is an alteration for the entire 10th floor.

11362 SF

100% Electrical and Mechanical (Engineered)

833.33 SF - Plumbing (Engineered)

<u>Valuation</u>	<u>Square Footage</u>	<u>C of O Required</u>
\$425,000.00	11,362.00	YES



CITY OF LUBBOCK
ALTERATIONS COMMERCIAL BUILDING

Friday, November 12, 2021 3:33PM

Page 2 of 3

<u>Date Entered</u>	<u>Date Expires</u>	<u>Permit Type/Number</u>	<u>Project Number</u>
12-Nov-2021	11-May-2022	COMM-130442-2021	

Professional

JK DENNARD LLC DENNARD, JON 4620 9TH ST LUBBOCK, TX 79416 State License: ACTIVE Professional License:	405-740-2021
--	--------------

Professional

SEVENTEEN SERVICES, LLC GENTRY, TYLER 12203 QUAKER, 17 LUBBOCK, TX 79424 State License: ACTIVE Professional License:	806-787-8533
---	--------------

Required Inspections

Footing
Framing
Slab Building
Fire Final
Building Final
Zoning Final



CITY OF LUBBOCK
ALTERATIONS COMMERCIAL BUILDING

Friday, November 12, 2021 3:33PM

Page 3 of 3

<u>Date Entered</u>	<u>Date Expires</u>	<u>Permit Type/Number</u>	<u>Project Number</u>
12-Nov-2021	11-May-2022	COMM-130442-2021	

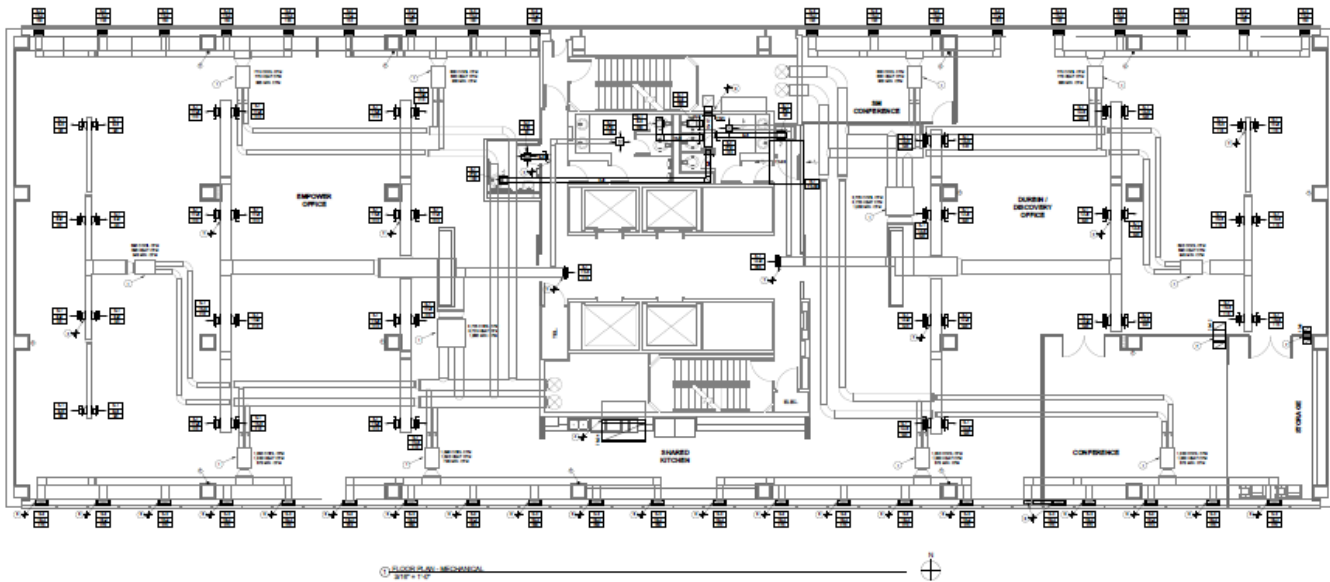
Notice/Signature

I hereby certify that the above statements are true facts concerning the construction of the building or other work for which this application is made. I also understand that the issuance of this permit does not relieve the permit holder from the responsibility of complying with all applicable City of Lubbock regulations, codes and ordinances and that failure to comply may subject the permit holder to criminal and/or civil liability.

Issuance of this city permit does not insure compliance with state or federal regulations, rules or laws. I understand that it is the responsibility of the permit holder or his agents to meet applicable state and federal requirements. These requirements may include, but are not limited to, those imposed by the Americans with Disabilities Act, the U. S. Environmental Protection Agency, the Texas Architectural Barriers Act, the Texas Department of Licensing and Regulation, the Texas Department of Health and the Texas Commission of Environmental Quality. This list is not all-inclusive and other federal or state requirements may be applicable.

Customer Signature: _____ **Permit Issued By:** 176037

1500 Broadway, 10th Floor – Architectural Plans



GENERAL NOTES	
1.	VERIFY EXISTING CONDITIONS OF ALL EXISTING STRUCTURE, MECHANICAL, ELECTRICAL, AND PLUMBING SYSTEMS.
2.	CONSTRUCTION SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE BUILDING CODES AND STANDARDS.
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REVISIONS:

DATE	DESCRIPTION

Durbin/Discovery & Empower Office

17

TYLER GENTRY

REGISTERED: TEXAS

ARCHITECT #2272

Architect: Durbin/Discovery & Empower Office

1500 Broadway Suite 200

Lubbock, TX 79401

806.767.8822

tyler@durbin.com

Project Number: 2021

Date: 10-01-2021

Drawn By: JG

Revised By: 01-2022

Floor Plan - Mechanical

M2



DATE: 12/15/2021

JOB: DISCOVERY HEALTH CARE GROUP 10TH FLOOR

SF: 11,362 SF

1.01 GENERAL CONDITIONS					
SUPERINTENDENT	20	WK	\$	715.60	\$ 14,312
JOBSITE CLEANUP 10TH FLOOR (8 HR/WK)	20	WK	\$	215.28	\$ 4,306
JOBSITE CLEANUP - 9TH FLOOR WORK (AFTER HOURS)	2	WK	\$	208.00	\$ 416
FINAL CLEAN	11,362	SF	\$	0.18	\$ 2,045
PROTECT/MAINTAIN ELEVATOR CAB	1	EA	\$	250.00	\$ 250
PROTECT RR FLOOR TILE - MASONITE (AFTER INSTALL) - DELETED			\$	-	\$ -
PROTECT FLOORS (OH PAINT)	11,362	SF	\$	0.82	\$ 9,317
TEMP PROTECTION - 11TH FLR WORK (AFTER HOURS) - DELETED			\$	-	\$ -
2.01 INTERIOR REMOVALS					
INTERIOR REMOVALS SUB QUOTE	1	LS	\$	13,551.00	\$ 13,551
DEMO ABANDONED MEP SUPPORTS	1	SCOPE			
DEMO PLASTER WALLS	1	SCOPE			
DEMO RESTROOM WALL & FLOOR TILE (2 LAYERS)	1	SCOPE			
DEMO RESTROOM DRYWALL CEILINGS	1	SCOPE			
DEMO PERIMETER WALL BELOW GLASS	1	SCOPE			
DEMO MARBLE AT ELEV LOBBY	1	SCOPE			
DEMO TOILET PARTITIONS	1	SCOPE			
DEMO RR COUNTERTOPS	1	SCOPE			
CUT/CAP, DEMO RR FIXTURES	1	SCOPE			
REMOVE DOORS	1	SCOPE			
PREP FLOORS	11,362	SF	\$	0.95	\$ 10,794
30 CYD DUMPSTER RENTAL	4	EA	\$	467.88	\$ 1,872
2.98 CONCRETE CUTTING/CORING					
SAWCUT/DEMO FOR CONF RM TABLE POKE-THRU	2	EA	\$	388.50	\$ 777
CORE DRILL PLUMBING PENETRATIONS	4	EA	\$	85.00	\$ 340
FILL HOLES IN SLAB AFTER PLUMBING REMOVAL	6	EA	\$	88.15	\$ 529
CHIP CONCRETE SLAB FOR PLMBG ROUGH-IN	1,248	SF	\$	2.20	\$ 2,746
PATCH/PREP CONCRETE COLUMNS	2,581	SF	\$	0.72	\$ 1,858
4.01 MASONRY - DELETED					
BRICK VENEER AT EAST/WEST WALL - DELETED					
REPAIR TOP OF EAST/WEST CMU WALLS - N/R					
6.01 ROUGH CARPENTRY					
MILLWORK - 2X6 FIRE TREATED WOOD BLOCKING	144	LF	\$	5.64	\$ 812
TOILET PARTITIONS - 2X6 FIRE TREATED WOOD BLOCKING	90	LF	\$	5.28	\$ 475
TOILET ACCESSORIES - 2X6 FIRE TREATED WOOD BLOCKING	60	LF	\$	4.96	\$ 298
FURRDOWNS - FIRE TREATED PLYWOOD	63	LF	\$	10.47	\$ 660
PERIMETER COUNTERTOP BLOCKING - DELETED					
6.02 ARCHITECTURAL WOODWORK					
ELEVATION 1-A - BREAK ROOM LOWER CABINETS - PAINT GRADE	30	LF	\$	330.00	\$ 9,900
ELEVATION 1-A - BREAK ROOM UPPER CABINETS - PAINT GRADE	22	LF	\$	365.00	\$ 8,030
ELEVATION 1-A - BREAK ROOM SOLID SURFACE COUNTERTOP & BACKSPLASH	60	SF	\$	75.00	\$ 4,500
STORAGE 106 - WEST LOWER CABINETS - PAINT GRADE	20	LF	\$	335.00	\$ 6,700
STORAGE 106 - WEST PLAM COUNTERTOP & BACKSPLASH	40	SF	\$	29.00	\$ 1,160
BAR W/ SOLID SURFACE COUNTERTOP & BACKSPLASH	24	LF	\$	154.00	\$ 3,696
RESTROOM COUNTERTOPS - SOLID SURFACE	24	SF	\$	136.00	\$ 3,264
MOVE IN CABINETS/COUNTERTOPS (2 MEN)	7	HR	\$	58.76	\$ 411
WOOD BASE - DELETED					
RECEPTION CABINETS/SHELVES - DELETED					
PERIMETER SOLID SURFACE COUNTERTOPS - DELETED					
8.00 DOORS, FRAMES, & HARDWARE					
DOORS, FRAMES, & HARDWARE VENDOR BID	1	LS	\$	7,495.00	\$ 7,495
REINSTALL DOORS IN EXISTING FRAMES (RR, ELEV CORE)	8	EA	\$	390.00	\$ 3,120
ACCESS DOORS (RESTROOMS)	6	EA	\$	125.00	\$ 750
3070 HOLLOW METAL FRAME	1	SCOPE			
6070 HOLLOW METAL FRAME	1	SCOPE			
SET HOLLOW METAL FRAMES	1	SCOPE			
STEEL STUD ANCHORS	1	SCOPE			
WOOD DOORS	1	SCOPE			
HARDWARE PREP	1	SCOPE			
DOOR CLOSERS	1	SCOPE			

	DOOR HINGES	1	SCOPE				
	STOREROOM LOCKSET	1	SCOPE				
	PRIVACY LOCKSET	1	SCOPE				
	DOOR HARDWARE (SATIN CHROME)	1	SCOPE				
	WALL STOPS	1	SCOPE				
	SET 3070 DOORS	1	SCOPE				
	SET 6070 DOORS	1	SCOPE				
	LABOR TO SET 3070 HARDWARE	1	SCOPE				
	LABOR TO SET 6070 HARDWARE	1	SCOPE				
8.28	GLASS & GLAZING						
	GLASS WALLS, DOORS, & HARDWARE SUB BID	1	LS	\$	41,099.00	\$	41,099
	CONF RM OFFICE GLASS WALLS (2)	1	SCOPE				
	CONF RM OFFICE GLASS DOORS & HARDWARE	1	SCOPE				
	PIVOT SINGLE & DOUBLE DOORS & HARDWARE	1	SCOPE				
	1/2" TEMPERED HEAVY GLASS - CLEAR	1	SCOPE				
9.02	DRYWALL & CEILINGS						
	DRYWALL & CEILINGS SUB BID	1	LS	\$	65,867.00	\$	65,867
	DRYWALL PARTITIONS	1	SCOPE				
	DRYWALL CEILINGS	1	SCOPE				
	MOISTURE RESISTANT DRYWALL AT RESTROOMS	1	SCOPE				
	COVER ELEV CORRIDOR PLASTER WALLS	1	SCOPE				
	FURR OUT/COVER (2) CONCRETE COLUMNS W/DRYWALL	1	SCOPE				
	DRYWALL - LOWER WALL/LEDGE AT GLASS	1	SCOPE				
	DRYWALL - UPPER WALL AT GLASS	1	SCOPE				
	PATCH/REPAIR HOLES - ELEVATOR SHAFT WALLS	1	SCOPE				
	CONTROL JOINTS	1	SCOPE				
	CORNER BEAD	1	SCOPE				
	BATT INSULATION (NEW WALLS & CEILINGS)	1	SCOPE				
	MOVE/UNLOAD MATERIAL	1	SCOPE				
	INSTALL ACCESS DOORS AT RR HARD CEILINGS	1	SCOPE				
	FRP AT MOP SINK	1	SCOPE				
9.02	FLOORING (LABOR ONLY)						
	SEALED CONCRETE FLOORS (SEAL EXISTING CONCRETE)	11,369	LS	\$	1.65	\$	18,759
	SEALED CONCRETE FLOORS, NOT POLISHED		LS	\$	-	\$	-
	EXCLUDES FLOOR GRINDING		SCOPE	\$	-	\$	-
	RUBBER BASE - ELEVATOR LOBBY	255	LF	\$	5.00	\$	1,275
	RUBBER BASE - EAST & WEST	930	LF	\$	5.00	\$	4,650
	VINYL FLOORING - EAST & WEST SIDES - DELETED						
	CARPET TILE AT CONFERENCE ROOMS - DELETED						
9.03	TILE (LABOR ONLY) - DELETED						
	TILE SUB BID			\$	-	\$	-
	WALL TILE AT RESTROOMS (LABOR ONLY) - DELETED						
	FLOOR TILE AT RESTROOMS - DELETED						
	TILE COVE BASE AT RESTROOMS (LABOR ONLY)						
	WATERPROOFING MEMBRANE AT TILE FLOORS						
	EPOXY GROUT AT ALL FLOOR TILE						
	GROUT SEALER AT ALL FLOORING GROUT						
	PREP RESTROOM FLOORS						
	CRACK ISOLATION MEMBRANE						
9.12	PAINT & FINISH						
	PAINT & FINISH SUB BID	1	LS	\$	57,847.00	\$	57,847
	TAPE/FLOAT & TEXTURE DRYWALL PARTITIONS		SCOPE				
	TAPE/FLOAT & TEXTURE DRYWALL CEILINGS		SCOPE				
	TAPE/FLOAT & TEXTURE PERIMETER LOW WALL		SCOPE				
	TAPE/FLOAT & TEXTURE PERIMETER HEADERS		SCOPE				
	TAPE/FLOAT & TEXTURE FURRDOWNS		SCOPE				
	TAPE/FLOAT & TEXTURE END WALLS - DELETED						
	TAPE/FLOAT & TEXTURE GYP BOARD CEILINGS		SCOPE				
	JOINT SEALANTS		SCOPE				
	PAINT DRYWALL PARTITIONS		SCOPE				
	PAINT DRYWALL CEILINGS		SCOPE				
	PAINT EXISTING CONCRETE COLUMNS		SCOPE				
	PAINT PERIMETER LOWER WALL/LEDGE AT GLASS		SCOPE				
	PAINT PERIMETER UPPER WALL AT GLASS		SCOPE				
	PAINT NEW FURRDOWNS		SCOPE				
	EPOXY PAINT RESTROOM WALLS (CHANGED FROM TILE)		SCOPE				
	BLOCK FILLER EAST & WEST CMU WALLS		SCOPE				
	PAINT EAST & WEST CMU WALLS		SCOPE				
	PREP/WIPE DOWN OH MEP & CONCRETE STRUCTURE		SCOPE				
	PAINT OH MEP & CONCRETE STRUCTURE		SCOPE				
	PAINT HOLLOW METAL FRAMES		SCOPE				
	PAINT NEW WOOD DOORS		SCOPE				
	REFINISH EXISTING WOOD DOORS (JKD)	8	EA	\$	163.13	\$	1,305
	PAINT MILLWORK (SHOP, JKD)	196	SF	\$	13.90	\$	2,724
	CAULK DOOR FRAMES, COUNTERTOPS, SPECIALTY ITEMS, ETC	488	LF	\$	1.73	\$	844

10.17 SPECIALTIES					
SPECIALTIES VENDOR QUOTE	1	LS	\$ 8,270.00	\$	8,270
INSTALL TOILET PARTITIONS	5	EA	\$ 475.00	\$	2,375
INSTALL SPECIALTIES	1	LS	\$ 2,800.00	\$	2,800
TOILET PARTITIONS, OH BRACED, POWDER COATED (NOT ADA)	1	SCOPE			
GRAB BARS	1	SCOPE			
MIRRORS	1	SCOPE			
SOAP DISPENSERS	1	SCOPE			
PAPER TOWEL DISPENSERS	1	SCOPE			
TOILET PAPER DISPENSERS	1	SCOPE			
FIRE EXTINGUISHERS, CABINETS	1	SCOPE			
22.01 PLUMBING					
PLUMBING SUB QUOTE	1	LS	\$ 40,375.00	\$	40,375
RELOCATE PLUMBING EAST OF THE NEW RESTROOM	1	LS			
SEWER PIPING	1	SCOPE			
VENT PIPING	1	SCOPE			
DCW AND DHW PIPING	1	SCOPE			
MIXING VALVES	1	SCOPE			
PLUMBING FIXTURES	1	SCOPE			
FINAL CONNECTION AT APPLIANCES	1	SCOPE			
APPLIANCES BY OWNER	1	SCOPE			
23.01 HVAC					
HVAC SUB BID	1	LS	\$ 129,564.00	\$	129,564
DEMO DUCTWORK WHERE SHOWN	1	SCOPE			
TEST & BALANCE AFTER COMPLETION	1	SCOPE			
GALVANIZED RECTANGULAR DUCTWORK	1	SCOPE			
CONNECT NEW SUPPLY DUCT RUNOUTS TO EXISTING DUCT	1	SCOPE			
LINED TRANSFER DUCT (NEW DUCT)	1	SCOPE			
AIR DISTRIBUTION DEVICES	1	SCOPE			
EXHAUST FANS	1	SCOPE			
DAMPERS	1	SCOPE			
(8) NEW VAV CONTROLLERS (9TH FLOOR VAV'S SERVING 10TH FLOOR)	1	SCOPE			
(4) NEW VAV CONTROLLERS (10TH FLOOR VAV'S SERVING 10TH FLOOR)	1	SCOPE			
(8) NEW VAV CONTROLLERS (10TH FLOOR VAV'S SERVING 11TH FLOOR) - DELETED		SCOPE			
26.01 ELECTRICAL					
ELECTRICAL SUB QUOTE	1	LS	\$ 85,000.00	\$	85,000
PURCHASE APPROVED ELECTRICAL MATERIAL	1	LS	\$ 102,000.00	\$	102,000
IDENTIFY/LABEL EXISTING CIRCUITS	1	SCOPE	\$ 2,587.00	\$	2,587
TEMP POWER & LIGHTING PER OSHA STANDARDS	1	SCOPE	\$ 779.04	\$	779
NEW 120/208V PANELBOARD	1	SCOPE			
PANEL IDENTIFICATION	1	SCOPE			
BRANCH CIRCUITING, EMT CONDUIT	1	SCOPE			
120V DUPLEX OUTLETS	1	SCOPE			
120V GFI DUPLEX OUTLETS	1	SCOPE			
POWER FOR 9TH & 10 FLOOR VAV CONTROLLERS	1	SCOPE			
POWER FOR 11TH FLOOR VAV CONTROLLERS - DELETED	1	SCOPE			
POWER RECEPTACLES, SWITCHES	1	SCOPE			
TELE/POWER POLES W/2 POWER & 2 DATA	1	SCOPE			
ROUGH-IN FIRE ALARM DEVICES IN EMT CONDUIT	1	SCOPE			
APPROVED VE LIGHTING PACKAGE	1	SCOPE			
LIGHTING CONTROLS DELETED, SWITCHES ONLY					
FIRE ALARM					
FIRE ALARM SUB BID	1	LS	\$ 12,140.00	\$	12,140
CERTIFY ALARM SYSTEM AFTER COMPLETION OF WORK	1	SCOPE	\$ -	\$	-
DATA/TELECOM (DELETED, BY OWNER)					
DATA/TELECOM SUB BID	1	LS	\$ -	\$	-
DEMO ABANDONED TELECOM CABLING	11,362	SF	\$ 0.70	\$	7,953
PURCHASE APPROVED DATA CABLING, RACK, PATCH PANEL	1	LS	\$ 7,548.00	\$	7,548
LOW PROFILE, WALL MOUNT RACK ENCLOSURE - DELETED					
CABLING, CONNECTORS, FACE PLATE, TESTING - DELETED					
PATCH PANEL W/LABELS - DELETED					
				\$	710,145
GL, AUTO, UMBRELLA	0.9%			\$	7,246
BUILDERS RISK INSURANCE	0.5%			\$	4,176
FEE	6.00%			\$	46,057
CONTINGENCY	0.0%			\$	-
Approval Signature:				\$	767,624
Discovery Healthcare Consulting Group and					
Empower Services Corp					
01/05/2022					
			\$/SF	\$	67.56

J. Brent Fuen CPA

Invoice #199

Feb 07, 2022

BILL TO

shonna cannaday
shonnac@dhcg.com

FROM

Lanie Kiatta
7804 56TH ST, Unit A
Lubbock, TX 79407
info@laniekinteriors.com
+1 7138228674

INVOICE ITEMS

AMOUNT

10th floor project design board
2 hrs x \$100.00/hr

\$200.00

\$200.00

PAYMENT DUE **FEB 07, 2022**

MESSAGE

Thanks for your business.

CORNERSTONE ACCESSIBILITY

4210 E. Municipal Dr. #6, Lubbock, TX 79403
Phone: (806) 790-9227 Email: barrierfreetx@aim.com Fax: (806) 744-2490

INVOICE

Bill To:
Seventeen Services
1500 Broadway St, Suite 203
Lubbock, TX 79401

Attn: Tyler Gentry

For:
TABS2022002233
Texas Accessibility Standards Review Fees
Discovery Durbin Empower Office Remodel – 10th Floor
McDougal Tower
1500 Broadway St
Lubbock, TX 79401

CAS File #210299
10/18/2021

DESCRIPTION	RATE	AMOUNT
TAS Review Fees (Construction Cost \$200,001-\$500,000)	\$320.00	\$320.00
TDLR Project Registration	\$175.00	\$175.00
Printing costs (copy of receipt upon request)	\$ 9.74	\$ 9.74
	TOTAL DUE	\$504.74

Please make all checks payable to *Cornerstone Accessibility Services* and **reference the CAS File #.**

Total due prior to services being rendered and is non-refundable as per Texas Department of Licensing and Regulation Administrative Rules section 68.80(d).

THANK YOU FOR YOUR BUSINESS!

Seventeen Services LLC
1500 Broadway, Suite 203
TX 79401 US
tyler@17services.com



INVOICE

BILL TO

Shonna Cannaday
Durbin Discovery Empower

INVOICE # 2810reim
DATE 11/11/2021
DUE DATE 11/26/2021
TERMS Net 15

ACTIVITY	DESCRIPTION	QTY	RATE	AMOUNT
Consulting	Reimbursement for TAS restroom variance	1	175.00	175.00
BALANCE DUE				\$175.00

Seventeen Services LLC
1500 Broadway, Suite 203
TX 79401 US
tyler@17services.com



INVOICE

BILL TO

Shonna Cannaday
Durbin Discovery Empower

INVOICE # 2810**DATE** 10/01/2021**DUE DATE** 10/16/2021**TERMS** Net 15

ACTIVITY	DESCRIPTION	QTY	RATE	AMOUNT
Architectural/Plan set	Architectural & MEP Plans for Interior Remodel of 10th floor at 1500 Broadway Lubbock	1	21,295.00	21,295.00

BALANCE DUE

\$21,295.00



Yates Flooring Center

1901 W. loop 289, Suite #11
Lubbock, TX 79407
Phone 806-795-0070 Fax 806-793-2803

INVOICE #4

Date: 4/11/2022
Order Number:

Submitted To:

Discovery HealthCare Consulting Group

Lubbock, TX

Attn: Shonna Cannaday

Phone: 806-776-0603

Project:

Wells Fargo 10th Floor Flooring

1500 Broadway St

Lubbock, TX

Carpet Material & Adhesive

MATERIAL DEPOSIT MADE

Total: \$3,488.00

Resilient Flooring & Base Material & Adhesives

MATERIAL DEPOSIT MADE

Total: \$25,338.00

Porcelain Tile & Install Materials

PAID IN FULL

Total: \$1,288.00

Additional Porcelain Tile & Install Materials

Total: \$990.00

Sub-Total: \$31,104.00

Sales Tax: \$2,566.68

Grand Total: \$33,670.68

NOTES:

RETURN POLICY: No returns on special orders. Return on in-stock merchandise accepted only within 30 days of purchase with 15% restocking charge. If paying with a credit card, customer hereby gives permission to Yates Flooring Center to charge remaining balance upon job completion.

Deposits Made: \$18,067.68

Current Payment Due: \$15,603.00

Balance to Finish: \$0.00

Grand Total: \$33,670.68

Vernon's SVT

2308 50th street
Lubbock, TX 79412
806-687-0073

Invoice

Date	Invoice #
11/11/2021	2247

Bill To
DISCOVERY HEALTHCARE CONSULTIN G GROUP LUBBOCK, TEXAS 79410 US

P.O. No.	Terms	Project
SHONNA	Due on receipt	

Quantity	Description	Rate	Amount
1,824	COMMERCIAL FILM FILM ORDER	2.00	3,648.00
1,824	LABOR ON FILM REMOVAL	2.00	3,648.00
	Sales Tax	8.25%	0.00
		Total	\$7,296.00

Vernon's SVT
2308 50th street
Lubbock,TX 79412
806-687-0073

Invoice

Date	Invoice #
4/14/2022	2259

Bill To
DISCOVERY HEALTHCARE CONSULTIN G GROUP LUBBOCK, TEXAS 79410 US

P.O. No.	Terms	Project
	Net 30	

Quantity	Description	Rate	Amount
1,824	WINDOW FILM INSTALLATION LABOR	1.50	2,736.00
	Sales Tax	8.25%	0.00
		Total	\$2,736.00

Double T Cable Services, Inc.

QUOTE

DATE 3-11-2022

5914 CR 6300
Lubbock, TX 79413
Phone (806) 687-0201 Fax (806) 687-3079

Quote For

FOR

Durbin & Company LLP

PO# Telecloud

DESCRIPTION	Item #	Qty	RATE	AMOUNT
70 Cat6 black cable runs **		70	\$160.00	\$ 11,200.00
** Pricing includes all materials, cable, J hooks, wall plates, fittings, etc. as well as terminating, testing and certifying all runs.				
			SUBTOTAL	\$ 11,200.00
			TAX RATE	
			SALES TAX	-
			OTHER	
			TOTAL	\$ 11,200.00

Gailey FIRE PROTECTION, INC.

P.O. BOX 64696
LUBBOCK, TEXAS 79464
(806) 745-8333

INVOICE

DATE 1-21-22		PLEASE REFERENCE INVOICE NUMBER ON CHECK	
CUSTOMER ORDER NUMBER	OUR CONTRACT NUMBER 21-507	JOB NAME Wells Fargo Building, 10th Floor	Nº 10094

TO Discovery Health Care Consulting Group

Lubbock, Texas

ATTN: ACCOUNTS PAYABLE

EST. NO. 2

NET AMOUNT DUE UPON RECEIPT

WE SUBMIT OUR INVOICE HERewith FOR PAYMENT COVERING WORK PERFORMED AND/OR MATERIALS SUPPLIED FOR THE ABOVE JOB THROUGH

1-21-22

ORIGINAL CONTRACT AMOUNT \$ 29,000.00

AUTHORIZED EXTRAS OR
DELETIONS (IF ANY)

\$ 2,393.00

FOR Sales Tax

\$ _____ FOR _____
\$ _____ FOR _____
\$ _____ FOR _____
\$ _____ FOR _____
\$ _____ FOR _____

TOTAL CONTRACT

\$ 31,393.00

TOTAL COMPLETE TO DATE

\$ 31,393.00

LESS RETAINAGE

\$ _____

SUB-TOTAL

\$ _____

LESS PREVIOUS INVOICE(S)

\$ 21,000.00

AMOUNT DUE THIS INVOICE
(SEE STATEMENT BELOW)

\$ 10,393.00

STATEMENT OF ACCOUNT		
INVOICE NUMBER	DATE	UNPAID AMOUNT
TOTAL UNPAID INVOICES	TOTAL AMOUNT DUE INCLUDING THIS INVOICE	\$10,393.00



Dimensional Impact
7454 Airport Road - Unit G
West Jordan, UT 84084
+1 8012618383
Sales@DimensionalImpact.com
www.DimensionallImpact.com

ADDRESS

w - Discovery Healthcare
Consulting Group
1500 Broadway Suite 1000
Lubbock, TX 79423
Shonna
Cannaday:shonnac@dhcg.com
(806) 543-8165

SHIP TO

w - Discovery Healthcare
Consulting Group
1500 Broadway Suite 1000
Lubbock, TX 79423
Shonna
Cannaday:shonnac@dhcg.com
(806) 543-8165

Estimate 12017**DATE 03/02/2022****SALES REP**

Ashley 801.879.8294

DESCRIPTON	QTY	RATE	AMOUNT
Anticipated Ship Date "Make To Order" - Anticipated Ship Date: Approximately 3-4 weeks after order confirmation	1	0.00	0.00
Please note: Due to current extremely high demand and the effects of Covid on our suppliers, lead times are currently running to the high side of our anticipated projections.			
SS-48-WGW Superior Shiplap Planks Set Set includes: 12 planks (48" long x 5.75" tall x 1/4" thick) Covers: 23.0 square feet Style: Wood Grain Color: White WITH ADHESIVE STRIPS	32	159.99	5,119.68T

**** Please examine the contents before signing any documents prior to acceptance of delivery.

Upon receipt, please inspect contents. If the entire shipment is damaged, please refuse the shipment and notify us of the damage. If any part of the shipment is damaged, please accept the shipment, but sign for it as 'damaged'. In either event notify us within 48 hours at Info@DimensionallImpact.com

DESCRIPTON	QTY	RATE	AMOUNT
Shipping The Freight Quote below is for Dock to Dock Delivery If the freight is to a residence, to a place with limited access (churches, resorts, schools) or to a Trade Show, or if you require liftgate service or inside delivery please contact your sales representative to re-quote the shipping charges. These "additional services" are not part of this quote and you agree to pay them if they are incurred. Freight Weight: 865 Pounds Freight Dimensions: 50"x26"x19" If you would prefer to arrange your own freight, please notify us and we will remove the shipping charges from this order. Fire Rating: Class C (Other classes available - call for quote) If you do not have a truck high receiving dock, you will need to have individuals available upon delivery (or a forklift) to manually offload the freight. Each panel only weighs approximately 45 pounds but 2 people should unload each panel to avoid damaging the panels while transporting them.	1	0.00	0.00
Freight Shipping FOB from Salt Lake City Utah: Freight Load #: 14871820 Logistics Company: RL Carriers Freight Carrier: RL Carriers Anticipated Transit Time: 4-5 Days The estimated freight charge is noted towards the bottom of this estimate and is good for 7 days only. If you order is placed after 7 days from the date of this estimate, the freight charge will be changed to the actual charge at the time of shipment.	1	0.00	0.00
Promotional Discount 25% OFF Product Cost IF order is placed BY 3/3/22	1	-1,378.89	-1,378.89
SUBTOTAL			3,740.79
TAX			0.00
SHIPPING			395.89
TOTAL			\$4,136.68

**** Please examine the contents before signing any documents prior to acceptance of delivery.

Upon receipt, please inspect contents. If the entire shipment is damaged, please refuse the shipment and notify us of the damage. If any part of the shipment is damaged, please accept the shipment, but sign for it as 'damaged'. In either event notify us within 48 hours at Info@DimensionalImpact.com

Accepted By

Accepted Date

**** Please examine the contents before signing any documents prior to acceptance of delivery.

Upon receipt, please inspect contents. If the entire shipment is damaged, please refuse the shipment and notify us of the damage. If any part of the shipment is damaged, please accept the shipment, but sign for it as 'damaged'. In either event notify us within 48 hours at Info@DimensionalImpact.com

CHANGE PROPOSAL #1
MISC ELECTRICAL CHANGES
10TH FLR DURBIN, DISCOVERY, & EMPOWER OFFICE

DATE: 3/15/22

COST OF WORK SUMMARY	QTY	UNIT	RATE	TOTAL
MISC ELECTRICAL				
RELOCATE CIRCUITS SERVING 11TH FLOOR (SHUTDOWN AFTER HOURS)	6.00	EA	\$300.00	\$1,800.00
2/28/22 REXEL ELECTRICAL SUPPLY INVOICE	1.00	LS	\$523.13	\$523.13
3/4/22 WESCO INVOICE	1.00	LS	\$286.22	\$286.22
ADD CIRCUIT AT STORAGE RM EAST WALL FOR FRIG	1.00	EA	\$281.84	\$281.84
ADD CIRCUIT FOR GARBAGE DISPOSAL	1.00	EA	\$285.00	\$285.00
RELOCATE FRIG CIRCUIT FOR MICROWAVE	1.00	EA	\$45.00	\$45.00
ADD POWER AT FRONT ENTRANCE WALLS (1 PER WALL)	2.00	EA	\$153.68	\$307.36
ADD POWER AT DURBIN NORTH CONFERENCE RM COLUMN	1.00	EA	\$244.60	\$244.60
DELETE POWER POLE AT DURBIN NE CORNER	(1.00)	EA	\$1,600.00	(\$1,600.00)
ADD POWER AT MEN/WOMEN'S RESTROOMS	2.00	EA	\$300.00	\$600.00
ADD GFCI DUPLEX RECEPTACLES AT 2 RESTROOMS (EXISTING OUTLETS ABANDONED)	2.00	EA	\$145.60	\$291.20
ADD 110V POWER FOR MOTORIZED FIRE DAMPER IN RR	1.00	EA	\$179.37	\$179.37
RELOCATE IN PLACE FIRE ALARM DEVICES FROM WALLS TO OVERHEAD	38.00	EA	\$39.83	\$1,513.54
3/7/22 WESCO INVOICE	1.00	LS	\$305.66	\$305.66
3/14/22 ELLIOTT ELECTRICAL SUPPLY INVOICE	1.00	LS	\$543.18	\$543.18
EXISTING MEN/WOMEN RESTROOMS				
DEMO RR PLASTER WALLS & CEILINGS (2 MEN)	3.00	DAY	\$553.40	\$1,660.20
CLEANUP PLASTER DEMO (2 MEN)	18.00	HR	\$29.77	\$535.86
REPLACE NORTH/SOUTH PLASTER WALLS (FLOOR TO STRUCTURE)	655.00	SF	\$10.05	\$6,582.75
DELETE GYP BOARD AT NORTH/SOUTH WALLS	(655.00)	SF	\$2.84	(\$1,860.20)
FRAME RR WALLS	43.00	LF	\$56.00	\$2,408.00
FRAME RR CEILINGS	388.00	SF	\$1.43	\$554.84
BLOCKING - COUNTERTOPS, TOILET PARTITIONS	30.00	LF	\$5.22	\$156.60
EXTEND SINK COLD/HOT WATER STOPS OUT OF WALL (SHUTDOWN AFTER HOURS)	4.00	EA	\$133.55	\$534.20
BREAKROOM				
EXTEND CABINETS & COUNTERTOP AT DELETED REFRIGERATOR	1.00	LS	\$1,488.37	\$1,488.37
ADD ROLLING TRASH CAN CABINET	1.00	LS	\$259.97	\$259.97
ADD MICROWAVE SLOT	1.00	EA	\$185.22	\$185.22
MODIFY BAR TOP SOLID SURFACE	1.00	LS	\$1,067.31	\$1,067.31
TOTAL COST OF WORK				\$19,179
OVERHEAD			10.00%	\$2,498.91
PROFIT			5.00%	\$1,249.46
SALES TAX			8.25%	\$2,061.60
TOTAL				\$24,989

SCOPE OF WORK:
EXCLUDES CHANGES FOR THE ELEVATOR LOBBY, GLASS AT LOBBY DOORS, AND NEW STORAGE ROOM
EXCLUDES TILE AT RESTROOMS

GAILEY FIRE PROTECTION, INC.

P.O. Box 64696 Lubbock, TX 79464

Phone:(806)-745-9333 Fax:(806)745-1336

March 22, 2022

Re: Automatic Fire Sprinkler System Renovation Change Request #1 For
Discovery Health Care Consulting Group—McDougal Building 10th Floor
Lubbock, TX

We are pleased to quote our price for the above mentioned change request in the amount of \$1,300.00 excluding sales tax. This price shall be to provide pendent fire sprinklers in the elevator lobby area, in lieu of the upright sprinklers currently installed. The following shall qualify our proposal:

1. Material and installation shall be per NFPA #13 and the Lubbock Fire Marshal only.
2. It shall be assumed that all existing fire sprinkler components are in proper working condition (valves, piping, fittings, etc...). The above mentioned pricing excludes fixing any leaks on the existing fire sprinkler system. This will include all existing joints, piping, and fittings that are not in our scope of work mentioned above.
3. Adequate heat (forty degrees or more) and insulation shall be provided by others throughout the building for the installation of a wet fire sprinkler system.
4. All existing fire sprinkler main and branch line piping (horizontal runs) shall remain in place under the base bid price.
5. All work shall be performed during normal business hours (8:00AM-5:00PM), Monday through Friday.
6. Cutting, patching, and painting of existing solid ceilings, and/or walls is excluded.
7. Removal and replacement of existing lift out ceiling grid and tiles is excluded.
8. Providing a fire watch, if necessary, is excluded.
9. Sales tax is excluded from the above mentioned pricing.
10. This price shall be valid for thirty days.

We appreciate the opportunity to work with you on this project. If you need any additional information please feel free to call this office.

Thank You,



Wayne Gailey



We have prepared a quote for you

Small Switches for New Location - Lubbock

Quote # 034133

Version 1

Prepared for:

Discovery Healthcare Consulting Group

Brent Fuller

brentf@dhcg.com

Tuesday, April 12, 2022

Discovery Healthcare Consulting Group
Brent Fuller
1500 Broadway St. Suite 1000
Lubbock, TX 79401
brentf@dhcg.com

Dear Brent,

Blue Layer was founded by a group of systems administrators who found that the technology services market was in need of “Right Sized Consulting” solutions. We take pride in being a detail oriented solutions provider, and in addition to technical expertise from company owners, Blue Layer employs support technicians, engineers and project / account managers to meet all your business needs.


To better serve the needs of this proposal, our engineers and managers have completed several training and certifications courses including: Enterprise Project Management and Resource Connections, CCNA, RHCE, CWNA, MCSE, MCP, CISSP, VSP, VTSP, VCP, and many others. With a combined 80 years of experience supporting businesses in every market vertical, Blue Layer is a perfect fit for your IT needs. Blue Layer is a growing technology company thats ready to address your needs both today and tomorrow.

This estimate contains hardware, software and labor estimates we have discussed. If you have any questions please let me know.




Kelsey Dowdy
Director of Operations
Blue Layer

Hardware

Item	Description	Price	Qty	Ext. Price
Cisco Networking Hardware: PoE Switches for Each "Pod" in New Location				
MS120-8LP-HW 	Cisco Meraki MS120-8LP L2 Cloud Managed 8 Port GigE PoE Switch <u>General Information</u> Product Model: MS120-8LP Product Name: Cloud-Managed 8 Port Gigabit PoE Switch <u>Interfaces/Ports</u> Total Number of Network Ports: 8 Uplink Port: Yes Modular: No Port/Expansion Slot Details: 8 x Gigabit Ethernet Network 2 x Gigabit Ethernet Expansion Slot <u>Media & Performance</u> Media Type Supported: Twisted Pair Ethernet Technology: Gigabit Ethernet Network Technology: 10/100/1000Base-T <u>I/O Expansions</u> Number of Total Expansion Slots: 2 Expansion Slot Type: SFP Number of SFP Slots: 2 Layer Supported: 2 Manageable: Yes <u>Warranty</u> Limited Warranty: Lifetime	\$1,342.00	6	\$8,052.00


Subtotal: \$8,052.00

Software

Item	Description	Price	Qty	Ext. Price
Cisco Networking Licenses: PoE Switches				
Meraki MS120-8LP Switch License 	Cisco Meraki MS120-8LP Enterprise License - 3 Year 3 Year Meraki Enterprise License for MS120-8LP Switches	\$71.00	6	\$426.00



Subtotal: \$426.00

Services

Item	Description	Price	Qty	Ext. Price
Project Labor 	Configuration, Setup, & Deployment of Networking Hardware Connection and Testing of Cables During Installation Blue Layer provides professional technology consulting and support services. Our technicians and engineers are professionals dedicated to providing "Right Sized Consulting". This means that each business is unique, and we understand that a "one size fits all approach" is not acceptable for business technology solutions. Blue Layer guarantees that your labor fee for this project will not exceed the quote amount. * Special Project Labor	\$125.00	3	\$375.00

Subtotal: \$375.00

Shipping

Item	Description	Price	Qty	Ext. Price
Shipping  	Standard Shipping of Hardware Items to Blue Layer Additional Charges May Apply for Expedited or Express Shipping Methods Shipping to Blue Layer <ul style="list-style-type: none">FedEx or UPS Shipping (Drop Ship)	\$16.00	1	\$16.00

Subtotal: \$16.00

Small Switches for New Location - Lubbock



Kelsey Dowdy

Prepared by:

Blue Layer

Kelsey Dowdy
806-687-4765
Fax
kdowdy@bluelayer.com

Prepared for:

Discovery Healthcare Consulting Group

1500 Broadway St. Suite 1000
Lubbock, TX 79401
Brent Fuller
brentf@dhcg.com
(806) 776-0601

Quote Information:

Quote #: 034133

Version: 1
Delivery Date: 04/12/2022
Expiration Date: 05/11/2022

Quote Summary

Description	Amount
Hardware	\$8,052.00
Software	\$426.00
Services	\$375.00

Subtotal: \$8,853.00

Shipping: \$16.00

Tax: \$731.69

Total: \$9,600.69

Taxes, shipping, handling and other fees may apply. We reserve the right to cancel orders arising from pricing or other errors.

Signature

Date



Slate Group

6024 45th Street
Lubbock, TX 79407
Phone (806) 794-7752
Fax (806) 798-8517
<http://www.slategroup.com>

Quotation

137534

To:

Discovery HealthCare
1500 Broadway
Suite 1000
Lubbock, TX 79401
ATTN: Shonna Cannaday
Phone (806) 776-0603
Email shonnac@dhcg.com

Date

4/13/22

Salesperson

William Pellowski

Shonna Cannaday

Below Is Your Detailed Production Specifications and pricing for this Request

Description	Storefront Entry Signage		
Size	Final Size : 48 x 14		
Paper	118.00 pt Brushed Silver Alumaboard (Dibond)		
	125.00 pt Clear Polycarbonate		
Ink	5/0		
Prepress	PDF Proof, Digital Preflight		
Finishing	WF Kongsberg Sheet Changeout, WF Kongsberg Router Cut, WF Standoffs, WF Backlit Film Backer, WF Installation Time		
Finishing	WF Kongsberg Sheet Changeout, WF Kongsberg Router Cut, WF Adhesive Mount Film		
Buy Out	Backlit Materials & Hardware		
Shipping	Carton Pak Wide Format Kit, Freight (Net Weight)		
Prices	Quantity	Prices	
	1 Each Of 2	\$1,701.54	
Tax Detail	Sales tax is not included		
Schedule	Delivery dates are based on proof being returned as expected		

Thank you for allowing Slate Group to quote your project. The prices quoted here are subject to change based on stock pricing and availability upon receipt of order. Prices are based upon the specifications provided to us. Sometime minor changes in the paper or ink can result in savings. If your price is above your budget, please call me to discuss ways to obtain a similar piece at a lower price.

Quoted By: William Pellowski Sign: _____ Date: _____

Accepted By: _____ Sign: _____ Date: _____

Please note, that all work is accepted subject to trade customs on reverse side.

Information

Agenda Item

Resolution - Public Health Services: Consider a resolution authorizing the Mayor to execute Amendment No. 1 to the Department of State Health Services Contract No. HHS001120300005, under the STD/HIV-DIS Prevention Services Grant Program, by and between the City of Lubbock, and the State of Texas Department of State Health Services (DSHS), and all related documents, for funding from the HIV/STD Program of the Texas DSHS.

Item Summary

This contract provides funding from the HIV/STD Program of the Texas DSHS to strengthen prevention activities in the community including community engagement, focused HIV testing to at-risk populations, and linkage to pharmaceutical therapies such as Pre-Exposure Prophylaxis (PrEP). The grant will enable staff to reach individuals outside traditional clinical settings.

Amendment No. 1 extends the contract from March 1, 2022, through December 31, 2022.

Fiscal Impact

Amendment No. 1 will increase the contract amount by \$196,485. The total amount is not to exceed \$392,969.

Staff/Board Recommending

Bill Howerton, Deputy City Manager
Katherine Wells, Director of Public Health

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, on behalf of the City of Lubbock, Amendment No. 1 to the Department of State Health Services Contract No. HHS001120300005 under the STD/HIV-DIS Prevention Services Grant Program, by and between the City of Lubbock and the State of Texas' Department of State Health Services, 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 _____.

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



TEXAS
Health and Human
Services

Texas Department of State Health Services

John Hellerstedt, M.D.
Commissioner

The Honorable Daniel Pope, Mayor
City of Lubbock
PO Box 2000
Lubbock, Texas 79457

Subject: Sexually Transmitted Disease/Human Immunodeficiency Virus
Disease Intervention Specialists (STD/HIV-DIS) Contract
Contract Number: HHS001120300005, Amendment No. 1
Contract Amount: \$392,969.00
Contract Term: March 1, 2022 through December 31, 2022

Dear Mayor Pope:

Enclosed is the STD/HIV-DIS amendment between the Department of State Health Services and City of Lubbock.

The purpose of this contract is to control and prevent the spread of Sexually Transmitted Diseases (STDs), including Human Immunodeficiency Virus/Acquired Immunodeficiency Syndrome (HIV/AIDS) and viral hepatitis.

This amendment increases the contract amount by \$196,485.00 and extends the contract term through December 31, 2022.

Please let me know if you have any questions or need additional information.

Sincerely,

Lillie McMillian, CTCM
Contract Manager
(512) 776-2665
lillie.mcmillian@dshs.texas.gov

**DEPARTMENT OF STATE HEALTH SERVICES
CONTRACT NO. HHS001120300005
AMENDMENT NO. 1**

The **DEPARTMENT OF STATE HEALTH SERVICES** ("DSHS" or "System Agency"), a pass-through entity, and **CITY OF LUBBOCK** ("Grantee"), Parties to that certain STD/HIV-DIS Contract, that was effective March 1, 2022, and denominated DSHS Contract No. HHS001120300005 ("Contract"), now want to amend the Contract.

WHEREAS, the Parties want to extend the Contract term through December 31, 2022; and

WHEREAS, the Parties want to revise the Budget and the Statement of Work.

NOW, THEREFORE, the Parties agree as follows:

1. **ARTICLE III** of the Contract, **DURATION**, is hereby amended to extend the termination date from August 31, 2022, to December 31, 2022.
2. **ARTICLE IV** of the Contract, **BUDGET**, is amended to increase the Contract amount by \$196,485.00, resulting in a new total not-to-exceed Contract amount of \$392,969.00.
3. **ATTACHMENT A, STATEMENT OF WORK**, is deleted in its entirety and replaced with **ATTACHMENT A-1, REVISED STATEMENT OF WORK**.
4. **ATTACHMENT B, BUDGET**, is deleted in its entirety and replaced with **ATTACHMENT B-1, REVISED BUDGET**. All expenditures under this Contract will be in accordance with **ATTACHMENT B-1, REVISED BUDGET**.
5. This amendment shall be effective as of the date last signed below.
6. Except as modified by this Amendment, all terms and conditions of the Contract shall remain in full force and effect.
7. Any further revisions to the Contract shall be by written agreement of the Parties.

SIGNATURE PAGE FOLLOWS

**SIGNATURE PAGE FOR AMENDMENT NO. 1
DSHS CONTRACT NO. HHS001120300005**

DEPARTMENT OF STATE HEALTH SERVICES

GRANTEE

By: _____

By: _____

Printed Name: _____

Printed Name: _____

Title: _____

Title: _____

Date of Signature: _____

Date of Signature: _____

**THE FOLLOWING ATTACHMENTS TO SYSTEM AGENCY CONTRACT NO. HHS001120300005 ARE
INCORPORATED BY REFERENCE:**

ATTACHMENT A-1: REVISED STATEMENT OF WORK

ATTACHMENT B-1: REVISED BUDGET

ATTACHMENTS FOLLOW

ATTACHMENT A-1 REVISED STATEMENT OF WORK

I. GRANTEE RESPONSIBILITIES

Grantee shall do the following:

- A. Conduct programs, as described herein, to control and prevent the spread of Sexually Transmitted Infections (STIs), including human immunodeficiency virus/acquired immunodeficiency syndrome (HIV/AIDS) and viral hepatitis, in accordance with the Centers for Disease Control and Prevention's (CDC) STD Program Operations Guidelines, located at: <http://www.cdc.gov/std/program/gl-2001.htm>.
- B. Perform the following six (6) core activities:
 - 1. Community and Individual Behavior Change Interventions;
 - 2. Medical and Laboratory Services;
 - 3. Partner Services;
 - 4. Leadership and Program Management;
 - 5. Surveillance and Data Management; and
 - 6. Training and Professional Development.
- C. Maintain written program procedures covering these six (6) core activities. All procedures shall be consistent with the requirements of this Contract.
- D. Perform the activities required under this Contract in the service area designated in this Contract. Service area will include the following county(ies): Lubbock.
- E. Designate one of its staff to be a Local Responsible Party (LRP), who will be responsible overall for ensuring the security of the confidential HIV/STI information the Grantee maintains pursuant to this Contract.
- F. Comply with all applicable federal and state policies, standards, and guidelines. The following documents are incorporated into this Contract by reference:
 - 1. DSHS HIV and STD Program Operating Procedures and Standards (POPS), located at: <http://www.dshs.texas.gov/hivstd/pops/default.shtm>;
 - 2. DSHS TB/HIV/STD and Viral Hepatitis Unit Security Policies and Procedures, located at: <http://www.dshs.texas.gov/hivstd/policy/security.shtm>;
 - 3. CDC STD Program Operations Guidelines, located at: <http://www.cdc.gov/std/program/gl-2001.htm>;

4. CDC STD Treatment Guidelines, located at: <http://www.cdc.gov/std/treatment/>; and
 5. DSHS HIV and STD Program Policy Reporting Suspected Abuse and Neglect of Children, located at: <https://www.dshs.texas.gov/childabusereporting/default.shtm>.
- G. Comply with all applicable federal and state regulations and statutes, as amended, including, but not limited to:
1. Chapters 81 and 85 of the Texas Health and Safety Code (**Note:** See, for example, Section 85.085 of the Texas Health and Safety Code [Physician Supervision of Medical Care], which requires that a licensed physician supervise any medical care or procedure provided under a testing program as required by law);
 2. Chapter 94 of the Texas Health and Safety Code (relating to Education and Prevention Programs for Hepatitis C);
 3. Chapter 98 of the Texas Health and Safety Code (relating to the reporting of Sexually Transmitted Diseases including Human Immunodeficiency Virus);
 4. Title 25 Texas Administrative Code (TAC), Chapter 97;
 5. Texas Government Code Section 531.02161, as an update to provision of services, where there is delivery of an in-person service, there must also be an option of that service via telecommunications or through the use of information technology; and
 6. Misuse of Funds and Performance Malfeasance, which states:
 - a. Report to the contract manager assigned to the Contract, any knowledge of debarment, suspected fraud, program abuse, possible illegal expenditures, unlawful activity, or violation of financial laws, rules, policies, and procedures related to performance under this Contract;
 - b. Make such report no later than three (3) working days from the date the Grantee has knowledge or reason to believe such activity has taken place;
 - c. If this Contract is federally funded by the Department of Health and Human Services (HHS):
 - i. Report any credible evidence that a principal, employee, subgrantee or agent of Grantee, or any other person, has submitted a false claim under the False Claims Act or has committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct involving those funds; and
 - ii. Make this report to the SAO at <http://sao.fraud.texas.gov>, and to the HHS Office of Inspector General at <http://www.oig.hhs.gov/fraud/hotline/> no later than three (3) working days from the date the Grantee has knowledge or reason to believe such activity has taken place.

- H. Perform all activities in accordance with the terms of this Contract (including detailed budget) and any subsequent DSHS Program instructions given to Grantee pursuant to it. All of the above-referenced documents are incorporated into this Contract by reference. Grantee must receive written approval from DSHS before varying from applicable policies, procedures, and protocols and must update its implementation documentation within 48 hours of making approved change(s).
- I. DSHS reserves the right, where legal authority allows, to redirect funds in the event of financial shortfalls. DSHS Program will monitor Grantee's expenditures on a quarterly basis. If expenditures are below the total Contract amount, Grantee's budget may be subject to a decrease for the remainder of the Contract term. Positions that remain vacant for 90 days may subject the Contract to a decrease in funding.

II. PERFORMANCE MEASURES

The following performance measures will be used to assess, in part, Grantee's effectiveness in providing the services described in this Contract, without waiving the enforceability of any of the other terms of the Contract.

A. Public Health Follow-Up (PHFU) Program Objectives

Grantee shall follow the requirements for each of the STD Program Objectives, in accordance with the DSHS HIV/STD Program POPS, [Chapter 9: Disease Intervention Specialist Performance Standards](#), with special emphasis on outcomes excerpted below. If the data submitted by Grantee (or otherwise obtained by DSHS) indicates the Grantee's performance does not meet the standards stated in one (1) or more of the objectives, DSHS may (at its sole discretion) require additional measures be taken by the Grantee to improve performance. Grantee must implement these measures according to a timetable mandated by DSHS. Grantee shall:

1. Syphilis Objectives

- a. Ensure that all individuals newly diagnosed with early syphilis are interviewed within three (3) days of assignment. If data indicates less than 80% of individuals newly diagnosed with early syphilis covered by the scope of this Contract are interviewed as described, DSHS may (at its sole discretion) require additional measures be taken by the Grantee to improve that percentage. In that scenario, Grantee must follow those additional measures, and do so according to the timetable mandated by DSHS. Note: Early syphilis is defined as all syphilis cases that are determined to be primary, secondary, or early non-primary/non-secondary syphilis. See CDC definition at: <https://wwwn.cdc.gov/nndss/conditions/syphilis/case-definition/2018/>.
- b. Achieve a partner index of at least 2.0 for all interviews conducted on individuals newly diagnosed with early syphilis. If data indicates less than a 2.0 partner index for all interviews conducted for early syphilis by Disease Intervention Specialists (DIS), DSHS may (at its sole discretion) require

additional measures be taken by the Grantee to improve that percentage. In that scenario, Grantee must follow those additional measures, and do so according to the timetable mandated by DSHS.

- c. Ensure that all partners initiated (partners obtained from the interview/case management process with locating information as outlined by [Chapter 9: Disease Intervention Specialist Performance Standards](#) to attempt notification on early syphilis interviews) are notified of the disease exposure. If data indicates less than .75 partner notification index for all initiated partners, DSHS may (at its sole discretion) require additional measures be taken by the Grantee to improve that percentage. In that scenario, Grantee must follow those additional measures, and do so according to the timetable mandated by DSHS.
- d. Ensure that all partners notified of syphilis exposure are tested and treated for syphilis, including incubating syphilis (disease intervention index). If data indicates less than 60% of notified partners are tested and treated as described, DSHS may (at its sole discretion) require additional measures be taken by the Grantee to improve that percentage. In that scenario, Grantee must follow those additional measures, and do so according to the timetable mandated by DSHS.
- e. Ensure that a treatment index of at least .75 is achieved for all interviews conducted on individuals newly diagnosed with early syphilis. If data indicates less than .75 treatment index, DSHS may (at its sole discretion) require additional measures be taken by the Grantee to improve that percentage. In that scenario, Grantee must follow those additional measures, and do so according to the timetable mandated by DSHS.

2. HIV Objectives

- a. Ensure that all individuals newly diagnosed with HIV will be interviewed within seven (7) days in accordance with DSHS HIV/STD Program POPS. If data indicates less than 80% of individuals newly diagnosed with HIV are interviewed as described, DSHS may (at its sole discretion) require additional measures be taken by the Grantee to improve that percentage. In that scenario, Grantee must follow those additional measures, and do so according to the timetable mandated by DSHS.
- b. Ensure that all individuals interviewed who have been newly diagnosed with HIV successfully complete their first HIV medical appointment. If data indicates less than 85% of new HIV-positive clients interviewed successfully complete their first HIV medical appointment, DSHS may (at its sole discretion) require additional measures be taken by the Grantee to improve that percentage. In that scenario, Grantee must follow those additional measures, and do so according to the timetable mandated by DSHS.
- c. Achieve a partner index of at least 2.0 for interviews conducted on individuals newly diagnosed with HIV. If data indicates a partner index of less than 2.0 for individuals interviewed by DIS, DSHS may (at its sole discretion) require

additional measures be taken by the Grantee to improve that percentage. In that scenario, Grantee must follow those additional measures, and do so according to the timetable mandated by DSHS.

- d. Ensure that all partners initiated (partners obtained from the interview/case management process with enough locating information to attempt notification) on a new HIV interview are notified of the disease exposure. If data indicates less than .75 partner notification index, DSHS may (at its sole discretion) require additional measures be taken by the Grantee to improve that percentage. In that scenario, Grantee must follow those additional measures, and do so according to the timetable mandated by DSHS.
- e. Ensure that all partners notified for HIV exposure are tested for HIV. If data indicates less than 60% of the notified partners are tested for HIV, DSHS may (at its sole discretion) require additional measures be taken by Grantee to improve that percentage. In that scenario, Grantee must follow those additional measures, and do so according to the timetable mandated by DSHS.
- f. Ensure that all persons receiving PHFU (initiated partners, those co-infected with a bacterial STD such as syphilis, gonorrhea, and/or chlamydia, and/or individuals in the social-sexual network of an identified HIV genotype cluster) who have been previously diagnosed with HIV and have no evidence of care for more than 12 months are re-engaged to establish HIV medical services. The activities taken to locate the person must be documented in the designated data system. This includes confirmation that the client attended his/her HIV medical care appointment. All the tasks described in this provision must be completed by a Disease Intervention Specialist (DIS).

3. Other Objectives

- a. Ensure that a complaint process is maintained and posted in the areas where services are provided, in accordance with [DSHS HIV/STD Program POPS, Chapter 12, STI Clinical Standards](#).
- b. Maintain a staff retention policy.
- c. Provide routine staffing updates for vacant positions, in accordance with DSHS required format and schedule for reporting.
- d. Participate in targeted evaluation activities and other projects as required by DSHS or CDC.
- e. Ensure that the client survey is conducted at a minimum of two (2) times per year for a total of thirty (30) days. The summary of the feedback must be available for review and identified concerns must be addressed within thirty (30) days of the feedback period.
- f. Establish and maintain mutually agreed-upon formal written procedures with local providers to ensure the provision of partner services in accordance with DSHS HIV/STD Program POPS. The procedures must specify processes (e.g., communication) to facilitate timely partner elicitation by the local health

department following the delivery of HIV-positive test results to clients by Grantee.

- g.** Establish and maintain mutually agreed-upon formal written procedures with local agencies who provide services frequently needed by clients seeking HIV/STD services from Grantee in accordance with DSHS HIV/STD Program POPS. The procedures must specify processes (e.g., communication) to facilitate timely partner elicitation by the local health department following the delivery of HIV-positive test results to clients by Grantee, including but not limited to:

 - i.** HIV testing and counseling;
 - ii.** STD clinical services;
 - iii.** Partner services;
 - iv.** HIV medical and support services;
 - v.** Substance use treatment services;
 - vi.** Harm reduction services; and
 - vii.** Mental health services.

At a minimum, such procedures should address conditions associated with making and accepting client referrals. If Grantee provides all of the services listed above in a specific geographic area, no such agreement is necessary for that area. Grantee must maintain complete records of all referrals made. These procedures must be finalized and in place within thirty (30) days of the effective date of this Contract.

- h.** Ensure that performance of activities under this Contract is of a high quality and consistent with all the requirements of this Contract, in order to meet DSHS' high performance expectations.
- i.** Conduct regular assessments of Grantee's performance, including compliance with DSHS Program procedures, policies and guidance, contractual conditions, attainment of performance measures, maintenance of adequate staff, and submission of required data and narrative reports. Failure to comply with stated requirements and contractual conditions may result in the immediate loss of Contract funds at the discretion of DSHS.
- j.** Ensure that all staff operating under this Statement of Work are permitted to provide HIV and/or syphilis screening(s) by collecting blood-based specimens, in both field and clinical settings. Supplemental testing must be collected by venipuncture immediately, on site, after a point-of-care preliminary positive test result. Staff will offer and perform these tests unless the client refuses. HIV and syphilis specimens may be submitted through the DSHS public health laboratory or another laboratory designated by the Grantee and approved in advance by DSHS.

- k. Ensure that all staff operating under this Statement of Work are permitted to deliver all HIV and/or STD results, including positive results, in both field and clinical settings.
 - l. Ensure that all staff operating under this Statement of Work, when conducting field work, are permitted to disclose the reason s/he is contacting them (e.g., exposure to someone who tested positive for HIV and wanted to ensure s/he had the ability to be tested, positive test results were received from a provider, laboratory, life insurance company, etc.)
 - m. Ensure that staff who operate under this Statement of Work deliver all positive test results within the designated timeframes referenced in the DSHS HIV/STD Program POPS. Staff will ensure the client understands the infection(s) s/he has tested positive for, is offered appropriate treatment for his/her infection(s) and is linked to other medical and social resources as appropriate (e.g., HIV testing and counseling; Pre-Exposure Prophylaxis [PrEP]; Harm Reduction Services; STD clinical services; partner services; HIV medical and support services; substance use treatment services; and mental health services).
 - n. Staff operating under this Statement of Work may be identified by DSHS or local programs to respond to rapid response efforts to address and intervene in the transmission of reportable STDs, HIV and/or other infections staff have received disease information training to respond to, as needed.
4. The following STD clinical services shall be provided, consistent with the DSHS HIV/STD Program POPS Chapter 12: STI Clinical Standards:
 - a. Grantee shall follow the requirements for examining, testing, and treating individuals served in public STD clinics. If data indicates that less than 90% of individuals served were examined, tested and/or treated for STD(s) as medically appropriate, within twenty-four (24) hours of seeking services, DSHS may (at its sole discretion) require additional measures be taken by the Grantee to improve that percentage. In that scenario, Grantee must follow those additional measures, and do so according to the timetable mandated by DSHS.
 - b. Individuals seeking STD diagnostic and/or treatment services in public STD clinics shall be medically managed according to Grantee written protocols in compliance with DSHS HIV/STD Program POPS, and with CDC STD Treatment Guidelines 2021 (as revised).
 - c. Grantee shall ensure that individuals seeking STD diagnostic and/or treatment services in public STD clinics will be referred for Pre-Exposure Prophylaxis/Non-Occupational Post-Exposure Prophylaxis (PrEP/nPEP) services if at increased risk for HIV but currently HIV negative. Individuals to be prioritized for PrEP referrals include: Men who have Sex with Men (MSM) with rectal GC and/or syphilis, individuals who have an HIV+ partner, individuals in the social-sexual network of an identified HIV

genotype cluster, and others at increased risk for HIV who could benefit from PrEP.

- d. Grantee shall ensure that individuals seeking STD diagnostic and/or treatment services in public STD clinics, who have been previously diagnosed with HIV and have no evidence of care for more than 12 months, will be referred to a DIS or other linkage worker to ensure they are re-engaged into HIV medical care.
- e. Grantee shall explore mechanisms to expand testing and awareness of STDs via home testing and home self-collection kits and self-collection.
- f. Grantee shall explore mechanisms to use telemedicine/telehealth for individuals seeking STD diagnostic and treatment services and/or PrEP/nPEP services.

III. TRAINING REQUIREMENTS

Due to the specialization and job knowledge required for effective STD control programs, the following minimum training is required of personnel operating under this Contract. Compliance will be monitored by DSHS Program staff. Grantee shall:

- A. Authorize and require their staff to attend training, conferences, and meetings as directed by DSHS Program.
 - 1. Training Requirements for Disease Intervention Specialist staff (DIS) are as follows:
 - a. The following DSHS HIV/STD Program POPS chapters must be read and acknowledged:
 - i. Chapter 3: HIV/STI Partner Services and Seropositive Notification; and
 - ii. Chapter 9: Disease Intervention Specialists Performance Standards.
 - b. The DSHS-approved Fundamentals of STD Intervention (FSTDI), including all prerequisites, within six (6) months of employment, must be completed successfully.
 - c. The DSHS-approved Fundamentals of Counseling and Testing (FCT) or equivalent within six (6) months of employment must be completed successfully.
 - d. DIS must complete training successfully in, and demonstrate knowledge of, the TB/HIV/STD Information System (THISIS).
 - e. DIS must be able to participate in the HIV Navigation in Texas (HNT) within one (1) year of employment.
 - f. DIS must successfully complete venipuncture training that has been approved by the local health authority within 60 days of employment.
 - g. DIS must successfully complete training for all locally sanctioned testing technologies used for specimen collection and processing.

- h. DIS with more than one (1) year of experience shall successfully complete additional courses as required by DSHS.
2. Training Requirements for First-Line Supervisors staff (FLS) are as follows:
 - a. The following DSHS HIV/STD Program POPS chapters must be read and acknowledged:
 - i. Chapter 10: First-Line Supervisors Performance Standards; and
 - ii. Chapter 11: Regional and Local Health Department HIV/STD Program Manager Performance Standards, in addition to what is required of the DIS.
 - b. FLS must successfully complete all training activities which are required for DIS under this Contract, and also must take the next available Texas First-Line Supervisor (TXFLS) training.
 - c. If new to the jurisdiction, FLS must participate in the HIV Navigation in Texas within one (1) year of employment.
 - d. FLS must attend and participate in the DSHS FLS Summit, as scheduled.
 - e. FLS must participate in the quarterly DSHS FLS calls.
 - f. FLS must attend and participate in any other required DSHS trainings, as scheduled.
3. Training Requirements for Program Manager staff (PM) are as follows:
 - a. PM must read and demonstrate understanding of the following DSHS HIV/STD Program POPS chapters: Chapter 11, Regional and Local Health Department HIV/Program Manager Performance Standards, in addition to what is required of the FLS and DIS.
 - b. PM operating under this Contract must complete all training requirements of DIS and FLS.
 - c. PM must participate in the DSHS Leadership Meeting, as scheduled.
 - d. PM must participate in the monthly DSHS Leadership calls.
4. Recommended trainings and topics for all program staff are as follows:
 - a. Health Insurance Portability and Accountability Act (HIPAA)
 - b. Ethics
 - c. Field Safety
 - d. Health Equities
 - e. Cultural Humility
 - f. CPR/First Aid
 - g. Automated External Defibrillators (AED)
 - h. Defensive Driving
 - i. Approaches in Harm Reduction

- j. Self-Defense
- k. Non-Violent Crisis Intervention
- l. Status Neutral Biomedical Approaches to HIV Prevention (Early Intervention, PrEP, nPEP)
- m. Motivational Interviewing
- n. Technical Writing
- o. Computer Skills
- p. Linkage to Care
- q. Gender and Sexual Diversity
- r. HIV Care and Treatment
- s. Human Trafficking
- t. Substance Use
- u. Mental Health
- v. Case Notes Documentation

B. Notify DSHS of completed trainings in the semiannual reports referenced in the Reporting Requirements section.

IV. CONFIDENTIALITY

Grantee shall:

- A.** Designate and identify a HIPAA Privacy Officer, who is authorized to act on behalf of Grantee and is responsible for the development and implementation of the privacy and security requirements of federal and state privacy laws.
- B.** Designate, from its staff, a Local Responsible Party (LRP) who has the overall responsibility for ensuring the security of the TB/HIV/STD confidential information maintained by Grantee as part of activities under this Contract. The LRP will:
 - 1.** Ensure that appropriate policies/procedures are in place for handling confidential information, for the release of confidential TB/HIV/STD data, and for the rapid response to suspected breaches of protocol and/or confidentiality. These policies and procedures must comply with DSHS policies and procedures (Grantee may choose to adopt those DSHS policies and procedures as its own).
 - 2.** Ensure that security policies are reviewed periodically for efficacy, and that the Grantee monitors evolving technology (e.g., new methods hackers are using to illegally access confidential data; new technologies for keeping confidential data protected from hacking) on an ongoing basis to ensure the program's data remain as secure as possible.
 - 3.** Approve any Grantee staff requiring access to TB/HIV/STD confidential information. LRP will grant authorization to Grantee staff who have a work-

related need (i.e., work under this Contract) to view TB/HIV/STD confidential information.

4. Maintain a list of authorized Grantee staff persons who have been granted permission to view and work with TB/HIV/STD confidential information.
 5. Review the authorized user list ten (10) days from the effective date of this Contract to ensure it is current.
 6. Ensure that all Grantee staff with access to confidential information have a signed copy of a confidentiality agreement on file; it must be updated once during the term of this Contract.
 7. Ensure that all Grantee staff with access to confidential information are trained on TB/HIV/STD security policies and procedures before access to confidential information is granted; this training will be renewed once during the term of this Contract.
 8. Ensure that all Grantee staff with access to confidential information are trained on federal and state privacy laws and policies before access to confidential information is granted; this training will be renewed once during the term of this Contract.
 9. Thoroughly and quickly investigate all suspected breaches of confidentiality in consultation with the DSHS LRP to ensure compliance with the DSHS Program policy, TB/HIV/STD and Viral Hepatitis Breach of Confidentiality Response Policy, located at: <http://www.dshs.texas.gov/hivstd/policy/security.shtm>.
 10. Ensure that all required quarterly reports are submitted on time.
- C. Ensure that its security procedures require that all of its computers and networks meet DSHS security standards, as certified by DSHS IT staff.
- D. Provide a list to DSHS of personnel with access to secured areas and of all identified personnel who have received security training.
- E. Provide a list to DSHS of personnel with access to all network drives where confidential information is stored and of all identified personnel who have received security training.
- F. Ensure that requests for TB/HIV/STD system user account terminations are sent to DSHS within one business day of the identification of need for account termination.
- G. Transfer secure data electronically using the Public Health Information Network.
- H. Maintain a visitors' log for individuals entering the secured areas; this must be reviewed quarterly by the LRP.

- I. Verify TB/HIV/STD system user passwords are changed at least every ninety (90) days; this must be verified by the LRP.
- J. Ensure that portable devices used to store confidential data are approved by the LRP and encrypted.
- K. Ensure that confidential data/documents are:
 - 1. Maintained in a secured area;
 - 2. Locked when not in use;
 - 3. Not left in plain sight; and
 - 4. Shredded before disposal.

V. HIV/STD RAPID RESPONSE PLAN

DSHS will review the proposed Rapid Response Plan and provide guidance to the Grantee. Grantee shall:

- A. Develop, update, and submit a local HIV/STD Rapid Response Plan, and submit this by February 1 each year of the Contract to the designated DSHS staff. The plan shall include how the program will:
 - 1. Identify responsible parties for planned activities, including but not limited to:
 - a. response coordinator,
 - b. activity team lead,
 - c. collaborative lead, and
 - d. medical lead;
 - 2. Identify increases in disease or outbreaks;
 - 3. Increase active surveillance;
 - 4. Examine outbreak characteristics;
 - 5. Educate health care providers and the community of disease outbreak (e.g., including signs/symptoms, available resources, disease trends, reporting requirements, testing algorithms, and testing/treatment options);
 - 6. Inform media outlets, as appropriate;
 - 7. Conduct targeted screening efforts including testing in correctional settings (as appropriate);
 - 8. Enhance partner services;
 - 9. Expand clinical access and services (e.g., increase clinical hours or days of services, employ rapid testing, enhance prophylactic treatment protocols); and

- 10. Adjust work hours for employees involved in the response (i.e., allow staff to work alternate hours or extended hours during response).**
- B. Establish and maintain collaborative relationships with local businesses, community clinics, and community-based organizations who serve populations most affected by HIV or other STDs, as well as with appropriate local and institutional individuals and groups (e.g., providers, hospitals, mental health and intellectually disabled facilities, infection control nurses), in order to implement the local Rapid Response Plan.**
- C. Continue to enhance their current HIV/STD surveillance system, including, but not limited to:**
 - 1. Improving reporting of providers and laboratories; and**
 - 2. Increasing the number of sites that report electronically.**
- D. Make all directed revisions to the Rapid Response Plan and submit a revised version to the DSHS designated program consultant by the directed deadline.**
- E. Notify local leadership and key stakeholders of the finalized plan and maintain a copy within the Program.**
- F. Comply with the final, approved version of the Rapid Response Plan when an outbreak is identified.**
- G. Identify program Disease Intervention Specialists to respond to local and statewide rapid response activities when necessary. The identified staff must complete DSHS identified trainings prior to assignment. The number of staff will be as directed by the DSHS Rapid Response Team leader, to conduct disease intervention activities as prescribed in the Grantee's final, approved Rapid Response Plan or statewide Cluster Detection Response Plan.**

VI. REPORTING REQUIREMENTS

REPORT NAME	FREQUENCY	PERIOD BEGIN	PERIOD END	DUE DATE
Semiannual Report	First six (6) months	03/01/2022	08/31/2022	09/30/2022
Semiannual Report	Remaining four (4) months	09/01/2022	12/31/2022	01/31/2023
Congenital Syphilis Case Investigation and Infant Syphilis Control Records	Monthly	03/01/22	12/31/2022	Due thirty (30) calendar days after period being reported. Note: This Report is submitted through THISIS and is subject to HIPAA and PHI data requirements.
Local Responsible Party (LRP) Report	First six (6) months	03/01/2022	08/31/2022	09/30/2022
LRP Report	Remaining four (4) months	09/01/2022	12/31/2022	01/31/2023
Financial Status Report (FSR)	Biannual	03/01/2022	08/31/2022	09/30/2022
FSR	Remaining four (4) months	09/01/2022	12/31/2022	02/15/2023

VII. INVOICE AND PAYMENT

- A.** Invoices must be submitted monthly to prevent delays in subsequent months. Grantees that do not incur expenses for a month are required to submit timely “zero” dollar invoices. Invoices and all supporting documentation must be emailed to invoices@dshs.texas.gov and cmsinvoices@dshs.texas.gov simultaneously. Grantee must submit a final close out invoice and final status report no later than 45 days following the end of the contract term. Invoices received more than 45 days past the contract term are subject to denial of payment.
- B.** DSHS reserves the right, where allowed by legal authority, to redirect funds in the event of financial shortfalls. DSHS Program will monitor Grantee’s expenditures on a quarterly basis. If expenditures are below the amount in Grantee’s total Contract, Grantee’s budget may be subject to a decrease for the remainder of the Contract term. Vacant positions existing after ninety (90) days may result in a decrease in funds.

**ATTACHMENT B-1
REVISED BUDGET**

CATEGORICAL EXPENDITURES	
PERSONNEL	\$199,667.00
FRINGE BENEFITS	\$101,391.00
TRAVEL	\$2,575.00
EQUIPMENT	\$0.00
SUPPLIES	\$21,636.00
CONTRACTUAL	\$25,000.00
OTHER	\$42,700.00
TOTAL DIRECT CHARGES	\$392,969.00
INDIRECT CHARGES	\$0.00
TOTAL	\$392,969.00

Certificate Of Completion

Envelope Id: CC815ECF73C14635B603026A1D2C2131

Status: Sent

Subject: \$392,969.00 HHS001120300005 City of Lubbock A-1 STD/HIV-DIS

Source Envelope:

Document Pages: 18

Signatures: 0

Envelope Originator:

Certificate Pages: 5

Initials: 0

CMS Internal Routing Mailbox

AutoNav: Enabled

11493 Sunset Hills Road

Envelope Stamping: Enabled

#100

Time Zone: (UTC-06:00) Central Time (US & Canada)

Reston, VA 20190

CMS.InternalRouting@dshs.texas.gov

IP Address: 167.137.1.13

Record Tracking

Status: Original

Holder: CMS Internal Routing Mailbox

Location: DocuSign

3/30/2022 10:11:39 AM

CMS.InternalRouting@dshs.texas.gov

Signer Events

Signature

Timestamp

Authority Daniel Pope, Mayor

dpope@mylubbock.us

Mayor

City of Lubbock

Security Level: Email, Account Authentication

(None)

Electronic Record and Signature Disclosure:

Accepted: 2/24/2022 10:25:44 AM

ID: d25db9ae-a441-462f-8bd3-26cfa7fa0ce2

Helen Whittington

helen.whittington@dshs.texas.gov

Security Level: Email, Account Authentication

(None)

Electronic Record and Signature Disclosure:

Accepted: 3/30/2022 10:25:47 AM

ID: cf4af24f-b2e9-4620-bf32-8a7eb9cc5f43

Patty Melchior

Patty.Melchior@dshs.texas.gov

Security Level: Email, Account Authentication

(None)

Electronic Record and Signature Disclosure:

Accepted: 3/29/2022 1:58:22 PM

ID: 4e68af6d-9afd-47dc-90ee-34a6b98876da

Kirk Cole

Kirk.Cole@dshs.texas.gov

Security Level: Email, Account Authentication

(None)

Electronic Record and Signature Disclosure:

Accepted: 3/29/2022 4:55:28 PM

ID: 3e650224-d245-435f-9f53-12144b931a03

In Person Signer Events

Signature

Timestamp

Editor Delivery Events

Status

Timestamp

Agent Delivery Events

Status

Timestamp

Intermediary Delivery Events

Status

Timestamp

Certified Delivery Events	Status	Timestamp
Carbon Copy Events		
Amber Vasche amber.vasche@dshs.texas.gov Security Level: Email, Account Authentication (None) Electronic Record and Signature Disclosure: Not Offered via DocuSign	COPIED	Sent: 3/30/2022 10:17:09 AM
Lillie McMillian lillie.mcmillian@dshs.texas.gov Security Level: Email, Account Authentication (None) Electronic Record and Signature Disclosure: Not Offered via DocuSign	COPIED	Sent: 3/30/2022 10:17:09 AM
Katherine Wells kwells@mylubbock.us Director of Public Health City of Lubbock Security Level: Email, Account Authentication (None) Electronic Record and Signature Disclosure: Not Offered via DocuSign	COPIED	Sent: 3/30/2022 10:17:09 AM Viewed: 3/30/2022 11:03:50 AM
CMS Internal Routing Mailbox CMS.InternalRouting@dshs.texas.gov Security Level: Email, Account Authentication (None) Electronic Record and Signature Disclosure: Not Offered via DocuSign		
Witness Events	Signature	Timestamp
Notary Events	Signature	Timestamp
Envelope Summary Events		
Envelope Sent	Hashed/Encrypted	3/30/2022 10:17:09 AM
Payment Events		
Electronic Record and Signature Disclosure		

ELECTRONIC RECORD AND SIGNATURE DISCLOSURE

From time to time, DSHS Contract Management Section (we, us or Company) may be required by law to provide to you certain written notices or disclosures. Described below are the terms and conditions for providing to you such notices and disclosures electronically through the DocuSign system. Please read the information below carefully and thoroughly, and if you can access this information electronically to your satisfaction and agree to this Electronic Record and Signature Disclosure (ERSD), please confirm your agreement by selecting the check-box next to 'I agree to use electronic records and signatures' before clicking 'CONTINUE' within the DocuSign system.

Getting paper copies

At any time, you may request from us a paper copy of any record provided or made available electronically to you by us. You will have the ability to download and print documents we send to you through the DocuSign system during and immediately after the signing session and, if you elect to create a DocuSign account, you may access the documents for a limited period of time (usually 30 days) after such documents are first sent to you. After such time, if you wish for us to send you paper copies of any such documents from our office to you, you will be charged a \$0.00 per-page fee. You may request delivery of such paper copies from us by following the procedure described below.

Withdrawing your consent

If you decide to receive notices and disclosures from us electronically, you may at any time change your mind and tell us that thereafter you want to receive required notices and disclosures only in paper format. How you must inform us of your decision to receive future notices and disclosure in paper format and withdraw your consent to receive notices and disclosures electronically is described below.

Consequences of changing your mind

If you elect to receive required notices and disclosures only in paper format, it will slow the speed at which we can complete certain steps in transactions with you and delivering services to you because we will need first to send the required notices or disclosures to you in paper format, and then wait until we receive back from you your acknowledgment of your receipt of such paper notices or disclosures. Further, you will no longer be able to use the DocuSign system to receive required notices and consents electronically from us or to sign electronically documents from us.

All notices and disclosures will be sent to you electronically

Unless you tell us otherwise in accordance with the procedures described herein, we will provide electronically to you through the DocuSign system all required notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you during the course of our relationship with you. To reduce the chance of you inadvertently not receiving any notice or disclosure, we prefer to provide all of the required notices and disclosures to you by the same method and to the same address that you have given us. Thus, you can receive all the disclosures and notices electronically or in paper format through the paper mail delivery system. If you do not agree with this process, please let us know as described below. Please also see the paragraph immediately above that describes the consequences of your electing not to receive delivery of the notices and disclosures electronically from us.

How to contact DSHS Contract Management Section:

You may contact us to let us know of your changes as to how we may contact you electronically, to request paper copies of certain information from us, and to withdraw your prior consent to receive notices and disclosures electronically as follows:

To contact us by email send messages to: alison.joffrion@hhsc.state.tx.us

To advise DSHS Contract Management Section of your new email address

To let us know of a change in your email address where we should send notices and disclosures electronically to you, you must send an email message to us at alison.joffrion@hhsc.state.tx.us and in the body of such request you must state: your previous email address, your new email address. We do not require any other information from you to change your email address.

If you created a DocuSign account, you may update it with your new email address through your account preferences.

To request paper copies from DSHS Contract Management Section

To request delivery from us of paper copies of the notices and disclosures previously provided by us to you electronically, you must send us an email to alison.joffrion@hhsc.state.tx.us and in the body of such request you must state your email address, full name, mailing address, and telephone number. We will bill you for any fees at that time, if any.

To withdraw your consent with DSHS Contract Management Section

To inform us that you no longer wish to receive future notices and disclosures in electronic format you may:

- i. decline to sign a document from within your signing session, and on the subsequent page, select the check-box indicating you wish to withdraw your consent, or you may;
- ii. send us an email to alison.joffrion@hhsc.state.tx.us and in the body of such request you must state your email, full name, mailing address, and telephone number. We do not need any other information from you to withdraw consent.. The consequences of your withdrawing consent for online documents will be that transactions may take a longer time to process..

Required hardware and software

The minimum system requirements for using the DocuSign system may change over time. The current system requirements are found here: <https://support.docusign.com/guides/signer-guide-signing-system-requirements>.

Acknowledging your access and consent to receive and sign documents electronically

To confirm to us that you can access this information electronically, which will be similar to other electronic notices and disclosures that we will provide to you, please confirm that you have read this ERSD, and (i) that you are able to print on paper or electronically save this ERSD for your future reference and access; or (ii) that you are able to email this ERSD to an email address where you will be able to print on paper or save it for your future reference and access. Further, if you consent to receiving notices and disclosures exclusively in electronic format as described herein, then select the check-box next to 'I agree to use electronic records and signatures' before clicking 'CONTINUE' within the DocuSign system.

By selecting the check-box next to 'I agree to use electronic records and signatures', you confirm that:

- You can access and read this Electronic Record and Signature Disclosure; and
- You can print on paper this Electronic Record and Signature Disclosure, or save or send this Electronic Record and Disclosure to a location where you can print it, for future reference and access; and
- Until or unless you notify DSHS Contract Management Section as described above, you consent to receive exclusively through electronic means all notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you by DSHS Contract Management Section during the course of your relationship with DSHS Contract Management Section.

CITY OF LUBBOCK

ATTEST:

By: _____
REBECCA GARZA, City Secretary

APPROVED AS TO CONTENT:

By:  _____
KATHERINE WELLS, Director of Public Health

APPROVED AS TO FORM:

By:  _____
RYAN BROOKE, Assistant City Attorney

Information

Agenda Item

Resolution - Public Health Services: Consider a resolution authorizing the Mayor to execute Amendment No. 2 to the Department of State Health Services (DSHS) Contract No. HHS000812700012, and all related documents, by and between the City of Lubbock, and the State of Texas acting by and through DSHS, to provide funding for COVID-19 activities.

Item Summary

The additional funding from Amendment No. 2 from the Texas Department of State Health Services will support ongoing COVID-19 activities of the City of Lubbock Health Department. The funding will be used to support the salary of existing staff, enhance laboratory, surveillance, informatics and other workforce capacity, strengthen and increase local laboratory testing capacity for COVID-19, and make improvements to the surveillance data system.

Amendment No. 2 will be extended through July 31, 2024.

Fiscal Impact

The total for Amendment No. 2 will not exceed \$384,543.

Staff/Board Recommending

Bill Howerton, Deputy City Manager
Katherine Wells, Director of Public Health

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, on behalf of the City of Lubbock, Amendment No. 2 to the Department of State Health Services (DSHS) Contract No. HHS000812700012, to provide funding for COVID-19 activities, by and between the City of Lubbock and the State of Texas acting by and through DSHS, 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.

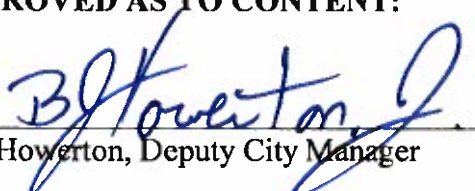
Passed by the City Council on _____.

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.DSHS Contract No. HHS000812700012 Amendment No.2
4.11.22

**DEPARTMENT OF STATE HEALTH SERVICES
CONTRACT NO. HHS000812700012
AMENDMENT NO. 2**

The **DEPARTMENT OF STATE HEALTH SERVICES** ("SYSTEM AGENCY" or "**DSHS**") and **CITY OF LUBBOCK** ("**Grantee**"), who are collectively referred to herein as the "Parties," to that certain grant contract for COVID-19 activities effective August 17, 2020, and denominated DSHS Contract No. HHS000812700012 ("**Contract**"), as amended, now desire to further amend the Contract.

WHEREAS, the Parties desire to extend the term of the Contract;

WHEREAS, the Parties desire to revise the Statement of Work; and

WHEREAS, the Parties desire to revise the Budget.

NOW, THEREFORE, the Parties hereby amend and modify the Contract as follows:

1. **SECTION III** of the Contract, **DURATION**, is hereby amended to reflect a revised termination date of July 31, 2024.
2. **SECTION IV** of the Contract, **BUDGET**, is hereby deleted in its entirety and replaced with the following language:

The total amount of this Contract will not exceed **\$348,543.00** for COVID-19 response activities through July 31, 2024. Grantee is not required to provide matching funds.

All expenditures under the Contract will be in accordance with **ATTACHMENT B-2, REVISED BUDGET**.

3. **ATTACHMENT A-2** of the Contract, **SUPPLEMENTAL STATEMENT OF WORK**, is hereby deleted in its entirety and replaced with **ATTACHMENT A-3, REVISED SUPPLEMENTAL STATEMENT OF WORK**.
4. **ATTACHMENT B-1** of the Contract, **REVISED BUDGET**, is hereby deleted in its entirety and replaced with **ATTACHMENT B-2, REVISED BUDGET**.
5. This Amendment No. 2 shall be effective as of the date last signed below.
6. Except as amended and modified by this Amendment No. 2, all terms and conditions of the Contract, as amended, shall remain in full force and effect.
7. Any further revisions to the Contract shall be by written agreement of the Parties.

SIGNATURE PAGE FOLLOWS

**SIGNATURE PAGE FOR AMENDMENT NO. 2
DSHS CONTRACT NO. HHS000812700012**

SYSTEM AGENCY

GRANTEE

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date of Execution: _____

Date of Execution: _____

**THE FOLLOWING ATTACHMENTS ARE ATTACHED AND INCORPORATED AS PART OF THE
CONTRACT:**

ATTACHMENT A-3 - REVISED SUPPLEMENTAL STATEMENT OF WORK

ATTACHMENT B-2 - REVISED BUDGET

**ATTACHMENT A-3
REVISED SUPPLEMENTAL STATEMENT OF WORK**

I. GRANTEE RESPONSIBILITIES

Grantee will perform activities as submitted in their DSHS approved budgets for this specific funding Contract period. All activities must be listed below to be approved for this funding and any additional activities not listed in the approved budget must be submitted for DSHS consideration and approval. The activities for this Contract funding period are as follows:

A. Enhance Laboratory, Surveillance, Informatics and other Workforce Capacity, including:

1. Train and hire staff to improve laboratory workforce ability to address issues around laboratory safety, quality management, inventory management, specimen management, diagnostic and surveillance testing and reporting results.
2. Build expertise for healthcare and community outbreak response and infection prevention and control (IPC) among local health departments.
3. Train and hire staff to improve the capacities of the epidemiology and informatics workforce to effectively conduct surveillance and response of COVID-19 (including case investigation and public health follow-up activities) and other emerging infections and conditions of public health significance. This should include staff who can address unique cultural needs of those at higher risk for COVID-19. Grantee may not incur COVID-19 contact tracing or contact tracing call center expenditures after 08/31/2021.
4. Build expertise to support management of the COVID-19-related activities within the jurisdiction and integrate into the broader Epidemiology and Laboratory Capacity (ELC) portfolio of activities (e.g., additional leadership, program and project managers, budget staff, etc.).
5. Increase capacity for timely data management, analysis, and reporting for COVID-19 and other emerging coronavirus and other infections and conditions of public health significance.

B. Strengthen Laboratory Testing

1. Establish or expand capacity to quickly, accurately and safely test for SARS-CoV-2/COVID-19 and build infectious disease preparedness for future coronavirus and other events involving other pathogens with potential for broad community spread.
 - a. Develop systems to improve speed and efficiency of specimen submission to clinical and reference laboratories.
 - b. Strengthen ability to rapidly respond to testing (e.g., nucleic acid amplification test [NAAT], antigen, etc.) as necessary to ensure that optimal utilization of existing and new testing platforms can be supported to help meet increases in

testing demand in a timely manner. Laboratory Response Networks (LRNs) and Local Health Departments (LHDs) with laboratories are strongly encouraged to diversify their testing platforms to enable them to pivot depending on reagent and supply availabilities.

- c. Perform serology testing with an FDA Emergency Use Authorization (EUA) authorized serological assay as appropriate to respond to emerging pandemics in order to conduct surveillance for past infection and monitor community exposure.
 - d. Build local capacity for testing of COVID-19/SARS-CoV-2 including within high-risk settings or in vulnerable populations that reside in their communities.
 - e. Apply laboratory safety methods to ensure worker safety when managing and testing samples that may contain SARS-CoV-2/COVID-19.
 - f. Laboratories and LRNs are encouraged to implement new technologies to meet local needs.
 - g. Augment or add specificity to existing laboratory response plans for future coronavirus and other outbreak responses caused by an infectious disease. Provider must be able to establish a plan to maintain the activity when the funds are no longer available. This is an optional activity.
2. Enhance laboratory testing capacity for SARS-CoV-2/COVID-19 by ensuring public/private laboratory testing providers have access to biosafety resources for SARS-CoV-2 specimen collection and/or testing.

C. Advance Electronic Data Exchange at Public Health Labs

1. Enhance and expand laboratory information infrastructure, to improve jurisdictional visibility on laboratory data (tests performed) from all testing sites and enable faster and more complete data exchange and reporting with DSHS.
 - a. Employ a well-functioning Laboratory Information Management System (LIMS) to support efficient data flows within the PHL and its partners. This includes expanding existing capacity of the current LIMS to improve data exchange and increase data flows through LIMS maintenance, new configurations/modules, and enhancements. Implement new/replacement LIMS where needed.

Note: If implementing new or replacement systems, develop an implementation plan, including appropriate milestones and timeline to completion. Implementation plans will be reviewed and approved for consistency with the activities set forth by DSHS prior to start of implementation. Completion of the implementation plan is DSHS verifying that the submitted electronic laboratory reporting (ELR) feeds have been successfully processed in National Electronic Disease Surveillance System (NEDSS).

- b. Ensure ability to administer LIMS. Ensure the ability to configure all tests that are in LIMS, including new tests, EUAs, etc., in a timely manner. Ensure expanding needs for administration and management of LIMS are covered through dedicated staff.
- c. Interface diagnostic equipment to directly report laboratory results into LIMS.

D. Improve Surveillance and Reporting of Electronic Health Data

1. Establish complete, up-to-date, timely reporting of morbidity and mortality to DSHS due to COVID-19 and other coronavirus and other emerging infections which impact conditions of public health significance, with required associated data fields in a machine-readable format, by:
 - a. Establishing or enhancing community-based surveillance, including surveillance of vulnerable populations, individuals without severe illness, those with recent travel to high-risk locations, or who are contacts to known cases.
 - b. Monitoring changes to daily incidence rates of COVID-19 and other conditions of public health significance at the county or Zip code level to inform community mitigation strategies.
2. Establish additional and ongoing surveillance methods (e.g., sentinel surveillance) for COVID-19 and other conditions of public health significance.
3. At the health department, enhance capacity to work with testing facilities to onboard and improve ELR, including to receive data from new or non-traditional testing settings. Use alternative data flows (e.g., reporting portals) and file formats (e.g., CSV or XLS) to help automate where appropriate. In addition to other reportable results, this should include all COVID-19/SARS-CoV-2-related testing data (i.e., tests to detect SARS-CoV-2 including serology testing).
4. Improve understanding of capacity, resources, and patient impact at healthcare facilities through electronic reporting.
 - a. Require expansion of reporting facility capacity, resources, and patient impact information, such as patients admitted and hospitalized, in an electronic, machine-readable, as well as human-readable, visual and tabular manner, to achieve 100% coverage in jurisdiction and include daily data from all acute care, long-term care, and ambulatory care settings. Use these data to monitor facilities with confirmed cases of COVID-19/SARS-CoV-2 infection or with COVID-like illness among staff or residents and facilities at high risk of acquiring COVID-19/SARS-CoV-2 cases and COVID-like illness among staff or residents.
 - b. Increase Admit, Discharge, Transfer (ADT) messaging and use to achieve comprehensive surveillance of emergency room visits, hospital admissions, facility and department transfers, and discharges to provide an early warning signal, to monitor the impact on hospitals, and to understand the growth of serious cases requiring admission.
5. Establish or improve systems to ensure complete, accurate and immediate (within 24 hours) data transmission that allows for automated transmission of data to DSHS in a machine-readable format.

Note: Use of an existing DSHS system is preferred. If implementing new or replacement systems, develop an implementation plan, including the process for automatic transmission of data to DSHS in a machine-readable

format, appropriate milestones and timeline to completion. Implementation plans will be reviewed and approved for consistency with the activities set forth by DSHS prior to start of implementation.

- a. Submit all case reports in an immediate way to DSHS for COVID-19/SARS-CoV-2 and other conditions of public health significance with associated required data fields in a machine-readable format.
- b. Report requested COVID-19/SARS-CoV-2-related data, including line level testing data (negatives, positives, indeterminates, serology, antigen, nucleic acid) daily by county or Zip code to DSHS.
- c. Establish these systems in such a manner that they may be used on an ongoing basis for surveillance of, and reporting on, routine and other threats to the public health and conditions of public health significance.

E. Use Laboratory Data to Enhance Investigation, Response and Prevention

1. Use laboratory data to initiate and conduct case investigation and public health follow-up activities and implement containment measures.
 - a. Conduct necessary case investigation and public health follow-up activities including contact elicitation/identification, contact notification, contact testing, and follow-up. Activities could include traditional case investigation and public health follow-up activities and/or proximity/location-based methods, as well as methods adapted for healthcare facilities, employers, elementary and secondary schools, childcare facilities, institutions of higher education or in other settings. Data must be entered into the DSHS data system in accordance with DSHS published guidance. Grantee may not incur COVID-19 contact tracing call center expenditures beyond 8/31/2021.
 - b. Utilize tools (e.g., geographic information systems and methods) that assist in the rapid mapping and tracking of disease cases for timely and effective epidemic monitoring and response, incorporating laboratory testing results and other data sources.
 - c. Assist in identifying facilities that are not submitting data through ELR. Provide these facilities with information on the ELR onboarding process and the appropriate contact information of DSHS team who can onboard the facility to have their data be reported electronically and no longer sent by fax. Also provide the names of these facilities to the DSHS team.
2. Identify cases and exposure to COVID-19 in high-risk settings or within populations at increased risk of severe illness or death to target mitigation strategies and referral for therapies (for example, monoclonal antibodies) to prevent hospitalization.
 - a. Assess and monitor infections in healthcare workers across the healthcare spectrum.
 - b. Monitor cases and exposure to COVID-19 to identify need for targeted mitigation strategies to isolate and prevent further spread within high-risk healthcare facilities (e.g., hospitals, dialysis clinics, cancer clinics, nursing homes, other long-term care facilities, etc.).
 - c. Monitor cases and exposure to COVID-19 to identify need for targeted mitigation strategies to isolate and prevent further spread within high-risk

occupational settings (e.g., meat processing facilities) and congregate living settings (e.g., correctional facilities, youth homes, shelters).

- d. Work with DSHS to build capacity for reporting, rapid containment and prevention of COVID-19/SARS-CoV-2 within high-risk settings or in vulnerable populations that reside in their communities.
- e. Jurisdictions should ensure systems are in place to link test results to relevant public health strategies, including prevention and treatment.

Note: Utilization of an existing DSHS system is preferred. If implementing new or replacement systems, develop an implementation plan, including the process for automatic transmission of data to DSHS in a machine-readable format, appropriate milestones and timeline to completion. Implementation plans will be reviewed and approved for consistency with the activities set forth by DSHS prior to start of implementation.

- 3. Implement prevention strategies in high-risk settings or within vulnerable populations (including tribal nations as appropriate), including proactive monitoring for asymptomatic case detection.

Note: These additional resources are intended to be directed toward testing, case investigation and public health follow-up activities, surveillance, containment, and mitigation, including support for workforce, epidemiology, use by employers, elementary and secondary schools, childcare facilities, institutions of higher education, long-term care facilities, or in other settings, scale-up of testing by public health, academic, commercial, and hospital laboratories, and community-based testing sites, mobile testing units, healthcare facilities, and other entities engaged in COVID-19 testing, and other related activities related to COVID-19 testing, case investigation and public health follow-up activities, surveillance, containment, and mitigation which may include interstate compacts or other mutual aid agreements for such purposes.

- a. Build capacity for infection prevention and control in long-term care facilities (LTCFs) (e.g., at least one Infection Preventionist [IP] for every facility) and outpatient settings.
 - i. Build capacity for LTCFs to safely care for infected and exposed residents of LTCFs and other congregate settings.
 - ii. Assist with enrollment of all LTCFs into CDC's National Healthcare Safety Network NHSN at <https://www.cdc.gov/nhsn/ltc/enroll.html>.
- b. Build capacity for infection prevention and control in elementary and secondary schools, childcare facilities, and/or institutions of higher education.
- c. Increase Infection Prevention and Control (IPC) assessment capacity on site using tele-ICAR.
- d. Perform preparedness assessment to ensure interventions are in place to protect high-risk populations.
- e. Coordinate as appropriate with federally funded entities responsible for providing health services to higher-risk populations (e.g., tribal nations and federally qualified health centers).

- F.** Submit a quarterly report on the report template to be provided by DSHS. Quarterly reports are due on or before the 15th of the month following the end of the quarter. Each report must contain a summary of activities that occurred during the preceding quarter for each activity listed above in Section I, Subsections A through E. Submit quarterly reports by electronic mail to COVID.Contracts@dshs.texas.gov. The email "Subject Line" and the name of the attached file for all reports should be clearly identified with the Grantee's Name, Contract Number, IDCU/COVID and the quarter the report covers.
- G.** Not use funds for research, clinical care, fundraising activities, construction or major renovations, to supplant existing state or federal funds for activities, or funding an award to another party or provider who is ineligible. Other than normal and recognized executive-legislative relationships, no funds may be used for:
1. Publicity or propaganda purposes, for the preparation, distribution, or use of any material designed to support or defeat the enactment of legislation before any legislative body;
 2. The salary or expenses of any grant or contract recipient, or agent acting for such recipient, related to any activity designed to influence the enactment of legislation, appropriations, regulation, administrative act or Executive order proposed or pending before any legislative body.
- H.** Controlled Assets include firearms, regardless of the acquisition cost, and the following assets with an acquisition cost of \$500 or more, but less than \$5,000: desktop and laptop computers (including notebooks, tablets and similar devices), non-portable printers and copiers, emergency management equipment, communication devices and systems, medical and laboratory equipment, and media equipment. Controlled Assets are considered Supplies.
- I.** Grantee shall maintain an inventory of Equipment, supplies defined as Controlled Assets, and real property and submit an annual cumulative report of the equipment and other property on the DSHS Contractor's Property Inventory Report located at <https://www.dshs.state.tx.us/grants/forms.shtm> to CMSInvoices@dshs.texas.gov and COVID.Contracts@dshs.texas.gov not later than October 15 of each year. If Grantee did not purchase Equipment or other property, this report is still required to be submitted.
- J.** DSHS funds must not be used to purchase buildings or real property without prior written approval from DSHS. Any costs related to the initial acquisition of the buildings or real property are not allowable without written pre-approval.
- K.** At the expiration or termination of this Contact for any reason, title to any remaining equipment and supplies purchased with funds under this Contract reverts to DSHS. Title may be transferred to any other party designated by DSHS. DSHS may, at its option and to the extent allowed by law, transfer the reversionary interest to such property to Grantee.

**ATTACHMENT B-2
REVISED BUDGET**

Categorical Budget	CARES Funding	Expansion Funding	
Budget Period	August 17, 2020 to July 31, 2024	August 31, 2021 to July 31, 2024	Contract Total
PERSONNEL	\$58,126.00	\$31,250.00	\$89,376.00
FRINGE BENEFITS	\$26,157.00	\$14,063.00	\$40,220.00
TRAVEL	\$0.00	\$0.00	\$0.00
EQUIPMENT	\$0.00	\$0.00	\$0.00
SUPPLIES	\$0.00	\$65,000.00	\$65,000.00
CONTRACTUAL	\$70,625.00	\$83,322.00	\$153,947.00
OTHER	\$0.00	\$0.00	\$0.00
TOTAL DIRECT CHARGES	\$154,908.00	\$193,635.00	\$348,543.00
INDIRECT CHARGES	\$0.00	\$0.00	\$0.00
TOTAL	\$154,908.00	\$193,635.00	\$348,543.00

Certificate Of Completion

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Subject: Please DocuSign: HHS000812700012, City of Lubbock , COVID Amendment 2	
Source Envelope:	
Document Pages: 9	Signatures: 0
Certificate Pages: 5	Initials: 0
AutoNav: Enabled	Envelope Originator:
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	#100
	Reston, VA 20190
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Record Tracking

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Signer Events

Signature

Timestamp

Daniel Pope	Sent: 4/1/2022 3:59:33 PM
dpope@mail.ci.lubbock.tx.us	Viewed: 4/1/2022 4:54:13 PM
Mayor	

Security Level: Email, Account Authentication
(None)

Electronic Record and Signature Disclosure:

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Susana Garcia

Susana.Garcia@dshs.texas.gov

Security Level: Email, Account Authentication
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Electronic Record and Signature Disclosure:

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Patty Melchior

Patty.Melchior@dshs.texas.gov

Security Level: Email, Account Authentication
(None)

Electronic Record and Signature Disclosure:

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Imelda Garcia

ImeldaM.Garcia@dshs.texas.gov

Security Level: Email, Account Authentication
(None)

Electronic Record and Signature Disclosure:

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In Person Signer Events

Signature

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Editor Delivery Events

Status

Timestamp

Agent Delivery Events

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Timestamp

Intermediary Delivery Events

Status

Timestamp

Certified Delivery Events

Status

Timestamp

Carbon Copy Events	Status	Timestamp
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Katherine Wells kwells@mylubbock.us Director of Public Health City of Lubbock Security Level: Email, Account Authentication (None) Electronic Record and Signature Disclosure: Not Offered via DocuSign CMS Internal Routing Mailbox CMS.InternalRouting@dshs.texas.gov Security Level: Email, Account Authentication (None) Electronic Record and Signature Disclosure: Not Offered via DocuSign	COPIED	Sent: 4/1/2022 3:59:33 PM Viewed: 4/2/2022 10:00:50 AM
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Notary Events	Signature	Timestamp
Envelope Summary Events	Status	Timestamps
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Payment Events	Status	Timestamps
Electronic Record and Signature Disclosure		

ELECTRONIC RECORD AND SIGNATURE DISCLOSURE

From time to time, DSHS Contract Management Section (we, us or Company) may be required by law to provide to you certain written notices or disclosures. Described below are the terms and conditions for providing to you such notices and disclosures electronically through the DocuSign system. Please read the information below carefully and thoroughly, and if you can access this information electronically to your satisfaction and agree to this Electronic Record and Signature Disclosure (ERSD), please confirm your agreement by selecting the check-box next to 'I agree to use electronic records and signatures' before clicking 'CONTINUE' within the DocuSign system.

Getting paper copies

At any time, you may request from us a paper copy of any record provided or made available electronically to you by us. You will have the ability to download and print documents we send to you through the DocuSign system during and immediately after the signing session and, if you elect to create a DocuSign account, you may access the documents for a limited period of time (usually 30 days) after such documents are first sent to you. After such time, if you wish for us to send you paper copies of any such documents from our office to you, you will be charged a \$0.00 per-page fee. You may request delivery of such paper copies from us by following the procedure described below.

Withdrawing your consent

If you decide to receive notices and disclosures from us electronically, you may at any time change your mind and tell us that thereafter you want to receive required notices and disclosures only in paper format. How you must inform us of your decision to receive future notices and disclosure in paper format and withdraw your consent to receive notices and disclosures electronically is described below.

Consequences of changing your mind

If you elect to receive required notices and disclosures only in paper format, it will slow the speed at which we can complete certain steps in transactions with you and delivering services to you because we will need first to send the required notices or disclosures to you in paper format, and then wait until we receive back from you your acknowledgment of your receipt of such paper notices or disclosures. Further, you will no longer be able to use the DocuSign system to receive required notices and consents electronically from us or to sign electronically documents from us.

All notices and disclosures will be sent to you electronically

Unless you tell us otherwise in accordance with the procedures described herein, we will provide electronically to you through the DocuSign system all required notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you during the course of our relationship with you. To reduce the chance of you inadvertently not receiving any notice or disclosure, we prefer to provide all of the required notices and disclosures to you by the same method and to the same address that you have given us. Thus, you can receive all the disclosures and notices electronically or in paper format through the paper mail delivery system. If you do not agree with this process, please let us know as described below. Please also see the paragraph immediately above that describes the consequences of your electing not to receive delivery of the notices and disclosures electronically from us.

How to contact DSHS Contract Management Section:

You may contact us to let us know of your changes as to how we may contact you electronically, to request paper copies of certain information from us, and to withdraw your prior consent to receive notices and disclosures electronically as follows:

To contact us by email send messages to: alison.joffrion@hhsc.state.tx.us

To advise DSHS Contract Management Section of your new email address

To let us know of a change in your email address where we should send notices and disclosures electronically to you, you must send an email message to us at alison.joffrion@hhsc.state.tx.us and in the body of such request you must state: your previous email address, your new email address. We do not require any other information from you to change your email address.

If you created a DocuSign account, you may update it with your new email address through your account preferences.

To request paper copies from DSHS Contract Management Section

To request delivery from us of paper copies of the notices and disclosures previously provided by us to you electronically, you must send us an email to alison.joffrion@hhsc.state.tx.us and in the body of such request you must state your email address, full name, mailing address, and telephone number. We will bill you for any fees at that time, if any.

To withdraw your consent with DSHS Contract Management Section

To inform us that you no longer wish to receive future notices and disclosures in electronic format you may:

- i. decline to sign a document from within your signing session, and on the subsequent page, select the check-box indicating you wish to withdraw your consent, or you may;
- ii. send us an email to alison.joffrion@hhsc.state.tx.us and in the body of such request you must state your email, full name, mailing address, and telephone number. We do not need any other information from you to withdraw consent.. The consequences of your withdrawing consent for online documents will be that transactions may take a longer time to process..

Required hardware and software

The minimum system requirements for using the DocuSign system may change over time. The current system requirements are found here: <https://support.docusign.com/guides/signer-guide-signing-system-requirements>.

Acknowledging your access and consent to receive and sign documents electronically

To confirm to us that you can access this information electronically, which will be similar to other electronic notices and disclosures that we will provide to you, please confirm that you have read this ERSD, and (i) that you are able to print on paper or electronically save this ERSD for your future reference and access; or (ii) that you are able to email this ERSD to an email address where you will be able to print on paper or save it for your future reference and access. Further, if you consent to receiving notices and disclosures exclusively in electronic format as described herein, then select the check-box next to 'I agree to use electronic records and signatures' before clicking 'CONTINUE' within the DocuSign system.

By selecting the check-box next to 'I agree to use electronic records and signatures', you confirm that:

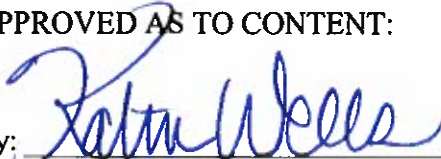
- You can access and read this Electronic Record and Signature Disclosure; and
- You can print on paper this Electronic Record and Signature Disclosure, or save or send this Electronic Record and Disclosure to a location where you can print it, for future reference and access; and
- Until or unless you notify DSHS Contract Management Section as described above, you consent to receive exclusively through electronic means all notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you by DSHS Contract Management Section during the course of your relationship with DSHS Contract Management Section.

CITY OF LUBBOCK

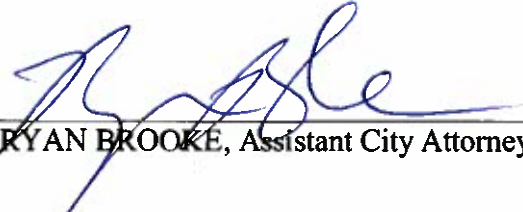
ATTEST:

By: _____
REBECCA GARZA, City Secretary

APPROVED AS TO CONTENT:

By:  _____
KATHERINE WELLS, Director of Public Health

APPROVED AS TO FORM:

By:  _____
RYAN BROOKE, Assistant City Attorney

Information

Agenda Item

Ordinance 2nd Reading - Community Development: Consider Ordinance No. 2022-O0075, amending Article 2.03 of the Code of Ordinances of the City of Lubbock, with regard to the Composition; Appointment and Terms of the Members of the Community Development and Services Board; providing a savings clause and providing for publication.

Item Summary

On April 26, 2022, the City Council approved the first reading of the ordinance.

Section 2.03.033 Composition; appointment and terms of members:

(a) The City Community Development and Services Board shall be composed of seven (7) members, each of whom shall be a resident citizen of the county. The members of the Board shall be appointed by the City Council and shall hold office for terms of three (3) years.

This ordinance reduces the number of members from nine (9) to seven (7), and no longer requires a tripartite board structure.

Fiscal Impact

None

Staff/Board Recommending

Bill Howerton, Deputy City Manager

Attachments

City Ordinance (r) - CDSB Composition 4 2022

ORDINANCE NO. _____

AN ORDINANCE AMENDING ARTICLE 2.03 OF THE CODE OF ORDINANCES OF THE CITY OF LUBBOCK, TEXAS, WITH REGARD TO THE COMPOSITION; APPOINTMENT, AND TERMS OF THE MEMBERS OF THE COMMUNITY DEVELOPMENT AND SERVICES BOARD; PROVIDING A SAVINGS CLAUSE; AND PROVIDING FOR PUBLICATION.

WHEREAS, the City Council of the City of Lubbock, Texas deems it in the best interest of the health, safety, and welfare of the citizens of Lubbock to make the following amendments to Article 2.03 of the Code of Ordinances with regard to the composition; appointment, and terms of the members of the community development and services board; NOW THEREFORE:

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

SECTION 1. THAT Section 2.03.033 of the Code of Ordinances of the City of Lubbock is hereby amended to read as follows:

Sec. 2.03.033 Composition; appointment and terms of members

(a) The city community development and services board shall be composed of seven (7) members, each of whom shall be a resident citizen of the city. The members of the board shall be appointed by the city council and shall hold office for terms of three (3) years.

SECTION 2. THAT should any paragraph, section, clause, phrase or word of this Ordinance be declared unconstitutional or invalid for any reason, the remainder of the Ordinance shall not be affected thereby.

SECTION 3. THAT the City Secretary of the City of Lubbock, Texas, is hereby authorized and directed to cause publication of the descriptive caption of this Ordinance as an alternative means of publication provided by law.

AND IT IS SO ORDERED.

Passed by the City Council on first reading this _____ day of _____, 2022.

Passed by the City Council on second reading this _____ day of _____, 2022.

DANIEL M. POPE, MAYOR

ATTEST:

Rebecca Garza, City Secretary

APPROVED AS TO CONTENT:


Karen Murfee, Community Development Director

APPROVED AS TO FORM:


Amy L. Sims, Deputy City Attorney

CDSB Board Composition Amend ORD

Information

Agenda Item

Resolution - Community Development: Consider a resolution authorizing the Mayor to execute Community Development Funding Contract 16577, and all related documents, with Catholic Charities, Diocese of Lubbock, to provide Education assistance to qualified low-to-moderate income persons and families through the Community Development Block Grant (CDBG) administered by the U.S. Department of Housing and Urban Development (HUD).

Item Summary

Grantee: Catholic Charities, Diocese of Lubbock

Funding Source: Community Development Block Grant (CDBG) funds from HUD

Use of Funds: Provide Education Self-sufficient assistance for low-income citizens of the City of Lubbock

Allocation: Up to \$200,000

Terms: January 1, 2022 – September 30, 2022

Fiscal Impact

There is no fiscal impact to the General Fund. The maximum amount allocated to Catholic Charities for the CDBG Education/Self-Sufficient Assistance program is \$200,000.

Staff/Board Recommending

Karen Murfee, Community Development Director

Attachments

Resolution

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, Community Development Block Grant Funding Agreement 16577, and all related documents, between the City of Lubbock and Catholic Charities, Diocese of Lubbock, for the funding of the Parent Empowerment Program. 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

**COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) FUNDING AGREEMENT
BETWEEN
THE CITY OF LUBBOCK
AND
CATHOLIC CHARITIES, DIOCESE OF LUBBOCK**

This Community Development Block Grant (CDBG) Program Funding Agreement (the "Agreement"), Contract No. **16577**, is made by and between the City of Lubbock, a State of Texas home rule municipal corporation (the "City") and **Catholic Charities, Diocese of Lubbock**, a State of Texas non profit enter (the "Grantee"), (each a "Party," and collectively the "Parties") acting by and through the Parties' representative officers and officials, and is hereby entered into by the Parties on this ____ day of _____, 2022 (the "Effective Date").

RECITALS

WHEREAS, the City is obligated to do and perform certain services in its undertaking of a Community Development Block Grant (CDBG) Program pursuant to the Housing and Development Act of 1975, as amended; and the Grantee operates a non-profit center offering services to individuals and families throughout Lubbock, Texas; and

WHEREAS, the Grantee proposes to use the funds in order to provide individuals and families education and self-sufficiency assistance (the "Program"); and

WHEREAS, the Grantee's services benefit residents in Lubbock, Texas and constitute a valuable public service, and the City Council of the City (the "City Council") has declared the services provided by the City to be a public purpose; and

WHEREAS, the accomplishment of the above public purpose is the predominate purpose of this Agreement; and

WHEREAS, the continuing supervision by the City with statutory and contractual requirements provide sufficient assurance that the public purpose of this Agreement will be accomplished; and

WHEREAS, the City Council has found that the Grantee has the special expertise, knowledge, and experience necessary for the operation of the Program; and, that the City will receive adequate consideration in the form of substantial public benefit; and **NOW, THEREFORE:**

THE PARTIES, FOR GOOD AND VALUABLE CONSIDERATION, AGREE AS FOLLOWS:

AGREEMENT

Article 1. SCOPE OF SERVICE

A. The City's Responsibilities

1. The City agrees to provide the Grantee with funding from the U.S. Department of Housing and Urban Development (HUD) pursuant to the Community Development Block Grant (CDBG) not to exceed the amount as stated in the attached EXHIBIT A, to be distributed and used according to the provisions of this Agreement.
2. The Funding will be limited to the City's performance of the Program, including the satisfaction of expenses incurred by the City in its performance of the Program.
3. The City's awarding of the Funding under this Agreement is contingent upon the City's receipt of adequate funds to meet the City's liabilities under this Agreement. If adequate funds are not made available to the City so that it cannot award the Funding, then the City shall notify the City in writing within a reasonable time after such fact is determined, the City shall terminate this Agreement, and the City will not be directly or indirectly liable for failure to award the Funding to the City under this Agreement.
4. The City shall not be liable to the City for any cost incurred by the City which has been paid to the City, which is subject to be paid to the City, which has been reimbursed to the City, or which is subject to reimbursement to the City by any source other than the City or the City.
5. The City shall not be liable for any cost incurred by the City which is not an allowable cost as set forth in this Agreement or under 24 CFR §570.207.
6. The City shall not be liable to the City for any cost incurred by the City or for any performance rendered by the City which is not strictly in accordance with the terms of this Agreement.
7. The City shall not be liable to the City for any cost incurred by the City in the performance of this Agreement which has not been billed to the City by the City within sixty (60) days following the termination of this Agreement.
8. The City shall not be liable for any cost incurred or performance rendered by the City before the commencement or after termination of this Agreement.
9. The City may, at its sole discretion and convenience, review any work specifications prior to the beginning of a procurement process under this Agreement, and the City may inspect any construction for compliance with work specifications prior to the release of the Funding.

B. The Grantee's Responsibilities

1. The Grantee will be responsible for administering the Program in a manner satisfactory to the City and in compliance with this Agreement and with any and all statutory standards related to the Funding.
2. The Grantee certifies that all of its activities carried out for the Program through the Funding will satisfy 24 CFR Part 570, including, but not limited to: CDBG's eligible activities under the applicable uniform administrative requirements described in 2 CFR Part 200 "Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards". The Grantee agrees to repay any and all of the Funding that does not satisfy the regulations required under this provision.
3. The Grantee shall perform all activities related to the Program in accordance with its budget; all applicable laws and regulations; and, with the assurance, certifications, and all other terms, provisions, and requirements set forth in this Agreement.
4. Upon the City's request while this Agreement is in effect, the Grantee shall submit to the City any and all reports, documents, or information on the Grantee's performance of the Funding or the Program contemplated under this Agreement.
5. In addition to the limitations on liability otherwise specified in this Agreement, it is expressly understood and agreed to by the Parties that if the Grantee fails to submit to the City in a timely and satisfactory manner any reports, documents, or information requested by the City under this Agreement, the City may, at its sole discretion, withhold all, or any part of, the Funding. If the City withholds all, or any part of, the Funding, it shall notify the Grantee in writing of its decision and the reasons therefor. Any Funding withheld pursuant to this paragraph may be held by the City until such time as the obligations for which the Funding is being withheld is fulfilled by the Grantee to the satisfaction of the City.
6. The Grantee shall refund to the City any Funding that has been paid to the Grantee by the City for which the City determines is a result of overpayment of the Funding to the Grantee, or for which the City determines any of the Funding has not been spent by the Grantee strictly in accordance with the terms of this Agreement. Such refund shall be made by the Grantee to the City within thirty (30) working days after such refund is requested by the City.
7. The Grantee shall submit to the City a request for an environmental assessment to be prepared and approved on individual construction sites prior to the beginning of any project if applicable.
8. The Grantee shall submit to the City a request for a review of all work specifications prior to the beginning of the procurement process.

9. The Grantee will certify eligibility by completion of Self Certification form to verify low – mod clientele participates in the program.
10. The Grantee agrees that any interests or assets obtained with the Funding shall revert back to the City in the event that the Grantee dissolves, files for bankruptcy, or goes out of business for any reason.

C. Grantee's Match

Waived

D. National Objective

The Grantee agrees that all activities funded with CDBG Funds and carried out under this Agreement will meet the following CDBG program national objectives as defined in 24 CFR 570.208(a):

- 1) Benefits low- and moderate-income persons

E. Performance Monitoring

1. *General Monitoring.* The City will monitor the Grantee's performance under this Agreement in order to ensure that the Grantee complies with the terms of this Agreement and all other applicable laws and regulations related to this Agreement and the Funding provided through this Agreement (the "Monitoring"). The Monitoring will be based on a risk analysis and a monitoring plan developed at the beginning of the fiscal year, and will take place on a monthly and quarterly basis as described below. Substandard performance as determined by the City will constitute non-compliance with this Agreement. If action to correct such substandard performance is not taken by the Grantee within a reasonable period of time after being notified by the Grantee in writing, the City may suspend or terminate this Agreement.
2. *On-site Monitoring.* The number of on-site Monitoring visits will be determined by the City. The City will send a Monitoring notification letter sent to the Grantee at least fifteen (15) days before a Monitoring visit. The City must provide a written response to the Monitoring report within thirty (30) days that describes how the City will resolve the issues raised by the City in the Monitoring report. The Grantee must confirm receipt of the Monitoring report within thirty (30) days if no actionable issues were identified in the Monitoring report. The City reserves the right to conduct a spot check of Grantee's facility where program takes place, at any given time without notice.

Article 2. TIME OF PERFORMANCE

Services of the Grantee shall start on the first (1st) day of January, 2022, and end on the thirtieth (30th) day of September, 2022 (the "Term"), with the understanding that the Grantee will expend 100 percent of the funds to assist low-income eligible persons during the contract term. The Term and the provisions of this Agreement shall be extended to cover any additional time period during which the City remains in control of the CDBG Funding period or other CDBG assets, including Program income.

Article 3. BUDGET

The Funding made available to the Grantee under this Agreement shall be specifically drawn from the sources listed in this section (the “Budget”). The Funding made available to the City under this Agreement shall be drawn from several fiscal year allocations by HUD to the City. The Funding made available to the Grantee under this Agreement shall be directly linked to the specific funding amount listed in the attached EXHIBIT A.

Article 4. PAYMENT

A. The Payment

The Funding shall be disbursed on a monthly basis based on the Grantee’s submission to the City of a written request for reimbursement, with such request being in a form acceptable to the City (the “Payment”). Expenses eligible for Payment to the Grantee by the City shall be those expenses that have been incurred or paid for by the City prior to the City’s submission to the City of a request for Payment. In its request to the City for the Payment, the Grantee shall submit detailed documentation to the City that clearly shows the source of the expenses incurred or paid for by the Grantee that are the subject of the Grantee’s request for Payment. Such source documentation includes, but is not limited to, time sheets, paycheck stubs, receipts, invoices, billing statements, or other verification in support of all expenditures incurred by the Grantee in its performance of the Program.

B. Not To Exceed

The total amount of the Funding to be paid by the City under this Agreement shall not exceed the amount as stated in the attached EXHIBIT A, for the Project. Any drawdowns on the Payment and any expenses for the general administration of the Program shall be made against the line item budgets specified in this Agreement and in accordance with the Grantee’s performance of Program.

C. 2 CFR Part 200

Every Payment may be contingent upon certification of the Grantee’s financial management system in accordance with the standards specified in 2 CFR Part 200.

Article 5. SPECIAL CONDITIONS

None.

Article 6. GENERAL CONDITIONS

A. General Compliance

1. The Grantee agrees to comply with the requirements of 24 CFR Part 570 (the HUD regulations concerning Community Development Block Grants (CDBG)), including subpart K of these regulations; except that: (1) the Grantee does not assume the City’s environmental responsibilities described in 24 CFR 570.604; and, (2) the Grantee does not assume the City’s responsibility for initiating the review process under the provisions of 24 CFR Part 52.
2. The Grantee also agrees to comply with all other applicable Federal, State and local laws, regulations, and policies governing the CDBG Funding provided under this Agreement.

The Grantee further agrees to utilize the CDBG Funding under this agreement to supplement, rather than supplant, funds otherwise available.

3. The Grantee shall comply with all applicable Federal laws, regulations, and requirements and all provisions of this Agreement, which include compliance with the provisions of the HCD Act and all rules, regulations, guidelines, and circulars promulgated by the various Federal departments, agencies, administrations, and commissions relating to the CDBG Program. The applicable laws and regulations include, but are not limited to: 24 CFR Part 570; 2 CFR Part 200; OMB Circular A-128, "Audits of State and Local Governments;" The Davis-Bacon Fair Labor Standards Act; The Contract Work Hours and Safety Standards Act of 1962; Copeland "Anti-Kickback" act of 1934; Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA); Title VI of the Civil Rights Act of 1964, (Public Law 88-352 implemented in 24 CFR Part 1); Fair Housing Act, Title VIII of the Civil Rights Act of 1968 (Public Law 90-234 and Executive Order 11063 as amended by Executive Order 12259 (implemented in 24 CFR Part 107); Section 104(b) and 109 of the HCD Act of 1974; Section 3 of the Housing and Urban Development Act of 1968; Equal employment opportunity and minority business enterprise regulations established in 24 CFR Part 570.904; Non-discrimination in employment, established by Executive Order 11246 (as amended by Executive Orders 11375 and 12086); Section 504 of the Rehabilitation Act of 1973 Uniform Federal accessibility Standards; The Architectural Barriers Act of 1968; The Americans With Disabilities Act (ADA) of 1990; The Age Discrimination Act of 1975, as amended; National Environmental Policy of 1969 (42 USC 4321 et seq.), as amended; Lead Based paint regulations established in 24 CFR Parts 35, 570.608, and 24 CFR 982.401; Asbestos guidelines established in CPD Notice 90-44; HUD Environmental Criteria and Standards (24CFR Part 51); The Energy Policy and Conservation Act (Public Law 94-163) and 24 CFR Part 39; Historic Preservation Act of 1966, as amended, and related laws and Executive Orders; Executive Order 11988, floodplain management, 1977 (42 FR 26951 et seq.); and, Flood Disaster protection Act of 1973.

B. "Independent Contractor"

Nothing contained in this Agreement is intended, or shall be construed in any manner, to create or establish the relationship of employer and employee between the Parties. The Grantee shall at all times remain an "independent contractor" with respect to the services to be performed under this Agreement.

The City shall be exempt from payment of all Unemployment Compensation, FICA, retirement, life, medical insurance, and Workers' Compensation insurance as the Grantee is an independent contractor.

C. Indemnity and Release

1. **THE GRANTEE SHALL INDEMNIFY AND HOLD HARMLESS, TO THE FULLEST EXTENT PERMITTED BY LAW, THE CITY, AND THE CITY'S RESPECTIVE OFFICERS, EMPLOYEES, ELECTED OFFICIALS, AND AGENTS, FROM AND AGAINST ANY AND ALL LOSSES, DAMAGES, CLAIMS, OR LIABILITIES, OF ANY KIND OR NATURE, WHICH ARISE DIRECTLY OR INDIRECTLY, OR ARE RELATED, IN ANY WAY, MANNER, OR FORM, TO THE GRANTEE'S ACTIVITIES CONTEMPLATED HEREUNDER; PROVIDED THAT NOTHING CONTAINED HEREIN SHALL CONSTITUTE AN INDEMNITY ON THE PART OF THE GRANTEE FOR ANY LOSSES, CLAIMS, OR LIABILITY OF ANY KIND OR NATURE WHICH ARISE DIRECTLY OR INDIRECTLY OR ARE RELATED, IN ANY WAY, MANNER OR FORM, TO THE CITY'S ACTIVITIES CONTEMPLATED HEREUNDER.**

2. THE GRANTEE SHALL PAY TO THE CITY, THE CITY'S RESPECTIVE OFFICERS, EMPLOYEES, ELECTED OFFICIALS, AND OR AGENTS, AS APPLICABLE, ALL ATTORNEYS' FEES INCURRED BY ENFORCING THE GRANTEE'S INDEMNITY HEREIN.
3. THE GRANTEE, AND ITS RESPECTIVE OFFICERS, EMPLOYEES, ELECTED OFFICIALS, AND AGENTS SHALL NOT BE LIABLE, AND THE GRANTEE HEREBY RELEASES THE CITY, AND ITS RESPECTIVE OFFICERS, EMPLOYEES, ELECTED OFFICIALS, AND AGENTS, FOR, FROM, AND AGAINST ANY LOSSES, DAMAGES, CLAIMS, OR LIABILITIES TO THE GRANTEE ARISING DIRECTLY OR INDIRECTLY, OR RELATED IN ANY WAY, MANNER OR FORM, TO THE GRANTEE'S ACTIVITIES CONTEMPLATED HEREUNDER. .
4. THE INDEMNITY AND RELEASE PROVIDED HEREIN SHALL SURVIVE THIS AGREEMENT.

D. Right to Exercise

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 Agreement, the former shall control.

E. Workers' Compensation

If applicable, the Grantee shall provide Workers' Compensation insurance coverage for all of its employees involved in the performance of this Agreement.

F. Insurance and Bonding

The Grantee shall carry sufficient insurance coverage to protect Agreement assets from loss due to theft, fraud, and/or or undue physical damage, and as a minimum, shall purchase a blanket fidelity bond covering all employees in an amount equal to cash advances from the City.

G. Grantor Recognition

The Grantee shall insure recognition of the role of the grantor agency in providing services through this Agreement. All activities, facilities, and items utilized pursuant to this Agreement shall be prominently labeled as to the Funding source. In addition, the Grantee will include a reference to the Funding in all publications made possible under this Agreement.

H. Amendments

1. The City or the Grantee may amend this Agreement at any time, provided that such amendments make specific reference to this Agreement and are executed in writing, signed by a duly authorized representative of both Parties, and approved by the City Council. Such amendments shall neither invalidate this Agreement nor relieve or release the City or the Grantee from its obligations under this Agreement.
2. The City may, in its discretion, amend this Agreement to conform with Federal, State, or local governmental guidelines, policies, and available funding amounts, or for any other reason. If such amendments result in a change in the Funding, the scope of services, or the schedule of the activities to be undertaken as part of this Agreement, such modifications will be incorporated only by written amendment signed by both Parties.

I. Suspension or Termination

1. In accordance with 2 CFR Part 200 Either Party may terminate this Agreement by giving written notice to the other Party of such termination and specifying the effective date thereof at least thirty (30) days before the effective date of such termination. Partial termination of this Agreement may only be undertaken with the prior approval of the City. In the event of any termination for convenience, all finished or unfinished documents, data, studies, surveys, maps, models, photographs, reports, or other materials prepared by the Grantee under this Agreement shall, at the option of the City, become the property of the City, and the Grantee shall be entitled to receive just and equitable compensation for any work completed on such documents or materials prior to the termination.
2. The City may terminate this agreement if the Grantee fails to comply with any terms of this Agreement, whole or in part which include (but are not limited to) the following:
 - a) Failure to comply with any of the rules, regulations or provisions referred to herein, or such statutes, regulations, executive orders and HUD guidelines, policies or directives as may become applicable at any time;
 - b) Failure, for any reason, of the Grantee to fulfil in a timely and proper manner its obligations under this Agreement;
 - c) Ineffective or improper use of CDBG funds provided under this agreement; or
 - d) Submission by the Grantee to the City of reports that are incorrect or incomplete in any material respect.
3. The City may suspend or terminate this Agreement if the City reasonably believes that the Grantee is in noncompliance with any requirement of this Agreement, then the City may withhold up to fifteen percent (15%) of the Funding until such time as the Grantee is found to be, or is otherwise adjudicated, to be in compliance.
4. The City may terminate this Agreement in the event of an emergency or disaster, whether, an act of God, natural or manmade, by giving twenty-four (24) hour notice. The City may give said notice verbally to the Grantee. Any expenditure incurred prior to receiving notice will be reimbursed; however, in no event shall the City pay any expenses incurred after notice of termination is received by the Grantee.

Article 7. ADMINISTRATIVE REQUIREMENTS

A. Financial Management

1. *Accounting Standards.* The Grantee agrees to comply with 2 CFR Part 200, “Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Award” and agrees to adhere to the accounting principles and procedures required therein, utilize adequate internal controls, and to maintain necessary source documentation for all costs incurred under this Agreement.

2. *Cost Principles.* The Grantee shall administer its program in conformance with 2 CFR Part 200, “Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Award”, which shall be applied to all direct or indirect costs incurred by the Grantee under this Agreement.

B. Documentation and Record-Keeping

1. *Records to be Maintained.* The Grantee shall maintain all records required by the Federal regulations specified in 24 CFR Part 570.506 that are pertinent to the activities to be funded under this Agreement. Such records shall include but not be limited to:
 - a) Records demonstrating that each activity meets one of the National Objectives of the CDBG Program, benefiting low to moderate income (LMI) persons or, low to moderate income area (LMA) by Census Tracts;
 - b) Records required to determine the eligibility of activities;
 - c) Financial records as required by 24 CFR Part 570.502;
 - d) Records required to document the acquisition, improvement, use or disposition of real property acquired or improved with CDBG assistance;
 - e) Records documenting compliance with the fair housing and equal opportunity components of the CDBG program;
 - f) Other records necessary to document compliance with Subpart K or 24 CFR Part 570.
2. *Retention.* The Grantee shall retain all financial records, supporting documents and all records pertinent to the Agreement, including but not limited to client data of no less than five (5) years.

The retention period begins on the date of the submission to the City’s annual performance and evaluation report to HUD in which activities assisted under this Agreement are reported on for the final time. Expenditures under this Agreement for a period of five (5) years after the termination of all activities funded under this Agreement.

Records for non-expendable property acquired with the Funding shall be retained for five (5) years after final disposition of such property. Records for any displaced person must be kept for five (5) years after the displaced person has received final payment. Notwithstanding the above, if there is any litigation, claim, audit, negotiation or other action that involves any of the records cited herein and that has started before the expiration of the five (5) year period, then such records must be retained until the completion of the actions and resolution of all issues, or the expiration of the five (5) year period, whichever occurs later.

3. *Client Data.* The Grantee shall maintain client data that demonstrates client eligibility for the Funding and services provided under this Agreement. Such data shall include, but not be limited to: client name or identifier; client address; client income level; age, gender, race, ethnicity or other determination of client eligibility; and, a description of the service provided to the client related to this Agreement. Such information shall be made available to the City for review upon request.
4. *Disclosure.* The Grantee understands that client information collected under this Agreement is private, and the use or disclosure of such information, when not directly connected with the administration of the City or Grantee's responsibilities related to this Agreement, is prohibited unless written consent is obtained from such client receiving service(s) and in the case of a minor, that of a responsible parent or guardian, unless otherwise required by law.
5. *Property Records.* The Grantee shall maintain a real property inventory that clearly identifies any property purchased, improved, or sold under this Agreement or that is related to the Funding. Any such property shall throughout the Term remain in compliance with all eligibility criteria and shall conform with the "changes in use" restrictions specified in 24 CFR Parts 570.503(b)(8).
6. *Close-Outs.* The Grantee's obligation to the City under this Agreement shall not end until all close-out requirements under this Agreement are completed pursuant to applicable Federal regulations and law. Activities during this close-out period shall include, but are not limited to: making final payments; disposing of Program assets (including the return of all unused materials, equipment, unspent cash advances, Program income balances, and accounts receivable to the City); final close-out reports; and, determining the custodianship of records. Notwithstanding the foregoing, the terms of this Agreement shall remain in effect during any period that the City has control of the CDBG funds, including program income.
7. *Audits & Inspections.* All of the Grantee's records related to this Agreement shall be made available at any time during normal business hours as often as the City or its designee deems necessary to monitor, audit (if required), examine, or make excerpts or transcripts of any data relevant to this Agreement in order for the City to produce an audit report. Any deficiencies noted in an audit report must be fully cleared by the Grantee within thirty (30) days after receipt by the City. Failure of the Grantee to comply with the above audit requirements will constitute a violation of this Agreement and may result in the withholding of Funding. The Grantee hereby agrees to have an annual internal audit conducted in accordance with current City policy concerning Grantee audits and, if required, a regular audit under Title 2 CFR Part 200 "Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards".

C. Reporting and Payment Procedures

1. *Payment Procedures.* The City will pay to the Grantee Funds based upon information submitted by the Grantee and consistent with any approved budget and City policy concerning the Payments.

Payment will be made for eligible expenses actually incurred by the Grantee, and not to exceed actual cash requirements. Payments will be adjusted by the City in accordance with advance fund and program income balances available in the Grantee's accounts. In addition, the City reserves the right to liquidate any part of the Funding for costs incurred by the City on behalf of the Grantee.

2. *Performance and Financial Reports.* Throughout the Term, the Grantee shall submit monthly reports to the City, in a format, content and frequency as required by the City. A monthly Performance Report, a Financial Report, and a narrative for the Grantee's Program activity and shall include the amount of all of the Grantee's expenditures for each of its Program activities. The Grantee shall submit such reports, demographics and narratives no later than the tenth (10th) day of each month. The End of Year report is due no later than October 10, 2022. Reporting will continue from the start of Program activity through the end of the Program year.

D. Procurement

Compliance. The Grantee shall comply with Title 2 CFR Part 200, "Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards" and the City policy concerning the purchase of equipment and shall maintain inventory records of all non-expendable personal property procured with CDBG funds.

All Program assets purchased with Funding, including unexpended program income, property, or equipment, shall revert to the City upon the termination of this Agreement.

1. *CFR Standards.* Unless specified otherwise within this Agreement, the Grantee shall procure all materials, property, or services in accordance with the requirements of 2 CFR Part 200.
2. *Travel.* The Grantee shall obtain written approval from the City for any travel outside the metropolitan area that is financed in any way through the Funding under this Agreement.

E. Use and Reversion of Assets

The use and disposition of real property and equipment under this Agreement shall be in compliance with the requirements of 2 CFR Part 200 and 24 CFR Part 570.502, 570.503, and 570.504, as applicable, which include but are not limited to the following:

1. Any Subrecipient used by the Grantee shall transfer to the Grantee all CDBG funds on hand and any accounts receivable attributable to the use of the Funding under this Agreement at the time of expiration, cancellation, or termination of this Agreement.
2. Real property under the Grantee's control that was acquired or improved, in whole or in part, with the Funding in excess of twenty-five thousand dollars (\$25,000) shall be used to meet one of the CDBG National Objectives pursuant to 24 CFR Part 570.208 until five (5) years after the expiration of this Agreement, or such longer period of time as the City deems appropriate.

If the Grantee fails to use CDBG-assisted real property in a manner that meets a CDBG National Objective for the prescribed period of time, then the Grantee shall pay to the City an amount equal to the current fair market value of the property less any portion of the value attributable to expenditures of non-CDBG funds for acquisition of, or improvement to, the property. Such payment shall constitute Program income to the City. The Grantee may retain real property acquired or improved under this Agreement after the expiration of the five (5) year period, or such longer period of time as the City deems appropriate.

3. In all cases in which equipment acquired, in whole or in part, with the Funding under this Agreement is sold, the proceeds shall be Program income to reflect the extent to that funds received under this Agreement were used to acquire the equipment. Equipment not needed by the Grantee for activities under this Agreement shall be (a) transferred to the City for the CDBG program, or (b) retained after compensating the City for an amount equal to the current fair market value of the equipment less the percentage of non-CDBG funds used to acquire the equipment.

Article 8. RELOCATION, REAL PROPERTY ACQUISITION AND ONE-FOR-ONE HOUSING REPLACEMENT

The City agrees to comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA), and implementing regulations at 49 CFR Part 24 and 24 CFR 570.606(b); the requirements of 24 CFR 570.606(c) governing the Residential Antidisplacement and Relocation Assistance Plan under Section 104(d) of the HCD Act; and, the requirements in 570.606(d) governing optional relocation policies. The City may preempt the optional policies. The City shall provide relocation assistance to persons, families, individuals, businesses, nonprofit organizations, and farms that are displaced as a direct result of acquisition, rehabilitation, demolition, or conversion for a CDBG-assisted project. The City also agrees to comply with all applicable City ordinances, resolutions, and policies concerning the displacement of persons from their residences.

Article 9. PERSONNEL & PARTICIPANT CONDITIONS

A. Civil Rights

1. *Compliance.* The Grantee agrees to comply, and to require its subcontractors to comply, with Title VI of the Civil Rights Act of 1964 as amended; Title VIII of the Civil Rights Act of 1968 as amended; Section 104(b) and Section 109 of Title I of the Housing and Community Development Act of 1974 as amended; Section 504 of the Rehabilitation Act of 1973; the Americans with Disabilities Act of 1990; the Age Discrimination Act of 1975; Executive Order 11063; and, with Executive Order 11246 as amended by Executive Orders 11375 and 12086.
2. *Nondiscrimination.* The Grantee agrees to comply with the non-discrimination in employment and contracting opportunities laws, regulations and executive orders referenced in 24 CFR Part 570.607, as revised by Executive Order 13279. The Grantee will not discriminate against any employee or applicant for employment because of race, color, creed, religion, ancestry, national origin, sex, disability, or other handicap, age, marital or familial status, or status with regard to public assistance. The City will take affirmative action to insure that all employment practices are free from such discrimination.

Such employment practices include, but are not limited to, the following: hiring, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff, termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The City agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting agency setting forth the provisions of this nondiscrimination clause.

3. *Land Covenants.* This Agreement is subject to the requirements of Title VI of the Civil Rights Act of 1964 and 24 CFR 570.601-602. In regard to the sale, lease, or other transfer of land acquired, cleared, or improved with assistance provided under this Agreement, the Grantee shall cause or require a covenant running with the land to be inserted in the deed or lease for such transfer, prohibiting discrimination as herein defined, in the sale, lease or rental, or in the use or occupancy of such land, or in any improvements erected or to be erected thereon, providing that the City and the United States are beneficiaries of and entitled to enforce such covenants.

The Grantee, in undertaking its obligation to carry out the Program assisted hereunder, agrees to take such measures as are necessary to enforce such covenant, and will not itself so discriminate.

4. *Section 504.* The Grantee agrees to comply with any Federal regulations issued pursuant in compliance with Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 706 794), which prohibits discrimination against the individuals with disabilities or handicaps in any Federally assisted program. The City shall provide the Grantee with any guidelines necessary for compliance with the regulations in force during the term of this Agreement.
5. *Reports.* The Grantee shall maintain a report that documents the race and ethnicity of its employees. The Grantee shall provide the City a copy with said report upon execution of this Agreement.
6. *Policies.* The Grantee shall maintain current copies of its fair housing and equal opportunity policies. The Grantee shall provide a copy of said policies to the City immediately upon request.

B. Affirmative Action

Approved Plan. The Grantee agrees they shall be committed to carry out pursuant to the City's specifications an Affirmative Action Program in keeping with the principles as provided in the President's Executive Order 11246 of September 24, 1965. If the Grantee receives Federal funds through the City, then the Grantee shall be required to develop a written Affirmative Action Program to insure that equal opportunity is provided in all aspects of its employment.

1. *Women- and Minority-Owned Business (W/MBE).* The Grantee will use its best efforts to afford small businesses, minority- and women-owned business enterprises and women's business enterprises the maximum practicable opportunity to participate in the performance of this Agreement.

The terms “small business” means a business that meets the criteria set forth in section 3(a) of the Small Business Act, as amended (15 U.S.C 632), and “minority and female business enterprise” means a business at least fifty-one percent (51%) owned and controlled by minority group members or women. For the purpose of the term “minority group members” means Afro-Americans, Spanish-speaking, Spanish-surnamed or Spanish-heritage Americans, Asian-Americans, and American Indians. The City Grantee may rely on written representations by businesses regarding their status as minority- and women-owned business enterprises in lieu of an independent investigation.

2. *Access to Records.* The City shall furnish and cause any Grantee or subcontractor to furnish all information and reports required hereunder and will permit access to its books, records, and accounts by the City, HUD or its agent, or other authorized Federal officials for purposes of investigation to ascertain compliance with the rules, regulations, and provisions stated herein.
3. *Notifications.* The City will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or worker’s representative of the City’s commitments hereunder, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
4. *Subcontract Provisions.* The City will include the provisions of the Civil Rights and Affirmative Action sections of this Agreement, in every subcontract or purchase order, specifically or by reference, so that such provisions will be binding upon each Grantee or subcontractor.

C. Employment Restrictions

1. *Prohibited Activity.* The Grantee is prohibited from using the Funding provided herein or personnel employed in the administration of the Program for political activities, inherently religious activities; sectarian activity, religious activity, lobbying, political patronage, or nepotism.
2. *Labor Standards.*
 - a) The Grantee agrees to comply with the requirements of the Secretary of Labor in accordance with the Davis-Bacon Act as amended, the provisions of Contract Work Hours and Safety Standards Act, the Copeland “Anti-Kickback” Act (40 U.S.C. 327 *et seq.*) and all other applicable Federal, State, and local laws and regulations pertaining to labor standards insofar as those acts apply to the performance of this Agreement. The Grantee agrees to comply with the Copeland Anti-Kick Back Act (18 U.S.C. 874 *et seq.*) and it’s implementing regulations of the U.S. Department of Labor Act at 29 CFR Part 5. The Grantee shall maintain documentation that demonstrates compliance with hour and wage requirements of this part. Such documentation shall be made available to the City for review upon request.

b) The Grantee agrees that, except with respect to the rehabilitation or construction of residential property containing less than eight (8) units, all contractors engaged under contracts in excess of two thousand dollars (\$2,000) for construction, renovation, or repair work financed in whole or in part with assistance provided under this Agreement, shall comply with Federal requirements adopted by the City pertaining to such contracts and with the applicable requirements of the regulations of the Department of Labor, under 29 CFR Parts 1, 3, 5 and 7 governing the payment of wages and ratio of apprentices and trainees to journey workers; provided, that if wage rates higher than those required under the regulations are imposed by State or local law, nothing hereunder is intended to relieve the Grantee of its obligation, if any, to require payment of the higher wage. The Grantee shall cause or require to be inserted in full, in all such contracts subject to such regulations, provisions meeting the requirements of this paragraph.

D. “Section 3” Clause

1. *Compliance.* Compliance with the provisions of Section 3 of the HUD Act of 1968, as amended and as implemented by the regulations set forth in 24 CFR 135, and all applicable rules and orders issued hereunder prior to the execution of this Agreement, shall be a condition of the Federal financial assistance provided under this Agreement, and binding upon the City, the Grantee, any of Subrecipient, and subcontractor. The Grantee certifies and agrees that no contractual or other legal incapacity exists which would prevent compliance with these requirements.

2. *“Section 3” Paragraph.* The Grantee further agrees to comply with these “Section 3” requirements and to include the following language in all subcontracts executed under this Agreement:

“The work to be performed under this contract is a project assisted under a program providing direct Federal financial assistance from HUD and is subject to the requirements of Section 3 (of the Housing and Urban Development Act of 1968), as amended, (12 U.S.C. 1701). Section 3 requires that, to the greatest extent feasible, opportunities for training and employment be given to low- and very low-income residents of the project area, and contracts for work in connection with the project be awarded to business concerns that provide economic opportunities for low- and very low-income persons residing in the metropolitan area in which the project is located.”

3. *Training & Employment.* The Grantee will ensure that opportunities for training and employment arising in connection with a housing rehabilitation (including reduction and abatement of lead-based paint hazards), housing construction, or other public construction project are given to low- and very low-income persons residing within the metropolitan area in which the Project is located. Where feasible, the Grantee agrees that priority should be given to low- and very low-income persons within the service area of the Project or the neighborhood in which the Project is located, and to low- and very low-income participants in other HUD programs.

4. *Award of Contracts.* The Grantee agrees to award contracts for work undertaken in connection with a housing rehabilitation (including reduction and abatement of lead-based paint hazards), housing construction, or other public construction project are given to business concerns that provide economic opportunities for low- and very low-income persons residing within the metropolitan area in which the Project is located. Where feasible, the Grantee agrees that priority should be given to business concerns which provide economic opportunities to low- and very low-income residents within the service area or the neighborhood in which the Project is located, and to low- and very low-income participants in other HUD programs.
5. *Notifications.* The Grantee agrees to send to each labor organization or representative of workers with which it has a collective bargaining agreement or other contract or understanding, if any, a notice advising said labor organization or worker's representative of its commitments under this Section 3 clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment or training.
6. *Subcontracts.* The Grantee will include this Section 3 clause in every subcontract and will take appropriate action pursuant to the subcontract upon a finding that the subcontractor is in violation of regulations issued by the grantor agency. The Grantee will not subcontract with any entity where it has notice or knowledge that the latter has been found in violation of regulations under 24 CFR 135 and will not allow any subcontract unless the entity provides a preliminary statement of ability to comply with the requirements of this Agreement and all other applicable law.

E. Assignability

The Grantee shall not assign or transfer any interest in this Agreement without the prior written consent of the City. Claims for money due or to become due to the City from the Grantee under this Agreement may be assigned to a bank, trust company, or other financial institution without such approval. Notice of any such assignment or transfer shall be furnished promptly to the City.

F. Subcontracts

1. *Approvals.* The Grantee shall not enter into any subcontracts with any agency or individual in the performance of this Agreement without the written consent of the City prior to the execution of such subcontract.
2. *Monitoring.* The City will monitor the performance of the Grantee. All subcontracted services on a risk analysis basis to assure contract compliance. Results of monitoring efforts shall be summarized in written reports and supported with documented evidence of follow-up actions taken to correct areas of noncompliance. Substandard performance as determined by the City will constitute noncompliance with this agreement. If action to correct such substandard performance is not taken by the Grantee within a reasonable time after being notified, Agreement suspension or termination will take place.

3. *Content.* The Grantee shall cause all of the provisions of this Agreement in its entirety to be included in and made a part of any subcontract executed in the performance of this Agreement.
4. *Selection Process.* The City shall insure that all subcontracts entered into in the performance of this Agreement shall be awarded on a fair and open competition basis. Executed copies of all subcontracts shall be forwarded to the City along with documentation concerning the selection process.
5. *Suspension and Disbarment.* The Grantee shall not enter into any subcontracts with an agency, business, or individual that has been suspended, disbarred, or otherwise excluded from Federal grants. The Grantee shall maintain records demonstrating that it has reviewed potential subcontractors against the debarred and excluded list prior to committing any of the Funding to a subcontract.

G. Hatch Act

The Grantee agrees that no Funding or personnel employed under this Agreement shall be in any way or to any extent engaged in the conduct of political activities in violation of Chapter 15 of Title V U.S.C.

H. Conflict of Interest

The Grantee agrees to abide by the provisions of 24 CFR 84.42 and 570.611, which include but are not limited to:

1. The Grantee shall maintain a written code of conduct to govern the performance of its officers, employees or agents engaged in the award and administration of contracts supported by Federal funds.
2. No covered persons who exercise or have exercised any functions or responsibilities with respect to CDBG-assisted activities, or who are in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a financial interest in any contract, or have a financial interest in any contract, subcontract, or agreement with respect to the CDBG-assisted activity, or with respect to the proceeds from the CDBG-assisted activity, either for themselves or those with whom they have business or immediate family ties, during their tenure or for a period of one (1) year thereafter. For purposes of this paragraph, a "covered person" includes any person who is an employee, agent, consultant, officer, or elected or appointed official of the City, the Grantee, or any designated public agency.

I. Lobbying

The Grantee hereby certifies that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of it, 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 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;

2. 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, it will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. It will require that the language of Article 10.D.2 of this Agreement 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.

J. Lobbying Certification

Any person who fails to file the required certification imposed by 31 USC 1352 shall be subject to a civil penalty of not less than ten thousand dollars(\$10,000) and not more than one hundred thousand dollars (\$100,000) for each such failure. Submission of such certification is a prerequisite for making or entering into this Agreement, and the certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into.

K. Copyright

If this Agreement results in any copyrightable material or inventions, the City reserves the right to royalty-free, non-exclusive, and irrevocable license to reproduce, publish, or otherwise use and to authorize others to use, the work or materials for government purposes.

L. Religious Organization

The Grantee agrees that the Funding provided under this Agreement will not be utilized for religious activities, to promote religious interests, or for the benefit of a religious organization prohibited by 24 CFR 570.200(j), such as worship, religious instruction or proselyzation.

Article 10. ENVIRONMENTAL CONDITIONS

A. Air and Water

The Grantee agrees to comply with the following requirements insofar as they apply to the performance of this Agreement:

- National Environmental Policy Act, 42 U.S.C. Part 55.
- Clean Air Act, 42 U.S.C., 7401, et seq;
- Federal Water Pollution Control Act, as amended; 33 U.S.C. 1251, et seq., as amended; 1318 relating to inspection, monitoring, entry, reports, and information; other requirements specified in said Section 114 and Section 308, and all regulations and guidelines issued thereunder; and, Environmental Protection Agency (EPA) regulations pursuant to 40 C.F.R., Part 50, as amended.

B. Flood Disaster Protection

In accordance with the requirements of the Flood Disaster Protection Act of 1973 (42 USC 4001), the Grantee shall assure that, for activities located in an area identified by Federal Emergency Management Agency (FEMA) as having special flood hazards, flood insurance under the National Flood Insurance Program is obtained and maintained as a condition of financial assistance for acquisition or construction purposes, including rehabilitation.

C. Lead-Based Paint

The Grantee agrees that any construction or rehabilitation of residential structures with assistance provided under this Agreement shall be subject to HUD Lead-Based Paint Regulations at 24 CFR 570.608, and 24 CFR Part 35, Subpart B. Such regulations pertain to all CDBG-assisted housing and require that all owners, prospective owners, and tenants of properties constructed prior to 1978 be properly notified that such properties may include lead-based paint.

Such notification shall point out the hazards of lead-based paint and explain the symptoms, treatment and precautions that should be taken when dealing with lead-based paint poisoning and the advisability and availability of blood lead level screening for children under seven. The notice should also point out that if lead-based paint is found on the property, abatement measures may be undertaken. The regulations further require that, depending on the amount of Federal funds applied to a property, paint testing, risk assessment, treatment and/or abatement may be conducted.

D. Asbestos

The Grantee agrees to comply with the Texas Asbestos Health Protection Act set forth at Article 4477-3a Section 12 of the Texas Civil Statutes and the National Emission Standard for Asbestos Regulations set forth at 40 CFR Part 61.

E. Historic Preservation

The Grantee agrees to comply with the Historic Preservation requirements set forth in the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470) and the procedures set forth in 36 CFR, Part 800, Advisory Council on Historic Preservation Procedures for Protection of Historic Properties, insofar as they apply to the performance of this Agreement. In general, this requires concurrence from the State Historic Preservation Officer for all rehabilitation and demolition of historic properties that are fifty (50) years old or older or that are included on a Federal, State, or local historic property list.

Article 11. SEVERABILITY

If any provision of this Agreement is held invalid, the remainder of the Agreement shall not be affected thereby, and all other parts of this Agreement shall nevertheless be in full force and effect.

Article 12. SECTION HEADINGS AND SUBHEADINGS

The section headings and subheadings contained in this Agreement are included for convenience only and shall not limit or otherwise affect the terms of this Agreement.

Article 13. WAIVER

The Grantee's failure to act with respect to a breach by the Subrecipient does not waive its right to act with respect to subsequent or similar breaches. The failure of the Grantee to exercise or enforce any right or provision shall not constitute a waiver of such right or provision.

Article 14. CHAPTER 2270, SUBTITLE F, TITLE 10, TEXAS GOVERNMENT CODE

The City warrants that it is in compliance with Chapter 2270, Subtitle F, Title 10 of the Texas Government Code by verifying that it does not boycott Israel, and that it will not boycott Israel during the term of this Agreement.

Article 15. ENTIRE AGREEMENT

This Agreement constitutes the entire agreement between the Parties for the use of funds received under this Agreement and it supersedes all prior or contemporaneous communications and proposals, whether electronic, oral, or written between the City and the Grantee, and any Subrecipient, with respect to this Agreement.

**IN WITNESS WHEREOF, THE PARTIES HAVE EXECUTED AND ENTER INTO THIS
AGREEMENT ON THE EFFECTIVE DATE**

[Signature Page to Follow]

SIGNATURES

FOR: THE CITY OF LUBBOCK

DANIEL M. POPE, MAYOR

**FOR: CATHOLIC CHARITIES,
DIOCESE OF LUBBOCK**



Cynthia Quintanilla

FED. I.D. # 75-1966688

ATTEST:

Rebecca Garza, City Secretary

APPROVED AS TO CONTENT:



Karen Murfee, Community Development Director

APPROVED AS TO FORM:



Kelli Leisure, Assistant City Attorney

Exhibit A

2021-2022

COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG)

AGREEMENT SUMMARY

GRANTEE NAME: Catholic Charities, Diocese of Lubbock
CONTRACT TERM: January 1, 2022 – September 30, 2022
PROGRAM NAME: Parent Empowerment Program (PEP)
FEDERAL TAX ID: 75-1966688 **UNIQUE ENTITY ID:** FLQSD63YEXK4
ALLOCATION: **\$200,000**
MATCH: **\$50,000** (25% of allocation)

PROGRAM DELIVERY - This program will assist individuals and families with case management and support financially to obtain education to become self sufficient

LEVEL OF ACCOMPLISHMENT - In addition to the normal administrative services required as part of this Agreement, the Grantee agrees to provide the following levels of program services in its performance of the Program:

<u>Activity</u>	<u>Timeline</u>	<u>Accomplishments</u>
Program	January 1, 2022 – September 30, 2022	125

*Monthly Reports and Reimbursement Request are due by the 10th of each month
Year End and Outcome Report due no later than October 10, 2022*

STAFFING:	<u>Name:</u>	<u>Title:</u>
	Cynthia Quintanilla	Executive Director
	Sabrina Robbins	Program Director

BUDGET:	<u>Line Item</u>	<u>Amount</u>
	Education / Self Sufficiency	\$200,000

CONTACT INFORMATION

Communication and details concerning this Agreement shall be directed to the following:

For the City:
Community Development
Karen Murfee
P.O. Box 2000
Lubbock, TX 79457
(806) 775-2296

For the Grantee:
Catholic Charities, Diocese of Lubbock
Cynthia Quintanilla
102 Ave J
Lubbock, TX 79401
(806)765-8475

Information

Agenda Item

Resolution - Facilities Management: Consider a resolution authorizing the Mayor to execute Contract 16482, with Henthorn Commercial, Inc., for construction and renovation of the Lubbock Public Health and Community Development Facility.

Item Summary

This contract for General Contractor services is for the construction and renovation of Public Health / Community Development Facility, site improvements, and utilities for the project. The scope of work consists of renovating a 23,000 square foot existing single story structure and constructing a 3,257 square foot single story addition. The facility is located in Lubbock, Lubbock County, Texas at 2015 50th Street.

In response to RFP 22-16482-MA, three proposals were received, opened, and evaluated using the following criteria: Price (60 points), Contractor Qualifications (30 points) and Construction Time (10 points) for a total point value of 100 points. The following ranking was obtained by the 3-person Evaluation Committee.

Contractor	Points
Henthorn Commercial, Inc., Lubbock, Texas	288.68
Collier Construction, Lubbock, Texas	270.42
Lee Lewis Construction, Inc., Lubbock, Texas	237.44

Pursuant to Texas Local Government Code, Section 2269.155 it requires the City to first attempt to negotiate a contract with the highest-ranking offeror. The City and its architect or engineer may discuss with the selected offeror, options for a scope or time modification and any price change associated with the modification. If the City is unable to negotiate a satisfactory contract with the selected offeror, the governmental entity shall, formally and in writing, end negotiations with that offeror and proceed to the next offeror in the order of the selection ranking until a contract is reached or all proposals are rejected.

After negotiations and discussion with the highest ranking offeror, the Staff and Evaluation Committee recommends the contract award to Henthorn Commercial, Inc. of Lubbock, Texas for \$8,148.125, with a construction duration of 540 days for final completion.

Fiscal Impact

This contract for \$8,148,125 is funded in Capital Improvement Project No. 92707, Public Health & Community Development Facility Project.

Staff/Board Recommending

Bill Howerton, Deputy City Manager

Attachments

Resolution 16482

22-16482 Proposal Submittal Form - Updated

CIP Detail

92707 Budget Summary

16482 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, Public Works Contract No. 16482 for City of Lubbock Public Health and Community Development Facility Renovation as per RFP 22-16482-MA, by and between the City of Lubbock and Henthorn Commercial 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.

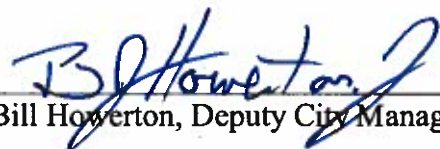
Passed by the City Council on _____.

DANIEL M. POPE, MAYOR

ATTEST:

Rebecca Garza, City Secretary

APPROVED AS TO CONTENT:



Bill Howerton, Deputy City Manager

APPROVED AS TO FORM:



Kelli Leisure, Assistant City Attorney

**PROPOSAL SUBMITTAL FORM
LUMP SUM PRICE PROPOSAL CONTRACT**

DATE: April 28th, 2022

PROJECT NUMBER: **RFP 22-16482-MA Public Health & Community Development**

Facility of **Henthorn Commercial Construction, LLC** (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 **Public Health & Community Development Facility** 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 below. The price to cover all expenses incurred in performing the work required under the contract documents.

ITEM	DESCRIPTION	TOTAL LUMP SUM
1	Base bid consists of the materials and labor for the construction of the above referenced Public Health & Community Development Facility, as specified herein.	\$ 7,885,000.00

ALTERNATES

ITEM	DESCRIPTION	TOTAL LUMP SUM
A-1	Base bid consists of the materials and labor for the construction of the above referenced Public Health & Community Development Facility, as specified herein. However, provide concrete pavement in lieu of asphalt. Refer to civil sheets.	ADD \$ 258,175.00
A-2	Base bid consists of the materials and labor for the construction of the above referenced Police Headquarters, as specified herein. However, provide alternate pricing to provide Anodic Copper Metallic Finish for Metal Panel 1 (ACM).	ADD \$ 4,950.00

AMOUNTS INCLUDED IN BASE BID

The Offeror provides the following additional information that will be made a part of the contract with the City of Lubbock:

1)	Overhead and Profit included in the Base Proposal:	\$ <u>336,675.00</u>
2)	General Conditions included in the Base Proposal:	\$ <u>472,030.60</u>
3)	Owner Contingency Allowance included in the Base Proposal	\$ <u>350,000.00</u>

PROPOSED CONSTRUCTION TIME:

1. Contractors proposed CONSTRUCTION TIME for completion:

TOTAL CONSECUTIVE CALENDAR DAYS: 475 (to Substantial Completion)

TOTAL CONSECUTIVE CALENDAR DAYS: 540 (to Final Completion)

(not to exceed 480 consecutive calendar days to Substantial Completion / 540 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 **480 Consecutive Calendar Days** with **final completion** within **540 Consecutive Calendar Days** as stipulated in the specification and other 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 **\$1,000** 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 29 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.

HD Offeror's Initials

Enclosed with this proposal is a Cashier's Check or Certified Check Enclosed with this proposal is a Cashier's Check or Certified Check for NA Dollars (\$) or a Proposal Bond in the sum of Dollars (\$), which it is agreed shall be collected and retained by the Owner as liquidated damages in the event the proposal is accepted by the Owner and the undersigned fails to execute the necessary contract documents, insurance certificates, and the required bond (if any) with the Owner within ten (10) business days after the date of receipt of written notification of acceptance of said proposal; otherwise, said check or bond shall be returned to the undersigned upon demand.

Offeror understands and agrees that the contract to be executed by Offeror shall be bound and include all contract documents made available to him for his inspection in accordance with the Notice to Offerors.

Pursuant to Texas Local Government Code 252.043(g), a competitive sealed proposal that has been opened may not be changed for the purpose of correcting an error in the proposal price. THEREFORE, ANY CORRECTIONS TO THE PROPOSAL PRICE MUST BE MADE ON THE PROPOSAL SUBMITTAL FORM PRIOR TO PROPOSAL OPENING.

Date: 4/28/22



Authorized Signature

Heath Davidson, Sr. PM

(Printed or Typed Name)

Henthorn Commercial Construction, LLC

Company
2011 Ave C

Address
Lubbock, Lubbock

City, Texas County 79404

State Zip Code

Telephone: 806 - 438-4285

Fax: 806 - 209-0220

Email: heath@henthorncommercial.com

FEDERAL TAX ID or SOCIAL SECURITY No.

26-4058489

(Seal if Offeror is a Corporation)

ATTEST:

Secretary

Offeror acknowledges receipt of the following addenda:

Addenda No.	<u>1</u>	Date	<u>3-22-22</u>
Addenda No.	<u>2</u>	Date	<u>3/22/22</u>
Addenda No.	<u>3</u>	Date	<u>4/1/22</u>
Addenda No.	<u>4</u>	Date	<u>4/4/22</u>

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)

City of Lubbock, TX
Capital Project
Project Cost Detail
May 10, 2022

Capital Project Number:	92707
Capital Project Name:	Public Health Facility

Capital Project Number:	81140
Capital Project Name:	Health Department Grant

	92707	Budget 81140	Total
<i>Encumbered/Expended</i>			
Design Professional Services	\$ 771,668	-	771,668
Miscellaneous	514	-	514
Pre-Construction	-	-	-
Construction	-	-	-
Acquisitions/Furniture	1,097,556	-	1,097,556

Agenda Item May 10, 2022

Henthorn Contract 16482	8,148,125	-	8,148,125
<i>Encumbered/Expended to Date</i>	10,017,863	-	10,017,863

Estimated Costs for Remaining Appropriation

Construction	93,479	923,000	1,016,479
<i>Remaining Appropriation</i>	93,479	923,000	1,016,479
Total Appropriation To Date	\$ 10,111,342	923,000	11,034,342



**Purchasing and Contract Management
Project Summary**

22-16482-MA City of Lubbock Public Health and Community Development Facility Renovations

Notice was published in the Lubbock Avalanche Journal on March 14 and March 21, 2022.

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

Notice was published on Bonfire-hub.com from March 14 and April 6, 2022.

40 vendors took documents from Bonfire-hub.com.

11 vendors were notified separately.

23 vendors submitted a proposal.

Information

Agenda Item

Resolution - Public Transit Services: Consider a resolution authorizing the Mayor to execute an interlocal agreement, with Texas Tech University, for campus bus service.

Item Summary

The interlocal agreement with Texas Tech University for transit services is for a 4-year period beginning September 1, 2022, and ending on August 31, 2026, and is for a minimum of 63,000 hours of service each academic calendar year. The cost per hour for each year is as follows:

Academic Year	Base Amount Per Hour
2022 - 2023	\$70.00
2023 - 2024	\$70.00
2024 - 2025	\$75.00
2025 - 2026	\$75.00

However, if the total number of hours actually provided is less than 63,000 for any academic year, the base rate for that year will be increased by 3% retroactively to the beginning of the academic year.

Academic Year	Base Amount Per Hour
2022 - 2023	\$72.10
2023 - 2024	\$72.10
2024 - 2025	\$77.25
2025 - 2026	\$77.25

The current average annual cost of providing services is factored into the per-hour charges for the University bus service. However, if the actual average per gallon diesel fuel cost to the City exceeds \$4.00 for a calendar month, an additional fuel surcharge by the City may be assessed to the University for that month based on a calculation of:

Fuel Surcharge per vehicle = (2.5 x Fuel Cost Above \$4.00 per gallon).

Charter rates have also been adjusted in the interlocal agreement. All charters that occur on normal service days will have a 2-hour minimum per bus and rates will not prorate until the 3rd hour of service. The rates are as follows:

Base Rate	Additional Hours
\$280	\$80 per hour

Additionally, all charters on Sundays, holidays or other non-service days will have a 3-hour minimum and rates will not prorate until after the 3rd hour of service. The rates are as follows:

Base Rate	Additional Hours
\$475	\$85 per hour

The City of Lubbock/Citibus has had a contract with Texas Tech University since 1968, with the fuel cost adjustment being added to the contract in 1981. In accordance with the Texas Tech University Agreement, Citibus does not collect fares from its passengers.

The Texas Tech University Board of Regents will consider approval of the contract at their May meeting. The Texas Tech University Board of Regents requests that the City Council execute the agreement first.

Fiscal Impact

Citibus anticipates receiving approximately \$4,410,000 for the first two years of the contract and approximately \$4,725,000 for the last two years of the contract. The total of the 4-year contract is approximately \$18,270,000. The approval of this agreement will result in no additional cost to the City of Lubbock.

Staff/Board Recommending

Bill Howerton, Deputy City Manager
The Public Transit Advisory Board

Attachments

Resolution - Citibus/TTU Contract
Citibus/TTU 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 Interlocal Transit System Management Agreement, by and between the City of Lubbock and Texas Tech University, 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:



Bill Howerton, Assistant City Manager

APPROVED AS TO FORM:



Mitchell Satterwhite, First Assistant City Attorney

ccdocs/RES.Interlocal Agrmt-TTU
April 3, 2022

INTERLOCAL TRANSIT SYSTEM MANAGEMENT AGREEMENT

This Interlocal Transit System Management Agreement (the "Agreement"), is by and between the City of Lubbock, Texas, a Home Rule Municipal Corporation (the "City"), and Texas Tech University at Lubbock, Texas, a Texas public institution of higher education (the "University"), and the City and the University (each individually a "Party," and collectively, the "Parties"), acting by and through the Parties' duly authorized officers and elected officials, and shall become effective on September 1, 2022 (the "Effective Date").

RECITALS

WHEREAS, the Parties are aware of the traffic and parking challenges on the Lubbock campus of the University (the "Campus") as it relates to the expanding campus, enrollment growth, and the increasing number of commuting students, staff, and faculty of the University; and

WHEREAS, the Parties desire to relieve the traffic congestion and to expedite transit between areas in and immediately adjacent to the Campus; and

WHEREAS, through its authority under Texas Government Code Chapter 791, in which the City may contract with the University to perform governmental functions and services for public health and welfare, the City desires to provide the equipment and staff to help relieve the traffic congestion and to expedite transit between areas in and immediately adjacent to the Campus; and

WHEREAS, the Parties have contracted for many years for the provision of bus service to help relieve traffic congestion and to expedite transit between areas in and immediately adjacent to the Campus; and

WHEREAS, this Agreement embodies the full intention of the Parties; **NOW, THEREFORE,**

THE PARTIES, FOR GOOD AND VALUABLE CONSIDERATION, AGREE AS FOLLOWS:

AGREEMENT

Article 1. Term

- A.** The bus service contemplated under this Agreement shall be provided by the City for the University for a term of four (4) years, beginning September 1, 2022 and ending August 31, 2026, at hourly rates as set forth in this Agreement (the "Term").
- B.** Either Party may terminate this Agreement for convenience upon thirty (30) days' written notice delivered to the other Party by registered mail.
- C.** In the event that any of the provisions of this Agreement are violated by either Party, the violating Party will be deemed in default of this Agreement. The non-defaulting Party may serve upon the defaulting Party a written notice specifying such default. If, within ten (10) business days after receipt of the written notice of default, the defaulting Party takes no steps to begin to correct such default, then the non-defaulting Party may terminate or suspend this Agreement for cause. If either Party suspends this Agreement for cause, such suspension is limited to a total of ten (10) cumulative days. All work performed under this Agreement prior to the effective date of such termination or suspension shall be paid according to the terms of this Agreement.

Article 2. Scope of Services

- A.** The Parties hereby agree that a University bus service utilizing up to forty five (45) buses shall be provided for the University by the City or the City's agent. The City shall furnish buses having a seating capacity with a manufacturer's rating of not less than thirty-three (33) with driver-operated front and side doors – with the exception of the Tech Terrace route, which shall have a seating capacity not less than twenty-one (21). The City shall provide the necessary personnel to service the route or routes designated by the University during the Term. The number of buses and the operating periods shall be subject to continuous review, and the University shall advise the City with regard to the University's bus service needs and with respect to any changes in the number of buses or operating periods required under this Agreement. Subject to equipment availability, any changes to the services contemplated under this Agreement shall be instituted by the City within five (5) days after receipt of written notice from the University. Initial service, commencing on September 1, 2022, shall be on a schedule provided by the University prior to that date.
- B.** While providing the bus services contemplated under this Agreement, the City shall use buses that are in a good and safe mechanical condition, buses that are in a reasonably clean condition, and competent and duly licensed bus drivers. The City shall assume full and complete responsibility for the requirements of this Section, and the University assumes no obligations whatsoever for the same. The City agrees to maintain and operate the bus service contemplated under this Agreement in a safe, efficient, and lawful manner, and in so doing, shall comply with all applicable statutes, municipal ordinances, and traffic rules and regulations promulgated by the University.
- C.** In the event that during the Term, a change in or extension of route, removal of a route, or addition of a new route is necessary or desirable, the City shall, upon five (5) days written notice, make such changes to, or extensions of, or remove a route or routes, or, upon ten (10) days written notice, shall add a new route upon the University's request. The changes to be made by the City shall be subject to the conditions and limitations set forth in this Agreement. If additional buses are required in order to meet the demand for the bus service contemplated under this Agreement during any portion of the Term, then the City, upon receipt of the University's written request and upon the City's ability to provide additional buses, shall provide such additional buses subject to the terms of this Agreement. The University may terminate any such changes, extensions, or new routes upon five (5) days' written notice to the City.
- D.** The University has the exclusive right to determine the on Campus bus routes provided by the City according to this Agreement. The University shall have the sole discretion to determine the routes for independent bus companies or buses from housing facilities that unload passengers on the Campus. Service order bus charters provided by the City or any other company are permitted on the Campus for touring purposes only.
- E.** Buses shall stop to receive or discharge passengers using the bus service contemplated under this Agreement at such points off of the Campus as shall be agreed upon from time to time between the City and the University. The City shall provide signage indicating a bus stop at all agreed upon locations off of the Campus of the University.
- F.** The City shall exercise due diligence to adhere to the time schedules for the bus services

contemplated by this Agreement as such schedules shall be agreed upon by the Parties. Minor deviations from bus services time schedules due to variations in traffic, weather, or load conditions shall not be deemed to be a default of this Agreement.

- G. The City shall not collect fares from the passengers of the bus service contemplated under this Agreement, but shall charge the University for providing bus service on and off the Campus as follows:

During the period from September 1, 2022 to August 31, 2023, the City will provide at least sixty-three thousand (63,000) hours of service at a base rate of seventy dollars (\$70.00) per hour, for a total of four million four hundred ten thousand dollars (\$4,410,000.00), with such hours being calculated based on the published 2021-22 school calendar; provided, however, that if the total number of hours actually provided is less than sixty-three thousand (63,000) for any such year, the base rate for that year shall be seventy-two dollars and ten cents (\$72.10), with said rate applied retroactively to the beginning of the academic year.

During the period from September 1, 2023 to August 31, 2024, the City will provide at least sixty-three thousand (63,000) hours of service at a base rate of seventy dollars (\$70.00) per hour, for a total of four million four hundred ten thousand dollars (\$4,410,000.00), with such hours being calculated based on the published 2022-2023 school calendar; provided, however, that if the total number of hours actually provided is less than sixty-three thousand (63,000) for any such year, the base rate for that year shall be seventy-two dollars and ten cents (\$72.10), with said rate applied retroactively to the beginning of the academic year.

During the period from September 1, 2024 to August 31, 2025, the City will provide at least sixty-three thousand (63,000) hours of service at a base rate of seventy-five dollars (\$75.00) per hour, for a total of four million seven hundred twenty-five thousand dollars (\$4,725,000.00), with such hours being calculated based on the published 2023-2024 school calendar; provided, however, that if the total number of hours actually provided is less than sixty-three thousand (63,000) for any such year, the base rate for that year shall be seventy-seven dollars and twenty-five cents (\$77.25), with said rate applied retroactively to the beginning of the academic year.

During the period from September 1, 2025 to August 31, 2026, the City will provide at least sixty-three thousand (63,000) hours of service at a base rate of seventy-five dollars (\$75.00) per hour, for a total of four million seven hundred twenty-five thousand dollars (\$4,725,000.00), with such hours being calculated based on the published 2024-2025 school calendar; provided, however, that if the total number of hours actually provided is less than sixty-three thousand (63,000) for any such year, the base rate for that year shall be seventy-seven dollars and twenty cents (\$77.25), with said rate applied retroactively to the beginning of the academic year.

- H. Notwithstanding any provision in Section G above, the Parties hereto agree that if the reason for the shortage in service hours provided is reasonably due to a natural disaster, pandemic, or act of God, the Parties will in good faith attempt to negotiate a lower applicable base rate.

- I. The total estimated charges for the on Campus and off Campus bus service contemplated under this Agreement for the Term, calculated by adding the total charges in Section G of this Article, and excluding any additional charges contemplated in this Agreement for the Term, shall be eighteen million two hundred seventy thousand dollars (\$18,270,000.00).
- J. The City's current average annual cost of providing services hereunder are generally factored into the per-hour charges for on Campus and off Campus bus services. However, if the actual average per gallon diesel fuel cost to the City exceeds four dollars (\$4.00) for a calendar month, an additional fuel surcharge by the City may be assessed to University, applicable to said month, in an amount equal to the product of the price paid in excess of \$4.00, and the number of gallons consumed at a fuel consumption rate of two and one half (2.5) gallons per hour of operation, per vehicle, using the following formula: Fuel Surcharge per vehicle = (2.5 x Fuel Cost Above \$4.00 per gallon).
- K. The City shall present the University with a detailed invoice on or before the fifteenth (15th) day of each month for the prior month's hours of bus service provided under this Agreement. Such invoice is to be paid by the University no later than thirty (30) days after receipt of the invoice, in accordance with State law.
- L. Omitted.
- M. Omitted or deleted.
- N. The City shall not charge any University student to ride any fixed City bus route published online at <http://www.citibus.com/page/routes> if the student shows a current University Student Identification Card to the driver of the bus.
- O. In an emergency situation on the Campus, the University's Senior Managing Director of Grounds Maintenance and Transportation & Parking Services, or his designee, is the Emergency Transportation Officer. During an emergency situation, the transportation of people may have to be facilitated or restricted from areas at risk and in support of response and recovery activities. The Emergency Transportation Officer, working as a part of the Emergency Operations Center, has responsibility for arranging for or providing the transportation needed to support emergency operations. The City will continue to provide bus service pursuant to this Agreement during emergency situations. Buses serving the Campus under this Agreement may be diverted from their normal routes and scheduled as needed to support University emergency operations.
- P. City shall provide a bus tracking mobile device application for use by riders to track bus locations, routes, and schedules.

Article 3. Charter Service Orders

- A. The Federal Transit Administration has issued charter regulations, found at Federal Register 49 CFR Part 604, effective April 30, 2008. (The rules are set up to protect private charter companies from unfair competition from public transportation systems that receive Federal funds. The Federal Transit Administration has created a website where private charter operators can register for all geographic regions in which they are interested in providing

service – www.fta.dot.gov/charterregistration).

- B. Due to the above referenced regulations, when a public transportation system receives a request for charter service it cannot simply agree to provide the charter service. The public transportation system shall get the details of the charter service that is being requested and shall e-mail the information to all private charter companies listed in its geographic area. If any private charter company indicates to the City that it is interested in providing charter service, then the public transportation system shall not be able to provide the charter service for any reason. The private charter company that has expressed interest in the charter service shall contact the University to work out the details of the charter service requested. In order for this process to take place, public transportation systems must have at least four (4) days' notice on charter service requests.
- C. In the event that the City is able to provide charter service to the University, the City shall furnish service orders, if equipment is available, for the transportation within twenty-five (25) miles of the City limits of such special groups as may be designated by the University. The City shall charge the University for providing said service orders the sum of two hundred eighty dollars (\$280.00) for the first two (2) hours of service, and eighty dollars (\$80.00) per hour after the first two (2) hours. There shall be a two (2) hour minimum required on all service orders and rates will not be pro-rated until the third (3rd) hour of service. For all charters occurring on Sundays, holidays or other non-service days, the cost is four hundred seventy-five dollars (\$475) for the first three (3) hours and then eighty-five dollars (\$85) for each hour thereafter. There shall be a three (3) hour minimum per bus per charter service order and rates will be pro-rated after the third (3rd) hour of service. Billing periods and reports of operation shall be submitted in accordance with the provisions of Article 2. K. above.

Article 4. Publicity

- A. The University shall undertake and conduct a program designed to publicize the existence of the bus service contemplated under this Agreement, and the University shall acquaint its staff members and students with the availability of the same during the Term.
- B. The City shall place an advertisement in The Word Publications at the beginning of the Fall Semester during the Term. The City shall obtain the University's approval of any advertisements before placing them in the buses used on the Campus.
- C. The City shall provide lease space for vinyl wrap bus advertisements to the University at no charge during the Term, or any successive future Term, on up to six (6) buses. The University will have access to a maximum of six (6) vinyl wrap buses at no charge at any given time during the Term, or any successive future Term. Additional vinyl wrap bus advertisements may be purchased by the University at the publicly advertised rates. No vinyl wrap shall stay on any bus for longer than three (3) years. During the Term, the City shall determine the condition of the vinyl for renewal option. Any vinyl replacement would be at the University's cost. The vinyl wraps shall be designed by the University with final approval by the City. The City shall be responsible for having the vinyl produced and installed. The University shall be responsible for the production and installation cost of the vinyl. Vinyl shall be warranted for three (3) years, and window vinyl shall be warranted for one (1) year. The University will be charged the normal, publicly advertised lease rates for any vinyl bus advertisement that remains on any bus past the Term, given there is no successive future term.

- D. The City shall provide space for in-bus signage for the University advertising a non-revenue generating event at no fee to the University. The University is responsible for the artwork and production of the signage. All artwork must be approved by the University and the City. This will be limited to two (2) advertisements per bus per year. In order to place two (2) advertisements per bus the University will need to provide eighty (80) posters to the City. Signage must be laminated to eleven inches by seventeen inches (11" x 17") in a horizontal format. All University advertisements shall be in compliance with the advertising guide produced by the City's agent.
- E. The University administration will be provided with space for twelve (12) posters per bus per year to use at their discretion. Signage must be laminated to eleven inches by seventeen inches (11" x 17") in a horizontal format. The University retains the right to retain any revenue obtained from the use of these signs. All University advertisements shall be in compliance with the advertising guide produced by the City's agent.
- F. The University has the right to research further bus advertising options. Such options will not be implemented unless agreed upon by both the City and the University, and documented in an amendment to this Agreement.

Article 5. Independent Contractor Relationship

In its performance under this Agreement, the City shall act solely in the capacity of and as an independent contractor, and not as an agent or employee of the University. The University shall have no control over the City's operations in connection with providing the bus services contemplated under this Agreement except as otherwise provided in this Agreement. The University shall have no control or supervision whatsoever over the drivers of the buses used in the bus services contemplated under this Agreement. The bus services contemplated under this Agreement shall be performed by employees or agents of the City, and shall be subject solely to the City's or the City's agents' supervision and control. In no way shall such City employees or agents be considered agents or employees of the University.

Article 6. Insurance and Risk

- A. The Parties shall be self-insured in the performance of the bus service contemplated under this Agreement.
- B. The University shall not be liable for damage to any and all buses or other City property used in the provision of the bus service contemplated under this Agreement. Any insurance proceeds arising from a claim filed by the University for damage or injury to University property that is related to the City's provision of the bus service contemplated under this Agreement shall be used to reimburse the University for any such damage or injury, except that no such reimbursement shall be made for (i) damage to pavement by normal operation of buses, or (ii) any damage or injury caused by acts or omissions over which the City, its employees, or agents had no control.
- C. If the City shall engage an agent to perform the bus service contemplated under this Agreement, then the City's agent shall satisfy the following requirements:

The City's agent shall procure and carry throughout the Term insurance protection in the form and substance satisfactory to the City, covering all operations in connection with this Agreement, whether such operations are performed by the City's agent, the City's agent's subcontractor, or third parties. A certificate of insurance specifying each and all coverages required under this Agreement shall be submitted to the City prior to the execution of this Agreement. The certificate of insurance shall be prepared and executed by the City's agent or an authorized third party company and shall contain provisions representing and warranting that the insurance forms required by this Agreement have been approved by the Texas State Board of Insurance. Proof of coverage shall be furnished, and written notice of cancellation or any material change shall be provided, to the City within thirty (30) days in advance of any such cancellation or change. Every insurance policy required under this Agreement shall contain an agreement on the part of the insurer waiving the right of subrogation against the City and the University. The following insurance coverages shall be required of the City's agent:

- i. Commercial General Liability Insurance. The City's agent shall have commercial liability insurance with a minimum of one million dollars (\$1,000,000.00) combined single limit in the aggregate and per occurrence. The policy shall contain cross liability and severability clauses. The City and the University shall be named as the additional insured in such policy.
- ii. Comprehensive Automobile Liability Insurance. The City's agent shall obtain comprehensive automobile liability insurance, with limits of not less than bodily/property damage of one million dollars (\$1,000,000.00) combined single limit to include all owned, non-owned, hired, or scheduled vehicles. The City and the University shall be named as the additional insured in such policy.
- iii. Property Damage Liability Insurance. The City's agent shall obtain a property damage liability insurance policy naming the City and the University as insured, in the amount of, for bodily injuries, including accidental death and property damage, five hundred thousand dollars (\$500,000.00) combined single limit.
- iv. Excess Liability Insurance. The City's agent shall obtain excess liability insurance, Umbrella Form, naming the City and the University as an additional insured, in the amount of one million dollars (\$1,000,000.00) per occurrence.
- v. Worker's Compensation and Employer's Liability Insurance. The City's agent shall elect to obtain worker's compensation coverage pursuant to Section 406.002 of the Texas Labor Code. Further, said coverage shall comply with all provisions of Title 5 of the Texas Labor Code to ensure that the City's agent maintains said coverage. Any termination of worker's compensation insurance coverage by the City's agent, or any cancellation or non-renewal of worker's compensation insurance coverage for the City's agent, shall be a material breach of this Agreement. The City's agent shall require each subcontractor with whom it may contract to provide activities as contemplated by this Agreement, to obtain proof of insurance coverage as set forth herein, and to provide to the City's agent, prior to such person performing any such activities, a certificate of insurance establishing such coverage.

- vi. *Fidelity and Surety Bonds*. The City's agent's employees shall be covered by a blanket fidelity bond, the premium for which shall be considered as an operating expense. The above-mentioned coverages may be modified at the request of the City on thirty (30) days' notice. The City's agent, at its sole cost and expense, shall furnish to the City all necessary fidelity and surety bonds to protect, save, hold harmless, and indemnify the City from and against dishonesty, fraud, or theft occasioned by any officer or employee of the City's agent. Coverage of each such employee shall be in the amount of no less than fifty thousand dollars (\$50,000.00).
- vii. *INSURANCE INDEMNITY*. THE CITY'S AGENT SHALL INDEMNIFY, PROTECT, DEFEND, AND HOLD HARMLESS THE PARTIES AND THE PARTIES' OFFICERS, ELECTED OFFICIALS, DIRECTORS, AGENTS, AND EMPLOYEES FROM AND AGAINST ANY AND ALL LOSS, LIABILITY, CLAIM, DAMAGE, OR EXPENSE, INCLUDING, BUT NOT LIMITED TO, ATTORNEYS' FEES, ARISING OUT OF OR RELATED TO THE CITY'S AGENT'S FAILURE TO FURNISH AND MAINTAIN THE INSURANCE COVERAGE REQUIRED BY THIS AGREEMENT. IN THE EVENT OF ANY SUCH FAILURE, THE CITY MAY, IN ITS SOLE DISCRETION, FURNISH SUCH POLICY WITHOUT PREJUDICE TO ANY OTHER REMEDY THE CITY MAY HAVE. THE COST AND EXPENSE OF FURNISHING AND MAINTAINING SUCH POLICY SHALL BE DEEMED AN OPERATING EXPENSE OF THE CITY'S AGENT PAYABLE AT THE CITY'S SOLE DISCRETION. THE FOREGOING SHALL NOT, HOWEVER, APPLY TO CRIMINAL PENALTIES OR FRAUD COMMITTED BY THE PARTIES OR THE PARTIES' OFFICERS, DIRECTORS, OR EMPLOYEES. THIS PROVISION SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.
- viii. *GENERAL INDEMNITY*. THE CITY'S AGENT SHALL INDEMNIFY, PROTECT, DEFEND, AND HOLD HARMLESS THE PARTIES AND THE PARTIES' OFFICERS, ELECTED OFFICIALS, DIRECTORS, AGENTS, AND EMPLOYEES FROM AND AGAINST ANY AND ALL LOSS, LIABILITY, CLAIM, DAMAGE, OR EXPENSE, INCLUDING, BUT NOT LIMITED TO, ATTORNEYS' FEES, ARISING OUT OF OR RELATED TO THE CITY'S AGENT'S PERFORMANCE OF THE SERVICES CONTEMPLATED UNDER THIS AGREEMENT, WHETHER OR NOT CAUSED, IN WHOLE OR IN PART, BY THE NEGLIGENCE OF THE CITY'S AGENT. THE FOREGOING SHALL NOT, HOWEVER, APPLY TO CRIMINAL PENALTIES OR FRAUD COMMITTED BY THE PARTIES OR THE PARTIES' OFFICERS, DIRECTORS, OR EMPLOYEES. THIS PROVISION SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

Article 7. Miscellaneous

- A. This Agreement is made solely for the benefit of the University and the City, and no one else, whether a staff member or student of the University, or otherwise, and that no action or defense may be founded upon this Agreement except by the Parties.
- B. In no event shall the City be deemed to be in default of any provision of this Agreement for failure to perform where such failure is due solely to strikes, walkouts, civil insurrections or disorders, acts of God, or for any other cause or causes wholly beyond the control of the City. In such eventuality, the University may, upon twelve (12) hours' notice to the City, request the

temporary suspension of the services contemplated under this Agreement until the resumption of normal class schedules, in which event the City shall not furnish buses or be paid for services until the resumption of services. The University shall, in such cases, notify the City twelve (12) hours in advance of the time service is to be resumed.

- C. The Parties understand and acknowledge that the funding of this Agreement is contained in each Party's annual budget and is subject to the approval of each Party in each fiscal year. The Parties further agree that should the governing body of any of the Parties fail to approve a budget which includes sufficient funds for the continuance of this Agreement, or should the governing body of any of the Parties fail to certify funds for any reason, then and upon the occurrence of such event, this Agreement shall terminate as to that Party and that Party shall then have no further obligation to the other Party. When the funds budgeted or certified during any fiscal year by a Party to discharge its obligations under this Agreement are expended, this Agreement may be terminated. The Party paying for the bus service contemplated under this Agreement must make said payments from current revenues available to the paying Party.
- D. This Agreement is subject to all present and future valid laws, orders, rules, ordinances, and regulations of the United States of America, the State of Texas, the Parties, and any other regulatory body having jurisdiction over this Agreement. This Agreement shall be construed and governed according to the laws of the State of Texas. The sole venue for any action, controversy, dispute, or claim arising under this Agreement shall be in a court of appropriate jurisdiction in Lubbock County, Texas exclusively.
- E. Each Party 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. Neither Party shall 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 Agreement, the former shall control.
- F. This Agreement is public information. To the extent, if any, that any provision of this Agreement is in conflict with Tex. Gov't. Code Ann. Chapter 552 et seq., as amended, the same shall be of no force and effect.
- G. This Agreement is entered solely by and between, and may be enforced only by and among the Parties. Except as set forth above, this Agreement shall not be deemed to create any rights in or obligations to any third parties.
- H. Nothing in this Agreement is construed as creating any personal liability on the part of any employee, officer, or agent of any public body that may be a party to this Agreement.
- I. This Agreement is not intended to, and shall not be construed to create, any joint enterprise between or among the Parties.
- J. The Parties expressly acknowledge that the Parties' authority to indemnify and hold harmless any third party is governed by the Texas Constitution and any provision which purports to require indemnification by either Party is invalid.

K. THE PARTIES EXPRESSLY ACKNOWLEDGE AND AGREE THAT NO PROVISION OF THIS AGREEMENT IS IN ANY WAY INTENDED TO CONSTITUTE A WAIVER BY EITHER PARTY OF ANY IMMUNITIES FROM SUIT OR LIABILITY THAT A PARTY TO THIS AGREEMENT MAY HAVE BY OPERATION OF LAW. EACH PARTY RETAINS ALL OF ITS GOVERNMENTAL IMMUNITIES.

L. If a dispute concerning this Agreement arises between the Parties and the Parties are unable to resolve the dispute in the ordinary course of business, the Parties agree to mediate the issue in Lubbock County, Texas, using the guidelines and model rules of the Texas Attorney General's Office established pursuant to Tex. Gov't Code §2260.052(c). If a resolution is reached, then the Parties will be bound by the terms and conditions set forth in the settlement agreement that will be executed by the Parties. Both Parties shall share the cost of the mediation equally, although attorneys and witnesses or specialists are the direct responsibility of each Party, and their fees and expenses are the responsibility of the individual Party. The Parties agree to jointly select a mediator.

This Agreement is executed by the Parties on this _____ day of _____, 2022.

SIGNATURES

FOR THE CITY:

FOR THE UNIVERSITY:

DANIEL M. POPE, Mayor

LAWRENCE SCHOVANEC, President

ATTEST:

ATTEST:

Rebecca Garza, City Secretary

(Printed Name)

APPROVED AS TO CONTENT:

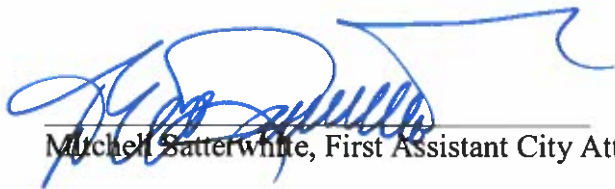
APPROVED AS TO CONTENT:



Bill Howerton, Assistant City Manager

Noel Sloan, Senior Vice President for
Administration and Finance,
Chief Financial Officer

APPROVED AS TO FORM:



Mitchell Satterwhite, First Assistant City Attorney

APPROVED AS TO FORM:

Eric D. Bentley, Vice Chancellor and
General Counsel

AGENT ACKNOWLEDGMENT:



Chris Mandrell, General Manager Citibus

Information

Agenda Item

Resolution - Public Transit Services: Consider a resolution authorizing the Mayor to execute a Services Agreement, with Swiftly, Inc., to provide real time vehicle tracking for the Citibus fleet through software, as a service subscription.

Item Summary

The agreement with Swiftly, Inc. will provide real time vehicle tracking for the Citibus fleet through software as a service subscription and support, to assure effective management and improvements to the system's reliability. It provides a data platform that will provide a live-operations mapping tool for Citibus operations staff and customer service representatives, rider alerts, real time General Transit Feed Specification (GTFS) creation and management, and a passenger-facing live mapping tool.

Swiftly is the only fully integrated big data platform for fixed-route public transportation, enabling users to instantly pinpoint in real-time and historically where and when performance issues are occurring. This provides opportunities for staff across the agency to make improvements. The agreement with Swiftly, Inc. will fall under a sole source purchase. As noted in the Federal Transit Administration (FTA) CARES Act FAQs, this would fall under the sole source language for Emergency Response.

This would be documented as a sole source justification, and it would not require a waiver from FTA.

The exact service term ('Initial Term') is for 60 Months (5/1/2022 - 4/30/2027). The term shall automatically renew for successive one-year terms (each a 'Renewal Term') after the Initial Term unless either party notifies the other party of its intent not to renew at least thirty (30) days prior to the end of the then current term.

Fiscal Impact

Costs associated with the Swiftly, Inc agreement/order are as follows:

Year 1 service costs - \$67,172

Year 2 service costs - \$71,059

Year 3 service costs - \$75,062

Year 4 service costs - \$79,185

Year 5 service costs - \$83,432

One time capital costs - \$196,532

The first year annual service cost associated with this agreement is included in the FY 2022 Citibus Budget. Citibus will use FY 2018 & 2019 Federal Section 5307 funds for the one-time capital purchase. Local match for this is included in the FY 2018 & 2019 Citibus Budgets.

Staff/Board Recommending

Bill Howerton, Deputy City Manager

Attachments

Resolution - Swiftly
Swiftly 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, Contract No. 16537, a Services Agreement, for GPS Playback Module, On-Time Performance Module, Vehicle Speed Module, and Runtime Module for Citibus, by and between the City of Lubbock and Swiftly, Inc., and all 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.

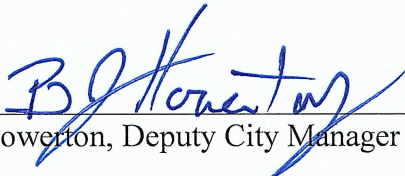
Passed by the City Council on _____.

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 No. 16537-Swiftly, Inc.
4.21.22

**CITY OF LUBBOCK
SERVICES AGREEMENT**

This Service Agreement (this "Agreement") Contract No. 16537 is entered into as of the _____ day of _____ 2022, ("Effective Date") by and between Swiftly, Inc. (the Contractor), and the City of Lubbock (the "City").

RECITALS

WHEREAS, the parties enter into this agreement in accordance with Local Government Code (LGC) § 252.022 (7) (A); and

WHEREAS, Contractor desires to perform as an independent contractor to GPS Playback Module, On-Time Performance Module, Vehicle Speed Module, and Runtime Module 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 – Swiftly Order Form
3. Exhibit B – Insurance Requirements
4. Exhibit C – Federal Clauses

Scope of Work

Contractor shall provide the services that are specified in Exhibit A. The Contractor shall comply with all the applicable requirements set forth in Exhibit B.

Article 1 Terms

1.1 The contract shall be for a term of five (5) years from said date of term beginning upon formal approval. The contract shall will automatically renew for successive one (1) year terms unless terminated.

1.2 Contractor shall use its commercially reasonable efforts to render Services under this Agreement in a professional and business-like manner and in accordance with the standards and practices recognized in the industry.

1.3 The contract shall remain in effect until the first of the following occurs: (1) the expiration date, (2) performance of services ordered, or (3) Termination for breach by either party with a 30 day written notice or termination for non-appropriation of funding 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.

1.4 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.

1.5 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.

Miscellaneous.

Article 2

- 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 Texas Government Code 2274. By entering into this Agreement, Contractor verifies that: (1) it does not, and will not for the duration of the contract, have a practice, policy, guidance,

or directive that discriminates against a firearm entity or firearm trade association or (2) the verification required by Section 2274.002 of the Texas Government Code does not apply to the contract. If Contractor is a company with 10 or more full-time employees and if this Agreement has a value of at least \$100,000 or more, Contractor verifies that, pursuant to Texas Government Code Chapter 2274, it does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and will not discriminate during the term of the contract against a firearm entity or firearm trade association.

- 2.18 Contractor represents and warrants that: (1) it does not, and will not for the duration of the contract, boycott energy companies or (2) the verification required by Section 2274.002 of the Texas Government Code does not apply to the contract. If Contractor is a company with 10 or more full-time employees and if this Agreement has a value of at least \$100,000 or more, Contractor verifies that, pursuant to Texas Government Code Chapter 2274, it does not boycott energy companies; and will not boycott energy companies during the term of the Agreement. This verification is not required for an agreement where a governmental entity determines that these requirements are inconsistent with the governmental entity's constitutional or statutory duties related to the issuance, incurrence, or management of debt obligations or the deposit, custody, management, borrowing, or investment of funds.
- 2.19 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.
- 2.20 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

Daniel M. Pope, Mayor

ATTEST:

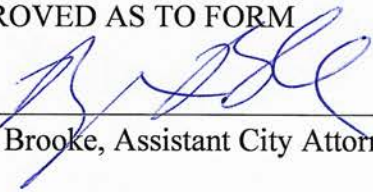
Rebecca Garza, City Secretary

APPROVED AS TO CONTENT:



Chris Mandrell, General Manager of Citibus

APPROVED AS TO FORM



Ryan Brooke, Assistant City Attorney

CONTRACTOR

BY:



Authorized Representative

Jonathan Simkin, CEO
Print Name

~~2261~~ 2261 Market St. #4151
Address

San Francisco, CA 94114
City, State, Zip Code

Swiftly Order Form



Customer	Citibus (Lubbock, TX)
Quote Date	4/25/2022 — Pricing Valid for 30 Days
Effective Date of Service	Upon contract signing
Contract Term	The exact service term (the 'Initial Term'): 60 Months. Upon Contract signing. The term shall automatically renew for successive one (1) year terms (each a 'Renewal Term') after the Initial Term unless either party notifies the other party of its intent not to renew at least thirty (30) days prior to the end of the then current term.
Price Increases	The annual cost shall increase by 3% for each year during the Initial Term and 3% for each one year Renewal Term.
Marketing Terms	Willingness to work with Swiftly to develop a case study, mutually agreeable press release, and ability to use your agency as a reference (website, presentations, etc.).

Annual Fees

PRODUCT	NUMBER OF VEHICLES	LIST ANNUAL PRICE PER VEHICLE	ANNUAL COST PER VEHICLE	TOTAL COST PER YEAR
Swiftly Transitime				
Real-Time Passenger Information Module: - Data APIs (GTFS-rt, JSON, XML, etc.) - SMS and Voice software services - Passenger Facing Website	56	\$730	\$612	\$34,272
Live Operations Module	56			Included
Rider Alerts Module	56	\$290	\$290	\$16,240
Swiftly Metronome				
AVAS Connector	56	\$350	\$298	\$16,660
TOTAL ANNUAL COST				\$67,172
TOTAL ANNUAL INCREASE AFTER YEAR 1				3%

Optional Additional Modules*	NUMBER OF VEHICLES	LIST ANNUAL PRICE PER VEHICLE	ANNUAL COST PER VEHICLE	TOTAL COST PER YEAR
Swiftly Insights				
GPS Playback Module	56	\$365	\$323	\$18,114
On-Time Performance Module	56	\$365	\$323	\$18,114
Swiftly Metronome				
Service Adjustments Module	56	\$550	\$537	\$30,085
TOTAL ANNUAL COST				\$66,313
TOTAL ANNUAL INCREASE AFTER YEAR 1				3%

*The Optional Additional Modules are not included in the Billing Table below. Customer may purchase the Optional Additional Modules for the prices specified above by executing a separate Order Form before December 31, 2022.

One-Time Fees

PRODUCT NAME	NUMBER OF VEHICLES	LIST PRICE PER VEHICLE	COST PER VEHICLE	TOTAL COST
Swiftly Implementation Services	56	\$810	\$319	\$17,864
AVA Hardware (audio-only)	56	\$2,930	\$2,491	\$139,468
AVA Installation Services	56	\$700	\$700	\$39,200
TOTAL ONE-TIME COST				\$196,532

Billing Table	Annual Term	Billing Date	Amount Due
	Year 1:	-	\$263,704
	Year 2:	-	\$71,059
	Year 3:	-	\$75,062
	Year 4:	-	\$79,185
	Year 5:	-	\$83,432
	Total Years 1 - 5:	Upon contract signing	\$572,442

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	
GENERAL LIABILITY			
<input checked="" type="checkbox"/> Commercial General Liability (can be combined with an Excess Liability to meet requirement)		General Aggregate	<u>\$2,000,000</u>
<input type="checkbox"/> Claims Made	<input checked="" type="checkbox"/> Occurrence - <u>\$1,000,000</u>	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>
<input checked="" type="checkbox"/> CYBER LIABILITY			<u>\$1,000,000</u>
<input checked="" type="checkbox"/> TECHNOLOGY ERROS AND OMMISION			<u>\$1,000,000</u>
AUTOMOTIVE LIABILITY			
<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>
OTHER: COPIES OF ENDOSEMENTS ARE REQUIRED			
<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 to 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.

Federal Clauses

- 1 NO GOVERNMENT OBLIGATION TO THIRD PARTIES.** No Government Obligation to Third Parties. All contracts except micro-purchases (\$3,000 or less, except for construction contracts over \$2,000) (1) The municipal corporation and contractor acknowledge and agree that, notwithstanding any concurrence by the US Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the US Government, the US Government is not a party to this contract and shall not be subject to any obligations or liabilities to the municipal corporation, the contractor or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract. (2) Contractor agrees to include the above clause in each subcontract financed in whole or in part with FTA assistance. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.
- 2 PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENT AND RELATED ACTS.** All contracts except micro-purchases (\$3,000 or less, except for construction contracts over \$2,000) (1) Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 USC 3801 et seq. and USDOT regulations, "Program Fraud Civil Remedies," 49 CFR 31, apply to its actions pertaining to this project. Upon execution of the underlying contract, contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submittal, or certification, the US Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act (1986) on contractor to the extent the US Government deems appropriate. (2) If contractor makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submittal, or certification to the US Government under a contract connected with a project that is financed in whole or in part with FTA assistance under the authority of 49 USC 5307, the Government reserves the right to impose the penalties of 18 USC 1001 and 49 USC 5307(n)(1) on contractor, to the extent the US Government deems appropriate. (3) Contractor shall include the above two clauses in each subcontract financed in whole or in part with FTA assistance. The clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.
- 3 ACCESS TO RECORDS AND REPORTS.** Applicability – As shown below. These requirements do not apply to micro- purchases (\$3,000 or less, except for construction contracts over \$2,000) The following access to records requirements apply to this Contract: 1. Where the purchaser is not a State but a local government and is an FTA recipient or a subgrantee of FTA recipient in accordance with 49 CFR 18.36(i), contractor shall provide the purchaser, the FTA, the US Comptroller General or their authorized representatives access to any books, documents, papers and contractor records which are pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor shall also, pursuant to 49 CFR 633.17, provide authorized FTA representatives, including any PMO contractor, access to contractor's records and construction sites pertaining to a capital project, defined at 49 USC 5302(a)1, which is receiving FTA assistance through the programs described at 49 USC 5307, 5309 or 5311. 2. Where the purchaser is a State and is an FTA recipient or a subgrantee of FTA recipient in accordance with 49 CFR 633.17, contractor shall provide the purchaser, authorized FTA representatives, including any PMO Contractor, access to contractor's records and construction sites pertaining to a capital project, defined at 49 USC

5302(a)1, which receives FTA assistance through the programs described at 49 USC 5307, 5309 or 5311. By definition, a capital project excludes contracts of less than the simplified acquisition threshold currently set at \$100,000. 3. Where the purchaser enters into a negotiated contract for other than a small purchase or under the simplified acquisition threshold and is an institution of higher education, a hospital or other non-profit organization and is an FTA recipient or a subgrantee of FTA recipient in accordance with 49 CFR 19.48, contractor shall provide the purchaser, the FTA, the US Comptroller General or their authorized representatives, access to any books, documents, papers and record of the contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. 4. Where a purchaser which is an FTA recipient or a subgrantee of FTA recipient in accordance with 49 USC 5325(a) enters into a contract for a capital project or improvement (defined at 49 USC 5302(a)1) through other than competitive bidding, contractor shall make available records related to the contract to the purchaser, the Secretary of USDOT and the US Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection. 5. Contractor shall permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed. 6. Contractor shall maintain all books, records, accounts and reports required under this contract for a period of not less than three (3) years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case contractor agrees to maintain same until the municipal corporation, FTA Administrator, US Comptroller General, or any of their authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Re: 49 CFR 18.39(i)(11). FTA does not require the inclusion of these requirements in subcontracts.

4 FEDERAL CHANGES. All Contracts except micro-purchases (\$3,000 or less, except for construction contracts over

\$2,000) Contractor shall comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between the purchaser and FTA, as they may be amended or promulgated from time to time during the term of the contract. Contractor's failure to comply shall constitute a material breach of the contract.

5 CIVIL RIGHTS REQUIREMENTS. All contracts except micro-purchases (\$3,000 or less, except for construction contracts over \$2,000) The following requirements apply to the underlying contract: (1) Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 USC 2000d, Sec. 303 of the Age Discrimination Act (1975), as amended, 42 USC 6102, Sec. 202 of the Americans with Disabilities Act (1990), 42 USC 12132, and 49 USC 5332, contractor shall not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age or disability. Contractor shall also comply with applicable Federal implementing regulations and other requirements FTA may issue. (2) Equal Employment Opportunity - The following equal employment opportunity requirements apply to the underlying contract: (a) Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 USC 2000e, and 49 USC 5332, contractor shall comply with all applicable equal employment opportunity requirements of USDOL, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, USDOL," 41 CFR 60 et seq., (implementing Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 USC 2000e), and any applicable Federal statutes, executive orders, regulations, and policies that may in the future affect

construction activities undertaken in the course of the project. Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex or age. 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. In addition, contractor shall comply with any implementing requirements FTA may issue. (b) Age - In accordance with Sec. 4 of the Age Discrimination in Employment Act (1967), as amended, 29 USC 623 and 49 USC 5332, contractor shall refrain from discrimination against present and prospective employees for reason of age. Contractor shall also comply with any implementing requirements FTA may issue. (c) Disabilities - In accordance with Sec. 102 of the Americans with Disabilities Act (ADA), as amended, 42 USC 12112, contractor shall comply with the requirements of US Equal Employment Opportunity Commission (EEOC), Regulations to Implement Equal Employment Provisions of the Americans with Disabilities Act, 29 CFR 1630, pertaining to employment of persons with disabilities. Contractor shall also comply with any implementing requirements FTA may issue. (3) Contractor shall include these requirements in each subcontract financed in whole or in part with FTA assistance, modified only if necessary to identify the affected parties.

6 INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS.

All contracts except micro- purchases (\$3,000 or less, except for construction contracts over \$2,000) The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1E, 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. Contractor shall not perform any act, fail to perform any act, or refuse to comply with any City requests which would cause the City to be in violation of the FTA terms and conditions.

7 ENERGY CONSERVATION All Contracts except micro-purchases (\$3,000 or less, except for construction contracts over \$2,000) Contractor shall comply with mandatory standards and policies relating to energy efficiency, stated in the state energy conservation plan issued in compliance with the Energy Policy & Conservation Act.

8 TERMINATION All Contracts over \$10,000, except contracts with nonprofit organizations and institutions of higher learning, where the threshold is \$100,000 a. Termination for Convenience (General Provision) the municipal corporation may terminate this contract, in whole or in part, at any time by written notice to contractor when it is in the municipal corporation's best interest. Contractor shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. Contractor shall promptly submit its termination claim to the municipal corporation. If contractor is in possession of any the municipal corporation property, contractor shall account for same, and dispose of it as the municipal corporation directs. b. Termination for Default [Breach or Cause] (General Provision) If contractor does not deliver items in accordance with the contract delivery schedule, or, if the contract is for services, and contractor fails to perform in the manner called for in the contract, or if contractor fails to comply with any other provisions of the contract, the municipal corporation may terminate this contract for default. Termination shall be effected by serving a notice of termination to contractor setting forth the manner in which contractor is in default. Contractor shall only be paid the contract price for supplies delivered and accepted, or for services performed in accordance with the manner of performance set forth in the

contract. If it is later determined by the municipal corporation that contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of contractor, the municipal corporation, after setting up a new delivery or performance schedule, may allow contractor to continue work, or treat the termination as a termination for convenience. c. Opportunity to Cure (General Provision) the municipal corporation in its sole discretion may, in the case of a termination for breach or default, allow contractor an appropriately short period of time in which to cure the defect. In such case, the notice of termination shall state the time period in which cure is permitted and other appropriate conditions. If contractor fails to remedy to the municipal corporation's satisfaction the breach or default or any of the terms, covenants, or conditions of this Contract within ten (10) days after receipt by contractor or written notice from the municipal corporation setting forth the nature of said breach or default, the municipal corporation shall have the right to terminate the Contract without any further obligation to contractor. Any such termination for default shall not in any way operate to preclude the municipal corporation from also pursuing all available remedies against contractor and its sureties for said breach or default. d. Waiver of Remedies for any Breach In the event that the municipal corporation elects to waive its remedies for any breach by contractor of any covenant, term or condition of this Contract, such waiver by the municipal corporation shall not limit its remedies for any succeeding breach of that or of any other term, covenant or condition of this Contract. e. Termination for Convenience (Professional or Transit Service Contracts) the municipal corporation, by written notice, may terminate this contract, in whole or in part, when it is in the municipal corporation's interest. If the contract is terminated, the municipal corporation shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination. f. Termination for Default (Supplies and Service) If contractor fails to deliver supplies or to perform the services within the time specified in this contract or any extension or if the contractor fails to comply with any other provisions of this contract, the municipal corporation may terminate this contract for default. the municipal corporation shall terminate by delivering to contractor a notice of termination specifying the nature of default. Contractor shall only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner or performance set forth in this contract. If, after termination for failure to fulfill contract obligations, it is determined that contractor was not in default, the rights and obligations of the parties shall be the same as if termination had been issued for the municipal corporation's convenience. g. Termination for Default (Transportation Services) If contractor fails to pick up the commodities or to perform the services, including delivery services, within the time specified in this contract or any extension or if contractor fails to comply with any other provisions of this contract, the municipal corporation may terminate this contract for default. The municipal corporation shall terminate by delivering to contractor a notice of termination specifying the nature of default. Contractor shall only be paid the contract price for services performed in accordance with the manner of performance set forth in this contract. If this contract is terminated while contractor has possession of the municipal corporation goods, contractor shall, as directed by the municipal corporation, protect and preserve the goods until surrendered to the municipal corporation or its agent. Contractor and the municipal corporation shall agree on payment for the preservation and protection of goods. Failure to agree on an amount shall be resolved under the Dispute clause. If, after termination for failure to fulfill contract obligations, it is determined that contractor was not in default, the rights and obligations of the parties shall be the same as if termination had been issued for the municipal corporation's convenience.

h. Termination for Default (Construction) If contractor refuses or fails to prosecute the work or any separable part, with the diligence that will insure its completion within the time specified, or any extension, or fails to complete the work within this time, or if contractor fails

to comply with any other provisions of this contract, the municipal corporation may terminate this contract for default. the municipal corporation shall terminate by delivering to contractor a notice of termination specifying the nature of default. In this event, the municipal corporation may take over the work and complete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work. Contractor and its sureties shall be liable for any damage to the municipal corporation resulting from contractor's refusal or failure to complete the work within specified time, whether or not contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the municipal corporation in completing the work. Contractor's right to proceed shall not be terminated nor shall contractor be charged with damages under this clause if: 1. Delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of contractor. Examples of such causes include: acts of God, acts of the municipal corporation, acts of another contractor in the performance of a contract with the recipient, epidemics, quarantine restrictions, strikes, freight embargoes; and 2. Contractor, within 10 days from the beginning of any delay, notifies the municipal corporation in writing of the causes of delay. If in the municipal corporation's judgment, delay is excusable, the time for completing the work shall be extended. the municipal corporation's judgment shall be final and conclusive on the parties, but subject to appeal under the Disputes clauses. If, after termination of contractor's right to proceed, it is determined that contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if termination had been issued for the municipal corporation's convenience.

i. Termination for Convenience or Default (Architect & Engineering) the municipal corporation may terminate this contract in whole or in part, for the municipal corporation's convenience or because of contractor's failure to fulfill contract obligations. The municipal corporation shall terminate by delivering to contractor a notice of termination specifying the nature, extent and effective date of termination. Upon receipt of the notice, contractor shall (1) immediately discontinue all services affected (unless the notice directs otherwise), and (2) deliver to the municipal corporation all data, drawings, specifications, reports, estimates, summaries and other information and materials accumulated in performing this contract, whether completed or in process. If termination is for the municipal corporation's convenience, it shall make an equitable adjustment in the contract price but shall allow no anticipated profit on unperformed services. If termination is for contractor's failure to fulfill contract obligations, the municipal corporation may complete the work by contract or otherwise and contractor shall be liable for any additional cost incurred by the municipal corporation. If, after termination for failure to fulfill contract obligations, it is determined that contractor was not in default, the rights and obligations of the parties shall be the same as if termination had been issued for the municipal corporation's convenience.

j. Termination for Convenience or Default (Cost-Type Contracts) the municipal corporation may terminate this contract, or any portion of it, by serving a notice of termination on contractor. The notice shall state whether termination is for convenience of the municipal corporation or for default of contractor. If termination is for default, the notice shall state the manner in which contractor has failed to perform the requirements of the contract. Contractor shall account for any property in its possession paid for from funds received from the municipal corporation, or property supplied to contractor by the municipal corporation. If termination is for default, the municipal corporation may fix the fee, if the contract provides for a fee, to be paid to contractor in proportion to the value, if any, of work performed up to the time of termination. Contractor shall promptly submit its termination claim to the municipal corporation and the parties shall negotiate the termination settlement to be paid to contractor. If termination is for the municipal corporation's convenience, contractor shall be paid its contract close-out costs, and a fee, if the contract provided for payment of a fee, in proportion to the work performed up to the time of

termination. If, after serving a notice of termination for default, the municipal corporation determines that contractor has an excusable reason for not performing, such as strike, fire, flood, events which are not the fault of and are beyond the control of contractor, the municipal corporation, after setting up a new work schedule, may allow contractor to continue work, or treat the termination as a termination for convenience.

- 9 GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NON-PROCUREMENT).** This contract is a covered transaction for purposes of 49 CFR Part 29. As such, Contractor is required to verify that none of Contractor, its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945.

Contractor is required to comply with 49 CFR 29, Subpart C and must include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into.

By signing and submitting its bid or proposal, the bidder or proposer certifies as follows:

The certification in this clause is a material representation of fact relied upon by municipal corporation. If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to The City, 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 49 CFR 29, 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.

- 10 DISADVANTAGED BUSINESS ENTERPRISE (DBE).** Contracts over \$3,000 awarded on the basis of a bid or proposal offering to use DBEs (a) This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs. The national goal for participation of Disadvantaged Business Enterprises (DBE) is 10%. The municipal corporation's overall goal for DBE participation is listed elsewhere. If a separate contract goal for DBE participation has been established for this procurement, it is listed elsewhere. (b) Contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this DOT-assisted contract. Failure by Contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as The City deems appropriate. Each subcontract Contractor signs with a subcontractor must include the assurance in this paragraph (*see* 49 CFR 26.13(b)).

(c) If a separate contract goal has been established, Bidders/offerors are required to document sufficient DBE participation to meet these goals or, alternatively, document adequate good faith efforts to do so, as provided for in 49 CFR 26.53. d. If no separate contract goal has been established, the successful bidder/offeror will be required to report its DBE participation obtained through race-neutral means throughout the period of performance. e. The contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than 30 days after the contractor's receipt of payment for that work from the municipal corporation. In addition, the contractor may withhold retainage from its subcontractors or must return any retainage payments to those subcontractors within 30 days after the subcontractor's work related to this contract is satisfactorily completed or must return any retainage payments to those subcontractors within 30 days after incremental

acceptance of the subcontractor's work by the municipal corporation and contractor's receipt of the partial retainage payment related to the subcontractor's work. f. The contractor must promptly notify the municipal corporation whenever a DBE subcontractor performing work related to this contract is terminated or fails to complete its work, and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of the municipal corporation.

11 TRANSIT EMPLOYEE PROTECTIVE ARRANGEMENTS The Contractor agrees to the comply with applicable transit employee protective requirements as follows:

- a. **General Transit Employee Protective Requirements** - To the extent that FTA determines that transit operations are involved, the Contractor agrees to carry out the transit operations work on the underlying contract in compliance with terms and conditions determined by the U.S. Secretary of Labor to be fair and equitable to protect the interests of employees employed under this contract and to meet the employee protective requirements of 49 U.S.C. A 5333(b), and U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the letter of certification from the U.S. DOL to FTA applicable to the FTA Recipient's project from which Federal assistance is provided to support work on the underlying contract. The Contractor agrees to carry out that work in compliance with the conditions stated in that U.S. DOL letter. The requirements of this subsection (1), however, do not apply to any contract financed with Federal assistance provided by FTA either for projects for elderly individuals and individuals with disabilities authorized by 49 U.S.C. § 5310(a)(2), or for projects for nonurbanized areas authorized by 49 U.S.C. § 5311. Alternate provisions for those projects are set forth in subsections (b) and (c) of this clause.
- b. **Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C. § 5310(a)(2) for Elderly Individuals and Individuals with Disabilities** - If the contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5310(a)(2), and if the U.S. Secretary of Transportation has determined or determines in the future that the employee protective requirements of 49 U.S.C. § 5333(b) are necessary or appropriate for the state and the public body subrecipient for which work is performed on the underlying contract, the Contractor agrees to carry out the Project in compliance with the terms and conditions determined by the U.S. Secretary of Labor to meet the requirements of 49 U.S.C. § 5333(b), U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the U.S. DOL's letter of certification to FTA, the date of which is set forth Grant Agreement or Cooperative Agreement with the state. The Contractor agrees to perform transit operations in connection with the underlying contract in compliance with the conditions stated in that U.S. DOL letter.
- c. **Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C. § 5311 in Nonurbanized Areas** - If the contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5311, the Contractor agrees to comply with the terms and conditions of the Special Warranty for the Nonurbanized Area Program agreed to by the U.S. Secretaries of Transportation and Labor, dated May 31, 1979, and the procedures implemented by U.S. DOL or any revision thereto.

- d. The Contractor also agrees to include the any applicable requirements in each subcontract involving transit operations financed in whole or in part with Federal assistance provided by FTA.

12. PRIVACY ACT (APR 1984)

(a) The Contractor agrees to- (1) Comply with the Privacy Act of 1974 (the Act) and the agency rules and regulations issued under the Act in the design, development, or operation of any system of records on individuals to accomplish an agency function when the contract specifically identifies—

(i) The systems of records; and

(ii) The design, development, or operation work that the contractor is to perform;

(2) Include the Privacy Act notification contained in this contract in every solicitation and resulting subcontract and in every subcontract awarded without a solicitation, when the work statement in the proposed subcontract requires the redesign, development, or operation of a system of records on individuals that is subject to the Act; and

(3) Include this clause, including this paragraph (3), in all subcontracts awarded under this contract which requires the design, development, or operation of such a system of records.

(b) In the event of violations of the Act, a civil action may be brought against the agency involved when the violation concerns the design, development, or operation of a system of records on individuals to accomplish an agency function, and criminal penalties may be imposed upon the officers or employees of the agency when the violation concerns the operation of a system of records on individuals to accomplish an agency function. For purposes of the Act, when the contract is for the operation of a system of records on individuals to accomplish an agency function, the Contractor is considered to be an employee of the agency.

(c)(1) "Operation of a system of records," as used in this clause, means performance of any of the activities associated with maintaining the system of records, including the collection, use, and dissemination of records.

(2) "Record," as used in this clause, means any item, collection, or grouping of information about an individual that is maintained by an agency, including, but not limited to, education, financial transactions, medical history, and criminal or employment history and that contains the person's name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a fingerprint or voiceprint or a photograph.

(3) "System of records on individuals," as used in this clause, means a group of any records under the control of any agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual.

Information

Agenda Item

Resolution - Information Technology: Consider a resolution authorizing the Mayor to execute Purchase Order 33001616, to ThinkGard, LLC, for Managed Backup and Disaster Recovery as a Service (DRaaS) Solution with discounted pricing and backup hardware included.

Item Summary

This service with ThinkGard LLC will provide Managed Backup & Disaster Recovery as a Service (DRaaS) solution with a first year cost of \$359,802. The agreement provides for 2 one-year renewal options.

The purchase is a Sole Source purchase, as ThinkGard is the only company staff has identified that provides a complete and comprehensive Data Protection (Disaster Recovery & Cyber Security) as a Service solution. ThinkGard does so as their only service offering and specializes in the public sector.

Fiscal Impact

The fiscal impact for the current budget year in the amount of \$89,950.50 is budgeted in the Information Technology Operating Budget, Hardware as a Service.

Staff/Board Recommending

Erik Rejino, Assistant City Manager
James C. Brown, Director of Information Technology

Attachments

Resolution
ThinkGard PO 33001616

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 33001616, for the purchase of ThinkGard's Managed Backup & Disaster Recovery Solution (DRaaS), by and between the City of Lubbock and ThinkGrad, LLC, of Atlanta, Georgia, 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:



Erik Rejino, Assistant City Manager

APPROVED AS TO FORM:



Ryan Brooke, Assistant City Attorney

RES.PO 33001616-ThinkGard, LLC
5.2.22



PURCHASE ORDER

Page - 1
Date - 4/27/2022
Order Number 33001616 000 OP
Branch/Plant 3410

TO: THINKGARD, LLC
VC3, INC
PO BOX 746804
ATLANTA GA 30374-6804

SHIP TO: CITY OF LUBBOCK
INFORMATION TECHNOLOGY
1314 AVENUE K - BASEMENT
LUBBOCK TX 79401

INVOICE TO: CITY OF LUBBOCK
ACCOUNTS PAYABLE
P.O. BOX 2000
LUBBOCK, TX 79457

BY: 
Marta Alvarez, Director of Purchasing & Contract Management

Ordered 4/27/2022 Freight
Requested 4/27/2022 Taken By YBUSBY
Delivery Per J Zhine / Req # 58772 PUR 16581/#20220413-094105816/SoleSource

If you have any questions contact Jay Zhine: jzhine@mylubbock.us Phone 806-775-2372

Description/Supplier Item	Ordered	Unit Cost	UM	Extension	Request Date
80TB Enterprise Appliance	1.000		EA		5/27/2022
# S4-E80-512					
Enterprise DataGard	1.000	154,512.0000	EA	154,512.00	5/27/2022
# DataGard ICR - E80					
60TB Enterprise Appliance	1.000		EA		5/27/2022
# S4-E60-256					
Enterprise DataGard	1.000	66,600.0000	EA	66,600.00	5/27/2022
# DataGard ICR - E60					
36TB Enterprise Appliance	1.000		EA		5/27/2022
# S4-E36-256					
Enterprise DataGard	1.000	46,920.0000	EA	46,920.00	5/27/2022
# DataGard ICR - E36					
24TB Enterprise Appliance	1.000		EA		5/27/2022
# S4-E24-256					
Enterprise DataGard	1.000	73,200.0000	EA	73,200.00	5/27/2022
# DataGard ICR - E24					



PURCHASE ORDER

Page - 2
Date - 4/27/2022
Order Number 33001616 000 OP
Branch/Plant 3410

TO: THINKGURD, LLC
VC3, INC
PO BOX 746804
ATLANTA GA 30374-6804

SHIP TO: CITY OF LUBBOCK
INFORMATION TECHNOLOGY
1314 AVENUE K - BASEMENT
LUBBOCK TX 79401

INVOICE TO: CITY OF LUBBOCK
ACCOUNTS PAYABLE
P.O. BOX 2000
LUBBOCK, TX 79457

BY:

Marta Alvarez, Director of Purchasing & Contract Management

Ordered 4/27/2022 Freight
Requested 4/27/2022 Taken By YBUSBY
Delivery Per J Zhine / Req # 58772 #20220413-094105816/SoleSource

Description/Supplier Item	Ordered	Unit Cost	UM	Extension	Request Date
4TB Professional Appliance	1.000		EA		5/27/2022
# S4-P4-96					
Professional DataGard	1.000	13,320.0000	EA	13,320.00	5/27/2022
# DataGard ICR - P4					
Implementation Services - Ente	1.000	5,250.0000	EA	5,250.00	5/27/2022
# SKU 2IP268					

Total Order

Terms NET 30

359,802.00

INSURANCE REQUIRED:

Commercial General Liability, per occurrence- \$1,000,000
\$2,000,000 Aggregate. Cyber Liability - \$2,000,000.
To include products of complete operations endorsement
Automotive Liability- Combined Single limit for Any Auto -
\$1,000,000

Worker's Compensation: Statutory. If vendor is independent
contractor with no employees and are exempt from providing
Workers' Compensation coverage, must sign a waiver and provide
copy of driver's license. Technology Errors and Omissions -
\$5,000,000 per claim.

City of Lubbock is named as an additional insured on a primary and non-contributory basis with a waiver of subrogation in favor of the
City of Lubbock on liability coverages. To include products of completed operations endorsements. Waiver of subrogation provided on
the workers' compensation.

This purchase order encumbers funds in the amount of \$359,802.00 awarded to ThinkGard, LLC of Atlanta, GA, on _____,
2022. The following is incorporated into and made part of this purchase order by reference: Quote dated April 13, 2022, from ThinkGard of
Atlanta, GA.

Resolution # _____

CITY OF LUBBOCK

ATTEST:

Daniel M. Pope, Mayor

Rebecca Garza, City Secretary

PURCHASE ORDER TERMS AND CONDITIONS STANDARD TERMS AND CONDITIONS

Seller and Buyer agree as follows:

ACCEPTANCE OF THIS PURCHASE ORDER:

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 the City's 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.

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 of 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. 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.

28. 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

29. Texas Government Code, Section 2252.908 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/departmentsal-websites/departments/purchasing/vendor-information>

30. No Boycott of Israel. Pursuant to Section 2271.002 of the Texas Government Code, Respondent certifies that either (i) it meets an exemption criteria under Section 2271.002; or (ii) it does not boycott Israel and will not boycott Israel during the term of the contract resulting from this solicitation. Respondent shall state any facts that make it exempt from the boycott certification in its Response.

31. No Boycott of Energy Companies. Pursuant to Section 2274 of the Texas Government Code, Respondent certifies that either (i) it meets an exemption criteria under Section 2274.002; or (ii) it does not boycott Energy Companies and will not boycott Energy Companies during the term of the contract resulting from this solicitation. Respondent shall state any facts that make it exempt from the boycott certification in its Response.

32. No Boycott of a Firearm Entity or Firearm Trade Association. Pursuant to Section 2274 of the Texas Government Code, Respondent certifies that either (i) it meets an exemption criteria under Section 2274.002; or (ii) it does not boycott a Firearm Entity or Firearm Trade Association and will not boycott a Firearm Entity or Firearm Trade Association during the term of the contract resulting from this solicitation. Respondent shall state any facts that make it exempt from the boycott certification in its Response.

33. 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

34. **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.

35. 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: pr@mylubbock.us. Please send this request to this email address for it to be processed

City of Lubbock, TX - DRaaS Solution - Discounted & Free Hardware (annualized)

Quote created on April 13, 2022 - Reference: 20220413-094105816

City of Lubbock TX
1314 Avenue K
Lubbock, TX 79401
United States

James Brown
Chief Information Officer
jbrown@mail.ci.lubbock.tx.us
(806) 775-2372

Comments

This proposal for the City of Lubbock, TX includes pricing for ThinkGard's Managed Backup & Disaster Recovery Solution (DRaaS).

It includes free hardware - a discount secured from ThinkGard's manufacturer which will expire on June 30, 2022.

Nolan Griffin - Sales Executive at ThinkGard LLC



Products & Services

80TB Enterprise Appliance

2 x ~~\$31,174.00~~

S4-E80-512 - 80TB Enterprise Appliance

\$31,174.00 discount **\$0.00**

- CPU: 2x Xeon
- RAM: 512GB
- Array: RAID 6
- NICs: 2x10GbE OS
- Drive: 240GB SSD
- Transfer Drive: 1x4TB
- Chassis: 4U

DataGard ICR - E80

2 x ~~\$90,600.00 / year~~

Enterprise DataGard - 80TB Monthly Services

\$13,344.00 discount **\$154,512.00 / year**

Services Included in Monthly Rate:

for 3 years

- Infinite Cloud-Based Retention in US-based datacenters (ICR)
- Local backups in variable rates to the local appliance (5 minutes - 24 hours)

- Backup replication - 2 remote bicoastal sites
 - Daily monitoring & technical support to keep backups running
 - Assist in file and server recovery
 - On-Call trouble shooting service
 - Annual system testing including local & cloud test
 - Full technical DR documentation
 - 5-year warranty on the backup appliance
 - 30 days of off-site virtualization after which a fee of \$200.00 per 24 hours will apply.
-

60TB Enterprise Appliance

1 x ~~\$25,454.00~~

S4-E60-256 - 60TB Enterprise Appliance

\$25,454.00 discount **\$0.00**

- CPU: 2x Xeon
 - RAM: 256GB
 - Array: RAID 6
 - NICs: 2x10GbE
 - OS Drive: 240GB SSD
 - Transfer Drive: 1x1TB
 - Chassis: 4U
-

DataGard ICR - E60

1 x ~~\$75,120.00 / year~~

Enterprise DataGard - 60TB Monthly Services

\$8,520.00 discount **\$66,600.00 / year**

Services Included in Monthly Rate:

for 3 years

- Infinite Cloud-Based Retention in US-based datacenters (ICR)
 - Local backups in variable rates to the local appliance (5 minutes - 24 hours)
 - Backup replication - 2 remote bicoastal sites
 - Daily monitoring & technical support to keep backups running
 - Assist in file and server recovery
 - On-Call trouble shooting service
 - Annual system testing including local & cloud test
 - Full technical DR documentation
 - 5-year warranty on the backup appliance
 - 30 days of off-site virtualization after which a fee of \$200.00 per 24 hours will apply.
-

36TB Enterprise Appliance

1 x ~~\$14,344.00~~

S4-E36-256 - 36TB Enterprise Appliance

\$14,344.00 discount **\$0.00**

- CPU: 2x Xeon
 - RAM: 256GB
 - Array: RAID 6
 - NICs: 2x10GbE
 - OS Drive: 240GB SSD
 - Transfer Drive: 1x1TB
 - Chassis: 2U
-

DataGard ICR - E36

1 x ~~\$53,880.00 / year~~

Enterprise DataGard - 36TB Monthly Services

\$6,960.00 discount **\$46,920.00 / year**

Services Included in Monthly Rate:

for 3 years

- Infinite Cloud-Based Retention in US-based datacenters (ICR)
- Local backups in variable rates to the local appliance (5 minutes - 24 hours)
- Backup replication - 2 remote bicoastal sites

- Daily monitoring & technical support to keep backups running
- Assist in file and server recovery
- On-Call trouble shooting service
- Annual system testing including local & cloud test
- Full technical DR documentation
- 5-year warranty on the backup appliance
- 30 days of off-site virtualization after which a fee of \$200.00 per 24 hours will apply.

24TB Enterprise Appliance

2 x ~~\$12,472.00~~

S4-E24-256- 24TB Enterprise Appliance

\$12,472.00 discount **\$0.00**

- CPU: 2x Xeon
- RAM: 256GB
- Array: RAID 6
- NICs: 2x10GbE OS
- Drive: 240GB SSD
- Transfer Drive: 1x1TB
- Chassis: 2U

DataGard ICR - E24

2 x ~~\$43,200.00 / year~~

Enterprise DataGard - 24TB Monthly Services

\$6,600.00 discount **\$73,200.00 / year**

Services Included in Monthly Rate:

for 3 years

- Infinite Cloud-Based Retention in US-based datacenters (ICR)
- Local backups in variable rates to the local appliance (5 minutes - 24 hours)
- Backup replication - 2 remote bicoastal sites
- Daily monitoring & technical support to keep backups running
- Assist in file and server recovery
- On-Call trouble shooting service
- Annual system testing including local & cloud test
- Full technical DR documentation
- 5-year warranty on the backup appliance
- 30 days of off-site virtualization after which a fee of \$200.00 per 24 hours will apply.

4TB Professional Appliance

1 x ~~\$3,178.00~~

S4-P4-96 - 4TB Professional Appliance

\$3,178.00 discount **\$0.00**

- CPU: Xeon D
- RAM: 96GB
- Array: RAID 1
- NICs: 2x10GbE OS
- Drive: 120GB SSD
- Transfer Drive: 1x1TB
- Chassis: 1U

DataGard ICR - P4

1 x ~~\$15,060.00 / year~~

Professional DataGard - 4TB Monthly Services

\$1,740.00 discount **\$13,320.00 / year**

Services Included in Monthly Rate:

for 3 years

- Infinite Cloud-Based Retention in US-based datacenters (ICR)
- Local backups in variable rates to the local appliance (5 minutes - 24 hours)
- Backup replication - 2 remote bicoastal sites
- Daily monitoring & technical support to keep backups running

- Assist in file and server recovery
- On-Call trouble shooting service
- Annual system testing including local & cloud test
- Full technical DR documentation
- 5-year warranty on the backup appliance
- 30 days of off-site virtualization after which a fee of \$200.00 per 24 hours will apply.

Implementation Services - Enterprise	7 x \$1,000.00
SKU 2IP268	\$250.00 discount \$5,250.00

Implementation Services - Enterprise
The one-time fee includes:

- Optimize & preconfigure appliance(s).
- Assistance in installing backup agents on each server.
- Initial disaster recovery testing to build technical DR documentation.
- Setup of reporting and alerting.

Recurring discount	\$57,108.00 / year
Recurring subtotal	\$354,552.00 / year
One-time discount	\$132,018.00
One-time subtotal	\$5,250.00
Total	\$359,802.00

This quote expires on July 12, 2022.

Information

Agenda Item

Resolution - Parks and Recreation: Consider a resolution authorizing the Mayor to execute on behalf of the City of Lubbock an Agreement Termination and Release to the License Agreement dated September 26, 2002, Resolution No. 2002-R0394 with the Friends of Legacy Play Village, Community Playground Corporation.

Item Summary

The City of Lubbock entered into a License Agreement with the Friends of Legacy Play Village, Community Playground Corporation, in September 2002, for the purpose of constructing, maintaining and operating the Legacy Play Village. The term of the agreement is twenty (20) years. The Legacy Play Village was located in McAlister Park at 6401 Marsha Sharp Freeway in Southwest Lubbock. For safety reasons, the playground was torn down in the fall of 2018. The Friends of Legacy Play Village no longer wish to utilize the land and have asked to terminate the existing agreement.

Fiscal Impact

None

Staff/Board Recommending

Brooke Witcher, Assistant City Manager

Attachments

Resolution
Agreement Termination and Release
Exhibit A

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 Agreement Termination and Release to the License Agreement dated September 26, 2002, Resolution No. 2002-R0394, by and between the City of Lubbock and The Friends of Legacy Play Village, Community Playground Corporation, and related documents. Said Agreement Termination and Release 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:



Brooke Witcher, Assistant City Manager

APPROVED AS TO FORM:



Ryan Brooke, Assistant City Attorney

AGREEMENT TERMINATION AND RELEASE

This Agreement Termination and Release (the "Contract"), is dated effective May 10, 2022, and is by and between the City of Lubbock, Texas, a Texas home rule municipal corporation (the "City") and The Friends of Legacy Play Village, Community Playground Corporation ("Friends").

WHEREAS, pursuant to that certain License Agreement (the "Agreement"), dated on or about September 26, 2002, Resolution No. 2002-R0394, attached hereto as Exhibit "A," Friends entered into the Agreement to construct and maintain a community playground call "Legacy Play Village" on certain real property owned by the City and located in McAlister Park (the "Land");

WHEREAS, Friends no longer wish to utilize the Land and have caused the removal of the community playground on the Land pursuant to the Agreement; and

WHEREAS, the City and Friends both wish to terminate the Agreement;

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is herein acknowledged, the City and Friends hereby agree as follows:

1. For and in consideration of the mutual promises and covenants made herein, the City and Friends hereby terminate and cancel the Agreement dated on or about September 26, 2002, Resolution No. 2002-R0394, attached hereto as Exhibit "A," effective as of May 10, 2022.
2. IN CONSIDERATION OF THE MUTUAL PROMISES AND COVENANTS MADE HEREIN, THE CITY AND FRIENDS, TO THE FULLEST EXTENT PERMITTED BY LAW, DO HEREBY RELEASE EACH OTHER, AND THEIR RESPECTIVE OFFICERS, EMPLOYEES, ELECTED OFFICIALS, AGENTS, SUCCESSORS AND ASSIGNS FOR, FROM AND AGAINST ANY AND ALL OBLIGATIONS, RESPONSIBILITIES OR CLAIMS UNDER, OR WHICH MAY ARISE DIRECTLY OR INDIRECTLY FROM, OR ARE

RELATED TO, THE AGREEMENT, INCLUDING WITHOUT LIMITATION, ANY OBLIGATION ON THE PART OF USER.

3. Friends represents and warrants to the City that Friends has the full power and authority to make and perform all agreements, as provided herein.

5. THIS CONTRACT IS TO BE CONSTRUED UNDER, AND GOVERNED BY, TEXAS LAW WITHOUT REGARD TO CONFLICT OF LAW RULES THAT WOULD DIRECT APPLICATION OF THE LAWS OF ANY OTHER JURISDICTION. THE OBLIGATIONS OF THE PARTIES CREATED BY THIS CONTRACT ARE PERFORMABLE, AT LEAST IN PART, IN LUBBOCK COUNTY, TEXAS. VENUE FOR ANY ACTION BROUGHT PURSUANT TO THIS CONTRACT, OR ACTIVITY CONTEMPLATED HEREBY, SHALL EXCLUSIVELY BE IN COURTS OF COMPETENT JURISDICTION LOCATED IN LUBBOCK COUNTY, TEXAS.

6. This Contract represents the entire and sole agreement between Friends and the City with respect to the subject matter hereof and supersedes any and all prior negotiations, understandings, representations or other agreements, whether written or oral. This Contract may not be modified or amended except in writing and duly authorized and executed by each party hereto.


7. If any provision of this Contract is declared invalid or unenforceable, such provision shall be deemed modified to the extent necessary to render it valid and enforceable so long as said modification is reasonably within the intent the parties as originally expressed. In the event such provision may not be so modified, the unenforceability or invalidity of any provision shall not affect any other provision of this Contract, and this Contract shall continue in force and effect as if such provision had not been included in this Contract.

IN WITNESS WHEREOF, the parties have executed this Contract by their duly authorized representatives as of the date first written above.

CITY OF LUBBOCK:

Daniel M. Pope, MAYOR

**THE FRIENDS OF LEGACY
PLAY VILLAGE, COMMUNITY
PALYGROUND
CORPORATION:**

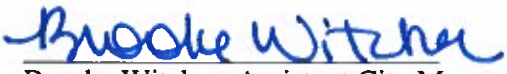


Gregory Turner, President

ATTEST:

Rebecca Garza, City Secretary

APPROVED AS TO CONTENT:



Brooke Witcher, Assistant City Manager

APPROVED AS TO FORM:



Ryan Brooke, Assistant City Attorney

EXHIBIT

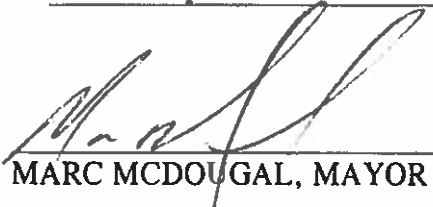
A

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 License Agreement, between the City of Lubbock and The Friends of Legacy Play Village, Community Playground Corporation, for the purpose of constructing, maintaining and operating the Legacy Play Village and any associated documents. Said License 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 this 26th day of September, 2002.



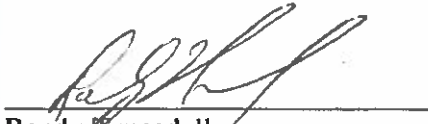
MARC MCDUGAL, MAYOR

ATTEST:



Rebecca Garza, City Secretary

APPROVED AS TO CONTENT:



Randy Truesdell
Parks and Recreation Manager

APPROVED AS TO FORM:



Amy Sims, Assistant City Attorney

cdoes.Legacy Play Village.res
September 20, 2002

LICENSE AGREEMENT

This License Agreement (the "Agreement") is entered into on this 26th day of Sept., 2002, between the City of Lubbock, Texas (the "City"), a Texas Home Rule Municipal Corporation, and The Friends of Legacy Play Village, Community Playground Corporation ("Friends"), a not for profit corporation acting by and through their duly authorized officers and officials.

R E C I T A L S

WHEREAS, Friends desires to construct a community playground called "Legacy Play Village" (the "Project");

WHEREAS, it is the belief of the City and Junior League that the Project will provide recreational activities and opportunities to the residents of the City, and encourage tourism to the City;

WHEREAS, the Friends of Legacy Play Village, Community Playground Corporation has been established to secure funds for the operation and maintenance of the Legacy Play Village; and

WHEREAS, Friends desires to construct the project over and on that certain real property owned by the City described on Exhibit "A" attached hereto (the "Lands");

WHEREAS, the Friends of Legacy Play Village have set a goal to raise funds for the operation, maintenance, and long term care of the Legacy Play Village; NOW THEREFORE:

ARTICLE I

License

Section 1.01. License. In consideration of the mutual covenants and agreements of this Agreement, and of other good and valuable consideration, the City hereby grants, upon the terms and conditions set forth in this Agreement, a license on and over the Lands to Friends for the sole purpose of constructing, maintaining and operating the Project.

Section 1.02. Term. The term of this license is twenty (20) years beginning on the date of the execution of this Agreement by the City, and ending on the twentieth anniversary of such date (the "Primary Term"), unless terminated sooner as provided in this Agreement.

This Agreement shall terminate without further notice when the Primary Term expires, and Friends shall immediately vacate the Lands. Any holding over by Friends after that term expires, except as provided otherwise in this Agreement, shall not constitute a renewal of this Agreement, or provide Friends any rights whatsoever under this Agreement and/or to the Lands.

ARTICLE II

Improvements

Section 2.01. Construction of Project. On or before October 1, 2002, Friends shall begin construction, or cause to begin construction, and begin location upon the Lands, the Project. The Project shall include various playground equipment and other such play devices for the purpose of providing a recreational facility for active and passive play as well as demonstrating historical aspects of the Lubbock area.

Section 2.02. Approval of Construction. No construction of any type or kind, including additions or alterations to existing structures or structures completed, or caused to be completed, by Friends and/or placement or location of improvements, including all matters described in this Article II, may be commenced, unless the plans, specifications and proposed location of such construction and/or location of improvements have received the City's, and if required by the City or by law, any other entities' or parties', including, but not limited to, the State of Texas, Texas Parks and Wildlife Department and Texas Historical Commission, prior written approval, as described below.

Friends shall, at its own expense, engage a licensed architect or engineer to prepare plans and specifications for the construction, addition, location or alteration of any building or improvement. Friends shall submit a copy of detailed working drawings, plans and specifications to the City for its approval not less than thirty (30) days before such construction or location of improvements is scheduled to commence.

The City, and any other parties having the right of approval, as described herein, shall review all plans submitted under this Section 2.02, and provide to Friends, in writing, any required changes or corrections that must be made, that the City, and any other parties having the right of approval, as described herein, may deem necessary, in their sole discretion. Any required changes or corrections shall be made and the plans

resubmitted to the City, and any other parties having the right of approval, as described herein, prior to the commencement of such construction, addition or alteration of any building or location of improvement. No such construction, addition or alteration of any building or location of improvement shall be commenced unless and until the plans are finally approved by the City and any other parties having the right of approval, as described herein. The failure to receive the approval described herein shall not excuse the performance by Friends of any activity or covenant described in this Agreement.

Minor repairs and/or alterations necessary to maintain existing structures and improvements located upon the Lands in a useful state of repair and operation does not require submission and approval, as described herein.

The City and/or any of the parties having the right of approval, as described herein, shall have the right at all times to observe any and all activities described in this Article II. Notwithstanding the approval by the City and/or any of the parties having the right of approval, as described herein, of any plans and specifications, and/or the observation rights of the City and/or any of the parties having the right of approval, as described herein, the City assumes no liability or responsibility for the architectural or engineering design or for any defect in any building or improvement constructed from such plans or specifications, nor shall such approval and/or observation relieve Friends from any or all of its obligations hereunder.

All activities described in this Article II shall be at the sole cost and expense of Friends.

Section 2.03. Surety. Any and all contracts that Friends may enter into with third parties to participate in the construction and/or location of improvement activities

contemplated by this Agreement shall contain the requirement that such third parties adequately bond their performance under said contract, naming the City as a co-beneficiary or co-secured. The original of said bonds are to be suitable in form to the City and submitted to the City prior to the commencement of any activities of any kind by such third parties.

Section 2.04. Ownership of Buildings and Improvements. Any and all buildings, improvements, additions, alterations and fixtures constructed, placed, located and/or maintained on any part of the Lands during the term of this Agreement are considered part of the real property and must remain on the Lands and, subject to the terms of this Agreement, become property of the City, from and after the termination of this Agreement.

Section 2.05. Removal of Improvements. Friends may, upon the termination of this Agreement, and only upon such event, remove the property not owned by the City, as set forth by law and/or Section 2.04, herein. Notwithstanding the right of removal granted herein, Friends shall repair any and all damage to any buildings or improvements on the Lands resulting from such removal. Any and all of such items not removed by Friends on or before ten (10) days after the termination of this Agreement, shall, at the option of the City, either (i) become the property of the City; or (ii) be removed by the City at Friends' sole cost and expense. In the event the City shall elect to remove such property, the City shall owe no duty to protect such property, and shall in no event be liable to Friends for loss, damage or destruction of same. The City may dispose of any such property in any manner it desires in its sole discretion and retain any proceeds received therefor.

ARTICLE III

Operations of Friends

Section 3.01. Security. Friends shall take any and all actions necessary to prevent the entry of unauthorized persons in, on and/or over the Lands. Such actions shall include, but are not limited to, the installation and maintenance of lighting facilities to illuminate the Lands.

Section 3.02. Access of Public. Entrances to the Lands shall be open to the general public within reasonable hours as designated by Friends and approved by the City. Friends shall not permit any discrimination in its operation of the Project because of race, color, sex, religion, national origin, physical handicap or disability.

On or before thirty (30) days prior to allowing admission to the general public in, on or over the Lands, Friends shall submit to the City and/or the Parks and Recreation Board, or the successor to same, for approval, the proposed rules and regulations regarding admission to the Lands by the general public. The City and/or the Parks and Recreation Board, or the successor to same, shall review all of said rules and/or regulations. If the City and/or the Parks and Recreation Board, or the successor to same, shall disapprove, for any reason, in its sole discretion, of any such rule and/or regulation, the City and/or the Parks and Recreation Board, or the successor to same, shall provide to Friends its proposed new rule and/or regulation (the "New Rules"). In the event Friends and the City and/or the Parks and Recreation Board, or the successor to same, cannot agree on the terms of the rules and/or regulations, the terms of the New Rules shall apply.

Section 3.03. Utilities. Friends shall be responsible for providing and/or furnishing all utilities to the Lands and any and all improvements located thereon and

shall bear any and all expenses of any kind or nature for the providing of same to the Lands and the utilization of same in connection with the operation of the Project. Such utilities shall include, without limitation, water, telephone, electricity, gas, power, sewage disposal and rubbish removal. City will provide adequate notification of expected costs.

Section 3.04. Taxes. Friends shall pay and discharge all charges, including without limitation, personal property taxes, gross receipts taxes, general and special assessments, and other charges of similar nature which may be levied or assessed against the Lands, the Project, and/or any activity contemplated by this Agreement, if any.

Section 3.05. Prohibition on Encumbrance. Friends shall not encumber any interest in the license granted herein, the Lands, the improvements described herein, and/or this Agreement, in any way, manner or form, including, but not limited to, by deed of trust, mortgage or any other security instrument.

Further, Friends shall not cause or permit any mechanic's liens or any other liens to be filed against the license granted herein, the Lands, the improvements described herein, and/or this Agreement by reason of any work, labor, services, or materials supplied and/or performed or claimed to have been supplied and/or performed to, by or for Friends or any contractors or subcontractors of Friends.

Section 3.06. Right of Entry--City. Nothing contained in this Agreement shall be construed to prohibit, upon reasonable notice to Friends, the right of entry by the City, in, on, over and/or across the Lands, at any and all times, and for any and all purposes, and City expressly reserves the right to enter upon the Lands and any and all improvements located thereon, subject to the conditions stated herein, to conduct any and all activities

the City deems necessary. Friends shall furnish to the City any and all keys and/or instructions necessary to allow the City's right of entry reserved and/or described herein.

Section 3.07. Control of City. The City shall retain all authority placed in it which is non-delegable. No provision of this Agreement shall be construed as delegating any non-delegable right, power or duty of the City, and in the event of a conflict between this Section 3.07 and any other term or provision of this Agreement, this Section 3.07 shall control and such conflicting term or provision shall be void and of no force and effect.

Section 3.08. Assistance by the City. The City, at its sole discretion, may provide assistance to Friends in the operation of the Project, from time to time, including, but not limited to providing certified playground inspectors to inspect the Project. Friends agree to reimburse the City any and all costs associated with the provision of said services.

ARTICLE IV

Operation Funds

Section 4.01. Solicitation of Funds. Friends shall, during the effective term of this Agreement, utilize its best efforts to solicit funds from various sources, including, but not limited to, memorials, honorarians, grants, membership dues, concessions and gifts in kind, or any other like sources to be utilized in the creation, construction, operation and maintenance of the Project.

Section 4.02 Accounting and Audits. Friends shall keep complete and accurate records, books and accounts according to customary and accepted business practices and generally accepted accounting principles, and the City shall have the right to examine and audit said records, books and accounts at any reasonable time. Friends shall furnish the

City an annual audit of its books by a certified public accountant, such audit report to be furnished to the City on or before ninety (90) days after the end of each fiscal year of Friends.

Section 4.03. Operation Funds. Friends shall at all times maintain adequate funding to operate, construct and maintain the Project in accordance with the terms hereof. Specifically, Friends agrees to maintain an account with an accredited financial institution as approved by the City in its sole and absolute discretion for the purpose of maintaining funds for the operation, maintenance and care of the Project (the "Account") during the term of this Agreement. Friends agrees that the all monies deposited into the Account and any and all interest accrued from said monies shall be used solely for the operation, maintenance, and care of the Project. Any and all monies, including any and all interest earned on same, remaining in the Account at the termination of this Agreement shall belong to the City, to be used by the City exclusively for the operation, maintenance, and care of the Project and the Lands. The annual audit required by Section 4.02, shall cover and include all aspects and actions of the matters set forth in this Article IV.

ARTICLE V

Maintenance and Repair

Section 5.01. Maintenance and Duty to Repair. At all times during the term of this Agreement, Friends shall keep and maintain, or cause to be kept and maintained, all buildings, and improvements, including, but not limited to, playground equipment erected and/or located on the Lands, and the landscaping, including, but not limited to lawns,

grasses, flowers and flower beds, shrubs and trees, in a good state of appearance and repair, to be determined by the City, in its sole discretion, at Friends' sole expense.

Section 5.02. Damage or Destruction. If any building or improvement constructed and/or located on the Lands, including, but not limited to, the playground equipment, is damaged or destroyed by fire, vandalism, or any other casualty, regardless of the extent of the damage or destruction, Friends must, within twelve (12) months from the date of the damage or destruction, complete repair, reconstruction or replacement of the damaged or destroyed building or improvement to the original condition of such building or improvement.

ARTICLE VI

Insurance, Indemnity and Release

Section 6.01. Indemnity and Release. FRIENDS SHALL INDEMNIFY AND HOLD HARMLESS, TO THE FULLEST EXTENT PERMITTED BY LAW, THE CITY, AND CITY'S RESPECTIVE OFFICERS, EMPLOYEES, ELECTED OFFICIALS AND AGENTS, FROM AND AGAINST ANY AND ALL LOSSES, DAMAGES, CLAIMS OR LIABILITIES, OF ANY KIND OR NATURE, WHICH ARISE DIRECTLY OR INDIRECTLY, OR ARE RELATED TO, IN ANY WAY, MANNER OR FORM, THE ACTIVITIES CONTEMPLATED HEREUNDER, OR THE OMISSION OF THE ACTIVITIES CONTEMPLATED HEREUNDER, INCLUDING, BUT NOT LIMITED TO, LOSSES, DAMAGES, CLAIMS OR LIABILITIES ARISING FROM OR RELATED TO, IN ANY WAY, MANNER OR FORM, THE ACT OR OMISSION OF THIRD PARTIES. FRIENDS FURTHER COVENANTS AND AGREES TO DEFEND ANY SUITS OR ADMINISTRATIVE PROCEEDINGS

BROUGHT AGAINST THE CITY AND/OR THE CITY'S RESPECTIVE OFFICERS, EMPLOYEES, ELECTED OFFICIALS AND/OR AGENTS ON ACCOUNT OF ANY SUCH CLAIM, AND TO PAY OR DISCHARGE THE FULL AMOUNT OR OBLIGATION OF ANY SUCH CLAIM INCURRED BY, ACCRUING TO, OR IMPOSED ON THE CITY, OR THE CITY'S RESPECTIVE OFFICERS, EMPLOYEES, ELECTED OFFICIALS AND/OR AGENTS, AS APPLICABLE, RESULTING FROM ANY SUCH SUITS, CLAIMS, AND/OR ADMINISTRATIVE PROCEEDINGS OR ANY MATTERS RESULTING FROM THE SETTLEMENT OR RESOLUTION OF SAID SUITS, CLAIMS, AND/OR ADMINISTRATIVE PROCEEDINGS. IN ADDITION, FRIENDS SHALL PAY TO THE CITY, THE CITY'S RESPECTIVE OFFICERS, EMPLOYEES, ELECTED OFFICIALS AND/OR AGENTS, AS APPLICABLE, ALL ATTORNEYS' FEES INCURRED BY SUCH PARTIES IN ENFORCING FRIENDS' INDEMNITY IN THIS SECTION.

THE CITY, AND ITS RESPECTIVE OFFICERS, EMPLOYEES, ELECTED OFFICIALS AND AGENTS, SHALL NOT BE LIABLE, AND FRIENDS HEREBY RELEASES THE CITY, AND ITS RESPECTIVE OFFICERS, EMPLOYEES, ELECTED OFFICIALS AND AGENTS, FOR, FROM AND/OR AGAINST ANY LOSSES, DAMAGES, CLAIMS OR LIABILITIES TO FRIENDS, ON ANY THEORY OF LEGAL LIABILITY, INCLUDING, BUT NOT LIMITED TO THE NEGLIGENCE, OF ANY TYPE OF DEGREE, OR FAULT, OF THE CITY, ARISING FROM OR RELATED TO, IN ANY WAY, MANNER OF FORM, THE UNENFORCEABILITY OR VOIDANCE, FOR ANY REASON, OF ALL OR ANY PART OF THIS AGREEMENT.

THE INDEMNITY AND RELEASE PROVIDED HEREIN SHALL SURVIVE
THE TERMINATION OR VOIDANCE OF THIS AGREEMENT.

Section 6.02. Insurance. Friends shall procure and carry, at its sole cost and expense during the term of any construction of the Project, insurance protection as hereinafter specified, in form and substance satisfactory to the City, carried with an insurance company authorized to transact business in the State of Texas, covering all foreseeable aspects and operations in connection with the construction contemplated under this Agreement, including, but not limited to, all aspects, operations and/or occurrences to which Friends has indemnified the City, as provided in Section 6.01 hereof. A Certificate of Insurance specifying each and all coverages shall be submitted to the City no later than fifteen (15) days prior to the commencement of construction activities. Friends shall provide to the City proof of the below-described insurance on or before fourteen (14) days prior to the expiration date of each expiring policy, and cause each required policy to require the insurer to (i) give notice to the City, as specified herein, of termination of any such policy sixty (60) days before such termination is to be effective; and (ii) contain a waiver of any and all of the insurer's rights to subrogation that any such insurer or insurers may acquire by virtue of payment of any loss under such insurance.

- A. *Builder's Risk Insurance*. Friends shall have Builder's Risk Insurance in the amount of one hundred percent (100%) of the prices of each contract relating to the construction activities contemplated in Article II, above.

The City shall provide general liability insurance and property insurance to Friends and will name Friends an additional insured under said insurance; however the

City specifically shall exclude any and all matters relating to the construction activities and worker's compensation coverage. Friends shall pay to the City within thirty (30) after completion of the construction of the project an amount, as determined by the City, for the cost of said coverage. The City shall bill Friends each subsequent year during the term of this agreement for the cost of coverage for each respective year. Friends agrees to pay said bill within thirty (30) days of receipt.

ARTICLE VII

Warranties, Covenants and Representations of Friends

Section 7.01. Existence. Friends is a corporation duly organized, validly existing and in good standing under the laws of the State of Texas, and is duly qualified to carry on its business in the State of Texas.

Section 7.02. Power. Friends has the corporate power to enter into and perform this Agreement and all activities contemplated hereby.

Section 7.03. Authorization. The execution, delivery and performance of this Agreement and the activities contemplated hereby have been duly and validly authorized by all requisite corporate action on the part of Friends.

ARTICLE VIII

Events of Default and Remedies

Section 8.01. Default. An Event of Default (herein so called) shall exist if any one or more of the following events shall occur:

- (a) Any representation or warranty made by Friends in this Agreement shall prove to be untrue or inaccurate in any material respect as of the date on which such representation or warranty is made;

- (b) Friends shall default, in any way, manner or form, in the performance of any of the covenants, provisions and/or terms of this Agreement;
- (c) Friends shall (i) apply for or consent to the appointment of a receiver, custodian, trustee, intervenor, or liquidator of itself or of all or a substantial part of its assets, (ii) voluntarily become the subject of a bankruptcy, reorganization or insolvency proceeding or be insolvent or admit in writing that it is unable to pay its debts as they become due, (iii) file a petition or answer seeking reorganization or an arrangement with creditors or to take advantage of any bankruptcy or insolvency laws, (iv) become the subject of an order for relief under any bankruptcy, reorganization or insolvency proceedings, or (v) fail to pay any money judgment against it before the expiration of thirty (30) days after such judgment becomes final; or
- (d) Friends shall default in the payment of any material indebtedness of Friends.

Section 8.02. Remedies upon Event of Default. If an Event of Default shall have occurred and be continuing, then the City, at its option may (i) declare this Agreement, and all rights and interests created by it, terminated and Friends shall reimburse the City any and all sums provided by the City to Friends under this Agreement, or otherwise; (ii) assert an action for damages, including, but not limited to, recovery of any and all sums provided by the City to Friends under this Agreement, or otherwise, and any and all other damages available to the City under this Agreement and/or pursuant to law or equity;

and/or (iii) pursue and enforce any rights of the City as provided under or pursuant to any applicable law or this Agreement.

In the event the City elects to terminate this Agreement as provided herein, this Agreement shall cease as if the day of the City's election to terminate were the day originally fixed in this Agreement for its expiration.

ARTICLE IX

Miscellaneous

Section 9.01. No Waiver. No failure to exercise, and no delay in the exercise on the part of the City, of any right hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right. The rights of the City hereunder shall be in addition to all other rights provided by law.

Section 9.02. Notice. Any notice required or permitted to be given herein must be given in writing and must be personally delivered, delivered by telephonic facsimile, or mailed by prepaid certified or registered mail to the party to whom such notice or communication is directed at the address of such party as follows:

City:

Randy Truesdell
Parks and Recreation Manager
P. O. Box 2000
Lubbock, Texas 79457
(806) 775-2687
Fax: (806) 775-2686

Friends of Legacy Play Village:

Amy Pierce
P.O. Box 54167
Lubbock, Texas 79453
(806) 763-0066

Any such notice or other communication shall deemed to have been given (whether actually received or not) on the date it is personally delivered or delivered by

telephonic facsimile, or, if mailed, on the third day after it is mailed as aforesaid. Any party may change its address for purposes of this Agreement by giving notice of such change to all other parties pursuant to this Section 9.02.

Section 9.03. Assignment/Sublet. This license is personal to Friends. Friends shall not assign or sublet this license. Any attempt to assign or sublet this license shall terminate the license granted herein.

Section 9.04. City. Unless otherwise provided herein or required by law and/or local ordinance, charter or code, any action required or permitted to be taken by “the City”, shall be taken by the City Manager of the City of Lubbock or any party designated by him or her.

Section 9.05. Relationship of Parties. The relationship between the City and Friends is at all times solely that of licensor and licensee, and may not be deemed, in any event, a partnership or a joint venture.

Section 9.06. Compliance with Applicable Law. Friends shall comply with all applicable federal, state and local rules, regulations, statutes, laws and ordinances governing, in any way, manner or form the construction activities contemplated herein, the operation of the Project, and/or any other aspect of the activities described in this Agreement, including, without limitation those regarding to access of the facilities by handicapped persons and the storage, display and alteration of antiquities.

Section 9.07. Time of the Essence. Time is of the essence of this Agreement.

Section 9.08. Texas Law/Venue. This Agreement is to be construed under Texas law, without regard to conflict of law rules that would direct application of the laws of any other jurisdiction, and all obligations of the parties created by this Agreement are

performable in Lubbock County, Texas. Venue for any action brought pursuant to this Agreement, or any activity contemplated hereby, shall lie exclusively in Lubbock County, Texas.

Section 9.09. Partial Invalidity. If any one or more of the provisions contained in this Agreement are for any reason held to be invalid, illegal, or unenforceable in any respect, the invalidity, illegality, or unenforceability will not affect any other provision of this Agreement, which shall be construed as if it had not included the invalid, illegal or unenforceable provision.

Section 9.10. Agreements Superseded. This Agreement constitutes the parties' sole agreement and supersedes any prior understandings or written or oral agreements between the parties with respect to the subject matter hereof.

Section 9.11. Amendment. No amendment, modification, or alteration of this Agreement is binding, unless in writing, dated subsequent to the date of this Agreement, and duly executed by the parties.

Section 9.12. Attorney's Fees. If, as a result of either party's breaching this Agreement, the other party employs or uses an attorney or attorneys to enforce its rights under this Agreement, then the breaching party shall pay the other party the reasonable attorney's fees and costs incurred to enforce this Agreement.

Section 9.13. Exhibits. The exhibits, which are referenced in, and attached to this Agreement, are incorporated in and made a part of this Agreement for all purposes.

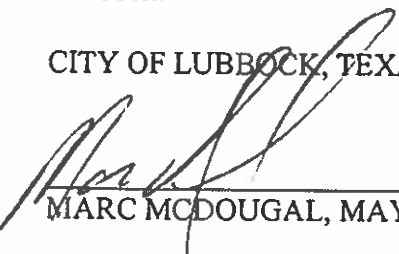
Section 9.14. Captions. Section captions are for convenience only and shall in no way affect the interpretation of this Agreement.

Section 9.15. License Agreement. The intent of this Agreement is to grant a license to Friends to utilize the Lands solely for the purposes described herein. This Agreement shall not be construed, in any way, manner or form, as a lease of the Lands or as conveying to Friends any interest in the real property comprising the Lands.

Executed and effective as of the date of the execution hereof by the City of

Lubbock.

CITY OF LUBBOCK, TEXAS


MARC MCDOUGAL, MAYOR

Date executed: September 26, 2002

THE FRIENDS OF LEGACY PLAY
VILLAGE

BY: 

Name: Amy M. Perce

Title: President

Date executed: September 20, 2012

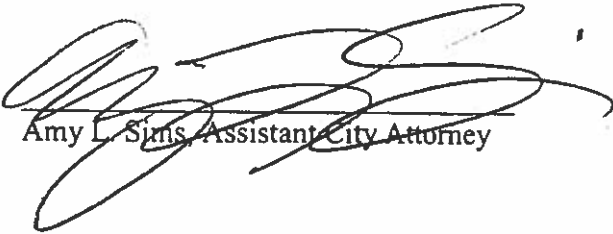
ATTEST:


Rebecca Garza, City Secretary

APPROVED AS TO CONTENT:


Randy Truesdell, Parks and Recreation Manager

APPROVED AS TO FORM:

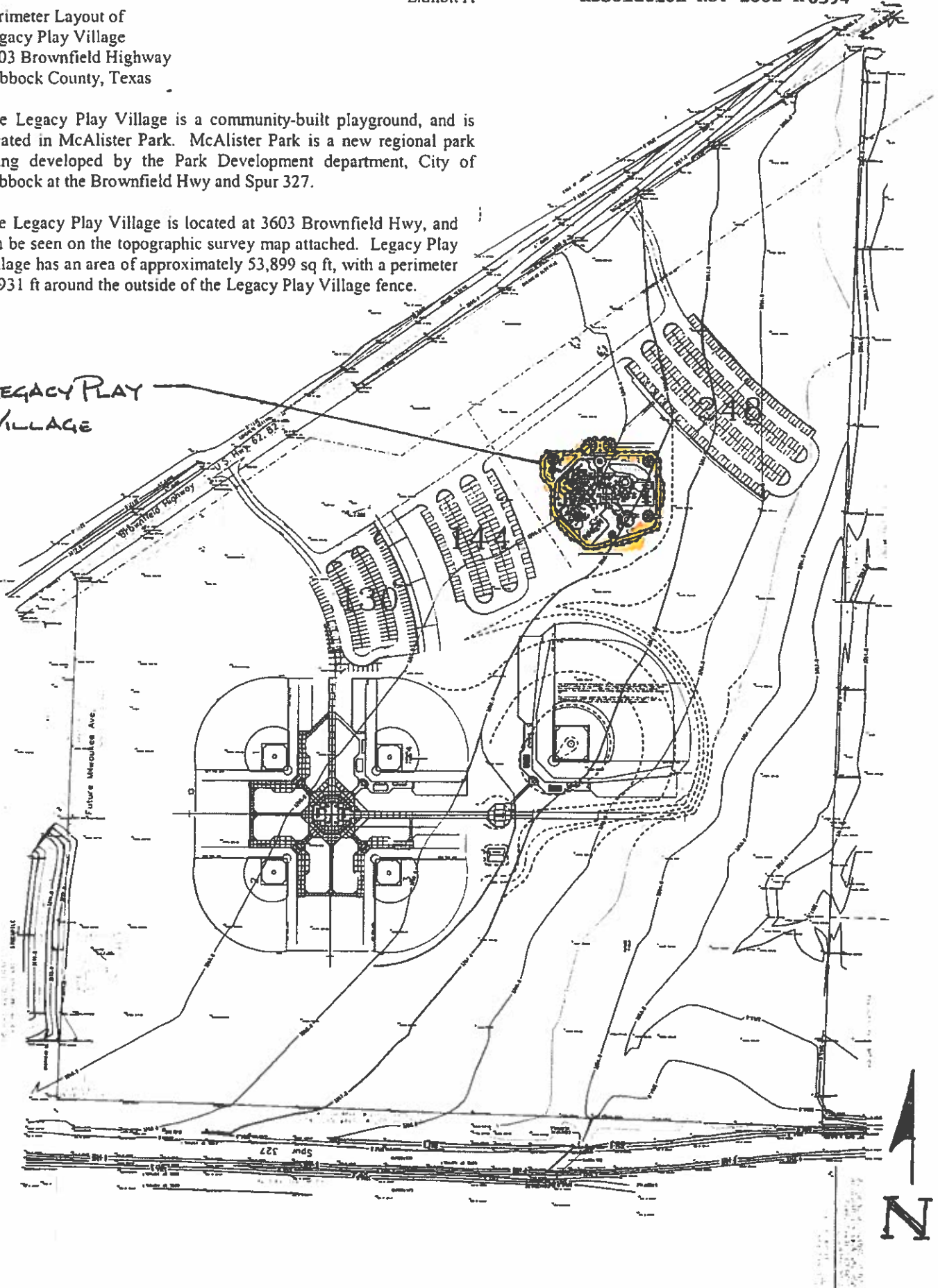

Amy L. Sims, Assistant City Attorney

Perimeter Layout of
Legacy Play Village
6303 Brownfield Highway
Lubbock County, Texas

The Legacy Play Village is a community-built playground, and is located in McAlister Park. McAlister Park is a new regional park being developed by the Park Development department, City of Lubbock at the Brownfield Hwy and Spur 327.

The Legacy Play Village is located at 3603 Brownfield Hwy, and can be seen on the topographic survey map attached. Legacy Play Village has an area of approximately 53,899 sq ft, with a perimeter of 931 ft around the outside of the Legacy Play Village fence.

LEGACY PLAY
VILLAGE



Information

Agenda Item

Resolution - Parks and Recreation: Consider a resolution authorizing and ratifying the acts of the Deputy City Manager, in executing a Senior Center Operations Contract, and all related documents, with the South Plains Association of Governments (SPAG), for funds passed through the Texas Health and Human Services (HHS), to pay for operation of senior citizen program sites.

Item Summary

The City has contracted with South Plains Association of Governments (SPAG) for the Area Agency on Aging Direct Purchase of Services Program Grant for the past 40 years, to provide services to senior citizens through the City's five senior program sites. The City's senior program targets any citizen 60 years of age or older, to provide a hot meal, transportation, and recreational and social activities.

The City is currently under agreement with SPAG, which provides reimbursement for meals and transportation service units. This contract will provide additional operating funds due to hardships brought on by COVID-19.

This ratification is due to SPAG providing the City of Lubbock with the agreement and is asking that it be signed and returned within 24 hours.

Fiscal Impact

This contract will provide \$2,292 per month, not to exceed a maximum of \$13,752, for the contract period ending September 30, 2022, or whenever available funds are depleted, whichever occurs first.

Staff/Board Recommending

Brooke Witcher, Assistant City Manager

Attachments

SCO Resolution FY22

SCO Contract FY22

RESOLUTION

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

THAT the acts of the Deputy City Manager in executing, on behalf of the City of Lubbock, a Senior Center Operations Contract for funds to pay for the operation of senior citizen sites, by and between the City of Lubbock and the South Plains Association of Governments, 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:



Brooke Witcher, Assistant City Manager

APPROVED AS TO FORM:



Ryan Brooke, Assistant City Attorney

SENIOR CENTER OPERATIONS CONTRACT

I. AUTHORITY TO CONTRACT

The authority on which this contract is based derives from the Older Americans Act (OAA), as amended, and its regulations; HHS regulations on Administration of Grants; Title 2 Code of Federal Regulations (CFR), Part 200; the Uniform Grant Management Standards (UGMS), Governor's Office of Budget and Planning; and all applicable Texas Health and Human Services (HHS) and Area Agencies on Aging (AAA) Rules as published in the Texas Administrative Code (TAC) under Chapter 213 (Title 26, Part 1, Subchapters A, B & C); and, all state and local laws as pertains to this contract and its attachments.

II. CONTRACTING PARTIES

This contract is between the **South Plains Association of Governments**, hereinafter referred to as AGENCY, and **City of Lubbock** hereinafter referred to as Vendor. Whereas the State of Texas, acting through the Texas Health and Human Services (HHS), has designated the South Plains Association of Governments to act as the Area Agency on Aging (AAA), and whereas the AAA is the designated authority under the OAA to administer OAA funds, the AGENCY and the VENDOR hereto have severally and collectively agreed and by execution hereof are bound to the mutual obligations set forth herein and to performance and accomplishment of the tasks hereinafter described.

III. CONTRACT PERIOD

This agreement will become binding on the date of the signature by both parties. Notwithstanding this date, the term of the contract will begin on April 1, 2022 and end on September 30, 2022 or when available funds are depleted, whichever occurs first. The amount of the contract is **\$2,292.00** federal dollars per month and not to exceed a maximum of **\$13,752.00** for the contract period.

IV. CONTRACT EXTENSIONS

The parties to this contract may, by mutual agreement, extend this contract for a specified period. Any extension shall be in writing, with specific reference to this contract, and shall be subject to all of the terms and conditions of this contract and made a part thereof for all purposes.

V. AMENDMENTS TO THE CONTRACT

This agreement may be amended in writing upon mutual agreement by both parties or when dictated by implementation of laws and rules becoming effective within the contract period as pertains to the scope of this contract and its attachments. Amendment to this contract is also made upon submission to and approval by the AGENCY of an amended budget.

VI. CONTRACT PURPOSE

The purpose of this contract is to provide funds to pay for the operation of the senior citizen site. These funds are to be utilized for the expense of utilities, rent, salary, and indirect cost.

VII. DEFINITION OF SENIOR CENTER OPERATIONS

The operation of community facilities where older individuals meet together to pursue mutual interests, receive services and/or take part in activities which will enhance their quality of life, support their independence, and encourage their continued involvement in and with the community.

VIII. CONTRACT GOAL

The goal of this contract is to provide funding for the daily cost of the operations at the Senior Citizen site to ensure that participants will have a community facility to assemble.

IX. FUNDING OBLIGATIONS

The VENDOR acknowledges the AGENCY'S obligation hereunder for payment, in consideration of full and satisfactory performance of activities described in this contract, is limited to monies received from the Texas Health and Human Services (HHS), the State of Texas, and any other originating funding source.

The AGENCY shall not be liable to the VENDOR for costs incurred or performance rendered unless such costs and performances are strictly in accordance with the terms of this contract, including but not limited to, terms governing the VENDOR'S promised performance and unit rates and/or reimbursement capitations specified.

The AGENCY shall not be liable to the VENDOR for any expenditures which are not allowable costs as defined in the Code of Federal Regulations (CFR) Part 200 §200.405, as amended, or which expenditures have not been made in accordance with the fiscal guidelines and requirements outlined by the AGENCY.

The AGENCY shall not be liable to the VENDOR for expenditures made in violation of regulations promulgated under the OAA, as amended, or in violation of the AGENCY rules, UGMS, or this contract.

XIV. ACCEPTANCE OF CONTRACT

I, the undersigned, certify that I have read and understand the terms of this contract and that this agency will abide by them. I further certify that I am authorized to sign for the VENDOR agency.

City of Lubbock

Legal Name of Contracted Provider



Signature

Bill Howerton, Deputy City Manager

Printed/Typed Name of Signer

April 1, 2022

Date

South Plains Association of Governments

Name of Area Agency on Aging



Signature

Tim C. Pierce

Printed/Typed Name of Signer

April 1, 2022

Date

Information

Agenda Item

Resolution - Lubbock Fire Rescue: Consider a resolution authorizing the Mayor to execute Contract 16548, by and between the City of Lubbock, and Jahnke & Sons Construction, Inc. dba WHP Trainingtowers, for the construction of the Lubbock Fire Rescue Training Complex.

Item Summary

This contract is for the construction of a custom general alarm 4-story training tower, a 2-story residential/industrial unit and a 1-story annex on the grounds at Lubbock Fire Rescue. The facility staging multiple live fire burn rooms will serve as a training site that offers personnel the ability to better control ventilation and fire suppression in a manner that more realistically mimics the challenges of modern fire environments. The service contract valued at \$1,338,823.22 is from WHP Trainingtowers of Grandview, Missouri through GSA Contract # GS-07F-5448P.

Fiscal Impact

\$1,338,823.22 is appropriated in CIP 92759, Public Safety Improvements – ARPA for this purchase.

Staff/Board Recommending

Anthony Fogerson, Fire Chief

Attachments

Resolution

Contract 16548

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. 16548, for the construction of the Lubbock Fire Rescue Training Complex (GS-07F-5448P), by and between the City of Lubbock and Jahnke & Sons Construction, Inc. d/b/a/ WHP Trainingtowers, and all 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:



Shaun Fogerson, Fire Chief

APPROVED AS TO FORM:



Ryan Brooke, Assistant City Attorney

RES.Contract No. 16548, Lubbock Fire Rescue Training Complex
4.21.22

STATE OF TEXAS
COUNTY OF LUBBOCK

THIS AGREEMENT, made and entered into this _____ day of _____, 2022 by and between the City of Lubbock, County of Lubbock, State of Texas, acting by and through the Mayor, City of Lubbock, thereunto authorized to do so, hereinafter referred to as OWNER, and Jahnke & Sons Construction, Inc. dba WHP Trainingtowers of the City of Grandview and the State of Missouri hereinafter termed CONTRACTOR.

WITNESSETH: That for and in consideration of the payments and agreements hereinafter mentioned, to be made and performed by the OWNER and under the conditions expressed in the bond bearing even date herewith (if any) the CONTRACTOR hereby agrees with OWNER to commence and complete the construction of certain improvements described as follows:

Lubbock Fire Rescue Training Complex (GS-07F-5448P)

and all extra work in connection therewith, under the terms as stated in the contract documents and at his (or their) own proper cost and expense to furnish all materials, supplies, machinery, equipment, tools, superintendence, labor, insurance and other accessories and services necessary to complete the said construction in accordance with the contract documents as defined in the Jahnke & Sons Construction, Inc. dba WHP Trainingtower's proposal dated April 1, 2022 is incorporated into and made a part of this agreement.

The CONTRACTOR hereby agrees to commence work within ten days after the date written notice to do so shall have been given to him and to substantially complete same within the time specified in the contract documents.

The OWNER agrees to pay the CONTRACTOR in current funds for the performance of the contract in accordance with the proposal submitted therefore, subject to additions and deductions, as provided in the contract documents and to make payment on account thereof as provided therein.

IN WITNESS WHEREOF, the parties to these presents have executed this agreement in Lubbock, Lubbock County, Texas in the year and day first above written.

CONTRACTOR:

Jahnke & Sons Construction, Inc. dba WHP Trainingtower

By: Steven W. Jahnke
PRINTED NAME: STEVEN W. JAHNKE
TITLE: EXECUTIVE VICE PRESIDENT

COMPLETE ADDRESS:

Company JAHNKE & SONS CONSTRUCTION
Address 519 DICK ROAD
City, State, Zip GRANDVIEW, MO 64030

ATTEST:

[Signature]
Corporate Secretary

CITY OF LUBBOCK, TEXAS (OWNER):

By: _____
Daniel M. Pope, Mayor

ATTEST:

Rebecca Garza, City Secretary

APPROVED AS TO CONTENT:

[Signature]
DEPARTMENT Representative

Shaun Fogerson, Chief of Fire
Name (Printed) _____ Date _____

APPROVED AS TO FORM:

[Signature]
ATTORNEY, Assistant City Attorney

GENERAL CONDITIONS OF THE AGREEMENT

1. OWNER

Whenever the word Owner, or First Party, are used in this contract, it shall be understood as referring to the City of Lubbock, Texas.

2. CONTRACTOR

Whenever the word Contractor, or Second Party, is used, it shall be understood to mean the person, persons, co-partnership or corporation, to wit **Jahnke & Sons Construction, Inc. dba WHP Trainingtowers** who has agreed to perform the work embraced in this contract, or their legal representative.

3. OWNER'S REPRESENTATIVE

Whenever the word Owner's Representative or representative is used in this contract, it shall be understood as referring to, City of Lubbock, or its representative **Rob Keinast, Deputy Chief** so designated who will inspect constructions; or to such other representatives, supervisors, architects, engineers, or inspectors as may be authorized by said Owner to act in any particular under this agreement. Engineers, supervisors or inspectors will act for the Owner under the direction of Owner's Representative, but shall not directly supervise the Contractor or persons acting on behalf of the Contractor.

4. CONTRACT DOCUMENTS

The contract's documents shall consist of the Notice to Bidders, General Instructions to Bidders, Response, Signed Agreement, Statutory Bonds (if required), General Conditions of the Agreement, Special Conditions of the Agreement (if any), Specifications, Plans, Insurance Certificates, and all other documents made available to Bidder for inspection in accordance with the Notice to Bidders. The above described materials are sometimes referred to herein as the "contract" or "contract documents".

5. INTERPRETATION OF PHRASES

Whenever the words "Directed," "Permitted," "Designated," "Required," "Considered Necessary," "Prescribed," or words of like import are used, it shall be understood that the direction, requirement, permission, order, designation or prescription of the Owner's Representative is intended; and similarly, the words "Approved," "Acceptable," "Satisfactory," or words of like import shall mean approved by or acceptable or satisfactory to the Owner's Representative.

6. SUBCONTRACTOR

The term Subcontractor, as employed herein, includes only those having a direct contract with the Contractor for performance of work on the project contemplated by these contract documents. Owner shall have no responsibility to any Subcontractor employed by Contractor for performance of work on the project contemplated by these contract documents, but said Subcontractors will look exclusively to Contractor for any payments due Subcontractor. The City reserves the right to approve or disapprove the selection of any subcontractor(s).

7. WRITTEN NOTICE

Written notice shall be deemed to have been duly served if delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended, or if delivered at or sent certified mail to the last business address known to the party who gives the notice.

8. CONTRACTOR'S RESPONSIBILITIES

Unless otherwise stipulated, the Contractor shall provide and pay for all materials, supplies, machinery, equipment, tools, superintendence, labor, insurance, and all water, light, power, fuel, transportation and all other facilities necessary for the execution and completion of the work covered by the contract documents. Unless otherwise specified, all materials shall be new and both workmanship and materials shall be of a good quality. The Contractor shall, if required, furnish satisfactory evidence as to the kind and quality of materials. Materials or work described in words which so applied have well known, technical or trade meaning shall be held to refer such recognized standards.

All work shall be done and all materials furnished in strict conformity with the contract documents.

9. SUBSTANTIALLY COMPLETED

The term "Substantially Completed" is meant that the structure or project contemplated by the contract documents has been made suitable for use or occupancy or the facility is in a condition to serve its intended purpose, but still may require minor miscellaneous work and adjustment.

10. LAYOUT

Except as specifically provided herein, the Contractor shall be responsible for laying out all work and shall accomplish this work in a manner acceptable to the Owner's Representative. The Owner's Representative will check the Contractor's layout of all major structures and any other layout work done by the Contractor at Contractor's request, but this check does not relieve the Contractor of the responsibility of correctly locating all work in accordance with the Plans and Specifications.

11. KEEPING OF PLANS AND SPECIFICATIONS ACCESSIBLE

The Contractor shall be furnished five copies of all Plans and Specifications without expense to Contractor and Contractor shall keep one copy of same consistently accessible on the job site.

12. RIGHT OF ENTRY

The Owner's Representative may make periodic visits to the site to observe the progress or quality of the executed work and to determine, in general, if the work is proceeding in accordance with the contract documents. Owner's Representative will not be required to make exhaustive or continuous onsite inspections to check the quality or quantity of the work, nor will Owner's Representative be responsible for the construction means, methods, techniques, sequences or procedures, or the safety precautions incident thereto. Notwithstanding the Owner's Representative's rights of entry hereunder, the Owner's Representative will not be responsible for the Contractor's failure to perform the work in accordance with the Contract Documents.

13. LINES AND GRADES

The Contractor is responsible for construction layout based on the control provided in the construction documents. All lines and grades shall be furnished whenever Owner's Representative (as distinguished from Resident Project Representative(s)) deems said lines and grades are necessary for the commencement of the work contemplated by these contract documents or the completion of the work contemplated by these contract documents. Whenever necessary, Contractor shall suspend its work in order to permit Owner's Representative to comply with this requirement, but such suspension will be as brief as practical and Contractor shall be allowed no extra compensation therefore. The Contractor shall give the Owner's Representative ample notice of the time and place where lines and grades will be needed. All stakes, marks, etc., shall be carefully preserved by the Contractor, and in case of careless destruction or removal by Contractor, its Subcontractors, or its employees, such stakes, marks, etc., shall be replaced by the Owner's Representative at Contractor's expense.

14. OWNER'S REPRESENTATIVE'S AUTHORITY AND DUTY

Unless otherwise specified, it is mutually agreed between the parties to this Agreement that the Owner's Representative (as distinguished from Resident Project Representative(s)) has the authority to review all work included herein. The Owner's Representative has the authority to stop the work whenever such stoppage may be necessary to ensure the proper execution of the contract. The Owner's Representative shall, in all cases, determine the amounts and quantities of the several kinds of work which are to be paid for under the contract documents, and shall determine all questions in relation to said work and the construction thereof, and shall, in all cases, decide every question which may arise relative to the execution of this contract on the part of said Contractor. The decision of the Owner's Representative shall be conclusive in the absence of written objection to same delivered to Owner's Representative within fifteen (15) calendar days of any decision or direction by Owner's Representative. In the absence of timely written objection by Contractor, as provided herein, any and all objection or objections shall be deemed waived.

15. SUPERINTENDENCE AND INSPECTION

It is agreed by the Contractor that the Owner's Representative shall be and is hereby authorized to appoint from time to time such subordinate engineers, supervisors, or inspectors, as distinguished from Resident Project Representative, as the said Owner's Representative may deem proper to inspect the materials furnished and the work done under this Agreement, and to see that said material is furnished and said work is done in accordance with the specifications therefore. The Contractor shall furnish all reasonable aid and assistance required by the subordinate engineers, supervisors or inspectors for the proper inspection and examination of the work. The Contractor shall regard and obey the directions and instructions of any subordinate engineers, supervisors or inspectors so appointed, when such directions and instructions are consistent with the obligations of this Agreement and accompanying plans and specifications provided, however, should the Contractor object to any orders by any subordinate engineer, supervisor or inspector, the Contractor may within fifteen (15) calendar days make written appeal to the Owner's Representative for its decision. In the absence of timely written objection by Contractor, as provided herein, any and all objection or objections shall be deemed waived.

16. CONTRACTOR'S DUTY AND SUPERINTENDENCE

The Contractor shall give personal attention to the faithful prosecution and completion of this contract and shall keep on the work, during its progress, a competent superintendent and any

necessary assistants, all satisfactory to Owner's Representative. The superintendent shall represent the Contractor in its absence and all directions given to superintendent shall be binding as if given to the Contractor. It is expressly agreed that adequate supervision by competent and reasonable representatives of the Contractor is essential to the proper performance of the work and lack of such supervision shall be grounds for suspending operations of the Contractor.

The work, from its commencement to completion, shall be under the exclusive charge and control of the Contractor and all risk in connection therewith shall be borne by the Contractor.

The Owner or Owner's Representatives shall not be responsible for the acts or omissions of the Contractor, or any subcontractors, or any of Contractor's agents or employees, or any other persons performing any of the work.

17. CONTRACTOR'S UNDERSTANDING

It is understood and agreed that the Contractor has, by careful examination, satisfied itself as to the nature and location of the work, the confirmation of the ground, the character, quality and quantity of materials to be encountered, the character of equipment and facilities needed preliminary to and during the prosecution of the work, and the general and local conditions, and all other matters which in any way affect the work under the contract documents. No oral agreement or conversation with any officer, agent, or employee of the Owner, or Owner's Representative either before or after the execution of this contract, shall affect or modify any of the terms or obligations herein contained. Subject to the rights of Owner as set forth in Paragraph 23 hereof, all modifications and/or amendments to the contract documents, shall be in writing, and executed by Owner's Representative and Contractor.

Unless otherwise specified herein, all loss, expense or damage to Contractor arising out of the nature of the work to be done, or from the action of the elements, or from any unforeseen circumstance and the prosecution of the work, shall be sustained and borne by the Contractor at its own cost and expense.

18. CHARACTER OF WORKERS

The Contractor agrees to employ only orderly and competent workers, skillful in the performance in the type of work required under this contract, to do the work; and agrees that whenever the Owner's Representative shall inform Contractor in writing that any person or persons on the work, are, in Owner's Representative's sole opinion, incompetent, unfaithful, disorderly, or otherwise unacceptable to Owner or Owner's Representative, such person or persons shall be discharged from the work and shall not again be employed on the work without the Owner's Representative's written consent.

19. CONSTRUCTION PLANT

The Contractor shall provide all labor, tools, equipment, machinery and materials necessary in the prosecution and completion of this contract where it is not otherwise specifically provided that Owner shall furnish same, and it is also understood that Owner shall not be held responsible for the care, preservation, conservation, or protection of any materials, tools, equipment or machinery or any part of the work until it is finally completed and accepted.

The building of structures for the housing of workers or equipment will be permitted only at such places as the Owner's Representative shall consent or direct, and the sanitary conditions of the

grounds in or about such structure shall at all times be maintained in a manner satisfactory to the Owner's Representative.

20. SANITATION

Necessary sanitary conveniences for the use of laborers on the work site, properly secluded from public observation, shall be constructed and maintained by the Contractor in such manner and at such points as shall be approved by the Owner's Representative and their use shall be strictly enforced.

21. OBSERVATION AND TESTING

The Contractor is responsible for construction quality control testing, cost, and reporting of the type and extent required by the contract documents. The Owner or Owner's Representative shall have the right at all times to observe and test the work. Contractor shall make necessary arrangements and provide proper facilities and access for such observation and testing at any location wherever such work is in preparation or progress. Contractor shall ascertain the scope of any observation that may be contemplated by Owner or Owner's Representative and shall give ample notice as to the time each part of the work will be ready for such observation. Owner or Owner's Representative may reject any such work found to be defective or not in accordance with the contract documents, regardless of the stage of its completion or the time or place of discovery of such errors and regardless of whether Owner's Representative has previously accepted the work. If any such work should be covered without approval or consent of the Owner, it must, if requested by Owner or Owner's Representative, be uncovered for examination at Contractor's expense. In the event that any part of the work is being fabricated or manufactured at a location where it is not convenient for Owner or Owner's Representative to make observations of such work or require testing of said work, then in such event Owner or Owner's Representative may require Contractor to furnish Owner or Owner's Representative certificates of inspection, testing or approval made by persons competent to perform such tasks at the location where that part of the work is being manufactured or fabricated. All such tests will be in accordance with the methods prescribed by the American Society for Testing and Materials or such other applicable organization as may be required by law or the contract documents.

If any such work which is required to be inspected, tested, or approved is covered up without written approval or consent of the Owner or Owner's Representative, it must, if requested by the Owner or Owner's Representative, be uncovered for observation and testing at the Contractor's expense. The cost of all such inspections, tests and approvals shall be borne by the Contractor unless otherwise provided herein. Any work which fails to meet the requirements of any such tests, inspections or approvals, and any work which meets the requirements of any such tests or approvals but does not meet the requirements of the contract documents shall be considered defective, and shall be corrected at the Contractor's expense.

Neither observations by the Owner or Owner's Representative, nor inspections, tests, or approvals made by Owner, Owner's Representative, or other persons authorized under the contract documents to make such inspections, tests, or approvals shall relieve the Contractor from its obligation to perform the work in accordance with the requirements of the contract documents.

22. DEFECTS AND THEIR REMEDIES

It is expressly agreed that if the work or any part thereof, or any material brought on the site of the work for use in the work or selected for the same, shall be deemed by the Owner or Owner's

Representative as unsuitable or not in conformity with plans, specifications and/or contract documents, the Contractor shall, after receipt of written notice thereof from the Owner's Representative, forthwith remove such material and rebuild or otherwise remedy such work so that it shall be in full accordance with the contract documents. It is further agreed that any remedial action contemplated as hereinabove set forth shall be at Contractor's expense.

23. CHANGES AND ALTERATIONS

The Contractor further agrees that the Owner may make such changes and alterations as the Owner may see fit, in the line, grade, form dimensions, plans or materials for the work herein contemplated, or any part thereof, either before or after the beginning of the construction, without affecting the validity of this contract and the accompanying bond.

If such changes or alterations diminish the quantity of the work to be done, they shall not constitute the basis for a claim for damages, or anticipated profits on the work that may be dispensed with. If they increase the amount of work, and the increased work can fairly be classified under the specifications, such increase shall be paid according to the quantity actually done and at the unit price established for such work under this contract; otherwise such additional work shall be paid for as provided under Extra Work. In case the Owner shall make such changes or alterations as shall make useless any work already done or material already furnished or used in said work, then the Owner shall recompense the Contractor for any material or labor so used, and for actual expenses incurred in preparation for the work as originally planned.

24. EXTRA WORK

The term "extra work" as used in this contract shall be understood to mean and include all work that may be required by the Owner or Owner's Representative to be done by the Contractor to accomplish any change, alteration or addition to the work as shown on the plans and specifications or contract documents and not covered by Contractor's proposal, except as provided under Changes and Alterations in Paragraph 23.

It is agreed that the Contractor shall perform all extra work under the observation of the Owner's Representative when presented with a written work order signed by the Owner's Representative; subject, however, to the right of the Contractor to require written confirmation of such extra work order by the Owner. It is also agreed that the compensation to be paid to the Contractor for performing said extra work shall be determined by the following methods:

- Method (A) - By agreed unit prices; or
- Method (B) - By agreed lump sum; or
- Method (C) - If neither Method (A) or Method (B) be agreed upon before the extra work is commenced, then the Contractor shall be paid the lesser of the following: (1) actual field cost of the extra work, plus fifteen (15%) percent to the firm actually performing the work, and additional higher-tier markups limited to 5% to cover additional overhead and insurance costs; or (2) the amount that would have been charged by a reasonable and prudent Contractor as a reasonable and necessary cost for performance of the extra work, as estimated by the Engineer and approved by the Owner..

In the event said extra work be performed and paid for under Method (C)(1), then the provisions of this paragraph shall apply and the "actual field cost" is hereby defined to include the cost of all workers, such as foremen, timekeepers, mechanics and laborers, materials, supplies, teams, trucks,

rentals on machinery and equipment, for the time actually employed or used on such extra work, plus actual transportation charges necessarily incurred, together with all expenses incurred directly on account of such extra work, including Social Security, Old Age Benefits, Maintenance Bonds, Public Liability and Property Damage and Workers' Compensation and all other insurances as may be required by law or ordinances or directed by the Owner or Owner's Representative, or by them agreed to. Owner's Representative may direct the form in which accounts of the actual field cost shall be kept and records of these accounts shall be made available to the Owner's Representative. The Owner's Representative may also specify in writing, before the work commences, the method of doing the work and the type and kind of machinery and equipment to be used; otherwise, these matters shall be determined by the Contractor. Unless otherwise agreed upon, the prices for the use of machinery and equipment shall be determined by using 100%, unless otherwise specified, of the latest Schedule of Equipment and Ownership Expenses adopted by the Associated General Contractors of America. Where practical, the terms and prices for the use of machinery and equipment shall be incorporated in the written extra work order. The fifteen percent (15%) of the actual field cost to be paid to Contractor shall cover and compensate Contractor for its profit, overhead, general superintendence and field office expense, and all other elements of cost and expense not embraced within the actual field cost as herein defined, save that where the Contractor's Camp or Field Office must be maintained primarily on account of such Extra Work, then the cost to maintain and operate the same shall be included in the "actual field cost."

No claim for extra work of any kind will be allowed unless ordered in writing by Owner's Representative. In case any orders or instructions appear to the Contractor to involve extra work for which Contractor should receive compensation or an adjustment in the construction time, Contractor shall prior to commencement of such extra work, make written request to the Owner's Representative for a written order authorizing such extra work. Should a difference of opinion arise as to what does or does not constitute extra work or as to the payment therefore, and the Owner's Representative insists upon its performance, the Contractor shall proceed with the work after making written request for written order and shall keep adequate and accurate account of the actual field cost thereof, as provided under Method (C) (1). If Contractor does not notify Owner's Representative before the commencement of any extra work, any claim for payment due to alleged extra work shall be deemed waived.

25. DISCREPANCIES AND OMISSIONS

It is further agreed that it is the intent of the contract documents that all work described in the proposal, the specifications, plans and other contract documents, is to be done for the prices quoted by the Contractor and that such price shall include all appurtenances necessary to complete the work in accordance with the intent of these contract documents as interpreted by Owner's Representative. **Notices of any discrepancies or omissions in these plans, specifications, or contract documents, shall be given to the Owners' Representative and a clarification obtained before the proposals are received, and if no such notice is received by the Owner's Representative prior to the opening of proposals, then it shall be deemed that the Contractor fully understands the work to be included and has provided sufficient sums in its proposal to complete the work in accordance with these plans and specifications. If Contractor does not notify Owner's Representative before offering of any discrepancies or omissions, then it shall be deemed for all purposes that the plans and specifications are sufficient and adequate for completion of the project. It is further agreed that any request for clarification must be submitted no later than five (5) calendar days prior to the opening of proposals. In the absence of a requested clarification for a conflict in the documents prior to proposals being reviewed, it will be**

assumed that the Contractor proposes the higher cost alternative on conflicts identified after proposals are reviewed.

26. RIGHT OF OWNER TO MODIFY METHODS AND EQUIPMENT

If at any time the methods or equipment used by the Contractor are found to be inadequate to secure the quality of work with the rate of progress required under this contract, the Owner or Owner's Representative may order the Contractor in writing to increase their safety or improve their character and efficiency and the Contractor shall comply with such order. If, at any time, the working force of the Contractor is inadequate for securing the progress herein specified, the Contractor shall, if so ordered in writing, increase its force or equipment, or both, to such an extent as to give reasonable assurance of compliance with the schedule of progress.

27. PROTECTION AGAINST ACCIDENT TO EMPLOYEES AND THE PUBLIC AND GENERAL INDEMNITY

The Contractor shall take out and procure a policy or policies of Workers' Compensation Insurance with an insurance company licensed to transact business in the State of Texas, which policy shall comply with the Workers' Compensation laws of the State of Texas. The Contractor shall at all times exercise reasonable precaution for the safety of employees and others on or near the work and shall comply with all applicable provisions of federal, state and municipal laws and building and construction codes. All machinery and equipment and other physical hazards shall be guarded in accordance with the "Manual of Accident Prevention in Construction" of Associated General Contractors of America, except where incompatible with federal, state or municipal laws or regulations. The Contractor, its sureties and insurance carriers shall defend, indemnify and hold harmless the Owner and Engineer and all of its officers, agents and employees against any all losses, costs, damages, expenses, liabilities, claims and/or causes of action, whether known or unknown, fixed, actual, accrued or contingent, liquidated or unliquidated, including, but not limited to, attorneys' fees and expenses, in connection with, incident to, related to, or arising out of, the Contractor's or any subcontractor's, agent's or employee's, in any manner whatsoever, omission, execution and/or supervision of this contract, and the project which is the subject matter of this contract.

The safety precautions taken shall be the sole responsibility of the Contractor, in its sole discretion as an Independent Contractor; inclusion of this paragraph in the Agreement, as well as any notice which may be given by the Owners or the Owner's Representative concerning omissions under this paragraph as the work progresses, are intended as reminders to the Contractor of its duty and shall not be construed as any assumption of duty to supervise safety precautions by either the Contractor or any of its subcontractors.

28. CONTRACTOR'S INSURANCE

The Contractor shall not commence work under this contract until he has obtained all insurance as required in the General Conditions of the contract documents, from an underwriter authorized to do business in the State of Texas and satisfactory to the City. Proof of coverage shall be furnished to the City and written notice of cancellation or any material change will be provided ten (10) calendar days in advance of cancellation or change. All policies of insurance, required herein, including policies of insurance required to be provided by Contractor and its subcontractors, shall contain a waiver of any and all of the insurer's or payor's, in the event of self-insurance, rights to subrogation

that any such insurer or payor, in the event of self-insurance, may acquire by virtue of payment of any loss under such insurance or self-insurance. All certificates of insurance submitted to the City in conformity with the provisions hereof shall establish such waiver.

The Contractor shall procure and carry at its sole cost and expense through the life of this contract, insurance protection as hereinafter specified. Coverage in excess of that specified herein also shall be acceptable. Such insurance shall be carried with an insurance company authorized to transact business in the State of Texas and shall cover all operations in connection with this contract, whether performed by the Contractor or a subcontractor, or separate policies shall be provided covering the operation of each subcontractor. A certificate of insurance specifying each and all coverages shall be submitted prior to contract execution.

PROOF OF COVERAGE SHALL BE FURNISHED TO THE CITY OF LUBBOCK IN THE FORM OF A CERTIFICATE OF INSURANCE. THE INSURANCE CERTIFICATES FURNISHED SHALL NAME THE CITY OF LUBBOCK AS ADDITIONAL INSURED ON AUTO/GENERAL LIABILITY ON A PRIMARY AND NON-CONTRIBUTORY BASIS TO INCLUDE PRODUCTS OF COMPLETE OPERATIONS. PROVIDE A WAIVER OF SUBROGATION IN FAVOR OF THE CITY OF LUBBOCK. IT SHALL BE THE CONTRACTOR'S RESPONSIBILITY TO PROVIDE TO THE OWNER ALL PROOF OF COVERAGE INSURANCE DOCUMENTS INCLUDING WORKERS COMPENSATION COVERAGE FOR EACH SUBCONTRACTOR. COPIES OF THE ENDORSEMENTS ARE REQUIRED.

- A. Commercial General Liability Insurance (Primary Additional Insured and Waiver of Subrogation required)

The contractor shall have Comprehensive General Liability Insurance with limits of **\$1,000,000** Combined Single Limit in the aggregate and **\$2,000,000** per occurrence to include:

Products & Completed Operations Hazard
Contractual Liability
Personal Injury & Advertising Injury
Heavy equipment endorsement is required
Professional Liability Requirements

- B. Owner's and Contractor's Protective Liability Insurance – **NOT REQUIRED**

- C. Comprehensive Automobile Liability Insurance (Waiver of Subrogation Required)

The Contractor shall have Comprehensive Automobile Liability Insurance with limits of not less than; Bodily Injury/Property Damage, **\$1,000,000** Combined Single Limit per occurrence, to include all owned and non-owned cars including: Employers Non-ownership Liability Hired and Non-owned Vehicles.

- D. Builder's Risk Insurance/Installation Floater Insurance – Builder's Risk Insurance is needed for this project, and at a minimum, the insurance should cover the full insurable value of the improvements.

- E. Umbrella Liability Insurance (Primary Additional Insured and Waiver of Subrogation required) **NOT REQUIRED**

F. **Worker's Compensation and Employers Liability Insurance (Waiver of Subrogation required)**

Worker's Compensation Insurance covering all employees whether employed by the Contractor or any Subcontractor on the job with Employers Liability of at least **\$1,000,000**

1. **Definitions:**

Certificate of coverage ("certificate") - A copy of a certificate of insurance, a certificate of authority to self-insure issued by the commission, or a coverage agreement (TWCC-81, TWCC-82, TWCC-83, or TWCC-84), showing statutory workers' compensation insurance coverage for the person's or entity's employees providing services on a project, for the duration of the project.

Duration of the project - includes the time from the beginning of the work on the project until the Contractor's/person's work on the project has been completed and accepted by the governmental entity.

Persons providing services on the project ("subcontractor" in Section 406.096, Texas Labor Code) - includes all persons or entities performing all or part of the services the Contractor has undertaken to perform on the project, regardless of whether that person contracted directly with the Contractor and regardless of whether that person has employees. This includes, without limitation, independent contractors, subcontractors, leasing companies, motor carriers, owner-operators, employees of any such entity, or employees of any entity which furnishes persons to provide services on the project. "Services" include, without limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other service related to a project. "Services" does not include activities unrelated to the project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.

2. The Contractor shall provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all employees of the contractor providing services on the project, for the duration of the project.
3. The Contractor must provide a certificate of coverage to the governmental entity prior to being awarded the contract.
4. If the coverage period shown on the Contractor's current certificate of coverage ends during the duration of the project, the Contractor must, prior to the end of the coverage period, file a new certificate of coverage with the governmental entity showing that coverage has been extended.
5. The Contractor shall obtain from each person providing services on the project, and provide to the governmental entity:

- (a) a certificate of coverage, prior to that person beginning work on the project, so the governmental entity will have on file certificates of coverage showing coverage for all persons providing services on the project; and
 - (b) no later than seven days after receipt by the Contractor, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project.
- 6. The Contractor shall retain all required certificates of coverage for the duration of the project and for one year thereafter.
- 7. The Contractor shall notify the governmental entity in writing by certified mail or personal delivery, within 10 days after the Contractor knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project.
- 8. The Contractor shall post on each project site a notice, in the text, form and manner prescribed by the Texas Workers' Compensation Commission, informing all persons providing services on the project that they are required to be covered, and stating how a person may verify coverage and report lack of coverage.
- 9. The Contractor shall contractually require each person with whom it contracts to provide services on the project, to:
 - (a) provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all of its employees providing services on the project, for the duration of the project;
 - (b) provide to the Contractor, prior to that person beginning work on the project, a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the project, for the duration of the project;
 - (c) provide the Contractor, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project;
 - (d) obtain from each other person with whom it contracts, and provide to the Contractor:
 - (1) a certificate of coverage, prior to the other person beginning work on the project; and
 - (2) a new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the project;
 - (e) retain all required certificates of coverage on file for the duration of the project and for one year thereafter;

- (f) notify the governmental entity in writing by certified mail or personal delivery, within 10 days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project; and
 - (g) contractually require each person with whom it contracts to perform as required by paragraphs (a) - (g), with the certificates of coverage to be provided to the person for whom they are providing services.
10. By signing this contract or providing or causing to be provided a certificate of coverage, the Contractor is representing to the governmental entity that all employees of the Contractor who will provide services on the project will be covered by worker's compensation coverage for the duration of the project, that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the commission's Division of Self-Insurance Regulation. Providing false or misleading information may subject the Contractor to administrative penalties, criminal penalties, civil penalties, or other civil actions.
11. The Contractor's failure to comply with any of these provisions is a breach of contract by the Contractor which entitles the governmental entity to declare the contract void if the Contractor does not remedy the breach within ten days after receipt of notice of breach from the governmental entity.

G. Proof of Coverage

Before work on this contract is commenced, each Contractor and subcontractor shall submit to the Owner for approval five Certificates of Insurance covering each insurance policy carried and offered as evidence of compliance with the above insurance requirements, signed by an authorized representative of the insurance company setting forth:

- (1) The name and address of the insured.
- (2) The location of the operations to which the insurance applies.
- (3) The name of the policy and type or types of insurance in force thereunder on the date borne by such certificate.
- (4) The expiration date of the policy and the limit or limits of liability thereunder on the date borne by such certificate.
- (5) A provision that the policy may be canceled only by mailing written notice to the named insured at the address shown in the proposal specifications.
- (6) A provision that written notice shall be given to the City ten days prior to any change in or cancellation of the policies shown on the certificate.
- (7) The certificate or certificates shall be on the form (or identical copies thereof) contained in the job specifications. No substitute or nor amendment thereto will be acceptable.
- (8) If policy limits are paid, new policy must be secured for new coverage to complete project.

(9) A Contractor shall:

- (a) provide coverage for its employees providing services on a project, for the duration of the project based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements;
- (b) provide a certificate of coverage showing workers' compensation coverage to the governmental entity prior to beginning work on the project;
- (c) provide the governmental entity, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the Contractor's current certificate of coverage ends during the duration of the project;
- (d) obtain from each person providing services on a project, and provide to the governmental entity:
 - (i) a certificate of coverage, prior to that person beginning work on the project, so the governmental entity will have on file certificates of coverage showing coverage for all persons providing services on the project; and
 - (ii) no later than seven days after receipt by the Contractor, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project;
- (e) retain all required certificates of coverage on file for the duration of the project and for one year thereafter;
- (f) notify the governmental entity in writing by certified mail or personal delivery, within 10 days after the Contractor knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project;
- (g) post a notice on each project site informing all persons providing services on the project that they are required to be covered, and stating how a person may verify current coverage and report failure to provide coverage. This notice does not satisfy other posting requirements imposed by the Texas Worker's Compensation Act or other commission rules. This notice must be printed with a title in at least 30-point bold type and text in at least 19-point normal type, and shall be in both English and Spanish and any other language common to the worker population. The text for the notices shall be the following text provided by the commission on the sample notice, without any additional words or changes:

REQUIRED WORKERS' COMPENSATION COVERAGE

"The law requires that each person working on this site or providing services related to this construction project must be covered by workers' compensation insurance. This includes persons providing, hauling, or delivering equipment or materials, or providing labor or transportation or other service related to the project, regardless of the identity of their employer or status as an employee."

"Call the Texas Workers' Compensation Commission at 800-372-7713 or 512-804-4000 (www.tdi.state.tx.us) to receive information of the legal requirements for coverage, to verify whether your employer has provided the required coverage, or to report an employer's failure to provide coverage;" and

- (h) contractually require each person with whom it contracts to provide services on a project, to:
 - (i) provide coverage based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements for all of its employees providing services on the project, for the duration of the project;
 - (ii) provide a certificate of coverage to the Contractor prior to that person beginning work on the project;
 - (iii) include in all contracts to provide services on the project the following language:

"By signing this contract or providing or causing to be provided a certificate of coverage, the person signing this contract is representing to the governmental entity that all employees of the person signing this contract who will provide services on the project will be covered by workers' compensation coverage for the duration of the project, that the coverage will be based on proper reprinting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the commission's Division of Self-Insurance Regulation. Providing false or misleading information may subject the Contractor to administrative penalties, criminal penalties, civil penalties, or other civil actions."
 - (iv) provide the Contractor, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project;
 - (v) obtain from each other person with whom it contracts, and provide to the Contractor:
 - (1) a certificate of coverage, prior to the other person beginning work on the project; and
 - (2) prior to the end of the coverage period, a new certificate of coverage showing extension of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the project;
 - (vi) retain all required certificates of coverage on file for the duration of the project and for one year thereafter;

- (vii) notify the governmental entity in writing by certified mail or personal delivery, within 10 days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project; and
- (viii) contractually require each other person with whom it contracts, to perform as required by paragraphs (i)-(viii), with the certificate of coverage to be provided to the person for whom they are providing services.

29. DISABLED EMPLOYEES

Contractors having more than fifteen (15) employees agree to comply with the Americans with Disabilities Act of 1990, and agree not to discriminate against a qualified individual with a disability because of the disability of such individual in regard to job application procedures, the hiring, advancement, or discharge of employees, employee compensation, job training, and other terms, conditions, and privileges of employment.

30. PROTECTION AGAINST CLAIMS OF SUBCONTRACTORS, LABORERS, MATERIALMEN, AND FURNISHERS OF MACHINERY, EQUIPMENT AND SUPPLIES

Without limiting, in any way, manner or form, the indemnity provided by Contractor in paragraph 27 hereof, the Contractor agrees that it will indemnify and save the Owner and Engineer and all of its officers, agents and employees, harmless against any and all claims, liabilities, losses, damages, expenses and causes of action arising out of, in any way, manner or form, the demands of subcontractors, laborers, workmen, mechanics, material men and furnishers of machinery and parts thereof, equipment, power tools, and supplies, incurred in the performance of this contract and the project which is the subject matter of this contract. When Owner so desires, the Contractor shall furnish satisfactory evidence that all obligations of the nature hereinabove designated have been paid, discharged or waived.

31. PROTECTION AGAINST ROYALTIES OR PATENT INVENTION

The Contractor shall pay all royalties and license fees, and shall provide for the use of any design, device, material or process covered by letters patent or copyright by suitable legal agreement with the Patentee or owner thereof. Without limiting, in any way, manner or form, the indemnity provided by Contractor in paragraph 27 hereof, the Contractor shall defend all suits or claims for infringement of any patent or copyrights and shall indemnify and save the Owner and Engineer, and all of its officers, agents and employees harmless from any loss on account thereof, except that Owner shall defend all such suits and claims and shall be responsible for all such loss when a particular design, device, material or process or the product of a particular manufacturer or manufacturers is specified or required in these contract documents by Owner; provided, however, if choice of alternate design, device, material or process is allowed to the Contractor, then Contractor shall indemnify and save Owner, and all of its officers, agents and employees harmless from any loss on account thereof. Notwithstanding anything herein to the contrary, if the material or process specified or required by Owner and/or this contract is an infringement, the Contractor shall be responsible for such loss unless it gives written notice of such infringement to the Owner's Representative prior to offering.

32. LAWS AND ORDINANCES

The Contractor shall at all times observe and comply with all federal, state and local laws, ordinances and regulations, which in any manner affect the contract or the work, and without limiting, in any way, manner or form, the indemnity provided by Contractor in paragraph 27 hereof, Contractor shall indemnify and save harmless the Owner and Engineer and all of its officers, agents, and employees against any claims arising from the violation of any such laws, ordinances, and regulations, whether by the Contractor, its employees, or subcontractors. If the Contractor observes that the plans and specifications are at variance therewith, he shall notify the Owner's Representative in writing prior to proposing and any necessary changes shall be adjusted as provided in the contract for changes in the work. In the absence of timely written notification to Owner's Representative of such variance or variances within said time, any objection and/or assertion that the plans and specifications are at variance with any federal, state or local laws, ordinances or regulations shall be deemed waived. If the Contractor, its employees or subcontractors perform any work contrary to such laws, ordinances, rules and regulations, and without such notice to the Owner's Representative, Contractor shall bear all costs arising there from.

The Owner is a municipal corporation of the State of Texas and the law from which it derives its powers, insofar as the same regulates the objects for which, or the manner in which, or the conditions under which the Owner may enter into contracts, shall be controlling, and shall be considered as part of this contract to the same effect as though embodied herein.

33. SUBCONTRACTING

The Contractor agrees that it will retain personal control and will give its personal attention to the fulfillment of this contract. The Contractor further agrees that subletting of any portion or feature of the work, or materials required in the performance of this contract, shall not relieve the Contractor from its full obligations to the Owner, as provided by the contract documents.

34. TIME FOR SUBSTANTIAL COMPLETION AND LIQUIDATED DAMAGES

It is hereby understood and mutually agreed by and between the Contractor and the Owner, that the date of beginning and time for completion as specified in the Notice to Proceed and contract documents, respectively, of work to be done hereunder are essential conditions of this contract; and it is further mutually understood and agreed that the work embraced in this contract shall be commenced as provided in the contract documents.

If the Contractor should neglect, fail, or refuse to substantially complete the work within the time herein specified, then the Contractor does hereby agree as part of the consideration for the awarding of this contract, the Owner may withhold permanently from Contractor's total compensation, the sum of **\$25 PER CONSECUTIVE CALENDAR DAY**, not as a penalty, but as liquidated damages for the breach of the contract as herein set forth for each and every working day that the Contractor shall be in default after the time stipulated for substantially completing the work.

If the Contractor should neglect, fail, or refuse to Finally complete the work within the time herein specified, then the Contractor does hereby agree as part of the consideration for the awarding of this contract, the Owner may withhold permanently from Contractor's total compensation, the sum of **\$25 PER CONSECUTIVE CALENDAR DAY**, not as a penalty, but as liquidated damages for the breach of the contract as herein set forth for each and every working day that the Contractor shall fail to meet the time requirements stipulated for substantially completing the work.

It is expressly understood and agreed, by and between Contractor and the Owner, that the time for the substantial completion of the work described herein is reasonable time for the completion of the same, taking into consideration the average climatic range and conditions and usual industrial conditions prevailing in this locality. The amount is fixed and agreed upon by and between the Contractor and the Owner because the actual damages the Owner would sustain in such event would be difficult and/or impossible to estimate, however, the amount agreed upon herein is a reasonable forecast of the amount necessary to render just compensation to Owner, and is expressly agreed to be not disproportionate to actual damages as measured at time of breach.

IT IS FURTHER AGREED AND UNDERSTOOD BETWEEN THE CONTRACTOR AND OWNER THAT TIME IS OF THE ESSENCE OF THIS CONTRACT.

35. TIME AND ORDER OF COMPLETION

It is the meaning and intent of this contract, unless otherwise herein specifically provided, that the Contractor shall be allowed to prosecute its work in such order of precedence, and in such manner as shall be most conducive to economy of construction. The Contractor shall ensure daily prosecution of the work is conducted every business day until completed, regardless if the work will be substantially or finally complete ahead of specified deadlines in the agreement, unless the City determines time off from said prosecution is necessary or reasonable and Contractor received said determination in writing from the City. Further, when the Owner is having other work done, either by contract or by its own force, the Owner's Representative (as distinguished from the Resident Project Representative) may direct the time and manner of constructing work done under this contract so that conflicts will be avoided and the construction of the various works being done for the Owner shall be harmonized. Additionally, inclement weather shall be the only other reason consistent, daily prosecution of the work may not take place on those inclement weather days.

The Contractor shall submit, at such times as may reasonably be requested by the Owner's Representative, schedules which shall show the order in which the Contractor intends to carry on the work, with dates at which the Contractor will start the several parts of the work and estimated dates of completion of the several parts.

36. TIME OF PERFORMANCE

The Contractor agrees that it has submitted its proposal in full recognition of the time required for the completion of this project, taking into consideration the average climatic range and industrial conditions prevailing in this locality, and has considered the liquidated damage provisions of paragraph 34 hereinabove set forth and expressly agrees that it shall not be entitled to, nor will it request, an extension of time on this contract, except when its work has been delayed by an act or neglect of the Owner, Owner's Representative, employees of the Owner or other contractors employed by the Owner, or by changes ordered in the work, or by strike, walkouts, acts of God or the public enemy, fire or flood. Any request for extension shall be in writing with the written request for same setting forth all justifications, in detail, for the request, and submitted to Owner's Representative within twenty (20) calendar days of the occurrence of the event causing said delay. A failure by Owner's Representative to affirmatively grant the extension no later than within twenty (20) calendar days of written submission by Contractor shall be deemed a denial, and final. Further, in the absence of timely written notification of such delay and request for extension, as provided herein, any request for extension by Contractor shall be deemed waived.

37. HINDRANCE AND DELAYS

In executing the contract, the Contractor agrees that in undertaking to complete the work within the time herein fixed, Contractor has taken into consideration and made allowances for all hindrances and delays incident to such work, whether growing out of delays due to unusual and unanticipated circumstances, difficulties or delays in securing material or workers, or any other cause or occurrence. No charge shall be made by the Contractor for hindrance or delays from any cause during the progress of any part of the work embraced in this contract except where the work is stopped by order of the Owner or Owner's Representative for the Owner's convenience, in which event, such expense as in the sole judgment of the Owner's Representative that is caused by such stoppage shall be paid by Owner to Contractor.

38. QUANTITIES AND MEASUREMENTS

No extra or customary measurements of any kind will be allowed, but the actual measured or computed length, area, solid contents, number and weight only shall be considered, unless otherwise specifically provided. In the event this contract is let on a unit price basis, then Owner and Contractor agree that this contract, including the specifications, plans and other contract documents are intended to show clearly all work to be done and material to be furnished hereunder. Where the estimated quantities are shown, and only when same are expressly stated to be estimates, for the various classes of work to be done and material to be furnished under this contract, they are approximate and are to be used only as a basis for estimating the probable cost of the work and for comparing their proposals offered for the work. In the event the amount of work to be done and materials to be furnished are expressly stated to be estimated, and only when same are expressly stated to be estimated, it is understood and agreed that the actual amount of work to be done and the materials to be furnished under this contract may differ somewhat from these estimates, and that where the basis for payment under this contract is the unit price method, payment shall be for the actual amount of work done and materials furnished on the project, provided that the over run or under run of estimated quantities not exceed 15% of the estimated quantity.

39. PROTECTION OF ADJOINING PROPERTY

The Contractor shall take proper means to protect the adjacent or adjoining property or properties in any way encountered, which may be injured or seriously affected by any process of construction to be undertaken under this agreement, from any damage or injury by reason of said process of construction; and Contractor shall be liable for any and all claims for such damage on account of his failure to fully protect all adjacent property. Without limiting, in any way, manner and form, the indemnity provided by Contractor in paragraph 27 hereof, the Contractor agrees to indemnify, save and hold harmless the Owner and Engineer, and any of its officers, agents and employees, against any and all claims or damages due to any injury to any adjacent or adjoining property, related to, arising from or growing out of the performance of this contract.

40. PRICE FOR WORK

In consideration of the furnishing of all necessary labor, equipment and material and the completion of all work by the Contractor, and on the delivery of all materials embraced in this contract in full conformity with the specifications and stipulations herein contained, the Owner agrees to pay the Contractor the price set forth in the proposal attached hereto, which has been made a part of this contract, and the Contractor hereby agrees to receive such price in full for furnishing all materials and all labor required for the aforesaid work, also, for all expenses incurred by Contractor and for well and truly performing the same and the whole thereof in the manner and according to this

agreement, the attached specifications, plans, contract documents and requirements of Owner's Representative.

41. PAYMENTS

No payments made or certificates given shall be considered as conclusive evidence of the performance of the contract, either wholly or in part, nor shall any certificate or payment be considered as acceptance of defective work. Contractor shall at any time requested during the progress of the work furnish the Owner or Owner's Representative with a verifying certificate showing the Contractor's total outstanding indebtedness in connection with the work. Before final payment is made, Contractor shall satisfy Owner, by affidavit or otherwise, that there are no outstanding liens against Owner's premises by reason of any work under the contract. Acceptance by Contractor of final payment of the contract price shall constitute a waiver of all claims against Owner, Owner's agents and employees, which have not theretofore been timely filed as provided in this contract.

42. PARTIAL PAYMENTS

On or before the tenth day of each month, the Contractor shall submit to Owner's Representative an application for partial payment or, if the Contractor does not submit such application, the Owner's Representative shall determine the amount to be partially paid. Owner's Representative shall review said application for partial payment if submitted, and the progress of the work made by the Contractor and if found to be in order, shall prepare a certificate for partial payment showing as completely as practical the total value of the work done by the Contractor up to and including the last day of the preceding month. The determination of the partial payment by the Owner's Representative shall be in accordance with Paragraph 14 hereof.

The Owner shall then pay the Contractor on or before the fifteenth day of the current month the total amount of the Owner's Representative's Certificate of Partial Payment, less:

- (i) in the event the total value of the contract is five million dollars or more, 5% of the amount thereof, which 5% shall be retained until final payment, and further, less all previous payments and all further sums that may be retained by Owner under the terms of the contract documents; or
- (ii) in the event the total value of the contract is less than five million dollars, 10% or less, of the amount thereof, which percentage shall be retained until final payment, and further, less all previous payments and all further sums may be retained by Owner under the terms of the contract documents ("Retainage").

If Contractor engages a sub-contractor to perform all or part of Contractor's work under the contract, the Contractor shall not withhold a greater percentage of Retainage than the percentage set out in in this section pertaining to the Contractor. Contractor shall likewise require any subcontractor it engages to comply with section 2252.032 of the Texas Government Code.

Any partial payment made hereunder shall not constitute a waiver by the Owner of any and all other rights to enforce the express terms of the contract documents, and all remedies provided therein, as to any and all work performed, to be performed and/or materials delivered hereunder, including, but limited to, work to which said partial payment is attributable.

43. SUBSTANTIAL COMPLETION

Contractor shall give Owner's Representative written notice of substantial completion. Within fifteen (15) calendar days after the Contractor has given the Owner's Representative written notice that the work has been substantially completed, the Owner's Representative and/or the Owner shall

inspect the work and within said time, if the work be found to be substantially completed in accordance with the contract documents, the Owner's Representative shall issue to the Owner and Contractor a certificate of substantial completion. The work will be deemed substantially complete when the work (or a specified portion thereof) has progressed to the point where, in the opinion of the Owner or Owner's Representative, the work (or a specified portion thereof) is sufficiently complete, in accordance with all the contract documents, including the Proposal and all applicable technical specifications, so that the work (or a specified portion thereof) can be utilized for the purposes for which it is intended without unscheduled disruption. Owner may, in its sole discretion, release all or a portion of the Retainage upon Owner's receipt of the certificate of substantial completion for all of the work or a specified portion thereof. Notwithstanding the issuance of a certificate of substantial completion, Contractor shall proceed with diligence to finally complete the work within the time provided in this contract.

44. FINAL COMPLETION AND PAYMENT

The Contractor shall give written notice to Owner's Representative of final completion. Upon written notice of final completion, the Owner's Representative shall proceed to make final measurement to determine whether final completion has occurred. If the Owner's Representative determines final completion has occurred, Owner's Representative shall so certify to the Owner. Upon certification by Owner's Representative of final completion, Owner shall pay to the Contractor on or before the 31st working day after the date of certification of final completion, the balance due Contractor under the terms of this agreement. Neither the certification of final completion nor the final payment, nor any provisions in the contract documents shall relieve the Contractor of the obligation for fulfillment of any warranty which may be required in the contract documents and/or any warranty or warranties implied by law or otherwise. Owner may, in its sole discretion, release all or a portion of the Retainage for fully completed and accepted portions of the work.

Notwithstanding the foregoing, Owner may withhold the Retainage if there is a bona fide dispute between Owner and Contractor according to section 2252.032(f) of the Texas Government Code.

45. CORRECTION OF WORK

Contractor shall promptly remove from Owner's premises all materials condemned by the Owner's Representative on account of failure to conform to the contract documents, whether actually incorporated in the work or not, and Contractor shall at its own expense promptly replace such condemned materials with other materials conforming to the requirements of the contract documents. Contractor shall also bear the expense of restoring all work of other contractors damaged by any such removal or replacement. If Contractor does not remove and replace any such condemned work within a reasonable time but not to exceed 30 days after a written notice by the Owner or the Owner's Representative, Owner may remove and replace it at Contractor's expense. The Contractor shall pay all claims, cost, losses, and damages (including but not limited to all fees and charges of the engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution cost) arising out of or relating to such correction or removal.

Neither the final payment, nor certification of final completion or substantial completion, nor any provision in the contract documents shall relieve the Contractor of responsibility for faulty materials or workmanship, and Contractor shall remedy any defects due thereto and pay for any damage to other work resulting therefrom, which shall appear within a period of one (1) year from the date of certification of final completion by Owner's Representative.

46. PAYMENT WITHHELD

The Owner or Owner's Representative may, on account of subsequently discovered evidence, withhold or nullify the whole or part of any certification to such extent as may be necessary to protect itself from loss on account of:

- (a) Defective work not remedied and/or work not performed,
- (b) Claims filed or reasonable evidence indicating possible filing of claims,
- (c) Damage to another contractor,
- (d) Notification to owner of failure to make payments to Subcontractors or Suppliers,
- (e) Failure to submit up-to-date record documents as required,
- (f) Failure to submit monthly progress schedule updates or revised scheduled as requested by Owner,
- (g) Failure to provide Project photographs required by Specifications.

When the above grounds are removed, or the Contractor provides a surety bond satisfactory to the Owner, in the amount withheld, payment shall be made for amounts withheld because of them.

47. CLAIM OR DISPUTE

It is further agreed by both parties hereto that all questions of dispute or adjustment presented by the Contractor shall be in writing and filed with the Owner's Representative within fifteen (15) calendar days after the Owner's Representative has given any direction, order or instruction to which the Contractor desires to take exception. Timely written notice of dispute as provided in this contract of any decision by Owner's Representative or Owner shall be a condition precedent to the bringing and/or assertion of any action or claim by Contractor of any right under this Contract. If the matters set forth in the notice of dispute are not granted or otherwise responded to by Owner's Representative within fifteen (15) calendar days of receipt of notice of dispute by Owner's Representative, said objections shall be deemed denied. Any decision by the Owner's Representative, or deemed denial by the Owner's Representative, shall be final and conclusive in the absence of fraud. It is further agreed that the acceptance by the Contractor of the final payment shall be a bar to any and all claims of the Contractor, and constitute a waiver of the right to assert any claim against Owner, Owner's agents and employees and Owner's Representative, by Contractor.

48. NON-COMPLIANCE AND/OR ABANDONMENT BY CONTRACTOR

In case the Contractor should (1) abandon and fail or refuse to resume work within fifteen (15) calendar days after written notification from the Owner or the Owner's Representative, or (2) if the Contractor fails to comply with the written orders of the Owner's Representative, when such orders are consistent with this contract, then the Surety on the bond shall be notified in writing and directed to complete the work and a copy of said notice shall be delivered to the Contractor. In the event a bond is not required by law, or otherwise obtained by the Contractor, no further notice of such non-compliance to Contractor shall be required.

After receiving said notice of abandonment or non-compliance, the Contractor shall not remove from the work any machinery, equipment, tools, materials or supplies then on the job, but the same, together with any materials and equipment under the contract for work, may be held for use on the work by the Owner or the Surety of the Contractor, or another contractor, in completion of the work; and the Contractor shall not receive any rental or credit therefore (except when used in connection with Extra Work, where credit shall be allowed as provided for under paragraph 24 of this contract);

it being understood that the use of such equipment and materials will ultimately reduce the cost to complete the work and be reflected in the final settlement.

In the event the Contractor, or Surety, whichever is applicable, should fail to commence compliance with the notice hereinbefore provided within ten (10) calendar days after service of such notice, and/or shall fail to proceed with diligence to complete the project as contemplated and in compliance with all terms and provisions of the contract documents, then the Owner may exercise any and all remedies available to it pursuant to law, contract, equity or otherwise, including, but not limited to, providing for completion of the work in either of the following elective manners:

- (a) The Owner may employ such force of persons and use of machinery, equipment, tools, materials and supplies as said Owner may deem necessary to complete the work and charge the expense of such labor, machinery, equipment, tools, materials and supplies to said Contractor, and the expense so charged shall be deducted and paid by the Owner out of such moneys as may be due, or that may thereafter at any time become due to the Contractor under and by virtue of this Agreement. In case such expense is less than the sum which would have been payable under this contract, if the same had been completed by the Contractor, then said Contractor shall receive the difference. In case such expense is greater than the sum which would have been payable under this contract, if the same had been completed by said Contractor, then the Contractor and/or its Surety shall pay the amount of such excess to the Owner; or
- (b) The Owner, under sealed proposals, after notice published as required by law, at least twice in a newspaper having a general circulation in the County of location of the work, may let the contract for the completion of the work under substantially the same terms and conditions which are provided in this contract. In case of any increase in cost to the Owner under the new contract as compared to what would have been the cost under this contract, such increase shall be charged to the Contractor and the Surety shall be and remain bound therefore. Should the cost to complete any such new contract prove to be less than that which would have been the cost to complete the work under this contract, the Contractor or his Surety shall be credited therewith.

In the event the Owner's Representative elects to complete the work, as described above, when the work shall have been finally completed, the Contractor and his Surety shall be so notified and certification of completion as provided in paragraph 44 hereinabove set forth, shall be issued. A complete itemized statement of the contract accounts, certified to by Owner's Representative as being correct shall then be prepared and delivered to Contractor and his Surety, if applicable, whereon the Contractor or his Surety, or the Owner as the case may be, shall pay the balance due as reflected by said statement within 30 days after the date of certification of completion.

In the event the statement of accounts shows that the cost to complete the work is less than that which would have been the cost to the Owner had the work been completed by the Contractor under the terms of this contract, or when the Contractor and/or his Surety, if applicable, shall pay the balance shown to be due by them to the Owner, then all machinery, equipment, tools, materials or supplies left on the site of the work shall be turned over to the Contractor and/or his Surety, if applicable. Should the cost to complete the work exceed the contract price, and the Contractor and/or his Surety, if applicable, fail to pay the amount due the Owner within the time designated hereinabove, and there remains any machinery, equipment, tools, materials or supplies on the site of the work, notice thereof, together with an itemized list of such equipment and materials shall be mailed to the Contractor and his Surety, if applicable, at the respective addresses designated in this contract; provided, however, that actual written notice given in any manner will satisfy this

condition. After mailing, or other giving of such notice, such property shall be held at the risk of the Contractor and his Surety, if applicable, subject only to the duty of the Owner to exercise ordinary care to protect such property. After fifteen (15) calendar days from the date of said notice the Owner may sell such machinery, equipment, tools, materials or supplies and apply the net sum derived from such sale to the credit of the Contractor and his Surety, if applicable. Such sale may be made at either public or private sale, with or without notice, as the Owner may elect. The Owner shall release any machinery, equipment, tools, materials, or supplies that remain on the jobsite and belong to persons other than the Contractor or his Surety, if applicable, to their proper owners.

The remedies provided to Owner by law, equity, contract, or otherwise, shall be cumulative, to the extent permitted by law. It is expressly agreed and understood that the exercise by Owner of the remedies provided in this paragraph shall not constitute an election of remedies on the part of Owner, and Owner, irrespective of its exercise of remedies hereunder, shall be entitled to exercise concurrently or otherwise, any and all other remedies available to it, by law, equity, contract or otherwise, including but not limited to, liquidated damages, as provided in paragraph 34, hereinabove set forth.

49. LIMITATION ON CONTRACTOR'S REMEDY

The remedies of Contractor hereunder shall be limited to, and Owner shall be liable only for, work actually performed by Contractor and/or its subcontractors as set forth in the contract documents, and Owner shall not be liable for any consequential, punitive or indirect loss or damage that Contractor may suffer in connection with the project which is the subject matter of this contract.

50. BONDS

The Contractor is required to furnish a performance bond in accordance with Chapter 2253, Government Code, in the amount of 100% of the total contract price in the event that said contract price exceeds \$100,000 and the Contractor is required to furnish a payment bond in accordance with Chapter 2253, Government Code, in the amount of 100% of the total contract price in the event that said contract price exceeds \$50,000. All bonds shall be submitted on forms supplied by the Owner, and executed by a Surety Company listed on the State Treasury's "Approved" list and authorized to do business in the State of Texas. It is further agreed that this contract shall not be in effect until such bonds are so furnished.

51. SPECIAL CONDITIONS

In the event special conditions are contained herein as part of the contract documents and said special conditions conflict with any of the general conditions contained in this contract, then in such event the special conditions shall control.

52. LOSS OR EXPENSE DUE TO UNUSUAL OR UNANTICIPATED CIRCUMSTANCES

Unless otherwise specified herein, all loss, expense or damage to the Contractor arising out of the nature of the work to be done, or from the action of the elements, or from any unforeseen circumstance or from unusual obstructions or difficulties, naturally occurring, man-made or otherwise, which may be encountered in the prosecution of the work, shall be sustained and borne by the Contractor at his own cost and expense.

53. INDEPENDENT CONTRACTOR

Contractor is, and shall remain, an independent contractor with full, complete and exclusive power and authority to direct, supervise, and control its own employees and to determine the method of the performance of the work covered hereby. The fact that the Owner or Owner's Representative shall have the right to observe Contractor's work during Contractor's performance and to carry out the other prerogatives which are expressly reserved to and vested in the Owner or Owner's Representative hereunder, is not intended to and shall not at any time change or effect the status of the Contractor as an independent contractor with respect to either the Owner or Owner's Representative or to the Contractor's own employees or to any other person, firm, or corporation.

54. CLEANING UP

The Contractor shall at all times keep the premises free from accumulation of debris caused by the work, and at the completion of the work Contractor shall remove all such debris and also its tools, scaffolding, and surplus materials and shall leave the work room clean or its equivalent. The work shall be left in good order and condition. In case of dispute Owner may remove the debris and charge the cost to the Contractor.

55. HAZARDOUS SUBSTANCES AND ASBESTOS

Hazardous Substances (herein so called), as defined in the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C.S. §9601(14)) and the regulations promulgated thereunder, as same may be amended from time to time, hydrocarbons or other petroleum products or byproducts and/or asbestos, in any form, shall not (i) be utilized, in any way, manner or form, in the construction of, or incorporation into, the Project; or (ii) be brought upon, placed, or located, by any party, on the Project site, or any other property of the City, without the written consent of the Owner's Representative. If Contractor believes that the utilization of a Hazardous Substance, hydrocarbons or other petroleum products or byproducts and/or asbestos is necessary in the construction of the Project, or that it is necessary to place and/or otherwise locate upon the site of the Project or other property of the City, a Hazardous Substance, hydrocarbons or other petroleum products or byproducts and/or asbestos, Contractor shall notify the Owner's Representative, and request consent therefrom, at least twenty (20) days prior to such action. Owner's Representative may grant or deny the request of Contractor and provide whatever requirements such consent, if granted, is conditioned upon, in its sole and absolute discretion. If the request of Contractor is not granted, or otherwise not responded to, by Owner's Representative within five (5) days of the receipt of said request, said request shall be deemed to be denied.

In the event Owner's Representative shall consent to the request of Contractor, Contractor shall be responsible for ensuring that all personnel involved in the Project are (i) trained for the level of expertise required for proper performance of the actions contemplated by this Contract and, in particular, in all aspects of handling, storage, disposal and exposure of Hazardous Substances, hydrocarbons or other petroleum products or byproducts and/or asbestos; and (ii) are provided and utilize all protective equipment, including without limitation, personal protective gear, necessary to provide protection from exposure to Hazardous Substances, hydrocarbons or other petroleum products or byproducts and/or asbestos.

56. 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 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 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.

57. THE CITY RIGHT TO AUDIT

At any time during the term of this Contract and for a period of four (4) years 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 under this Contract. In the event such an audit by the City reveals any errors/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.

58. 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.

59. 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.

60. LABOR CODE CHAPTER 214

Sec. 214.008. MISCLASSIFICATION OF CERTAIN WORKERS; PENALTY. (a) A person who contracts with a governmental entity to provide a service as defined by Section 2155.001, Government Code, shall properly classify, as an employee or independent contractor in accordance with Chapter 201, any individual the person directly retains and compensates for services performed in connection with the contract. (b) In this subsection, "subcontractor" means a person directly retained and compensated by a person who contracts with a governmental entity to provide a service as defined by Section 2155.001, Government Code. A subcontractor shall properly classify, as an employee or independent contractor in accordance with Chapter 201, any individual the subcontractor directly retains and compensates for services performed in connection with the contract for which the subcontractor is retained. (c) A person who fails to properly classify an individual as required by Subsection (a) or (b) shall pay to the commission a penalty equal to \$200 for each individual that the

person has not properly classified. (d) The commission may not take action to collect a penalty under this section from a person after the third anniversary of the date on which the violation occurred.

61. CERTIFICATE OF INTERESTED PARTIES

House Bill 1295, adopted by the 84th Legislature, created §2252.908, Texas Government Code. Section 2252.908 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. Section 2252.908 requires the disclosure form to be signed by the authorized agent of the contracting business entity, acknowledging that the disclosure is made under oath and under penalty of perjury. Section 2252.908 applies only to a contract that requires an action or vote by the governing body of the governmental entity or state agency before the contract may be signed or has a value of at least \$1 million. Instructions for completing Form 1295 are available at:

<https://ci.lubbock.tx.us/departments/purchasing/vendor-information>

62. TEXAS GOVERNMENT CODE SECTION 2252.152

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.

63. TEXAS GOVERNMENT CODE SECTION 2271.002

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.

64. 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.

65. 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.

66. 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.

67. 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.

68. PROFESSIONAL RESPONSIBILITY

All architectural or engineering services to be performed shall be done with the professional skill and care ordinarily provided by competent architects or engineers practicing under the same or similar circumstances and professional license.

69. TEXAS SENATE BILL 219 SUBCHAPTER B ITEMS B AND C

(b) A contractor must, within a reasonable time of learning of a defect, inaccuracy, inadequacy, or insufficiency in the plans, specifications, or other design documents, disclose in writing to the person with whom the contractor enters into a contract the existence of any known defect in the plans, specifications, or other design documents that is discovered by the contractor, or that reasonably should have been discovered by the contractor using diligence, before or during construction. In this subsection, ordinary diligence means the observations of the plans, specifications, or other design documents or the improvement to real property that a contractor would make in the reasonable preparation of a bid or fulfillment of its scope of work under normal circumstances. Ordinary diligence does not require that the contractor engage a person licensed or registered under Title 6, Occupations Code, or any other person with specialized skills. A disclosure under this subsection is made in the contractor's capacity as contractor and not as a licensed professional under Title 6, Occupations Code.

(c) A contractor who fails to disclose a defect as required by Subsection (b) may be liable for the consequences of defects that result from the failure to disclose.

LIST OF SUB CONTRACTORS

	Company Name	Location	Services Provided	Minority Owned	
				Yes	No
1.				<input type="checkbox"/>	<input type="checkbox"/>
2.				<input type="checkbox"/>	<input type="checkbox"/>
3.				<input type="checkbox"/>	<input type="checkbox"/>
4.				<input type="checkbox"/>	<input type="checkbox"/>
5.				<input type="checkbox"/>	<input type="checkbox"/>
6.				<input type="checkbox"/>	<input type="checkbox"/>
7.				<input type="checkbox"/>	<input type="checkbox"/>
8.				<input type="checkbox"/>	<input type="checkbox"/>
9.				<input type="checkbox"/>	<input type="checkbox"/>
10.				<input type="checkbox"/>	<input type="checkbox"/>
11.				<input type="checkbox"/>	<input type="checkbox"/>
12.				<input type="checkbox"/>	<input type="checkbox"/>
13.				<input type="checkbox"/>	<input type="checkbox"/>
14.				<input type="checkbox"/>	<input type="checkbox"/>
15.				<input type="checkbox"/>	<input type="checkbox"/>
16.				<input type="checkbox"/>	<input type="checkbox"/>

Company _____

Address _____

City, _____ County _____

State _____ Zip Code _____

Telephone: _____ - _____

Fax: _____ - _____

**THIS FORM SHALL BE COMPLETED AND RETURNED ALONG WITH YOUR PROPOSAL IF
NO SUB-CONTRACTORS WILL BE USED PLEASE INDICATE SO**

**City of Lubbock, TX
Insurance Requirement Affidavit**

To Be Completed by Bidder
Must be submitted with Bid

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.

Contractor (Original Signature)

Contractor (Print)

CONTRACTOR'S BUSINESS NAME:

(Print or Type)

CONTRACTOR'S FIRM ADDRESS:

NOTE TO CONTRACTOR

If the time requirement specified above is not met, the City has the right to reject this bid and award the contract to another contractor. If you have any questions concerning these requirements, please contact the Director of Purchasing & Contract Management Office for the City of Lubbock at (806) 775-2572.

SAFETY RECORD QUESTIONNAIRE

The City of Lubbock City Council desires to avail itself of the benefits of Section 252.0435 of the Local Government Code, and consider the safety records of potential contractors prior to awarding proposals on City contracts. Pursuant to Section 252.0435 of the Local Government Code, City of Lubbock has adopted the following written definition and criteria for accurately determining the safety record of a proposer prior to awarding proposals on City contracts.

The definition and criteria for determining the safety record of a bidder for this consideration shall be:

The City of Lubbock shall consider the safety record of the bidders in determining the responsibility thereof. The City may consider any incidence involving worker safety or safety of the citizens of the City of Lubbock, be it related or caused by environmental, mechanical, operational, supervision or any other cause or factor. Specifically, the City may consider, among other things:

- a. Complaints to, or final orders entered by, the Occupational Safety and Health Review Commission (OSHRC), against the proposer for violations of OSHA regulations within the past three (3) years.
- b. Citations (as defined below) from an Environmental Protection Agency (as defined below) for violations within the past five (5) years. Environmental Protection Agencies include, but are not necessarily limited to, the U.S. Army Corps of Engineers (USACOE), the U.S. Fish and Wildlife Service (USFWS), the Environmental Protection Agency (EPA), the Texas Commission on Environmental Quality (TCEQ), the Texas Natural Resource Conservation Commission (TNRCC) (predecessor to the TCEQ), the Texas Department of State Health Services (DSHS), the Texas Parks and Wildlife Department (TPWD), the Structural Pest Control Board (SPCB), agencies of local governments responsible for enforcing environmental protection or worker safety related laws or regulations, and similar regulatory agencies of other states of the United States. Citations include notices of violation, notices of enforcement, suspension/revocations of state or federal licenses or registrations, fines assessed, pending criminal complaints, indictments, or convictions, administrative orders, draft orders, final orders, and judicial final judgments.
- c. Convictions of a criminal offense within the past ten (10) years, which resulted in bodily harm or death.
- d. Any other safety related matter deemed by the City Council to be material in determining the responsibility of the bidder and his or her ability to perform the services or goods required by the proposal documents in a safe environment, both for the workers and other employees of bidder and the citizens of the City of Lubbock.

In order to obtain proper information from bidder s so that City of Lubbock may consider the safety records of potential contractors prior to awarding proposals on City contracts, City of Lubbock requires that bidders answer the following four (4) questions and submit them with their bids:

QUESTION ONE

Has the bidder, or the firm, corporation, partnership, or institution represented by the bidder, or anyone acting for such firm, corporation, partnership or institution, received citations for violations of OSHA within the past three (3) years?

YES _____ NO _____

If the bidder has indicated YES for question number one above, the bidder must provide to City of Lubbock, with its proposal submission, the following information with respect to each such citation:

Date of offense, location of establishment inspected, category of offense, final disposition of offense, if any, and penalty assessed.

_____ bidder's Initials

QUESTION TWO

Has the bidder, or the firm, corporation, partnership, or institution represented by the bidder, or anyone acting for such firm, corporation, partnership or institution, received citations for violations of environmental protection laws or regulations, of any kind or type, within the past five years? Citations include notice of violation, notice of enforcement, suspension/revocations of state or federal licenses, or registrations, fines assessed, pending criminal complaints, indictments, or convictions, administrative orders, draft orders, final orders, and judicial final judgments.

YES _____ NO _____

If the bidder has indicated YES for question number two above, the bidder must provide to City of Lubbock, with its bid submission, the following information with respect to each such conviction:

Date of offense or occurrence, location where offense occurred, type of offense, final disposition of offense, if any, and penalty assessed.

QUESTION THREE

Has the bidder, or the firm, corporation, partnership, or institution represented by bidder, or anyone acting for such firm, corporation, partnership, or institution, ever been convicted, within the past ten (10) years, of a criminal offense which resulted in serious bodily injury or death?

YES _____ NO _____

If the bidder has indicated YES for question number three above, the bidder must provide to City of Lubbock, with its bid submission, the following information with respect to each such conviction:

Date of offense, location where offense occurred, type of offense, final disposition of offense, in any, and penalty assessed.

QUESTION FOUR

Provide your company's Experience Modification Rate and supporting information: _____

ACKNOWLEDGEMENT

THE STATE OF TEXAS

COUNTY OF LUBBOCK

I certify that I have made no willful misrepresentations in this Questionnaire nor have I withheld information in my statements and answers to questions. I am aware that the information given by me in this questionnaire will be investigated, with my full permission, and that any misrepresentations or omissions may cause my proposal to be rejected.

Signature

Title

CONTRACTORS PROPOSAL



April 12, 2022

Ref Number: Q-2217194 (via email)

Randy Lammons, Training Battalion Chief
Lubbock Fire Rescue
1515 East Ursuline
Lubbock, TX 79403

806-775-3447
rlammons@mylubbock.us

Dear Chief Lammons:

We are pleased to provide you with the following GSA pricing for a **CUSTOM GENERAL ALARM FOUR-STORY WHPFT4GFH21AWHP** training simulator under **GSA Contract #GS-07F-5448P**. The simulator would consist of a structure that would approximate the following:

Features included are as follows:

1. Section A will be a **Four-Story Tower** approximately 21'-11" W x 25'-4" L x 44'-0" H (to top of parapet).
 - a. Three (3) interior floors (2nd, 3rd, 4th)
 - b. One (1) flat roof with parapet roof guard system
 - c. Two (2) 3'-4" double swing gates
 - d. Four (4) rappelling anchors on the roof
 - e. One (1) 2'-6" x 3'-0" Bilco roof hatch
 - f. One (1) Vertical ladder from the 4th floor up to the roof hatch
 - g. One (1) four-story interior stair with welded stair railing
 - h. One (1) five-story exterior intermediate stair with welded railing
 - i. One (1) four-story galvanized standpipe with FDC and two-head sprinkler run
 - j. Two (2) inset balconies with welded railing
 - k. Seven (7) 3' x 7' plate steel doors and hardware
 - l. Four (4) 3' x 7' burn room plate steel doors and hardware
 - m. Two (2) 3' x 4' window openings with latching shutters
 - n. Two (2) 3' x 4' burn room window openings with latching shutters
 - o. One (1) 3' x 3' access hatch to residential attic
 - p. Two (2) 13'-3"x14'-6" burn rooms protected with Padgenite Super HD™ burn liner system
 - q. Two (2) burn cribs
2. Section B will be a **Two-Story Residential/Industrial** section approximately 21'-11" W x 35'-0" L x 24'-0" H to eave.
 - a. One (1) gable roof, 5/12 and 9/12 un-equal pitch on half of roof with perimeter welded guardrail
 - b. One (1) flat roof with parapet walls on half of roof with two (2) chain gate openings

- c. Two (2) 6'-0" chain gates
 - d. Two (2) chop-outs on gabled roof one 48" x 48" and one 48"x96"
 - e. One (1) attic space provided between the gabled roof and the second floor
 - f. One (1) 3' x 3' framed window opening with latching shutter at gabled end of the attic
 - g. Seven (7) 3' x 4' framed window openings with latching shutters
 - h. One (1) 6'x4' double framed window opening with latching shutters
 - i. Fourteen (14) 3' x 7' plate steel door and hardware
 - j. Three (3) 3' x 7' burn room plate steel door and hardware
 - k. Multiple rooms per drawings
 - l. Two (2) forcible entry doors
 - m. Two (2) forcible entry windows
 - n. One (1) breachable floor/ceiling
 - o. One (1) breachable wall
 - p. One (1) 20' caged ladder leading to a 4'x7' balcony
 - q. One (1) 9'x7' coiling door with hood
 - r. One (1) two-story interior stair with welded stair railing
 - s. One (1) 4'x38' balcony and fire escape to second floor
 - t. One (1) 11' x 16' burn room protected with a Padgenite Super HD™ liner system
 - u. One (1) 4'x4' attic burn area system
 - v. Three (1) burn cribs
3. Section C will be a **One-Story Annex** approximately 21'-11" W x 14'-6" L x 10'-0" H.
- a. Two (2) 3' x 4' framed window openings with latching shutters
 - b. One (1) 3' x 7' exterior burn room plate steel door and hardware
 - c. One (1) 8670 double burn plate door
 - d. Entire room shall be protected with a Padgenite Super HD™ liner system
 - e. One (1) burn crib
 - f. One (1) Temperature monitoring system

Base GSA Item	Quantity		GSA Part #	GSA Price	GSA Total	Open Market Price	Open Market Total
General Alarm 4-story	1		WHPFT4GFH21A	\$490,019.13	\$490,019.13		
GSA Additions							
Single Door-w/sweep	2		WHPsdext	\$1,731.49	\$3,462.98		
Burn Room-Single Door-w/sweeps	4		WHPsd2ndbrmm	\$2,088.90	\$8,355.60		
5 Story (w/4 doors) exterior stair w/intermediate landings	1		WHP5extsil	\$65,887.32	\$65,887.32		
Thermocouple	7		WHPtc	\$184.57	\$1,291.98		
4'x4' Burn Crib	2		WHPbc	\$502.52	\$1,005.04		
4 Story Glvanized Dry Standpipe	1		WHP4gsp	\$2,835.64	\$2,835.64		
Sprinkler System per floor- 2 heads	1		WHPsprink	\$300.31	\$300.31		
20ft Caged Ladder	1		WHPcl20	\$4,401.46	\$4,401.46		
Power jamb door	2		WHPpjd	\$2,534.13	\$5,068.26		
Super Padgenite per sq ft in additional burn room	2431		WHPpadsup	\$51.33	\$124,780.11		

Off-Schedule Additions							
3040 Bum Closers	2					\$1,531.76	\$3,063.52
Interior Walls	36					\$138.00	\$4,968.00
8670 Dbl Bum Door	1					\$5,513.40	\$5,513.40
Floor Drain	3					\$750.00	\$2,250.00
3052 2 Shelf Bum Crib	2					\$1,407.00	\$2,814.00
Forcible Entry Window	2					\$5,437.50	\$10,875.00
Breachable Floor/Ceiling	1					\$1,534.95	\$1,534.95
Breachable Wall	1					\$745.95	\$745.95
4'x7' Balcony	1					\$2,986.20	\$2,986.20
9'x7' Coiling Door	1					\$4,598.37	\$4,598.37
Upgrade to Padgenite Interlock™	2431					No Cost	No Cost
Totals						\$707,407.83	\$39,349.39

GSA Materials are:	\$707,407.83
Open-Market Materials are:	\$ 39,349.39
Freight is:	\$ 44,090.00
Soils Test:	\$ 3,500.00
Foundation Design:	\$ 3,500.00
Compact Footprint to 95% @ 12":	\$ 13,417.00
Foundation Installation:	\$ 79,450.00
Concrete Fill on Deck:	\$ 36,621.00
3,225 sf of 6" Exterior Concrete Apron:	\$ 41,387.00
Labor is:	\$323,578.00
Payment and Performance Bond:	<u>\$46,523.00</u>
Total:	\$1,338,823.22

Note: Rebar on all slabs on grade include #5 rebar at 12" O.C. each way.

Prevailing Wages: Prevailing wages have been included based on General Decision Number: TX20220280 1-7-2022 for Lubbock County, Texas. If the General Decision is updated or a job specific wage determination is performed wages will be adjusted accordingly and be the responsibility of the owner.

All pricing is in US Dollars and is valid for 30 days. It is the policy of WHP Trainingtowers™ to provide a reasonable cost estimate for your budgeting purposes. It is not uncommon in the construction industry to offer cost estimates that are for low end or stripped-down structures. WHP believes the cost estimate should reflect a training simulator that meets OSHA safety requirements, is of the highest quality, and will meet the expectations of the customer.

Schedule: We would require 4 weeks to prepare conceptual drawings after award of the contract or purchase order and 18-20 weeks for delivery after receipt of approved drawings. If the foundation is in place the erection would be complete approximately 16-18 weeks after delivery of building. Some optional items such as brick exteriors will require more time to complete erection.

Design Criteria: Pricing is based on the following structural design criteria per IBC 2012:

1. *Live Loads-* (a) Roof: 100 psf (b) Floor: 100 psf (c) Attic: 100 psf
2. *Wind Loads-* (a) Speed: 90 mph (b) Exposure: C

3. *Seismic Loads-* (a) Coefficient Ss [max]: 55 (b) Coefficient S1 [max]: 13
4. *Soil Capacity-* Minimum 1500 lbs/sq.ft.

*Requirements exceeding these loads may result in additional costs.

Exclusions: We exclude from our proposal: taxes, permits, special insurance requirements if any, field painting of exterior handrails and stairs, civil design, mechanical, electrical, fire protection systems, gas fired simulators, winter conditions, mass site work, removal of spoils, excavation, engineering layout and general condition items and any other miscellaneous fees.

Terms: For materials a deposit of 25% on the building package is due on receipt of order (signing of contract). Balance of payment on materials due on delivery to site. No retention on materials. Labor will be billed monthly. Invoices not in dispute over 30 days will be assessed 1 ½ % per month on balances in excess of 30 days. Financing is available through lease purchase programs.

We hope you find the proposal acceptable. If we can provide you with further information please feel free to call.

Sincerely,

A handwritten signature in blue ink, appearing to read "Joe P. Kirchner", with a stylized flourish at the end.

Joe Kirchner, Executive Vice President of Operations
WHP Trainingtowers™

SECTION 03050 – NORMAL WEIGHT CONCRETE

PART 1 – GENERAL

1.1 SUMMARY

- A. This section includes the following:
 - 1. Formwork, reinforcement, accessories, normal weight concrete, finishing, curing and sealing.

1.2 SUBMITTALS

- A. Product Data: Submit manufacturer's technical product data and installation instructions for each curing compound, sealing compound, admixture and anchors.
 - 1. Include proposed mix design.

1.3 QUALITY ASSURANCE

- A. Concrete Testing: Owner will retain a testing laboratory to perform quality control testing.

PART 2 – PRODUCTS

2.1 FORM MATERIALS AND ACCESSORIES

- A. Plywood: As necessary, provide PS-1, A-C Grade Douglas Fir species, sound undamaged sheets with clean true edges.
- B. Form Release Agent: Colorless mineral oil which will not stain concrete (or impair natural bonding characteristics of coating intended for use on concrete).
- C. Slab Edge Joint Filler: Provide ASTM D1751, Premolded asphaltic board, 1/2" thick.

2.2 CONCRETE MATERIALS

- A. Cement: ASTM C150, Normal – Type I
- B. Fine Aggregate: Clean natural sand or manufactured sand. Normal weight, Conform to ASTM C33
- C. Coarse Aggregate: 3/4" max aggregate size, clean crushed stone or processed gravel. Normal weight, not containing organic material. Conform to ASTM C33.

- D. Pozzolan, Fly Ash, Slag: Use of Fly Ash, calcined natural Pozzolan, or ground granulated blast furnace Slag in concrete is subject to the approval of the engineer.
- E. Water: Potable
- F. Air Entrainment: ASTM C260, required where flatwork may be exposed to freezing temperatures and all exterior concrete above ground.
- G. Water Reducing Admixtures: ASTM C494, Type A
- H. Fiber Reinforcing: 100% virgin polypropylene by Fibermesh or equivalent (allowable use is subject to discretion and approval by engineer).

2.3 CONCRETE MIX PROPORTIONS

- A. Mix and deliver concrete in accordance with ASTM C94.
- B. Compressive strength: 2,800 psi in 3 days, 4,000 psi at 28 days
- C. Density: 145 to 150 pounds per cubic foot.
- D. Cement: 550 lbs minimum
- E. Pozzolan, Fly Ash, Slag: Not required, however contractor may propose using Pozzolan, Fly ash or Slag, in quantities up to 15% of the total cementitious material and subject to approval of engineer.
- F. Water: Maximum water to cementitious materials ratio = .500
- G. Air Entrainment: 5 to 7 percent where concrete flatwork may be exposed to freezing temperatures.
- H. Fiber Reinforcing Dosage: 1.5 pounds per cubic yard of concrete minimum (allowable use is subject to discretion and approval by engineer).
- I. Slump: Not to Exceed 4 ½"

2.3 COMPOUNDS HARDENERS AND SEALERS

- A. Curing Compound: ASTM C309 minimum 18% solids and non-yellowing, or ASTM C1315 minimum 25% solids and non-yellowing.
- B. Chemical Scaler: Liquid type, penetrative reactive silicate solution; "Intra-Seal" manufactured by Conspec or equivalent.
- C. Bonding Agent: Polymer resin emulsion or latex emulsion.

PART 3 EXECUTION

3.1 Formwork Erection:

- A. Erect formwork, shoring and bracing to achieve design requirements.

3.2 INSERTS, EMBEDDED COMPONENTS AND OPENINGS

- A. Provide formed openings where required for work to be embedded in and passing through concrete members.

- B. Coordinate work of other sections in forming and setting openings, slots, recesses, chases, sleeves, bolts, anchors and other inserts.
- C. Install concrete accessories straight level and plumb.
- D. Place joint filler at perimeter of penetrations.
- E. Install void forms in accordance with manufacturer's instructions. Protect forms from moisture before concrete placement and from crushing during concreting.

3.3 PLACING CONCRETE

- A. Prepare against previously placed concrete by cleaning with steel brush and applying bonding agent. Apply bonding agent in accordance with manufacturer's instructions.
- B. Place concrete continuously between predetermined expansion, control, and construction joints. Do not break or interrupt successive pours such that cold joints occur.

3.4 FORM REMOVAL

- A. Remove formwork progressively and in accordance with code requirements.

3. FLOOR FINISHING

- A. Finish concrete floor surfaces in accordance with ACI 301.
- B. Uniformly spread, screed and float concrete.
- C. Steel trowel or light broom finish surfaces per owner's preference.
- D. Maintain surface slope, minimum of 1/8" per foot towards exterior stem wall scuppers and door openings.
- E. In areas with floor drains, maintain floor level at walls, and slope surfaces uniformly to drains.
- F. Apply concrete sealer on floor surfaces. Apply in accordance with manufacturer's instructions.

3.6 CURING

- A. Apply curing compound on floor surfaces in accordance with manufacturer's instructions. Place absorptive matting and dampen as required. Coordinate selection of curing compound with sealer/compound to maintain compatibility.
- B. Immediately after placement, protect concrete from premature drying.
- C. Maintain concrete with minimal moisture loss at relatively constant temperature for period necessary for hydration of cement and hardening of concrete.

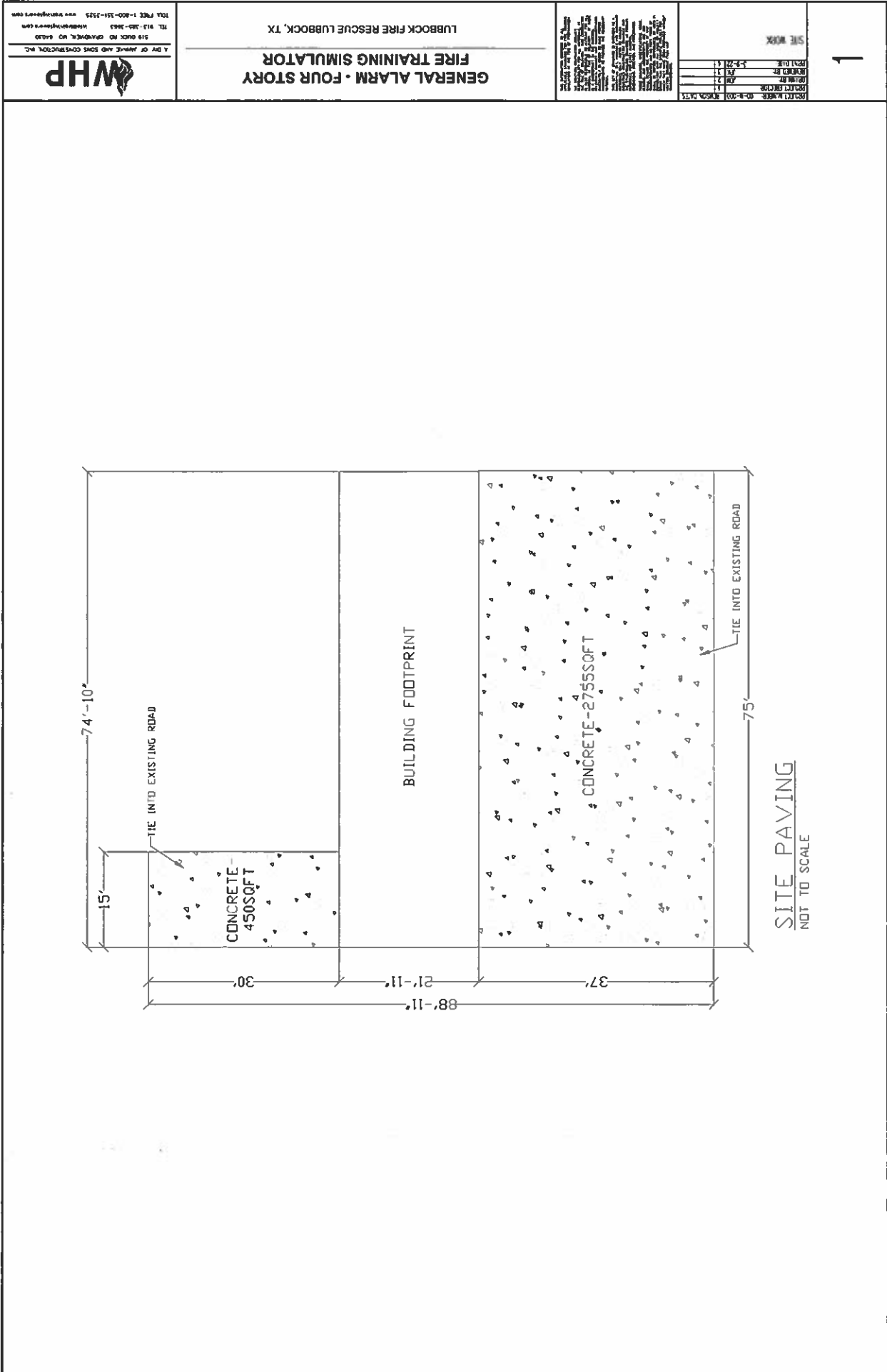
3.7 FIELD QUALITY CONTROL

- A. Three (3) Concrete Test Cylinders: Taken for every 75 or less cubic yards each class of concrete placed, but in no case less than 3 cylinders shall be taken.
- B. One (1) Additional Test Cylinder: Taken during cold weather concreting, and be cured on jobsite under same conditions as concrete represents.

3.8 DEFECTIVE CONCRETE

- A. Modify or replace concrete not conforming to required lines, details and elevations, as directed by engineer.

END OF SECTION 3050

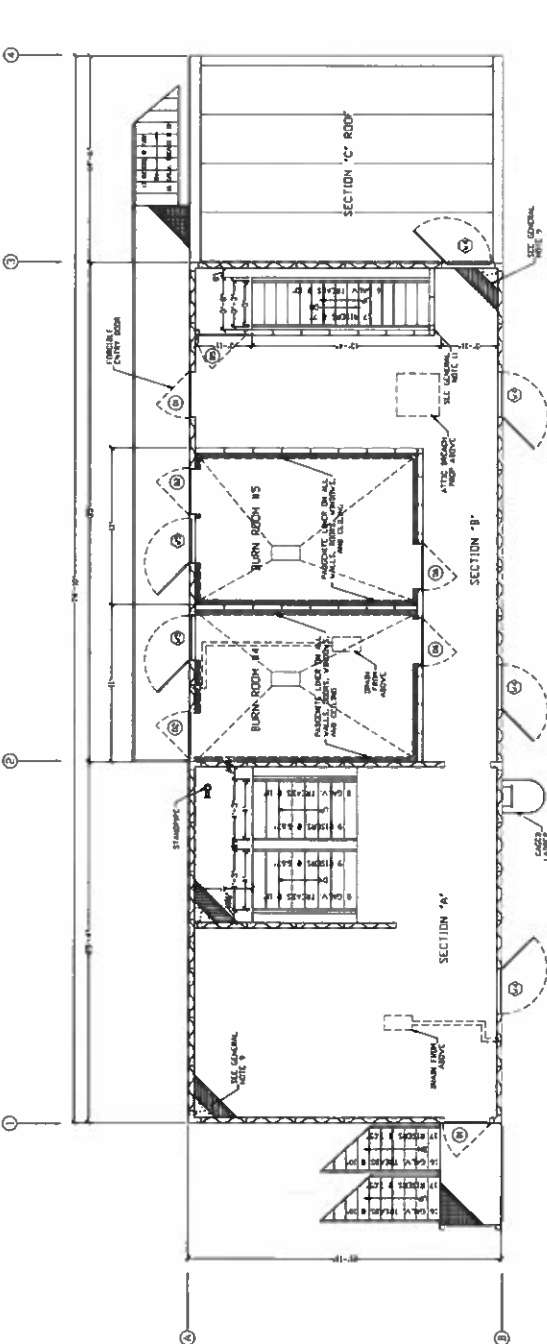


FIRST FLOOR AND SECOND FLOOR PLANS

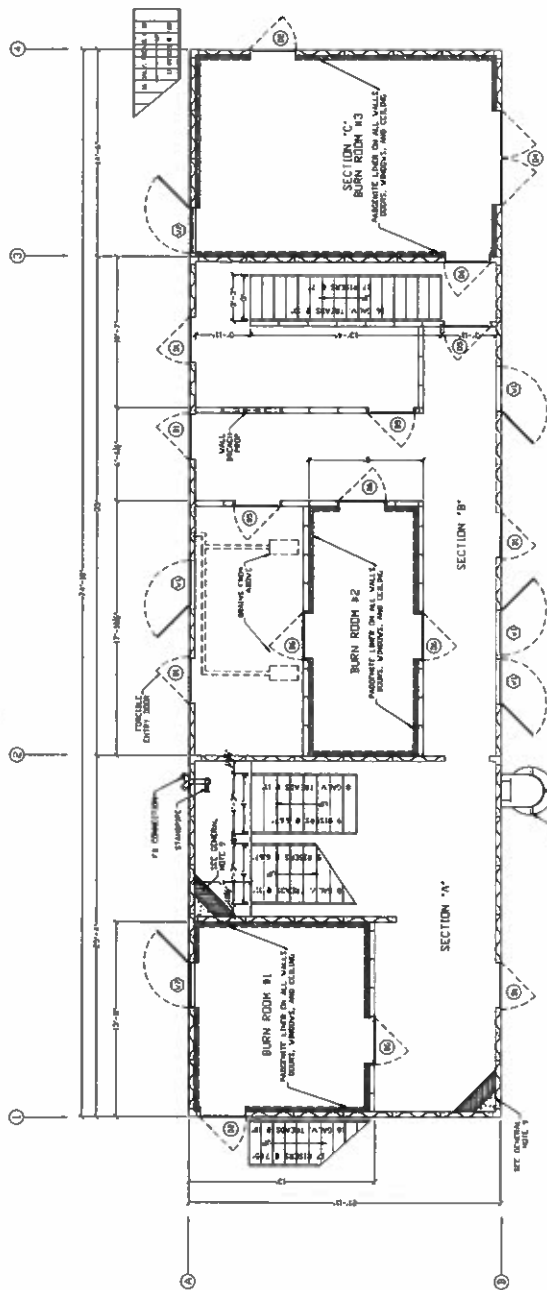
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4	02-01-12	WHP	WHP	WHP
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100	02-01-12	WHP	WHP	WHP

GENERAL ALARM - FOUR STORY
FIRE TRAINING SIMULATOR
LUBBOCK FIRE RESCUE LUBBOCK, TX

WHP
519 DUCK RD. LUBBOCK, TX 79402
TEL. 817-785-3643
FAX. 817-785-3643
WWW.WHPCORP.COM



TOWER AND RESIDENTIAL 2ND FLOOR PLAN AND ANNEX ROOF PLAN
SCALE: 1/4" = 1'-0"



TOWER, RESIDENTIAL, AND ANNEX 1ST FLOOR PLAN
SCALE: 1/4" = 1'-0"

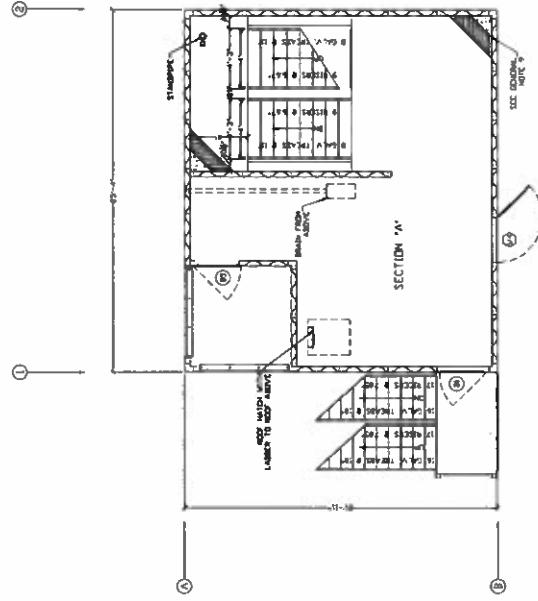
**GENERAL ALARM - FOUR STORY
FIRE TRAINING SIMULATOR**

LUBBOCK FIRE RESCUE LUBBOCK, TX

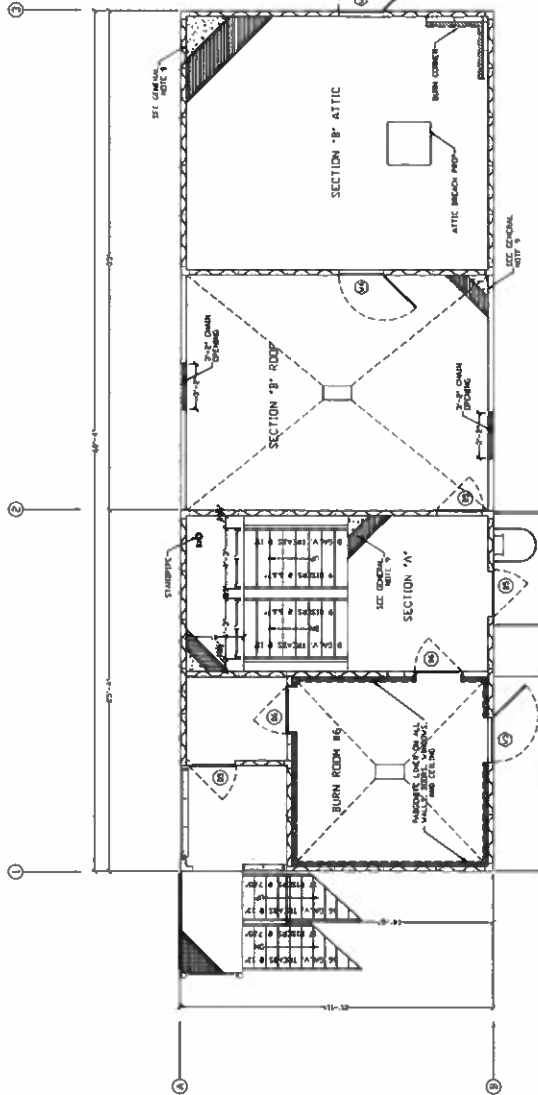
PROJECT NUMBER	10-8-700
PROJECT LOCATION	1
DATE	6/2
DRAWN BY	1
CHECKED BY	1
REVISED	1-9-22
THIRD FLOOR	
FOURTH FLOOR	
AID TOWER ROOF PLANS	

3

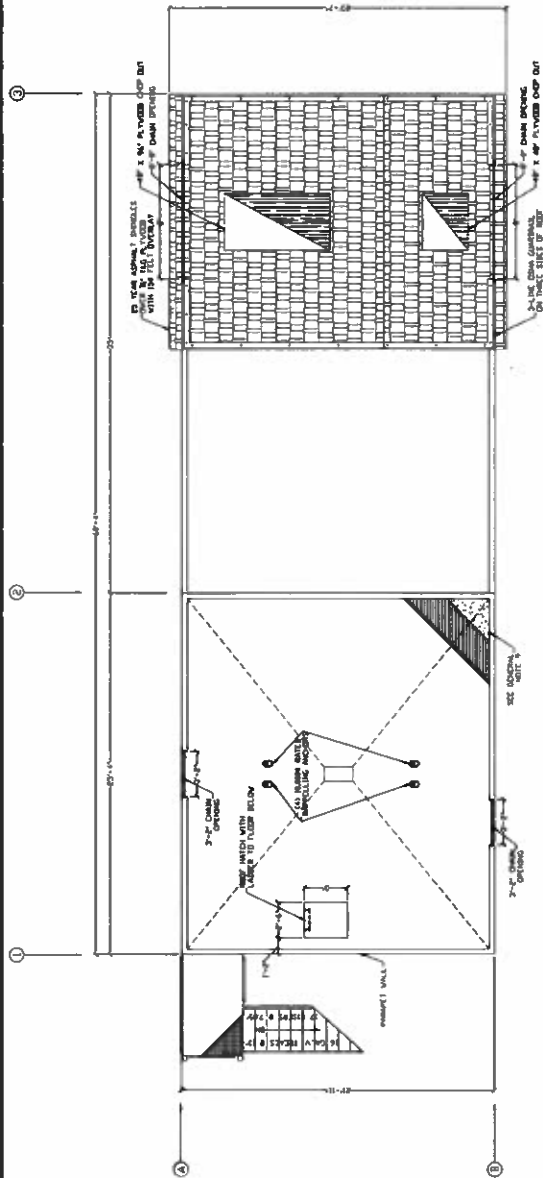
TOWER 4TH FLOOR PLAN
SCALE 1/4" = 1'-0"



TOWER 3RD FLOOR PLAN AND RESIDENTIAL ATTIC PLAN
SCALE: 1/4" = 1'-0"



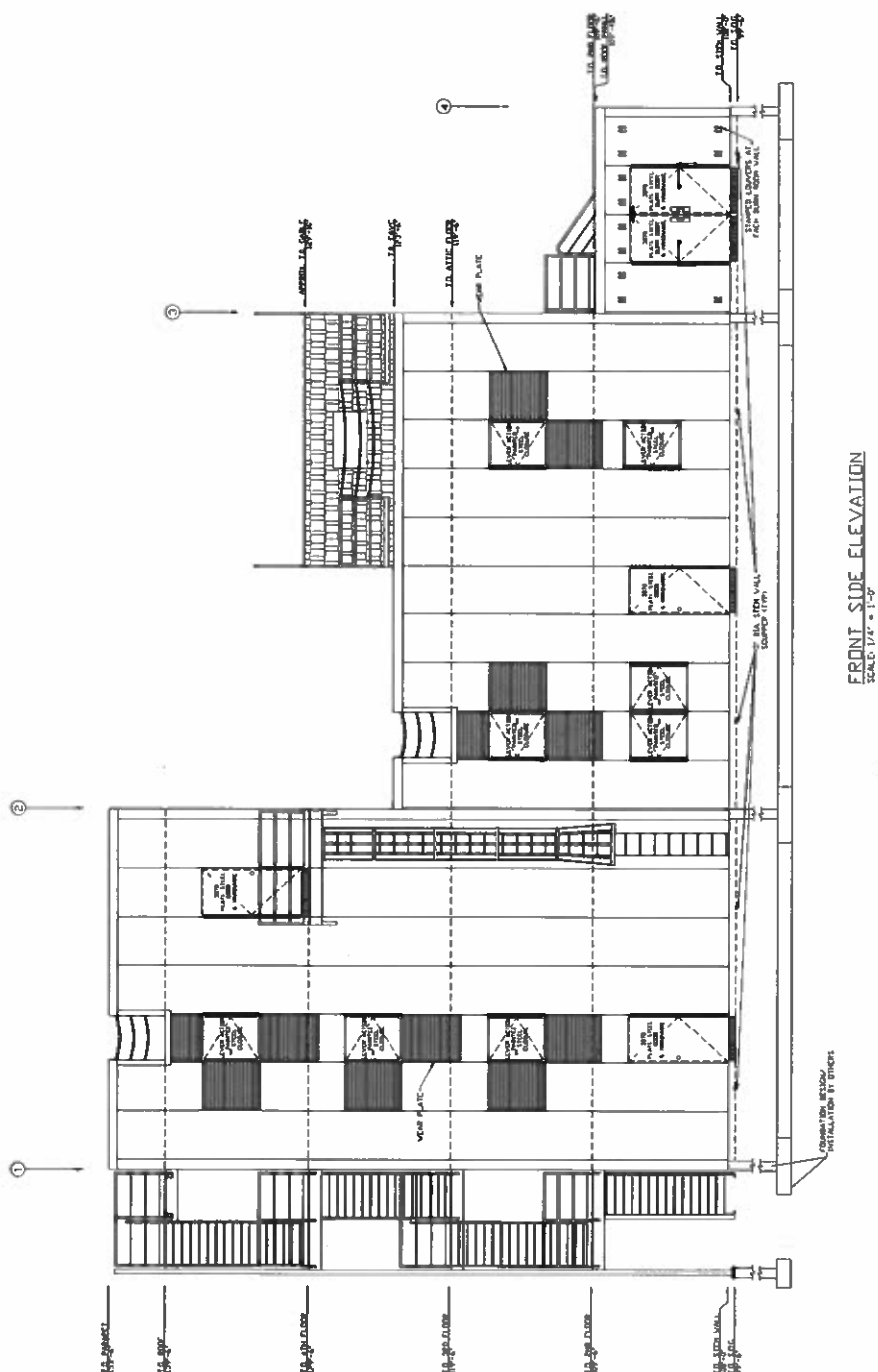
TOWER AND RESIDENTIAL ROOF PLAN



PROJECT NUMBER
DRAWING NO.
SHEET NO.
DATE
ELEVATION
FRONT SIDE
NOTATION

**GENERAL ALARM - FOUR STORY
FIRE TRAINING SIMULATOR**
LUBBOCK FIRE RESCUE LUBBOCK, TX

A DIV. OF ARCAD AND SONS CONSTRUCTION, INC.
519 QUACK RD. OFFSHORE, MD 20686
TEL. 813-389-3663 info@arcsolutions.com
TOLL FREE 1-800-351-2525 www.arcsolutions.com



PROJECT NUMBER	1
PROJECT FOLDER	1
PROJECT NAME	1
PROJECT TYPE	1
PROJECT DATE	1
PROJECT TIME	1
PROJECT LOCATION	1
PROJECT STATUS	1
PROJECT COMMENTS	1

1. The first step in the process is to identify the problem or issue that needs to be addressed. This involves gathering information and understanding the context of the problem.

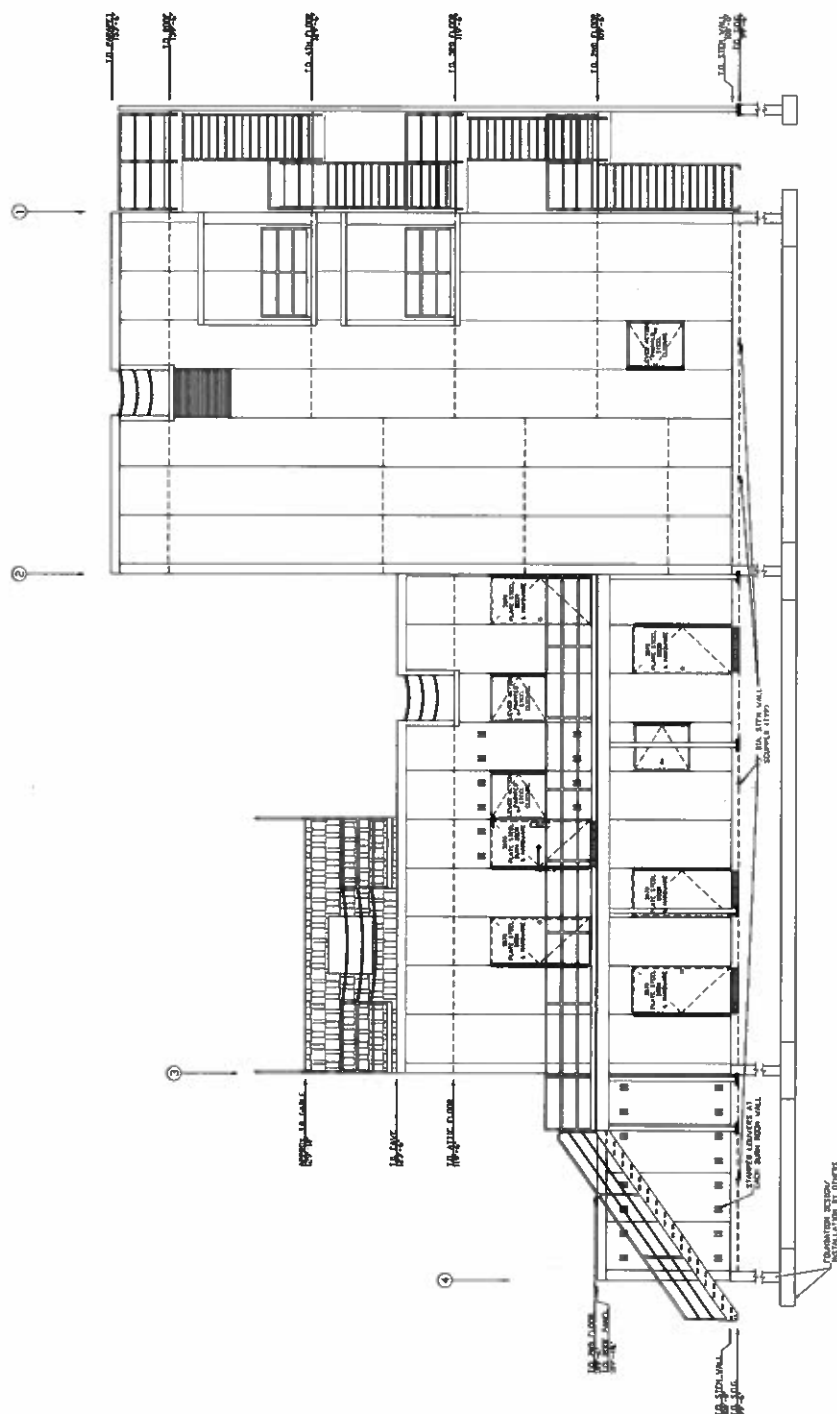
**GENERAL ALARM - FOUR STORY
FIRE TRAINING SIMULATOR**

LUBBOCK FIRE RESCUE LUBBOCK, TX

A DIV. OF JAMES AND SON'S CONSTRUCTION, INC.
519 DUCK RD. CHANDLER, AZ 84630
TEL. 913-385-3863
FAX 913-385-3863
www.jamesandsons.com



REAR SIDE ELEVATION
SCALE: 1/4" = 1'-0"



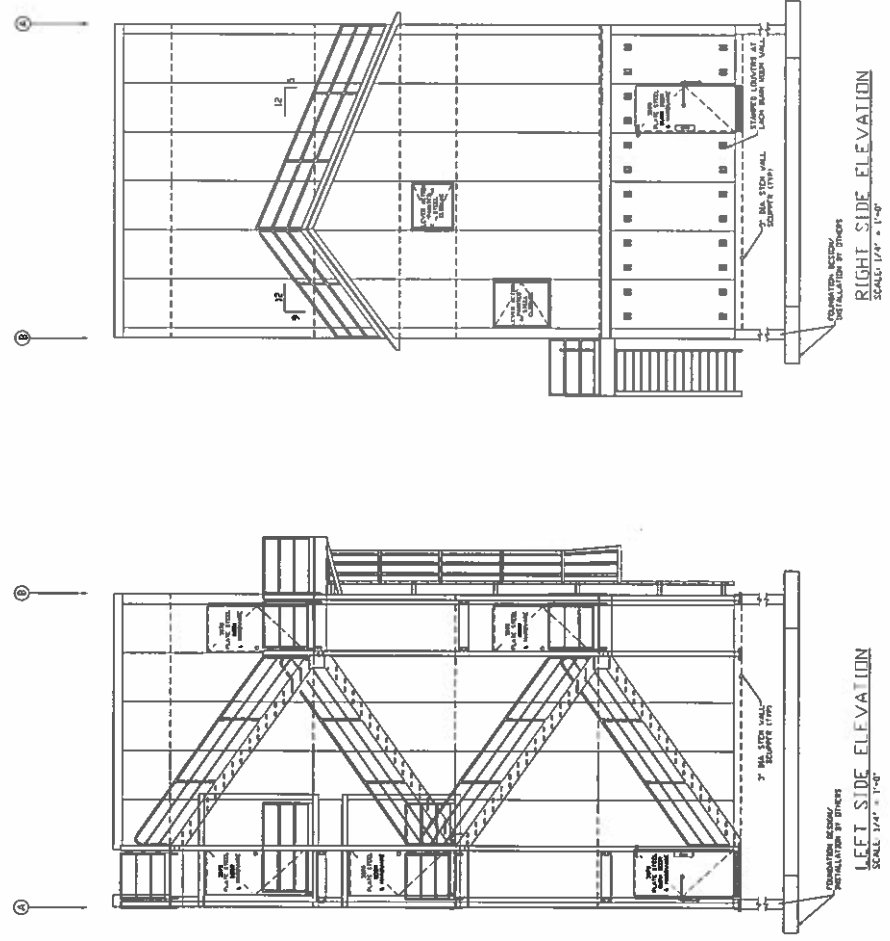
LEFT SIDE AND RIGHT SIDE ELEVATIONS	
PROJECT NAME	GENERAL ALARM - FOUR STORY FIRE TRAINING SIMULATOR
PROJECT NUMBER	00-001
DATE	10-20-11
BY	WHP
CHECKED BY	WHP
SCALE	1/4" = 1'-0"

NOTES:
1. SEE ELEVATION 00-001 FOR EXTERIOR FINISHES.
2. SEE ELEVATION 00-002 FOR INTERIOR FINISHES.
3. SEE ELEVATION 00-003 FOR ROOF FINISHES.
4. SEE ELEVATION 00-004 FOR FOUNDATION FINISHES.
5. SEE ELEVATION 00-005 FOR MECHANICAL FINISHES.
6. SEE ELEVATION 00-006 FOR ELECTRICAL FINISHES.
7. SEE ELEVATION 00-007 FOR PLUMBING FINISHES.
8. SEE ELEVATION 00-008 FOR HEATING FINISHES.
9. SEE ELEVATION 00-009 FOR COOLING FINISHES.
10. SEE ELEVATION 00-010 FOR INSULATION FINISHES.

GENERAL ALARM - FOUR STORY
FIRE TRAINING SIMULATOR

LUBBOCK FIRE RESCUE LUBBOCK, TX

A DIV OF JENSEN AND SONS CONSTRUCTION, INC.
518 DUCK RD. CHANDLER, AZ 84420
TEL. 913-183-1863
WWW.JENSENANDSONS.COM
TOLL FREE 1-800-351-3529



AFTER AWARD

FEDERAL CLAUSES

1. NO OBLIGATION BY THE FEDERAL GOVERNMENT

Purchaser and Vendor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying Purchase, absent the express written consent by the Federal Government, the Federal Government is not a party to this Purchase and shall not be subject to any obligations or liabilities to CITY OF LUBBOCK AND CITIBUS TRANSIT Transit, Vendor, or any other party (whether or not a party to that Purchase) pertaining to any matter resulting from the underlying Purchase.

2. FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS

Vendor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. §§ 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies", 49 CFR Part 31, apply to its actions pertaining to this Purchase. The Vendor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the resultant purchase or the FTA assisted project for which this work is being performed. The Vendor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Vendor to the extent the Federal Government deems appropriate. The Vendor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a purchase connected with a project that is financed in whole or part with federal assistance originally awarded by FTA under the authority of 49 U.S.C. 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001, to the extent the Federal Government deems appropriate.

3. ACCESS TO RECORDS

The Vendor shall permit the authorized representatives of CITY OF LUBBOCK AND CITIBUS TRANSIT Transit, the Texas Department of Transportation, the U.S. Department of Transportation, and the Comptroller General of the United States to inspect and audit all data records of the Vendor relating to the Vendor's performance under the Purchase until the expiration of three (3) years after the final payment and resolution of this Purchase. The Vendor shall transmit this data to CITY OF LUBBOCK AND CITIBUS TRANSIT Transit upon request. The Vendor further agrees to include in all subcontracts hereunder a provision to the effect that the subcontractor agrees that CITY OF LUBBOCK AND CITIBUS TRANSIT Transit, the Texas Department of Transportation, the U.S. Department of Transportation, and the Comptroller General of the United States or any of their duly authorized representatives shall, until the expiration of three (3) years after final payment and resolution of audit under the subcontract, have access to and the right to examine any directly pertinent books, documents, papers, and records of subcontractor, involving transactions related to the subcontractor. The subcontractor shall transmit all data records to CITY OF LUBBOCK AND CITIBUS TRANSIT Transit upon request.

The Vendor shall be responsible for any funds determined to be ineligible for reimbursement under this Project and shall reimburse CITY OF LUBBOCK AND CITIBUS TRANSIT Transit the amount of such funds previously provided to it by CITY OF LUBBOCK AND CITIBUS TRANSIT Transit.

4. FEDERAL CHANGES

Vendor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between Purchaser and FTA, as they may be amended or promulgated from time to time during the term of this purchase. Vendor's failure to so comply shall constitute a material breach of this purchase.

5. TERMINATION

termination for Convenience (General Provision) CITY OF LUBBOCK AND CITIBUS TRANSIT Transit may terminate this contract, in whole or in part, at any time by written notice to the Contractor when it is in the Government's best interest. The Contractor shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. The Contractor shall promptly submit its termination claim to CITY OF LUBBOCK AND CITIBUS TRANSIT Transit to be paid the Contractor. If the Contractor has any property in its possession belonging to CITY OF LUBBOCK AND CITIBUS TRANSIT Transit, the Contractor will account for the same, and dispose of it in the manner CITY OF LUBBOCK AND CITIBUS TRANSIT Transit directs.

Termination for Default (Supplies and Service) If the Contractor fails to deliver supplies or to perform the services within the time specified in this contract or any extension or if the Contractor fails to comply with any other provisions of this contract, CITY OF LUBBOCK AND CITIBUS TRANSIT Transit may terminate this contract for default. CITY OF LUBBOCK AND CITIBUS TRANSIT Transit shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. The Contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner or performance set forth in this contract. If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Recipient.

Upon written notice, the Offeror agrees that the Federal Government may suspend or terminate all or any part of Federal assistance if terms of the project agreement are violated, if the Federal Government determines that the purposes of the laws authorizing the Project would not be adequately served by the continuation of Federal assistance for the Project, if reasonable progress on the Project is not made, if there is a violation of the project agreement that endangers substantial performance of the Project, or if the Federal Government determines that Federal assistance has been willfully misused by failing to make appropriate use of Project property. Termination of Federal assistance for the Project will not typically invalidate obligations properly incurred before the termination date to the extent those obligations cannot be canceled. The Federal Government reserves the right to require the refund of the entire amount of Federal assistance provided for the Project or a lesser amount.

6. CIVIL RIGHTS

- a. **Non-discrimination** – In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and federal transit law at 49 U.S.C. § 5332, the Vendor agrees that it shall not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Vendor agrees to comply with applicable federal implementing regulations and other implementing requirements FTA may issue.
- b. **Equal Employment Opportunity** - The following equal employment opportunity requirements apply:
- i. **Race, Color, Creed, National Origin, Sex** – In accordance with Title VII of the Civil Rights Act, as amended 42 USC § 2000, and federal transit laws at 49 USC § 5332, the Vendor agrees to comply with all applicable equal employment opportunity requirements of the U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 CFR Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended) and with any applicable federal statutes, executive orders, regulations, and federal policies that may in the future affect construction activities undertaken in the course of the Project. The Vendor agrees to take

affirmative action to ensure that the applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, 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. In addition, Vendor agrees to comply with any implementing requirements FTA may issue.

ii. **Age**- In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 623 and federal transit law at 49

U.S.C. § 5332, the Vendor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, Vendor agrees to comply with any implementing requirements FTA may issue.

iii. **Disabilities** - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 USC § 12112, Vendor agrees that it shall comply with the requirements of US Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 CFR Part 1630, pertaining to employment of persons with disabilities. In addition, Vendor agrees to comply with any implementing requirements FTA may issue.

iv. The Vendor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

7. DISADVANTAGED BUSINESS ENTERPRISE

CITY OF LUBBOCK AND CITIBUS TRANSIT Transit has established a Disadvantaged Business Enterprise (DBE) program in accordance with regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 26. CITY OF LUBBOCK AND CITIBUS TRANSIT Transit has received Federal financial assistance from the Department of Transportation, and as a condition of receiving this assistance, CITY OF LUBBOCK AND CITIBUS TRANSIT Transit has signed an assurance that it will comply with 49 CFR Part 26.

It is the policy of CITY OF LUBBOCK AND CITIBUS TRANSIT Transit to ensure that DBEs are defined in part 26, have an equal opportunity to receive and participate in DOT-assisted purchases. It is also our policy:

- To ensure nondiscrimination in the award and administration of DOT- assisted purchases;
- To create a level playing field on which DBEs can compete fairly for DOT-assisted purchases;
- To ensure that the DBE Program is narrowly tailored in accordance with applicable law;
- To ensure that only firms that fully meet 49 CFR Part 26 eligibility standards are permitted to participate as DBEs;
- To help remove barriers to the participation of DBEs in DOT assisted purchases;
- To assist the development of firms that can compete successfully in the market place outside the DBE Program.

8. INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS

All contractual provisions required by DOT, as set forth in FTA Circular 4220.1E 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 Vendor shall not perform any act, fail to perform any act, or refuse to comply with any (name of grantee) requests which would cause (name of grantee) to be in violation of the FTA terms and conditions.

9. DEBARMENT AND SUSPENSION

This provision applies when the purchase exceeds \$25,000, in which case the Vendor agrees: The Vendor hereby certifies that it and its principals have not presently or within a three year period been debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transactions by any Federal agency; and the Vendor hereby certifies that it and its principals have not presently or within a three-year period been convicted of or had a civil judgment rendered against them for the commission of a fraud or a criminal offense in connection with obtaining, attempting to obtain or performing a public (Federal, state or local) transaction; violation of Federal or state antitrust statutes; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property.

10. BUY AMERICA

The Contractor agrees to comply with 49 U.S.C. 5323 U and 49 C.F.R Part 661, which provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA- funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 C.F.R 661.7, and include final assembly in the United States for 15 passenger vans and 15 passenger wagons produced by Chrysler Corporation, and microcomputer equipment and software. Separate requirements for rolling stock are set out at 49 U.S.C. 53230(2)(C) and 49 C.F.R 661.11. Rolling stock must be assembled in the United States and have a 60 percent domestic content.

A Contractor must submit to the FTA recipient the appropriate Buy America certification with all bids or offers on FTA-funded contracts, except those subject to a general waiver. Responses, bids or offers that are not accompanied by a completed Buy America certification must be rejected as nonresponsive.

With the implementation of the Fixing America's Surface Transportation (FAST) Act, new requirements for domestic content are phased in based on the date of delivery of the rolling stock. The increased domestic content percentage requirement for rolling stock for:

- i. FY16 & FY17 is more than 60% domestic content;
- ii. FY18 & FY19 is more than 65% domestic content; and
- iii. FY20 & beyond is more than 70% domestic content.

For rolling stock purchases for which the average cost of the vehicle is more than \$300,000, the FAST Act allows the cost of steel or iron produced in the U.S. and used in the rolling stock frames or car shells to be included in the domestic content calculation, regardless of whether the frame or car shell is produced in the U.S.

FTA does not require the inclusion of these requirements in subcontracts.

11. CARGO PREFERENCE

This provision applies when the purchase exceeds \$2,500, in which case the Vendor agrees: a) to utilize privately owned U.S.-Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to this contract to the extent such vessels are available at fair and reasonable rates for U.S.-Flag commercial vessels. b) to furnish within 20 working days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, "on board" commercial ocean bill-of-lading in English for each shipment of cargo described in paragraph (a) above to CITY OF LUBBOCK AND CITIBUS TRANSIT Transit (through the Contractor in the case of a subcontractor's bill-of-lading) and to the Office of Cargo Preference, Maritime Administration (MAR-590), 400 Seventh Street SW, Washington, DC

20590. c) to include these requirements in all subcontracts pursuant to this contract when the subcontract may involve the transport of equipment, material, or commodities by ocean liner.

12. ENERGY CONSERVATION

Vendor agrees to comply with mandatory standards and policies related to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act. Vendor further agrees to include this provision in each subcontract financed in whole or in part with federal assistance provided by FTA.

13. RECYCLED PRODUCTS

The Vendor agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the 40 CFR Part 247 and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR 247.

14. ACCESS FOR INDIVIDUALS WITH DISABILITIES

The Vendor agrees to comply with 49 U.S.C. § 5301(d), which states the Federal policy that elderly individuals and individuals with disabilities have the same right as other individuals to use public transportation services and facilities, and that special efforts shall be made in planning and designing those services and facilities to implement transportation accessibility rights for elderly individuals and individuals with disabilities. The Vendor also agrees to comply with all applicable provisions of section 504 of the Rehabilitation Act of 1973, as amended, with 29 U.S.C. § 794, which prohibits discrimination on the basis of disability; with the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. §§ 12101 et seq., which requires that accessible facilities and services be made available to individuals with disabilities; and with the Architectural Barriers Act of 1968, as amended, 42 U.S.C. §§ 4151 et seq., which requires that buildings and public accommodations be accessible to individuals with disabilities; and with other laws and amendments thereto pertaining to access for individuals with disabilities that may be applicable. In addition, the Vendor agrees to comply with applicable implementing Federal regulations any later amendments thereto, and agrees to follow applicable Federal directives except to the extent FTA approves otherwise in writing. Among those regulations and directives are: (1) U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 C.F.R. Part 37; (2) U.S. DOT regulations, "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," 49 C.F.R. Part 27; (3) Joint U.S. Architectural and Transportation Barriers Compliance Board (U.S. ATBCB)/U.S. DOT regulations, "Americans With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 C.F.R. Part 1192 and 49 C.F.R. Part 38; (4) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services," 28 C.F.R. Part 35; (5) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," 28 C.F.R. Part 36; (6) U.S. General Services Administration (U.S. GSA) regulations, "Accommodations for the Physically Handicapped," 41 C.F.R. Subpart 101-19; (7) U.S. EEOC, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630; (8) U.S. Federal Communications Commission regulations, "Telecommunications Relay Services and Related Customer Premises Equipment for the Hearing and Speech Disabled," 47 C.F.R. Part 64, Subpart F; (9) U.S. ATBCB regulations, "Electronic and Information Technology Accessibility Standards," 36 C.F.R. Part 1194; (10) FTA regulations, "Transportation for Elderly and Handicapped Persons," 49

15. PROHIBITED INTEREST

The vendor certifies that no member, officer or employee of the Public Body or of a local public body during his or her tenure of one year thereafter shall have any interest, direct or indirect, in this contract or the proceeds thereof.

16. DISPUTES AND REMEDIES

Should disputes arise concerning the specifications contained in this document, the Vendor and CITY OF LUBBOCK AND CITIBUS TRANSIT shall negotiate in good faith towards resolving such disputes. CITY OF LUBBOCK AND CITIBUS TRANSIT shall be responsible to its funding agencies for the settlement of all contractual and administrative issues arising out of the procurement. Violation or breach of purchase terms by the Vendor may be grounds for termination, and should said disputes be irreconcilable, CITY OF LUBBOCK AND CITIBUS TRANSIT shall terminate the agreement by default. Any increased costs arising from termination shall be paid by the Vendor.

17. RIGHT OF STATE GOVERNMENT TO TERMINATE

Upon written notice, the Vendor agrees that the State Government may suspend or terminate all or any part of State assistance if terms of the project agreement are violated, if the State Government determines that the purposes of the laws authorizing the Project would not be adequately served by the continuation of State assistance for the Project, if reasonable progress on the Project is not made, if there is a violation of the project agreement that endangers substantial performance of the Project, or if the State Government determines that State assistance has been wilfully misused by failing to make appropriate use of Project property. Termination of State assistance for the Project will not typically invalidate obligations properly incurred before the termination date to the extent those obligations cannot be cancelled. The State Government reserves the right to require the refund of the entire amount of State assistance provided for the Project or a lesser amount.

18. HOUSE BILL 89

Pursuant to Texas Government code Section 2270.02, the Provider of good and services under this agreement confirms that it does not and will not boycott Israel during the term of this contract.

19. NO BOYCOTT OF ISRAEL

Pursuant to Texas Government code Section 2270.02, a governmental entity, including a political subdivision of the State of Texas, may not enter into a contract with a company for good and services unless the contract contains a verification from the company that it does not boycott Israel and will not boycott Israel during the term of the contract. The Vendor under this contract confirms that it does not and will not boycott Israel during the term of this contract.

20. FLY AMERICA

The vendor agrees to comply with 49 U.S.C. 40118, in accordance with the General Services Administration's regulation at 41 CFR Part 310-10, which provide that recipients and subrecipients of Federal funds and their contractors are required to use U.S. flag air carriers for U.S. Government financed international air travel and transportation of personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. The Vendor submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by the U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. The Vendor agrees to include the requirement of this section in all

subcontracts that may involve international air transportation.

21. CLEAN WATER AND AIR

The vendor agrees to comply with all applicable standards, orders or regulation issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. The vendor agrees to comply with all applicable standards, order or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq. The vendor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser, will, in turn, report each violation as required to assure notification to the FTA and the appropriate EPA Regional Office.

22. LOBBYING

The undersigned certifies to the best of his or her knowledge and belief that:

- 1) 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 any officer or employee of an agency, a member of Congress, an officer or employee 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.
- 2) 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, and 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.
- 3) 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 section 1352, title 31, USC. 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.

NAME OF COMPANY:	PRINTED NAME OF PERSON COMPLETING FORM:
DATE:	SIGNATURE:

23. PRIVACY ACT

Contracts Involving Federal Privacy Act Requirements- The following requirements apply to the Contractor and its employees that administer any system of records on behalf of the Federal Government under any contract: The Contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a. Among other things, the Contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Federal Government. The Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.

The Contractor also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA

24. DRUG AND ALCOHOL TESTING

A contractor providing services involving the performance of safety sensitive activities must comply with 49 U.S.C. Section 5331 and FTA regulations, "Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations," 49 CFR Part 655.

25. BONDING

In accordance with 49 C.F.R. 18.36(i), the Contractor agrees to provide the Purchaser, the FTA 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. Contractor also agrees, pursuant to 49 C.F.R. 633 to provide the FTA Administrator or his authorized representatives including any PMO Contractor access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5325(a)(1), which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.

Where any Purchaser which is the FTA Recipient or a sub grantee of the FTA Recipient in accordance with 49 U.S.C. 5325(a) enters into a contract for a capital project or improvement (defined at 49 U.S.C. 5302(a)(1)) through other than competitive bidding, the Contractor shall make available records related to the contract to the Purchaser, the Secretary of Transportation and the Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.

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 maintain all books, records, accounts and reports required under this contract for a period of not less than three years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Contractor agrees to maintain same until the Purchaser, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i)(11).

The Recipient agrees to require its third-party contractors and third party Subcontractors, at as many tiers of the Project as required, to provide to the U.S. Secretary of Transportation and the Comptroller General of the United States or their duly authorized

representatives, access to all third-party contract records to the extent required by 49 U.S.C. § 5325(g). The Recipient further agrees to require its third-party Contractors and third-party Subcontractors, at as many tiers of the Project as required, to provide sufficient access to third party A bid guarantee from each Offeror equivalent to five (5) percent of the bid price. The "bid guarantee" shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the Offeror will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified;

A performance bond on the part of the Contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the Contractor's obligations under such contract; and

A payment bond on the part of the Contractor. A payment bond is one executed in connection with a contract to assure payment, as required by law, of all persons supplying labor and material in the execution of the work provided for in the contract. Payment bond amounts determined to adequately protect the federal interest are as follows:

- a. Fifty percent of the contract price if the contract price is not more than \$1 million;
- b. Forty percent of the contract price if the contract price is more than \$1 million but not more than \$5 million; or c. Two and a half million dollars if the contract price is more than \$5 million.

DAVIS BACON WAGE DETERMINATIONS

"General Decision Number: TX20220280 02/25/2022

Superseded General Decision Number: TX20210280

State: Texas

Construction Type: Building

Counties: Crosby and Lubbock Counties in Texas.

BUILDING CONSTRUCTION PROJECTS (does not include single family homes or apartments up to and including 4 stories).

Note: Contracts subject to the Davis-Bacon Act are generally required to pay at least the applicable minimum wage rate required under Executive Order 14026 or Executive Order 13658. Please note that these Executive Orders apply to covered contracts entered into by the federal government that are subject to the Davis-Bacon Act itself, but do not apply to contracts subject only to the Davis-Bacon Related Acts, including those set forth at 29 CFR 5.1(a)(2)-(60).

If the contract is entered into on or after January 30, 2022, or the contract is renewed or extended (e.g., an option is exercised) on or after January 30, 2022:	<ul style="list-style-type: none">. Executive Order 14026 generally applies to the contract.. The contractor must pay all covered workers at least \$15.00 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in 2022.
If the contract was awarded on or between January 1, 2015 and January 29, 2022, and the contract is not renewed or extended on or after January 30, 2022:	<ul style="list-style-type: none">. Executive Order 13658 generally applies to the contract.. The contractor must pay all covered workers at least \$11.25 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on that contract in 2022.

The applicable Executive Order minimum wage rate will be adjusted annually. If this contract is covered by one of the Executive Orders and a classification considered necessary for performance of work on the contract does not appear on this wage determination, the contractor must still submit a conformance request.

Additional information on contractor requirements and worker protections under the Executive Orders is available at <https://www.dol.gov/agencies/whd/government-contracts>.

Modification Number	Publication Date
0	01/07/2022
1	02/25/2022

BOIL0074-003 01/01/2021

	Rates	Fringes
BOILERMAKER.....	\$ 29.47	24.10

CARP0665-001 05/01/2021

	Rates	Fringes
CARPENTER.....	\$ 24.25	7.69

ELEC0602-008 03/01/2020

	Rates	Fringes
ELECTRICIAN.....	\$ 23.12	3%+10.75

ENGI0178-005 06/01/2020

	Rates	Fringes
POWER EQUIPMENT OPERATOR		
(1) Tower Crane.....	\$ 32.85	13.10
(2) Cranes with Pile Driving or Caisson Attachment and Hydraulic Crane 60 tons and above.....	\$ 28.75	10.60
(3) Hydraulic cranes 59 Tons and under.....	\$ 32.35	13.10

IRON0084-011 06/01/2021

	Rates	Fringes
IRONWORKER, ORNAMENTAL.....	\$ 26.01	7.56

IRON0263-003 06/01/2020

	Rates	Fringes
IRONWORKER, STRUCTURAL.....	\$ 25.14	7.43

PLUM0404-001 09/01/2020

	Rates	Fringes
PLUMBER.....	\$ 26.05	8.81

SHEE0049-001 04/01/2019

	Rates	Fringes
SHEET METAL WORKER (HVAC Duct Installation Only).....	\$ 21.73	14.94

* SUTX2014-060 07/21/2014

	Rates	Fringes
BRICKLAYER.....	\$ 20.04	0.00
CEMENT MASON/CONCRETE FINISHER...	\$ 19.60	0.00

INSULATOR - MECHANICAL (Duct, Pipe & Mechanical System Insulation).....	\$ 19.77	7.13
IRONWORKER, REINFORCING.....	\$ 12.27 **	0.00
LABORER: Common or General.....	\$ 12.35 **	0.00
LABORER: Mason Tender - Brick...	\$ 11.36 **	0.00
LABORER: Mason Tender - Cement/Concrete.....	\$ 10.58 **	0.00
LABORER: Pipelayer.....	\$ 12.49 **	2.13
LABORER: Roof Tearoff.....	\$ 11.28 **	0.00
OPERATOR: Backhoe/Excavator/Trackhoe.....	\$ 14.25 **	0.00
OPERATOR: Bobcat/Skid Steer/Skid Loader.....	\$ 13.93 **	0.00
OPERATOR: Bulldozer.....	\$ 18.29	1.31
OPERATOR: Drill.....	\$ 16.22	0.34
OPERATOR: Forklift.....	\$ 14.83 **	0.00
OPERATOR: Grader/Blade.....	\$ 13.37 **	0.00
OPERATOR: Loader.....	\$ 13.55 **	0.94
OPERATOR: Mechanic.....	\$ 17.52	3.33
OPERATOR: Paver (Asphalt, Aggregate, and Concrete).....	\$ 16.03	0.00
OPERATOR: Roller.....	\$ 12.70 **	0.00
PAINTER (Brush, Roller, and Spray).....	\$ 14.27 **	0.00
ROOFER.....	\$ 13.75 **	0.00
SHEET METAL WORKER, Excludes HVAC Duct Installation.....	\$ 21.13	6.53
TILE FINISHER.....	\$ 11.22 **	0.00
TILE SETTER.....	\$ 14.00 **	2.01
TRUCK DRIVER: Dump Truck.....	\$ 12.39 **	1.18
TRUCK DRIVER: Flatbed Truck.....	\$ 19.65	8.57
TRUCK DRIVER: Semi-Trailer Truck.....	\$ 12.50 **	0.00
TRUCK DRIVER: Water Truck.....	\$ 12.00 **	4.11

WELDERS - Receive rate prescribed for craft performing
operation to which welding is incidental.

** Workers in this classification may be entitled to a higher minimum wage under Executive Order 14026 (\$15.00) or 13658 (\$11.25). Please see the Note at the top of the wage determination for more information.

Note: Executive Order (EO) 13706, Establishing Paid Sick Leave for Federal Contractors applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2017. If this contract is covered by the EO, the contractor must provide employees with 1 hour of paid sick leave for every 30 hours they work, up to 56 hours of paid sick leave each year. Employees must be permitted to use paid sick leave for their own illness, injury or other health-related needs, including preventive care; to assist a family member (or person who is like family to the employee) who is ill, injured, or has other health-related needs, including preventive care; or for reasons resulting from, or to assist a family member (or person who is like family to the employee) who is a victim of, domestic violence, sexual assault, or stalking. Additional information on contractor requirements and worker protections under the EO is available at <https://www.dol.gov/agencies/whd/government-contracts>.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (ii)).

The body of each wage determination lists the classification and wage rates that have been found to be prevailing for the cited type(s) of construction in the area covered by the wage determination. The classifications are listed in alphabetical order of "identifiers" that indicate whether the particular rate is a union rate (current union negotiated rate for local), a survey rate (weighted average rate) or a union average rate (weighted union average rate).

Union Rate Identifiers

A four letter classification abbreviation identifier enclosed in dotted lines beginning with characters other than "SU" or "UAVG" denotes that the union classification and rate were prevailing for that classification in the survey. Example: PLUM0198-005 07/01/2014. PLUM is an abbreviation identifier of the union which prevailed in the survey for this classification, which in this example would be Plumbers. 0198 indicates the local union number or district council number where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. 07/01/2014 is the effective date of the most current negotiated rate, which in this example is July 1, 2014.

Union prevailing wage rates are updated to reflect all rate changes in the collective bargaining agreement (CBA) governing this classification and rate.

Survey Rate Identifiers

Classifications listed under the "SU" identifier indicate that no one rate prevailed for this classification in the survey and the published rate is derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As this weighted average rate includes all rates reported in the survey, it may include both union and non-union rates. Example: SULA2012-007 5/13/2014. SU indicates the rates are survey rates based on a weighted average calculation of rates and are not majority rates. LA indicates the State of Louisiana. 2012 is the year of survey on which these classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. 5/13/2014 indicates the survey completion date for the classifications and rates under that identifier.

Survey wage rates are not updated and remain in effect until a new survey is conducted.

Union Average Rate Identifiers

Classification(s) listed under the UAVG identifier indicate that no single majority rate prevailed for those classifications; however, 100% of the data reported for the classifications was union data. EXAMPLE: UAVG-OH-0010 08/29/2014. UAVG indicates that the rate is a weighted union average rate. OH indicates the state. The next number, 0010 in the example, is an internal number used in producing the wage determination. 08/29/2014 indicates the survey completion date for the classifications and rates under that identifier.

A UAVG rate will be updated once a year, usually in January of each year, to reflect a weighted average of the current negotiated/CBA rate of the union locals from which the rate is based.

WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

- * an existing published wage determination
- * a survey underlying a wage determination
- * a Wage and Hour Division letter setting forth a position on a wage determination matter
- * a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour National Office because National Office has responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations
Wage and Hour Division
U.S. Department of Labor

200 Constitution Avenue, N.W.
Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

4.) All decisions by the Administrative Review Board are final.

=====

END OF GENERAL DECISIO"

PAYMENT BOND

**STATUTORY PAYMENT BOND PURSUANT TO SECTION 2253.021(a)
OF THE TEXAS GOVERNMENT CODE
(CONTRACTS MORE THAN \$50,000)**

KNOW ALL MEN BY THESE PRESENTS, that _____ (hereinafter called the Principal(s), as Principal(s), and _____

(hereinafter called the Surety(s), as Surety(s), are held and firmly bound unto the City of Lubbock (hereinafter called the Oblige), in the amount of _____ Dollars (\$_____) lawful money of the United States for the payment whereof, the said Principal and Surety bind themselves, and their heirs, administrators, executors, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has entered into a certain written contract with the Oblige, dated the _____ day _____ of _____, **2022**, to _____

and said Principal under the law is required before commencing the work provided for in said contract to execute a bond in the amount of said contract which contract is hereby referred to and made a part hereof as fully and to the same extent as if copied at length herein.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the said Principal shall pay all claimants supplying labor and material to him or a subcontractor in the prosecution of the work provided for in said contract, then, this obligation shall be void; otherwise to remain in full force and effect;

PROVIDED, HOWEVER, that this bond is executed pursuant to the provisions of Section 2253.021(a) of the Texas Government Code, and all liabilities on this bond shall be determined in accordance with the provisions of said Article to the same extent as if it were copied at length herein.

IN WITNESS WHEREOF, the said Principal (s) and Surety (s) have signed and sealed this instrument this _____ day of _____, **2022**.

Surety

(Company Name)

*By: _____
(Title)

By: _____
(Printed Name)

(Signature)

(Title)

The undersigned surety company represents that it is duly qualified to do business in Texas, and hereby designates _____ an agent resident in Lubbock County to whom any requisite notices may be delivered and on whom service of process may be had in matters arising out of such suretyship.

Surety

* By: _____
(Title)

Approved as to form:

City of Lubbock

By: _____
City Attorney

* Note: If signed by an Office of the Surety Company there must be on file a certified extract from the by-laws showing that this person has authority to sign such obligation. If signed by an Attorney in Fact, we must have copy of power of attorney for our files.

PERFORMANCE BOND

**STATUTORY PERFORMANCE BOND PURSUANT TO SECTION 2253.021(a)
OF THE TEXAS GOVERNMENT CODE
(CONTRACTS MORE THAN \$100,000)**

KNOW ALL MEN BY THESE PRESENTS, that _____ (hereinafter called the Principal(s), as Principal(s), and

(hereinafter called the Surety(s), as Surety(s), are held and firmly bound unto the City of Lubbock (hereinafter called the Obligee), in the amount of _____ Dollars (\$ _____) lawful money of the United States for the payment whereof, the said Principal and Surety bind themselves, and their heirs, administrators, executors, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has entered into a certain written contract with the Obligee, dated the ____ day of _____, **2022**, to _____

and said principal under the law is required before commencing the work provided for in said contract to execute a bond in the amount of said contract which contract is hereby referred to and made a part hereof as fully and to the same extent as if copied at length herein.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the said Principal shall faithfully perform the work in accordance with the plans, specifications and contract documents, then this obligation shall be void; otherwise to remain in full force and effect.

PROVIDED, HOWEVER, that this bond is executed pursuant to the provisions of Section 2253.021(a) of the Texas Government Code, and all liabilities on this bond shall be determined in accordance with the provisions of said article to the same extent as if it were copied at length herein.

IN WITNESS WHEREOF, the said Principal (s) and Surety (s) have signed and sealed this instrument this ____ day of _____, **2022**.

Surety

* By: _____
(Title)

(Company Name)

By: _____
(Printed Name)

(Signature)

(Title)

The undersigned surety company represents that it is duly qualified to do business in Texas, and hereby designates _____ an agent resident in Lubbock County to whom any requisite notices may be delivered and on whom service of process may be had in matters arising out of such suretyship.

Surety

*By: _____
(Title)

Approved as to Form

City of Lubbock

By: _____
City Attorney

* Note: If signed by an Office of the Surety Company, there must be on file a certified extract from the by-laws showing that this person has authority to sign such obligation. If signed by an Attorney in Fact, we must have copy of power of attorney for our files.

Information

Agenda Item

Resolution - City Manager: Consider a resolution authorizing the Mayor to execute an American Rescue Plan Act (ARPA) Funding Agreement, by and between the City of Lubbock, and StarCare Specialty Health System, for the construction of infrastructure that will serve as a center for behavioral crisis.

Item Summary

StarCare will be responsible for the construction of a 10,000 square-foot service site to be adjoined with the existing service location known as Sunrise Canyon, in which behavioral health crisis services will be delivered to assist people who are experiencing mental health distress to receive appropriate specialty healthcare, thereby avoiding emergency rooms, jails, and inpatient hospitals, as appropriate.

Fiscal Impact

Funds have been appropriated from the City of Lubbock's American Rescue Plan Act (ARPA) allocation in the amount of \$3,500,000.

Staff/Board Recommending

Bill Howerton, Deputy City Manager

Attachments

StarCare Reso
StarCare 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, an American Rescue Plan Act (ARPA) Funding Agreement for the Construction of Infrastructure to Serve as a Center for Behavioral Health Crisis, by and between the City of Lubbock and StarCare Specialty Health System, a Unit of Local Government, as authorized by Chapter 534 of the Texas Health and Safety Code, with a simultaneous Internal Revenue Service designation of a 501(c) 3 not-for profit charitable organization, and related documents. Said Funding 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:



Bill Howerton, Deputy City Manager

APPROVED AS TO FORM:



Ryan Brooke, Assistant City Attorney

THE STATE OF TEXAS §
 §
COUNTY OF LUBBOCK §

AMERICAN RESCUE PLAN ACT (ARPA) FUNDING AGREEMENT FOR THE
CONSTRUCTION OF INFRASTRUCTURE TO SERVE AS A CENTER FOR
BEHAVIORAL HEALTH CRISIS

This ARPA Funding Agreement for Infrastructure Construction (the “Agreement”) Contract No. 16598 is entered into this tenth day of May 2022, is by and between the City of Lubbock (the “City”), a Texas home rule municipal corporation, and StarCare Specialty Health System., a Unit of Local Government, as authorized by Chapter 534 of the Texas Health and Safety Code, with a simultaneous Internal Revenue Service designation of a 501(c) 3 not-for profit charitable organization (the “Subrecipient”).

WHEREAS, the Coronavirus Disease 2019 (“COVID-19”) pandemic caused numerous public health and economic issues throughout the United States, including in the City of Lubbock; and

WHEREAS, on March 27, 2020, the President signed into federal law the Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”), which established the Coronavirus Relief Fund; and

WHEREAS, on March 11, 2021, the President signed into federal law the American Rescue Plan Act (“ARPA”), which established the Coronavirus State Fiscal Recovery Fund and Coronavirus Local Fiscal Recovery Funds (“CLFRF Fund”), which together make up the Coronavirus State and Local Fiscal Recovery Funds (“SLFRF”) program. The SLFRF builds on and expands the support provided to the City, including through the Coronavirus Relief Fund; and

WHEREAS, pursuant to the SLFRF program, the United States Department of Treasury has provided the City with a direct payment from the CLFRF Fund to cover certain costs, which includes the requirement of the obligation of funds by December 31, 2024 for following uses:

- (1) To respond to the public health emergency with respect to the Coronavirus Disease 2019 (COVID–19) or its negative economic impacts, including assistance to households, small businesses, and nonprofits, or aid to impacted industries such as tourism, travel, and hospitality;
- (2) To respond to workers performing essential work during the COVID–19 public health emergency by providing premium pay to eligible workers of the metropolitan city, non-entitlement unit of local government, or county that are performing such essential work, or by providing grants to eligible employers that have eligible workers who perform essential work;

(3) For the provision of government services to the extent of the reduction in revenue of such metropolitan city, non-entitlement unit of local government, or county due to the COVID-19 public health emergency relative to revenues collected in the most recent full fiscal year of the metropolitan city, non-entitlement unit of local government, or county prior to the emergency; and

(4) To make necessary investments in water, sewer, or broadband infrastructure; and

WHEREAS, the City is a metropolitan city as defined by section 5302(a)(4) of the Housing and Community Development Act of 1974 (42 U.S.C. § 5302(a)(4)); and

WHEREAS, the City is allocating the costs for the assistance provided under this Agreement prior to December 31, 2024; and

WHEREAS, the COVID-19 pandemic has contributed to a growing number of individuals in Lubbock, and across the nation in need of behavioral health services; and

WHEREAS, the City has determined the funds the City is providing to Subrecipient under this Agreement are reasonable and necessary expenditures to address the COVID-19 public health emergency to respond to and assist those who have experienced a behavioral health crisis; and

WHEREAS, the City recognizes the need for coordination of mental health treatment, substance misuse treatment and other community support services in a centralized location for those who are in crisis; and

WHEREAS, the community also seeks to provide recovery oriented, short-stay alternative to incarceration for non-violent, justice-oriented persons with behavioral health needs; and

WHEREAS, the primary goal of this Agreement is for the City to provide the Subrecipient funds to support the building of a facility to house coordinated efforts for mental health and substance use crisis services; and

WHEREAS, the Subrecipient shall combine funds in the amount of \$3,500,000 awarded by Lubbock County to develop and construct the center; and

WHEREAS, the Subrecipient and the City shall work together along with vested community partners to expand services in the community;

NOW THEREFORE, for and in consideration of the terms, covenants and conditions set forth in this Agreement, the City and the Subrecipient hereby agree as follows:

ARTICLE I. TERM

The term of this Agreement commences on the Effective Date and continues without interruption through December 31, 2026. An amendment to this Agreement resulting in an increase in the amount of the consideration must be approved by the City acting through its governing body.

ARTICLE II. SCOPE OF SERVICES

The Subrecipient shall be responsible for the construction of a 10,000 square foot (approximate) service site to be adjoined with the existing service location known as Sunrise Canyon in which behavioral health crisis services will be delivered to help people who are experiencing mental health distress receive appropriate specialty healthcare, thereby avoiding emergency rooms, jails, and inpatient hospitals, as appropriate.

The center will be open to all Lubbock residents regardless of income or insurance status. The center will screen anyone who presents at the center in mental health crisis with the goal of linking the individuals to the most appropriate level of care. Although the goal is to assist everyone, receipt of some services may be limited based on diagnosis and specific program eligibility requirements.

The Subrecipient shall move existing crisis mental health services into the new facility to include:

- 1) 24/7 walk-in psychiatric crisis services;
- 2) 24/7 law enforcement/emergency services drop-off;
- 3) 23-hour Extended Observation Unit;
- 4) Drop in services for adults with complex mental health challenges;
- 5) Group therapy;
- 6) Psychosocial rehabilitation;
- 7) Targeted case management; and
- 8) Access to walk-in psychiatric consultation.

The parties will work to establish a steering committee through a separate interlocal agreement by December 1, 2022 to recommend policies, improve coordination of, and support the operation of the center constructed with funds awarded through this contract. The intention of the parties is that the steering committee will make recommendations about the operation and priorities of services to be provided in the center. The intentions of the parties is that the steering committee agreement will be developed by members of the West Texas Mental Health Collaborative (WTMHC). And that each member organization of WTMHC will be offered one (1) position on the steering committee. The Subrecipient shall work with the steering committee and other vested community organizations to braid existing funding, secure additional funding and, to the extent they are willing, coordinate with existing providers to expand services to include:

- 1) Onsite medical clearance;

- 2) Onsite primary care;
- 3) Medication management;
- 4) An array of Substance Use Disorder services; and
- 5) Discharge planning to coordinate access to housing, social services, and treatment post-discharge, utilizing case managers and peer support.

The subrecipient shall design the building in a manner that includes space for existing programs as well as allows room for expansion, including flexible space in which to house community partners who serve the same people . The subrecipient will review the final floor plans and receive approval from the City before construction begins. The City agrees to provide such approval in an expeditious manner so as to not impede progress needed for completion within the established timelines referenced herein.

The projected opening date of the facility is September 2023. The Subrecipient shall provide the City with quarterly updates (March, June, September and December of each year) about the project status through completion.

ARTICLE III. CONVEYANCE OF ARPA GRANT FUNDS

The City agrees to convey ARPA grant funds to the Subrecipient in the amount of three million five hundred thousand dollars (\$3,500,00.00) which includes the cost of construction of patient care space, office space, lobby space, connection corridors, furniture, fixtures, equipment, parking, signage and landscaping.

ITEM	Estimated Cost
Patient Care Space	\$1,750,000
Office Space	\$312,500
Lobby Space	\$150,000
Connection Corridors	\$75,000
Furniture, Fixtures and Equipment	\$362,500
Parking/Signage/Landscaping	\$350,000
Utility and Road Infrastructure	\$500,000
TOTAL	\$3,500,000

The transfer of ARPA grant funds to the Subrecipient shall be one lump sum payment within 30 days after contract execution.

ARTICLE IV. TERMINATION

A. General. The City may terminate this Agreement, for cause, upon thirty (30) days written notice to the Subrecipient, and Subrecipient does not cure its default within the time stated in the written notice. In the event this Agreement is so terminated, the City shall only provide ARPA grant funds to the Subrecipient for the infrastructure contemplated here which is constructed up to the date the Subrecipient is deemed to have received notice of termination, as provided herein. Further, any excess ARPA grant funds in the Subrecipient's possession shall be refunded to the City immediately upon termination.

B. Termination and Remedies. In the event either party breaches any term and/or provision of this Agreement, the parties shall be entitled to exercise any right or remedy available to it by this Agreement, at law, equity, or otherwise, including without limitation, termination of this Agreement and assertion of an action for damages and/or injunctive relief. The exercise of any right or remedy shall not preclude the concurrent or subsequent exercise of any right or remedy and all rights and remedies shall be cumulative.

ARTICLE V. NON - ARBITRATION

The parties reserve 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 parties 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 Agreement, this provision shall control.

ARTICLE VI. REPRESENTATIONS AND WARRANTIES

A. Existence. The Subrecipient is a Unit of Local Government, as authorized by Chapter 534 of the Texas Health and Safety Code, with a simultaneous Internal Revenue Service designation of a 501(c) 3 not-for profit charitable organization validly existing, and in good standing under the laws of the State of Texas and is qualified to carry on its business in the State of Texas.

B. Corporate Power. The Subrecipient has the legal authority to enter into and perform this Agreement and all other activities contemplated hereby.

C. Authorization. Execution, delivery, and performance of this Agreement and the activities contemplated hereby have been duly and validly authorized by all the requisite action on the part of the Subrecipient. This Agreement constitutes legal, valid, and binding obligations of the Subrecipient and is enforceable in accordance with the terms thereof.

D. Subrecipient. The Subrecipient maintains a commercially proficient staff and employs, as needed, other qualified specialists experienced in completing the Project, and

is familiar with all laws, rules, and regulations, both state and federal, including, without limitation the applicable laws, regarding the Project contemplated hereby.

E. Performance. The Subrecipient will and shall conduct all activities contemplated by this Agreement in accordance with the standard of care, skill and diligence normally provided by a professional person in performance of similar services, and comply with all applicable laws, rules, and regulations, both state and federal, relating to professional services, as contemplated hereby.

F. Use of Copyrighted Material. The Subrecipient warrants that any materials provided by the Subrecipient for use by City pursuant to this Agreement shall not contain any proprietary material owned by any other party that is protected under the Copyright Act or any other law, statute, rule, order, regulation, ordinance or contractual obligation relating to the use or reproduction of materials. The Subrecipient shall be solely responsible for ensuring that any materials provided by the Subrecipient pursuant to this Agreement satisfy this requirement and the Subrecipient agrees to indemnify and hold City harmless to the extent allowable by law from all liability or loss caused to City or to which City is exposed on account of the Subrecipient's failure to perform this duty.

ARTICLE VII. INDEPENDENT CONTRACTOR STATUS

The Subrecipient and the City agree that the Subrecipient shall perform the duties under this Agreement as an independent contractor and shall be considered as independent contractor under this Agreement and/or in its activities hereunder for all purposes. The Subrecipient has the sole discretion to determine the manner in which the Services are to be performed. During the performance of the Services under this Agreement, the Subrecipient and the Subrecipient's employees and/or sub-consultants, will not be considered, for any purpose, employees or agents of the City within the meaning or the application of any federal, state or local law or regulation, including without limitation, laws, rules or regulations regarding or related to unemployment insurance, old age benefits, workers compensation, labor, personal injury or taxes of any kind.

ARTICLE VIII. PERFORMANCE AND PAYMENT BONDS

Upon execution of this Agreement, and prior to any work on the Project, the Subrecipient shall obtain from the general construction contractor and present to the City performance and payment bonds in compliance with the Texas Government Code § 2253.021.

ARTICLE IX. INSURANCE

The Subrecipient shall procure and carry, at its sole cost and expense through the life of this Agreement, except as otherwise provided herein, insurance protection as hereinafter specified, in form and substance satisfactory to the City, carried with an insurance company authorized to transact business in the state of Texas, covering all aspects and risks of loss of all construction in connection with this Agreement, including without limitation, the indemnity obligations set forth herein. The Subrecipient shall

obtain and maintain in full force and effect during the term of this Agreement, and as applicable, shall cause each approved sub-contractor or sub-consultant of the Subrecipient to obtain and maintain in full force and effect during the term of this Agreement, commercial general liability, professional liability and automobile liability coverage for non-owned and hired vehicles 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. Except for Professional Liability, the policies will be written on an occurrence basis, subject to the following minimum limits of liability:

Commercial General Liability:

Per Occurrence Single Limit: \$1,000,000

General Aggregate Limit: \$2,000,000

Professional Liability:

Combined Single Limit: \$2,000,000

Automobile Liability:

Combined Single Limit for any auto: \$1,000,000 Per Occurrence

Employer's Liability:

Per Occurrence Single Limit: \$1,000,000

Worker's Compensation

Per Occurrence Single Limit: \$500,000

The Subrecipient shall further cause any approved sub-contractor or sub-consultant to procure and carry, during the term of this Agreement, the insurance coverage required of Subrecipient herein, including without limitation, Professional Liability coverage, protecting the City against losses caused by the professional negligence of the approved sub-contractor or sub-consultant. The City shall be listed as a primary and noncontributory additional insured with respect to the Automobile Liability and Commercial General Liability and shall be granted a waiver of subrogation under those policies. The Subrecipient shall provide a Certificate of Insurance to the City as evidence of coverage.

The Certificate shall provide 30 days' notice of cancellation. A copy of the additional insured endorsement and waiver of subrogation attached to the policy shall be included in the Certificate. The Subrecipient shall elect to obtain worker's compensation coverage pursuant to Section 406.002 of the Texas Labor Code. Further, the Subrecipient shall maintain said coverage throughout the term of this Agreement and shall comply with all provisions of Title 5 of the Texas Labor Code to ensure that the Subrecipient maintains said coverage. The Subrecipient may maintain Occupational Accident and Disability Insurance in lieu of Worker's Compensation. In either event, the policy must be endorsed to include a waiver of subrogation in favor of the City. If at any time during the life of the Agreement or any extension hereof, the Subrecipient fails to maintain the required insurance in full force and effect, the Subrecipient shall be in breach hereof and all work under the Agreement shall be discontinued immediately.

Notwithstanding anything contained herein to the contrary, the professional liability policy shall be maintained at the Subrecipient's sole cost and expense, unless attributable to the work of a subconsultant. The retroactive date shall be no later than the

commencement of the performance of this Agreement and the discovery period (possibly through tail coverage) shall be no less than 10 years after the completion of the Services provided for in this Agreement. The provisions of this Article IX shall survive the termination or expiration of this Agreement.

ARTICLE X. EMPLOYMENT OF AGENTS/RETAINING OF CONSULTANTS

The Subrecipient may employ or retain consultants, sub-contractors, or third parties (any of which are referred to herein as "Sub-consultant"), to perform certain duties of Subrecipient, this Agreement, provided that the City approves the retaining of Sub-consultants. The Subrecipient is at all times responsible to the City to perform the Services as provided in this Agreement and the Subrecipient is in no event relieved of any obligation under this Agreement upon retainage of any approved Sub-consultant. Any agent and/or Sub-consultant retained and/or employed by the Subrecipient shall be required by the Subrecipient to carry, for the protection and benefit of the City and the Subrecipient and naming said third parties as additional insureds, insurance as described above required to be carried by the Subrecipient in this Agreement.

The Subrecipient agrees to follow all applicable notice and/or bid requirements under Texas Law.

ARTICLE XI. CONFIDENTIALITY

The parties shall retain all information received from or concerning the Subrecipient, the Subrecipient's business, 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 Subrecipient or City, unless otherwise required by law.

ARTICLE XII. INDEMNITY

TO THE EXTENT ALLOWABLE UNDER THE LAW, THE SUBRECIPIENT 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 SUBRECIPIENT, ITS AGENTS, EMPLOYEES, AND/OR SUBCONSULTANTS, 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.

ARTICLE XIII. COMPLIANCE WITH APPLICABLE LAWS

The Subrecipient shall comply with all applicable federal, state and local laws, statutes, ordinances, rules and regulations relating, in any way, manner or form, to the activities under this Agreement, and any amendments thereto.

ARTICLE XIV. NOTICE

A. General. Whenever notice from the Subrecipient to the City or the City to the Subrecipient is required or permitted by this Agreement and no other method of notice is provided, such notice shall be given by (1) actual delivery of the written notice to the other party by hand (in which case such notice shall be effective upon delivery); (2) facsimile (in which case such notice shall be effective upon delivery); or (3) by depositing the written notice in the United States mail, properly addressed to the other party at the address provided in this article, registered or certified mail, return receipt requested, in which case such notice shall be effective on the third business day after such notice is so deposited.

B. Subrecipient's Address. The Subrecipient's address and numbers for the purposes of notice are:

Beth Lawson, CEO
StarCare Specialty Health System
P.O. Box 2828
Lubbock, Texas 79401
Telephone: 806-441-1542
Email: StarCare@starcarelubbock.org

C. City's Address. The City's address and numbers for the purposes of notice are:

Bill Howerton, Deputy City Manager
City of Lubbock
P.O. Box 2000
1314 Avenue K
Lubbock, Texas 79457
Email: bhowerton@mylubbock.us
Telephone: 806-775-2300

D. Change of Address. Either party may change its address or numbers for purposes of notice by giving written notice to the other party as provided herein, referring specifically to this Agreement, and setting forth such new address or numbers. The address or numbers shall become effective on the 15th day after such notice is effective.

ARTICLE XV. CITY-PROVIDED DATA AND RESPONSIBILITIES

Provision of Data. The City shall furnish the Subrecipient non-confidential studies, reports and other available data in the possession of the City pertinent to the Agreement. The Subrecipient shall be entitled to use and rely, so long as such reliance Subrecipient's is reasonable, upon all such provided data.

ARTICLE XVI. MISCELLANEOUS

A. Captions. The captions for the articles and sections in this Agreement are inserted in this Agreement strictly for the parties' convenience in identifying the provisions to this Agreement and shall not be given any effect in construing this Agreement.

B. Audit. The Subrecipient shall, upon written request, provide access to its corporate books and records to the City. The City may audit, at its expense and during normal business hours, the Subrecipient's books and records with respect to this Agreement between the Subrecipient and the City.

C. Records. The Subrecipient shall maintain records that are necessary to substantiate the activities contemplated under this agreement.

D. Assignability. The Subrecipient may not assign this Agreement without the prior written approval of the City, which approval shall not be unreasonably withheld. Additionally, if the Subrecipient is unable to complete the project for any reason,

E. Successor and Assigns. This Agreement binds and inures to the benefit of the City and the Subrecipient, and in the case of the City, its respective successors, legal representatives, and assigns, and in the case of the Subrecipient, its permitted successors and assigns.

F. Construction and Venue.

THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS. THIS AGREEMENT IS PERFORMABLE IN LUBBOCK COUNTY, TEXAS. THE PARTIES HERETO HEREBY IRREVOCABLY CONSENT TO THE SOLE AND EXCLUSIVE JURISDICTION AND VENUE OF THE COURTS OF COMPETENT JURISDICTION OF THE STATE OF TEXAS, COUNTY OF LUBBOCK, FOR THE PURPOSES OF ALL LEGAL PROCEEDINGS ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE ACTIONS THAT ARE CONTEMPLATED HEREBY.

G. Severability. If any provision of this Agreement is ever held to be invalid or ineffective by any court of competent jurisdiction with respect to any person or circumstance, the remainder of this Agreement and the application of such provision to persons and/or circumstances other than those with respect to which it is held invalid or ineffective shall not be affected thereby.

H. Amendment. No amendment, modification, or alteration of the terms of this Agreement shall be binding unless such amendment, modification, or alteration is in writing, dated subsequent to this Agreement, and duly authorized and executed by the Subrecipient and the City.

I. Entire Agreement. This Agreement, including Exhibits “A” through “B” attached hereto, contains the entire agreement between the City and the Subrecipient, and there are no other written or oral promises, conditions, warranties, or representations relating to or affecting the matters contemplated herein.

J. No Joint Enterprise. Nothing contained herein shall be construed to imply a joint venture, joint enterprise, partnership or principal – agent relationship between the Subrecipient and the City.

K. Documents Delivered to City. Copies of any and all documents, drawings and specifications prepared by Subrecipient as part of the construction hereunder, shall become the property of the City when the Subrecipient has been compensated as set forth in Article III, above. The Subrecipient, as a governmental entity and owner of the resulting center, will retain originals of any and all work products for its files.

L. Notice of Waiver. A waiver by either the City or the Subrecipient of a breach of this Agreement must be in writing and duly authorized to be effective. In the event either party shall execute and deliver such waiver, such waiver shall not affect the waiving party’s rights with respect to any other or subsequent breach.

M. Third Party Activities. Nothing in this Agreement shall be construed to provide any rights or benefits whatsoever to any party other than the City and the Subrecipient.

O. Contracts with Companies Engaged in Business with Iran, Sudan, or Foreign Terrorist Organization Prohibited. Pursuant to Section 2252.152 of the Texas Government Code, the City is prohibited 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.

P. 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.

Q. Texas Government Code 2274. By entering into this Agreement, Subrecipient verifies that: (1) it does not, and will not for the duration of the contract, have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association or (2) the verification required by Section 2274.002 of the Texas

Government Code does not apply to the contract. If Subrecipient is a company with 10 or more full-time employees and if this Agreement has a value of at least \$100,000 or more, Subrecipient verifies that, pursuant to Texas Government Code Chapter 2274, it does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and will not discriminate during the term of the contract against a firearm entity or firearm trade association.

R. Subrecipient represents and warrants that: (1) it does not, and will not for the duration of the contract, boycott energy companies or (2) the verification required by Section 2274.002 of the Texas Government Code does not apply to the contract. If Subrecipient is a company with 10 or more full-time employees and if this Agreement has a value of at least \$100,000 or more, Subrecipient verifies that, pursuant to Texas Government Code Chapter 2274, it does not boycott energy companies; and will not boycott energy companies during the term of the Agreement. This verification is not required for an agreement where a governmental entity determines that these requirements are inconsistent with the governmental entity's constitutional or statutory duties related to the issuance, incurrence, or management of debt obligations or the deposit, custody, management, borrowing, or investment of funds.

S. Texas Public Information Act. The requirements of Subchapter J, Chapter 552, Government Code, may apply to this contract and the Subrecipient or vendor agrees that the contract can be terminated if the Subrecipient 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, Subrecipient 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.

T. Professional Responsibility. All architectural or engineering services to be performed shall be done with the professional skill and care ordinarily provided by competent architects or engineers practicing under the same or similar circumstances and professional license.

ARTICLE XVII. AGREEMENT WITH SUBRECIPIENT OF FEDERAL RECOVERY FUNDS TERMS AND CONDITIONS

1. Use of Funds.

a. Subrecipient understands and agrees that the funds disbursed under this award may only be used in compliance with section 603(c) of the Social Security Act

(the Act) and Treasury's regulations implementing that section and guidance.

b. Subrecipient will determine prior to engaging in any project using this assistance that it has the institutional, managerial, and financial capability to ensure proper planning, management, and completion of such Project.

2. Period of Performance. The period of performance for this award begins on the date hereof and ends on December 31, 2026. As set forth in Treasury's implementing regulations, Subrecipient may use award funds to cover eligible costs incurred during the period that begins on March 3, 2021, and ends on December 31, 2024.
3. Reporting. Subrecipient agrees to comply with any reporting obligations established by Treasury as they relate to this award.
4. Maintenance of and Access to Records
 - a. Subrecipient shall maintain records and financial documents sufficient to evidence compliance with section 603(c), Treasury's regulations implementing that section, and guidance issued by Treasury regarding the foregoing.
 - b. The Treasury Office of Inspector General and the Government Accountability Office, or their authorized representatives, shall have the right of access to records (electronic and otherwise) of Subrecipient in order to conduct audits or other investigations.
 - c. Records shall be maintained by Subrecipient for a period of five (5) years after all funds have been expended or returned to Treasury, whichever is later.
5. Pre-award Costs. Pre-award costs, as defined in 2 C.F.R. § 200.458, may not be paid with funding from this award.
6. Administrative Costs. Subrecipient may use funds provided under this award to cover both direct and indirect costs.
7. Cost Sharing. Cost sharing or matching funds are not required to be provided by Subrecipient.
8. Conflicts of Interest. The City of Lubbock understands and agrees it must maintain a conflict of interest policy consistent with 2 C.F.R. § 200.318(c) and that such conflict of interest policy is applicable to each activity funded under this award. Recipients and Subrecipients must disclose in writing to the Office of the State Controller or the pass-through entity, as appropriate, any potential conflict of interest affecting the awarded funds in accordance with 2 C.F.R. § 200.112. The Office of the State Controller shall disclose such conflict to Treasury.

9. Compliance with Applicable Law and Regulations.

a. Subrecipient agrees to comply with the requirements of section 603 of the Act, regulations adopted by Treasury pursuant to section 603(f) of the Act, and guidance issued by Treasury regarding the foregoing. Subrecipient also agrees to comply with all other applicable federal statutes, regulations, and executive orders, and Subrecipient shall provide for such compliance by other parties in any agreements it enters into with other parties relating to this award.

b. Federal regulations applicable to this award include, without limitation, the following:

i. Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 C.F.R. Part 200, other than such provisions as Treasury may determine are inapplicable to this Award and subject to such exceptions as may be otherwise provided by Treasury. Subpart F – Audit Requirements of the Uniform Guidance, implementing the Single Audit Act, shall apply to this award.

ii. Universal Identifier and System for Award Management (SAM), 2 C.F.R. Part 25, pursuant to which the award term set forth in Appendix A to 2 C.F.R. Part 25 is hereby incorporated by reference.

iii. Reporting Subaward and Executive Compensation Information, 2 C.F.R. Part 170, pursuant to which the award term set forth in Appendix A to 2 C.F.R. Part 170 is hereby incorporated by reference.

iv. OMB Guidelines to Agencies on Government Wide Debarment and Suspension (Nonprocurement), 2 C.F.R. Part 180, including the requirement to include a term or condition in all lower tier covered transactions (Agreements and sub-contractors described in 2 C.F.R. Part 180, subpart B) that the award is subject to 2 C.F.R. Part 180 and Treasury's implementing regulation at 31 C.F.R. Part 19.

v. Subrecipient Integrity and Performance Matters, pursuant to which the award term set forth in 2 C.F.R. Part 200, Appendix XII to Part 200 is hereby incorporated by reference.

vi. Government Wide Requirements for Drug-Free Workplace, 31 C.F.R. Part 20.

vii. New Restrictions on Lobbying, 31 C.F.R. Part 21.

viii. Uniform Relocation Assistance and Real Property Acquisitions Act of 1970 (42 U.S.C. §§ 4601-4655) and implementing regulations.

ix. Generally applicable federal environmental laws and regulations.

c. Statutes and regulations prohibiting discrimination applicable to this award include, without limitation, the following:

i. Title VI of the Civil Rights Act of 1964 (42 U.S.C. §§ 2000(d) et seq.) and Treasury's implementing regulations at 31 C.F.R. Part 22, which prohibit discrimination on the basis of race, color, or national origin under programs or activities receiving federal financial assistance;

ii. The Fair Housing Act, Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§ 3601 et seq.), which prohibits discrimination in housing on the basis of race, color, religion, national origin, sex, familial status, or disability;

iii. Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of disability under any program or activity receiving federal financial assistance;

iv. The Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101 et seq.), and Treasury's implementing regulations at 31 C.F.R. Part 23, which prohibit discrimination on the basis of age in programs or activities receiving federal financial assistance; and

v. Title II of the Americans with Disabilities Act of 1990, as amended (42 U.S.C. §§ 12101 et seq.), which prohibits discrimination on the basis of disability under programs, activities, and services provided or made available by state and local governments or instrumentalities or agencies thereto.

10. Remedial Actions. In the event of Subrecipient's noncompliance with section 603 of the Act, other applicable laws, Treasury's implementing regulations, guidance, or any reporting or other program requirements, Treasury may impose additional conditions on the receipt of a subsequent tranche of future award funds, if any, or take other available remedies as set forth in 2 C.F.R. § 200.339. In the case of a violation of section 603(c) of the Act regarding the use of funds, previous payments shall be subject to recoupment as provided in section 603(e) of the Act and any additional payments may be subject to withholding as provided in section 603(e) of the Act, as applicable.

11. Hatch Act. Subrecipient agrees to comply, as applicable, with requirements of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328), which limit certain political activities of State or local government employees whose principal employment is in connection with an activity financed in whole or in part by this federal assistance.

12. Copeland Anti-kickback Act. Subrecipient agrees to comply with the requirements of the Copeland Anti-kickback Act (40 U.S.C. § 3145), prohibiting a federal funds grantee engaged in constructing, carrying out, completing, or repairing public buildings, public works, or buildings or works that at least partly are financed by a loan or grant from the Federal Government from inducing an employee into giving up any part of the compensation that he or she is entitled to under the terms of his or her employment contract.
13. Contract Work Hours and Safety Standards Act. Subrecipient agrees to comply, as applicable, with the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 3701-3708), regarding contracts for public works involving the employment of laborers or mechanics.
14. Rights to Inventions Made Under a Contract or Agreement. Subrecipient agrees to comply, as applicable, with the Rights to Inventions Made Under a Contract or Agreement (37 C.F.R. Part 401). For any federally assisted contract, awarded to a small business firm or nonprofit organization as defined in 37 CFR 401.2 for the performance of experimental, developmental, or research work, the Subrecipient. Subrecipient agrees to all of the terms in 37 CFR 401.14(a).
15. Clean Air and Water Pollution Control Acts. Subrecipient agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. §§ 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. §§ 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).
16. Byrd Anti-Lobbying Amendment. Subrecipient agrees to comply with the Byrd Anti-Lobbying Amendment (31 U.S.C. § 1352), prohibiting the use of funds appropriated by any Act to be expended by the recipient of a Federal contract, grant, loan, or cooperative agreement to pay 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 certain Federal actions.
17. Procurement of Recovered Materials. Subrecipient agrees to comply, as applicable, with 2 C.F.R. § 200.323 pursuant to section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act.
18. Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment. Subrecipient agrees to comply with 2 C.F.R. § 200.216 regarding the prohibition of the utilization of grant funds for certain telecommunications and video surveillance services or equipment.
19. Domestic Preferences for Procurements. Subrecipient agrees to comply with 2 C.F.R. § 200.322 to provide a preference for the purchase, acquisition, or use of

goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products).

20. False Statements. Subrecipient understands that making false statements or claims in connection with this award is a violation of federal law and may result in criminal, civil, or administrative sanctions, including fines, imprisonment, civil damages and penalties, debarment from participating in federal awards or Agreements, and/or any other remedy available by law.

21. Publications. Any publications produced with funds from this award must display the following language: "This project [is being] [was] supported, in whole or in part, by federal award number SLFRP2653 awarded to the City of Lubbock by the U.S. Department of the Treasury."

22. Debts Owed the Federal Government.

a. Any funds paid to the Subrecipient:

i. in excess of the amount to which the Subrecipient is finally determined to be authorized to retain under the terms of this award;

ii. that are determined by the Treasury Office of Inspector General to have been misused; or

iii. that are determined by Treasury to be subject to a repayment obligation pursuant to sections 602(e) and 603(b)(2)(D) of the Act and have not been repaid by the Subrecipient shall constitute a debt to the federal government.

b. Any debts determined to be owed to the federal government must be paid promptly by Subrecipient. A debt is delinquent if it has not been paid by the date specified in Treasury's initial written demand for payment, unless other satisfactory arrangements have been made or if the Subrecipient knowingly or improperly retains funds that are a debt as defined in paragraph 14(a). Treasury will take any actions available to it to collect such a debt.

23. Disclaimer.

a. The United States expressly disclaims any and all responsibility or liability to Subrecipient or third persons for the actions of Subrecipient or third persons resulting in death, bodily injury, property damages, or any other losses resulting in any way from the performance of this award or any other losses resulting in any way from the performance of this award or any Agreement, or sub-contractor under this award.

b. The acceptance of this award by Subrecipient does not in any way establish an

agency relationship between the United States and Subrecipient.

24. Protections for Whistleblowers.

a. In accordance with 41 U.S.C. § 4712, Subrecipient may not discharge, demote, or otherwise discriminate against an employee in reprisal for disclosing to any of the list of persons or entities provided below, information that the employee reasonably believes is evidence of gross mismanagement of a federal Agreement or grant, a gross waste of federal funds, an abuse of authority relating to a federal Agreement or grant, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation related to a federal Agreement (including the competition for or negotiation of an Agreement) or grant.

b. The list of persons and entities referenced in the paragraph above includes the following:

- i. A member of Congress or a representative of a committee of Congress;
- ii. An Inspector General;
- iii. The Government Accountability Office;
- iv. A Treasury employee responsible for Agreement or grant oversight or management;
- v. An authorized official of the Department of Justice or other law enforcement agency;
- vi. A court or grand jury; or
- vii. A management official or other employee of Subrecipient, Subrecipient, or Sub-contractor who has the responsibility to investigate, discover, or address misconduct.

c. Subrecipient shall inform its employees in writing of the rights and remedies provided under this section, in the predominant native language of the workforce.

25. Increasing Seat Belt Use in the United States. Pursuant to Executive Order 13043, 62 FR 19217 (Apr. 18, 1997), Subrecipient should encourage its Subrecipients to adopt and enforce on-the-job seat belt policies and programs for their employees when operating company-owned, rented or personally owned vehicles.

26. Reducing Text Messaging While Driving. Pursuant to Executive Order 13513, 74 FR 51225 (Oct. 6, 2009), Subrecipient should encourage its employees and contractors to adopt and enforce policies that ban text messaging while driving, and Subrecipient should establish workplace safety policies to decrease accidents caused by distracted drivers.

ARTICLE XVIII. ASSURANCES OF COMPLIANCE WITH CIVIL RIGHTS REQUIREMENTS

ASSURANCES OF COMPLIANCE WITH TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

As a condition of receipt of federal financial assistance from the Department of the Treasury, the Subrecipient provides the assurances stated herein. The federal financial assistance may include federal grants, loans and Agreements to provide assistance to the Subrecipient's beneficiaries, the use or rent of Federal land or property at below market value, Federal training, a loan of Federal personnel, subsidies, and other arrangements with the intention of providing assistance. Federal financial assistance does not encompass Agreements of guarantee or insurance, regulated programs, licenses, procurement Agreements by the Federal government at market value, or programs that provide direct benefits.

The assurances apply to all federal financial assistance from or funds made available through the Department of the Treasury, including any assistance that the Subrecipient may request in the future.

The Civil Rights Restoration Act of 1987 provides that the provisions of the assurances apply to all of the operations of the Subrecipient's program(s) and activity(ies), so long as any portion of the Subrecipient's program(s) or activity(ies) is federally assisted in the manner prescribed above.

1. Subrecipient ensures its current and future compliance with Title VI of the Civil Rights Act of 1964, as amended, which prohibits exclusion from participation, denial of the benefits of, or subjection to discrimination under programs and activities receiving federal financial assistance, of any person in the United States on the ground of race, color, or national origin (42 U.S.C. § 2000d et seq.), as implemented by the Department of the Treasury Title VI regulations at 31 CFR Part 22 and other pertinent executive orders such as Executive Order 13166, directives, circulars, policies, memoranda, and/or guidance documents.

2. Subrecipient acknowledges that Executive Order 13166, "Improving Access to Services for Persons with Limited English Proficiency," seeks to improve access to federally assisted programs and activities for individuals who, because of national origin, have Limited English proficiency (LEP). Subrecipient understands that denying a person access to its programs, services, and activities because of LEP is a form of national origin discrimination prohibited under Title

VI of the Civil Rights Act of 1964 and the Department of the Treasury's implementing regulations. Accordingly, Subrecipient shall initiate reasonable steps, or comply with the Department of the Treasury's directives, to ensure that LEP persons have meaningful access to its programs, services, and activities. Subrecipient understands and agrees that meaningful access may entail providing language assistance services, including oral interpretation and written translation where necessary, to ensure effective communication in the Subrecipient's programs, services, and activities.

3. Subrecipient agrees to consider the need for language services for LEP persons when Subrecipient develops applicable budgets and conducts programs, services, and activities. As a resource, the Department of the Treasury has published its LEP guidance at 70 FR 6067. For more information on taking reasonable steps to provide meaningful access for LEP persons, please visit <http://www.lep.gov>.

4. Subrecipient acknowledges and agrees that compliance with the assurances constitutes a condition of continued receipt of federal financial assistance and is binding upon Subrecipient and Subrecipient's successors, transferees, and assignees for the period in which such assistance is provided.

5. Subrecipient acknowledges and agrees that it must require any sub-grantees, Subrecipients, sub-contractors, successors, transferees, and assignees to comply with assurances 1-4 above, and agrees to incorporate the following language in every Agreement or agreement subject to Title VI and its regulations between the Subrecipient and the Subrecipient's sub-grantees, Subrecipients, sub-contractors, successors, transferees, and assignees:

The sub-grantee, Subrecipient, sub-contractor, successor, transferee, and assignee shall comply with Title VI of the Civil Rights Act of 1964, which prohibits Subrecipients of federal financial assistance from excluding from a program or activity, denying benefits of, or otherwise discriminating against a person on the basis of race, color, or national origin (42 U.S.C. § 2000d et seq.), as implemented by the Department of the Treasury's Title VI regulations, 31 CFR Part 22, which are herein incorporated by reference and made a part of this Agreement (or agreement). Title VI also includes protection to persons with "Limited English Proficiency" in any program or activity receiving federal financial assistance, 42 U.S.C. § 2000d et seq., as implemented by the Department of the Treasury's Title VI regulations, 31 CFR Part 22, and herein incorporated by reference and made a part of this Agreement or agreement.

6. Subrecipient understands and agrees that if any real property or structure is provided or improved with the aid of federal financial assistance by the Department of the Treasury, this assurance obligates the Subrecipient, or in the case of a subsequent transfer, the transferee, for the period during which the real property or structure is used for a purpose for which the federal financial

assistance is extended or for another purpose involving the provision of similar services or benefits. If any personal property is provided, this assurance obligates the Subrecipient for the period during which it retains ownership or possession of the property.

7. Subrecipient shall cooperate in any enforcement or compliance review activities by the Department of the Treasury of the aforementioned obligations. Enforcement may include investigation, arbitration, mediation, litigation, and monitoring of any settlement agreements that may result from these actions. The Subrecipient shall comply with information requests, on-site compliance reviews and reporting requirements.

8. Subrecipient shall maintain a complaint log and inform the Department of the Treasury of any complaints of discrimination on the grounds of race, color, or national origin, and limited English proficiency covered by Title VI of the Civil Rights Act of 1964 and implementing regulations and provide, upon request, a list of all such reviews or proceedings based on the complaint, pending or completed, including outcome. Subrecipient also must inform the Department of the Treasury if Subrecipient has received no complaints under Title VI.

9. Subrecipient must provide documentation of an administrative agency's or court's findings of non-compliance of Title VI and efforts to address the non-compliance, including any voluntary compliance or other agreements between the Subrecipient and the administrative agency that made the finding. If the Subrecipient settles a case or matter alleging such discrimination, the Subrecipient must provide documentation of the settlement. If Subrecipient has not been the subject of any court or administrative agency finding of discrimination, please so state.

10. If the Subrecipient makes sub-awards to other agencies or other entities, the Subrecipient is responsible for ensuring that sub-Subrecipients also comply with Title VI and other applicable authorities covered in this document. State agencies that make sub-awards must have in place standard grant assurances and review procedures to demonstrate that they are effectively monitoring the civil rights compliance of sub-contractor.

The United States of America has the right to seek judicial enforcement of the terms of this assurance document and nothing in this document alters or limits the federal enforcement measures that the United States may take in order to address violations of this document or applicable federal law.

EXECUTED as of the Effective Date hereof.


CITY OF LUBBOCK

STARCARE SPECIALITY HEALTH
SYSTEM


DANIEL M. POPE, MAYOR


Beth Lawson, CEO

ATTEST:


Rebecca Garza, City Secretary

APPROVED AS TO CONTENT:


Bill Howerton, Deputy City Manager

APPROVED AS TO FORM:


Ryan Brooke, Assistant City Attorney

Information

Agenda Item

Resolution - City Manager: Consider a resolution authorizing the Mayor to execute American Rescue Plan Act (ARPA) Agreement No. 16515, by and between the City of Lubbock, and South Plains College, for healthcare training scholarships.

Item Summary

The City of Lubbock has allocated \$3.5 million from the American Rescue Plan Act (ARPA) funds for the development of job training programs. One of the job training programs that the City is considering is the creation of a Healthcare Training Grant Program for students enrolled in health sciences programs. The purpose of the program is to support individuals looking to enter the medical field or advance within the medical field. In addition, the program is for students specifically enrolled in one of the five major institutions that currently have health science programs, including South Plains College, Wayland Baptist University, Lubbock Christian University, Texas Tech University Health Sciences, and Covenant School of Nursing.

This effort is part of a broader effort called the Talent Pipeline Management (TPM) Program. Through the TPM process, a shortage of over 5,500 health care positions on the South Plains have been identified. The annual capacity of the area-training providers consists of only 1,300 student slots.

In order to help encourage more individuals to enter the medical field or advance within the medical field, the proposed Healthcare Training Scholarship Program includes a total of \$1.3 million from the job training ARPA allocation. This agreement is in the amount of \$416,000 to help fund up to 208 \$2,000 scholarships for students enrolled in a health sciences program at South Plains College. This will fund approximately half of the health sciences students enrolled at South Plains College.

Fiscal Impact

The agreement in the amount of \$416,000 is appropriated in CIP 8669.8302.10000, Job Training – ARPA.

Staff/Board Recommending

Erik Rejino, Assistant City Manager

Attachments

Resolution

Agreement

Budget Detail - 8669

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, ARPA Funding Agreement No. 16515 for healthcare training scholarships, by and between the City of Lubbock and South Plains College, of Levelland, 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:



Erik Rejino, Assistant City Manager

APPROVED AS TO FORM:



Kelli Leisure, Assistant City Attorney

THE STATE OF TEXAS §
 §
COUNTY OF LUBBOCK §

**AMERICAN RESCUE PLAN ACT (ARPA) FUNDING AGREEMENT FOR
HEALTHCARE TRAINING GRANTS**

This ARPA Funding Agreement for Job Training Services (the "Agreement") Contract No. 16515. is entered into this ____ day of _____ 2022, is by and between the City of Lubbock (the "City"), a Texas home rule municipal corporation, and South Plains College (the "Subrecipient"), collectively referred to herein as (the "Parties").

WHEREAS, the Coronavirus Disease 2019 ("COVID-19") pandemic caused numerous economic concerns throughout the United States, including in the City of Lubbock; and

WHEREAS, on March 27, 2020, the President signed into federal law the Coronavirus Aid, Relief, and Economic Security Act ("CARES Act"), which established the Coronavirus Relief Fund; and

WHEREAS, on March 11, 2021, the President signed into federal law the American Rescue Plan Act ("ARPA"), which established the Coronavirus State Fiscal Recovery Fund and Coronavirus Local Fiscal Recovery Funds ("CLFRF Fund"), which together make up the Coronavirus State and Local Fiscal Recovery Funds ("SLFRF") program. The SLFRF builds on and expands the support provided to the City, including through the Coronavirus Relief Fund; and

WHEREAS, pursuant to the SLFRF program, the United States Department of Treasury has provided the City with a direct payment from the CLFRF Fund to cover certain costs, which includes the requirement of the obligation of funds by December 31, 2024 for following uses:

- (1) To respond to the public health emergency with respect to the Coronavirus Disease 2019 (COVID-19) or its negative economic impacts, including assistance to households, small businesses, and nonprofits, or aid to impacted industries such as tourism, travel, and hospitality;
- (2) To respond to workers performing essential work during the COVID-19 public health emergency by providing premium pay to eligible workers of the metropolitan city, non-entitlement unit of local government, or county that are performing such essential work, or by providing grants to eligible employers that have eligible workers who perform essential work;
- (3) For the provision of government services to the extent of the reduction in revenue of such metropolitan city, non-entitlement unit of local government, or county due to the COVID-19 public health emergency relative to revenues collected in the most recent full

fiscal year of the metropolitan city, non-entitlement unit of local government, or county prior to the emergency; and

(4) To make necessary investments in water, sewer, or broadband infrastructure; and

WHEREAS, the City is a metropolitan city as defined by section 5302(a)(4) of the Housing and Community Development Act of 1974 (42 U.S.C. § 5302(a)(4)); and

WHEREAS, the City is incurring the costs for the assistance provided under this Agreement prior to December 31, 2024; and

WHEREAS, the primary goal of this Agreement is for the City to provide to the Subrecipient certain funds received from the CLFRF Funds in order that those funds shall be given as grants to certain selected students (the “Awardee”) enrolled in Subrecipient’s healthcare training programs; and

WHEREAS, the City has determined the funds the City is providing to Subrecipient under this Agreement are reasonable and necessary expenditures to address the COVID-19 public health emergency to respond to and assist the healthcare industry which has been impacted due to the COVID-19 pandemic; and

NOW THEREFORE, for and in consideration of the terms, covenants and conditions set forth in this Agreement, the City and the Subrecipient hereby agree as follows:

ARTICLE I. TERM

The term of this Agreement commences on the Effective Date and continues until allocated funds have been disbursed to the Subrecipient or December 31, 2024, whichever shall occur first.

ARTICLE II. SCOPE OF SERVICES

The Subrecipient shall be responsible for applying ARPA funds contemplated herein to the Awardee’s tuition account, for payment of tuition and fees, at Subrecipient’s institution where the Awardee is attending healthcare training classes as an enrolled student, either full-time or part-time, by the census date of the semester. Further, to be eligible for funds contemplated herein, the Awardee must be enrolled in one of the following programs at the Subrecipient’s institution:

- A. Associate Degree Nursing;
- B. Vocational Nursing;
- C. Child Development;
- D. Emergency Medical Services;

- E. Physical Therapist Assistant;
- F. Radiologic Technology;
- G. Respiratory Care;
- H. Surgical Technology; or
- I. Sterile Processing Technician.

ARTICLE III. CONVEYANCE OF ARPA GRANT FUNDS

The City agrees to convey ARPA grant funds to the Subrecipient as grant funds for the Awardee, and the Subrecipient shall apply the funds to the Awardee's tuition account at the Subrecipient's institution upon receipt. The City shall select individual applicants to be designated as Awardees and such selection shall be within the sole discretion of the City. Total funding allocated to the Subrecipient for these purposes shall be for an amount not to exceed four hundred sixteen thousand and NO/100 dollars (\$416,000.00). If for any reason the Awardee is not enrolled for courses at the Subrecipient's institution, the Subrecipient shall immediately refund the grant funds to the City. All funding shall be subject to the requirements of 42 U.S.C. § 803 and no funds shall be disbursed to the Subrecipient after December 31, 2024.

ARTICLE IV. TERMINATION

A. General. Either Party may terminate this Agreement, for any reason or convenience, upon thirty (30) days written notice to the other Party. Any excess ARPA grant funds in the Subrecipient's possession shall be refunded to the City immediately upon termination.

B. Termination and Remedies. In the event the either Party breaches any term and/or provision of this Agreement, the aggrieved Party shall be entitled to exercise any right or remedy available to it by this Agreement, at law, equity, or otherwise, including without limitation, termination of this Agreement and assertion of an action for damages and/or injunctive relief. The exercise of any right or remedy shall not preclude the concurrent or subsequent exercise of any right or remedy and all rights and remedies shall be cumulative.

ARTICLE V. NON - ARBITRATION

Both Parties reserve 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, either Party 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 Agreement, this provision shall control.

ARTICLE VI. REPRESENTATIONS AND WARRANTIES

A. Existence. The Subrecipient is an educational institution duly organized, validly existing, and in good standing under the laws of the State of Texas and is qualified to carry on its business in the State of Texas.

B. Corporate Power. The Subrecipient has the corporate power to enter into and perform this Agreement and all other activities contemplated hereby.

C. Authorization. Execution, delivery, and performance of this Agreement and the activities contemplated hereby have been duly and validly authorized by all the requisite corporate action on the part of the Subrecipient. This Agreement constitutes legal, valid, and binding obligations of the Parties and is enforceable in accordance with the terms thereof.

D. Subrecipient. The Subrecipient maintains a professional staff and employs, as needed, other qualified specialists experienced in completing the Program, and is familiar with all laws, rules, and regulations, both state and federal, including, without limitation the applicable laws, regarding the Program contemplated hereby.

E. Performance. The Subrecipient will and shall conduct all activities contemplated by this Agreement in accordance with the standard of care, skill and diligence normally provided by a professional person in performance of similar services, and comply with all applicable laws, rules, and regulations, both state and federal, relating to professional services, as contemplated hereby.

F. Use of Copyrighted Material. The Subrecipient warrants that any materials provided by the Subrecipient for use by City pursuant to this Agreement shall not contain any proprietary material owned by any other party that is protected under the Copyright Act or any other law, statute, rule, order, regulation, ordinance or contractual obligation relating to the use or reproduction of materials. The Subrecipient shall be solely responsible for ensuring that any materials provided by the Subrecipient pursuant to this Agreement satisfy this requirement and the Subrecipient agrees to indemnify and hold City harmless from all liability or loss caused to City or to which City is exposed on account of the Subrecipient's failure to perform this duty.

ARTICLE VII. INDEPENDENT CONTRACTOR STATUS

The Subrecipient and the City agree that the Subrecipient shall perform the duties under this Agreement as an independent contractor and shall be considered as independent contractor under this Agreement and/or in its activities hereunder for all purposes. The Subrecipient has the sole discretion to determine the manner in which the Services are to be performed. During the performance of the Services under this Agreement, the Subrecipient and the Subrecipient's employees and/or sub-consultants, will not be considered, for any purpose, employees or agents of the City within the meaning or the application of any federal, state or local law or regulation, including without limitation, laws, rules or regulations regarding or related to unemployment

insurance, old age benefits, workers compensation, labor, personal injury or taxes of any kind.

ARTICLE VIII. INSURANCE

The Subrecipient shall procure and carry, at its sole cost and expense through the life of this Agreement, except as otherwise provided herein, insurance protection as hereinafter specified, in form and substance satisfactory to the City, 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 Agreement, including without limitation, the indemnity obligations set forth herein. The Subrecipient shall obtain and maintain in full force and effect during the term of this Agreement, and shall cause each approved sub-contractor or sub-consultant of the Subrecipient to obtain and maintain in full force and effect during the term of this Agreement, commercial general liability, professional liability and automobile liability coverage for non-owned and hired vehicles 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. Except for Professional Liability, the policies will be written on an occurrence basis, subject to the following minimum limits of liability:

Commercial General Liability:

Per Occurrence Single Limit: \$1,000,000

General Aggregate Limit: \$2,000,000

Professional Liability:

Combined Single Limit: \$2,000,000

The Subrecipient shall further cause any approved sub-contractor or sub-consultant to procure and carry, during the term of this Agreement, the insurance coverage required of Subrecipient herein, including without limitation, Professional Liability coverage, protecting the City against losses caused by the professional negligence of the approved sub-contractor or sub-consultant. The City shall be listed as a primary and noncontributory additional insured with respect to the Automobile Liability and Commercial General Liability and shall be granted a waiver of subrogation under those policies. The Subrecipient shall provide a Certificate of Insurance to the City as evidence of coverage.

The Certificate shall provide 30 days' notice of cancellation. A copy of the additional insured endorsement and waiver of subrogation attached to the policy shall be included in the Certificate. The Subrecipient shall elect to obtain worker's compensation coverage pursuant to Section 406.002 of the Texas Labor Code. Further, the Subrecipient shall maintain said coverage throughout the term of this Agreement and shall comply with all provisions of Title 5 of the Texas Labor Code to ensure that the Subrecipient maintains said coverage. The Subrecipient may maintain Occupational Accident and Disability Insurance in lieu of Worker's Compensation. In either event, the policy must be endorsed to include a waiver of subrogation in favor of the City. If at any time during the life of the Agreement or any extension hereof, the Subrecipient fails to maintain the

required insurance in full force and effect, the Subrecipient shall be in breach hereof and all work under the Agreement shall be discontinued immediately.

Notwithstanding anything contained herein to the contrary, the professional liability policy shall be maintained at the Subrecipient's sole cost and expense. The retroactive date shall be no later than the commencement of the performance of this Agreement and the discovery period (possibly through tail coverage) shall be no less than 10 years after the completion of the Services provided for in this Agreement. The provisions of this Article IX shall survive the termination or expiration of this Agreement.

ARTICLE IX. EMPLOYMENT OF AGENTS/RETAINING OF CONSULTANTS

The Subrecipient may employ or retain consultants, sub-contractors, or third parties (any of which are referred to herein as "Sub-consultant"), to perform certain duties of Subrecipient under this Agreement, provided that the City approves the retaining of Sub-consultants. The Subrecipient is at all times responsible to the City to perform the Services as provided in this Agreement and the Subrecipient is in no event relieved of any obligation under this Agreement upon retainage of any approved Sub-consultant. Any agent and/or Sub-consultant retained and/or employed by the Subrecipient shall be required by the Subrecipient to carry, for the protection and benefit of the City and the Subrecipient and naming said third parties as additional insureds, insurance as described above required to be carried by the Subrecipient in this Agreement.

The Subrecipient represents that such services are either under applicable value thresholds or are otherwise exempt from notice and/or bid requirements under Texas Law.

ARTICLE X. CONFIDENTIALITY

The Subrecipient 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.

ARTICLE XI. INDEMNITY

TO THE EXTENT ALLOWED BY THE LAWS OF THE STATE OF TEXAS, THE SUBRECIPIENT 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 SUBRECIPIENT, ITS AGENTS, EMPLOYEES, AND/OR

SUBCONSULTANTS, 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.

ARTICLE XII. COMPLIANCE WITH APPLICABLE LAWS

The Subrecipient shall comply with all applicable federal, state and local laws, statutes, ordinances, rules and regulations relating, in any way, manner or form, to the activities under this Agreement, and any amendments thereto.

ARTICLE XIII. NOTICE

A. General. Whenever notice from the Subrecipient to the City or the City to the Subrecipient is required or permitted by this Agreement and no other method of notice is provided, such notice shall be given by (1) actual delivery of the written notice to the other party by hand (in which case such notice shall be effective upon delivery); (2) facsimile (in which case such notice shall be effective upon delivery); or (3) by depositing the written notice in the United States mail, properly addressed to the other party at the address provided in this article, registered or certified mail, return receipt requested, in which case such notice shall be effective on the third business day after such notice is so deposited.

B. Subrecipient's Address. The Subrecipient's address and numbers for the purposes of notice are:

South Plains College
Attn: Dr. Robin Satterwhite
1401 College Avenue
Levelland, TX 79336
Telephone: (806) 716-2200
Email: rsatterwhite@southplainscollege.edu

C. City's Address. The City's address and numbers for the purposes of notice are:

Erik Rejino, Assistant City Manager
City of Lubbock
P.O. Box 2000
1314 Avenue K
Lubbock, Texas 79457
Email: erejino@mylubbock.us
Telephone: 806-775-2355

D. Change of Address. Either party may change its address or numbers for purposes of notice by giving written notice to the other party as provided herein, referring

specifically to this Agreement, and setting forth such new address or numbers. The address or numbers shall become effective on the 15th day after such notice is effective.

ARTICLE XIV. CITY-PROVIDED DATA AND RESPONSIBILITIES

Provision of Data. The City shall furnish the Subrecipient non-confidential studies, reports and other available data in the possession of the City pertinent to the Subrecipient's Services. The Subrecipient shall be entitled to use and rely, so long as such reliance is reasonable, upon all such provided data.

ARTICLE XV. MISCELLANEOUS

A. Captions. The captions for the articles and sections in this Agreement are inserted in this Agreement strictly for the parties' convenience in identifying the provisions to this Agreement and shall not be given any effect in construing this Agreement.

B. Audit. The Subrecipient shall provide access to its corporate books and records to the City. The City may audit, at its expense and during normal business hours, the Subrecipient's books and records with respect to this Agreement between the Subrecipient and the City.

C. Records. The Subrecipient shall maintain enrollment records of the Awardee and the amount of scholarship applied to each Awardee's account that are necessary to substantiate the services provided by the Subrecipient.

D. Assignability. The Subrecipient may not assign this Agreement without the prior written approval of the City.

E. Successor and Assigns. This Agreement binds and inures to the benefit of the City and the Subrecipient, and in the case of the City, its respective successors, legal representatives, and assigns, and in the case of the Subrecipient, its permitted successors and assigns.

F. Construction and Venue.

THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS. THIS AGREEMENT IS PERFORMABLE IN LUBBOCK COUNTY, TEXAS. THE PARTIES HERETO HEREBY IRREVOCABLY CONSENT TO THE SOLE AND EXCLUSIVE JURISDICTION AND VENUE OF THE COURTS OF COMPETENT JURISDICTION OF THE STATE OF TEXAS, COUNTY OF LUBBOCK, FOR THE PURPOSES OF ALL LEGAL PROCEEDINGS ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE ACTIONS THAT ARE CONTEMPLATED HEREBY.

G. Severability. If any provision of this Agreement is ever held to be invalid or ineffective by any court of competent jurisdiction with respect to any person or circumstance, the remainder of this Agreement and the application of such provision to

persons and/or circumstances other than those with respect to which it is held invalid or ineffective shall not be affected thereby.

H. Amendment. No amendment, modification, or alteration of the terms of this Agreement shall be binding unless such amendment, modification, or alteration is in writing, dated subsequent to this Agreement, and duly authorized and executed by the Subrecipient and the City.

I. Entire Agreement. This Agreement contains the entire agreement between the City and the Subrecipient, and there are no other written or oral promises, conditions, warranties, or representations relating to or affecting the matters contemplated herein.

J. No Joint Enterprise. Nothing contained herein shall be construed to imply a joint venture, joint enterprise, partnership or principal – agent relationship between the Subrecipient and the City.

K. Documents Owned by City. Any and all documents, drawings and specifications prepared by Subrecipient as part of the Services hereunder, shall become the property of the City when the Subrecipient has been compensated as set forth in Article III, above. The Subrecipient shall make copies of any and all work products for its files.

L. Notice of Waiver. A waiver by either the City or the Subrecipient of a breach of this Agreement must be in writing and duly authorized to be effective. In the event either party shall execute and deliver such waiver, such waiver shall not affect the waiving party's rights with respect to any other or subsequent breach.

M. Third Party Activities. Nothing in this Agreement shall be construed to provide any rights or benefits whatsoever to any party other than the City and the Subrecipient.

N. Non-Appropriation. 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 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 services covered by this Agreement is spent, whichever event occurs first (the "Non-Appropriation Date"). If at any time funds are not appropriated for the continuance of this Agreement, cancellation shall be accepted by the Subrecipient 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 Agreement beyond the Non-Appropriation Date.

O. Contracts with Companies Engaged in Business with Iran, Sudan, or Foreign Terrorist Organization Prohibited. Pursuant to Section 2252.152 of the Texas Government Code, the City is prohibited 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.

P. 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.

Q. Texas Government Code 2274. By entering into this Agreement, Subrecipient verifies that: (1) it does not, and will not for the duration of the contract, have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association or (2) the verification required by Section 2274.002 of the Texas Government Code does not apply to the contract. If Subrecipient is a company with 10 or more full-time employees and if this Agreement has a value of at least \$100,000 or more, Subrecipient verifies that, pursuant to Texas Government Code Chapter 2274, it does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and will not discriminate during the term of the contract against a firearm entity or firearm trade association.

R. Subrecipient represents and warrants that: (1) it does not, and will not for the duration of the contract, boycott energy companies or (2) the verification required by Section 2274.002 of the Texas Government Code does not apply to the contract. If Subrecipient is a company with 10 or more full-time employees and if this Agreement has a value of at least \$100,000 or more, Subrecipient verifies that, pursuant to Texas Government Code Chapter 2274, it does not boycott energy companies; and will not boycott energy companies during the term of the Agreement. This verification is not required for an agreement where a governmental entity determines that these requirements are inconsistent with the governmental entity's constitutional or statutory duties related to the issuance, incurrence, or management of debt obligations or the deposit, custody, management, borrowing, or investment of funds.

S. Texas Public Information Act. The requirements of Subchapter J, Chapter 552, Government Code, may apply to this contract and the Subrecipient or vendor agrees that the contract can be terminated if the Subrecipient 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, Subrecipient 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.

T. Professional Responsibility. All architectural or engineering services to be performed shall be done with the professional skill and care ordinarily provided by competent architects or engineers practicing under the same or similar circumstances and professional license.

U. Nothing in this Agreement expressed or implied is intended or shall be construed to waive South Plains College's governmental immunities.

ARTICLE XVI. AGREEMENT WITH SUBRECIPIENT OF FEDERAL RECOVERY FUNDS TERMS AND CONDITIONS

1. Use of Funds.

a. Subrecipient understands and agrees that the funds disbursed under this award may only be used in compliance with section 603(c) of the Social Security Act (the Act) and Treasury's regulations implementing that section and guidance.

b. Subrecipient will determine prior to engaging in any Program using this assistance that it has the institutional, managerial, and financial capability to ensure proper planning, management, and completion of such Program.

2. Period of Performance. The period of performance for this award begins on the date hereof and ends on December 31, 2024. As set forth in Treasury's implementing regulations, Subrecipient may use award funds to cover eligible costs incurred during the period that begins on March 3, 2021, and ends on December 31, 2024.

3. Reporting. Subrecipient agrees to comply with any reporting obligations established by Treasury as they relate to this award.

4. Maintenance of and Access to Records

a. Subrecipient shall maintain records and financial documents sufficient to evidence compliance with section 603(c), Treasury's regulations implementing that section, and guidance issued by Treasury regarding the foregoing.

b. The Treasury Office of Inspector General and the Government Accountability Office, or their authorized representatives, shall have the right of access to records (electronic and otherwise) of Subrecipient in order to conduct audits or other investigations.

c. Records shall be maintained by Subrecipient for a period of five (5) years after all funds have been expended or returned to Treasury, whichever is later.

5. Pre-award Costs. Pre-award costs, as defined in 2 C.F.R. § 200.458, may not be paid with funding from this award.

6. Administrative Costs. Subrecipient may use funds provided under this award to cover both direct and indirect costs.
7. Cost Sharing. Cost sharing or matching funds are not required to be provided by Subrecipient.
8. Conflicts of Interest. The City of Lubbock understands and agrees it must maintain a conflict of interest policy consistent with 2 C.F.R. § 200.318(c) and that such conflict of interest policy is applicable to each activity funded under this award. Recipients and Subrecipients must disclose in writing to the Office of the State Controller or the pass-through entity, as appropriate, any potential conflict of interest affecting the awarded funds in accordance with 2 C.F.R. § 200.112. The Office of the State Controller shall disclose such conflict to Treasury.
9. Compliance with Applicable Law and Regulations.
 - a. Subrecipient agrees to comply with the requirements of section 603 of the Act, regulations adopted by Treasury pursuant to section 603(f) of the Act, and guidance issued by Treasury regarding the foregoing. Subrecipient also agrees to comply with all other applicable federal statutes, regulations, and executive orders, and Subrecipient shall provide for such compliance by other parties in any agreements it enters into with other parties relating to this award.
 - b. Federal regulations applicable to this award include, without limitation, the following:
 - i. Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 C.F.R. Part 200, other than such provisions as Treasury may determine are inapplicable to this Award and subject to such exceptions as may be otherwise provided by Treasury. Subpart F – Audit Requirements of the Uniform Guidance, implementing the Single Audit Act, shall apply to this award.
 - ii. Universal Identifier and System for Award Management (SAM), 2 C.F.R. Part 25, pursuant to which the award term set forth in Appendix A to 2 C.F.R. Part 25 is hereby incorporated by reference.
 - iii. Reporting Subaward and Executive Compensation Information, 2 C.F.R. Part 170, pursuant to which the award term set forth in Appendix A to 2 C.F.R. Part 170 is hereby incorporated by reference.
 - iv. OMB Guidelines to Agencies on Government Wide Debarment and Suspension (Nonprocurement), 2 C.F.R. Part 180, including the requirement to include a term or condition in all lower tier covered transactions (Agreements and sub-contractors described in 2 C.F.R. Part

180, subpart B) that the award is subject to 2 C.F.R. Part 180 and Treasury's implementing regulation at 31 C.F.R. Part 19.

v. Subrecipient Integrity and Performance Matters, pursuant to which the award term set forth in 2 C.F.R. Part 200, Appendix XII to Part 200 is hereby incorporated by reference.

vi. Government Wide Requirements for Drug-Free Workplace, 31 C.F.R. Part 20.

vii. New Restrictions on Lobbying, 31 C.F.R. Part 21.

viii. Uniform Relocation Assistance and Real Property Acquisitions Act of 1970 (42 U.S.C. §§ 4601-4655) and implementing regulations.

ix. Generally applicable federal environmental laws and regulations.

c. Statutes and regulations prohibiting discrimination applicable to this award include, without limitation, the following:

i. Title VI of the Civil Rights Act of 1964 (42 U.S.C. §§ 2000(d) et seq.) and Treasury's implementing regulations at 31 C.F.R. Part 22, which prohibit discrimination on the basis of race, color, or national origin under programs or activities receiving federal financial assistance;

ii. The Fair Housing Act, Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§ 3601 et seq.), which prohibits discrimination in housing on the basis of race, color, religion, national origin, sex, familial status, or disability;

iii. Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of disability under any program or activity receiving federal financial assistance;

iv. The Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101 et seq.), and Treasury's implementing regulations at 31 C.F.R. Part 23, which prohibit discrimination on the basis of age in programs or activities receiving federal financial assistance; and

v. Title II of the Americans with Disabilities Act of 1990, as amended (42 U.S.C. §§ 12101 et seq.), which prohibits discrimination on the basis of disability under programs, activities, and services provided or made available by state and local governments or instrumentalities or agencies thereto.

10. Remedial Actions. In the event of Subrecipient's noncompliance with section 603

of the Act, other applicable laws, Treasury's implementing regulations, guidance, or any reporting or other program requirements, Treasury may impose additional conditions on the receipt of a subsequent tranche of future award funds, if any, or take other available remedies as set forth in 2 C.F.R. § 200.339. In the case of a violation of section 603(c) of the Act regarding the use of funds, previous payments shall be subject to recoupment as provided in section 603(e) of the Act and any additional payments may be subject to withholding as provided in section 603(e) of the Act, as applicable.

11. Hatch Act. Subrecipient agrees to comply, as applicable, with requirements of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328), which limit certain political activities of State or local government employees whose principal employment is in connection with an activity financed in whole or in part by this federal assistance.
12. Copeland Anti-kickback Act. Subrecipient agrees to comply with the requirements of the Copeland Anti-kickback Act (40 U.S.C. § 3145), prohibiting a federal funds grantee engaged in constructing, carrying out, completing, or repairing public buildings, public works, or buildings or works that at least partly are financed by a loan or grant from the Federal Government from inducing an employee into giving up any part of the compensation that he or she is entitled to under the terms of his or her employment contract.
13. Contract Work Hours and Safety Standards Act. Subrecipient agrees to comply, as applicable, with the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 3701-3708), regarding contracts for public works involving the employment of laborers or mechanics.
14. Rights to Inventions Made Under a Contract or Agreement. Subrecipient agrees to comply, as applicable, with the Rights to Inventions Made Under a Contract or Agreement (37 C.F.R. Part 401). For any federally assisted contract, awarded to a small business firm or nonprofit organization as defined in 37 CFR 401.2 for the performance of experimental, developmental, or research work, the Subrecipient. Subrecipient agrees to all of the terms in 37 CFR 401.14(a).
15. Clean Air and Water Pollution Control Acts. Subrecipient agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. §§ 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. §§ 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).
16. Byrd Anti-Lobbying Amendment. Subrecipient agrees to comply with the Byrd Anti-Lobbying Amendment (31 U.S.C. § 1352), prohibiting the use of funds appropriated by any Act to be expended by the recipient of a Federal contract, grant, loan, or cooperative agreement to pay 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 certain Federal actions.

17. Procurement of Recovered Materials. Subrecipient agrees to comply, as applicable, with 2 C.F.R. § 200.323 pursuant to section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act.
18. Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment. Subrecipient agrees to comply with 2 C.F.R. § 200.216 regarding the prohibition of the utilization of grant funds for certain telecommunications and video surveillance services or equipment.
19. Domestic Preferences for Procurements. Subrecipient agrees to comply with 2 C.F.R. § 200.322 to provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products).
20. False Statements. Subrecipient understands that making false statements or claims in connection with this award is a violation of federal law and may result in criminal, civil, or administrative sanctions, including fines, imprisonment, civil damages and penalties, debarment from participating in federal awards or Agreements, and/or any other remedy available by law.
21. Publications. Any publications produced with funds from this award must display the following language: "This Program is being supported, in whole or in part, by federal award number SLFRP2653 awarded to the City of Lubbock by the U.S. Department of the Treasury."
22. Debts Owed the Federal Government.
 - a. Any funds paid to the Subrecipient:
 - i. in excess of the amount to which the Subrecipient is finally determined to be authorized to retain under the terms of this award;
 - ii. that are determined by the Treasury Office of Inspector General to have been misused; or
 - iii. that are determined by Treasury to be subject to a repayment obligation pursuant to sections 602(e) and 603(b)(2)(D) of the Act and have not been repaid by the Subrecipient shall constitute a debt to the federal government.
 - b. Any debts determined to be owed to the federal government must be paid promptly by Subrecipient. A debt is delinquent if it has not been paid by the date

specified in Treasury's initial written demand for payment, unless other satisfactory arrangements have been made or if the Subrecipient knowingly or improperly retains funds that are a debt as defined in paragraph 14(a). Treasury will take any actions available to it to collect such a debt.

23. Disclaimer.

a. The United States expressly disclaims any and all responsibility or liability to Subrecipient or third persons for the actions of Subrecipient or third persons resulting in death, bodily injury, property damages, or any other losses resulting in any way from the performance of this award or any other losses resulting in any way from the performance of this award or any Agreement, or sub-contractor under this award.

b. The acceptance of this award by Subrecipient does not in any way establish an agency relationship between the United States and Subrecipient.

24. Protections for Whistleblowers.

a. In accordance with 41 U.S.C. § 4712, Subrecipient may not discharge, demote, or otherwise discriminate against an employee in reprisal for disclosing to any of the list of persons or entities provided below, information that the employee reasonably believes is evidence of gross mismanagement of a federal Agreement or grant, a gross waste of federal funds, an abuse of authority relating to a federal Agreement or grant, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation related to a federal Agreement (including the competition for or negotiation of an Agreement) or grant.

b. The list of persons and entities referenced in the paragraph above includes the following:

- i. A member of Congress or a representative of a committee of Congress;
- ii. An Inspector General;
- iii. The Government Accountability Office;
- iv. A Treasury employee responsible for Agreement or grant oversight or management;
- v. An authorized official of the Department of Justice or other law enforcement agency;
- vi. A court or grand jury; or
- vii. A management official or other employee of Subrecipient,

Subrecipient, or Sub-contractor who has the responsibility to investigate, discover, or address misconduct.

c. Subrecipient shall inform its employees in writing of the rights and remedies provided under this section, in the predominant native language of the workforce.

25. Increasing Seat Belt Use in the United States. Pursuant to Executive Order 13043, 62 FR 19217 (Apr. 18, 1997), Subrecipient should encourage its Subrecipients to adopt and enforce on-the-job seat belt policies and programs for their employees when operating company-owned, rented or personally owned vehicles.

26. Reducing Text Messaging While Driving. Pursuant to Executive Order 13513, 74 FR 51225 (Oct. 6, 2009), Subrecipient should encourage its employees and contractors to adopt and enforce policies that ban text messaging while driving, and Subrecipient should establish workplace safety policies to decrease accidents caused by distracted drivers.

ARTICLE XVII. ASSURANCES OF COMPLIANCE WITH CIVIL RIGHTS REQUIREMENTS

ASSURANCES OF COMPLIANCE WITH TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

As a condition of receipt of federal financial assistance from the Department of the Treasury, the Subrecipient provides the assurances stated herein. The federal financial assistance may include federal grants, loans and Agreements to provide assistance to the Subrecipient's beneficiaries, the use or rent of Federal land or property at below market value, Federal training, a loan of Federal personnel, subsidies, and other arrangements with the intention of providing assistance. Federal financial assistance does not encompass Agreements of guarantee or insurance, regulated programs, licenses, procurement Agreements by the Federal government at market value, or programs that provide direct benefits.

The assurances apply to all federal financial assistance from or funds made available through the Department of the Treasury, including any assistance that the Subrecipient may request in the future.

The Civil Rights Restoration Act of 1987 provides that the provisions of the assurances apply to all of the operations of the Subrecipient's program(s) and activity(ies), so long as any portion of the Subrecipient's program(s) or activity(ies) is federally assisted in the manner prescribed above.

1. Subrecipient ensures its current and future compliance with Title VI of the Civil Rights Act of 1964, as amended, which prohibits exclusion from participation, denial of the benefits of, or subjection to discrimination under programs and activities receiving federal financial assistance, of any person in the

United States on the ground of race, color, or national origin (42 U.S.C. § 2000d et seq.), as implemented by the Department of the Treasury Title VI regulations at 31 CFR Part 22 and other pertinent executive orders such as Executive Order 13166, directives, circulars, policies, memoranda, and/or guidance documents.

2. Subrecipient acknowledges that Executive Order 13166, "Improving Access to Services for Persons with Limited English Proficiency," seeks to improve access to federally assisted programs and activities for individuals who, because of national origin, have Limited English proficiency (LEP). Subrecipient understands that denying a person access to its programs, services, and activities because of LEP is a form of national origin discrimination prohibited under Title VI of the Civil Rights Act of 1964 and the Department of the Treasury's implementing regulations. Accordingly, Subrecipient shall initiate reasonable steps, or comply with the Department of the Treasury's directives, to ensure that LEP persons have meaningful access to its programs, services, and activities. Subrecipient understands and agrees that meaningful access may entail providing language assistance services, including oral interpretation and written translation where necessary, to ensure effective communication in the Subrecipient's programs, services, and activities.

3. Subrecipient agrees to consider the need for language services for LEP persons when Subrecipient develops applicable budgets and conducts programs, services, and activities. As a resource, the Department of the Treasury has published its LEP guidance at 70 FR 6067. For more information on taking reasonable steps to provide meaningful access for LEP persons, please visit <http://www.lep.gov>.

4. Subrecipient acknowledges and agrees that compliance with the assurances constitutes a condition of continued receipt of federal financial assistance and is binding upon Subrecipient and Subrecipient's successors, transferees, and assignees for the period in which such assistance is provided.

5. Subrecipient acknowledges and agrees that it must require any sub-grantees, Subrecipients, sub-contractors, successors, transferees, and assignees to comply with assurances 1-4 above, and agrees to incorporate the following language in every Agreement or agreement subject to Title VI and its regulations between the Subrecipient and the Subrecipient's sub-grantees, Subrecipients, sub-contractors, successors, transferees, and assignees:

The sub-grantee, Subrecipient, sub-contractor, successor, transferee, and assignee shall comply with Title VI of the Civil Rights Act of 1964, which prohibits Subrecipients of federal financial assistance from excluding from a program or activity, denying benefits of, or otherwise discriminating against a person on the basis of race, color, or national origin (42 U.S.C. § 2000d et seq.), as implemented by the Department of the Treasury's Title VI regulations, 31 CFR Part 22, which are herein incorporated by reference and made a part of this Agreement (or agreement). Title VI also

includes protection to persons with "Limited English Proficiency" in any program or activity receiving federal financial assistance, 42 U.S.C. § 2000d et seq., as implemented by the Department of the Treasury's Title VI regulations, 31 CFR Part 22, and herein incorporated by reference and made a part of this Agreement or agreement.

6. Subrecipient understands and agrees that if any real property or structure is provided or improved with the aid of federal financial assistance by the Department of the Treasury, this assurance obligates the Subrecipient, or in the case of a subsequent transfer, the transferee, for the period during which the real property or structure is used for a purpose for which the federal financial assistance is extended or for another purpose involving the provision of similar services or benefits. If any personal property is provided, this assurance obligates the Subrecipient for the period during which it retains ownership or possession of the property.

7. Subrecipient shall cooperate in any enforcement or compliance review activities by the Department of the Treasury of the aforementioned obligations. Enforcement may include investigation, arbitration, mediation, litigation, and monitoring of any settlement agreements that may result from these actions. The Subrecipient shall comply with information requests, on-site compliance reviews and reporting requirements.

8. Subrecipient shall maintain a complaint log and inform the Department of the Treasury of any complaints of discrimination on the grounds of race, color, or national origin, and limited English proficiency covered by Title VI of the Civil Rights Act of 1964 and implementing regulations and provide, upon request, a list of all such reviews or proceedings based on the complaint, pending or completed, including outcome. Subrecipient also must inform the Department of the Treasury if Subrecipient has received no complaints under Title VI.

9. Subrecipient must provide documentation of an administrative agency's or court's findings of non-compliance of Title VI and efforts to address the non-compliance, including any voluntary compliance or other agreements between the Subrecipient and the administrative agency that made the finding. If the Subrecipient settles a case or matter alleging such discrimination, the Subrecipient must provide documentation of the settlement. If Subrecipient has not been the subject of any court or administrative agency finding of discrimination, please so state.

10. If the Subrecipient makes sub-awards to other agencies or other entities, the Subrecipient is responsible for ensuring that sub-Subrecipients also comply with Title VI and other applicable authorities covered in this document State agencies that make sub-awards must have in place standard grant assurances and review procedures to demonstrate that they are effectively monitoring the civil rights compliance of sub-contractor.

The United States of America has the right to seek judicial enforcement of the terms of this assurances document and nothing in this document alters or limits the federal enforcement measures that the United States may take in order to address violations of this document or applicable federal law.

EXECUTED as of the Effective Date hereof.

CITY OF LUBBOCK

SOUTH PLAINS COLLEGE

DANIEL M. POPE ,MAYOR

Dr. Robin Satterwhite, President

ATTEST:

Rebecca Garza, City Secretary

APPROVED AS TO CONTENT:



Erik Rejino, Assistant City Manager

APPROVED AS TO FORM:

Kelli Leisure, Assistant City Attorney

**City of Lubbock
Capital Project
Project Cost Detail
April 12, 2022**

Capital Project Number:	8669
Capital Project Name:	Job Training - ARPA

	Budget
<i>Encumbered/Expended</i>	\$ -
<i>Agenda Item April 12, 2022</i>	
South Plains College Contract	416,000
Lubbock Christian University Contract	150,000
Covenant Hospital Contract	224,000
Texas Tech University Health Sciences Center Contract	390,000
Wayland Baptist University	120,000
<i>Encumbered/Expended To Date</i>	<u>1,300,000</u>
<i>Estimated Cost for Remaining Appropriation</i>	
Job Training	<u>2,200,000</u>
<i>Remaining Appropriation</i>	<u>2,200,000</u>
Total Appropriation	<u><u>\$ 3,500,000</u></u>

Information

Agenda Item

Resolution - City Manager: Consider a resolution authorizing the Mayor to execute City of Lubbock, ARPA Funding Agreement No. 16528, by and between the City of Lubbock, and Lubbock Habitat for Humanity, for the construction of infrastructure to serve an affordable housing development in a qualified census tract,

Item Summary

Lubbock Habitat for Humanity will be responsible for the construction and installation of all water, sewer, and paving infrastructure which shall support an affordable housing development located in a Qualifying Census Tract (QCT), in an area known as the Talkington Addition. The affordable housing development will be comprised of a minimum of fifty-five (55) single-family residences. The homes will be completed and sold to a qualified household as an owner-occupied dwelling. The infrastructure and new single-family residences will be in conformance with the City of Lubbock Code of Ordinances, state, and federal laws.

Fiscal Impact

A maximum of \$1,250,000 in ARPA funding is allocated for this project.

Staff/Board Recommending

Bill Howerton, Deputy City Manager

Attachments

Habitat Resolution

Habitat 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, ARPA Funding Agreement No. 16528 for the construction of infrastructure to serve an affordable housing development in a qualified census tract, by and between the City of Lubbock and Lubbock Habitat for Humanity, 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

THE STATE OF TEXAS §
 §
COUNTY OF LUBBOCK §

**AMERICAN RESCUE PLAN ACT (ARPA) FUNDING AGREEMENT FOR THE
CONSTRUCTION OF INFRASTRUCTURE TO SERVE AN AFFORDABLE
HOUSING DEVELOPMENT IN A QUALIFIED CENSUS TRACT**

This ARPA Funding Agreement for Infrastructure Construction (the "Agreement") Contract No. 16528 is entered into this _____ day of _____ 2022, is by and between the City of Lubbock (the "City"), a Texas home rule municipal corporation, and Lubbock Habitat for Humanity, (the "Subrecipient").

WHEREAS, the Coronavirus Disease 2019 ("COVID-19") pandemic caused numerous public health and economic issues throughout the United States, including in the City of Lubbock; and

WHEREAS, on March 27, 2020, the President signed into federal law the Coronavirus Aid, Relief, and Economic Security Act ("CARES Act"), which established the Coronavirus Relief Fund; and

WHEREAS, on March 11, 2021, the President signed into federal law the American Rescue Plan Act ("ARPA"), which established the Coronavirus State Fiscal Recovery Fund and Coronavirus Local Fiscal Recovery Funds ("CLFRF Fund"), which together make up the Coronavirus State and Local Fiscal Recovery Funds ("SLFRF") program. The SLFRF builds on and expands the support provided to the City, including through the Coronavirus Relief Fund; and

WHEREAS, pursuant to the SLFRF program, the United States Department of Treasury has provided the City with a direct payment from the CLFRF Fund to cover certain costs, which includes the requirement of the obligation of funds by December 31, 2024 for following uses:

- (1) To respond to the public health emergency with respect to the Coronavirus Disease 2019 (COVID-19) or its negative economic impacts, including assistance to households, small businesses, and nonprofits, or aid to impacted industries such as tourism, travel, and hospitality;
- (2) To respond to workers performing essential work during the COVID-19 public health emergency by providing premium pay to eligible workers of the metropolitan city, non-entitlement unit of local government, or county that are performing such essential work, or by providing grants to eligible employers that have eligible workers who perform essential work;
- (3) For the provision of government services to the extent of the reduction in revenue of such metropolitan city, non-entitlement unit of local government, or county due to the COVID-19 public health emergency relative to revenues collected in the most recent full

fiscal year of the metropolitan city, non-entitlement unit of local government, or county prior to the emergency; and

(4) To make necessary investments in water, sewer, or broadband infrastructure; and

WHEREAS, the City is a metropolitan city as defined by section 5302(a)(4) of the Housing and Community Development Act of 1974 (42 U.S.C. § 5302(a)(4)); and

WHEREAS, the City is incurring the costs for the assistance provided under this Agreement prior to December 31, 2024; and

WHEREAS, the primary goal of this Agreement is for the City to provide to the Subrecipient certain funds received from the CLFRF Funds so that the Subrecipient may cause the construction and installation of infrastructure that will support a new affordable housing development for disproportionately impacted populations and communities living in a qualified census tract ("QCT") (*See* 31 CFR Part 35.6(b)(12)); and

WHEREAS, the Subrecipient shall develop and construct an affordable housing community of approximately 4.5 acres within a QCT which shall include construction of all necessary water, sewer, paving, and electric utility infrastructure (the "Project") to support the new affordable housing development of approximately fifty-five (55) single-family residences; and

WHEREAS, Subrecipient has an experienced staff and is qualified to provide oversight and management of the Project related to a new affordable housing development; and

WHEREAS, the City has determined the funds the City is providing to Subrecipient under this Agreement are reasonable and necessary expenditures to address the COVID-19 public health emergency to respond to and assist those who have experienced economic harm in the form of inadequate or poor-quality housing due to the COVID-19 pandemic; and

NOW THEREFORE, for and in consideration of the terms, covenants and conditions set forth in this Agreement, the City and the Subrecipient hereby agree as follows:

ARTICLE I. TERM

The term of this Agreement commences on the Effective Date and continues without interruption through December 31, 2026 or upon completion of the Project herein. An amendment to this Agreement resulting in an increase in the amount of the consideration must be approved by the City acting through its governing body.

ARTICLE II. SCOPE OF SERVICES

The Subrecipient shall be responsible for the construction and installation of all water, sewer, and paving infrastructure which shall support the affordable housing development Subrecipient shall construct in a QCT in the area as described as the Talkington Addition, as depicted on the preliminary plat attached hereto as "Exhibit A" and incorporated herein.

The Subrecipients affordable housing development shall be comprised of a minimum of fifty-five (55) single-family residences. Such affordable housing shall be constructed in a good and workmanlike manner and shall be utilized to increase the inventory of affordable housing units in the City of Lubbock. Further, the construction of the Project and new single-family residences shall be in conformance with the City of Lubbock Code of Ordinances, state, and federal laws, including but not limited to 2 C.F.R. Part 200.

ARTICLE III. CONVEYANCE OF ARPA GRANT FUNDS

The City agrees to convey ARPA grant funds to the Subrecipient for the installation of water, sewer, paving, and electric utility infrastructure that shall service the Subrecipient's new affordable housing development as stated herein, in an amount not to exceed one million one hundred thirty-six thousand three hundred twelve and NO/100 dollars (\$1,136,312.00) as estimated as the probable cost of construction of the infrastructure as set forth in "Exhibits B & C", attached hereto and incorporated herein.

The transfer of ARPA grant funds to the Subrecipient shall occur in four disbursements as follows:

- The first one-third of the funds shall be disbursed to the Subrecipient after thirty percent (30%) of the infrastructure described in "Exhibits B & C" has been constructed and inspected by the City;
- The second one-third of the funds shall be disbursed to the Subrecipient after sixty percent (60%) of the infrastructure described in "Exhibits B & C" has been constructed and inspected by the City;
- The final one-third of the funds shall be disbursed to the Subrecipient after ninety percent (90%) of the infrastructure described in "Exhibits B & C" has been constructed and inspected by the City; and
- The remaining ten percent (10%) of the funds shall be disbursed to the Subrecipient upon Project completion, the inspection by the City, and dedication of the Project to the City for public use.

ARTICLE IV. TERMINATION

A. General. The City may terminate this Agreement, for any reason or convenience, upon thirty (30) days written notice to the Subrecipient. In the event this Agreement is so terminated, the City shall only provide ARPA grant funds to the Subrecipient for the infrastructure contemplated here which is constructed up to the date

the Subrecipient is deemed to have received notice of termination, as provided herein. Further, any excess ARPA grant funds in the Subrecipient's possession shall be refunded to the City immediately upon termination.

B. Termination and Remedies. In the event the Subrecipient breaches any term and/or provision of this Agreement, the City shall be entitled to exercise any right or remedy available to it by this Agreement, at law, equity, or otherwise, including without limitation, termination of this Agreement and assertion of an action for damages and/or injunctive relief. The exercise of any right or remedy shall not preclude the concurrent or subsequent exercise of any right or remedy and all rights and remedies shall be cumulative.

ARTICLE V. 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 Agreement, this provision shall control.

ARTICLE VI. REPRESENTATIONS AND WARRANTIES

A. Existence. The Subrecipient is a limited liability corporation duly organized, validly existing, and in good standing under the laws of the State of Texas and is qualified to carry on its business in the State of Texas.

B. Corporate Power. The Subrecipient has the corporate power to enter into and perform this Agreement and all other activities contemplated hereby.

C. Authorization. Execution, delivery, and performance of this Agreement and the activities contemplated hereby have been duly and validly authorized by all the requisite corporate action on the part of the Subrecipient. This Agreement constitutes legal, valid, and binding obligations of the Subrecipient and is enforceable in accordance with the terms thereof.

D. Subrecipient. The Subrecipient maintains a professional staff and employs, as needed, other qualified specialists experienced in completing the Project, and is familiar with all laws, rules, and regulations, both state and federal, including, without limitation the applicable laws, regarding the Project contemplated hereby.

E. Performance. The Subrecipient will and shall conduct all activities contemplated by this Agreement in accordance with the standard of care, skill and diligence normally provided by a professional person in performance of similar services, and comply with all applicable laws, rules, and regulations, both state and federal, relating to professional services, as contemplated hereby.

F. Use of Copyrighted Material. The Subrecipient warrants that any materials provided by the Subrecipient for use by City pursuant to this Agreement shall not contain any proprietary material owned by any other party that is protected under the Copyright Act or any other law, statute, rule, order, regulation, ordinance or contractual obligation relating to the use or reproduction of materials. The Subrecipient shall be solely responsible for ensuring that any materials provided by the Subrecipient pursuant to this Agreement satisfy this requirement and the Subrecipient agrees to indemnify and hold City harmless from all liability or loss caused to City or to which City is exposed on account of the Subrecipient's failure to perform this duty.

ARTICLE VII. INDEPENDENT CONTRACTOR STATUS

The Subrecipient and the City agree that the Subrecipient shall perform the duties under this Agreement as an independent contractor and shall be considered as independent contractor under this Agreement and/or in its activities hereunder for all purposes. The Subrecipient has the sole discretion to determine the manner in which the Services are to be performed. During the performance of the Services under this Agreement, the Subrecipient and the Subrecipient's employees and/or sub-consultants, will not be considered, for any purpose, employees or agents of the City within the meaning or the application of any federal, state or local law or regulation, including without limitation, laws, rules or regulations regarding or related to unemployment insurance, old age benefits, workers compensation, labor, personal injury or taxes of any kind.

ARTICLE VIII. PERFORMANCE AND PAYMENT BONDS

Upon execution of this Agreement, and prior to any work on the Project, the Subrecipient shall present to the City performance and payment bonds in compliance with the Texas Government Code § 2253.021.

ARTICLE IX. INSURANCE

The Subrecipient shall procure and carry, at its sole cost and expense through the life of this Agreement, except as otherwise provided herein, insurance protection as hereinafter specified, in form and substance satisfactory to the City, 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 Agreement, including without limitation, the indemnity obligations set forth herein. The Subrecipient shall obtain and maintain in full force and effect during the term of this Agreement, and shall cause each approved sub-contractor or sub-consultant of the Subrecipient to obtain and maintain in full force and effect during the term of this Agreement, commercial general liability, professional liability and automobile liability coverage for non-owned and hired vehicles 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. Except for Professional Liability, the policies will be written on an occurrence basis, subject to the following minimum limits of liability:

Commercial General Liability:

Per Occurrence Single Limit: \$1,000,000

General Aggregate Limit: \$2,000,000

D&O Liability or Errors & Omissions:

Combined Single Limit: \$2,000,000

Automobile Liability:

Combined Single Limit for any auto: \$1,000,000 Per Occurrence

Employer's Liability:

Per Occurrence Single Limit: \$1,000,000

Worker's Compensation

Per Occurrence Single Limit: \$500,000

The Subrecipient shall further cause any approved sub-contractor or sub-consultant to procure and carry, during the term of this Agreement, the insurance coverage required of Subrecipient herein, including without limitation, Professional Liability coverage, protecting the City against losses caused by the professional negligence of the approved sub-contractor or sub-consultant. The City shall be listed as a primary and noncontributory additional insured with respect to the Automobile Liability and Commercial General Liability and shall be granted a waiver of subrogation under those policies. The Subrecipient shall provide a Certificate of Insurance to the City as evidence of coverage.

The Certificate shall provide 30 days' notice of cancellation. A copy of the additional insured endorsement and waiver of subrogation attached to the policy shall be included in the Certificate. The Subrecipient shall elect to obtain worker's compensation coverage pursuant to Section 406.002 of the Texas Labor Code. Further, the Subrecipient shall maintain said coverage throughout the term of this Agreement and shall comply with all provisions of Title 5 of the Texas Labor Code to ensure that the Subrecipient maintains said coverage. The Subrecipient may maintain Occupational Accident and Disability Insurance in lieu of Worker's Compensation. In either event, the policy must be endorsed to include a waiver of subrogation in favor of the City. If at any time during the life of the Agreement or any extension hereof, the Subrecipient fails to maintain the required insurance in full force and effect, the Subrecipient shall be in breach hereof and all work under the Agreement shall be discontinued immediately.

Notwithstanding anything contained herein to the contrary, the professional liability policy shall be maintained at the Subrecipient's sole cost and expense. The retroactive date shall be no later than the commencement of the performance of this Agreement and the discovery period (possibly through tail coverage) shall be no less than 10 years after the completion of the Services provided for in this Agreement. The provisions of this Article IX shall survive the termination or expiration of this Agreement.

ARTICLE X. EMPLOYMENT OF AGENTS/RETAINING OF CONSULTANTS

The Subrecipient may employ or retain consultants, sub-contractors, or third parties (any of which are referred to herein as "Sub-consultant"), to perform certain

duties of Subrecipient, as set forth in "Exhibit A", attached hereto, under this Agreement, provided that the City approves the retaining of Sub-consultants. The Subrecipient is at all times responsible to the City to perform the Services as provided in this Agreement and the Subrecipient is in no event relieved of any obligation under this Agreement upon retainage of any approved Sub-consultant. Any agent and/or Sub-consultant retained and/or employed by the Subrecipient shall be required by the Subrecipient to carry, for the protection and benefit of the City and the Subrecipient and naming said third parties as additional insureds, insurance as described above required to be carried by the Subrecipient in this Agreement.

The Subrecipient represents that such services are either under applicable value thresholds or are otherwise exempt from notice and/or bid requirements under Texas Law.

ARTICLE XI. CONFIDENTIALITY

The Subrecipient 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.

ARTICLE XII. INDEMNITY

THE SUBRECIPIENT 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 SUBRECIPIENT, ITS AGENTS, EMPLOYEES, AND/OR SUBCONSULTANTS, 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.

ARTICLE XIII. COMPLIANCE WITH APPLICABLE LAWS

The Subrecipient shall comply with all applicable federal, state and local laws, statutes, ordinances, rules and regulations relating, in any way, manner or form, to the activities under this Agreement, and any amendments thereto.

ARTICLE XIV. NOTICE

A. General. Whenever notice from the Subrecipient to the City or the City to the Subrecipient is required or permitted by this Agreement and no other method of notice is

provided, such notice shall be given by (1) actual delivery of the written notice to the other party by hand (in which case such notice shall be effective upon delivery); (2) facsimile (in which case such notice shall be effective upon delivery); or (3) by depositing the written notice in the United States mail, properly addressed to the other party at the address provided in this article, registered or certified mail, return receipt requested, in which case such notice shall be effective on the third business day after such notice is so deposited.

B. Subrecipient's Address. The Subrecipient's address and numbers for the purposes of notice are:

Lubbock Habitat for Humanity
Attn: Christy Reeves
3630 50th Street
Lubbock, Texas 79413
Telephone: 806-500-1996
Email: creeves@lubbockhabitat.org

C. City's Address. The City's address and numbers for the purposes of notice are:

Bill Howerton, Deputy City Manager
City of Lubbock
P.O. Box 2000
1314 Avenue K
Lubbock, Texas 79457
Email: bhowerton@mylubbock.us
Telephone: 806-775-2300

D. Change of Address. Either party may change its address or numbers for purposes of notice by giving written notice to the other party as provided herein, referring specifically to this Agreement, and setting forth such new address or numbers. The address or numbers shall become effective on the 15th day after such notice is effective.

ARTICLE XV. CITY-PROVIDED DATA AND RESPONSIBILITIES

Provision of Data. The City shall furnish the Subrecipient non-confidential studies, reports and other available data in the possession of the City pertinent to the Subrecipient's Services. The Subrecipient shall be entitled to use and rely, so long as such reliance is reasonable, upon all such provided data.

ARTICLE XVI. MISCELLANEOUS

A. Captions. The captions for the articles and sections in this Agreement are inserted in this Agreement strictly for the parties' convenience in identifying the provisions to this Agreement and shall not be given any effect in construing this Agreement.

B. Audit. The Subrecipient shall provide access to its corporate books and records to the City. The City may audit, at its expense and during normal business hours, the Subrecipient's books and records with respect to this Agreement between the Subrecipient and the City.

C. Records. The Subrecipient shall maintain records that are necessary to substantiate the services provided by the Subrecipient.

D. Assignability. The Subrecipient may not assign this Agreement without the prior written approval of the City.

E. Successor and Assigns. This Agreement binds and inures to the benefit of the City and the Subrecipient, and in the case of the City, its respective successors, legal representatives, and assigns, and in the case of the Subrecipient, its permitted successors and assigns.

F. Construction and Venue.

THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS. THIS AGREEMENT IS PERFORMABLE IN LUBBOCK COUNTY, TEXAS. THE PARTIES HERETO HEREBY IRREVOCABLY CONSENT TO THE SOLE AND EXCLUSIVE JURISDICTION AND VENUE OF THE COURTS OF COMPETENT JURISDICTION OF THE STATE OF TEXAS, COUNTY OF LUBBOCK, FOR THE PURPOSES OF ALL LEGAL PROCEEDINGS ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE ACTIONS THAT ARE CONTEMPLATED HEREBY.

G. Severability. If any provision of this Agreement is ever held to be invalid or ineffective by any court of competent jurisdiction with respect to any person or circumstance, the remainder of this Agreement and the application of such provision to persons and/or circumstances other than those with respect to which it is held invalid or ineffective shall not be affected thereby.

H. Amendment. No amendment, modification, or alteration of the terms of this Agreement shall be binding unless such amendment, modification, or alteration is in writing, dated subsequent to this Agreement, and duly authorized and executed by the Subrecipient and the City.

I. Entire Agreement. This Agreement, including Exhibits "A" through "B" attached hereto, contains the entire agreement between the City and the Subrecipient, and there are no other written or oral promises, conditions, warranties, or representations relating to or affecting the matters contemplated herein.

J. No Joint Enterprise. Nothing contained herein shall be construed to imply a joint venture, joint enterprise, partnership or principal – agent relationship between the Subrecipient and the City.

K. Documents Owned by City. Any and all documents, drawings and specifications prepared by Subrecipient as part of the Services hereunder, shall become the property of the City when the Subrecipient has been compensated as set forth in Article III, above. The Subrecipient shall make copies of any and all work products for its files.

L. Notice of Waiver. A waiver by either the City or the Subrecipient of a breach of this Agreement must be in writing and duly authorized to be effective. In the event either party shall execute and deliver such waiver, such waiver shall not affect the waiving party's rights with respect to any other or subsequent breach.

M. Third Party Activities. Nothing in this Agreement shall be construed to provide any rights or benefits whatsoever to any party other than the City and the Subrecipient.

N. Non-Appropriation. 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 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 services covered by this Agreement is spent, whichever event occurs first (the "Non-Appropriation Date"). If at any time funds are not appropriated for the continuance of this Agreement, cancellation shall be accepted by the Subrecipient 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 Agreement beyond the Non-Appropriation Date.

O. Contracts with Companies Engaged in Business with Iran, Sudan, or Foreign Terrorist Organization Prohibited. Pursuant to Section 2252.152 of the Texas Government Code, the City is prohibited 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.

P. 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.

Q. Texas Government Code 2274. By entering into this Agreement, Subrecipient verifies that: (1) it does not, and will not for the duration of the contract, have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association or (2) the verification required by Section 2274.002 of the Texas Government Code does not apply to the contract. If Subrecipient is a company with 10 or more full-time employees and if this Agreement has a value of at least \$100,000 or

more, Subrecipient verifies that, pursuant to Texas Government Code Chapter 2274, it does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and will not discriminate during the term of the contract against a firearm entity or firearm trade association.

R. Subrecipient represents and warrants that: (1) it does not, and will not for the duration of the contract, boycott energy companies or (2) the verification required by Section 2274.002 of the Texas Government Code does not apply to the contract. If Subrecipient is a company with 10 or more full-time employees and if this Agreement has a value of at least \$100,000 or more, Subrecipient verifies that, pursuant to Texas Government Code Chapter 2274, it does not boycott energy companies; and will not boycott energy companies during the term of the Agreement. This verification is not required for an agreement where a governmental entity determines that these requirements are inconsistent with the governmental entity's constitutional or statutory duties related to the issuance, incurrence, or management of debt obligations or the deposit, custody, management, borrowing, or investment of funds.

S. Texas Public Information Act. The requirements of Subchapter J, Chapter 552, Government Code, may apply to this contract and the Subrecipient or vendor agrees that the contract can be terminated if the Subrecipient 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, Subrecipient 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.

T. Professional Responsibility. All architectural or engineering services to be performed shall be done with the professional skill and care ordinarily provided by competent architects or engineers practicing under the same or similar circumstances and professional license.

ARTICLE XVII. AGREEMENT WITH SUBRECIPIENT OF FEDERAL RECOVERY FUNDS TERMS AND CONDITIONS

1. Use of Funds.

a. Subrecipient understands and agrees that the funds disbursed under this award may only be used in compliance with section 603(c) of the Social Security Act (the Act) and Treasury's regulations implementing that section and guidance.

- b. Subrecipient will determine prior to engaging in any project using this assistance that it has the institutional, managerial, and financial capability to ensure proper planning, management, and completion of such Project.
2. Period of Performance. The period of performance for this award begins on the date hereof and ends on December 31, 2026. As set forth in Treasury's implementing regulations, Subrecipient may use award funds to cover eligible costs incurred during the period that begins on March 3, 2021, and ends on December 31, 2024.
3. Reporting. Subrecipient agrees to comply with any reporting obligations established by Treasury as they relate to this award.
4. Maintenance of and Access to Records
- a. Subrecipient shall maintain records and financial documents sufficient to evidence compliance with section 603(c), Treasury's regulations implementing that section, and guidance issued by Treasury regarding the foregoing.
- b. The Treasury Office of Inspector General and the Government Accountability Office, or their authorized representatives, shall have the right of access to records (electronic and otherwise) of Subrecipient in order to conduct audits or other investigations.
- c. Records shall be maintained by Subrecipient for a period of five (5) years after all funds have been expended or returned to Treasury, whichever is later.
5. Pre-award Costs. Pre-award costs, as defined in 2 C.F.R. § 200.458, may not be paid with funding from this award.
6. Administrative Costs. Subrecipient may use funds provided under this award to cover both direct and indirect costs.
7. Cost Sharing. Cost sharing or matching funds are not required to be provided by Subrecipient.
8. Conflicts of Interest. The City of Lubbock understands and agrees it must maintain a conflict of interest policy consistent with 2 C.F.R. § 200.318(c) and that such conflict of interest policy is applicable to each activity funded under this award. Recipients and Subrecipients must disclose in writing to the Office of the State Controller or the pass-through entity, as appropriate, any potential conflict of interest affecting the awarded funds in accordance with 2 C.F.R. § 200.112. The Office of the State Controller shall disclose such conflict to Treasury.

9. Compliance with Applicable Law and Regulations.

a. Subrecipient agrees to comply with the requirements of section 603 of the Act, regulations adopted by Treasury pursuant to section 603(f) of the Act, and guidance issued by Treasury regarding the foregoing. Subrecipient also agrees to comply with all other applicable federal statutes, regulations, and executive orders, and Subrecipient shall provide for such compliance by other parties in any agreements it enters into with other parties relating to this award.

b. Federal regulations applicable to this award include, without limitation, the following:

i. Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 C.F.R. Part 200, other than such provisions as Treasury may determine are inapplicable to this Award and subject to such exceptions as may be otherwise provided by Treasury. Subpart F – Audit Requirements of the Uniform Guidance, implementing the Single Audit Act, shall apply to this award.

ii. Universal Identifier and System for Award Management (SAM), 2 C.F.R. Part 25, pursuant to which the award term set forth in Appendix A to 2 C.F.R. Part 25 is hereby incorporated by reference.

iii. Reporting Subaward and Executive Compensation Information, 2 C.F.R. Part 170, pursuant to which the award term set forth in Appendix A to 2 C.F.R. Part 170 is hereby incorporated by reference.

iv. OMB Guidelines to Agencies on Government Wide Debarment and Suspension (Nonprocurement), 2 C.F.R. Part 180, including the requirement to include a term or condition in all lower tier covered transactions (Agreements and sub-contractors described in 2 C.F.R. Part 180, subpart B) that the award is subject to 2 C.F.R. Part 180 and Treasury's implementing regulation at 31 C.F.R. Part 19.

v. Subrecipient Integrity and Performance Matters, pursuant to which the award term set forth in 2 C.F.R. Part 200, Appendix XII to Part 200 is hereby incorporated by reference.

vi. Government Wide Requirements for Drug-Free Workplace, 31 C.F.R. Part 20.

vii. New Restrictions on Lobbying, 31 C.F.R. Part 21.

viii. Uniform Relocation Assistance and Real Property Acquisitions Act of 1970 (42 U.S.C. §§ 4601-4655) and implementing regulations.

ix. Generally applicable federal environmental laws and regulations.

c. Statutes and regulations prohibiting discrimination applicable to this award include, without limitation, the following:

i. Title VI of the Civil Rights Act of 1964 (42 U.S.C. §§ 2000(d) et seq.) and Treasury's implementing regulations at 31 C.F.R. Part 22, which prohibit discrimination on the basis of race, color, or national origin under programs or activities receiving federal financial assistance;

ii. The Fair Housing Act, Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§ 3601 et seq.), which prohibits discrimination in housing on the basis of race, color, religion, national origin, sex, familial status, or disability;

iii. Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of disability under any program or activity receiving federal financial assistance;

iv. The Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101 et seq.), and Treasury's implementing regulations at 31 C.F.R. Part 23, which prohibit discrimination on the basis of age in programs or activities receiving federal financial assistance; and

v. Title II of the Americans with Disabilities Act of 1990, as amended (42 U.S.C. §§ 12101 et seq.), which prohibits discrimination on the basis of disability under programs, activities, and services provided or made available by state and local governments or instrumentalities or agencies thereto.

10. **Remedial Actions.** In the event of Subrecipient's noncompliance with section 603 of the Act, other applicable laws, Treasury's implementing regulations, guidance, or any reporting or other program requirements, Treasury may impose additional conditions on the receipt of a subsequent tranche of future award funds, if any, or take other available remedies as set forth in 2 C.F.R. § 200.339. In the case of a violation of section 603(c) of the Act regarding the use of funds, previous payments shall be subject to recoupment as provided in section 603(e) of the Act and any additional payments may be subject to withholding as provided in section 603(e) of the Act, as applicable.

11. **Hatch Act.** Subrecipient agrees to comply, as applicable, with requirements of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328), which limit certain political activities of State or local government employees whose principal employment is in connection with an activity financed in whole or in part by this federal assistance.

12. Davis Bacon Act. Subrecipient agrees to comply, as applicable, with the requirements of the Davis Bacon Act (40 U.S.C. §§ 3141-3148) regarding wage rates. Additionally, if the City finds that any laborer or mechanic employed by the Subrecipient or any sub-contractors directly on the site of the work covered by the agreement has been or is being paid a rate of wages less than the rate of wages required by the Act to be paid, the Federal Government by written notice to the Subrecipient may terminate the Subrecipient's right to proceed with the work or the part of the work as to which there has been a failure to pay the required wages. The City may have the work completed, by contract or otherwise, and the Subrecipient and the Subrecipient's sureties shall be liable to the City for any excess costs the City incurs.
13. Copeland Anti-kickback Act. Subrecipient agrees to comply with the requirements of the Copeland Anti-kickback Act (40 U.S.C. § 3145), prohibiting a federal funds grantee engaged in constructing, carrying out, completing, or repairing public buildings, public works, or buildings or works that at least partly are financed by a loan or grant from the Federal Government from inducing an employee into giving up any part of the compensation that he or she is entitled to under the terms of his or her employment contract.
14. Contract Work Hours and Safety Standards Act. Subrecipient agrees to comply, as applicable, with the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 3701-3708), regarding contracts for public works involving the employment of laborers or mechanics.
15. Rights to Inventions Made Under a Contract or Agreement. Subrecipient agrees to comply, as applicable, with the Rights to Inventions Made Under a Contract or Agreement (37 C.F.R. Part 401). For any federally assisted contract, awarded to a small business firm or nonprofit organization as defined in 37 CFR 401.2 for the performance of experimental, developmental, or research work, the Subrecipient. Subrecipient agrees to all of the terms in 37 CFR 401.14(a).
16. Clean Air and Water Pollution Control Acts. Subrecipient agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. §§ 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. §§ 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).
17. Byrd Anti-Lobbying Amendment. Subrecipient agrees to comply with the Byrd Anti-Lobbying Amendment (31 U.S.C. § 1352), prohibiting the use of funds appropriated by any Act to be expended by the recipient of a Federal contract, grant, loan, or cooperative agreement to pay 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 certain Federal actions.

18. Procurement of Recovered Materials. Subrecipient agrees to comply, as applicable, with 2 C.F.R. § 200.323 pursuant to section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act.
19. Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment. Subrecipient agrees to comply with 2 C.F.R. § 200.216 regarding the prohibition of the utilization of grant funds for certain telecommunications and video surveillance services or equipment.
20. Domestic Preferences for Procurements. Subrecipient agrees to comply with 2 C.F.R. § 200.322 to provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products).
21. False Statements. Subrecipient understands that making false statements or claims in connection with this award is a violation of federal law and may result in criminal, civil, or administrative sanctions, including fines, imprisonment, civil damages and penalties, debarment from participating in federal awards or Agreements, and/or any other remedy available by law.
22. Publications. Any publications produced with funds from this award must display the following language: "This project [is being] [was] supported, in whole or in part, by federal award number SLFRFP2653 awarded to the City of Lubbock by the U.S. Department of the Treasury."
23. Debts Owed the Federal Government.
 - a. Any funds paid to the Subrecipient:
 - i. in excess of the amount to which the Subrecipient is finally determined to be authorized to retain under the terms of this award;
 - ii. that are determined by the Treasury Office of Inspector General to have been misused; or
 - iii. that are determined by Treasury to be subject to a repayment obligation pursuant to sections 602(e) and 603(b)(2)(D) of the Act and have not been repaid by the Subrecipient shall constitute a debt to the federal government.
 - b. Any debts determined to be owed to the federal government must be paid promptly by Subrecipient. A debt is delinquent if it has not been paid by the date specified in Treasury's initial written demand for payment, unless other satisfactory arrangements have been made or if the Subrecipient knowingly or improperly retains funds that are a debt as defined in paragraph 14(a). Treasury

will take any actions available to it to collect such a debt.

24. Disclaimer.

a. The United States expressly disclaims any and all responsibility or liability to Subrecipient or third persons for the actions of Subrecipient or third persons resulting in death, bodily injury, property damages, or any other losses resulting in any way from the performance of this award or any other losses resulting in any way from the performance of this award or any Agreement, or sub-contractor under this award.

b. The acceptance of this award by Subrecipient does not in any way establish an agency relationship between the United States and Subrecipient.

25. Protections for Whistleblowers.

a. In accordance with 41 U.S.C. § 4712, Subrecipient may not discharge, demote, or otherwise discriminate against an employee in reprisal for disclosing to any of the list of persons or entities provided below, information that the employee reasonably believes is evidence of gross mismanagement of a federal Agreement or grant, a gross waste of federal funds, an abuse of authority relating to a federal Agreement or grant, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation related to a federal Agreement (including the competition for or negotiation of an Agreement) or grant.

b. The list of persons and entities referenced in the paragraph above includes the following:

- i. A member of Congress or a representative of a committee of Congress;
- ii. An Inspector General;
- iii. The Government Accountability Office;
- iv. A Treasury employee responsible for Agreement or grant oversight or management;
- v. An authorized official of the Department of Justice or other law enforcement agency;
- vi. A court or grand jury; or
- vii. A management official or other employee of Subrecipient, Subrecipient, or Sub-contractor who has the responsibility to investigate, discover, or address misconduct.

c. Subrecipient shall inform its employees in writing of the rights and remedies provided under this section, in the predominant native language of the workforce.

26. Increasing Seat Belt Use in the United States. Pursuant to Executive Order 13043, 62 FR 19217 (Apr. 18, 1997), Subrecipient should encourage its Subrecipients to adopt and enforce on-the-job seat belt policies and programs for their employees when operating company-owned, rented or personally owned vehicles.

27. Reducing Text Messaging While Driving. Pursuant to Executive Order 13513, 74 FR 51225 (Oct. 6, 2009), Subrecipient should encourage its employees and contractors to adopt and enforce policies that ban text messaging while driving, and Subrecipient should establish workplace safety policies to decrease accidents caused by distracted drivers.

ARTICLE XVIII. ASSURANCES OF COMPLIANCE WITH CIVIL RIGHTS REQUIREMENTS

ASSURANCES OF COMPLIANCE WITH TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

As a condition of receipt of federal financial assistance from the Department of the Treasury, the Subrecipient provides the assurances stated herein. The federal financial assistance may include federal grants, loans and Agreements to provide assistance to the Subrecipient's beneficiaries, the use or rent of Federal land or property at below market value, Federal training, a loan of Federal personnel, subsidies, and other arrangements with the intention of providing assistance. Federal financial assistance does not encompass Agreements of guarantee or insurance, regulated programs, licenses, procurement Agreements by the Federal government at market value, or programs that provide direct benefits.

The assurances apply to all federal financial assistance from or funds made available through the Department of the Treasury, including any assistance that the Subrecipient may request in the future.

The Civil Rights Restoration Act of 1987 provides that the provisions of the assurances apply to all of the operations of the Subrecipient's program(s) and activity(ies), so long as any portion of the Subrecipient's program(s) or activity(ies) is federally assisted in the manner prescribed above.

1. Subrecipient ensures its current and future compliance with Title VI of the Civil Rights Act of 1964, as amended, which prohibits exclusion from participation, denial of the benefits of, or subjection to discrimination under programs and activities receiving federal financial assistance, of any person in the United States on the ground of race, color, or national origin (42 U.S.C. § 2000d et seq.), as implemented by the Department of the Treasury Title VI regulations at 31 CFR Part 22 and other pertinent executive orders such as Executive Order

13166, directives, circulars, policies, memoranda, and/or guidance documents.

2. Subrecipient acknowledges that Executive Order 13166, "Improving Access to Services for Persons with Limited English Proficiency," seeks to improve access to federally assisted programs and activities for individuals who, because of national origin, have Limited English proficiency (LEP). Subrecipient understands that denying a person access to its programs, services, and activities because of LEP is a form of national origin discrimination prohibited under Title VI of the Civil Rights Act of 1964 and the Department of the Treasury's implementing regulations. Accordingly, Subrecipient shall initiate reasonable steps, or comply with the Department of the Treasury's directives, to ensure that LEP persons have meaningful access to its programs, services, and activities. Subrecipient understands and agrees that meaningful access may entail providing language assistance services, including oral interpretation and written translation where necessary, to ensure effective communication in the Subrecipient's programs, services, and activities.

3. Subrecipient agrees to consider the need for language services for LEP persons when Subrecipient develops applicable budgets and conducts programs, services, and activities. As a resource, the Department of the Treasury has published its LEP guidance at 70 FR 6067. For more information on taking reasonable steps to provide meaningful access for LEP persons, please visit <http://www.lep.gov>.

4. Subrecipient acknowledges and agrees that compliance with the assurances constitutes a condition of continued receipt of federal financial assistance and is binding upon Subrecipient and Subrecipient's successors, transferees, and assignees for the period in which such assistance is provided.

5. Subrecipient acknowledges and agrees that it must require any sub-grantees, Subrecipients, sub-contractors, successors, transferees, and assignees to comply with assurances 1-4 above, and agrees to incorporate the following language in every Agreement or agreement subject to Title VI and its regulations between the Subrecipient and the Subrecipient's sub-grantees, Subrecipients, sub-contractors, successors, transferees, and assignees:

The sub-grantee, Subrecipient, sub-contractor, successor, transferee, and assignee shall comply with Title VI of the Civil Rights Act of 1964, which prohibits Subrecipients of federal financial assistance from excluding from a program or activity, denying benefits of, or otherwise discriminating against a person on the basis of race, color, or national origin (42 U.S.C. § 2000d et seq.), as implemented by the Department of the Treasury's Title VI regulations, 31 CFR Part 22, which are herein incorporated by reference and made a part of this Agreement (or agreement). Title VI also includes protection to persons with "Limited English Proficiency" in any program or activity receiving federal financial assistance, 42 U.S.C. § 2000d et seq., as implemented by the Department of the Treasury's Title

VI regulations, 31 CFR Part 22, and herein incorporated by reference and made a part of this Agreement or agreement.

6. Subrecipient understands and agrees that if any real property or structure is provided or improved with the aid of federal financial assistance by the Department of the Treasury, this assurance obligates the Subrecipient, or in the case of a subsequent transfer, the transferee, for the period during which the real property or structure is used for a purpose for which the federal financial assistance is extended or for another purpose involving the provision of similar services or benefits. If any personal property is provided, this assurance obligates the Subrecipient for the period during which it retains ownership or possession of the property.

7. Subrecipient shall cooperate in any enforcement or compliance review activities by the Department of the Treasury of the aforementioned obligations. Enforcement may include investigation, arbitration, mediation, litigation, and monitoring of any settlement agreements that may result from these actions. The Subrecipient shall comply with information requests, on-site compliance reviews and reporting requirements.

8. Subrecipient shall maintain a complaint log and inform the Department of the Treasury of any complaints of discrimination on the grounds of race, color, or national origin, and limited English proficiency covered by Title VI of the Civil Rights Act of 1964 and implementing regulations and provide, upon request, a list of all such reviews or proceedings based on the complaint, pending or completed, including outcome. Subrecipient also must inform the Department of the Treasury if Subrecipient has received no complaints under Title VI.

9. Subrecipient must provide documentation of an administrative agency's or court's findings of non-compliance of Title VI and efforts to address the non-compliance, including any voluntary compliance or other agreements between the Subrecipient and the administrative agency that made the finding. If the Subrecipient settles a case or matter alleging such discrimination, the Subrecipient must provide documentation of the settlement. If Subrecipient has not been the subject of any court or administrative agency finding of discrimination, please so state.

10. If the Subrecipient makes sub-awards to other agencies or other entities, the Subrecipient is responsible for ensuring that sub-Subrecipients also comply with Title VI and other applicable authorities covered in this document. State agencies that make sub-awards must have in place standard grant assurances and review procedures to demonstrate that they are effectively monitoring the civil rights compliance of sub-contractor.

The United States of America has the right to seek judicial enforcement of the terms of this assurances document and nothing in this document alters or limits the federal

enforcement measures that the United States may take in order to address violations of this document or applicable federal law.

EXECUTED as of the Effective Date hereof.

CITY OF LUBBOCK

LUBBOCK HABITAT FOR HUMANITY

DANIEL M. POPE ,MAYOR

Christy Reeves, Executive Director

ATTEST:

Rebecca Garza, City Secretary

APPROVED AS TO CONTENT:

Bill Howerton, Deputy City Manager

APPROVED AS TO FORM:

Kelli Leisure, Assistant City Attorney

Information

Agenda Item

Resolution - City Manager: Consider a resolution authorizing the Mayor to execute, for and on behalf of the City of Lubbock, a Health District Agreement Pursuant to the authority of Chapter 121 of the Texas Health and Safety Code, thereby creating the Lubbock County Health District.

Item Summary

The agreement allows for the formation of a joint Public Health District between the City of Lubbock and Lubbock County. The City of Lubbock will establish and maintain the district at the direction of the Health District Director. All employees of the Public Health Department will be City employees. This simply expands the services offered by the Public Health Department to the remainder of Lubbock County. The initial term of this Agreement is for five (5) years. The Agreement may be extended for successive five (5) year terms, not to exceed twenty (20) years. Lubbock County will pay the City a one time, lump sum amount of Three Million Five Hundred Thousand and no/100 dollars (\$3,500,000). These funds will come from the County's allocation from the American Rescue Plan Act (ARPA).

The Health District shall provide the ten (10) essential public Health functions identified in Section 121.002 of the Texas Health and Safety Code ("Services"):

1. monitor the health status of individuals in the community to identify community health problems;
2. diagnose and investigate community health problems and community health hazards;
3. inform, educate, and empower the community with respect to health issues;
4. mobilize community partnerships in identifying and solving community health problems;
5. develop policies and plans that support individual and community efforts to improve health;
6. enforce laws and rules that protect the public health and ensure safety in accordance with those laws and rules;
7. link individuals who have a need for community and personal health services to appropriate community and private providers;
8. ensure a competent workforce for the provision of essential public health services;
9. research new insights and innovative solutions to community health problems; and
10. evaluate the effectiveness, accessibility, and quality of personal and population-based health services in a community.

Fiscal Impact

The County will pay the City \$3,500,000 from their ARPA allocation.

Staff/Board Recommending

Bill Howerton, Deputy City Manager

Attachments

PH District Reso

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 Health District Agreement pursuant to the authority of Chapter 121 of the Texas Health and Safety Code, thereby creating the Lubbock County Health District, by and between the City of Lubbock and Lubbock County, Texas, 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:



Bill Howerton, Deputy City Manager

APPROVED AS TO FORM:



Ryan Brooke, Assistant City Attorney

RES. Health District Agreement
4.20.22

THE STATE OF TEXAS §
 §
COUNTY OF LUBBOCK §

HEALTH DISTRICT AGREEMENT

WHEREAS, Chapter 121 of the Texas Health and Safety Codes, authorizes the establishment of health districts within and among counties, cities, and other governmental entities for the purpose of providing and furnishing county-wide public health programs;

WHEREAS, the City of Lubbock, acting by and through the City of Lubbock Health Department (“COLHD”), currently provides health services for citizens throughout Lubbock County; and

WHEREAS, the City of Lubbock and Lubbock County desire to establish the Lubbock County Health District to furnish a coordinated public health program throughout Lubbock County.

NOW THEREFORE, for and in consideration of the mutual promises, covenants, and other invaluable consideration the City and the County hereby establish the Lubbock County Health District according to the terms and conditions herein and pursuant to the authorities of the Texas Health and Safety Code Chapter 121 and the Texas Government Code Chapter 791, and any other applicable laws.

ARTICLE I

Section 1. Parties to the Agreement

- A. This agreement (“Agreement”) is entered into by and between Lubbock County, Texas (“County”) and the City of Lubbock (“City”), as original Lubbock County Health District (“Health District”) members (referred to collectively as “Members”).
- B. The Members hereby agree to operate the Health District covering the areas within the county limits of Lubbock County.
- C. The initial term of this Agreement shall be for five (5) years from the effective date hereof. The Agreement may be extended for successive five (5) year terms, not to exceed twenty (20) years in any event, by written agreement of each of the Member representatives with the approval of the governing bodies of each Member. If this Agreement is extended beyond the initial term, the Members shall also amend Article III of this Agreement by written agreement of each of the Member representatives, with the approval of the governing bodies of each Member, to provide the City additional consideration for the Services provided herein. This Agreement shall be effective upon the date of the last original Member’s approval and signature (“Effective Date”).

ARTICLE II

Section 1. Health District Activities

- A. The Health District shall provide the ten (10) essential public Health functions identified in Section 121.002 of the Texas Health and Safety Code (“Services”):
1. monitor the health status of individuals in the community to identify community health problems;
 2. diagnose and investigate community health problems and community health hazards;
 3. inform, educate, and empower the community with respect to health issues;
 4. mobilize community partnerships in identifying and solving community health problems;
 5. develop policies and plans that support individual and community efforts to improve health;
 6. enforce laws and rules that protect the public health and ensure safety in accordance with those laws and rules;
 7. link individuals who have a need for community and personal health services to appropriate community and private providers;
 8. ensure a competent workforce for the provision of essential public health services;
 9. research new insights and innovative solutions to community health problems; and
 10. evaluate the effectiveness, accessibility, and quality of personal and population-based health services in a community.

ARTICLE III

Section 1. Financial Administration

- A. The City shall establish and maintain a Health Department that will provide the Services to the Health District at the direction of the Health District Director. The employees of the Health Department shall be City employees. The City shall be responsible for the salaries and benefits of the Health Department’s employees.
- B. As consideration for the Services provided herein during the initial term of this Agreement, the County hereby agrees and obligates itself to pay to the City a one time, lump sum amount of Three Million Five Hundred Thousand and no/100 dollars (\$3,500,000.00), said amount to be paid no later than thirty (30) days after execution of this Agreement by both parties.
- C. The Members understand and acknowledge that the funding of this Agreement is contained in each Member’s annual budget and is subject to the approval of each Member in each fiscal year. The Members further agree that should the governing body of any of the Members fail to approve a budget which includes sufficient funds for the continuance of this Agreement, or should the governing body of any of the Members fail to certify funds for any reason, then and upon the occurrence of such event, this Agreement shall terminate as to that Member and the Member shall then have no further obligation to the any other

Member. When the funds budgeted or certified during any fiscal year by a Member to discharge its obligations under this Agreement are expended, any other Member's sole *and exclusive remedy* shall be to terminate this Agreement. If this agreement is between governmental entities, as defined by Chapter 791 of the Texas Government Code, each Member paying for the performance of governmental functions or services must make those payments from current revenues available to the paying Member.

ARTICLE IV

Section 1. Admission of New Members

Additional governmental entities may request membership in the Health District, for the purpose of receiving public health service, by application to the representatives of the original Members. Additional members shall contribute financially to the operation of the Health District in relation to the cost of provision of services for that new member.

Section 2. Withdrawal from Health District

Members may withdraw from the Health District upon not less than ninety (90) days written notice to all other Members, with the understanding that all services provided to the withdrawing Member as the result of membership in the Health District shall cease to that Member.

Section 3. Expulsion from Health District

Members may be expelled from membership in the Health District by agreement of the original Members of the Health District. Prior to such expulsion, the affected Member shall be given reasonable opportunity to correct the action leading to such expulsion.

Section 4. Dissolution of Health District

The Health District may be dissolved by joint agreement of the County and the City.

ARTICLE V

Section 1. Health District Director

The Director of Public Health for the City shall serve as the Health District Director ("Director"). The Director shall be hired by the City Manager of the City of Lubbock and shall be an employee of the City. The City shall be responsible for the salary and benefits of the Director in accordance with current City policies and procedures. The Director shall actively manage the operations of the District. The Director shall possess the qualifications and fulfill the requirements of Chapter 121 of the Texas Health and Safety Code as same may be amended from time to time.

Section 2. Health Authorities

The governing bodies of the County and City each reserve the right to independently appoint a Health Authority for their respected jurisdictions according to the provisions of Chapter 121 of the Texas Health and Safety Code. The Health Authority appointed by the City shall serve as the public Health Authority for all areas of the Health District not conflicting with the jurisdiction of the County's appointed Health Authority. The Health

Authority appointed by the City shall consult with the Director regarding any quarantine or isolation orders authorized by law. The Health Authority appointed by the City shall consult with the Director to appropriate a jurisdictional representative on any order that affects more than one household.

ARTICLE VI

Section 1. Board of Health

- A. The City of Lubbock Board of Health (“Board”) is hereby expanded to serve as an advisory public health board to the Health District. The Board shall consist of six (6) members appointed by the governing body of the City and three (3) members appointed by the governing body of the County. The Director shall serve as an ex-officio member of the Board.
- B. Board members shall serve for a period of three (3) years, except appointees appointed to fill the unexpired term of some member who shall for the remaining period of the unexpired term. Terms shall be staggered such that three (3) terms expire each year: two (2) City appointed terms and one (1) County appointed term.
- C. The Board shall advise the Health Authorities, Director, and Members regarding public health matters. The Board shall comply with the requirements of the Texas Public Information Act and the Texas Open Meetings Act. The City Secretary of the City will maintain all board documents.

ARTICLE VII

Section 1. Rights and Remedies Reserved

The Members reserve the right to exercise any right or remedy available to them 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 Members shall not be subject to any arbitration process prior to exercising their 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 Agreement, this provision shall control.

Section 2. Notice

- A. Whenever notice is required or permitted by this Agreement and no other method of notice is provided, such notice shall be given by (1) actual delivery of the written notice to the other party by hand (in which case such notice shall be effective upon delivery); (2) facsimile (in which case such notice shall be effective upon delivery); or (3) by depositing the written notice in the United States mail, properly addressed to the other party at the address provided in this article, registered or certified mail, return receipt requested, in which case such notice shall be effective on the third business day after such notice is so deposited.

B. The County's address and numbers for the purposes of notice are:

Curtis Parrish (or his successor)
Lubbock County Judge
904 Broadway, Suite 101
Lubbock, Texas 79401
Email: cparrish@lubbockcounty.gov
Telephone: 806-775-1335

C. The City's address and numbers for the purposes of notice are:

Katherine Wells, Director of Public Health
City of Lubbock
P.O. Box 2000
Lubbock, Texas 79457
Email: kwells@mylubbock.us
Telephone: 806-775-2941

Section 3. Venue and Applicable Law

This Agreement is subject to all present and future valid laws, orders, rules and ordinances and/or regulations of the United States of America, the State of Texas and the Members, and any other regulatory body having jurisdiction. This Agreement shall be construed and governed according to the laws of the State of Texas. The sole venue for any action, controversy, dispute or claim arising under this Agreement shall be in a court of appropriate jurisdiction in Lubbock County, Texas *exclusively*.

Section 4. Public Information

This Agreement is public information. To the extent, if any, that any provision of this Agreement is in conflict with Tex. Gov't. Code Ann. Chapter 552 *et seq.*, as amended (the "Texas Public Information Act") the same shall be of no force and effect.

Section 5. No Third-Party Beneficiaries

This Agreement is entered solely by and between, and may be enforced only by and among the Members. Except as set forth above, this Agreement shall not be deemed to create any rights in or obligations to any third parties.

Section 6. No Personal Liability

Nothing in this Agreement is construed as creating any personal liability on the part of any employee, officer or agent of any public body that may be a party to this Agreement.

Section 7. No Joint Enterprise

This Agreement is not intended to, and shall not be construed to create any joint enterprise between or among the Members.

Section 8. No Indemnification

The Members expressly acknowledge that the City's and County's authority to indemnify and/or hold harmless any third party is governed by Article XI, Section 7 of the Texas

Constitution and any provision which purports to require indemnification by the City or County is invalid.

Section 9. Compliance with Chapter 2270, Subtitle F, Title 10, Texas Government Code

The Members each, individually, warrant that they are in compliance with Chapter 2270, Subtitle F, Title 10 of the Texas Government Code by verifying that: (1) it does not boycott Israel; and (2) it will not boycott Israel during the term of the Agreement.

Section 10. Severability

If any provision hereof or the application thereof to any person or circumstance is held to any extent, to be void, invalid or unenforceable, the remainder of this Agreement, and the application of such provision to other persons or circumstances, shall not be affected thereby, and shall be valid and enforceable to the fullest extent permitted by law.

Section 11. Entire Agreement

This agreement embodies the entire Agreement between the parties hereto relative to the subject matter hereof. The Members may amend this Agreement at any time, provided that such amendments make specific reference to this Agreement, and are executed in writing, signed by an authorized representative of all Members and approved by all Members' governing bodies.

Section 11. Sovereign Immunity Acknowledged and Retained

THE MEMBERS EXPRESSLY ACKNOWLEDGE AND AGREE THAT NO PROVISION OF THIS AGREEMENT IS IN ANY WAY INTENDED TO CONSTITUTE A WAIVER BY ANY MEMBER OF ANY IMMUNITIES FROM SUIT OR LIABILITY THAT A MEMBER MAY HAVE BY OPERATION OF LAW. THE CITY OF LUBBOCK AND LUBBOCK COUNTY RETAIN ALL GOVERNMENTAL IMMUNITIES.

COMMISSIONER'S COURT OF
LUBBOCK COUNTY, TEXAS:

CITY OF LUBBOCK:

Curtis Parrish, County Judge

Daniel M. Pope, MAYOR

DATE

DATE

ATTEST:

ATTEST:

Kelly Pinion, County Clerk

Rebecca Garza, City Secretary

APPROVED AS TO FORM:

Jennifer Irlbeck, Civil
Assistant District Attorney

APPROVED AS TO CONTENT:

Katherine Wells
Director of Public Health

APPROVED AS TO FORM:

Ryan Brooke
Assistant City Attorney

Health District Agreement
4.11.22

Information

Agenda Item

Resolution - City Manager: Consider a resolution authorizing the Mayor to execute an amendment to Section 6, Paragraph H of the Commitment Agreement, by and between the City of Lubbock, and the Lubbock Entertainment and Performing Arts Association, dated January 25, 2018, allowing for additional time to begin construction of a parking area.

Item Summary

This resolution is an amendment to Section 6, Paragraph H, of the Commitment Agreement, by and between the City of Lubbock and the Lubbock Entertainment and Performing Arts Association (LEPAA), dated January 25, 2018. The agreement stated that within a reasonable time after the execution of the agreement, but no later than twelve (12) months after substantial completion of the Performing Arts Center, LEPAA agreed to begin construction of a parking area.

Due to the COVID-19 pandemic, the Buddy Holly Hall of Performing Arts and Sciences (BHH) encountered delays in the receipt of materials, construction delays, and restrictions on gathering of individuals, including theaters. The Buddy Holly Hall of Performing Arts and Sciences opened in January 2021 with COVID-19 restrictions in place. These circumstances impacted LEPAA's income during the first year of operation, and have impacted their ability to secure all the funding necessary for construction and maintenance of the parking area within the required time period.

The amendment provides, within a reasonable time after the execution of this Agreement, but no later than December 1, 2022, that LEPAA agrees to begin construction of the initial phase, being roughly the southern half, of the Parking Area, at its own expense. Said Parking Area being more particularly described in the attached Exhibit "C," is to be included and become part of this Agreement after approval by the City. LEPAA shall complete construction of the initial phase of the Parking Area by May 31, 2023. LEPAA shall complete construction of the entire Parking Area by May 31, 2025. Upon completion of the Parking Area, LEPAA agrees to maintain the Parking Area at its own expense according to the Downtown Public Improvements Design Standards. Prior to beginning construction, LEPAA shall submit plans and specifications for the Parking Area, including delineation of the initial phase, to the City for approval. The City shall not unreasonably withhold approval of the plans and specifications.

LEPAA further agrees to grant the City the right of ingress and egress at all times for such purpose of accessing the City's physical plant located on the Southeast corner of the Parking Area. LEPAA shall not in any way, by design of the Parking Area or otherwise, restrict the City's access to the City's physical plant located on the Southeast corner of the Parking Area. Particularly, the access on the North side of the physical plant shall not be obstructed in any way.

Both parties acknowledge that the City issued the Certificate of Occupancy for the BHH on January 5, 2021. Construction of the permanent parking area must commence no later than December 1, 2022.

Fiscal Impact

None

Staff/Board Recommending

W. Jarrett Atkinson, City Manager

Attachments

Resolution

Amendment to Commitment Agreement

Jan. 25 2018 Agreement

Concept Rendering Phase 1

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 Amendment to the January 25, 2018, Commitment Agreement, by and between the City of Lubbock and the Lubbock Entertainment and Performing Arts Association, 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 to Commitment Agreement-LEPAA-BIHH & COL
11.14.21

AMENDMENT TO COMMITMENT AGREEMENT DATED JANUARY 25, 2018

This Amendment is made as of the ____ day of _____, 2022 by and between the City of Lubbock, Texas (the "City"), a Texas home rule municipal corporation, and the Lubbock Entertainment and Performing Arts Association ("LEPAA"), a Texas nonprofit organization, (each a "Party," and collectively being the "Parties") acting by and through their respective and duly authorized officers and officials.

RECITALS

WHEREAS, due to the COVID-19 pandemic, the Buddy Holly Hall of Performing Arts and Sciences ("BHH") has encountered delays in the receipt of materials, construction delays, and restrictions on gathering of individuals, including theaters; and

WHEREAS, there is a possibility that these circumstances may impact LEPAA's income from BHH during the first years of operation, and may also impact its ability to secure all the funding necessary for construction and maintenance of the Parking Area within the required time period; and

WHEREAS, the Parties desire to adjust LEPAA's responsibilities in Section 6 of the Commitment Agreement to allow additional time to secure all the funding necessary for construction and maintenance of the Parking Area while also requiring LEPAA to construct a Temporary Parking Area prior to the completion of the Parking Area;

NOW THEREFORE, the City and LEPAA agree to amend and replace Section 6, Paragraph H of the Commitment Agreement between the parties dated January 25, 2018, to read as follows:

H. Parking Areas

1. Within a reasonable time after the execution of this Agreement, but no later than December 1, 2022, LEPAA agrees to begin construction of the initial phase, being roughly the southern half, of the Parking Area at its own expense. Said Parking Area being more particularly described in the attached Exhibit "C," to be included and become part of this Agreement after approval by the City. LEPAA shall complete construction of the initial phase of the Parking Area by May 31, 2023. LEPAA shall complete construction of the entire Parking Area by May 31, 2025. Upon completion of the Parking Area, LEPAA agrees to maintain the Parking Area at its own expense according to the Downtown Public Improvements Design Standards. Prior to beginning construction, LEPAA shall submit plans and specifications for the Parking Area, including delineation of the initial phase, to the City for approval. The City shall not unreasonably withhold approval of the plans and specifications.
2. LEPAA further agrees to grant the City the right of ingress and egress at all times for such purpose of accessing the City's physical plant located on the Southeast corner of the Parking Area. LEPAA shall not in any way, by design of the Parking Area or otherwise, restrict the City's access to the City's physical plant located on

the Southeast corner of the Parking Area. Particularly, the access on the North side of the physical plant shall not be obstructed in any way.

IN WITNESS WHEREOF, each Party hereto has caused this Amendment to be executed on behalf of such Party by an authorized representative as of the date first set forth above.

SIGNATURES

FOR THE CITY:

FOR LEPA:

DANIEL M. POPE, MAYOR



Tim Collins, Chairman

ATTEST:

Rebecca Garza, City Secretary

APPROVED AS TO CONTENT:



Brooke Witcher, Assistant City Manager

APPROVED AS TO FORM:



Ryan Brooke, Assistant City Attorney

January 25, 2018

RESOLUTION

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

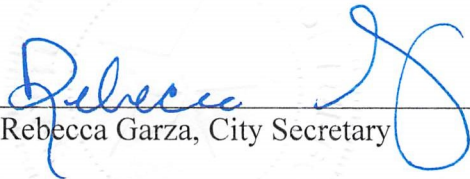
THAT the Mayor of the City of Lubbock is hereby authorized and directed to execute for and on behalf of the City of Lubbock, a Commitment Agreement and a Shared Parking Lease Agreement by and between the City of Lubbock and the Lubbock Entertainment and Performing Arts Association (LEPAA) in order to provide certain requirements for LEPAA to satisfy before the City of Lubbock will transfer real property to LEPAA for the public purpose of the construction and operation of a parking area adjacent to the Buddy Holly Hall of Performing Arts and Sciences. Said Commitment Agreement and Shared Parking Lease Agreement are attached hereto and incorporated in this resolution as if fully set forth herein; shall supersede and replace all prior agreements relating to the transfer of the property associated with the attached Commitment Agreement; and, shall be included in the minutes of the City Council.

Passed by the City Council on January 25, 2018.



DANIEL M. POPE, MAYOR

ATTEST:




Rebecca Garza, City Secretary

APPROVED AS TO CONTENT:



Scott Snider, Assistant City Manager

APPROVED AS TO FORM:



Justin Pruitt, Assistant City Attorney

SHARED PARKING LEASE AGREEMENT

THIS SHARED PARKING LEASE AGREEMENT (the “Agreement”) is made by and between the City of Lubbock, Texas, a State of Texas home rule municipal corporation (the “City”) and the Lubbock Entertainment and Performing Arts Association, a State of Texas nonprofit organization (“LEPAA”), (each a “Party;” and collectively, the “Parties”), acting by and through their respective and duly authorized officers and officials, and is hereby entered into by the Parties on, _____ January 25, 2018 _____ (the “Effective Date”).

THE PARTIES, FOR GOOD AND VALUABLE CONSIDERATION, AGREE AS FOLLOWS:

Article 1. The LEPAA Parking Area. Subject to the terms hereof, LEPAA authorizes the joint use by the Parties of the parking area that will be constructed and maintained by LEPAA on approximately four and a half (4.5) acres of land generally located on the easternmost portion of the area bordered by 4th Street and Marsha Sharp Freeway on the north, Avenue O on the west, Mac Davis Lane on the south, and the Buddy Holly Hall of Performing Arts and Sciences (the “Performing Arts Center”) on the east (the “LEPAA Parking Area”). The Parties’ joint use of the LEPAA Parking Area shall be at no cost to the Parties, shall be non-preferential, and shall be for the sole purpose of public parking during either of the Parties’ events near the LEPAA Parking Area. However, through its ticketing system or procedure, LEPAA may charge LEPAA patrons for parking in the LEPAA Parking Area for events held at the Performing Arts Center. The LEPAA Parking Area is more specifically described and depicted in “Exhibit 1” of this Agreement.

Article 2. The City Parking Area. Subject to the terms hereof, the City authorizes the joint use by the Parties of the parking lot located at the Lubbock Memorial Civic Center (the “City Parking Area”). The Parties’ joint use of the City Parking Area shall be at no cost to the Parties, shall be non-preferential, and shall be for the sole purpose of public parking during either of the Parties’ events near the City Parking Area. The City Parking Area does not include any existing or future City-owned parking lot located off the Lubbock Memorial Civic Center property. The City Parking Area is more specifically described and depicted in “Exhibit 2” of this Agreement.

Article 3. The Term. This Agreement shall become binding on the Effective Date and shall remain in effect through December 31, 2068 (the “Term”). The City reserves the right to extend the Term for two (2) additional ten (10) year periods (the “Extension Periods”), and LEPAA shall not prevent such extension. The City and LEPAA may extend the Term beyond the Extension Periods through a supplemental agreement signed by the Parties.

Article 4. Quarterly Event Coordination. Each Party will provide a quarterly update to the other Party that lists the Party’s planned events that might affect the Parties’ joint use of the LEPAA Parking Area and the City Parking Area. The quarterly updates shall be provided by each Party no later than January 10, April 10, July 10, and October 10 of each year, with each update detailing the planned and expected events that will occur prior to the next quarterly update. Based upon the quarterly update, the Parties shall develop a quarterly plan for the joint use of both the LEPAA Parking Area and the City Parking Area. If a Party should schedule an event not included in its quarterly plan, then that Party shall immediately inform the other Party in order to ensure the joint use of the LEPAA Parking Area and the City Parking Area. The Parties may adopt an updated plan other than the quarterly plan considered in this Article upon approval by the City Manager. The

intent of the quarterly plan is for each Party to have priority in their own parking area for that Party's events. If both Parties are holding events at the same time, the quarterly plan will address how to provide adequate parking for each event.

Article 5. Parking Area Maintenance. The City will maintain the City Parking Area at its own expense. LEPAAs will maintain the LEPAAs Parking Area at its own expense according to the terms of the Commitment Agreement between the City and LEPAAs, with such Commitment Agreement being made a part of this Agreement by reference. The City will not create or allow to be created any waste or nuisance on the LEPAAs Parking Area caused by the City's use of the LEPAAs Parking Area. LEPAAs will not create or allow to be created any waste or nuisance on the City Parking Area caused by LEPAAs's use of the City Parking Area.

Article 6. Future City Improvements. Nothing in this Agreement shall prevent the City from improving any land or property owned by the City at the time of, or subsequent to the Effective Date of, this Agreement. If the City should so improve any of its property, and should such improvement interfere with LEPAAs's joint use of the City Parking Area, then this Agreement shall not terminate and the Parties' joint use of the LEPAAs Parking Area shall continue without interruption. However, if the City should improve its property as contemplated under this Article, and should such improvement affect the availability of the parking at the City Parking Area, then this Agreement shall be immediately suspended and shall not become reactivated until such time as the City has amended this Agreement through a resolution passed by the City Council of the City. Any suspension of this Agreement under this Article shall neither extend nor otherwise have any effect on the Term of this Agreement.

Article 7. Future LEPAAs Improvements. Nothing in this Agreement shall prevent LEPAAs from improving the LEPAAs Parking Area so long as such improvements do not create a net loss in parking spaces in the LEPAAs Parking Area, unless such loss in parking spaces is temporary and City approved. The LEPAAs Parking Area shall conform to the depiction of the proposed LEPAAs Parking Area in "Exhibit 1." The parking spaces listed in "Exhibit 1" are the consideration for the transfer of the LEPAAs Parking Area from the City to LEPAAs, therefore, with the exception of a City-approved temporary reduction of parking spaces available to the City, and without prior written authorization of the City, the number of parking spaces available to the City at the LEPAAs Parking Area shall not fall below the number listed in the attached "Exhibit 1," and shall not fall below three hundred seventy-five (375) spaces. If the City and LEPAAs agree in writing that the depiction of the proposed LEPAAs Parking Area should be amended to address changes in design to the proposed LEPAAs Parking Area, then, because the parking spaces provided in "Exhibit 1" are a material part of the consideration for the transfer of the LEPAAs Parking Area that is the subject of this Agreement, such adjustment to the LEPAAs Parking Area shall not create a net loss of parking spaces provided in the attached depiction of the proposed LEPAAs Parking Area. If LEPAAs should improve the LEPAAs Parking Area, and should such improvement cause a net loss in parking spaces in the LEPAAs Parking Area, then LEPAAs shall pay to the City as liquidated damages in consideration of the City's loss of the public use of the parking spaces, the value of the net loss of the parking spaces in the LEPAAs Parking Area. The value of the net loss of parking spaces shall be agreed upon by the Parties.

Article 8. Access to City Property. This Agreement shall have no effect on the City's ability to have free and uninterrupted access at all times to City-owned property near the LEPA Parking Area including, but not limited to, the City's ability to access the Physical Plant located adjacent to the LEPA Parking Area. The property associated with the Physical Plant is further depicted and described in "Exhibit 3" attached to this Agreement.

Article 9. Termination. Either Party may terminate this Agreement for cause by providing written notice of such termination to the other Party at least thirty (30) days prior to the effective date of termination, with such notice allowing the cure of the cause of termination within a reasonable time.

Article 10. Service of Notice. Any notice required by this Agreement shall be deemed to be properly served if deposited in the U.S. mail by certified letter, return receipt requested, addressed to the recipient at the recipient's address shown below, and subject to the right of either Party to designate a different address by notice given in the manner just described.

For the City:
City Manager
City of Lubbock

P.O. Box 2000
Lubbock, Texas 79457
(806) 775-2016

For LEPA:
Chairman
Lubbock Entertainment
& Performing Arts Association
1500 Broadway, Suite 1254
Lubbock, Texas 79401
(806) 773-5650

The Parties acknowledge and affirm that no department of the City has the legal authority to enter into any contract of any type or nature in the name of the department or to accept any legal notice on behalf of the City.

Article 11. Funding. The Parties understand and acknowledge that the funding of this Agreement, if any such funding is required, is contained in the City's annual budget and is subject to the approval of the City in each fiscal year. The Parties further agree that should the City Council fail to approve a budget which includes sufficient funds for the continuance of this Agreement, or should the City Council fail to certify funds for any reason, then and upon the occurrence of such event, this Agreement shall terminate as to the City and the City shall then have no further obligation to LEPA. When the funds budgeted or certified during any fiscal year by the City to discharge its obligations under this Agreement are expended, LEPA may terminate this Agreement.

Article 12. Venue and Applicable Law. This Agreement is subject to all present and future valid laws, orders, rules, ordinances, and regulations of the United States of America, the State of Texas, the Parties, and any other regulatory body having jurisdiction over this Agreement. This Agreement shall be construed and governed according to the laws of the State of Texas. The sole venue for any action, controversy, dispute, or claim arising under this Agreement shall be in a court of appropriate jurisdiction in Lubbock County, Texas *exclusively*.

Article 13. Rights and Remedies Reserved. Each Party 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, neither Party shall 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 Agreement, the former shall control.

Article 14. Public Information. This Agreement is public information. To the extent, if any, that any provision of this Agreement is in conflict with Tex. Gov't. Code Ann. Chapter 552 et seq., as amended, same shall be of no force and effect.

Article 15. No Third-Party Beneficiaries. This Agreement is entered solely by and between, and may be enforced only by and among, the Parties. Except as set forth above, this Agreement shall not be deemed to create any rights in or obligations to any third parties.

Article 16. No Personal Liability. Nothing in this Agreement is construed as creating any personal liability on the part of any employee, officer or agent of any public body or other person that may be a party to this Agreement.

Article 17. No Joint Enterprise. This Agreement is not intended to, and shall not be construed to create any joint enterprise between or among the Parties.

Article 18. No Indemnification by City. The Parties expressly acknowledge that the City's authority to indemnify and hold harmless any third party is governed by Article XI, Section 7 of the Texas Constitution, and any provision that purports to require indemnification by the City is invalid.

Article 19. Insurance Requirements. LEPAA, and any contractor or subcontractor of LEPAA, shall obtain and maintain all insurance coverage required by the City at all times while this Agreement is in effect.

Article 20. Sovereign Immunity Acknowledged and Retained. THE PARTIES EXPRESSLY ACKNOWLEDGE AND AGREE THAT NO PROVISION OF THIS AGREEMENT IS IN ANY WAY INTENDED TO CONSTITUTE A WAIVER BY ANY PARTY OF ANY IMMUNITIES FROM SUIT OR LIABILITY THAT A PARTY MAY HAVE BY OPERATION OF LAW. THE CITY RETAINS ALL GOVERNMENTAL IMMUNITIES.

Article 21. Authority to Amend.

This Agreement may be amended by either Party in writing approved by the Parties and by the City Council.

The Parties execute and enter into this Agreement on January 25, 2018.

[SIGNATURES ON FOLLOWING PAGE]

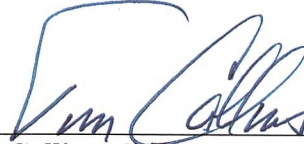
SIGNATURES

FOR THE CITY:

FOR LEPAA:



DANIEL M. POPE, MAYOR



Tim Collins, Chairman

ATTEST:



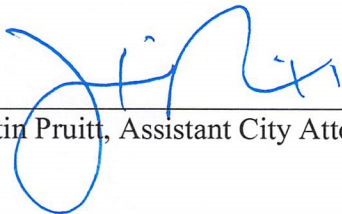
Rebecca Garza, City Secretary

APPROVED AS TO CONTENT:



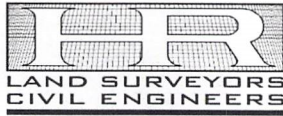
W. Jarrett Atkinson, City Manager

APPROVED AS TO FORM:



Justin Pruitt, Assistant City Attorney

Exhibit 1 – The LEPA Parking Area (Metes & Bounds)



HUGO REED AND ASSOCIATES, INC.
1601 AVENUE N / LUBBOCK, TEXAS 79401 / 806/763-5642 / FAX 806/763-3891
TEXAS REGISTERED ENGINEERING FIRM F-760
TEXAS LICENSED SURVEYING FIRM 100676-00

LEPAA Property – Metes & Bounds Description

METES AND BOUNDS DESCRIPTION of a portion of Lot 1-A, Block 1 and a portion of Lot 1-B, Block 1, Memorial Center Addition to the City of Lubbock, Lubbock County, Texas, according to the map, plat and/or dedication deed thereof recorded under County Clerk File Number 2017013164 of the Official Public Records of Lubbock County, Texas, being further described as follows:

BEGINNING at a 1/2" iron rod with cap marked "HRA" found in the South right-of-way line of the Marsha Sharp Freeway as described in Volume 7235, Page 120 of the Real Property Records of Lubbock County, Texas, being the Northeast corner of Lot 1-A, Block 1, and the Northwest corner of Lot 2-A, Block 1, Memorial Center Addition to the City of Lubbock, Lubbock County, Texas, according to the map, plat and/or dedication deed thereof recorded under County Clerk File Number 2017013164 of the Official Public Records of Lubbock County, Texas, for the Northeast corner of this tract;

THENCE S. 01°41'14" W., along the Eastern boundary of said Lot 1-A, and the Western boundary of said Lot 2-A, at 481.33 feet pass the most Easterly Southeast corner of said Lot 1-A same being the Northeast corner of Lot 1-B, Block 1, said Memorial Center Addition, continuing along the Western boundary of said Lot 2-A, and along the Eastern boundary of said Lot 1-B, for a total distance of 547.27 feet to a 1/2" iron rod with cap marked "HRA" set for the most Easterly Southeast corner of this tract, from whence a 1/2" iron rod with cap marked "HRA" found at the Southeast corner of said Lot 1-B bears S. 01°41'14" W. a distance of 89.24 feet;

THENCE N. 88°18'46" W. a distance of 161.50 feet to a 1/2" iron rod with cap marked "HRA" set for an "ell" corner of this tract;

THENCE S. 01°41'14" W. a distance of 89.24 feet to a 1/2" iron rod with cap marked "HRA" set in the North right-of-way line of Mac Davis Lane as dedicated by plat recorded in Volume 5, Page 384 of the Deed Records of Lubbock County, Texas, and the Southern boundary of said Lot 1-B, for the most Southerly Southeast corner of this tract, from whence a 1/2" iron rod with cap marked "HRA" found at the Southeast corner of said Lot 1-B bears S. 88°18'46" E. a distance of 161.50 feet;

THENCE N. 88°18'46" W., along said North right-of-way line and the Southern boundary of said Lot 1-B, a distance of 156.50 feet to a 1/2" iron rod with cap marked "HRA" set for the Southwest corner of this tract;

THENCE N. 01°41'14" E., at 26.99 feet pass a point in the Northern boundary of said Lot 1-B, continuing for a total distance of 458.23 feet to a 1/2" iron rod with cap marked "HRA" set for a point of curvature;

THENCE Northwesterly, along a curve to the left, said curve having a radius of 99.50 feet, a central angle of 25°57'39", tangent lengths of 22.94 feet, a chord distance of 44.70 feet and a chord bearing of N. 11°17'36" W. to a 1/2" iron rod with cap marked "HRA" set for a point of tangency;

THENCE N. 24°16'26" W. a distance of 117.49 feet to a set 1/2" iron rod with cap marked "HRA";

THENCE N. 01°41'14" E. a distance of 30.00 feet to a 1/2" iron rod with cap marked "HRA" set in the said South right-of-way line of Marsha Sharp Freeway and the Northern boundary of said Lot 1-A, for the Northwest corner of this tract;

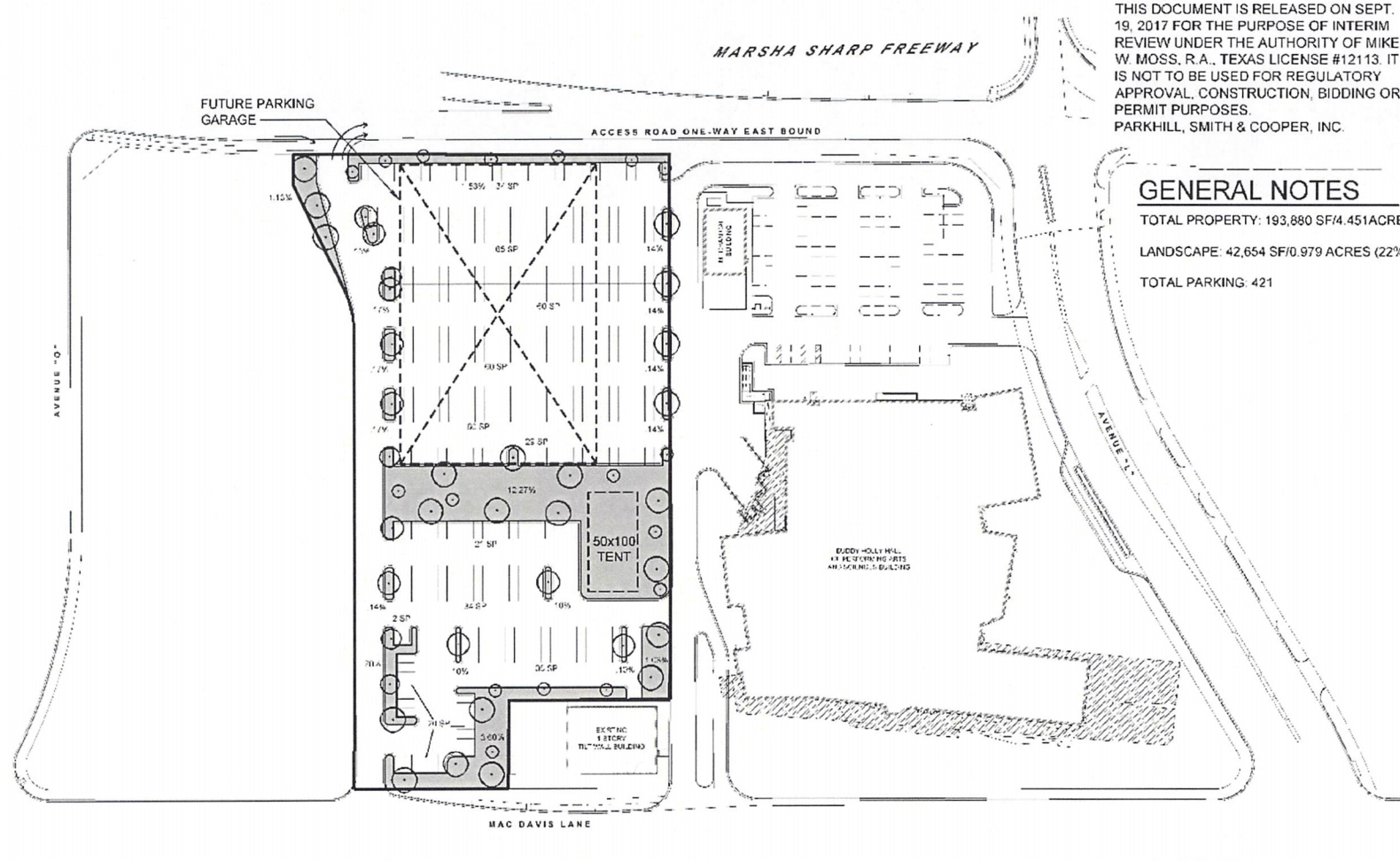
THENCE S. 88°10'30" E., along said South right-of-way line and the Northern boundary of said Lot 1-A, a distance of 379.48 feet to the Point of Beginning.

Contains: 193,880 square feet - 4.451 acres.

**Bearings are Relative to Grid North, Texas Coordinate System 1983, North-Central Zone, (2011, epoch 2010.0).
Distances are Surface, U.S. Survey Feet.**

NOTICE: This electronic file is provided for convenience purposes and is a verbatim copy of a certified description retained on file at Hugo Reed and Associates, Inc. In any case of discrepancy, the certified description governs.

THIS DOCUMENT IS RELEASED ON SEPT. 19, 2017 FOR THE PURPOSE OF INTERIM REVIEW UNDER THE AUTHORITY OF MIKE W. MOSS, R.A., TEXAS LICENSE #12113. IT IS NOT TO BE USED FOR REGULATORY APPROVAL, CONSTRUCTION, BIDDING OR PERMIT PURPOSES.
PARKHILL, SMITH & COOPER, INC.



GENERAL NOTES

TOTAL PROPERTY: 193,880 SF/4.451ACRES
LANDSCAPE: 42,654 SF/0.979 ACRES (22%)
TOTAL PARKING: 421

Exhibit 1 - The LEPA Parking Area (Site Plan)

Exhibit 2 – The City Parking Area

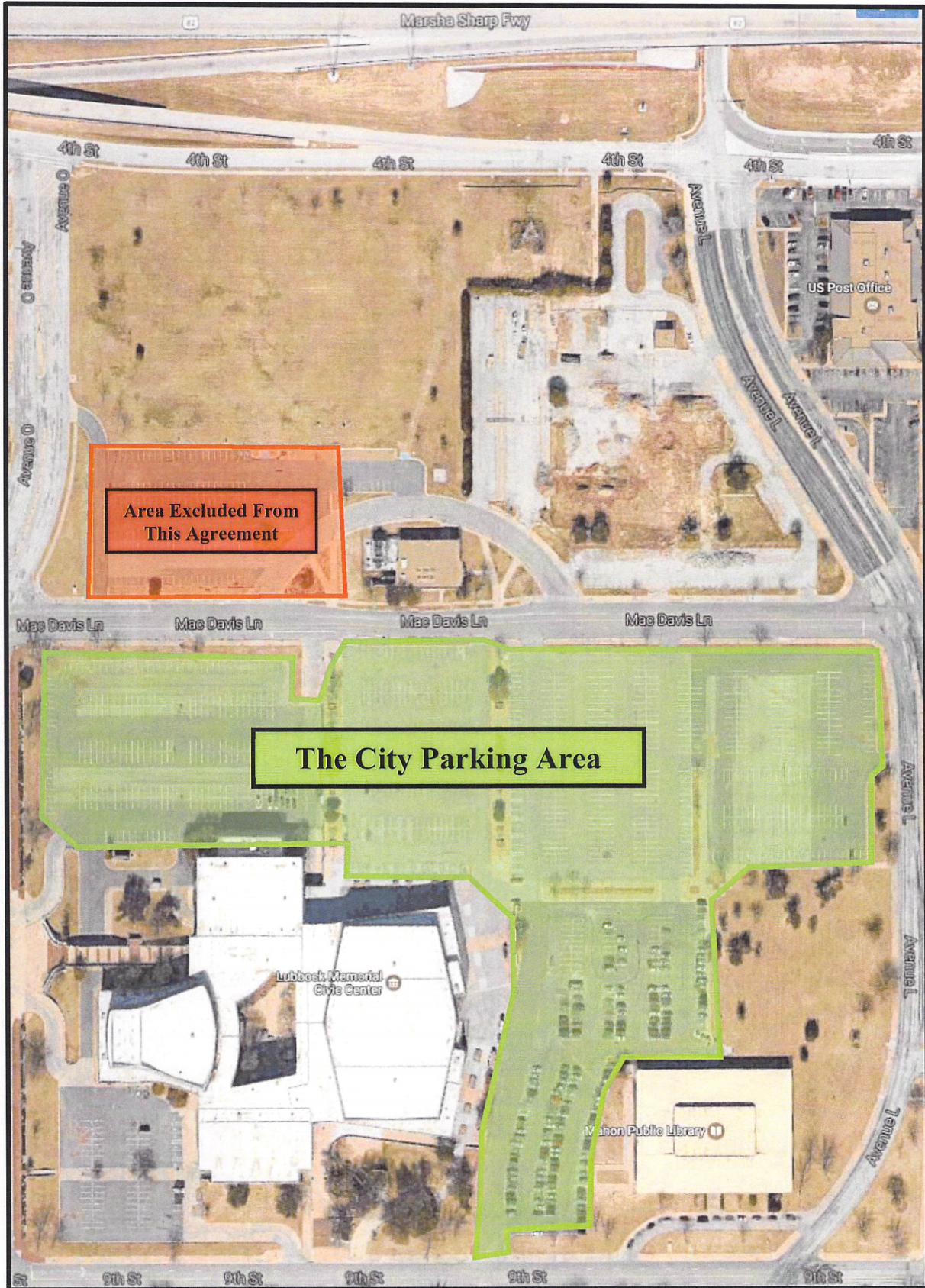
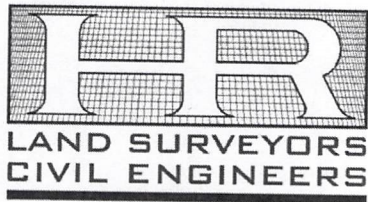


Exhibit 3 – The City's Physical Plant



HUGO REED AND ASSOCIATES, INC.
1601 AVENUE N / LUBBOCK, TEXAS 79401 / 806/763-5642 / FAX 806/763-3891
TEXAS REGISTERED ENGINEERING FIRM F-760
TEXAS LICENSED SURVEYING FIRM 100676-00

METES AND BOUNDS DESCRIPTION of a portion of Lot 1-B of Lots 1-A, 1-B and 2-A, Block 1, Memorial Center Addition to the City of Lubbock, Lubbock County, Texas, according to the map, plat and/or dedication deed thereof recorded in County Clerk File Number (CCFN) 2017013164 of the Official Public Records of Lubbock County, Texas (OPRLCT), being further described as follows:

BEGINNING at a 1/2" iron rod with cap set in the North right-of-way line of Mac Davis Lane as dedicated by plat recorded in Volume 5, Page 384 of the Deed Records of Lubbock County, Texas, for the Southwest corner of said Lot 2-A, Block 1, and the Southeast corner of this tract;

THENCE N. 88°18'46" W., along said North right-of-way line, a distance of 161.50 feet to a 1/2" iron rod with cap set for the Southwest corner of this tract;

THENCE N. 01°41'14" E. a distance of 89.24 feet to a 1/2" iron rod with cap set for the Northwest corner of this tract;

THENCE S. 88°18'46" E. a distance of 161.50 feet to a 1/2" iron rod with cap set in the Western boundary of said Lot 2-A, Block 1, for the Northeast corner of this tract;

THENCE S. 01°41'14" W., along the Western boundary of said Lot 2-A, Block 1, a distance of 89.24 feet to the Point of Beginning;

Bearings are Relative to Grid North, Texas Coordinate System 1983, North-Central Zone, (2011, epoch 2010.0).
Distances are Surface, U.S. Survey Feet

Contains 14,412 square feet or 0.3309 acres

COMMITMENT AGREEMENT

THIS COMMITMENT AGREEMENT (the “Agreement”) is made by and between the City of Lubbock, Texas (the “City”), a State of Texas home rule municipal corporation, and the Lubbock Entertainment and Performing Arts Association (“LEPAA”), a State of Texas nonprofit organization, (each a “Party,” and collectively, the “Parties”) acting by and through their respective and duly authorized officers and officials, and is hereby entered into by the Parties on January 25, 2018, (the “Effective Date”)

RECITALS

WHEREAS, LEPAA is a nonprofit organization founded in 2013, with donations and grants from interested and caring citizens, organizations, and charitable foundations of Lubbock, Texas and the surrounding South Plains region, to support it in achieving its goal of providing entertainment and performing arts in Lubbock, including concerts, ballet programs, symphony performances, Broadway shows, lecture series, cultural exhibits, and educational materials; and

WHEREAS, LEPAA, in order to provide a venue for such entertainment and performing arts, is building a permanent facility for a new performing arts center to be known as the Buddy Holly Hall of Performing Arts and Sciences (the “Performing Arts Center”) on property located at 1300 Mac Davis Lane, Lubbock, Texas, across from the Lubbock Memorial Civic Center (the “Civic Center”); and

WHEREAS, LEPAA, desires to construct a parking area adjacent to the Performing Arts Center (the “Parking Area”) on land currently owned by the City (the “Property”), with such Property being further depicted and described by a survey with metes and bounds in “Exhibit A” attached hereto, and with such Parking Area being further depicted in “Exhibit B” attached hereto; and

WHEREAS, the City Council of the City (the “City Council”) hereby finds that the Parking Area would serve a public purpose by providing public and private parking for downtown events at the Performing Arts Center, the Civic Center, and other downtown Lubbock locations;

WHEREAS, the City and LEPAA recognize that the Property is located within the Central Business District Tax Increment Financing Reinvestment Zone (the “CBD TIF”) which was established by the City through Ordinance 2001-O091, and along with the boundary of the CBD TIF, the City also adopted the Central Business District Project Plan and Financing Plan, the most recently updated version of which was approved by the City through Ordinance 2017-O0050 (the “Project Plans”); and

WHEREAS, the Project Plans anticipate that the CBD TIF will provide additional stimulus to development and redevelopment in the CBD TIF, and the Project Plans support the transfer, sale, and improvement of property within the CBD TIF; and

WHEREAS, Texas Tax Code §311.008(b)(2) allows the governing body of the City to exercise any power necessary and convenient to sell real property on the terms and conditions and in the manner it considers advisable, to implement the Project Plans, and, according to Texas Tax Code §311.008(c), the authority of the governing body of the City

to sell real property to support the Project Plans prevails over any law or municipal charter to the contrary; and

WHEREAS, for the public purpose of LEPAA's construction and maintenance of the Parking Area, and to implement the Project Plans, the City desires to transfer the Property to LEPAA through a Deed Without Warranty the terms and conditions of which the City considers advisable; and **NOW THEREFORE**,

THE PARTIES, FOR GOOD AND VALUABLE CONSIDERATION, AGREE AS FOLLOWS:

AGREEMENT

Section 1 – Recitals and Exhibits

The representations, covenants, and findings set forth in the recitals and exhibits of this Agreement are material to this Agreement and are hereby incorporated into and made a part of this Agreement.

Section 2 – Contract Authority

The Parties hereby warrant and represent that each has full lawful right, power, and authority to execute, deliver, and perform the terms and obligations of this Agreement. Accordingly, this Agreement constitutes a legal and binding obligation upon the Parties.

Section 3 – The Property

As more particularly depicted and described in "Exhibit A" attached hereto, the Property that is the subject of this Agreement is approximately four and a half (4.5) acres of City-owned land generally located on the easternmost portion of the area bordered by 4th Street and Marsha Sharp Freeway on the north, Avenue O on the west, Mac Davis Lane on the south, and the Performing Arts Center on the east.

Section 4 – Public Purpose

LEPAA hereby warrants and agrees that if the Property is transferred according to the terms contained in this Agreement, then the Property will be used solely for the public purpose of providing public parking through a parking lot or parking garage containing no less than three hundred seventy-five spaces (375) available for public use, with such parking lot or parking garage containing space for retail sales and office uses according to the Site Plan attached to this Agreement as "Exhibit B" (the "Public Purpose"). LEPAA hereby acknowledges that the use of the Property is restricted to the Public Purpose.

Section 5 – Term

Unless terminated earlier under any provision contained herein, this Agreement shall become effective on the day of its execution by both Parties and shall be effective through December 31, 2023 (the "Term"). The Term may be extended or reduced in writing by either Party as authorized by the City Council through a resolution.

Section 6 – LEPAA's Responsibilities

Upon the execution of this Agreement, LEPAA agrees to be bound by the following:

- A.** Prior to the transfer of the Property that is the subject of this Agreement, and prior to the expiration of the Term, LEPAA shall conduct and pay for an official survey of the

Property. Upon its completion, said official survey of the Property shall be incorporated into "Exhibit A" of this Agreement.

- B. Prior to the transfer of the Property that is the subject of this Agreement, and prior to the expiration of the Term, LEPA shall enter into a shared parking lease agreement with the City that addresses: LEPA's use of public parking near the Property during the construction and operation of the Parking Area; the City's use of the Parking Area; and, the City's access to City-owned land that is adjacent to the Parking Area. Such shared parking lease agreement shall be in substantially the same form as the Draft Shared Parking Lease Agreement attached as "Exhibit C" to this Agreement.
- C. Prior to the transfer of the Property, LEPA may use a portion of the Property for a stack lot in order to further the construction of the Performing Arts Center. LEPA's proposed portion of the Property to be used as a stack lot is depicted in "Exhibit D" attached to this Agreement, with such use being subject to City approval.
- D. Upon the transfer of the Property that is the subject of this Agreement, LEPA agrees to pay for all closing costs, including, but not limited to, a title policy, if such a policy is required.
- E. Upon the transfer of the Property that is the subject of this Agreement, and during the construction and operation of the Parking Area, LEPA agrees to maintain the Property at its own expense and in accordance with the City's Code of Ordinances, including the Downtown Public Improvements Design Standards.
- F. Prior to LEPA's initiation of any construction or improvements on the Property, LEPA shall submit final site plans to the City for permit approval that reflect LEPA's intended use of the Property solely for the Public Purpose.
- G. Prior to LEPA's initiation of any construction or improvements on the Property, LEPA shall provide evidence to the City that LEPA has secured all the funding necessary for the construction and maintenance of the Parking Area. Such evidence shall be in an amount and form reasonably acceptable to the City. If the City, in its sole discretion, determines that LEPA has not secured all the funding required for the construction and maintenance of the Parking Area, then the City will notify LEPA in writing and provide thirty (30) days for LEPA to secure such funding, or this Agreement shall terminate.
- H. Within a reasonable time after the execution of this Agreement, but no later than twelve (12) months after substantial completion of the construction of the Performing Arts Center, LEPA agrees to begin construction of the Parking Area at its own expense, and upon completion of the Parking Area, LEPA agrees to maintain the Parking Area at its own expense according to the Downtown Public Improvements Design Standards.
- I. The Parking Area will be primarily designed for the public purpose of vehicle parking, but LEPA agrees that at least twenty-two percent (22%) of the Parking Area will be designed, constructed, and maintained as green space at LEPA's expense. Landscaping in the green space may consist of a combination of plant material, including, but not limited to: grass, trees, shrubs, planters, brick, stone, natural forms, water forms, decorative pavers, and other similar features. Any combination of brick,

stone, and decorative pavers shall account for no more than twenty-five (25%) of the required landscaped area. Landscaping shall not include smooth concrete or asphalt. LEPA shall be responsible for the irrigation and maintenance of the landscaping in the Parking Area at its own expense. The requirements of this provision may only be adjusted through a written agreement signed by the Parties.

- J. The Parking Area shall conform to the depiction of the proposed Parking Area in "Exhibit B." The parking spaces listed in "Exhibit B" are the consideration for the transfer of the Property from the City to LEPA, therefore, with the exception of a City-approved temporary reduction of the parking spaces made available to the City, and without prior written approval of the City, the number of parking spaces available to the City at the Parking Area shall not fall below the number listed in the attached "Exhibit B," and in no case shall fall below three hundred seventy-five (375) spaces. If the City and LEPA agree in writing that the depiction of the proposed Parking Area should be amended to address changes in design to the proposed Parking Area, then, because the parking spaces provided in "Exhibit B" are a material part of the consideration for the transfer of the Property that is the subject of this Agreement, such adjustment to the Parking Area shall not create a net loss of parking spaces provided in the attached depiction of the proposed Parking Area. If LEPA should improve the Parking Area, and should such improvement cause a net loss in parking spaces in the Parking Area, then LEPA shall pay to the City as liquidated damages in consideration of the City's loss of the public use of the parking spaces, the value of the net loss of the parking spaces in the LEPA Parking Area. The value of the net loss of parking spaces shall be agreed upon by the Parties.
- K. LEPA agrees that its business records, including any financial documents, shall be open for inspection at reasonable times upon the request of the City.
- L. LEPA may terminate this Agreement without cause by providing written notice of such termination to the City at least thirty (30) days prior to the effective date of such termination.

Section 7 – The City's Responsibilities

Upon the execution of this Agreement, the City agrees to be bound by the following:

- A. The City agrees to hold the Property for the public purpose of the Parking Area throughout the Term, by which time LEPA shall have satisfied its applicable responsibilities under this Agreement.
- B. If the City determines that LEPA has satisfied its applicable responsibilities under this Agreement prior to the expiration of the Term, then the City will notify LEPA in writing of the City's intent to transfer the Property to LEPA by a Deed Without Warranty in a form substantially similar to the draft Deed Without Warranty that attached to this Agreement as "Exhibit E."
- C. If the City determines that LEPA has not satisfied all of its applicable responsibilities under this Agreement by the expiration of the Term, then the City shall provide written notification to LEPA that this Agreement shall terminate, the City shall not transfer the Property to LEPA, and the Property shall not be available to LEPA for the

Parking Area or any other project. The termination described in this subsection shall become effective immediately upon the determination of the City and shall not require any additional act, writing, or ruling of the City.

- D. Through a resolution authorizing an amendment to this Agreement, the City may elect to waive any of LEPAAs' responsibilities under this Agreement. If any such resolution is approved by the City Council, then the City will provide a copy of such resolution and amendment to LEPAAs.

Section 8 – Service of Notice

Any notice required by this Agreement shall be deemed to be properly served if deposited in the U.S. mail by certified letter, return receipt requested, addressed to the recipient at the recipient's address shown below, and subject to the right of either Party to designate a different address by notice given in the manner just described.

For the City:

City Manager
City of Lubbock

P.O. Box 2000
Lubbock, Texas 79457
(806) 775-2016

For LEPAAs:

Chairman
Lubbock Entertainment
& Performing Arts Association
1500 Broadway, Suite 1254
Lubbock, Texas 79401
(806) 773-5650

The Parties acknowledge and affirm that no department of the City has the legal authority to enter into any contract of any type or nature in the name of the department or to accept any legal notice on behalf of the City.

Section 9 – Funding

The Parties understand and acknowledge that the funding of this Agreement, if any such funding is required, is contained in the City's annual budget and is subject to the approval of the City in each fiscal year. The Parties further agree that should the City Council fail to approve a budget which includes sufficient funds for the continuance of this Agreement, or should the City Council fail to certify funds for any reason, then and upon the occurrence of such event, this Agreement shall terminate as to the City and the City shall then have no further obligation to LEPAAs. When the funds budgeted or certified during any fiscal year by the City to discharge its obligations under this Agreement are expended, LEPAAs may terminate this Agreement.

Section 10 – Venue and Applicable Law

This Agreement is subject to all present and future valid laws, orders, rules, ordinances, and regulations of the United States of America, the State of Texas, the Parties, and any other regulatory body having jurisdiction over this Agreement. This Agreement shall be construed and governed according to the laws of the State of Texas. The sole venue for any action, controversy, dispute, or claim arising under this Agreement shall be in a court of appropriate jurisdiction in Lubbock County, Texas *exclusively*.

Section 11 – Rights and Remedies Reserved

Each Party 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, neither Party shall 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 Agreement, the former shall control.

Section 12 – Public Information

This Agreement is public information. To the extent, if any, that any provision of this Agreement is in conflict with Tex. Gov't. Code Ann. Chapter 552 et seq., as amended, same shall be of no force and effect.

Section 13 – No Third-Party Beneficiaries

This Agreement is entered solely by and between, and may be enforced only by and among, the Parties. Except as set forth above, this Agreement shall not be deemed to create any rights in or obligations to any third parties.

Section 14 – No Personal Liability

Nothing in this Agreement is construed as creating any personal liability on the part of any employee, officer, or agent of any public body or other person that may be a party to this Agreement.

Section 15 – No Joint Enterprise

This Agreement is not intended to, and shall not be construed to create any joint enterprise between or among the Parties.

Section 16 – No Indemnification by City

The Parties expressly acknowledge that the City's authority to indemnify and hold harmless any third party is governed by Article XI, Section 7 of the Texas Constitution, and any provision which purports to require indemnification by the City is invalid.

Section 17 – Insurance Requirements

LEPAA, and any contractor or subcontractor of LEPAA, shall obtain and maintain all insurance coverage required by the City at all times while this Agreement is in effect.

Section 18 – Sovereign Immunity Acknowledged and Retained

THE PARTIES EXPRESSLY ACKNOWLEDGE AND AGREE THAT NO PROVISION OF THIS AGREEMENT IS IN ANY WAY INTENDED TO CONSTITUTE A WAIVER BY EITHER PARTY OF ANY IMMUNITIES FROM SUIT OR LIABILITY THAT A PARTY MAY HAVE BY OPERATION OF LAW. THE CITY RETAINS ALL GOVERNMENTAL IMMUNITIES.

Section 19 – Authority to Amend

This Agreement may be amended in writing by either Party, with such writing being subject to the approval of the Parties and of the City Council.

The Parties execute and enter into this Agreement on January 25, 2018.

[SIGNATURES INCLUDED ON THE NEXT PAGE]

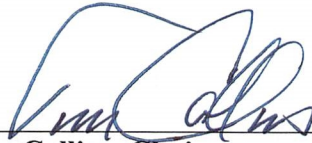
SIGNATURES

FOR THE CITY:

FOR LEPA:



DANIEL M. POPE, MAYOR



Tim Collins, Chairman

ATTEST:



Rebecca Garza, City Secretary

APPROVED AS TO CONTENT:



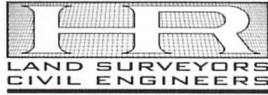
W. Jarrett Atkinson, City Manager

APPROVED AS TO FORM:



Justin Pruitt, Assistant City Attorney

Exhibit A – The Property (Metes & Bounds)



HUGO REED AND ASSOCIATES, INC.
1601 AVENUE N / LUBBOCK, TEXAS 79401 / 806/763-5642 / FAX 806/763-3891
TEXAS REGISTERED ENGINEERING FIRM F-760
TEXAS LICENSED SURVEYING FIRM 100676-00

METES AND BOUNDS DESCRIPTION of a portion of Lot 1-A, Block 1 and a portion of Lot 1-B, Block 1, Memorial Center Addition to the City of Lubbock, Lubbock County, Texas, according to the map, plat and/or dedication deed thereof recorded under County Clerk File Number 2017013164 of the Official Public Records of Lubbock County, Texas, being further described as follows:

BEGINNING at a 1/2" iron rod with cap marked "HRA" found in the South right-of-way line of the Marsha Sharp Freeway as described in Volume 7235, Page 120 of the Real Property Records of Lubbock County, Texas, being the Northeast corner of Lot 1-A, Block 1, and the Northwest corner of Lot 2-A, Block 1, Memorial Center Addition to the City of Lubbock, Lubbock County, Texas, according to the map, plat and/or dedication deed thereof recorded under County Clerk File Number 2017013164 of the Official Public Records of Lubbock County, Texas, for the Northeast corner of this tract;

THENCE S. 01°41'14" W., along the Eastern boundary of said Lot 1-A, and the Western boundary of said Lot 2-A, at 481.33 feet pass the most Easterly Southeast corner of said Lot 1-A same being the Northeast corner of Lot 1-B, Block 1, said Memorial Center Addition, continuing along the Western boundary of said Lot 2-A, and along the Eastern boundary of said Lot 1-B, for a total distance of 547.27 feet to a 1/2" iron rod with cap marked "HRA" set for the most Easterly Southeast corner of this tract, from whence a 1/2" iron rod with cap marked "HRA" found at the Southeast corner of said Lot 1-B bears S. 01°41'14" W. a distance of 89.24 feet;

THENCE N. 88°18'46" W. a distance of 161.50 feet to a 1/2" iron rod with cap marked "HRA" set for an "ell" corner of this tract;

THENCE S. 01°41'14" W. a distance of 89.24 feet to a 1/2" iron rod with cap marked "HRA" set in the North right-of-way line of Mac Davis Lane as dedicated by plat recorded in Volume 5, Page 384 of the Deed Records of Lubbock County, Texas, and the Southern boundary of said Lot 1-B, for the most Southerly Southeast corner of this tract, from whence a 1/2" iron rod with cap marked "HRA" found at the Southeast corner of said Lot 1-B bears S. 88°18'46" E. a distance of 161.50 feet;

THENCE N. 88°18'46" W., along said North right-of-way line and the Southern boundary of said Lot 1-B, a distance of 156.50 feet to a 1/2" iron rod with cap marked "HRA" set for the Southwest corner of this tract;

THENCE N. 01°41'14" E., at 26.99 feet pass a point in the Northern boundary of said Lot 1-B, continuing for a total distance of 458.23 feet to a 1/2" iron rod with cap marked "HRA" set for a point of curvature;

THENCE Northwesterly, along a curve to the left, said curve having a radius of 99.50 feet, a central angle of 25°57'39", tangent lengths of 22.94 feet, a chord distance of 44.70 feet and a chord bearing of N. 11°17'36" W. to a 1/2" iron rod with cap marked "HRA" set for a point of tangency;

THENCE N. 24°16'26" W. a distance of 117.49 feet to a set 1/2" iron rod with cap marked "HRA";

THENCE N. 01°41'14" E. a distance of 30.00 feet to a 1/2" iron rod with cap marked "HRA" set in the said South right-of-way line of Marsha Sharp Freeway and the Northern boundary of said Lot 1-A, for the Northwest corner of this tract;

THENCE S. 88°10'30" E., along said South right-of-way line and the Northern boundary of said Lot 1-A, a distance of 379.48 feet to the Point of Beginning.

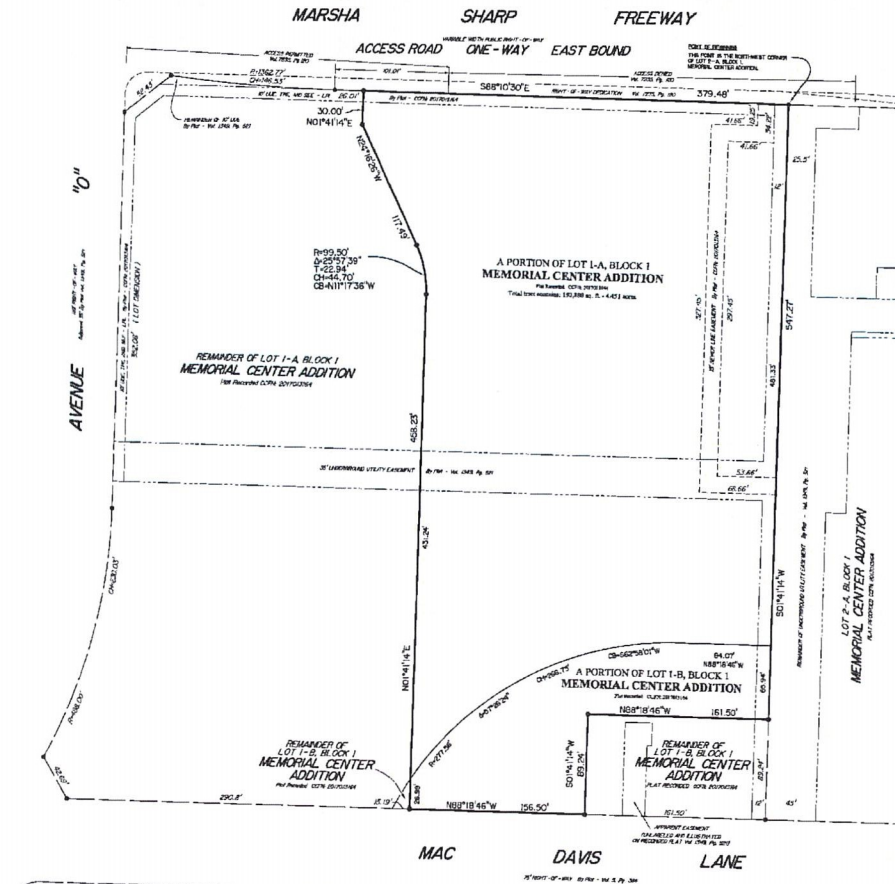
Contains: 193,880 square feet - 4.451 acres.

**Bearings are Relative to Grid North, Texas Coordinate System 1983, North-Central Zone, (2011, epoch 2010.0).
Distances are Surface, U.S. Survey Feet.**

NOTICE: This electronic file is provided for convenience purposes and is a verbatim copy of a certified description retained on file at Hugo Reed and Associates, Inc. In any case of discrepancy, the certified description governs.

Exhibit A – The Property (Survey)

PERIMETER SURVEY OF A PORTION OF
LOT 1-A, BLOCK 1 AND A PORTION OF LOT 1-B, BLOCK 1,
MEMORIAL CENTER ADDITION
TO THE CITY OF LUBBOCK, LUBBOCK COUNTY, TEXAS
ACCORDING TO THE MAP, PLAT AND/OR INDICATION
DEED THEREOF RECORDED UNDER
COUNTY CLERK FILE NUMBER 201701164
OF THE OFFICIAL PUBLIC RECORDS OF LUBBOCK COUNTY, TEXAS



MEASURES AND BOUNDARY DESCRIPTION of a portion of Lot 1-A, Block 1 and a portion of Lot 1-B, Block 1, Memorial Center Addition to the City of Lubbock, Lubbock County, Texas, according to the map, plat and/or indication deed thereof recorded under County Clerk File Number 201701164 of the Official Public Records of Lubbock County, Texas, being further described as follows:

REFERENCE to a 1/2" iron rod with cap marked "HRA" found in the South right-of-way line of the Marsha Sharp Freeway as described in Volume 7234, Page 120 of the Real Property Records of Lubbock County, Texas, being the Northern corner of Lot 1-A, Block 1, and the Northwest corner of Lot 1-B, Block 1, Memorial Center Addition to the City of Lubbock, Lubbock County, Texas, according to the map, plat and/or indication deed thereof recorded under County Clerk File Number 201701164 of the Official Public Records of Lubbock County, Texas, for the Northern corner of this tract.

THENCE N. 01°41'14" W., along the Eastern boundary of said Lot 1-A, and the Western boundary of said Lot 2-A, at 481.33 feet pass the most Westerly Southeast corner of said Lot 1-A, same being the Northwest corner of Lot 1-B, Block 1, said Memorial Center Addition, continuing along the Western boundary of said Lot 2-A, and along the Eastern boundary of said Lot 1-B, for a total distance of 547.27 feet to a 1/2" iron rod with cap marked "HRA" set for the most Westerly Southeast corner of this tract, from whence a 1/2" iron rod with cap marked "HRA" found in the Southeast corner of said Lot 1-B, bears S. 01°41'14" W., a distance of 89.24 feet;

THENCE N. 88°18'46" W., a distance of 161.50 feet to a 1/2" iron rod with cap marked "HRA" set for the "old" corner of this tract;

THENCE S. 01°41'14" W., a distance of 89.24 feet to a 1/2" iron rod with cap marked "HRA" set in the North right-of-way line of Marsha Sharp Lane as dedicated by plat recorded in Volume 5, Page 184 of the Deed Records of Lubbock County, Texas, and the Southeast boundary of said Lot 1-B, for the most Westerly Southeast corner of this tract, from whence a 1/2" iron rod with cap marked "HRA" found in the Southeast corner of said Lot 1-B, bears S. 89°18'46" E., a distance of 161.50 feet;

THENCE N. 88°18'46" W., along said North right-of-way line and the Southern boundary of said Lot 1-B, a distance of 156.58 feet to a 1/2" iron rod with cap marked "HRA" set for the Southeast corner of this tract;

THENCE N. 01°41'14" E., at 28.95 feet pass a pole in the Northern boundary of said Lot 1-B, continuing for a total distance of 438.23 feet to a 1/2" iron rod with cap marked "HRA" set for a point of beginning;

THENCE Northwesterly, along a curve to the left, said curve having a radius of 99.30 feet, a central angle of 23°57'36", tangent lengths of 22.94 feet, a chord distance of 44.70 feet and a chord bearing of N. 11°17'50" W. to a 1/2" iron rod with cap marked "HRA" set for a point of beginning;

THENCE N. 24°16'24" W., a distance of 117.49 feet to a 1/2" iron rod with cap marked "HRA";

THENCE N. 01°41'14" E., a distance of 10.00 feet to a 1/2" iron rod with cap marked "HRA" set in the said South right-of-way line of Marsha Sharp Freeway and the Northern boundary of said Lot 1-A, for the Northwest corner of this tract;

THENCE S. 89°18'46" E., along said North right-of-way line and the Northern boundary of said Lot 1-A, a distance of 379.48 feet to the Point of Beginning.

Contains 193,880 square feet - 4.451 acres.

HEARING HASK

Hearings were relative to Ord. No. 83, Texas Coordinate System, North-Central Zone, City of Lubbock Geodetic Network and Aerial Control. Distances are Surface, U.S. Survey Feet.

FLOOD STATEMENT

As graphically plotted on Parcel 305 of 500 of the Flood Insurance Rate Map published by the Federal Emergency Management Agency (FEMA) for Lubbock County, Texas and incorporated into Map No. 4800X0035 E, effective date: September 18, 2002 and Revised September 26, 2007, a portion of this property lies in ZONE AE and the remainder of this property lies in ZONE X.

TITLE COMMITMENT

No abstract of title or this commitment was provided to this surveyor. Record research done by this surveyor was made only for the purpose of determining the boundary of this property and of the adjoining parcels. Record documents other than those shown on this survey may exist and encumber this property.

This survey and all information herein is for the exclusive use of Lubbock Investment and Performing Arts Association and the City of Lubbock and shall not be copied or used except for the purpose for which it is expressly furnished.

I, Brent Carroll, Texas Registered Professional Land Surveyor No. 5410, do hereby certify that this survey was made on the ground.

March 16, 2017

April 18, 2017 - Revised to update recording information

July 18, 2017 - Revised to correct Lot reference in metes/and/or bearings

July 18, 2017 - Revised to correct boundary

September 15, 2017 - Revised to correct labeled square footage and acreage

Brent Carroll

Brent Carroll
Registered Professional Land Surveyor
No. 5410 State of Texas

NOTES:

- SCALE: 1"=50'
- HEAVY LINES INDICATE PLAT LIMITS.
- CONTROL MEASUREMENTS AS FOUND AND SHOWN.
- = FOUND 1/2" IRON ROD W/ CAP MARKED "HRA"
- = SET 1/2" IRON ROD W/ CAP MARKED "HRA"
- CCF = COUNTY CLERK FILE NUMBER
- TFE = TRANSFERRED EASEMENT
- SEE = SWITCHING EASEMENT
- UE = UNDERGROUND UTILITY EASEMENT
- LO = LUBBOCK POWER AND LIGHT
- R-O-W = RIGHT-OF-WAY
- TROSBACH (TOR)



WARNING
This plat is invalid unless it bears an original signature across to be recorded.

IRVING REED AND ASSOCIATES, P.C.

1100 N. WILSON ST., SUITE 100, LUBBOCK, TEXAS 79402
PH: 806.741.1100 FAX: 806.741.1101
WWW.IRVINGREEDANDASSOCIATES.COM

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Exhibit B – Proposed Parking Area

GENERAL NOTES

TOTAL PARKING: 421



PSC

PARKING LAYOUT - OPTION 1

Date: 9.19.17

Exhibit C – Draft Shared Parking Lease Agreement

(DRAFT) SHARED PARKING LEASE AGREEMENT

THIS SHARED PARKING LEASE AGREEMENT (the “Agreement”) is made by and between the City of Lubbock, Texas, a State of Texas home rule municipal corporation (the “City”) and the Lubbock Entertainment and Performing Arts Association, a State of Texas nonprofit organization (“LEPAA”), (each a “Party;” and collectively, the “Parties”), acting by and through their respective and duly authorized officers and officials, and is hereby entered into by the Parties on, _____ (the “Effective Date”).

THE PARTIES, FOR GOOD AND VALUABLE CONSIDERATION, AGREE AS FOLLOWS:

Article 1. The LEPAA Parking Area. Subject to the terms hereof, LEPAA authorizes the joint use by the Parties of the parking area that will be constructed and maintained by LEPAA on approximately four and a half (4.5) acres of land generally located on the easternmost portion of the area bordered by 4th Street and Marsha Sharp Freeway on the north, Avenue O on the west, Mac Davis Lane on the south, and the Buddy Holly Hall of Performing Arts and Sciences (the “Performing Arts Center”) on the east (the “LEPAA Parking Area”). The Parties’ joint use of the LEPAA Parking Area shall be at no cost to the Parties, shall be non-preferential, and shall be for the sole purpose of public parking during either of the Parties’ events near the LEPAA Parking Area. However, through its ticketing system or procedure, LEPAA may charge LEPAA patrons for parking in the LEPAA Parking Area for events held at the Performing Arts Center. The LEPAA Parking Area is more specifically described and depicted in “Exhibit 1” of this Agreement.

Article 2. The City Parking Area. Subject to the terms hereof, the City authorizes the joint use by the Parties of the parking lot located at the Lubbock Memorial Civic Center (the “City Parking Area”). The Parties’ joint use of the City Parking Area shall be at no cost to the Parties, shall be non-preferential, and shall be for the sole purpose of public parking during either of the Parties’ events near the City Parking Area. The City Parking Area does not include any existing or future City-owned parking lot located off the Lubbock Memorial Civic Center property. The City Parking Area is more specifically described and depicted in “Exhibit 2” of this Agreement.

Article 3. The Term. This Agreement shall become binding on the Effective Date and shall remain in effect through December 31, 2068 (the “Term”). The City reserves the right to extend the Term for two (2) additional ten (10) year periods (the “Extension Periods”), and LEPAA shall not prevent such extension. The City and LEPAA may extend the Term beyond the Extension Periods through a supplemental agreement signed by the Parties.

Article 4. Quarterly Event Coordination. Each Party will provide a quarterly update to the other Party that lists the Party’s planned events that might affect the Parties’ joint use of the LEPAA Parking Area and the City Parking Area. The quarterly updates shall be provided by each Party no later than January 10, April 10, July 10, and October 10 of each year, with each update detailing the planned and expected events that will occur prior to the next quarterly update. Based upon the quarterly update, the Parties shall develop a quarterly plan for the joint use of both the LEPAA Parking Area and the City Parking Area. If a Party should schedule an event not included in its quarterly plan, then that Party shall immediately inform the other Party in order to ensure the joint use of the LEPAA Parking Area and the City Parking Area. The Parties may adopt an updated plan other than the quarterly plan considered in this Article upon approval by the City Manager. The intent of the quarterly plan is for each Party to have priority in their own parking area for that Party’s events. If both Parties are holding events at the same time, the quarterly plan will address how to provide adequate parking for each event.

Article 5. Parking Area Maintenance. The City will maintain the City Parking Area at its own expense. LEPAA will maintain the LEPAA Parking Area at its own expense according to the terms of the Commitment Agreement between the City and LEPAA, with such Commitment Agreement being made a part of this Agreement by reference. The City will not create or allow to be created any waste or nuisance on the LEPAA Parking Area caused by the City’s use of the LEPAA Parking Area. LEPAA will not create or allow to be created any waste or nuisance on the City Parking Area caused by LEPAA’s use of the City Parking Area.

Article 6. Future City Improvements. Nothing in this Agreement shall prevent the City from improving any land or property owned by the City at the time of, or subsequent to the Effective Date of, this Agreement. If the City should so improve any of its property, and should such improvement interfere with LEPAA's joint use of the City Parking Area, then this Agreement shall not terminate and the Parties' joint use of the LEPAA Parking Area shall continue without interruption. However, if the City should improve its property as contemplated under this Article, and should such improvement affect the availability of the parking at the City Parking Area, then this Agreement shall be immediately suspended and shall not become reactivated until such time as the City has amended this Agreement through a resolution passed by the City Council of the City. Any suspension of this Agreement under this Article shall neither extend nor otherwise have any effect on the Term of this Agreement.

Article 7. Future LEPAA Improvements. Nothing in this Agreement shall prevent LEPAA from improving the LEPAA Parking Area so long as such improvements do not create a net loss in parking spaces in the LEPAA Parking Area, unless such loss in parking spaces is temporary and City approved. The LEPAA Parking Area shall conform to the depiction of the proposed LEPAA Parking Area in "Exhibit 1." The parking spaces listed in "Exhibit 1" are the consideration for the transfer of the LEPAA Parking Area from the City to LEPAA, therefore, with the exception of a City-approved temporary reduction of parking spaces available to the City, and without prior written authorization of the City, the number of parking spaces available to the City at the LEPAA Parking Area shall not fall below the number listed in the attached "Exhibit 1," and shall not fall below three hundred seventy-five (375) spaces. If the City and LEPAA agree in writing that the depiction of the proposed LEPAA Parking Area should be amended to address changes in design to the proposed LEPAA Parking Area, then, because the parking spaces provided in "Exhibit 1" are a material part of the consideration for the transfer of the LEPAA Parking Area that is the subject of this Agreement, such adjustment to the LEPAA Parking Area shall not create a net loss of parking spaces provided in the attached depiction of the proposed LEPAA Parking Area. If LEPAA should improve the LEPAA Parking Area, and should such improvement cause a net loss in parking spaces in the LEPAA Parking Area, then LEPAA shall pay to the City as liquidated damages in consideration of the City's loss of the public use of the parking spaces, the value of the net loss of the parking spaces in the LEPAA Parking Area. The value of the net loss of parking spaces shall be agreed upon by the Parties.

Article 8. Access to City Property. This Agreement shall have no effect on the City's ability to have free and uninterrupted access at all times to City-owned property near the LEPAA Parking Area including, but not limited to, the City's ability to access the Physical Plant located adjacent to the LEPAA Parking Area. The property associated with the Physical Plant is further depicted and described in "Exhibit 3" attached to this Agreement.

Article 9. Termination. Either Party may terminate this Agreement for cause by providing written notice of such termination to the other Party at least thirty (30) days prior to the effective date of termination, with such notice allowing the cure of the cause of termination within a reasonable time.

Article 10. Service of Notice. Any notice required by this Agreement shall be deemed to be properly served if deposited in the U.S. mail by certified letter, return receipt requested, addressed to the recipient at the recipient's address shown below, and subject to the right of either Party to designate a different address by notice given in the manner just described.

For the City:
City Manager
City of Lubbock

P.O. Box 2000
Lubbock, Texas 79457
(806) 775-2016

For LEPAA:
Chairman
Lubbock Entertainment
& Performing Arts Association
1500 Broadway, Suite 1254
Lubbock, Texas 79401
(806) 773-5650

The Parties acknowledge and affirm that no department of the City has the legal authority to enter into any contract of any type or nature in the name of the department or to accept any legal notice on behalf of the City.

Article 11. Funding. The Parties understand and acknowledge that the funding of this Agreement, if any such funding is required, is contained in the City's annual budget and is subject to the approval of the City in each fiscal year. The Parties further agree that should the City Council fail to approve a budget which includes sufficient funds for the continuance of this Agreement, or should the City Council fail to certify funds for any reason, then and upon the occurrence of such event, this Agreement shall terminate as to the City and the City shall then have no further obligation to LEPAA. When the funds budgeted or certified during any fiscal year by the City to discharge its obligations under this Agreement are expended, LEPAA may terminate this Agreement.

Article 12. Venue and Applicable Law. This Agreement is subject to all present and future valid laws, orders, rules, ordinances, and regulations of the United States of America, the State of Texas, the Parties, and any other regulatory body having jurisdiction over this Agreement. This Agreement shall be construed and governed according to the laws of the State of Texas. The sole venue for any action, controversy, dispute, or claim arising under this Agreement shall be in a court of appropriate jurisdiction in Lubbock County, Texas *exclusively*.

Article 13. Rights and Remedies Reserved. Each Party 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, neither Party shall 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 Agreement, the former shall control.

Article 14. Public Information. This Agreement is public information. To the extent, if any, that any provision of this Agreement is in conflict with Tex. Gov't. Code Ann. Chapter 552 *et seq.*, as amended, same shall be of no force and effect.

Article 15. No Third-Party Beneficiaries. This Agreement is entered solely by and between, and may be enforced only by and among, the Parties. Except as set forth above, this Agreement shall not be deemed to create any rights in or obligations to any third parties.

Article 16. No Personal Liability. Nothing in this Agreement is construed as creating any personal liability on the part of any employee, officer or agent of any public body or other person that may be a party to this Agreement.

Article 17. No Joint Enterprise. This Agreement is not intended to, and shall not be construed to create any joint enterprise between or among the Parties.

Article 18. No Indemnification by City. The Parties expressly acknowledge that the City's authority to indemnify and hold harmless any third party is governed by Article XI, Section 7 of the Texas Constitution, and any provision that purports to require indemnification by the City is invalid.

Article 19. Insurance Requirements. LEPAA, and any contractor or subcontractor of LEPAA, shall obtain and maintain all insurance coverage required by the City at all times while this Agreement is in effect.

Article 20. Sovereign Immunity Acknowledged and Retained. **THE PARTIES EXPRESSLY ACKNOWLEDGE AND AGREE THAT NO PROVISION OF THIS AGREEMENT IS IN ANY WAY INTENDED TO CONSTITUTE A WAIVER BY ANY PARTY OF ANY IMMUNITIES FROM SUIT OR LIABILITY THAT A PARTY MAY HAVE BY OPERATION OF LAW. THE CITY RETAINS ALL GOVERNMENTAL IMMUNITIES.**

Article 21. Authority to Amend. This Agreement may be amended by either Party in writing approved by the Parties and by the City Council.

[Signatures and Exhibits will be Included on the Official Version of this Shared Parking Lease Agreement]

North ↑

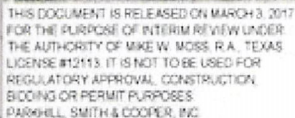


Exhibit E – Draft Deed Without Warranty

(DRAFT) DEED WITHOUT WARRANTY

DATE:

GRANTOR: City of Lubbock, Texas

GRANTOR'S MAILING ADDRESS:

P.O. Box 2000
Lubbock, TX 79457

GRANTEE: Lubbock Entertainment & Performing Arts Association

GRANTEE'S MAILING ADDRESS:

1500 Broadway, Suite 1254
Lubbock, Texas 79401

CONSIDERATION:

The Grantor and the Grantee expressly stipulate that the Grantee shall utilize the Property solely in a manner that promotes a public purpose of the Grantor. The Grantor and the Grantee stipulate that the consideration of a public purpose use of the Property by the Grantee is the sole consideration to be received by the Grantor for the conveyance of the Property by the Grantor and that such consideration is sufficient in all respects. Further, under the authority granted to it by Texas Tax Code §311.008(b)(2), the Grantor, in exercising the power it deems necessary and convenient to implement the Central Business District Tax Increment Financing Reinvestment Zone Project Plan and Financing Plan, adopted by the City of Lubbock through Ordinance 2017-00050 (the "Project Plans"), finds that the consideration received for the transfer of the Property to the Grantee is advisable to implement the Project Plans.

PROPERTY (INCLUDING ANY IMPROVEMENTS):

The property that is the subject of this Deed Without Warranty is depicted and described in the attached "Exhibit A" (the "Property").

CONVEYANCE AND RESTRICTION OF USE OF THE PROPERTY:

It is the intent of the Grantor to convey a fee simple estate in the Property to the Grantee, with the use of the Property being restricted to the public purpose of the Grantor. For the purposes hereof, the public purpose of the Grantor shall mean a public parking area adjacent to the Grantee's Buddy Holly Hall of Performing Arts and Sciences located at 1300 Mac Davis Lane, Lubbock, Texas, across from the Lubbock Memorial Civic Center, with such public parking area being a parking lot or parking garage providing no less than three hundred seventy-five spaces (375) available for public use and containing space for retail sales and office uses as specifically depicted in the attached "Exhibit 1." The parking area shall be a public benefit to the City of Lubbock by providing public parking for downtown events and venues, including the Lubbock Memorial Civic Center and the Buddy Holly Hall of Performing Arts and Sciences.

REPRESENTATIONS AND WARRANTIES OF GRANTEE:

The Grantee represents and warrants to the Grantor that it has made an independent inspection and evaluation of the Property and the title to the same, and acknowledges that the Grantor has made no statements or representations concerning the present or future value of the Property, the state of

title of the Property, the condition, including the environmental condition of the Property, or the anticipated income, costs, or profits, if any, to be derived from the Property.

FURTHER, THE GRANTOR MAKES NO REPRESENTATIONS OR WARRANTIES WHATSOEVER, EXPRESSED, STATUTORY, OR IMPLIED, INCLUDING, BUT WITHOUT LIMITATION, AS TO THE DESCRIPTION, TITLE, INCLUDING WITHOUT LIMITATION, THE EXISTENCE OF LIENS AGAINST THE PROPERTY, THE VALUE, QUALITY, PHYSICAL AND ENVIRONMENTAL CONDITION OF THE PROPERTY OR MATERIALS CONTAINED OR LOCATED IN, ON OR UNDER THE PROPERTY AND/OR IMPROVEMENTS LOCATED THEREON, THE NATURE OF THE PAST OR HISTORIC USE OF THE PROPERTY, MERCHANTABILITY OR FITNESS FOR PURPOSE OF ANY OF THE PROPERTY.

The Grantee further acknowledges that, in accepting this Deed Without Warranty, it has relied solely upon its independent evaluation and examination of the Property, and public records relating to the Property and the independent estimates, computations, evaluations, and studies based thereon. The Grantor makes no warranty or representation as to the accuracy, completeness, or usefulness of any information furnished to the Grantee, if any, whether furnished by the Grantor or any other third party. The Grantor, its officers, employees, elected officials, independent contractors, and agents assume no liability for the accuracy, completeness, or usefulness of any material furnished by the Grantor, or any of its officers, employees, elected officials, independent contractors, or agents, if any, or any other person or party. Reliance on any material so furnished shall not give rise to any cause, claim, or action against the Grantor, its officers, employees, elected officials, independent contractors, or agents, and any such reliance shall be at the Grantee's sole risk.

THE CONVEYANCE OF THE PROPERTY SHALL BE ON A "WHERE IS," "AS IS," AND "WITH ALL FAULTS" BASIS, AND SHALL BE WITHOUT REPRESENTATION OR WARRANTY WHATSOEVER, EXPRESSED, STATUTORY, OR IMPLIED, INCLUDING, BUT WITHOUT LIMITATION, AS TO TITLE, INCLUDING, BUT NOT LIMITED TO, THE EXISTENCE OF LIENS AGAINST THE PROPERTY, THE DESCRIPTION, PHYSICAL, AND ENVIRONMENTAL CONDITION OF THE PROPERTY AND MATERIALS CONTAINED OR LOCATED IN, ON, OR UNDER THE PROPERTY, OR IMPROVEMENTS LOCATED THEREON, THE NATURE OF THE PAST OR HISTORIC USE OF THE PROPERTY, QUALITY, VALUE, FITNESS FOR PURPOSE, MERCHANTABILITY, OR OTHERWISE.

The Grantee has satisfied itself as to the title, type, condition, quality, and extent of the Property and Property interests that comprise the Property it is receiving pursuant to this Deed Without Warranty.

The Grantor, for the consideration and subject to the conveyance and restriction of use of the Property, grants, sells, and conveys to the Grantee the Property, to have and to hold it to the Grantee and the Grantee's successors and assigns forever, without warranty, express or implied, statutory or otherwise, and all warranties that might arise by common law and the warranties created by Section 5.023 of the Texas Property Code (and all amendments and successors thereto) are expressly excluded.

[Signature, Notary, and Exhibit Pages To Be Included On Official Copy]

Information

Agenda Item

Ordinance Single Reading - Finance: Consider the adoption of an ordinance of the City of Lubbock, Texas, authorizing the issuance and sale of City of Lubbock, Texas, Tax Note, Series 2022; levying a tax in payment thereof; and enacting other provisions relating to the subject.

Item Summary

This ordinance authorizes the issuance of the Tax Note, Series 2022. The purpose of the Tax Note is to pay contractual obligations incurred or to be incurred for:

- (i) contractual obligations incurred or to be incurred for the purchase of the Property, including materials, supplies, equipment and machinery for solid waste purposes and public safety dispatch purposes; and
- (ii) paying the cost of issuance related to the Tax Note.

The Note will be excluded from gross income for federal income tax purposes, with annual payments of principal on February 15, 2023, through February 15, 2029, and with semi-annual interest payments beginning on February 15, 2023, and on each February 15 and August 15 thereafter, until maturity. Closing date is anticipated on June 7, 2022, subject to Texas Attorney General approval.

The Note is being offered to potential lenders for investment in its own account as a privately negotiated bank loan. Responses from potential lenders for this Note must be submitted no later than May 9, 2022. The Note will be awarded to the proposal producing the lowest interest cost to the City and with the terms most advantageous to the City (including, but not limited to, paying agent fees, underwriting fees, bank counsel fees, and early redemption provisions). The recommended lender will be presented to the City Council for approval at the May 10, 2022 City Council meeting.

Fiscal Impact

Annual payments will be made from the revenues of City departments and/or an ad valorem tax. The total principal amount on the issuance is \$5,150,000.

Staff/Board Recommending

D. Blu Kostelich, Chief Financial Officer

Attachments

Tax Note Ordinance

Ordinance No. 2022 – _____

ORDINANCE

relating to

CITY OF LUBBOCK, TEXAS
TAX NOTE, SERIES 2022

Adopted: May 10, 2022

TABLE OF CONTENTS

Page

ARTICLE I DEFINITIONS AND OTHER PRELIMINARY MATTERS

Section 1.01.	Definitions	2
Section 1.02.	Other Definitions	3
Section 1.03.	Findings	3
Section 1.04.	Table of Contents, Titles and Headings.....	3
Section 1.05.	Interpretation	4

ARTICLE II SECURITY FOR THE NOTE

Section 2.01.	Tax Levy for Payment of Note	4
---------------	------------------------------------	---

ARTICLE III AUTHORIZATION; GENERAL TERMS AND PROVISIONS REGARDING THE NOTE

Section 3.01.	Authorization	5
Section 3.02.	Date, Denomination, Maturities, Numbers and Interest.....	5
Section 3.03.	Medium, Method and Place of Payment	5
Section 3.04.	Execution and Initial Registration	7
Section 3.05.	Ownership.....	7
Section 3.06.	Registration, Transfer and Exchange.....	8
Section 3.07.	Cancellation and Authentication	8
Section 3.08.	Replacement Note.....	9

ARTICLE IV REDEMPTION OF NOTE BEFORE MATURITY

Section 4.01.	Limitation on Redemption.....	10
Section 4.02.	Optional Redemption.....	10
Section 4.03.	Partial Redemption	10
Section 4.04.	Notice of Redemption to Owners	10
Section 4.05.	Payment Upon Redemption.....	11
Section 4.06.	Effect of Redemption.....	11
Section 4.07.	Lapse of Payment	11

ARTICLE V PAYING AGENT/REGISTRAR

Section 5.01.	Appointment of Initial Paying Agent/Registrar.....	12
Section 5.02.	Qualifications.....	12
Section 5.03.	Maintaining Paying Agent/Registrar	12
Section 5.04.	Termination	12

Section 5.05.	Notice of Change	12
Section 5.06.	Agreement to Perform Duties and Functions	12
Section 5.07.	Delivery of Records to Successor.....	12

ARTICLE VI FORM OF THE NOTE

Section 6.01.	Form Generally.....	13
Section 6.02.	Legal Opinion.....	13

ARTICLE VII SALE OF THE NOTE; CONTROL AND DELIVERY OF THE NOTE

Section 7.01.	Sale of Note; Private Placement Letter.....	13
Section 7.02.	Control and Delivery of Note	14

ARTICLE VIII CREATION OF FUNDS AND ACCOUNTS; DEPOSIT OF PROCEEDS; INVESTMENTS

Section 8.01.	Debt Service Fund	14
Section 8.02.	Deposit of Proceeds.....	14

ARTICLE IX PARTICULAR, REPRESENTATIONS AND COVENANTS

Section 9.01.	Payment of Note	15
Section 9.02.	Other Representations and Covenants	15
Section 9.03.	Ordinance a Contract - Amendments	15
Section 9.04.	Federal Income Tax Exclusion	16

ARTICLE X DEFAULT AND REMEDIES

Section 10.01.	Events of Default.....	18
Section 10.02.	Remedies	19

ARTICLE XI DISCHARGE

Section 11.01.	Discharge.....	19
----------------	----------------	----

ARTICLE XII MISCELLANEOUS

Section 12.01.	Changes to Ordinance.....	19
Section 12.02.	Partial Invalidity	19
Section 12.03.	Repealer	19
Section 12.04.	Individuals Not Liable	20

Section 12.05.	Related Matters.....	20
Section 12.06.	Force and Effect.....	20

Form of Note.....	Exhibit A
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AN ORDINANCE OF THE CITY OF LUBBOCK, TEXAS, AUTHORIZING
THE ISSUANCE AND SALE OF CITY OF LUBBOCK, TEXAS, TAX NOTE,
SERIES 2022; LEVYING A TAX IN PAYMENT THEREOF; AND ENACTING
OTHER PROVISIONS RELATING TO THE SUBJECT

WHEREAS, pursuant to Chapter 1431, Texas Government Code, as amended (the “Act”), the governing body of a municipality is authorized to issue the tax note hereinafter authorized (the “Note”) to pay contractual obligations incurred or to be incurred for the purposes set forth in Section 3.01 hereof; and

WHEREAS, the City Council of the City of Lubbock, Texas (the “City”), hereby finds and determines that it is necessary and in the best interest of the City and its citizens to issue the Note for the purposes herein described and that the Note shall be payable from and secured by ad valorem taxes levied, within the limits prescribed by law, on all taxable property within the City; and

WHEREAS, the City Council desires to acquire, purchase, or finance personal property, appliances, equipment, facilities, furnishings or interests therein, whether movable or fixed, as described in this Ordinance, or such other personal property, appliances, equipment, facilities, furnishings or interests therein, whether movable or fixed, deemed by the City Council to be necessary, useful and/or appropriate for its purposes (the “Property”); and

WHEREAS, the Note hereinafter authorized shall mature before the seventh anniversary of the date that the Attorney General of the State of Texas approves the Note, as required by the Act; and

WHEREAS, it is affirmatively found that the City Council is authorized to proceed with the issuance and sale of the Note as authorized by the Constitution and laws of the State of Texas, particularly the Act; and

WHEREAS, the City Council has found and determined that it is necessary and in the best interest of the City and its citizens that it authorize by this Ordinance the issuance and delivery of its Note at this time; and

WHEREAS, it is officially found, determined, and declared that the meeting at which this Ordinance has been adopted was open to the public and public notice of the time, place and subject matter of the public business to be considered and acted upon at said meeting, including this Ordinance, was given, all as required by the applicable provisions of Chapter 551, Texas Government Code, as amended; Now Therefore,

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LUBBOCK, TEXAS:

ARTICLE I
DEFINITIONS AND OTHER PRELIMINARY MATTERS

Section 1.01. Definitions. Unless otherwise expressly provided or unless the context clearly requires otherwise, in this Ordinance the following terms shall have the meanings specified below:

“Bond Counsel” means Orrick, Herrington & Sutcliffe LLP or any successor thereto.

“Business Day” means a day that is not a Saturday, Sunday, legal holiday or other day on which banking institutions in the city where the Designated Payment/Transfer Office is located are required or authorized by law or executive order to close.

“Code” means the Internal Revenue Code of 1986, as amended, and, with respect to a specific section thereof, such reference shall be deemed to include (a) the Regulations promulgated under such section, (b) any successor provision of similar import hereafter enacted, (c) any corresponding provision of any subsequent Internal Revenue Code and (d) the regulations promulgated under the provisions described in (b) and (c).

“Debt Service Fund” means the Debt Service Fund established by Section 8.01(a).

“Designated Payment/Transfer Office” means (i) with respect to the initial Paying Agent/Registrar, its corporate trust office or such other location designated by the Paying Agent/Registrar, and (ii) with respect to any successor Paying Agent/Registrar, the office of such successor designated and located as may be agreed upon by the City and such successor.

“Event of Default” means the occurrence of an event described in Section 10.01 of this Ordinance.

“Fiscal Year” means such fiscal year as shall from time to time be set by the City Council.

“Initial Note” means the Note described in Section 3.04(d).

“Interest Payment Date” means the date or dates upon which interest on the principal of the Note is scheduled to be paid until the maturity or prior redemption of the Note, such dates being February 15 and August 15 of each year commencing February 15, 2023, until maturity or prior redemption.

“Issuance Date” means the date of the initial delivery of and payment for the Note.

“Maximum Lawful Rate” means the lesser of (a) the maximum rate of interest allowed by Chapter 1204, Texas Government Code, or any successor provision and (b) the maximum non-usurious rate of interest permitted to be charged by applicable federal or Texas law from time to time in effect.

“Note” means the City’s Note entitled “City of Lubbock, Texas Tax Note, Series 2022” authorized to be issued pursuant to Section 3.01.

“Ordinance” means this ordinance.

“Owner” means the person who is the registered owner of the Note, as shown in the Register.

“Paying Agent/Registrar” means _____, _____ or any successor thereto as provided in this Ordinance.

“Paying Agent/Registrar Agreement” means the Paying Agent/Registrar Agreement between the Paying Agent/Registrar and the City relating to the Note.

“Private Placement Letter” means that certain private placement letter between the City and the Purchaser, as described in Section 7.01 of this Ordinance.

“Property” has the meaning assigned in the recitals of this Ordinance.

“Purchaser” means _____.

“Record Date” means, for any Interest Payment Date, the close of business on the last day of the month next preceding an Interest Payment Date.

“Register” means the Register specified in Section 3.06(a).

“Regulations” means the applicable proposed, temporary or final Treasury Regulations promulgated under the Code or, to the extent applicable to the Code, under the Internal Revenue Code of 1954, as such regulations may be amended or supplemented from time to time.

“Special Payment Date” means the Special Payment Date prescribed by Section 3.03(b).

“Special Record Date” means the Special Record Date prescribed by Section 3.03(b).

“Unclaimed Payments” means money deposited with the Paying Agent/Registrar for the payment of the principal of or interest on the Note as the same become due and payable and remaining unclaimed by the Owners of the Note for 90 days after the applicable payment or redemption date.

Section 1.02. Other Definitions. The terms “Act,” “City Council” and “City” shall have the meanings assigned in the preamble to this Ordinance.

Section 1.03. Findings. The declarations, determinations and findings declared, made and found in the preamble to this Ordinance are hereby adopted, restated and made a part of the operative provisions hereof.

Section 1.04. Table of Contents, Titles and Headings. The table of contents, titles and headings of the Articles and Sections of this Ordinance have been inserted for convenience of reference only and are not to be considered a part hereof and shall not in any way modify or restrict any of the terms or provisions hereof and shall never be considered or given any effect in

construing this Ordinance or any provision hereof or in ascertaining intent, if any question of intent should arise.

Section 1.05. Interpretation.

(a) Unless the context requires otherwise, words of the masculine gender shall be construed to include correlative words of the feminine and neuter genders and vice versa, and words of the singular number shall be construed to include correlative words of the plural number and vice versa.

(b) Article and section references shall mean references to articles and sections of this Ordinance unless designated otherwise.

(c) This Ordinance and all the terms and provisions hereof shall be liberally construed to effectuate the purposes set forth herein to sustain the validity of this Ordinance.

(d) Any action required to be taken on a date which is not a Business Day shall be taken on the next succeeding Business Day and have the same effect as if taken on the date so required.

(e) Any duty, responsibility, privilege, power or authority conferred by this Ordinance upon an officer shall extend to an individual who occupies such office in an interim, acting or provisional capacity.

ARTICLE II
SECURITY FOR THE NOTE

Section 2.01. Tax Levy for Payment of Note.

While the Note or any part of the principal thereof or interest thereon remain outstanding and unpaid, there is hereby levied and there shall be annually levied, assessed and collected in due time, form and manner, and at the same time other City taxes are levied, assessed and collected, in each year, a continuing direct annual ad valorem tax, within the limits prescribed by law, upon all taxable property in the City sufficient to pay the current interest on the Note as the same becomes due, and to provide and maintain a sinking fund adequate to pay the principal of the Note as such principal matures, but never less than two percent (2%) of the original principal amount of the Note each year, full allowance being made for delinquencies and costs of collection, and such taxes when collected shall be applied to the payment of the interest on and principal of the Note and to no other purpose. The proceeds from all taxes levied, assessed and collected for and on account of the Note authorized by this Ordinance shall be deposited into the Debt Service Fund created pursuant to Section 8.01 herein.

Said ad valorem tax, the collections therefrom, and all amounts on deposit in or required hereby to be deposited to the Debt Service Fund are hereby pledged and committed irrevocably to the payment of the principal of and interest on the Note when and as due and payable in accordance with their terms and this Ordinance.

To pay debt service coming due on the Note prior to receipt of the taxes levied to pay such debt service, there is hereby appropriated from current funds on hand, which are hereby certified

to be on hand and available for such purpose, an amount sufficient to pay such debt service, and such amount shall be used for no other purpose.

ARTICLE III
AUTHORIZATION; GENERAL TERMS AND PROVISIONS REGARDING THE NOTE

Section 3.01. Authorization. The City's Note to be designated "City of Lubbock, Texas Tax Note, Series 2022," is hereby authorized to be issued and delivered in accordance with the Constitution and laws of the State of Texas, particularly the Act, in the aggregate principal amount of \$ _____ for the purpose of providing funds to pay (i) contractual obligations incurred or to be incurred for the purchase of the Property, including materials, supplies, equipment and machinery for solid waste purposes and public safety dispatch purposes; and (ii) the costs of issuance related thereto.

Section 3.02. Date, Denomination, Maturities, Numbers and Interest.

(a) The Note shall be dated as of the Issuance Date, and shall be issued in fully registered form, without coupons, in the denomination of \$100,000 and any integral multiple of \$1,000 in excess thereof and shall be numbered separately from R-1 upward, except the Initial Note, which shall be numbered I-1.

(b) The Note shall mature on February 15, 2029 and be repaid in serial installments on February 15 in the years 2023 through and including 2029 in the principal amounts set forth in the following schedule:

<u>Maturity</u>	<u>Principal Amount</u>	<u>Interest Rate</u>
2023	\$	%
2024		
2025		
2026		
2027		
2028		
2029		

(c) Interest shall accrue and be paid on the Note until the principal amount thereof has been paid or provision for such payment has been made, from the later of the Issuance Date or the most recent Interest Payment Date to which interest has been paid or provided for at the rate per annum for each respective maturity specified in the schedule contained in subsection (b) above. Such interest shall be payable semiannually on each Interest Payment Date, computed on the basis of a 360-day year composed of twelve 30-day months. In no event, however, may the rate of interest on the Note exceed the Maximum Lawful Rate.

Section 3.03. Medium, Method and Place of Payment.

(a) The principal of and interest on the Note shall be paid in lawful money of the United States of America as provided in this Section.

(b) Interest on the Note shall be payable to the Owners whose names appear in the Register at the close of business on the Record Date; provided, however, that in the event of nonpayment of interest on a scheduled Interest Payment Date, and for 30 days thereafter, a new record date for such interest payment (a "Special Record Date") will be established by the Paying Agent/Registrar if and when funds for the payment of such interest have been received from the City. Notice of the Special Record Date and of the scheduled payment date of the past due interest (the "Special Payment Date"), which shall be at least 15 days after the Special Record Date) shall be sent at least five Business Days prior to the Special Record Date by United States mail, first class, postage prepaid, to the address of the Owner of the Note appearing on the books of the Paying Agent/Registrar at the close of business on the last Business Day next preceding the date of mailing of such notice.

Interest on the Note shall be paid by wire or check (dated as of the Interest Payment Date) or by such other method as agreed to by the City, the Purchaser and the Paying Agent, and sent by the Paying Agent/Registrar to the person entitled to such payment, United States mail, first class postage prepaid, to the address of such person as it appears in the Register or by such other customary banking arrangements acceptable to the Paying Agent/Registrar and the person to whom interest is to be paid; provided, however, that such person shall bear all risk and expenses of such other customary banking arrangements.

(c) The principal of the Note shall be paid to the person in whose name the Note is registered on the due date thereof (whether at the maturity date or the date of prior redemption thereof) upon presentation and surrender of the Note at the Designated Payment/Transfer Office; provided, however, that for so long as the Note is held by a single Owner, mandatory sinking fund redemption or optional redemption payments made prior to final maturity will be noted by the Paying Agent/Registrar in their official records but will not require the presentation and surrender of the Note.

(d) If a date for the payment of the principal of or interest on the Note is not a Business Day, then the date for such payment shall be the next succeeding Business Day, and payment on such date shall have the same force and effect as if made on the original date payment was due.

(e) Subject to any applicable escheat, unclaimed property, or similar law, including Title 6 of the Texas Property Code, Unclaimed Payments remaining unclaimed by the Owners entitled thereto for three years after the applicable payment or redemption date shall be paid to the City and thereafter neither the City, the Paying Agent/Registrar, nor any other person shall be liable or responsible to any Owners of the Note for any further payment of such unclaimed moneys or on account of any such Note.

(f) Unclaimed Payments shall be segregated in a special escrow account and held in trust, uninvested by the Paying Agent/Registrar, for the accounts of the Owners of the Note to which the Unclaimed Payments pertain. Subject to Title 6 of the Texas Property Code, Unclaimed Payments remaining unclaimed by the Owners entitled thereto for three years after the applicable payment or redemption date shall be applied to the next payment or payments on the Note thereafter coming due and, to the extent any such money remains three (3) years after the retirement of the Note, shall be paid to the City to be used for any lawful purpose. Thereafter, neither the City, the Paying Agent/Registrar nor any other person shall be liable or responsible to

any owners of the Note for any further payment of such unclaimed monies or on account of the Note, subject to Title 6 of the Texas Property Code.

Section 3.04. Execution and Initial Registration.

(a) The Note shall be executed on behalf of the City by the Mayor or City Manager and City Secretary, by their manual or facsimile signatures, and the official seal of the City shall be impressed or placed in facsimile thereon. Such facsimile signatures on the Note shall have the same effect as if the Note had been signed manually and in person by each of said officers, and such facsimile seal on the Note shall have the same effect as if the official seal of the City had been manually impressed upon the Note.

(b) In the event that any officer of the City whose manual or facsimile signature appears on the Note ceases to be such officer before the authentication of the Note or before the delivery thereof, such manual or facsimile signature nevertheless shall be valid and sufficient for all purposes as if such officer had remained in such office.

(c) Except as provided below, no Note shall be valid or obligatory for any purpose or be entitled to any security or benefit of this Ordinance unless and until there appears thereon the Certificate of Paying Agent/Registrar substantially in the form provided in this Ordinance, duly authenticated by manual execution of the Paying Agent/Registrar. In lieu of the executed Certificate of Paying Agent/Registrar described above, the Initial Note delivered on the Issuance Date shall have attached thereto the Comptroller's Registration Certificate substantially in the form provided in this Ordinance, manually executed by the Comptroller of Public Accounts of the State of Texas or by her duly authorized agent, which certificate shall be evidence that the Initial Note has been duly approved by the Attorney General of the State of Texas and that it is a valid and binding obligation of the City, and has been registered by the Comptroller of Public Accounts of the State of Texas.

(d) On the Issuance Date, one Note (the "Initial Note"), executed by manual or facsimile signature of the Mayor or City Manager and City Clerk of the City, approved by the Attorney General of Texas, and registered and manually signed by the Comptroller of Public Accounts of the State of Texas, will be delivered to the Purchaser or its designee against payment therefor.

Section 3.05. Ownership.

(a) The City, the Paying Agent/Registrar and any other person may treat the person in whose name any Note is registered as the absolute Owner of such Note for the purpose of making and receiving payment of the principal thereof and premium, if any, thereon, for the further purpose of making and receiving payment of the interest thereon (subject to the provisions herein that interest is to be paid to the person in whose name the Note is registered on the Record Date or Special Record Date, as applicable), and for all other purposes, whether or not such Note is overdue, and neither the City nor the Paying Agent/Registrar shall be bound by any notice or knowledge to the contrary.

(b) All payments made to the person deemed to be the Owner of any Note in accordance with this Section shall be valid and effectual and shall discharge the liability of the City and the Paying Agent/Registrar upon such Note to the extent of the sums paid.

Section 3.06. Registration, Transfer and Exchange.

(a) So long as any Note remains outstanding, the City shall cause the Paying Agent/Registrar to keep at the Designated Payment/Transfer Office a register (the "Register") in which, subject to such reasonable regulations as it may prescribe, the Paying Agent/Registrar shall provide for the registration and transfer of the Note in accordance with this Ordinance.

Subject to the restrictions contained in the Private Placement Letter, the ownership of a Note may be transferred only upon the presentation and surrender of the Note at the Designated Payment/Transfer Office of the Paying Agent/Registrar with such endorsement or other evidence of transfer as is acceptable to the Paying Agent/Registrar. No transfer of any Note shall be effective until entered in the Register. A new Note will be delivered by the Paying Agent/Registrar, in lieu of the Note being transferred or exchanged, at the Designated Payment/Transfer Office, or sent by United States mail, first class, posted prepaid, to the Owner or his designee.

(b) The Note shall be exchangeable upon the presentation and surrender thereof at the Designated Payment/Transfer Office for a Note of the same maturity and interest rate and in any denomination or denominations of any integral multiple of \$100,000 and any integral multiple of \$1,000 in excess thereof, and in an aggregate principal amount equal to the unpaid principal amount of the Note presented for exchange. The Paying Agent/Registrar is hereby authorized to authenticate and deliver a Note transferred or exchanged for another Note in accordance with this Section.

(c) Each exchanged Note delivered by the Paying Agent/Registrar in accordance with this Section shall constitute an original contractual obligation of the City and shall be entitled to the benefits and security of this Ordinance to the same extent as the Note in lieu of which such exchange Note is delivered.

(d) No service charge shall be made to the Owner for the initial registration, subsequent transfer, or exchange for a different denomination of the Note. The Paying Agent/Registrar, however, may require the Owner to pay a sum sufficient to cover any tax or other governmental charge that is authorized to be imposed in connection with the registration, transfer or exchange of a Note.

(e) Neither the City nor the Paying Agent/Registrar shall be required to issue, transfer, or exchange any Note called for redemption, in whole or in part, where such redemption is scheduled to occur within 45 calendar days after the transfer or exchange date; provided, however, such limitation shall not be applicable to an exchange by the Owner of the uncalled principal balance of a Note.

Section 3.07. Cancellation and Authentication. A Note paid or redeemed before scheduled maturity in accordance with this Ordinance, and a Note in lieu of which an exchange Note or a replacement Note is authenticated and delivered in accordance with this Ordinance, shall

be cancelled upon the making of proper records regarding such payment, redemption, exchange or replacement. The Paying Agent/Registrar shall dispose of the cancelled Note in accordance with the Securities Exchange Act of 1934.

Section 3.08. Replacement Note.

(a) Upon the presentation and surrender to the Paying Agent/Registrar, at the Designated Payment/Transfer Office, of a mutilated Note, the Paying Agent/Registrar shall authenticate and deliver in exchange therefor a replacement Note of like tenor and principal amount, bearing a number not contemporaneously outstanding. The City or the Paying Agent/Registrar may require the Owner of such Note to pay a sum sufficient to cover any tax or other governmental charge that is authorized to be imposed in connection therewith and any other expenses connected therewith.

(b) In the event that any Note is lost, apparently destroyed or wrongfully taken, the Paying Agent/Registrar, pursuant to the applicable laws of the State of Texas and in the absence of notice or knowledge that such Note has been acquired by a bona fide purchaser, shall authenticate and deliver a replacement Note of like tenor and principal amount, bearing a number not contemporaneously outstanding, provided that the Owner first:

(i) furnishes to the Paying Agent/Registrar satisfactory evidence of his or her ownership of and the circumstances of the loss, destruction or theft of such Note;

(ii) furnishes such security or indemnity as may be required by the Paying Agent/Registrar and the City to save them harmless;

(iii) pays all expenses and charges in connection therewith, including, but not limited to, printing costs, legal fees, fees of the Paying Agent/Registrar and any tax or other governmental charge that is authorized to be imposed; and

(iv) satisfies any other reasonable requirements imposed by the City and the Paying Agent/Registrar.

(c) If, after the delivery of such replacement Note, a bona fide purchaser of the original Note in lieu of which such replacement Note was issued presents for payment such original Note, the City and the Paying Agent/Registrar shall be entitled to recover such replacement Note from the person to whom it was delivered or any person taking therefrom, except a bona fide purchaser, and shall be entitled to recover upon the security or indemnity provided therefor to the extent of any loss, damage, cost or expense incurred by the City or the Paying Agent/Registrar in connection therewith.

(d) In the event that any such mutilated, lost, apparently destroyed or wrongfully taken Note has become or is about to become due and payable, the Paying Agent/Registrar, in its discretion, instead of issuing a replacement Note, may pay such Note.

(e) Each replacement Note delivered in accordance with this Section shall constitute an original contractual obligation of the City and shall be entitled to the benefits and security of this Ordinance to the same extent as the Note in lieu of which such replacement Note is delivered.

ARTICLE IV
REDEMPTION OF NOTE BEFORE MATURITY

Section 4.01. Limitation on Redemption.

The Note shall be subject to redemption before scheduled maturity only as provided in this ARTICLE IV.

Section 4.02. Optional Redemption.

The Note is subject to redemption prior to maturity, in whole or in part, at the option of the City, on _____ or on any date thereafter.

Section 4.03. Partial Redemption.

(a) If less than all of the Note is to be redeemed pursuant to Section 4.02 hereof, the City shall determine the maturity or maturities and the amounts thereof to be redeemed and shall direct the Paying Agent/Registrar to call by lot, or other customary method that results in random selection, the Note, or portions thereof, within such maturity or maturities and in such principal amounts for redemption.

(b) A portion of a single Note of a denomination greater than \$100,000 may be redeemed, but only in a principal amount equal to \$100,000 or any integral multiple of \$1,000 in excess thereof. If such a Note is to be partially redeemed, the Paying Agent/Registrar shall treat each integral multiple of \$100,000 or any integral multiple of \$1,000 in excess thereof of the Note as though it were a single Note for purposes of selection for redemption.

(c) The Paying Agent/Registrar shall promptly notify the City in writing of the principal amount to be redeemed of any Note as to which only a portion thereof is to be redeemed.

Section 4.04. Notice of Redemption to Owners.

(a) The Paying Agent/Registrar shall give notice of any redemption of the Note by sending notice by first class United States mail, postage prepaid, not less than 30 days before the date fixed for redemption, to the Owners of each Note (or portions thereof) to be redeemed, at the address shown on the Register at the close of business on the Business Day next preceding the date of mailing such notice.

(b) The City reserves the right to give notice of its election or direction to redeem the Note under Section 4.02 conditioned upon the occurrence of subsequent events. Such notice may state (i) that the redemption is conditioned upon the deposit of moneys and/or authorized securities, in an amount equal to the amount necessary to effect the redemption, with the Paying Agent/Registrar, or such other entity as may be authorized by law, no later than the redemption date or (ii) that the City retains the right to rescind such notice at any time prior to the scheduled redemption date if the City delivers a certificate of the City to the Paying Agent/Registrar instructing the Paying Agent/Registrar to rescind the redemption notice, and such notice and redemption shall be of no effect if such moneys and/or authorized securities are not so deposited or if the notice is rescinded. The Paying Agent/Registrar shall give prompt notice of any such

rescission of a conditional notice of redemption to the affected Owners. Any Note subject to conditional redemption where redemption has been rescinded shall remain outstanding.

(c) Any notice given as provided in this Section shall be conclusively presumed to have been duly given, whether or not the Owner receives such notice.

Section 4.05. Payment Upon Redemption.

(a) Before or on each redemption date, the City shall deposit with the Paying Agent/Registrar money sufficient to pay all amounts due on the redemption date and the Paying Agent/Registrar shall make provision for the payment of the Note to be redeemed on such date by setting aside and holding in trust such amounts as are received by the Paying Agent/Registrar from the City and shall use such funds solely for the purpose of paying the principal of, redemption premium, if any, and accrued interest on the Note being redeemed.

(b) Upon presentation and surrender of any Note called for redemption at the Designated Payment/Transfer Office of the Paying Agent/Registrar on or after the date fixed for redemption, the Paying Agent/Registrar shall pay the principal of, redemption premium, if any, and accrued interest on such Note to the date of redemption from the money set aside for such purpose; provided, however, that for so long as the Note is held by a single Owner, optional redemption payments made prior to final maturity will be noted by the Paying Agent/Registrar in their official records but will not require the presentation and surrender of the Note.

Section 4.06. Effect of Redemption.

(a) When the Note has been called for redemption in whole or in part and due provision has been made to redeem same as herein provided, the Note or portions thereof so redeemed shall no longer be regarded as outstanding except for the purpose of receiving payment solely from the funds so provided for redemption, and the rights of the Owners to collect interest which would otherwise accrue after the redemption date on any Note or portion thereof called for redemption shall terminate on the date fixed for redemption. If the City shall fail to make provision for payment of all sums due on a redemption date, then any Note or portion thereof called for redemption shall continue to bear interest at the rate stated on the Note until due provision is made for the payment of same.

(b) If the City shall fail to make provision for payment of all sums due on a redemption date, then any Note or portion thereof called for redemption shall continue to bear interest at the rate stated on the Note until due provision is made for the payment of same by the City.

Section 4.07. Lapse of Payment. Money set aside for the redemption of the Note and remaining unclaimed by the Owners thereof shall be subject to the provisions of Section 3.03(f) hereof.

ARTICLE V
PAYING AGENT/REGISTRAR

Section 5.01. Appointment of Initial Paying Agent/Registrar.

_____ is hereby appointed as the initial Paying Agent/Registrar for the Note. The form of Paying Agent/Registrar Agreement is hereby approved.

Section 5.02. Qualifications.

Each Paying Agent/Registrar shall be a commercial bank, a trust company organized under the laws of the State of Texas, or any other entity duly qualified and legally authorized to serve as and perform the duties and services of paying agent and registrar for the Note.

Section 5.03. Maintaining Paying Agent/Registrar.

(a) At all times while the Note is outstanding, the City will maintain a Paying Agent/Registrar that is qualified under Section 5.02 of this Ordinance. The Mayor or the City Manager is hereby authorized and directed to execute an agreement with the Paying Agent/Registrar specifying the duties and responsibilities of the City and the Paying Agent/Registrar. The signature of the Mayor or the City Manager shall be attested by the City Clerk.

(b) If the Paying Agent/Registrar resigns or otherwise ceases to serve as such, the City will promptly appoint a replacement, provided, that such resignation shall not be effective until a successor Paying Agent/Registrar has been appointed and has accepted the duties of Paying Agent/Registrar for the Note.

Section 5.04. Termination. The City, upon not less than 45 days' notice, reserves the right to terminate the appointment of any Paying Agent/Registrar by delivering to the entity whose appointment is to be terminated written notice of such termination, provided, that such termination shall not be effective until a successor Paying Agent/Registrar has been appointed and has accepted the duties of Paying Agent/Registrar for the Note.

Section 5.05. Notice of Change. Promptly upon each change in the entity serving as Paying Agent/Registrar, the City will cause notice of the change to be sent to each Owner by first class United States mail, postage prepaid, at the address in the Register, stating the effective date of the change and the name and mailing address of the replacement Paying Agent/Registrar.

Section 5.06. Agreement to Perform Duties and Functions. By accepting the appointment as Paying Agent/Registrar, and executing the Paying Agent/Registrar Agreement, the Paying Agent/Registrar is deemed to have agreed to the provisions of this Ordinance and that it will perform the duties and functions of Paying Agent/Registrar prescribed hereby and thereby.

Section 5.07. Delivery of Records to Successor. If a Paying Agent/Registrar is replaced, such Paying Agent/Registrar, promptly upon the appointment of the successor, will deliver the Register (or a copy thereof) and all other pertinent books and records relating to the Note to the successor Paying Agent/Registrar.

ARTICLE VI FORM OF THE NOTE

Section 6.01. Form Generally.

(a) The Note, including the Registration Certificate of the Comptroller of Public Accounts of the State of Texas, the Certificate of the Paying Agent/Registrar, and the Assignment form to appear on the Note, (i) shall be substantially in the form set forth in Exhibit A, with such appropriate insertions, omissions, substitutions, and other variations as are permitted or required by this Ordinance, and (ii) may have such letters, numbers, or other marks of identification and such legends and endorsements (including any reproduction of an opinion of counsel) thereon as, consistently herewith, may be determined by the City or by the officers executing the Note, as evidenced by their execution thereof.

(b) Any portion of the text of any Note may be set forth on the reverse side thereof, with an appropriate reference thereto on the face of the Note.

(c) The Note, including the Initial Note submitted to the Attorney General of Texas, shall be typed, printed, lithographed, photocopied or engraved, and may be produced by any combination of these methods or produced in any other similar manner, all as determined by the officers executing the Note, as evidenced by their execution thereof.

Section 6.02. Legal Opinion. The approving legal opinion of Bond Counsel may be printed on or attached to each Note over the certification of the City Clerk of the City, which may be executed in facsimile.

ARTICLE VII SALE OF THE NOTE; CONTROL AND DELIVERY OF THE NOTE

Section 7.01. Sale of Note; Private Placement Letter.

(a) The Note is hereby sold and shall be delivered to the Purchaser at a price of \$_____ (representing _____), in accordance with the terms of the Private Placement Letter, presented to and hereby approved by the City Council, which price and terms are hereby found and determined to be the most advantageous reasonably obtainable by the City. The Mayor or City Manager and other appropriate officials of the City are hereby authorized to execute the Private Placement Letter on behalf of the City and to do any and all things necessary or desirable to satisfy the conditions set out therein and to provide for the issuance and delivery of the Note and the approving opinion of the Attorney General of Texas.

(b) All officers and officials of the City are authorized to take such actions and to execute such documents, certificates and receipts, and to make such elections with respect to the tax-exempt status of the Note, as they may deem necessary and appropriate in order to consummate the delivery of the Note.

(c) The obligation of the Purchaser to accept delivery of the Note is subject to the Purchaser being furnished with the final, approving opinion of Bond Counsel, which opinion shall be dated as of and delivered on the Issuance Date.

Section 7.02. Control and Delivery of Note.

(a) The Mayor or his designee is hereby authorized to have control of the Initial Note and all necessary records and proceedings pertaining thereto pending investigation, examination and approval of the Attorney General of the State of Texas, registration by the Comptroller of Public Accounts of the State of Texas, and registration with, and initial exchange or transfer by, the Paying Agent/Registrar.

(b) After registration by the Comptroller of Public Accounts, delivery of the Note shall be made to the Purchaser under and subject to the general supervision and direction of the Mayor or City Manager, against receipt by the City of all amounts due to the City under the terms of sale.

(c) In the event the Mayor is absent or otherwise unable to execute any document or take any action authorized herein, the City Manager shall be authorized to execute such documents and take such actions, and the performance of such duties by the City Manager shall for the purposes of this Ordinance have the same force and effect as if such duties were performed by the Mayor.

ARTICLE VIII

CREATION OF FUNDS AND ACCOUNTS; DEPOSIT OF PROCEEDS; INVESTMENTS

Section 8.01. Debt Service Fund.

(a) The City hereby establishes a special fund or account to be designated the "City of Lubbock, Texas, Tax Note, Series 2022 Debt Service Fund" (the "Debt Service Fund") with said fund to be maintained at an official depository bank of the City separate and apart from all other funds and accounts of the City. The taxes levied under Section 2.01 shall be deposited to the credit of the Debt Service Fund at such times and in such amounts as necessary for the timely payment of the principal of and interest on the Note.

(b) If the amount of money in the Debt Service Fund is at least equal to the aggregate principal amount of the outstanding Note plus the aggregate amount of interest due and that will become due and payable on the Note, no further deposits to that fund need be made.

(c) Money on deposit in the Debt Service Fund shall be used to pay the principal of and interest on the Note as such become due and payable.

Section 8.02. Deposit of Proceeds.

Proceeds from the sale of the Note are appropriated for the purposes and shall, promptly upon receipt by the City, be applied as follows:

(a) Note proceeds in the amount of \$_____ shall be used for the purposes described in Section 3.01(i) hereof.

(b) Note proceeds in the amount of \$_____ shall be used to pay the costs of issuance.

(c) Any amounts remaining after paying costs of issuance may be used for the purposes described in subsection (a). Any amounts remaining after accomplishing such purposes and paying costs of issuance shall be deposited to the Debt Service Fund and applied to the payment of debt service on the Note.

ARTICLE IX PARTICULAR, REPRESENTATIONS AND COVENANTS

Section 9.01. Payment of Note. While the Note is outstanding and unpaid, there shall be made available to the Paying Agent/Registrar, out of the Debt Service Fund, money sufficient to pay the interest on and the principal of the Note, as applicable, as will accrue or mature on each applicable Interest Payment Date and principal payment date.

Section 9.02. Other Representations and Covenants.

(a) The City is a duly organized and existing political subdivision of the State of Texas under the Constitution and laws of the State of Texas.

(b) The City is duly authorized under the laws of the State of Texas to issue the Note; all action on its part for the creation and issuance of the Note has been duly and effectively taken; and the Note in the hands of the Owners thereof are and will be valid and enforceable obligations of the City in accordance with their terms.

(c) The City will faithfully perform, at all times, any and all covenants, undertakings, stipulations, and provisions contained in this Ordinance and in the Note; the City will promptly pay or cause to be paid the principal of and interest on the Note on the dates and at the places and manner prescribed in the Note; and the City will, at the times and in the manner prescribed by this Ordinance, deposit or cause to be deposited the amounts of money specified by this Ordinance.

(d) The placement of the Note is exempt from the United States Securities and Exchange Commission's Rule 15c2-12. No continuing disclosure undertaking will be entered into by the City; however, the City will provide the Purchaser the City's most recently audited financial information as required in the Private Placement Letter.

Section 9.03. Ordinance a Contract - Amendments.

This Ordinance shall constitute a contract with the Owners from time to time, be binding on the City, and shall not be amended or repealed by the City so long as the Note remains outstanding except as permitted in this Section. The City may, without the consent of or notice to any Owners, from time to time and at any time, amend this Ordinance in any manner not detrimental to the interests of the Owners, including the curing of any ambiguity, inconsistency, or formal defect or omission herein. In addition, the City may, with the consent of the Owners holding a majority in aggregate principal amount of the Note then Outstanding, amend, add to, or rescind any of the provisions of this Ordinance; provided that, without the written consent of all Owners, no such amendment, addition, or rescission shall (a) extend the time or times of payment of the principal of and interest on the Note, reduce the principal amount thereof, the redemption price therefor, or the rate of interest thereon, or in any other way modify the terms of payment of the principal and interest thereon; (b) give any preference to any Note over any other Note; or (c)

reduce the aggregate principal amount of the Note required to be held by Owners for consent to any such amendment, addition, or rescission.

Section 9.04. Federal Income Tax Exclusion.

For any Note for which the City intends that the interest on the Note shall be excludable from gross income of the owners thereof for federal income tax purposes pursuant to Sections 103 and 141 through 150 of the Internal Revenue Code of 1986, as amended (the “Code”), and all applicable temporary, proposed and final regulations (the “Regulations”) and procedures promulgated thereunder and applicable to the Note, the City covenants that it will monitor and control the receipt, investment, expenditure and use of all gross proceeds of the Note (including all property the acquisition, construction or improvement of which is to be financed directly or indirectly with the proceeds of the Note) and take or omit to take such other and further actions as may be required by Sections 103 and 141 through 150 of the Code and the Regulations to cause interest on the Note to be and remain excludable from the gross income, as defined in Section 61 of the Code, of the owners of the Note for federal income tax purposes. Without limiting the generality of the foregoing, the City shall comply with each of the following covenants:

(a) The City will use all of the proceeds of the Note to (i) provide funds for the purposes described in Section 3.01 hereof, which will be owned and operated by the City and (ii) to pay the costs of issuing the Note. The City will not use any portion of the proceeds of the Note to pay the principal of or interest or redemption premium on, any other obligation of the City or a related person.

(b) The City will not directly or indirectly take any action, or omit to take any action, which action or omission would cause the Note to constitute “private activity bond” within the meaning of Section 141(a) of the Code.

(c) Principal of and interest on the Note will be paid solely from ad valorem taxes collected by the City and investment earnings on such collections.

(d) Based upon all facts and estimates now known or reasonably expected to be in existence on the date the Note are delivered, the City reasonably expects that the proceeds of the Note will not be used in a manner that would cause the Note or any portion thereof to be an “arbitrage bond” within the meaning of Section 148 of the Code.

(e) At all times while the Note are outstanding, the City will identify and properly account for all amounts constituting gross proceeds of the Note in accordance with the Regulations. The City will monitor the yield on the investments of the proceeds of the Note and, to the extent required by the Code and the Regulations, will restrict the yield on such investments to a yield which is not materially higher than the yield on the Note. To the extent necessary to prevent the Note from constituting “arbitrage bonds,” the City will make such payments as are necessary to cause the yield on all yield restricted nonpurpose investments allocable to the Note to be less than the yield that is materially higher than the yield on the Note.

(f) The City will not take any action or knowingly omit to take any action that, if taken or omitted, would cause the Note to be treated as “federally guaranteed” obligations for purposes of Section 149(b) of the Code.

(g) The City represents that not more than fifty percent (50%) of the proceeds of the Note will be invested in nonpurpose investments (as defined in Section 148(f)(6)(A) of the Code) having a substantially guaranteed yield for four years or more within the meaning of Section 149(g)(3)(A)(ii) of the Code, and the City reasonably expects that at least eighty-five percent (85%) of the spendable proceeds of the Note will be used to carry out the governmental purpose of the Note within the three-year period beginning on the date of issue of the Note.

(h) The City will take all necessary steps to comply with the requirement that certain amounts earned by the City on the investment of the gross proceeds of the Note, if any, be rebated to the federal government. Specifically, the City will (i) maintain records regarding the receipt, investment, and expenditure of the gross proceeds of the Note as may be required to calculate such excess arbitrage profits separately from records of amounts on deposit in the funds and accounts of the City allocable to other obligations of the City or moneys which do not represent gross proceeds of any obligations of the City and retain such records for at least six years after the day on which the last outstanding Note is discharged, (ii) account for all gross proceeds under a reasonable, consistently applied method of accounting, not employed as an artifice or device to avoid in whole or in part, the requirements of Section 148 of the Code, including any specified method of accounting required by applicable Regulations to be used for all or a portion of any gross proceeds, (iii) calculate, at such times as are required by applicable Regulations, the amount of excess arbitrage profits, if any, earned from the investment of the gross proceeds of the Note and (iv) timely pay, as required by applicable Regulations, all amounts required to be rebated to the federal government. In addition, the City will exercise reasonable diligence to assure that no errors are made in the calculations required by the preceding sentence and, if such an error is made, to discover and promptly correct such error within a reasonable amount of time thereafter, including payment to the federal government of any delinquent amounts owed to it, interest thereon and any penalty.

(i) The City will not directly or indirectly pay any amount otherwise payable to the federal government pursuant to the foregoing requirements to any person other than the federal government by entering into any investment arrangement with respect to the gross proceeds of the Note that might result in a reduction in the amount required to be paid to the federal government because such arrangement results in a smaller profit or a larger loss than would have resulted if such arrangement had been at arm's length and had the yield on the Note not been relevant to either party.

(j) The City will timely file or cause to be filed with the Secretary of the Treasury of the United States the information required by Section 149(e) of the Code with respect to the Note on such form and in such place as the Secretary may prescribe.

(k) The City will not issue or use the Note as part of an “abusive arbitrage device” (as defined in Section 1.148-10(a) of the Regulations). Without limiting the foregoing, the Note are not and will not be a part of a transaction or series of transactions that attempts to circumvent the provisions of Section 148 of the Code and the Regulations, by (i) enabling the City to exploit the difference between tax-exempt and taxable interest rates to gain a material financial advantage, or (ii) increasing the burden on the market for tax-exempt obligations.

(l) Proper officers of the City charged with the responsibility for issuing the Note are hereby directed to make, execute and deliver certifications as to facts, estimates or circumstances in existence as of the date of issuance of the Note and stating whether there are facts, estimates or circumstances that would materially change the City's expectations. On or after the date of issuance of the Note, the City will take such actions as are necessary and appropriate to assure the continuous accuracy of the representations contained in such certificates.

(m) The covenants and representations made or required by this Section are for the benefit of the Note holders and any subsequent Note holder and may be relied upon by the Note holders and any subsequent Note holder and Bond Counsel to the City.

(n) In complying with the foregoing covenants, the City may rely upon an unqualified opinion issued to the City by nationally recognized bond counsel that any action by the City or reliance upon any interpretation of the Code or Regulations contained in such opinion will not cause interest on the Note to be includable in gross income for federal income tax purposes under existing law.

(o) Notwithstanding any other provision of this Ordinance, the City's representations and obligations under the covenants and provisions of this Section shall survive the defeasance and discharge of the Note for as long as such matters are relevant to the exclusion of interest on the Note from the gross income of the owners for federal income tax purposes.

ARTICLE X DEFAULT AND REMEDIES

Section 10.01. Events of Default.

In addition to the rights and remedies provided by the laws of the State of Texas, the City covenants and agrees particularly that in the event the City:

(a) fails to make payment of the interest and principal when the same becomes due and payable; or

(b) defaults in the observance or performance of any of the other covenants, conditions or obligations set forth in this Ordinance, which default materially and adversely affects the rights of the Owners, including but not limited to their prospect or ability to be repaid in accordance with the Ordinance, and the continuation thereof for a period of thirty days after notice of such default is given by any Owner to the City; or

(c) An order of relief shall be issued by the bankruptcy court of the United States District Court having jurisdiction, granting the City any relief under any applicable law, or any other court having valid jurisdiction shall issue an order or decree under applicable federal or state law providing for the appointment of a receiver, liquidator, assignee, trustee, sequestrator, or other similar official for the City as applicable, of any substantial part of its property, affairs or assets, and the continuance of any such decree or order unstayed and in effect for a period of 90 consecutive days.

Section 10.02. Remedies.

(a) Upon the occurrence of an Event of Default, any Owner or an authorized representative thereof, including but not limited to, a trustee or trustees therefor, may proceed against the City for the purpose of protecting and enforcing the rights of the Owners under this Ordinance, by mandamus or other suit, action or special proceeding in equity or at law, in any court of competent jurisdiction, for any relief permitted by law, including the specific performance of any covenant or agreement contained herein, or thereby to enjoin any act or thing that may be unlawful or in violation of any right of the Owners hereunder or any combination of such remedies. It is provided that all such proceedings shall be instituted and maintained for the equal benefit of all Owners of the Note then outstanding. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power, or shall be construed to be a waiver of any such default or acquiescence therein, and every such right and power shall be exercised from time to time and as often as may be deemed expedient.

(b) No remedy herein conferred or reserved is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or under the Note or now or hereafter existing at law or in equity; provided, however, the right to accelerate the debt evidence by the Note shall not be available as a remedy under this Ordinance.

ARTICLE XI
DISCHARGE

Section 11.01. Discharge. The City reserves the right to defease, discharge or refund the Note in any manner now or hereinafter permitted by applicable law.

ARTICLE XII
MISCELLANEOUS

Section 12.01. Changes to Ordinance.

Bond Counsel is hereby authorized to make changes to the terms of this Ordinance if necessary or desirable to carry out the purposes hereof or in connection with the approval of the issuance of the Note by the Attorney General of Texas.

Section 12.02. Partial Invalidity.

If any section, paragraph, clause or provision of this Ordinance 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 Ordinance.

Section 12.03. Repealer.

All ordinances or resolutions, or parts thereof, heretofore adopted by the City and inconsistent with the provisions of this Ordinance are hereby repealed to the extent of such conflict.

Section 12.04. Individuals Not Liable.

No covenant, stipulation, obligation or agreement herein contained shall be deemed to be a covenant, stipulation, obligation or agreement of any member of City Council or agent or employee of City Council or of the City in his or her individual capacity and neither the members of City Council nor any officer thereof, nor any agent or employee of City Council or of the City, shall be liable personally on the Note, or be subject to any personal liability or accountability by reason of the issuance thereof.

Section 12.05. Related Matters.

To satisfy in a timely manner all of the City's obligations under this Ordinance, the Mayor, City Manager or the City Clerk and all other appropriate officers and agents of the City are hereby authorized and directed to do any and all things necessary and/or convenient to carry out the terms and purposes of this Ordinance.

Section 12.06. Force and Effect.

This Ordinance shall be in full force and effect from and after its final passage, and it is so ordained.

[Signature page follows]

PRESENTED, FINALLY PASSED AND, APPROVED AND EFFECTIVE on this
10th day of May, 2022.

DANIEL M. POPE, Mayor

ATTEST:

REBECCA GARZA, City Secretary

[SEAL]

APPROVED AS TO CONTENT:

By: _____
D. BLU KOSTELICH, Chief Financial Officer

APPROVED AS TO FORM:


By: _____
JERRY V. KYLE, JR., Bond Counsel

EXHIBIT A

FORM OF THE NOTE

The form of the Note, including the form of the Registration Certificate of the Comptroller of Public Accounts of the State of Texas, the form of Certificate of the Paying Agent/Registrar and the form of Assignment appearing on the Note, shall be substantially as follows:

(a) Form of Note.

THIS NOTE MAY NOT BE TRANSFERRED IN WHOLE OR IN PART EXCEPT AS PROVIDED IN SECTION 3.06 OF THE ORDINANCE AND AS PROVIDED HEREIN

REGISTERED
NO. _____¹

REGISTERED
\$ _____

UNITED STATES OF AMERICA
STATE OF TEXAS

CITY OF LUBBOCK, TEXAS
TAX NOTE, SERIES 2022

INTEREST RATE:

_____ %

MATURITY DATE:

February 15, 2029

ISSUANCE DATE:

June 7, 2022

The City of Lubbock (the "City"), in Lubbock County, State of Texas, for value received, hereby promises to pay to

_____ ,

or registered assigns, on the Maturity Date specified above, the sum of

_____ DOLLARS & NO/100

unless the payment of the principal hereof shall have been paid or provision for such payment shall have been made, and to pay interest on such principal amount hereof from the later of the Issuance Date specified above or the most recent interest payment date to which interest has been paid or provided for until such principal amount shall have been paid or provided for, at the per annum rate of interest specified above, computed on the basis of a 360-day year of twelve 30-day months, such interest to be paid semiannually on February 15 and August 15 of each year, commencing on February 15, 2023. This Note shall finally mature on the maturity date specified above, but shall be payable in annual installments on the dates and in the amounts set forth in the following schedule:

¹ The initial note shall be numbered I-1.

<u>Principal Installment Date</u>	<u>Principal Amount</u>
2/15/2023	\$
2/15/2024	
2/15/2025	
2/15/2026	
2/15/2027	
2/15/2028	
2/15/2029	

The principal of this Note (or so much thereof as shall not have been paid or deemed to have been paid upon prior redemption) shall be payable without exchange or collection charges in lawful money of the United States of America on the Maturity Date specified above (unless redeemed prior thereto as provided in this Note) upon presentation and surrender of this Note at the corporate trust office in _____, _____ (the “Designated Payment/Transfer Office”), _____ as initial Paying Agent/Registrar, or, with respect to a successor Paying Agent/Registrar, at the Designated Payment/Transfer Office of such successor. Interest on this Note is payable by check dated as of the interest payment date, mailed by the Paying Agent/Registrar to the registered owner at the address shown on the registration books kept by the Paying Agent/Registrar or by such other customary banking arrangements acceptable to the Paying Agent/Registrar, requested by, and at the risk and expense of, the person to whom interest is to be paid. For the purpose of the payment of interest on this Note, the registered owner shall be the person in whose name this Note is registered at the close of business on the “Record Date,” which shall be the close of business on the last day of the month next preceding such interest payment date; provided, however, that in the event of nonpayment of interest on a scheduled interest payment date, and for 30 days thereafter, a new record date for such interest payment (a “Special Record Date”) will be established by the Paying Agent/Registrar, if and when funds for the payment of such interest have been received from the City. Notice of the Special Record Date and of the scheduled payment date of the past due interest (the “Special Payment Date,” which shall be 15 days after the Special Record Date) shall be sent at least five Business Days prior to the Special Record Date by United States mail, first class, postage prepaid, to the address of each Owner of a Note appearing on the books of the Paying Agent/Registrar at the close of business on the last Business Day preceding the date of mailing such notice.

If a date for the payment of the principal of or interest on this Note is a Saturday, Sunday, legal holiday, or a day on which banking institutions in the city in which the Designated Payment/Transfer Office is located are authorized by law or executive order to close, then the date for such payment shall be the next succeeding day which is not a Saturday, Sunday, legal holiday, or day on which such banking institutions are authorized to close; and payment on such date shall have the same force and effect as if made on the original date payment was due.

This Note is dated June 7, 2022 and is issued in the aggregate principal amount of \$_____, pursuant to a certain ordinance approved by the City Council of the City (the “Ordinance”) for the purpose of providing funds to pay (i) contractual obligations incurred or to

be incurred for the purchase of the Property, including materials, supplies, equipment and machinery for solid waste purposes and public safety dispatch purposes; and (ii) the costs of issuance related thereto.

This Note and the interest thereon are payable from the levy of a direct and continuing ad valorem tax levied, within the limit prescribed by law, against all taxable property in the City as described and provided in the Ordinance.

The Note is subject to optional redemption prior to maturity, in whole or in part, on any date at the option of the City upon written notice to the Purchaser as provided in the Ordinance.

As provided in the Ordinance, and subject to certain limitations therein set forth, this Note is transferable upon surrender of this Note for transfer at the Designated Payment/Transfer Office, with such endorsement or other evidence of transfer as is acceptable to the Paying Agent/Registrar, and, thereupon, one or more new fully registered Note of the same stated maturity, of authorized denominations, bearing the same rate of interest, and for the same aggregate principal amount will be issued to the designated transferee or transferees.

Notwithstanding any of the foregoing, this Note may only be transferred in whole and not in part and only to (x) an affiliate of the Purchaser, (y) a trust or custodial arrangement established by the Purchaser or one of its affiliates, the owners of the beneficial interests in which are limited to qualified institutional buyers, as defined in Rule 144A promulgated under the Securities Act of 1933, as amended (the "1933 Act"), or (z) an entity that is both a qualified institutional buyer and a commercial bank having capital and surplus, determined as of the date of any transfer of the Note, of \$10,000,000 or more that has executed and delivered to the City a Private Placement Letter in a form acceptable to the City. Notwithstanding the foregoing, if the outstanding principal amount of the Note is less than \$250,000, a Note may not be transferred without the prior written consent of the City.

The City, the Paying Agent/Registrar, and any other person may treat the person in whose name this Note is registered as the owner hereof for the purpose of receiving payment as herein provided (except interest shall be paid to the person in whose name this Note is registered on the Record Date or Special Record Date, as applicable) and for all other purposes, whether or not this Note be overdue, and neither the City nor the Paying Agent/Registrar shall be affected by notice to the contrary.

IT IS HEREBY CERTIFIED AND RECITED that the issuance of this Note is duly authorized by law; that all acts, conditions and things required to be done precedent to and in the issuance of the Note has been properly done and performed and have happened in regular and due time, form and manner, as required by law; and that the total indebtedness of the City, including the Note, does not exceed any constitutional or statutory limitation.

IN WITNESS WHEREOF, this Note has been duly executed on behalf of the City, under its official seal, in accordance with law.

City Secretary
City of Lubbock, Texas

Mayor
City of Lubbock, Texas

[SEAL]

(b) Form of Certificate of Paying Agent/Registrar.

CERTIFICATE OF PAYING AGENT/REGISTRAR

The Initial Note of this series was approved by the Attorney General of the State of Texas and registered by the Comptroller of Public Accounts of the State of Texas and that this is one of the Note referred to in the within mentioned Ordinance.

_____,
as Paying Agent/Registrar

Dated: _____

By: _____

Authorized Signatory

(c) Form of Assignment.

ASSIGNMENT

FOR VALUE RECEIVED, the undersigned hereby sells, assigns, and transfers unto (print or typewrite name, address and ZIP Code of transferee: _____)

(Social Security or other identifying number: _____) the within Note and all rights hereunder and hereby irrevocably constitutes and appoints _____ attorney to transfer the within Note on the books kept for registration hereof, with full power of substitution in the premises.

Date: _____

Signature Guaranteed By:

NOTICE: The signature on this Assignment must correspond with the name of the registered owner as it appears on the face of the within Note in every

_____ particular and must be guaranteed in a manner acceptable to the Paying Agent/Registrar.

Authorized Signatory

Form of Comptroller's Registration Certificate.

The following Registration Certificate of Comptroller of Public Accounts shall appear on the Initial Note:

REGISTRATION CERTIFICATE OF
COMPTROLLER OF PUBLIC ACCOUNTS

OFFICE OF THE COMPTROLLER §
OF PUBLIC ACCOUNTS § REGISTER NO. _____
THE STATE OF TEXAS §

I HEREBY CERTIFY THAT there is on file and of record in my office a certificate to the effect that the Attorney General of the State of Texas has approved this Note, and that this Note has been registered this day by me.

WITNESS MY SIGNATURE AND SEAL OF OFFICE this _____.

Comptroller of Public Accounts
of the State of Texas

[SEAL]

Information

Agenda Item

Ordinance 2nd Reading - Planning: Consider Ordinance No. 2022-O0078, pursuant to Chapter 43 of the Texas Local Government Code, for annexation of the property located south of 122nd Street and east of Frankford Avenue, containing approximately 5.0 acres, out of Section 24, Block E-2, Lubbock County, Texas, and commonly identified by the Lubbock Central Appraisal District Reference Number R68745.

Item Summary

On April 26, 2022, the City Council approved the first reading of the ordinance.

In April 2016, the City Council finalized an annexation of approximately 2,393 acres and also approved development agreements with many property owners under Chapter 212 of the Local Government Code, exempting the properties from annexation under certain specified terms. These “212 Agreements” contained several conditions for the property, including circumstances that would bring about termination of the agreements upon commencement of development activity.

In the case of the subject property, the City received a replat from the property owners, showing their intent to develop the property and request termination of the agreement. This termination also constitutes a petition for voluntary annexation.

The proposed resolution formally terminates the agreement with the property owner and directs City staff to start the annexation process for the property.

Fiscal Impact

None

Staff/Board Recommending

Jesica McEachern, Assistant City Manager

Attachments

Ordinance - Frankford Farms, Tract 14
Annexation Map
Chapter 212 Agreement
Service Plan

ORDINANCE NO. _____

AN ORDINANCE ANNEXING AN AREA OF LAND INTO THE CITY OF LUBBOCK, TEXAS, THE PROPERTY LOCATED SOUTH OF 122ND STREET AND EAST OF FRANKFORD AVENUE, CONTAINING APPROXIMATELY 5 ACRES, OUT OF SECTION 24, BLOCK E-2, LUBBOCK COUNTY, TEXAS, AND COMMONLY IDENTIFIED BY THE LUBBOCK CENTRAL APPRAISAL DISTRICT REFERENCE NUMBERS R68745, AND MORE SPECIFICALLY IDENTIFIED IN "EXHIBIT A" OF THIS ORDINANCE, AND IS ADJACENT TO AND ABUTS THE EXISTING CITY LIMITS OF THE CITY OF LUBBOCK, TEXAS, AND WHICH CONTAINS FEWER THAN ONE HUNDRED (100) SEPARATE TRACTS OF LAND ON WHICH ONE OR MORE RESIDENTIAL DWELLINGS ARE LOCATED ON EACH TRACT; PROVIDING FOR THE ADOPTION OF A SERVICE PLAN IN THIS ORDINANCE; PROVIDING FOR CORRECTION OF THE CITY MAP TO INCLUDE THIS ANNEXED AREA; PROVIDING AN EFFECTIVE DATE; PROVIDING A SAVINGS CLAUSE; AND PROVIDING FOR PUBLICATION.

WHEREAS, the area described in Section 1 herein is an area determined by the City Council of the City of Lubbock (the "City Council") to be considered for annexation (the "Area"); and

WHEREAS, the City Council finds that there are fewer than one hundred (100) separate tracts of land on which one (1) or more residential dwellings are located in the Area; and

WHEREAS, all required notices, including written notice of intent to annex the Area to each property owner, each public entity, and each railroad company within the Area, as required by Section 43.062, Subchapter C-1 of Texas Local Government Code, have previously been made in accordance with applicable law; and

WHEREAS, all required notices to each public school district in the Area were previously sent as required by Section 43.905 of the Texas Local Government Code; and

WHEREAS, the City Council conducted two public hearings on March 8, 2016 and March 10, 2016, as required by Section 43.063 of Texas Local Government Code; and

WHEREAS, the City Council received input and comment from affected property owners at each public hearing; and

WHEREAS, City staff prepared a service plan for the Area in accordance with Sections 43.065 and 43.056 (b)-(o) of the Texas Local Government Code, with said service plan providing for full municipal services to the Area and being made available and explained to the public at the scheduled public hearings; and

WHEREAS, City staff, by certified mail return receipt requested, mailed an offer to make a development agreement to each property owner of land within the Area that is subject to an agricultural use, timber land, or wildlife management ad valorem tax exemption, as

determined by the Lubbock Central Appraisal District, as required by Section 43.035 of the Texas Local Government Code; and

WHEREAS, the property owner of the Area entered into a 212 Agreement for the Area, a copy of which is attached to this Ordinance as "Exhibit C," with the 212 Agreement providing terms upon which the 212 Agreement would terminate and providing a waiver of rights of the property owner of the Area as to the annexation of the Area upon the termination of the 212 Agreement; and

WHEREAS, the City Council, according to the terms of the 212 Agreement between the City and the property owner of the Area, terminated the exemption from annexation provided in the 212 Agreement for the Area due to the voluntary action of the property owner of the Area; and

WHEREAS, the 212 Agreement between the City and the property owner of the Area provided that the property owner of the Area agreed to the annexation of the Area by petition if the 212 Agreement was terminated and that the property owner of the Area waived the procedural rights and requirements of an annexation outlined in Chapter 43 of the Texas Local Government Code; and

WHEREAS, the terms of the 212 Agreement between the City and the property owner of the Area prevail over certain requirements under Chapter 43 of the Texas Local Government Code, including, but not limited to, Section 43.054 and Section 43.0545 that place width limitations on areas subject to annexation by a municipality; and

WHEREAS, the City Council of the City of Lubbock deems it to be in the best interest of the citizens of the City of Lubbock to annex the Area into the City of Lubbock; **NOW THEREFORE**,

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

SECTION 1. THAT the Area, which is further depicted and described in the attached "Exhibit A" and incorporated herein for all intents and purposes, which abuts and is adjacent to the existing corporate limits of the City of Lubbock, Texas, is hereby annexed into, and included within, the corporate limits of the City of Lubbock, Texas.

SECTION 2. THAT the service plan, attached as "Exhibit B" and incorporated herein by reference for all purposes, was submitted in accordance with Chapter 43 of the Texas Local Government Code and is hereby approved as part of this Ordinance.

SECTION 3. THAT the City Council hereby declares it to be its purpose to annex into the City of Lubbock every part of the Area described in Section 1 of this Ordinance, regardless of whether any part of the Area is not hereby effectively annexed into the City. Should this Ordinance for any reason be ineffective as to any part or parts of the Area hereby annexed into the City of Lubbock for full purposes, the ineffectiveness of this Ordinance as to any such part or parts shall not affect the effectiveness of this Ordinance as to the remainder of the Area.

SECTION 4. THAT the City Engineer, or his designee, is hereby authorized and directed to correct the map of the City of Lubbock by adding thereto the Area annexed by this Ordinance, indicating on the map the date of annexation and the number of this Ordinance. The City Secretary and the City Engineer shall each keep in their respective offices an official map of the City of Lubbock showing the boundaries of the municipal corporation, including this annexation.

SECTION 5. THAT this Ordinance shall be effective thirty (30) days after final passage by the City Council.

SECTION 6. 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 7. 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 provided by law.

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:



Bryan Isham, Director of Planning

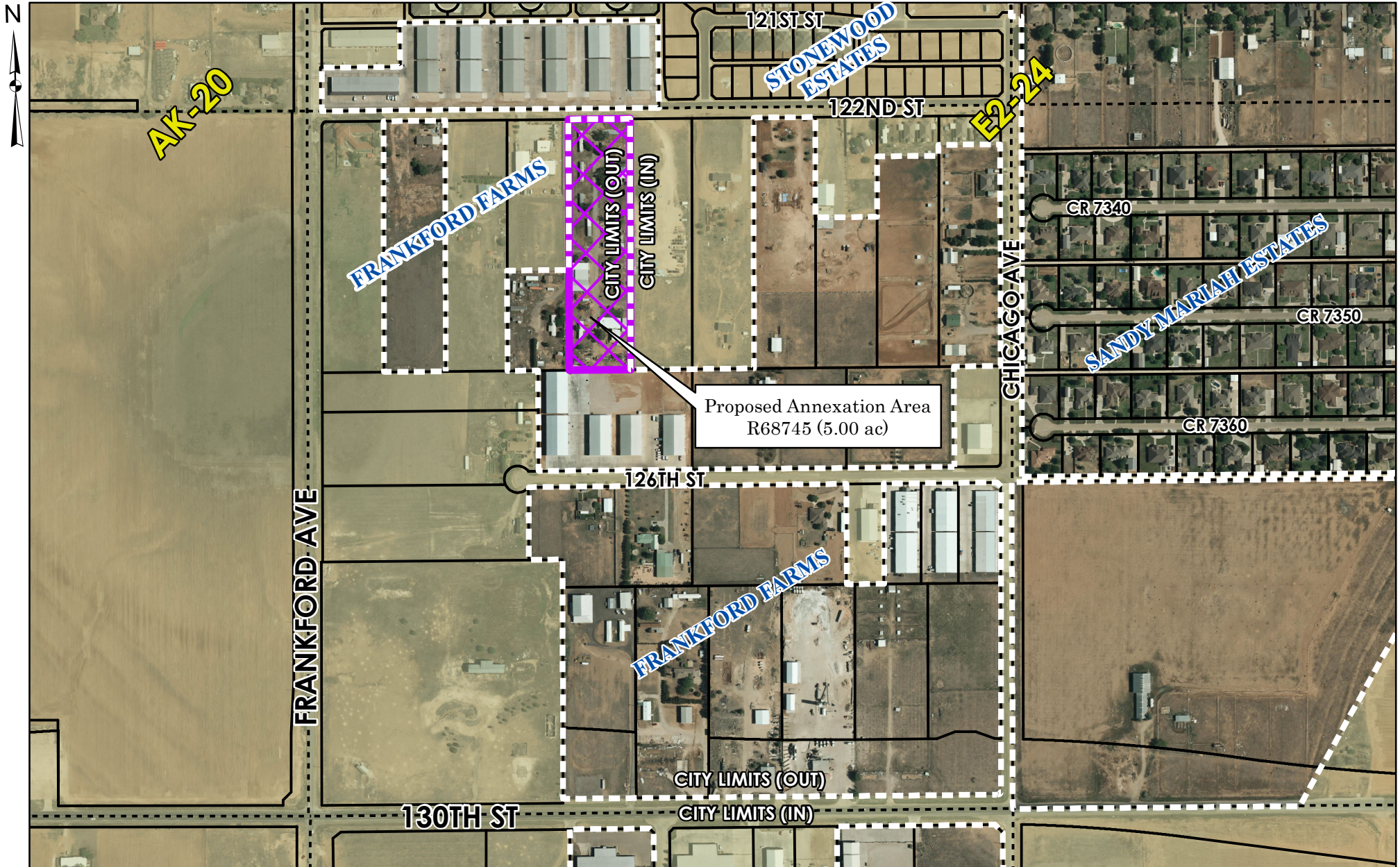
APPROVED AS TO FORM:



Kelli Leisure, Assistant City Attorney

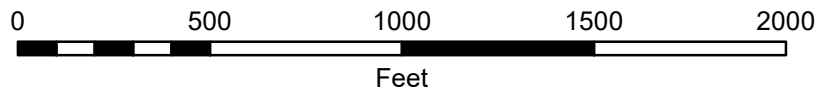
Ord. Annexation R68745 Ch. 212 Agreement Property
03.23.22

**Termination of 212 Agreement and Proposed Annexation of 5.00 Acres
Described as Tract 14, Frankford Farms Subdivision,
Located in the Southwest Quarter of Section 24, Block E2, Lubbock County**



Digital Orthophotography - May 2021

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.





NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OF THE FOLLOWING INFORMATION FROM THIS INSTRUMENT BEFORE IT IS FILED FOR RECORD IN THE REAL PROPERTY RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER

CITY OF LUBBOCK
CH. 212 DEVELOPMENT AGREEMENT IN LIEU OF ANNEXATION

THIS DEVELOPMENT AGREEMENT IN LIEU OF ANNEXATION (the "Agreement") is made and effective this 28th day of April, 2016, and is entered into pursuant to §212.172 of the Texas Local Government Code, by and between the City of Lubbock, Texas, a Texas home rule municipal corporation (the "City"), and the undersigned property owner(s) (the "Owner"), with the term "Owner" including all owners of the Property, and is as follows:

RECITALS

WHEREAS, the Owner owns a parcel of real property (the "Property") in Lubbock County, Texas, which is more particularly and separately described in the attached Exhibit A; and

WHEREAS, the City has instituted annexation proceedings for all portions of the Property and held public hearings regarding the proposed annexation on March 8 and March 10, 2016; and

WHEREAS, at the public hearings, the Owner was presented with a service plan for the Property and the Owner was given the opportunity to be heard by the City Council of the City of Lubbock; and

WHEREAS, the Owner does not want the Property to be annexed and desires to have the Property remain in the City's extraterritorial jurisdiction, in consideration for which the Owner agrees to enter into this Agreement; and

WHEREAS, it is the City's intention to allow the Owner to continue to use the Property as it is being used at the time of this Agreement; and

WHEREAS, the Owner and the City acknowledge that this Agreement is binding upon the City and the Owner and their respective successors and assigns for the duration of this Agreement; and

WHEREAS, this Agreement is to be recorded in the real property records of Lubbock County, Texas;

NOW, THEREFORE, in consideration of the mutual promises contained in this Agreement, the Owner and the City agree as follows:

AGREEMENT

Section 1 – The Property: Current Status. The City acknowledges that the Property, more particularly described in the attached "Exhibit A," is located within the extraterritorial jurisdiction of the City and is subject to annexation by the City unless this Agreement is signed by the Owner.

Section 2 – The Property: Continued Status. In lieu of annexation, the Owner desires that the Property remain in the extraterritorial jurisdiction of the City for the duration of this Agreement. The

Owner acknowledges that unless the Property is annexed by the City, the Property is not eligible to receive City services, the Property shall not be included in the City's voting precincts, and the Property shall be immune from City property taxes for the duration of this Agreement. The Owner's use of the Property at the time of this Agreement is "grandfathered" into the acceptable uses of the City, and the City is prohibited from interfering with any uses on the Property that comply with §43.002 of the Texas Local Government Code. The Owner acknowledges that Section 22.03.091(a) of the Code of Ordinances of the City prohibits the City from providing water to any entity outside of the city limits, and acknowledges that the City will not be providing water to the Property unless the Property is annexed into the City. However, if the Property is annexed pursuant to a provision of this Agreement, then the City shall provide services to the Property pursuant to Chapter 43 of the Texas Local Government Code.

Subject to the provisions of this Agreement, the City shall not annex the Property, shall not involuntarily institute proceedings to annex the Property, and shall not include the Property in a statutory annexation plan. The Owner authorizes the enforcement by the City of all of the City's regulations and planning authority that do not materially interfere with the use of the Property in the same manner that the City's regulations and planning authority are enforced within the City's boundaries. The City specifically reserves its authority pursuant to Chapter 251 of the Texas Local Government Code to exercise eminent domain over property that is subject to a §212.172 development agreement. The City further reserves its regulatory and planning authority in the City's ETJ, as such authority has been granted to it by the City Council.

Section 3 – The Property: Change In Status. The Owner agrees not to substantially change the use of the Property as it is used on the date of the execution of this Agreement. The Owner agrees not to develop the Property by filing any type of subdivision plat or related development document for the Property with Lubbock County or the City throughout the duration of this Agreement.

The Owner acknowledges that if any plat or related development document is filed for the Property, or if the Owner commences any development of the Property other than that which supports the use of the Property as the Property is used on the date of the execution of this Agreement, then this Agreement shall terminate, and in addition to the City's other remedies, such act will constitute a petition for voluntary annexation by the Owner, and the Property will be subject to annexation at the discretion of the City Council. The Owner agrees that such annexation shall be voluntary and the Owner hereby consents to such annexation as though a petition for such annexation had been tendered by the Owner.

If annexation proceedings begin pursuant to this Section, then the Owner acknowledges that this Agreement serves as an exception to Local Government Code §43.052, requiring a municipality to use certain statutory procedures under an annexation plan, and as an exception to Local Government Code §43.062 requiring certain statutory procedures as to the Owner to effectuate an annexation. Further, the Owner hereby waives any and all vested rights and claims that it may have under §43.002(a)(2) and Chapter 245 of the Texas Local Government Code that would otherwise exist by virtue of any plat or construction the Owner may initiate during the time between the expiration of this Agreement and the institution of annexation proceedings by the City.

Section 4 – The Term. The term of this Agreement (the "Term") shall be twenty (20) years from the date that this Agreement is approved by the City Council of the City of Lubbock. At the end of the Term, the Owner, and all of the Owner's heirs, successors and assigns shall be deemed to have filed

a petition for voluntary annexation of the Property, and the Property will be subject to voluntary annexation in accordance with Section 3 of this Agreement. Prior to the end of the Term, the City may commence the voluntary annexation of the Property.

Section 5 – Termination.

This Agreement will automatically terminate at the end of the Term. This Agreement shall terminate upon the filing of any plat or related development document with the City or with Lubbock County or upon the Owner's failure to prove that it is the sole owner of the Property with the authority to sign this Agreement. The Owner and the City may agree in writing to terminate this Agreement prior to the expiration of the Term of this Agreement.

Section 6 – City Council Approval Required. If the City Council of the City of Lubbock does not affirmatively vote to annex an area that contains the Property, then this Agreement will be null and void in its entirety.

Section 7 – Notification. Any person who sells or conveys any portion of the Property shall, prior to such sale or conveyance, give written notice of this Agreement to the prospective purchaser or grantee, and shall give written notice of the sale or conveyance to the City. Further, the Owner and the Owner's heirs, successors, and assigns shall give the City written notice within fourteen (14) days of any change in the status of the Property.

A copy of any notice required by this section shall be forwarded to the City at the following address:

**City of Lubbock
Attn: City Secretary
P.O. Box 2000
Lubbock, Texas 79457**

With copy to: **City of Lubbock
Attn: Director of Planning
P.O. Box 2000
Lubbock, Texas 79457**

This Agreement shall run with the Property and be recorded in the real property records of Lubbock County, Texas.

Section 8 – Waiver. Any failure by the Owner or the City to insist upon strict performance by either party of any material provision of this Agreement shall not be deemed a waiver thereof, and the Owner or the City shall have the right at any time thereafter to insist upon strict performance of any and all provisions of this Agreement. No provision of this Agreement may be waived except by a written agreement signed by the Owner or the City waiving such provision. Any waiver shall be limited to the specific purposes for which it is given. No waiver by the Owner or the City of any provision of this Agreement shall be deemed or construed to be a waiver of any other provision or subsequent waiver of the same provision. The Parties expressly agree that no provision of this Agreement is in any way intended to constitute a waiver by any Party of any immunity from suit or liability that it may have by operation of law. The Parties agree that the City shall retain all of its governmental immunities.

Section 9 – Assurance of Ownership. The Owner hereby expressly affirms that it is the sole owner of the Property and that no other person or entity has a valid claim to any right, title, or ownership in the Property. Should any dispute of right, title, or ownership concerning the Property arise subsequent to the Owner's execution of this Agreement, the Owner hereby agrees to be solely responsible for defending and confirming its absolute right, title, and ownership to the Property. If the Owner cannot

defend or fails to defend its right, title, and ownership to the Property, then this Agreement shall terminate.

Section 10 – Governing Law. This Agreement is entered into under and pursuant to, and is to be construed and enforceable in accordance with, the laws of the State of Texas, and all obligations of the Owner and the City are performable in Lubbock County, Texas. Venue for any action to enforce or construe this Agreement shall be Lubbock County, Texas. This Agreement is subject to all applicable federal, state, and local laws and any applicable ordinances, rules, orders and regulations of any local, state, or federal governmental authority, having or asserting jurisdiction. However, nothing contained in this Agreement shall be construed as a waiver by the Owner or the City of any right to question or contest any law, order, rule, or regulation which may affect the terms and conditions of this Agreement in any forum having jurisdiction, and the Owner and the City each agree to make a good faith effort to support all proposed laws and regulations which would be consistent with the performance of this Agreement in accordance with its terms. No subsequent change in the law regarding annexation shall affect the enforceability of this Agreement or the City's ability to annex the Property pursuant to this Agreement.

Section 11 – Remedy. 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 Agreement, the former shall control.

Section 12 – Public Information. This Agreement is public information. To the extent, if any, that any provision of this Agreement is in conflict with the Texas Public Information Act (Tex. Gov't. Code Ann. Chapter 552 et seq., as amended), the same shall be of no force and effect.

Section 13 – Third-Party Beneficiaries. This Agreement only inures to the benefit of, and may only be enforced by, the Owner and the City. No other person or entity shall have any right, title, or interest under this Agreement or otherwise be deemed to be a third-party beneficiary of this Agreement.

Section 14 – No Personal Liability & No Joint Venture. Nothing in this Agreement is construed as creating any personal liability on the part of any employee, officer or agent of any public body that may be a party to this Agreement. This Agreement is not intended to, and shall not be construed to, create any joint enterprise between or among the parties.

Section 15 – Due Diligence & Force Majeure. The Owner and the City shall use good faith, due diligence, and reasonable care in the performance of the obligations under this Agreement, and time shall be of the essence in such performance. In the event that the Owner or the City is unable to perform its respective obligations under this Agreement, due to any event or circumstance that is not within the reasonable respective control of the Owner or the City that could not have been avoided by either the Owner or the City with the exercise of good faith, due diligence, and reasonable care (a "Force Majeure"), then the obligations affected by the Force Majeure shall be temporarily suspended. Within three (3) business days after the occurrence of a Force Majeure, the Owner or the City shall give notice to each other, including a detailed explanation of the Force Majeure and a description of the action that will be taken to remedy the Force Majeure and resume full performance at the earliest possible time.

Section 16 – Enforcement. This Agreement may be enforced by the Owner or the City by any proceeding at law or in equity. Failure to do so shall not be deemed a waiver to enforce the Agreement thereafter.

Section 17 – Governmental Powers. It is understood that by execution of this Agreement, the City does not waive or surrender any of its governmental powers, except as expressly set forth herein.

Section 18 – Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and constitute one and the same instrument. The Owner acknowledges that each and every owner of the Property must sign this Agreement in order for the Agreement to take full effect.

Section 19 – Severability. If any provision of this Agreement is determined by a court of competent jurisdiction to be unenforceable for any reason, such unenforceable provision shall be deleted from this Agreement, and the remainder of this Agreement shall remain in full force and effect and shall be interpreted to give effect to the intent of the Owner and the City. Without limiting the generality of the foregoing, if it is determined that, as of the date that this Agreement becomes effective, that any Owner does not own any portion of the Property, then this Agreement shall remain in full force and effect with respect to the remaining portion of the Property that the Owners actually own.

Section 20 – Entire Agreement. This Agreement constitutes the entire agreement between the Owner and the City and supersedes all prior agreements, whether oral or written, covering the subject matter of this Agreement. The Owner acknowledges that each and every Owner of the Property must sign this Agreement in order for the Agreement to take full effect.


Section 21 – Captions & Recitals. Captions and headings used in this Agreement are for reference purposes only and shall not be deemed a part of this Agreement. However, each of the recitals contained herein, by this reference, shall be incorporated into, and deemed a part of, this Agreement.

Section 22 – Modification of Agreement. This Agreement cannot be modified or amended except in writing signed by the Owner and the City and attached and made a part of this Agreement.

Section 23 – Ch. 212 Agreement in lieu of Ch. 43 Agreement. If the Property is subject to an agricultural exemption, the Owner hereby acknowledges that the City, through the Office of the City Attorney, offered to make a development agreement with the Owner under §43.035 of the Texas Local Government Code. The Owner further acknowledges that the Owner rejected the offer to make a §43.035 Agreement in order to enter in to this §212.172 Agreement.

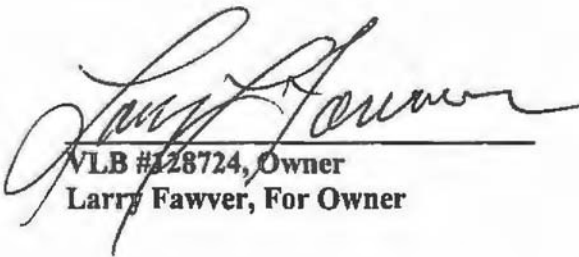
IN WITNESS HEREOF, the parties mutually enter this Agreement
on this 28th day of April, 2016.

For the City




GLEN C. ROBERTSON, MAYOR

For the Owner



VLB #128724, Owner
Larry Fawver, For Owner

ATTEST



Rebecca Garza, City Secretary

APPROVED AS TO CONTENT:



Andrew Paxton, Director of Planning

APPROVED AS TO FORM:



Justin Pruitt, Assistant City Attorney

NOTARIZATION

State of Texas §
County of Lubbock §

This instrument was executed before me on April 28th 2016, by Glen C. Robertson
Mayor of the City of Lubbock, a Texas municipal corporation, on behalf of said
corporation.

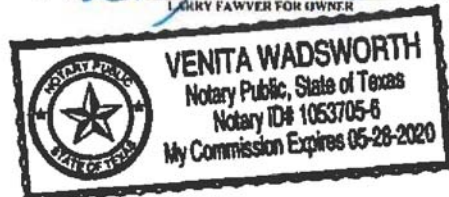
Jennifer Sowder Clements
Notary Public



State of Texas §
County of Lubbock §

This instrument was executed before me on 7/24 2016, by Larry Fawver,
on behalf of said Owner.

Venita Wadsworth
Notary Public



When Recorded Return To:

City Secretary
City of Lubbock, Texas
1625 13th Street
Lubbock, Texas 79401

EXHIBIT A — The Property

The South Three Hundred Seventy-Six point Twenty-Nine Feet (S 376.29') of Tract Thirteen (13), Frankford Farms, a Subdivision out of the Southwest Quarter (SW/4) of Section Twenty-Four (24), Block E-Two (E-2), Lubbock County, Texas, according to the map, plat, and/or dedication deed thereof recorded in Volume 3033, Page 242 and corrected in Volume 3176, Page 340 of the Real Property Records of Lubbock County, Texas;

AND

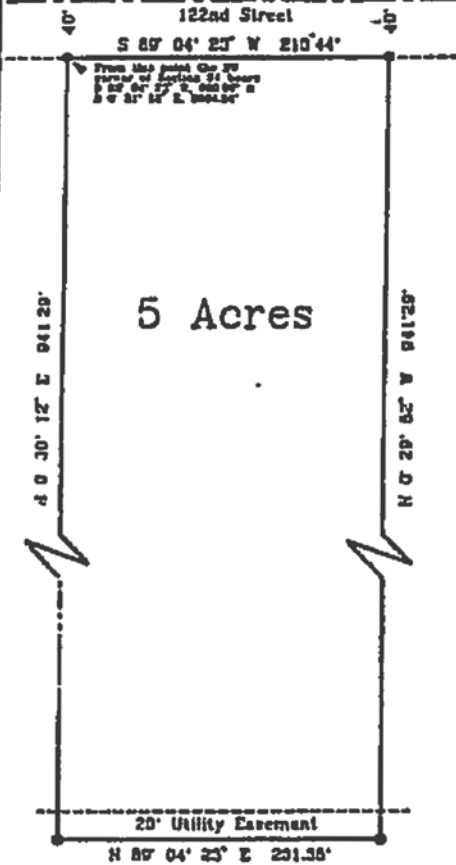
5.00 Acres, being Tract 14, Frankford Farms, a Subdivision out of the SW/4 of Section 24, Block E-2, Certificate No. 1869, L. A. Patillo Original Grantee, Lubbock County, Texas, as shown by plat recorded in Volume 3033, Page 242, Real Property Records of Lubbock County, Texas.

Plat of Survey

VOL 3110 PAGE 195

of a 5.0 acre tract of land out of the Southwest 1/4 of Section 24, Block E-2,
Certificate No. 1888, L.A. Patillo Original Grantee
Lubbock County, Texas

North line SW/4 Sec. 24 Centerline 122nd Street



Scale: 1" = 100'
March 13, 1989

■ = Set 1/2" Rod

FIELD NOTES:

FIELD NOTES of a 5.0 acre tract of land out of the SW/4 of Section 24, Block E-2, Certificate No. 1888, L.A. Patillo Original Grantee, Lubbock County, Texas and being more particularly described as follows:

BEGINNING at a 1/2" rod set for the NW corner of this survey and in the South R.O.W. of 122nd Street from whence the SW corner of Section 24 Bears S 89° 04' 23" W, 880.90' and S 0° 31' 12" E 2804.54';

THENCE S 0° 30' 12" E a distance of 841.29' to a 1/2" rod set for the SW corner of this survey;

THENCE N 0° 04' 23" E a distance of 231.35' to a 1/2" rod set for the SE corner of this survey;

THENCE N 0° 29' 52" W a distance of 841.29' to a 1/2" rod set in the South R.O.W. of 122nd Street for the NE corner of this survey;

THENCE S 89° 04' 23" W, along the South R.O.W. of 122nd Street a distance of 231.44' to the place of beginning and containing 5.0 acres of land.

DOUGLAS SURVEYING CO.

1801-C 34TH STREET

LUBBOCK, TEXAS 79411

(800) 744-0540

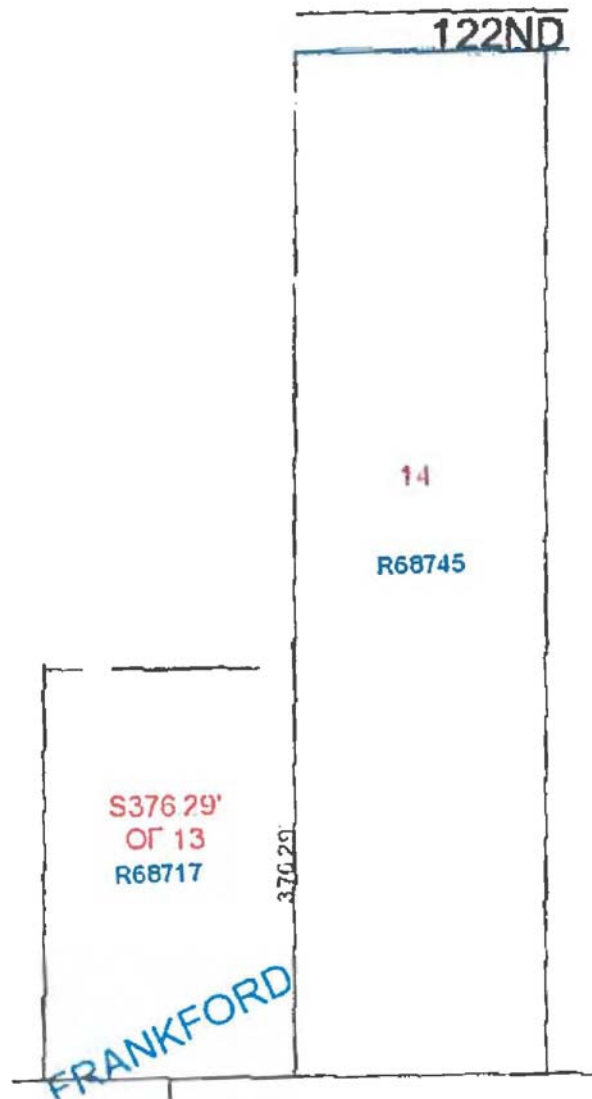
031200-1

FILED CORRECT FOR 5 ACRES
ENGR. DATE 3-23-89

PLAT SHOWN AS SURVEYED ON THE GROUND

DON H DOUGLAS
REGISTERED PUBLIC SURVEYOR #4570

FRANKFORD FARMS S379.29' OF TR 13 (LESS BLDG ONLY)
AND
FRANKFORD FARMS TR 14 (LESS BLDG ONLY)



FILED AND RECORDED

OFFICIAL PUBLIC RECORDS



Kelly Pinion

Kelly Pinion, County Clerk
Lubbock County, TEXAS
05/23/2018 10:02 AM
FEE: \$62.00
2016017941

MUNICIPAL SERVICE PLAN

FIRE

Existing Services: None

Services to be Provided: Fire suppression will be available to the area upon annexation. Primary fire response will be provided by Fire Station No. 16, located at 4030 114th Street, Station 19 located at 5826 98th Street, and Station No. 14 located at 2402 96th Street. Station No. 16 is approximately 2 miles from the proposed annexation with an approximate response time of 5 to 6 minutes. Station 19 is approximately 3 miles from the proposed annexation with an approximate response time of 8 to 9 minutes. Station No. 14 is approximately 3 miles from the proposed annexation with an approximate response time of 8 to 9 minutes. Fire suppression activities can be afforded to the annexed area within current appropriation with a less than desirable response time. As these areas are developed an additional fire station(s) will be considered. Fire Prevention activities will be provided by the Fire Marshal's office as needed.

POLICE

Existing Services: None. Currently, the area is under the jurisdiction of the Lubbock County Sheriff's Office.

Services to be Provided: The Police Department mission and purpose is to protect people and property; maintain social order by conducting criminal investigations and enforcing laws governing public health, order, and decency. The Police Department will extend the following services to the newly annexed area:

- Preventive patrol, traffic enforcement, and timely response to calls for service.
- Investigate crimes, arrests offenders, and assists in criminal prosecutions.
- Provide crime analysis, coordinate with any new neighborhood groups, enforce the alarm ordinance, and assume responsibility for the registering and monitoring of sex offenders.
- Maintain and disseminate records and documents of activities in the area.
- Enforce municipal ordinances that address physical signs of urban blight and social disorder.

Although spreading current resources of manpower out further, these services can be provided within the current budget to the annexed area. However as more houses and businesses begin filling in the vast area of the annexation in the next couple of years, it will be a necessity to increase staffing levels and associated equipment requirements in the Field Services Bureau and Investigations Services Bureau causing an increase in the budgets from FY16-17 and beyond. Additionally, a substation in the South or Southwest part of Lubbock will become a necessity to accommodate increased staffing and access by the citizens in that area of the city for better customer service.

CITY SECRETARY

Existing Services: None

Services to be Provided: Administration of Municipal Election services.

BUILDING INSPECTION

Existing Services: None

Services to be Provided: The Building Inspection Department will provide construction code enforcement services upon annexation. This includes construction plan review and field inspection services and the issuance of building, electrical and plumbing/mechanical permits for any new construction and remodeling, as well as enforcement of all other applicable codes which regulate building construction within the City of Lubbock.

It is anticipated that such services can be provided with current personnel and within the current budget appropriation. As land is developed, the need for additional personnel and budget appropriations will be dependent upon the type, intensity and rate of development within the annexed area as well as areas that compete for those resources.

PLANNING AND ZONING

Existing Services: The City of Lubbock Subdivision Ordinance regulations extend into the ETJ.

Services to be Provided: The Planning Department's responsibility for regulating development and land use through the administration of the City of Lubbock Zoning Ordinance will extend to this area on the effective date of the annexation. The property will also continue to be regulated under the requirements of the City of Lubbock Subdivision Ordinance. As Lubbock continues to grow, so does the need for and importance of long range planning in order to better serve the community. As land is developed, increases in personnel and budget will be needed in order to provide the same level of customer service.

GIS AND DATA SERVICES

Existing Services: None

Services to be Provided: GIS and Data Services will update all city-wide GIS data sets to include the newly annexed areas. This will include support to the Office of City

Secretary for changes to voting precincts (if any) and other elections requirements, to Building Inspection, Streets and Traffic Engineering for addresses and street names, to Stormwater Management for impervious surfaces and to Police and Fire for updated information for 911 Dispatch. The updated information will be reflected on the GIS website for use by the public.

These services can be provided within the department's current budget.

LIBRARY

Existing services: Free library use privileges are currently available to anyone residing in this area, as part of an agreement with Lubbock County.

Services to be Provided: These services will continue to be provided upon annexation.

CODE ADMINISTRATION/ENVIRONMENTAL HEALTH DEPARTMENTS

Existing Services: None

Services to be Provided: The City of Lubbock's Code Administration/Environmental Health Departments will implement the enforcement of local ordinances and regulations on the effective date of the annexation. Such services can be provided with current Code Administration/Health Department Personnel and within the current budget appropriation. As land is developed, increases in personnel and budget will be needed in order to provide the same level of customer service.

ANIMAL SERVICES

Existing Services: None. Currently, the area is under the jurisdiction of the Lubbock County Sheriff's Office.

Services to be Provided: Animal control services will be provided to the area as needed. The City of Lubbock Animal Services Department will implement the enforcement of the City of Lubbock's animal control ordinances and regulations upon the effective date of the annexation. It is anticipated that such services can be provided with current personnel and budget appropriation, but response times may increase.

STREET

Existing Services: Lubbock County Public Works currently maintains the county roads.

Services to be Provided: In accordance with the Master Thoroughfare Plan, the proposed annexation area will add approximately 8 centerline miles of thoroughfare

roadways to the City's infrastructure. As development occurs, the City's current policies require the City to design and build thoroughfares. Capital projects may be required in the future to provide adequate funding to support this anticipated growth. The timing of these improvements would be contingent on available funding and growth patterns in these areas.

STREET LIGHTING

Existing Services: None

Services to be Provided: The City of Lubbock will coordinate any request for improved street lighting with the local electric provider in accordance with standard policy.

STORM WATER MANAGEMENT

Existing Services: City maintains jurisdiction of playa lakes within the ETJ.

TCEQ (Texas Commission on Environmental Quality) has jurisdiction of enforcement and compliance with stormwater related permits outside the City limits.

Services to be Provided: As land is developed, developers will provide plans for addressing the conveyance of storm water drainage. The Storm Water staff will review the drainage plans for compliance with the current drainage regulations and policies. Any major improvements for conveyance will be inspected for compliance by the city staff at time of completion. Additionally, as land is developed and building permits are requested, Storm Water staff reviews each permit request for compliance with the Chapters 22 (City's Stormwater permit) and Chapter 30 (Lakes and Floodplains) of the City Code. After permit issuance, inspections of the construction sites are to ensure compliance with the City Code and state regulations. Depending on the type and intensity of development within the annexed area, the need for additional personnel and budget appropriations may be needed to provide adequate customer service (development and permit review and inspections).

TCEQ Stormwater permit holders will be transitioned from TCEQ oversight to City of Lubbock oversight, i.e. inspection and compliance of these existing facilities will now be the responsibility of the Storm Water Staff.

TRAFFIC ENGINEERING

Existing Services: None

Services to be Provided: Upon annexation approximately twenty-four (24) signs will be upgraded to city standards, thirty (30) new signs will be installed, and ten miles of

painted lane lines and pavement markings will be maintained. Current budget and staff are sufficient to provide these services. After annexation and in conjunction with the platting process, Traffic Engineering will identify and install required traffic signs to be installed at the developer's expense. Other regulatory traffic control devices will be provided after appropriate studies indicate the data meets the minimum requirements as set forth in the Texas Manual on Uniform Traffic Control Devices (TMUTCD) and as budget permits.

WATER AND SANITARY SEWER SERVICE

Existing Services: None

Services to be Provided: Water and Sewer:

- a) Water and sewer are not readily available in a majority of areas proposed for annexation.
- b) Major main extensions to these areas will need to be considered by City Council for future capital improvements projects to service these areas. County Road 7450 will need fire protection through a capital improvements project within 2.5 years of annexation. Up to three fire hydrants will be provided within one-half mile west of County Road 2200 (University Avenue) as required for adequate fire protection.
126th Street will need fire protection through a capital improvements project within 2.5 years of annexation. Up to three fire hydrants will be provided within one-half mile west of Chicago Avenue as required for adequate fire protection.
134th Street and 138th Street will need fire protection through a capital improvements project within 2.5 years of annexation. Up to three fire hydrants will be provided within one-half mile between Frankford Avenue and Chicago Avenue as required for adequate fire protection.
Water for fire protection prior to the extension of water lines from the City on County Road 7450, 126th Street, 134th Street, 138th Street, and any other area will need to be provided through pump trucks.
- c) Availability of water and sewer prior to or beyond the extension of a capital improvements project is at the request and expense of the developer, and shall be provided within current policies and ordinances of the City (see below for explanation of pro-rata charges).
- d) Water and sewer for domestic and commercial use, when installed will be available at approved City rates.
- e) Water for fire protection will be available through lines only after main extensions through a capital improvements project or development has occurred. Water in fire truck pumpers or in relay from existing sources will be used for fire suppression until that time for existing structures.

Pro-Rata Charges

Chapter 22.05 of the Code of Ordinances, City Code establishes the charges or the actual cost of construction due on all property to which water and/or sewer lines are extended. The charge is generally known as "pro-rata" and is due and payable before service is provided. The pro-rata charge represents a portion of the costs of providing water and/or sewer facilities to serve the property on which the pro-rata is paid.

When a person desires water and/or sewer service to property that requires an extension of existing facilities to provide service adjacent to the property or when the service connection will be made to a line constructed after April 1, 1952, the person desiring service shall pay non-refundable charge called pro-rata. The pro-rata charges include \$15.00 per front foot of lot or tract to be serviced for sewer and \$12.00 for water, unless the actual extension cost is greater, then the charge is per actual cost.

When an extension of water/sewer facilities exceeds the above costs, the person(s) desiring service shall pay the entire cost and later be refunded that amount above pro-rata when other persons tie onto service and pay their pro-rata. Ordinance 22.05 specifies other items including:

- a) pro-rata on property already platted, and extension of services,
- b) pro-rata and extensions to property being platted,
- c) sizes of lines and meter sizes,
- d) location for service connection,
- e) deposits, charges, refunds,
- f) cost of large mains may be partially paid by City, and other considerations,
- g) when the City Council can declare a health hazard and install mains at public expense.

SOLID WASTE SERVICES

Existing Services: None

Services to be Provided: Solid Waste Collection shall be provided to the area of annexation in accordance with the present ordinance. Service shall comply with existing City policies, beginning with occupancy of structures. Since it is expected that immediate development will not occur, impact to services has been determined to be gradual. Additional driver and equipment can be projected when 1,000 residential unit structures are occupied, and an increase in staffing and equipment will be needed as development continues within this proposed annexation and exceeds route collection averages.

MISCELLANEOUS

Exhibit B

In addition to the services listed above, the City will provide full municipal services to the Annexation Area commensurate with the levels of services provided in other parts of the City except if differences in topography, land use, and population density constitute a sufficient basis for providing different levels of service, not later than two and one-half years after the effective date of the full-purpose annexation. If full municipal services cannot be reasonably provided within the aforementioned time period, the City will propose a schedule for providing said services within a period of four and one-half years after the effective date of the annexation, and/or upon commencement of development of a subdivision within this property, whichever occurs later.

"Full municipal services" are services provided by the annexing municipality within its full-purpose boundaries, excluding gas or electrical service. The City shall provide the services by any of the methods, policies, and ordinances by which it extends the services to any other area of the City. Accordingly, there may be costs incurred by the user in order to access certain services.

Information

Agenda Item

Resolution - City Council: Consider a resolution creating a Downtown Parking Task Force, appointing its members, and establishing its scope of review and duties.

Item Summary

On April 26, 2022, WGI, Inc. presented the new Downtown Parking Master Plan to the City Council. The plan was in response to the recommendations in the Downtown Master Plan update that was approved on June 9, 2020. The purpose of the Plan is to inform the development of an efficient, cost-effective, and customer-focused parking management plan, leveraging current assets to support and promote continued growth in the downtown district.

In addition to adopting the Downtown Parking Master Plan, the City Council directed staff to prepare a resolution for the City Council to establish a Downtown Parking Task Force. This resolution allows the City Council to designate a citizen-led Task Force for parking in Downtown Lubbock. The Committee will review the adopted Downtown Parking Master Plan, and develop an appropriate implementation matrix, including recommendations and timing specific to the unique needs associated with the various zones and parking patterns in Downtown. The Committee will present their recommendations to the Central Business District TIF Board, and then to the Lubbock City Council.

Fiscal Impact

None

Staff/Board Recommending

Jarrett W. Atkinson, City Manager

Attachments

Resolution - Downtown Parking Task Force

RESOLUTION

WHEREAS, on December 3, 2001, the City Council of the City of Lubbock (the “City Council”) authorized and established the Central Business District Tax Increment Financing Reinvestment Zone Board (the “TIF Board”) in order to, among other things, generate funds for Downtown Lubbock public improvements that benefit the City of Lubbock (the “City”), its residents, and property owners; and

WHEREAS, on July 9, 2019 via Resolution No. 2019-R0247 the City Council approved an agreement between the TIF Board and Overland Partners, Inc. (“Overland”) for the creation of an Updated Downtown Master Plan (the “Plan”); and

WHEREAS, Overland’s completed Plan included a recommendation to perform a downtown parking study to evaluate current and future parking needs in Downtown Lubbock; and

WHEREAS, on April 13, 2021 via Resolution No. 2021-0136, the City Council approved a professional services agreement with WGI, Inc. (the “Consultant”) of Houston, Texas to perform a comprehensive downtown parking study (the “Study”); and

WHEREAS, on April 26, 2022 the City Council heard a presentation from the Consultant regarding the Study, and the City Council adopted the Study via Resolution No. 2022-R0215; and

WHEREAS, as part of Resolution No. 2022-R0215 the City Council also agreed to create a task force for the oversight and implementation of the Study; and **NOW THEREFORE:**

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

THAT, the City Council hereby creates the Downtown Parking Task Force (the “Task Force”); and

THAT, the City Council hereby establishes the Task Force for the purpose of working with City staff to review the Study and make recommendations to the TIF Board and the City Council regarding a project implementation matrix that shall include identifying specific needs in downtown for each downtown zone and recommending the proper timing for addressing those needs;

THAT, the recognized zones in Downtown Lubbock include the following districts:

1. Broadway;
2. Arts;
3. Courthouse;
4. Depot; and
5. Government; and

THAT, the membership of the Task Force shall be a maximum of nine (9) members, who shall serve a term of four (4) months from the date of the first Task Force meeting, unless otherwise extended by City Council; and

THAT, the Task Force membership shall include the Lubbock Police Department Parking Control Manager as a non-voting, ex-officio member, as well as the following members hereby appointed by the City Council, including the Task Force Chairperson as appointed by the Mayor of the City of Lubbock:

- 1.
- 2.
- 3.
- 4.
- 5.
- 6.
- 7.
- 8.
- 9.

THAT, meetings of the Task Force shall be advisory in nature, a quorum of the Task Force shall be a majority of the members, and a majority vote of the quorum shall be required for any action to be taken by the Task Force. All meetings and procedures of the Task Force shall be consistent with the policies of the City of Lubbock concerning advisory boards and commissions. The City Manager of the City of Lubbock, the City Attorney of the City of Lubbock, and other City staff, or their designees, may attend all meetings of the Committee, and shall serve as a resource to the Task Force as requested; and

THAT all Task Force members shall serve at the pleasure of, and may be removed by, the City Council; and

Passed by the City Council on _____.

DANIEL M. POPE, MAYOR

ATTEST:

Rebecca Garza, City Secretary

APPROVED AS TO CONTENT:



W. Jarrett Atkinson, City Manager

APPROVED AS TO FORM:



Kelli Leisure, Assistant City Attorney

Information

Agenda Item

Resolution - City Manager: Consider a resolution outlining that there is a homelessness issue within the city of Lubbock and supporting the formation of a local Continuum of Care.

Item Summary

This resolution simply acknowledges that homelessness is an issue for a portion of Lubbock's population. It also calls for the formation of a local Continuum of Care through the Housing and Urban Development Department (HUD). This will allow the service providers to work together closely, as strategies to address homelessness are identified and eventually implemented.

Fiscal Impact

Funding for these future endeavors has been appropriated from the City of Lubbock's allocation from the American Rescue Plan Act (ARPA) in the amount of \$3,500,000.

Staff/Board Recommending

Bill Howerton, Deputy City Manager

Attachments

Homelessness Reso

RESOLUTION

WHEREAS, homelessness is an issue of critical importance in the City of Lubbock and surrounding area; and

WHEREAS, evidence-based assessments in recent years have identified substantial and increasing numbers of homeless individuals in the Lubbock community; and

WHEREAS, children, families, veterans, and chronically homeless individuals experiencing mental illness and addictions comprise a large portion of the homeless population in Lubbock; and

WHEREAS, the United States Department of Housing and Urban Development created the Continuum of Care program in order to assist communities in strategic planning for homeless programs and services that are well integrated with planning for mainstream services; and

WHEREAS, the City Council supports the establishment of a local Continuum of Care comprised of a broad group of stakeholders dedicated to ending and preventing homelessness in the City of Lubbock and surrounding area, and envisions an active role by the City of Lubbock, Lubbock County, and non-profit organizations to direct and assist the Continuum of Care serve its purposes.

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

THAT homelessness in Lubbock, Texas must be immediately addressed in meaningful and effective ways;

THAT the City of Lubbock supports the formation of a local Continuum of Care, and desires to serve as a central, supporting role in coordinating public and private resources, services, strategic planning, and other activities in furtherance of the stated purposes of the Continuum of Care program;

Passed by the City Council of Lubbock, Texas on this, the 10th day of May, 2022.

DANIEL M. POPE, MAYOR

ATTEST:

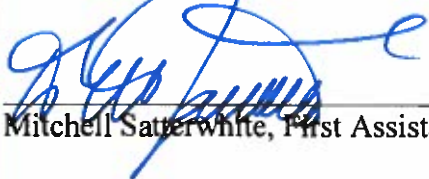
Rebecca Garza, City Secretary

APPROVED AS TO FORM:



Bill Howerton, Deputy City Manager

APPROVED AS TO FORM:



Mitchell Satterwhite, First Assistant City Attorney