City of Lubbock, Texas Regular City Council Meeting June 27, 2023

Tray Payne, Mayor Shelia Patterson Harris, Mayor Pro Tem, District 2 Christy Martinez-Garcia, Councilwoman, District 1 Mark W. McBrayer, Councilman, District 3 Steve Massengale, Councilman, District 4 Dr. Jennifer Wilson, Councilwoman, District 5 Latrelle Joy, Councilwoman, District 6



W. Jarrett Atkinson, City Manager Chad Weaver, City Attorney Courtney Paz, 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.

A quorum of the City Council will be physically present in City Council Chambers located in Citizens Tower, 1314 Avenue K, Lubbock, Texas, as it is the intent of the City Council to have a quorum physically present at this location. One or more members of the City Council, however, may participate in the meeting by video-conference call as permitted under Section 551.127 of the Texas Government Code.

11:00 a.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. Hear and discuss presentations regarding the following and provide guidance to staff as appropriate.
- 1. 1. Broadway Brick Presentation

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

- 2. Executive Session
- 2. 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.
- 2. 1. 1. Chapter 43 of the Texas Local Government Code

- 2. 1. 2. Tex. H.B. 1819, 88th Leg., R.S. (2023)
- 2. 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.
- 2. 2. 1. Lake 7
- 2. 3. Hold an executive session in accordance with Texas Government Code Section 551.074, to discuss personnel matters, regarding the duties, responsibilities, and/or appointments to the Building Board of Appeals, Canadian River Municipal Water Authority Board of Directors, Lubbock Reese Redevelopment Authority Board of Directors, Permit & License Appeal Board, and the Urban Design & Historic Preservation Commission.

Adjourn from Executive Session.

1:30 p.m. - City Council reconvenes in Open Session in City Council Chambers.

- 3. **Ceremonial Items**
- 3. 1. Invocation
- 3. 2. Pledges of Allegiance

Call to Order

- 4. 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 1:30 p.m. on June 27, 2023. Citizen Comments provide an opportunity for citizens to make comments and express a position on agenda items.
- 5. Minutes
- 5. 1. May 23, 2023 Regular City Council Meeting

- 6. 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.
- 6. 1. **Budget Ordinance Amendment 2nd Reading Finance:** Consider Budget Ordinance No. 2023-O0066, Amendment 22, amending the FY 2022-23 Budget for municipal purposes respecting the Water/Wastewater Fund; providing for filing; and providing for a savings clause.
- 6. 2. **Budget Ordinance Amendment 2nd Reading Finance:** Consider Budget Ordinance No. 2023-O0023, Amendment 23, amending the FY 2022-23 Budget for municipal purposes respecting the Grant Fund to accept and appropriate funding from the Federal Transit Administration; providing for filing; and providing for a savings clause.
- 6. 2. 1. **Resolution Public Transit Services:** Consider a resolution authorizing the Chief Financial Officer to execute a FY 2021 Section 5310 American Rescue Plan Act (ARPA) Grant, Project ID TX-2023-037-00, with the Federal Transit Administration, for Citibus Operations.
- 6. 3. **Resolution Business Development:** Consider an amendment to Resolution No. 2023-R0227 nominating Leprino Foods Company to the Office of the Governor, Economic Development and Tourism, through the Economic Development Bank, for designation as an Enterprise Project under the Texas Enterprise Zone Act, Chapter 2303, Texas Government Code.
- 6. 4. **Ordinance 2nd Reading Right-of-Way:** Consider Ordinance No. 2023-O0068 abandoning and closing portions of a Water Line Easement located at 4215 South Loop 289, in Tracts C-1 and C-2, West Chase Subdivision Addition to the City of Lubbock, Lubbock County, Texas.
- 6. 5. Ordinance 2nd Reading Right-of-Way: Consider Ordinance No. 2023-O0069 abandoning and closing portions of a Drainage Easement located west of Indiana Avenue and north of 114th Street, in Section 18, Block E-2, Lubbock County, Texas.
- 6. 6. **Ordinance 1st Reading Right-of-Way:** Consider an ordinance abandoning and closing portions of an Underground Streetlight Cable Easement, located on Lot 181, Stratford Pointe, Lubbock County, Texas.
- 6. 7. **Resolution Right-of-Way:** Consider a resolution authorizing the Mayor to execute a Street Use License Agreement, and related documents, with Westminster Presbyterian Church at 3321 33rd Street, Lubbock, Texas.
- 6. 8. **Resolution Engineering:** Consider a resolution authorizing the Mayor to execute Professional Services Agreement, Contract 17020, with Freese and Nichols, Inc., for the Northwest Sewer Interceptor Project.

- 6. 9. **Resolution Engineering:** Consider a resolution authorizing the Mayor to execute Public Works Contract 17342, with Lone Star Dirt & Paving, Ltd., for the Unpaved Roads Improvements Project, through Certificate of Obligation Bonds, Phase 3.
- 6. 10. **Resolution Engineering:** Consider a resolution authorizing the Mayor to execute Development Agreement Contract 17207, with Red Canyon Development, LLC., for the construction of drainage improvements along Memphis Avenue and 114th Street.
- 6. 11. **Resolution Water Operations:** Consider a resolution rejecting all bids, in response to ITB 23-17324-YB, for wooden power poles to be used at the Bailey County Well Field.
- 6. 12. **Resolution Wastewater Utility:** Consider a resolution authorizing the Mayor to execute Purchase Order 23105667, with James, Cooke and Hobson, Inc., for three wastewater submersible Flygt pumps for the Southeast Water Reclamation Plant.
- 6. 13. **Resolution Public Works Streets:** Consider a resolution authorizing the Mayor to execute Contract 17328, with West Texas Paving, to establish the annual pricing of asphalt materials.
- 6. 14. **Resolution Public Works Streets:** Consider a resolution authorizing the Mayor to execute Contract 17369, with West Infrastructure Construction, LLC, for rebuilding certain streets with concrete paving in the North Overton area.
- 6. 15. **Resolution Solid Waste:** Consider a resolution authorizing the Mayor to execute Contract 17319, with Product Recovery Management, for the Caliche Canyon Gas Blower and Flare Unit.
- 6. 16. **Ordinance 2nd Reading Codes Administration:** Consider Ordinance No. 2023-O0070, amending Sections 34.06.001 34.06.013, of the City of Lubbock Code of Ordinances, regarding junked vehicles.
- 6. 17. **Resolution Public Health Services:** Consider a resolution authorizing the Mayor to execute the Department of State Health Services (DSHS) Contract No. HHS001331300015, and all related documents, under the Immunization Locals Grant Program, by and between the City of Lubbock, and the State of Texas DSHS.
- 6. 18. **Resolution Parks and Recreation:** Consider a resolution authorizing the Mayor to execute Professional Services Agreement 17433, with PondMedics, Inc., d/b/a dredgeSMART, for a Cattail Control Plan for the Jim Bertram Canyon Lakes System.
- 6. 19. **Resolution Parks and Recreation:** Consider a resolution authorizing the Mayor to execute Contract 17444 with Turf Raider Lawn & Landscape, for turf management and mowing of Group 10 Class C Parks and Properties.

- 6. 20. **Resolutions Fleet Services:** Consider five resolutions authorizing the Mayor to execute contracts with Lubbock Truck Sales, Inc., McWhorter's Ltd., Roberts Truck Center, Texas Truck & Equipment Sales and Salvage, Inc., and Bruckner Truck Sales, Inc., as secondary vendors who will provide preventative maintenance and repairs on the City's heavy-duty vehicles and equipment.
- 6. 21. **Resolution Municipal Court:** Consider a resolution authorizing the Mayor to execute a Joint Interlocal Agreement between the City of Lubbock and Lubbock County, to provide joint magistration services for individuals being held at the Lubbock County Detention Center.
- 6. 22. Ordinance 2nd Reading City Secretary: Consider Ordinance No. 2023-O0071 amending Article 2.03, Division 3; Article 22.03, Division 2; Article 22.07; and Article 22.08, Division 3; and deleting Article 2.03, Divisions 11 and 17, of the City of Lubbock Code of Ordinances, regarding the duties and responsibilities of the Permit & License Appeal Board.
- 6. 23. **Resolution City Manager:** Consider a resolution authorizing the Mayor to execute Amendment No. 1 to the Joyland Amusement Park Lease Agreement dated April 12, 2022, by and between the City of Lubbock and Mackenzie Park Playground Inc. d/b/a Joyland Amusement Park, abating the rent for the year 2023 while the park remains closed for business.
- 6. 24. **Resolution City Manager:** Consider a resolution authorizing the Mayor to execute a Certificate of Approval for Issuance of Tax-Exempt Multifamily Housing Revenue Bonds, and all related documents, for the Lubbock Housing Finance Corporation.

7. **Regular Agenda**

- 7. 1. **Public Hearing Planning (District 1):** Consider a request for Zone Case 3483, a request of Felix Sanchez Medina, for a zone change from General Retail District (C-3) to Commercial District (C-4), at 1921 Clovis Road, located south of Clovis Road and east of Avenue T, Easley Addition, Block 38, Lots 21, 22, 23 and the southwest part of Lot 24, and consider an ordinance.
- 7. 2. **Public Hearing Planning (District 2):** Consider a request for Zone Case 3485, a request of the City of Lubbock, for a Specific Use for a Public Use (cemetery) on property zoned Transition District (T), at 4614 East 50th Street, located south of 50th Street and east of East Loop 289, on 100 acres of unplatted land out of Block S, Section 10 (proposed Veteran's Memorial Cemetery Addition, Tract A), and consider an ordinance.

- 7. 3. **Public Hearing Planning (District 3):** Consider a request for Zone Case 501-A, a request of Steve Vernon for Dellas W. Lee, for a Specific Use for an Event Center on property zoned Local Retail District (C-2), at 4012 34th Street, located north of 34th Street, and east of Oxford Avenue, Zuni Park Addition, Block 7, Lot 14, the east 55 feet of Lot 13 and the west 15 feet of Lot 15, and consider an ordinance.
- 7. 4. **Public Hearing Planning (District 3):** Consider a request for Zone Case 1190-C, a request of Lubbock Party House for Totomazza Inc., for a Specific Use for an Event Center on property zoned Local Retail District (C-2), at 4322 50th Street located north of 50th Street, and east of Quaker Avenue, Commercial Addition, Lot 5, and the east 42.06 feet of Lot 6, and consider an ordinance.
- 7. 5. **Public Hearing Planning (District 4):** Consider a request for Zone Case 1067-F, a request of McDougal Realtors for 3 Wiggle, LLC, for a zone change from Local Retail District (C-2) to General Retail District (C-3), at 6601 Indiana Avenue, located south of 66th Street and east of Indiana Avenue, Live Oak Addition, Lot 197-A, and consider an ordinance.
- 7. 6. **Public Hearing Planning (District 5):** Consider a request for Zone Case 3484, a request of R2M Engineering for M.N. Thompson Heirs, LLC and LSJ Thompson, LLC, for a zone change from Transition District (T) to Interstate Highway Commercial District (IHC), generally located east of Upland Avenue and north of 130th Street, on 26.26 acres of unplatted land out of Block AK, Section 19, and consider an ordinance.
- 7. 7. **Public Hearing Planning (District 6):** Consider a request for Zone Case 2538-AA, a request of AMD Engineering, LLC for 806 Land Group, for a zone change from General Retail District (C-3) and Two-Family District (R-2) to Local Retail District (C-2) with a Specific Use for a Self-Storage Facility, generally located east of Upland Avenue and north of 19th Street, on 4.05 acres of unplatted land out of Block JS, Section 10, and consider an ordinance.
- 7. 8. **Public Hearing Business Development:** Hold a public hearing for the consideration of a proposed 4% Non-Competitive Housing Tax Credit (HTC) application to be submitted to the Texas Department of Housing and Community Affairs (TDHCA) for the South Plains Apartments, located at 5520 58th Street in Lubbock, Texas.
- 7. 9. **Resolution Business Development:** Consider a resolution confirming that the City of Lubbock has no objection to the proposed 4% Non-Competitive Housing Tax Credit (HTC) application to be submitted to the Texas Department of Housing and Community Affairs (TDHCA) for the South Plains Apartments, located at 5520 58th Street in Lubbock, Texas.
- 7. 10. **Public Hearing Business Development:** Hold a public hearing for the consideration of a proposed 4% Non-Competitive Housing Tax Credit (HTC) application to be submitted to the Texas Department of Housing and Community Affairs (TDHCA) for The Ella, located at 1102 58th Street in Lubbock, Texas.

- 7. 11. **Resolution Business Development:** Consider a resolution confirming that the City of Lubbock has no objection to the proposed 4% Non-Competitive Housing Tax Credit (HTC) application to be submitted to the Texas Department of Housing and Community Affairs (TDHCA) for The Ella, located at 1102 58th Street in Lubbock, Texas.
- 7. 12. **Public Hearing Business Development:** Hold a public hearing for the City Council to receive public input concerning the adoption of an Ordinance designating a Reinvestment Zone, at 904 Lubbock Business Park Boulevard, as authorized by Chapter 312 of the Tax Code.
- 7. 13. **Ordinance 1st Reading Business Development:** Consider an ordinance designating the Dura-Line, LLC Reinvestment Zone within the City of Lubbock, as authorized by Chapter 312 of the Tax Code; describing the boundaries of said Zone for commercial / industrial tax abatement; providing a saving clause and providing for publication.
- 7. 14. **Ordinance 2nd Reading Planning:** Consider Ordinance No. 2023-O0072 for a request for annexation, from Red Canyon Development, LLC, and 14 Texas Real Estate, LLC, to annex an area of approximately 2.986 acres, adjacent to the southern city limits of the City of Lubbock, north of Woodrow Road and west of Quaker Avenue, into Lubbock's corporate limits, along with the adjacent right-of-way.
- 7. 15. **Resolution Right of Way:** Consider a resolution authorizing Condemnation of Property by Eminent Domain; Determining the Public Necessity for the Project; Authorizing the Acquisition of Real Property Interests by Easement or in Fee Simple; and Authorizing All Other Acts to Complete Condemnation Proceedings, said properties being a 0.2227 acre parcel, a 0.3333 acre parcel, both located in Section 8, Block JS, Lubbock County, Texas, being portions of a 7.6 acre tract described by CCFN 2021052641 North Milwaukee & Erskine Affordable Storage, LLC. Also, a 0.0753 parcel, a 0.2919 acre parcel, and a 2.803 acre parcel, located in Section 3, Block JS, Lubbock County, Texas, being portions of a 133.7-acre tract described in volume 6638, page 9, in the Official Public Records, Lubbock County, Texas.



Information

Agenda Item

Hold an executive session in accordance with Texas Government Code Section 551.074, to discuss personnel matters, regarding the duties, responsibilities, and/or appointments to the Building Board of Appeals, Canadian River Municipal Water Authority Board of Directors, Lubbock Reese Redevelopment Authority Board of Directors, Permit & License Appeal Board, and the Urban Design & Historic Preservation Commission.

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Staff/Board Recommending			
Fiscal Impact			
Item Summary			
Historic Preservation Commission.			
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Attachments

No file(s) attached.



Information

Agenda Item

May 23, 2023 Regular City Council Meeting

Item Summary

May 23, 2023 Regular City Council Meeting

Fiscal Impact

None

Staff/Board Recommending

Courtney Paz, City Secretary

Attachments

5.23.2023

CITY OF LUBBOCK REGULAR CITY COUNCIL MEETING May 23, 2023 1:30 P. M.

The City Council of the City of Lubbock, Texas met in regular session on the 23rd of May, 2023, in City Council Chambers, Citizens Tower, 1314 Avenue K, Lubbock, Texas at 1:30 p.m.

1:30 P.M. CITY COUNCIL CONVENED City Council Chambers, Citizens Tower, 1314 Avenue K, Lubbock, Texas

Present: Mayor Tray Payne; Mayor Pro Tem Shelia Patterson Harris; Council Member Latrelle Joy; Council Member Christy Martinez-Garcia; Council Member Steve Massengale; Council Member Mark W. McBrayer; Council Member Dr. Jennifer Wilson; City Manager W. Jarrett Atkinson; City Secretary Courtney Paz; City Attorney Chad Weaver

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

• Executive Session; 2.1-2.2; Citizen Comments 3; 4.1; 5.1-5.40; and 6.1-6.9

1. Executive Session

The meeting recessed at 1:30 p.m. and reconvened in Executive Session under the provisions of Section 551, Texas Government Code. City Council reconvened in open session at 2:00 p.m., and the meeting was called to order at 2:02 p.m.

- 1.1. 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.
- **1.1.** Claims related to electric utility property damage
- **1.1. 2.** Lots 11-14, Original Town Lubbock, Block 71
- **1.2.** 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.
- **1. 2. 1.** Lots 11-14, Original Town Lubbock, Block 71

2:00 p.m. - City Council reconvenes in Open Session in City Council Chambers.

City Council reconvened at 2:00 p.m.

2. Ceremonial Items

2.1. Invocation

Pastor Justin Stice, CO-OP Church, led the invocation.

2. 2. Pledges of Allegiance

Pledges of Allegiance, to the United States and Texas Flags, were led by Mayor Pro Tem Shelia Patterson Harris.

Call to Order

The meeting was called to order at 2:02 p.m.

3. 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 2:00 p.m. on May 23, 2023. Citizen Comments provide an opportunity for citizens to make comments and express a position on agenda items.

Sign ups:

• Mikel Ward appeared before City Council to speak on items 5.6-5.10 (resolutions approving expenditures of Market Lubbock, Inc. and Lubbock Economic Development Alliance) and 6.7-6.9 (an ordinance designating the X-Fab Texas, Inc. Reinvestment Zone; a resolution giving Notice of Intent for a Tax Abatement Agreement with X-FAB Texas, Inc.; and a resolution amending the program requirements and eligibility and authorizing the establishment of the 34th Street Empowerment Zone, North University Empowerment Zone, and Lubbock East Neighborhood Empowerment Zone)

4. Minutes

4.1. April 25, 2023 Regular City Council Meeting

Motion by Council Member Christy Martinez-Garcia, seconded by Council Member Dr. Jennifer Wilson, to approve the April 25, 2023 Regular City Council Meeting minutes.

Vote: 7 - 0 Motion carried

5. 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 Christy Martinez-Garcia, seconded by Council Member Steve Massengale, to approve items 5.1-5.40.

Vote: 7 - 0 Motion carried

- **5. 1. Budget Ordinance Amendment 1st Reading Finance:** Ordinance No. 2023-O0056, Amendment 18, amending the FY 2022-23 budget for municipal purposes respecting the General Fund, Airport Fund, Water/Wastewater Fund and the Fleet Capital Fund to appropriate funding for Capital Improvement Project 92827, FY 2023-24 Pre-Purchase Vehicles; providing for filing; and providing for a savings clause.
- **5.1. 1. Resolution Fleet Services:** Resolution No. 2023-R0243 authorizing the City Manager to advance purchase twelve Half-Ton Pickups, twelve Three-Quarter Ton Pickups, one One-Ton Pickup, and seventeen SUV/Sedans for Fiscal Year 2023-24, to replace essential vehicles in various City departments.
- **5. 2. Budget Ordinance Amendment 1st Reading Finance:** Ordinance No. 2023-O0057, Amendment 19, amending the FY 2022-23 Budget for municipal purposes respecting the Water Capital Project Fund; providing for filing; and providing for a savings clause.
- **5. 3. Budget Ordinance Amendment 1st Reading Finance:** Ordinance No. 2023-O0058, Amendment 20, amending the FY 2022-23 Budget for municipal purposes respecting the Grant Fund to accept and appropriate funding from the Texas Health and Human Services Commission; providing for filing; and providing for a savings clause.
- **5. 4. Budget Ordinance Amendment 1st Reading Finance:** Ordinance No. 2023-O0059, Amendment 21, amending the FY 2022-23 Budget for municipal purposes respecting the Water/Wastewater Fund; providing for filing; and providing for a savings clause.
- **5. 5. Resolution Risk Management:** Resolution No. 2023-R0244 authorizing and directing the City Manager to purchase layered excess liability insurance coverage, from Texas Insurance Company (35.714% of the program) and Upland Specialty Insurance Company (64.286% of the program), for which the premium amount shall not exceed \$388,443.89 and \$699,208.66, respectively.
- **Resolution Business Development:** Resolution No. 2023-R0245 approving a Downtown Grant Program (Facade) expenditure of Market Lubbock, Inc., to be provided to Davis W. Smith, P.C., located at 1220 Avenue K, pursuant to Article IV, Section 5 of the Amended and Restated Bylaws of the Market Lubbock Development Corporation.

- **5. 7. Resolution Business Development:** Resolution No. 2023-R0246 approving a Downtown Grant Program (Permittable) expenditure of Market Lubbock, Inc., to be provided to 1114 Texas Avenue, LLC, located at 1114 Texas Avenue, pursuant to Article IV, Section 5, of the Amended and Restated Bylaws of the Market Lubbock Development Corporation.
- **5. 8. Resolution Business Development:** Resolution No. 2023-R0247 approving a Downtown Grant Program (Facade) expenditure of Market Lubbock, Inc., to be provided to Merinda Condra, Individual, located at 1510 Avenue L, pursuant to Article IV, Section 5, of the Amended and Restated Bylaws of the Market Lubbock Development Corporation.
- **5. 9. Resolution Business Development:** Resolution No. 2023-R0248 authorizing a program or expenditure of the Lubbock Economic Development Alliance, to be provided to Dura-Line, pursuant to Section 501.073 of the Texas Local Government Code.
- **5. 10. Resolution Business Development:** Resolution No. 2023-R0249 authorizing a program or expenditure of the Lubbock Economic Development Alliance, to be provided to CoNetrix, LLC, pursuant to Section 501.073 of the Texas Local Government Code.
- **5. 11. Resolution Business Development:** Resolution No. 2023-R0250 authorizing the Mayor to execute Contract 17222, with West Texas Services, Inc. dba Tom's Tree Place, for landscape maintenance services in the North Point Public Improvement District.
- **5. 12. Ordinance 1st Reading Right-of-Way:** Ordinance No. 2023-O0060 abandoning and closing portions of a water line easement and portions of two (2) utility easements located in Tracts A and B, South Plains Addition to the City of Lubbock, Lubbock County, Texas.
- **5. 13. Resolution Right-of-Way:** Resolution No. 2023-R0251 authorizing the Mayor to execute a Street Use Agreement, with Vista Bank, to use a portion of a dedicated right-of-way for a building awning, located in Block 181, Original Town of Lubbock, Lubbock County, Texas.
- **5. 14. Resolution Right-of-Way:** Resolution No. 2023-R0252 authorizing the Mayor to accept and execute a Special Warranty Deed, and all related documents, associated with a 3.991-acre parcel in Section 31, Block AK, in Lubbock County, Texas, owned by South Plains Electric Cooperative, Inc.
- **5. 15. Resolution Right-of-Way:** Resolution No. 2023-R0253 authorizing the Mayor to execute for and on behalf of the City of Lubbock, a Street Use License Agreement for the Right-of-Way located in Block 3, Lot I to the Clutter 1st Addition to the City of Lubbock, Lubbock County, Texas, particularly the Plat Dedicated ROW, Plat Number 457, at the South abutment of ROW 457, adjacent to the manhole cover at 47th St, near the intersection of Southeast Drive, by and between the City of Lubbock and U.S. Geological Survey, Oklahoma-Texas Science Center.
- **5. 16. Resolution Right-of-Way:** Resolution No. 2023-R0254 authorizing the Mayor to execute for and on behalf of the City of Lubbock, a Street Use License Agreement for the Right-of-Way located in Edwards & Reed Section 18, Block A more particularly, that Right-of Way Easement 0052096, Map Document Number 0052096, File Record Info 2017008675, by and between the City of Lubbock and U.S. Geological Survey, Oklahoma-Texas Science Center.

- **5. 17. Resolution Right-of-Way:** Resolution No. 2023-R0255 authorizing the Mayor to execute for and on behalf of the City of Lubbock, a Street Use License Agreement for the Right-of-Way located at Section 5, Block S, G.C. & S.F. Railway Co. more particularly, that Right-of Way at CR 2600 and Drainage Easement File record number V8348 P237 (Map Document 0543004) Base Map Note 30' SWE, Drainage Easement 1 Underground Storm Water Line Easement, by and between the City of Lubbock and U.S. Geological Survey, Oklahoma-Texas Science Center.
- **5. 18. Resolution Right-of-Way:** Resolution No. 2023-R0256 authorizing the Mayor to execute an Alley Use License, with Schauer & Associates, Inc., to use a portion of a dedicated alley for a parking area, landscaping area, and stairway, located in Lots 11-12, Block 121, Original Town of Lubbock addition to the City of Lubbock, Lubbock County, Texas.
- **5. 19. Resolution Engineering:** Resolution No. 2023-R0257 authorizing the Mayor to execute Amendment No. 3 to Contract 15282, with Freese and Nichols, Inc., to provide Engineer of Record Services during the construction of the Downtown Sanitary Sewer Line Improvements Project and Major Sewer Line Condition Assessment and Repair.
- **5. 20. Resolution Stormwater Compliance:** Resolution No. 2023-R0258 authorizing the Mayor to execute License Agreement 17344, with Abbi Armes, regarding certain designated rights-of-way, for the purpose of installation and display of artwork.
- **5. 21. Resolution Stormwater Compliance:** Resolution No. 2023-R0259 authorizing the Mayor to execute License Agreement 17345, with Kaysha Byrd, regarding certain designated rights-of-way, for the purpose of installation and display of artwork.
- **5. 22. Resolution Stormwater Compliance:** Resolution No. 2023-R0260 authorizing the Mayor to execute License Agreement 17346, with Madelyn Garcia, regarding certain designated rights-of-way, for the purpose of installation and display of artwork.
- **5. 23. Resolution Public Works Streets:** Resolution No. 2023-R0261 authorizing the Mayor to execute Contract 17235, with Permian Paving Inc., for the rebuilding of a portion of Avenue P, from 19th Street to 34th Street.
- **5. 24. Resolution Facilities Management:** Resolution No. 2023-R0262 authorizing the Mayor to execute Contract 17079, with Hart Moving & Storage, Inc., for moving and relocation services on various City properties.
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- **5. 26. Resolution Public Health Services:** Resolution No. 2023-R0264 authorizing the Mayor to execute a Memorandum of Understanding and all related documents, with Plainview Serenity Services, Inc., for coordination with the City of Lubbock Health Department, to provide substance abuse services and co-occurring mental health services.
- **5. 27. Resolution Human Resources:** Resolution No. 2023-R0265 authorizing the Mayor to execute an Interlocal Cooperation Agreement, and related documents, with the Texas Tech University Health Sciences Center, Department of Psychiatry, through the Southwest Institute for Addictive Diseases, for Employee Assistance Program (EAP) Services.
- **5. 28. Resolutions Human Resources:** Resolution No. 2023-R0266 authorizing the Mayor to execute Amendment No. 1 to Contract 13972, with Marsh & McLennan Agency, LLC, to provide actuarial and consulting services.
- **5. 29. Resolution Aviation:** Resolution No. 2023-R0267 authorizing the Mayor to execute a lease agreement with Dera Holdings, LLC, for real property located at Lubbock Preston Smith International Airport.
- **5. 30. Resolution Public Transit Services:** Resolution No. 2023-R0268 authorizing the Mayor to execute Contract 17071, with Turbo Images, for vinyl wrap printing, installation, and removal for Citibus.
- **5.31. Resolution Public Transit Services:** Resolution No. 2023-R0269 supporting and authorizing approval of an application by Citibus to the Texas Department of Transportation's Transportation Alternatives Set Aside Program.
- **5. 32. Resolution Fleet Services:** Resolution No. 2023-R0270 authorizing the Mayor to execute Purchase Order 31073727, with Roberts Truck Center, for the purchase of a Class 8 Commercial Cab and Chasis with a Custom Flat Bed Container, for the Solid Waste Recycling Collection Department.
- **5. 33. Resolution Fleet Services:** Resolution No. 2023-R0271 authorizing the Mayor to execute Purchase Order 31073610, with Warren CAT, for the purchase of three Belshe Backhoe Trailers, for the Water Distribution and Maintenance Department.
- **5. 34. Resolution Parks and Recreation:** Resolution No. 2023-R0272 supporting and authorizing approval of an application by the City of Lubbock Parks and Recreation Department to the Texas Department of Transportation's Transportation Alternatives Set-Aside Program, for the Canyon Lakes Primary Shared Use Path (SUP) Trail Project.
- **5. 35. Resolution Information Technology:** Resolution No. 2023-R0273 authorizing the Mayor to execute Purchase Order 33001734, with Dell Marketing LP, for the purchase of Dell OptiPlex desktop computers for the scheduled computer replacement program.

- **5. 36. Resolution Information Technology:** Resolution No. 2023-R0274 authorizing the Mayor to execute Contract 17230, with Johnson Technical Services, Inc., for repair and inspection services on City radio towers and associated equipment.
- **5. 37. Resolution Police:** Resolution No. 2023-R0275 authorizing the Mayor to execute Purchase Order 10026392, with Rules of Engagement Tactical, LLC dba ROE Tactical, for duty rifles and related equipment for the Special Weapons and Tactics teams of the Lubbock Police Department.
- **5. 38. Resolution City Secretary:** Resolution No. 2023-R0276 authorizing the Mayor to execute Contract HHSREV100002930, with the State of Texas Department of State Health Services (DSHS), Vital Statistics Section, for access to the DSHS Vital Event Electronic Registration System, to allow issuance of birth certificates.
- **5. 39. Resolution City Secretary:** Resolution No. 2023-R0277 authorizing the City Secretary to transfer certain non-permanent audiovisual records to the Southwest Collection at Texas Tech University for permanent retention and preservation.
- **5. 40. Resolution City Manager:** Resolution No. 2023-R0278 authorizing the Mayor to execute a Certificate of Approval for Issuance of Tax-Exempt Multifamily Housing Revenue Bonds, and all related documents, for the Lubbock Housing Finance Corporation.
- 6. Regular Agenda
- **6. 1. Public Hearing Planning (District 1):** Ordinance No. 2023-O0061, for Zone Case 3482, a request of Travis Turner for SuGu, LLC, for a zone change from Two-Family District (R-2) to Family Apartment District (A-1), at 2123 21st Street, located south of 21st Street and east of Avenue V, McCrummen's Second Addition, Block 54, Lot 12.

Kristen Sager, director of planning, gave a presentation and answered questions from City Council.

Mayor Payne opened the public hearing at 2:13 p.m.

Travis Turner, on behalf of the proponent, appeared to speak in favor.

No one appeared to speak in opposition.

Mayor Payne closed the public hearing at 2:15 p.m.

Motion by Council Member Latrelle Joy, seconded by Council Member Steve Massengale, to approve Ordinance No. 2023-O0061.

Vote: 6 - 1 Motion carried

NAY: Council Member Latrelle Joy

Public Hearing - Planning (District 5): Ordinance No. 2023-O0062, for Zone Case 2995-HH, a request of Centerline Engineering and Consulting for T. Market Properties, LLC, for a zone change from Two-Family District (R-2) Specific Use for Reduced Setbacks to General Retail District (C-3), at 6617 Monticello Avenue, located east of Monticello Avenue and south of 66th Street, on 0.23 acres of unplatted land out of Block AK, Section 30.

Kristen Sager, director of planning, gave a presentation and answered questions from City Council.

Mayor Payne opened the public hearing at 2:22 p.m.

No one appeared to speak in favor or opposition.

Mayor Payne closed the public hearing at 2:23 p.m.

Motion by Council Member Dr. Jennifer Wilson, seconded by Council Member Christy Martinez-Garcia, to approve Ordinance No. 2023-O0062.

Vote: 7 - 0 Motion carried

Public Hearing - Planning (District 5): Ordinance No. 2023-O0063, for Zone Case 3003-H, a request of Hugo Reed and Associates, Inc. for Fountain Hills LP, for a zone change from Single-Family District (R-1) Specific Use for Reduced Setbacks to Local Retail District (C-2), generally located north of 107th Street and east of Milwaukee Avenue, on 0.3 acres of unplatted land out of Block AK, Section 21.

Kristen Sager, director of planning, gave a presentation and answered questions from City Council.

Mayor Payne opened the public hearing at 2:22 p.m.

No one appeared to speak in favor or opposition.

Mayor Payne closed the public hearing at 2:23 p.m.

Motion by Council Member Steve Massengale, seconded by Council Member Latrelle Joy, to approve Ordinance No. 2023-O0063.

Vote: 7 - 0 Motion carried

Public Hearing - Planning (District 6): Ordinance No. 2023-O0064, for Zone Case 2538-II, a request of Westar Commercial Realty for Gebo Distributing Co., Inc., for a zone change from Single-Family District (R-1) to Light Manufacturing District (M-1), generally located south of 19th Street and west of Fairbank Avenue, on 3.22 acres of unplatted land out of Block AK, Section 41.

Kristen Sager, director of planning, gave a presentation and answered questions from City Council. Kevin Watt, with Westar Commercial Realty, gave comments and answered questions

from City Council.

Mayor Payne opened the public hearing at 2:22 p.m.

No one appeared to speak in favor or opposition.

Mayor Payne closed the public hearing at 2:23 p.m.

Motion by Council Member Steve Massengale, seconded by Council Member Christy Martinez-Garcia, to approve Ordinance No. 2023-O0064.

Vote: 7 - 0 Motion carried

Resolution - Planning: Resolution No. 2023-R0279, authorizing the Mayor to execute a Municipal Services Agreement, with Red Canyon Development, LLC and 14 Texas Real Estate, LLC, for the requested annexation of an area of land generally described as 2.986 acres north of Woodrow Road and west of Quaker Avenue, into Lubbock's corporate limits, along with the adjacent right-of-way.

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

Motion by Council Member Steve Massengale, seconded by Council Member Latrelle Joy, to approve Resolution No. 2023-R0279.

Vote: 7 - 0 Motion carried

6. 6. Ordinance Single Reading - Finance: Ordinance No. 2023-O0065, authorizing the issuance and sale of City of Lubbock, Texas, Tax Note, Series 2023; levying a tax in payment thereof; and enacting other provisions relating to the subject.

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

Motion by Council Member Latrelle Joy, seconded by Council Member Mark W. McBrayer, to approve Ordinance No. 2023-00065.

Vote: 7 - 0 Motion carried

6. 7. Ordinance 2nd Reading - Business Development: Ordinance No. 2023-O0055, designating the X-Fab Texas, Inc. Reinvestment Zone within the City of Lubbock, as authorized by Chapter 312 of the Tax Code; describing the boundaries and eligibility of said Zone for commercial-industrial tax abatement; providing a savings clause and providing for publication.

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

Motion by Council Member Christy Martinez-Garcia, seconded by Council Member Steve Massengale, to approve Ordinance No. 2023-O0055.

Vote: 7 - 0 Motion carried

Resolution - Business Development: Resolution No. 2023-R0280, giving Notice of Intent to enter into and execute a Tax Abatement Agreement with X-FAB Texas, Inc., with said notice to be given to the presiding officers of each taxing unit having jurisdiction in assessing taxes on the property located at 2301 North University Avenue.

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

Motion by Council Member Christy Martinez-Garcia, seconded by Council Member Steve Massengale, to approve Resolution No. 2023-R0280.

Vote: 7 - 0 Motion carried

Resolution - Business Development: Resolution No. 2023-R0281, amending Resolution No. R2018-R0395, amending the program requirements and eligibility, and authorizing the establishment of the 34th Street Empowerment Zone and the North University Empowerment Zone for the purpose of encouraging redevelopment and revitalization within the City of Lubbock, through the promotion of economic development within these zones, as well as the Lubbock East Neighborhood Empowerment Zone.

Brianna Brown, director of business development, gave a presentation and answered questions from City Council. John Osborne, president and chief executive officer for Lubbock Economic Development Alliance (LEDA), gave comments and answered questions from City Council.

Motion by Council Member Christy Martinez-Garcia, seconded by Council Member Dr. Jennifer Wilson, to approve Resolution No. 2023-R0281.

Vote: 7 - 0 Motion carried

2:56 P.M. CITY COUNCIL ADJOURNED

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

The May 23, 2023 Regular City Council Meeting minutes were approved by the City Council on the 27th day of June, 2023.

TRAY PAYNE, MAYOR	

Regular	City (Council	Meeting
May 23,	2023		

Page 11 of 11

ATTEST:	
Courtney Paz, City Secretary	



Information

Agenda Item

Budget Ordinance Amendment 2nd Reading - Finance: Consider Budget Ordinance No. 2023-O0066, Amendment 22, amending the FY 2022-23 Budget for municipal purposes respecting the Water/Wastewater Fund; providing for filing; and providing for a savings clause.

Item Summary

On June 13, 2023, the City Council approved the first reading of the ordinance.

The unforeseen failure of filter membranes at the South Water Treatment Plant is the major contributor for this requested budget amendment. Although repairs are ongoing at the South Water Treatment Plant, outflows are still reduced. With no or limited flow being produced by the South Water Treatment Plant, additional raw (untreated) water needs to be purchased from the Canadian River Municipal Water Authority to meet the needs of our customers.

I. Amend the Water Treatment Operating Budget in the Water/Wastewater Fund by increasing the appropriation by \$1,753,000, from \$11,295,791 to \$13,048,791, for the purchase of water from the Canadian River Municipal Water Authority (CRMWA). Funding will be from the Water/Wastewater Fund Balance.

Fiscal Impact

Included in Item Summary

Staff/Board Recommending

D. Blu Kostelich, Chief Financial Officer

Attachments

Budget Amendment 22

ORDINANCE NO.	-

AN ORDINANCE AMENDING THE FY 2022-23 BUDGET FOR MUNICIPAL PURPOSES RESPECTING THE WATER/WASTEWATER FUND; PROVIDING FOR FILING; AND PROVIDING FOR A SAVINGS CLAUSE

ODDINIANCE NO

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 2022-23 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 2022-23 (Budget Amendment #22) for municipal purposes, as follows:

I. Amend the Water Treatment Operating Budget in the Water/Wastewater Fund by increasing the appropriation by \$1,753,000, from \$11,295,791 to \$13,048,791, for the purchase of water from the Canadian River Municipal Water Authority. Funding will be from the Water/Wastewater fund balance.

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 r	reading on	·
Passed by the City Council on secon	nd reading on	
	TRAY PAYNE, MAYOR	

ATTEST:

Courtney Paz City Secretary

APPROVED AS TO CONTENT:

D. Blu Kostelich Chief Financial Officer

APPROVED AS TO FORM:

Amy Sims

Deputy City Attorney

ccdocs/BudgetFY22-23.Amend22.ord May 25, 2023

Information

Agenda Item

Budget Ordinance Amendment 2nd Reading - Finance: Consider Budget Ordinance No. 2023-O0023, Amendment 23, amending the FY 2022-23 Budget for municipal purposes respecting the Grant Fund to accept and appropriate funding from the Federal Transit Administration; providing for filing; and providing for a savings clause.

Item Summary

On June 13, 2023, the City Council approved the first reading of the ordinance.

A Federal Transit Administration (FTA) FY 2021 Section 5310 American Rescue Plan Act (ARPA) Grant has been awarded to the City of Lubbock/Citibus in the amount of \$37,934. This grant is 100% Federally funded and requires no local match.

The FTA FY 2021 Section 5310 ARPA Grant was not included in the FY 2021 Budget due to it being enacted and approved after the budget process. Section 5310 Grants must be used for costs associated with Elderly and Disabled services. The grant will be used for salary/wages, benefits, fuel, and supplies incurred for ADA paratransit trips taken after 7:00 p.m.

I. Accept and appropriate \$37,934 from the Federal Transit Administration for the FY 2021 Section 5310 American Rescue Plan Grant.

Fiscal Impact

Included in Item Summary

Staff/Board Recommending

D. Blu Kostelich, Chief Financial Officer

Attachments

Budget Amendment 23

AN ORDINANCE AMENDING THE FY 2022-23 BUDGET FOR MUNICIPAL PURPOSES RESPECTING THE GRANT FUND TO ACCEPT AND APPROPRIATE FUNDING FROM THE FEDERAL TRANSIT ADMINISTRATION; 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 2022-23 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 2022-23 (Budget Amendment #23) for municipal purposes, as follows:

I. Accept and appropriate \$37,934 from the Federal Transit Administration for the FY 2021 Section 5310 American Rescue Plan Grant.

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

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

AND IT IS SO ORDERED

Passed by the City Council on	first reading on	•
Passed by the City Council on	second reading on	
	2	
	TRAY PAYNE MAYOR	

ATTEST:

Courtney Paz City Secretary

APPROVED AS TO CONTENT:

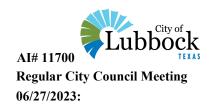
D. Blu Kostelich Chief Financial Officer

APPROVED AS TO FORM:

Amy Sims

Deputy City Attorney

ccdoc/BudgetFY22-23, Amend23, ord June 8, 2023



Information

Agenda Item

Resolution - Public Transit Services: Consider a resolution authorizing the Chief Financial Officer to execute a FY 2021 Section 5310 American Rescue Plan Act (ARPA) Grant, Project ID TX-2023-037-00, with the Federal Transit Administration, for Citibus Operations.

Item Summary

The Federal Transit Administration has allocated \$37,934 in FY 2021 Section 5310 American Rescue Plan Act (ARPA) funds to the City of Lubbock/Citibus to be used in response to COVID-19.

The grant must be used for services for elderly and disabled citizens. Section 5310 grants are to be used for public transportation, designed and carried out, to meet the special needs of seniors and individuals with disabilities, according to the Americans with Disabilities Act (ADA), when public transportation is insufficient, inappropriate, or unavailable. The grant will be used for salary/wages, benefits, fuel, and supplies incurred for these paratransit trips taken after 7:00 p.m.

The Lubbock Public Transit Advisory Board and Citibus Staff recommend the approval of this resolution. Federal Transit Administration regulations require that all grants must be applied for and executed electronically.

Fiscal Impact

This grant is 100% federally funded and does not require a local match. Acceptance of this grant will result in no additional cost to the City of Lubbock.

Staff/Board Recommending

Bill Howerton, Deputy City Manager Chris Mandrell, General Manager of Citibus Transit Services Advisory Board

Attachments

Resolution - FTA FY 21 Section 5310 Operating FTA FY 21 Section 5310 ARP Grant Award

RESOLUTION

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

THAT the City Council of the City of Lubbock does hereby authorize the Chief Financial Officer to execute for and on behalf of the City of Lubbock, any instrument necessary in connection with the acceptance of an award under the FY 2021 5310 American Rescue Plan Grant, Project No. TX-2023-037-00 with the Federal Transit Administration for Citibus Operating. Documation of said award is attached hereto and incorporated in this Resolution as if fully set forth herein and shall be included in the minutes of the Council.

Passed by the City Council on
TRAY PAYNE, MAYOR
ATTEST:
Courtney Paz, City Secretary
APPROVED AS TO CONTENT:
Bill Howerton, Deputy City Manager
APPROVED AS TO FORM:
Mitch Satterwhile, First Assistant City Attorney

RES.Citibus Grant FTA TX-2023-037-00 June 12, 2023

DOT FTA

U.S. Department of Transportation

Federal Transit Administration

Award

Federal Award Identification Number (FAIN)	TX-2023-037-00
Temporary Application Number	1993-2023-5
Award Name	Lubbock-Citibus FY 2021 Section 5310 American Rescue Plan (ARP) Operating
Award Status	Obligated / Ready for Execution
Award Budget Number	0

Period of Performance Start Date	6/14/2023	
Original Period of Performance End Date	6/30/2027	
Current Period of Performance End Date	6/30/2027	Revision #: 0

Part 1: Recipient Information

name: LC	JBBOCK, CITT C)F		
Recipient ID	Recipient OST Type	Recipient Alias	UEI	DUNS
1993	City	CITY OF LUBBOCK	LXDNEKWRVKJ6	058213893

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

Union Information

Union Name	NONE	
Address 1		
Address 2		
City		

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

Part 2: Award Information

Title: Lubbock-Citibus FY 2021 Section 5310 American Rescue Plan (ARP) Operating

FAIN	Award Status	Award Type	Application Cost Center	Date Created	Last Updated Date	From TEAM?
TX-2023- 037-00	Obligated / Ready for Execution	Grant	Region 6	5/24/2023	5/24/2023	No

Award Executive Summary

This is an FFY 2021 Section 5310 ARP funding application in the amount of \$37,934 representing 100% federal share of the total eligible amount. This application utilizes ARP funding will be used to help to cover Salary/Wages, Benefits, Fuel, Supplies as needed to prepare, prevent and respond to the COVID-19 pandemic.

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

The recipient agrees that if it receives Federal funding from the Federal Emergency Management Agency (FEMA) or through a pass-through entity through the Robert T. Stafford Disaster Relief and Emergency Assistance Act, a different Federal agency, or insurance proceeds for any portion of a project activity approved for FTA funding under this Grant Agreement, it will provide written notification to FTA, and reimburse FTA for any Federal share that duplicates funding provided by FEMA, another Federal agency, or insurance company.

Per the ARP, the project in this application is not required to be programmed in the Long-Range Transportation Plan or Statewide Transportation Improvement Program .

The City of Lubbock certifies that the allocation of these funds to sub recipients was awarded on a fair and equitable basis; the projects have been derived from a regionally coordinated public transit- human services transportation plan; to the extent feasible services are coordinated with transportation services provided by other federal agencies; and the planning process included representatives of public, private and non-profit transportation and human service providers, participation by the public and representatives addressing the needs of older adults and individuals with disabilities.

Pre-award is selected to cover milestone activity prior to grant award.

Frequency of Milestone Progress Reports (MPR)
Annual

Frequency of Federal Financial Reports (FFR)

Annual

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

This award does not include research and development activities.

Pre-Award Authority

This award is using Pre-Award Authority.

Does this application include suballocation funds?

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

Will this Grant be using Lapsing Funds?

No, this Grant does not use Lapsing Funds.

Will indirect costs be applied to this application?

This award does not include an indirect cost rate.

Indirect Rate Details: N/A

Requires E.O. 12372 Review

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

Delinquent Federal Debt

No, my organization does not have delinquent federal debt.

Award Description

Purpose

This is an application for FY 2021 Section 5310 American Rescue Plan (ARP) in the amount of \$37,934. These funds will be used to assist with the mobility of seniors and individuals with disabilities.

Activities to be performed:

Funding trips outside of our required ADA service area and regular fixed-route service hours. Funds will also be used to assist with the funding of free services for all individuals needing transportation to and from the health department for COVID-19 testing as well as the free services being provided to all individuals needing transportation to and from the vaccination facility.

Expected outcomes:

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

Intended beneficiaries:

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

Subrecipient Activities:

N/A

Award Point of Contact Information

First Name	Last Name	Title	E-mail Address	Phone
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	chevonne.madison@dot.gov	Transportation Program Specialist		
Rebecca	Rodriguez	Accountant/Planning Analyst	rebeccarodriguez@citibus.com	(806) 775- 3443 8067753443
Rosalyn	Brown	Financial Analyst	rosalyn.brown@dot.gov	(817)-978- 0555

Award Budget Control Totals

Funding Source	Section of Statute	CFDA Number	Amount
5310 - Mobility of Sr. & Indv. w/ Disabilities Formula (ARPA)	5310-5	20513	\$37,934
Local			\$0
Local/In-Kind			\$0
State			\$0
State/In-Kind			\$0
Other Federal			\$0
Transportation Development Credit			\$0
Adjustment			\$0
Total Eligible Cost			\$37,934

Award Budget

Project Number		Budget Ite	FTA Amount	Non- FTA Amount	Total Eligible Amount	Quantity	
TX-2023-037-01- 00	641-00 (641- A1)	5310 PROJEC	CTS	\$37,934.00	\$0.00	\$37,934.00	0
TX-2023-037-01- 00		30.09.08	EMER RELIEF - OPERATING ASSIST - 100% Fed Share	\$37,934.00	\$0.00	\$37,934.00	0

Discretionary Allocations

This application does not contain discretionary allocations.

Sources of Federal Financial Assistance

PO Number	Project Number	Scope Name		Scope Suffix		Area Name	Account Class Code	FPC	Description	Amendment Amount	Cumulative Amount
TX-16-Y 088	TX-2023- 037-01-0 0	5310 P ROJEC TS	641-00 (641)	A1	4813 50		2021.32.1 6.PL.1	04	Sr. & Inv. w/ Dis abilities Sec 53 10 - > 200K Po p (ARPA)	\$37,934	\$37,934

Part 3: Project Information

Project Title: Lubbock-Citibus FY 2021 Section 5310 American Rescue Plan (ARP) Operating

Project Number	Temporary Project Number	Date Created	Start Date End Date	
TX-2023-037-01-00	1993-2023-5-P1	5/25/2023	5/31/2023	12/31/2026

Project Description

This is an application for FY 2021 Federal Funds from the ARP 5310 in the amount of \$37,934. These funds will be used to support the senior and disabled community for trips outside of our required ADA service area and time. Additionally, the funds will be used to assist in the funding of our free services for transporting any individual needing transport to the health department for COVID-19 testing, and for individuals needing transport to and from the vaccination site. These free services were in response to the need to prepare, prevent and respond to the COVID-19 pandemic.

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

Project Benefits

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

Additional Information

None provided.

Location Description

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

Project Location (Urbanized Areas)

UZA Code	Area Name
481350	Lubbock, TX

Congressional District Information

State	District	Representative
Texas	19	Jodey Arrington

Program Plan Information

STIP/TIP

Date: Not Provided

Description: Per the ARP, the project in this application is not required to be programmed in the Long-

Range Transportation Plan or Statewide Transportation Improvement Program .

UPWP

Date: N/A Description: N/A

Long Range Plan

Date: N/A
Description: N/A

Project Control Totals

Funding Source	Section of Statute	CFDA Number	Amount
5310 - Mobility of Sr. & Indv. w/ Disabilities Formula (ARPA)	5310-5	20513	\$37,934
Local			\$0
Local/In-Kind			\$0
State			\$0
State/In-Kind			\$0
Other Federal			\$0
Transportation Development Credit			\$0
Adjustment			\$0
Total Eligible Cost			\$37,934

Project Budget

Project Number		Budget Ite	m	FTA Amount	Non- FTA Amount	Total Eligible Amount	Quantity
TX-2023-037-01- 00	641-00 (641- A1)	5310 PROJEC	CTS	\$37,934.00	\$0.00	\$37,934.00	0
TX-2023-037-01- 00		30.09.08	EMER RELIEF - OPERATING ASSIST - 100% Fed Share	\$37,934.00	\$0.00	\$37,934.00	0

Project Budget Activity Line Items

Budget Activity Line Item: 30.09.08 - EMER RELIEF - OPERATING ASSIST - 100% Fed Share

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

Extended Budget Description

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

Operating funds will cover expenses for existing service incurred beginning 05/31/2023 until 12/31/2026 . Funds overlap with FY22 and FY23 formula 1993-2023-1. Operating funds not sufficient to cover dates.

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

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

Funding Source	Section of Statute	CFDA Number	Amount
5310 - Mobility of Sr. & Indv. w/ Disabilities Formula (ARPA)	5310-5	20513	\$37,934
Local			\$0
Local/In-Kind			\$0
State			\$0
State/In-Kind			\$0
Other Federal			\$0
Transportation Development Credit			\$0
Adjustment			\$0
Total Eligible Cost			\$37,934

Milestone Name	Est. Completion Date	Description
Start Date	5/31/2023	
End Date	12/31/2026	

Project Environmental Findings

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

Class Level Description

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

Categorical Exclusion Description

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

Date Description	Date
Class IIc CE Approved	

Scope Name / Code	Line Item Number	Line Item Name	Quantity	FTA Amount	Total Eligible Cost
5310 PROJECTS (641-00)	30.09.08	EMER RELIEF - OPERATING ASSIST - 100% Fed Share	0	\$37,934.00	\$37,934.00

Part 4: Fleet Details

No fleet data exists for this application.

Part 5: FTA Review Comments

There are no review comments to display at this time.

Part 6: Agreement

UNITED STATES OF AMERICA DEPARTMENT OF TRANSPORTATION FEDERAL TRANSIT ADMINISTRATION

GRANT AGREEMENT (FTA G-30)

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

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

- (1) "Federal Transit Administration Master Agreement," FTA MA(30), http://www.transit.dot.gov,
- (2) The Certifications and Assurances applicable to the FTA Award that the Recipient has selected and provided to FTA, and
- (3) Any Award notification containing special conditions or requirements, if issued.

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

FTA OR THE FEDERAL GOVERNMENT MAY WITHDRAW ITS OBLIGATION TO PROVIDE FEDERAL

ASSISTANCE IF THE RECIPIENT DOES NOT EXECUTE THIS GRANT AGREEMENT WITHIN 90 DAYS FOLLOWING FTA'S AWARD DATE SET FORTH HEREIN.

FTA AWARD

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

Recipient Information

Recipient Name: LUBBOCK, CITY OF

Recipient ID: 1993

UEI: LXDNEKWRVKJ6

DUNS: 058213893

Award Information

Federal Award Identification Number: TX-2023-037-00

Award Name: Lubbock-Citibus FY 2021 Section 5310 American Rescue Plan (ARP) Operating

Award Start Date: 6/14/2023

Original Award End Date: 6/30/2027

Current Award End Date: 6/30/2027

<u>Award Executive Summary:</u> This is an FFY 2021 Section 5310 ARP funding application in the amount of \$37,934 representing 100% federal share of the total eligible amount. This application utilizes ARP funding will be used to help to cover Salary/Wages, Benefits, Fuel, Supplies as needed to prepare, prevent and respond to the COVID-19 pandemic.

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

The recipient agrees that if it receives Federal funding from the Federal Emergency Management Agency (FEMA) or through a pass-through entity through the Robert T. Stafford Disaster Relief and Emergency Assistance Act, a different Federal agency, or insurance proceeds for any portion of a project activity approved for FTA funding under this Grant Agreement, it will provide written notification to FTA, and reimburse FTA for any Federal share that duplicates funding provided by FEMA, another Federal agency, or insurance company.

Per the ARP, the project in this application is not required to be programmed in the Long-Range Transportation Plan or Statewide Transportation Improvement Program .

The City of Lubbock certifies that the allocation of these funds to sub recipients was awarded on a fair and equitable basis; the projects have been derived from a regionally coordinated public transit- human services transportation plan; to the extent feasible services are coordinated with transportation services provided by other federal agencies; and the planning process included representatives of public, private and non-profit transportation and human service providers, participation by the public and representatives addressing the needs of older adults and individuals with disabilities.

Pre-award is selected to cover milestone activity prior to grant award.

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

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

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

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

Award Budget

Total Award Budget: \$37,934.00

Amount of Federal Assistance Obligated for This FTA Action (in U.S. Dollars): \$37,934.00

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

Total FTA Amount Awarded and Obligated (in U.S. Dollars): \$37,934.00

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

Award Budget Control Totals

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

Funding Source	Section of Statute	CFDA Number	Amount
5310 - Mobility of Sr. & Indv. w/ Disabilities Formula (ARPA)	5310-5	20513	\$37,934
Local			\$0
Local/In-Kind			\$0
State			\$0
State/In-Kind			\$0
Other Federal			\$0
Transportation Development Credit			\$0
Adjustment			\$0
Total Eligible Cost			\$37,934

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

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

Original Certification Date:

Special Conditions

There are no special conditions.

FINDINGS AND DETERMINATIONS

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

FTA AWARD OF THE GRANT AGREEMENT

Awarded By:
Gail Lyssy
Regional Administrator
FEDERAL TRANSIT ADMINISTRATION
U.S. DEPARTMENT OF TRANSPORTATION
Contact Info: gail.lyssy@dot.gov
Award Date: 6/14/2023

EXECUTION OF THE GRANT AGREEMENT

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

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

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

Executed By:

LUBBOCK, CITY OF



Information

Agenda Item

Resolution - Business Development: Consider an amendment to Resolution No. 2023-R0227 nominating Leprino Foods Company to the Office of the Governor, Economic Development and Tourism, through the Economic Development Bank, for designation as an Enterprise Project under the Texas Enterprise Zone Act, Chapter 2303, Texas Government Code.

Item Summary

On May 9, 2023, the City Council approved Resolution No. 2023-R0227, nominating Leprino Foods Company to the Office of the Governor, Economic Development and Tourism, to be considered for an enterprise project designation. Following receipt of the company's application, the Office of the Governor requested additional information be added to the Resolution to specify that "a Triple Jumbo nomination counts as the use of three designations against the City's total number of designations allowed". This amendment reflects that change.

Original Comments about the project are included below:

The City of Lubbock received a request from Leprino Foods Company to nominate them to the Office of the Governor, Economic Development and Tourism, to be considered for an enterprise project designation.

The Texas Enterprise Zone Program is a state sales and use tax rebate program designed to encourage private investment and job creation in economically distressed areas of the state. There is no fiscal impact to the City of Lubbock. A summary of the Enterprise Project Nomination Resolution is listed below.

The purpose of the resolution is to nominate Leprino Foods Company as an enterprise project to the State of Texas, Economic Development and Tourism Department. If designated by the State of Texas, Leprino Foods Company would have access to state sales and use tax rebates. The City of Lubbock can only nominate the project. It is a competitive process, so the application will be competing with any other applications submitted to the State in the June 2023 round. Only the State can designate the enterprise zone project recipient.

The nomination is for the construction of a food manufacturing facility at 4301 East 19th Street and a wastewater treatment facility at 4502 East 4th Street in Lubbock, Texas. Leprino plans to invest \$869,987,791 in new buildings, machinery and equipment. The project will generate 500 new jobs with an estimated payroll of \$28,815,929.

The City of Lubbock must find that Leprino Foods Company meets the criteria for designation as an enterprise project under Chapter 2303, Subchapter F of the Act, on the following grounds.

1. Leprino Foods Company is a "qualified business" under Section 2303.402 of the Act, since it is engaged in the active conduct of trade and business at a qualified business site located inside an

- enterprise zone, and at least 25% of the company's new employees are residents of an enterprise zone, or Veterans, or economically disadvantaged individuals;
- 2. There has been and will continue to be a high level of cooperation between public, private and neighborhood entities within the area;
- 3. The designation of Leprino Foods Company as an enterprise project will contribute significantly to the achievement of the City's plans for development and revitalization of an area;
- 4. Leprino Foods Company meets the criteria for tax relief and other incentives adopted by the City, on the grounds that it will be located at the qualified business site, will retain a higher level of employment, economic activity and stability; and
- 5. That it is in the best interest of the City to nominate Leprino Foods Company as an enterprise project, pursuant to the Act.

Fiscal Impact

None

Staff/Board Recommending

D. Blu Kostelich, Chief Financial Officer

Attachments

Resolution Amendment Original Resolution

CITY OF LUBBOCH	K, AMENDED RESOLUTION NO.
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AN AMENDED RESOLUTION APPROVING AND AUTHORIZING THE NOMINATION OF LEPRINO FOODS COMPANY TO THE OFFICE OF THE GOVERNOR ECONOMIC DEVELOPMENT AND TOURISM THROUGH THE ECONOMIC DEVELOPMENT BANK AS A TRIPLE JUMBO TEXAS STATE ENTERPRISE PROJECT.

WHEREAS, the City Council of the City of Lubbock (the "City Council") passed Resolution No. 2023-R0227 on May 9, 2023, attached hereto as "Exhibit A" and incorporated herein, approving and authorizing the nomination of Leprino Foods Company (the "Applicant") as a Triple Jumbo Texas State Enterprise Project; and

WHEREAS, the Applicant has requested an amendment to said Resolution, and the City Council hereby approves the amendment herein;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF LUBBOCK, TEXAS THAT:

SECTION 1. That the findings of the City and its actions approving this amended Resolution taken at the council meeting are hereby approved and adopted.

SECTION 2. That **Leprino Foods Company** is a "qualified business" as defined in Section 2303.402 of the Act, and meets the criteria for designation as a Triple Jumbo Enterprise Project, as set forth in Chapter 2303, Subchapter F of the Act.

SECTION 3. That a Triple Jumbo nomination is the equivalent of three designations against the City's total number of designations allowed.

SECTION 4. The Enterprise Project shall take effect on the date of designation of the Enterprise Project by the Office of the Governor Economic Development and Tourism and terminate five years from the date of designation.

SECTION 5. That this Resolution shall take effect immediately upon its passage and approval.

Passed by the City Council on $__$		
	TRAY PAYNE, MAYOR	-0.000000000000000000000000000000000000

ATTEST:
Courtney Paz, City Secretary
APPROVED AS TO CONTENT:
D. Blu Kostelich, Chief Financial Officer
APPROVED AS TO FORM:
Kelli Leisure, Senior Assistant City Attorney

Page 2 of 2

Ccdocs://RES.AmendedLeprino ERZ nomination 6.20.23

CITY OF LUBBOCK, RESOLUTION NO. 2023-R0227

A RESOLUTION APPROVING AND AUTHORIZING THE NOMINATION OF LEPRINO FOODS COMPANY TO THE OFFICE OF THE GOVERNOR ECONOMIC DEVELOPMENT AND TOURISM THROUGH THE ECONOMIC DEVELOPMENT BANK AS A TRIPLE JUMBO TEXAS STATE ENTERPRISE PROJECT.

WHEREAS, the City Council of the City of Lubbock, Texas ("City") has previously passed City Ordinance No. 2020-O0154, approved November 17, 2020, electing to participate in the Texas Enterprise Zone Program, and the local incentives offered under this resolution are the same on this date as were outlined in City Ordinance No. 2020-O0154; and

WHEREAS, the Office of the Governor Economic Development and Tourism (OGEDT), through the Economic Development Bank, will consider **Leprino Foods Company** as a Triple Jumbo enterprise project pursuant to a nomination and an application made by the City; and

WHEREAS, the City desires to pursue the creation of the proper economic and social environment in order to induce the investment of private resources in productive business enterprises located in the City and to provide employment to residents of enterprise zones, veterans, and to other economically disadvantaged individuals; and

WHEREAS, pursuant to Chapter 2303, Subchapter F of the Texas Enterprise Zone Act, Texas Government Code (the "Act"), Leprino Foods Company has applied to the City for designation as a Triple Jumbo enterprise project; and

WHEREAS, the City finds that Leprino Foods Company meets the criteria for designation as an enterprise project under Chapter 2303, Subchapter F of the Act on the following grounds:

- a) Leprino Foods Company is a "qualified business" under Section 2303.402 of the Act since it will be engaged in the active conduct of a trade or business at a qualified business site within the governing body's jurisdiction, located inside of an enterprise zone and at least twenty-five percent (25%) of the business' new employees will be residents of an enterprise zone, veterans, or economically disadvantaged individuals; and
- b) There has been and will continue to be a high level of cooperation between public, private and neighborhood entities within the area; and
- c) The designation of **Leprino Foods Company** as a Triple Jumbo Texas Enterprise Project will contribute significantly to the achievement of the plans of the City for development and revitalization of the area.

WHEREAS, the City finds that Leprino Foods Company meets the criteria for tax relief and other incentives adopted by the City and nominates Leprino Foods Company for Triple Jumbo enterprise project status on the grounds that this enterprise project will be located at the qualified

business site, will create a higher level of employment, economic activity and stability in the area; and

WHEREAS, the City finds that it is in the best interest of the City to nominate Leprino Foods Company as a Triple Jumbo enterprise project pursuant to the Act;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF LUBBOCK, TEXAS THAT:

SECTION 1. That the findings of the City and its actions approving this Resolution taken at the council meeting are hereby approved and adopted.

SECTION 2. That **Leprino Foods Company** is a "qualified business" as defined in Section 2303.402 of the Act, and meets the criteria for designation as a Triple Jumbo enterprise project, as set forth in Chapter 2303, Subchapter F of the Act.

SECTION 3. The Enterprise Project shall take effect on the date of designation of the enterprise project by OGEDT and terminate five years from the date of designation.

SECTION 4. That this Resolution shall take effect immediately upon its passage and approval.

Passed by the City Council on _______. May 9, 2023 _____.

TRAY PAYNE, MAYOR

ATTEST:

Courtney Paz, City Secretary

APPROVED AS TO CONTENT:

D. Blu Kostelich, Chief Financial Officer

APPROVED AS TO FORM:

Kelli Leisure, Senior Assistant City Attorney

Ccdocs://RES.Leprino ERZ nomination 5.01.23

Information

Agenda Item

Ordinance 2nd Reading - Right-of-Way: Consider Ordinance No. 2023-O0068 abandoning and closing portions of a Water Line Easement located at 4215 South Loop 289, in Tracts C-1 and C-2, West Chase Subdivision Addition to the City of Lubbock, Lubbock County, Texas.

Item Summary

On June 13, 2023, the City Council approved the first reading of the ordinance.

The City of Lubbock is in receipt of a request to abandon and close portions of a Water Line Easement located in Tracts C-1 and C-2, West Chase Addition to the City of Lubbock, Lubbock County, Texas. This Walmart location is 4215 S. Loop 289.

Walmart is requesting the closure of the easement to allow for improvements. They will relocate the water line around the proposed improvements and rededicate the water line easement in its new location with their replat. The total area of the easement being closed is 1,378 square feet.

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

Fiscal Impact

None

Staff/Board Recommending

Erik Rejino, Assistant City Manager Michael G. Keenum, P.E., Division Director of Engineering/City Engineer

Attachments

Ordinance - WalMart Closure Exhibit A - WalMart GIS Map Walmart

ORDINANCE NO.	

AN ORDINANCE ABANDONING AND CLOSING PORTIONS OF A WATER LINE EASEMENT LOCATED IN TRACTS C-1 & C-2, WEST CHASE SUBDIVISION 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 easement hereinafter described in the body of this Ordinance IS no longer needed for easement purposes and for public use; and it would be in the public interest to close, vacate and abandon the same for easement purposes and for public use; NOW THEREFORE:

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

- SECTION 1. THAT the easement as hereinafter described shall BE and the same IS hereby closed, vacated and abandoned for easement purposes and for public use, such easement being more particularly described in the attached Exhibit "A."
- SECTION 2. THAT the City Engineer is hereby authorized and directed to mark the official maps of the City of Lubbock to reflect said abandonment and closing, showing the number of this Ordinance and the date of its final passage.
- SECTION 3. THAT should any section, paragraph, sentence, phrase, clause or word of this Ordinance be declared unconstitutional or invalid for any reason, the remainder of this Ordinance shall not be affected thereby.
- SECTION 4. THAT the City Secretary of the City of Lubbock is hereby authorized and directed to cause publication of the descriptive caption of this Ordinance as an alternative method provided by law.

AND IT IS SO ORDERED.

Passed by the City Council on first reading	this	_ day of	, 2023.
Passed by the City Council on second reading	ng this	_day of	, 2023.
	TDD A M D	AND MANOR	
	IKAYP	AYNE, MAYOR	

ATTEST:
Courtney Paz, City Secretary
APPROVED AS TO CONTENT:
Michael Keenum, P.E., Division Director of Engineering/City Engineer
APPROVED AS TO FORM:
1323.
Amy Sins, Deputy City Attorney

Ord. Waterline Easement Tract C1 West Chase Subdivision, 5.5.23

EXHIBIT "A" PAGE 1 OF 4 PAGES

County:

Lubbock

Project:

Lubbock Wal-Mart WLE Abandonment

M&B No: CS Job No: 23-063(r) 23001

METES AND BOUNDS DESCRIPTION OF 0.0316 ACRE

Being a tract of land containing 0.0316 acre (1,378 square feet), located in the B&B Survey, Section 11, Block 2, Abstract 11, in Lubbock County, Texas; Said 0.0316 acre tract being out of Tract C-1, of Tract C-1 and C-2 of the West Chase Addition, a subdivision of record in Lubbock County Clerk's File Number (L.C.C.F. No.) 2010003602, same being recorded in the name of Wal-Mart Real Estate Business Trust, in L.C.C.F. No. 20100036025; Said 0.0316 acre tract being more particularly described by metes and bounds as follows (all bearings are referenced to the recorded subdivision plat of said West Chase Subdivision):

COMMENCING, at a 1/2-inch capped iron rod found at the northeast corner of said Tract C-1, same being the northwest corner of Tract D of West Chase Addition, a subdivision of record in Cabinet 6, Slide 189A, of the Lubbock County Plat Records (L.C.P.R.), on the south Right-of-Way (R.O.W.) line of State Loop 289 (width varies), from which an "X" cut in concrete found at the northeast corner of said Tract D, same being the northwest corner of Tract G of said West Chase Addition, bears South 78° 15' 36" East, a distance of 313.56 feet;

THENCE, through and across said Tract C-1, the following six (6) courses:

- 1. South 03° 10' 34" East, a distance of 414.07 feet to an angle point;
- 2. South 45° 04' 48" East, a distance of 5.08 feet to the most northerly corner and **POINT OF BEGINNING** of the herein described tract;
- 3. South 45° 04' 48" East, a distance of 141.29 feet to an angle point;
- 4. South 67° 28' 21" West, a distance of 10.83 feet to a point for the most southerly corner of the herein described tract;
- 5. North 45° 04' 48" West, a distance of 134.36 feet to an angle point;

EXHIBIT "A", PAGE 2 OF 4 PAGES

6. North 29° 24' 51" East, a distance of 10.38 feet to the **POINT OF BEGINNING** and containing 0.0316 acre (1,378 square feet) of land.

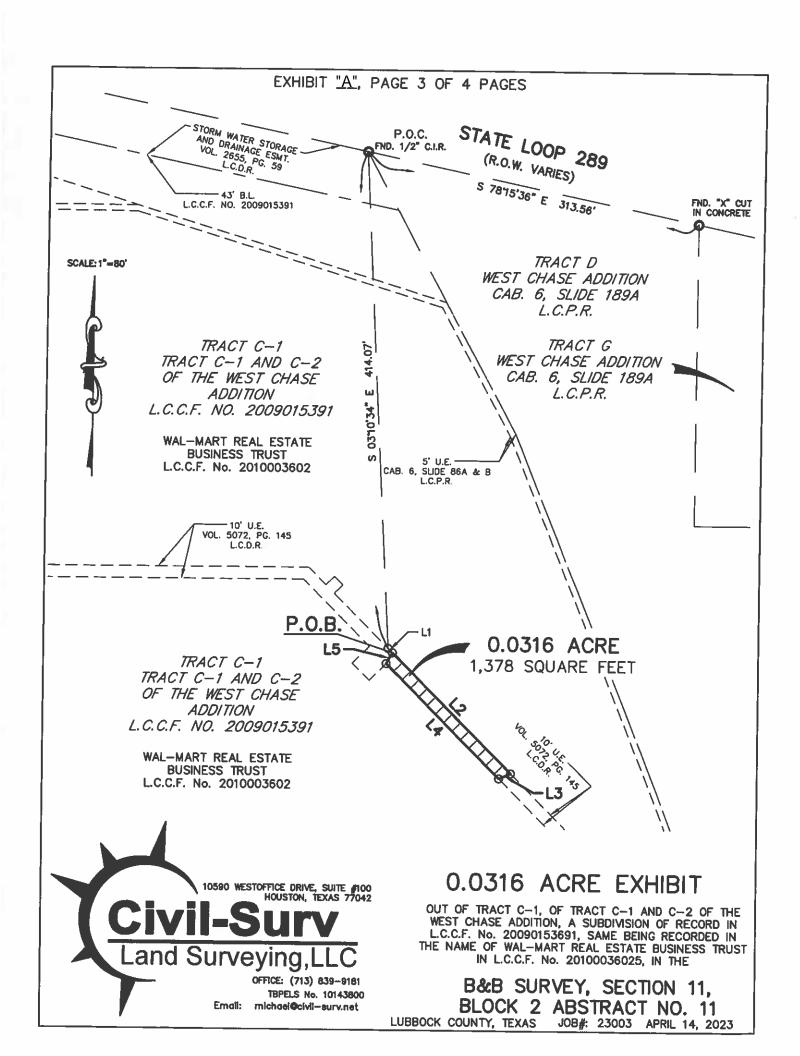
An Exhibit Map of the herein described tract was prepared in conjunction with and accompanies this description.

Chris Rhodes, R.P.L.S.

Texas Registration Number 6532

CIVIL-SURV LAND SURVEYING, LC

PH: (713) 839-9181 April 13, 2023



LINE TABLE		
LINE # DIRECTION LENGTH		
L1	S 45'04'48" E	5.08'
L2	S 45'04'48" E	141.29'
L3	S 67'28'21" W	10.83'
L4	N 45'04'48" W	134.36'
L5	N 29'24'51" E	10.38'

NOTE:

- 1. THE BEARINGS SHOWN HEREON ARE BASED ON THE RECORDED PLAT OF TRACTS C-1 AND C-2 OF THE WEST CHASE ADDITION IN LUBBOCK COUNTY CLERK'S FILE NUMBER 2009015391.
- 2. A METES AND BOUNDS DESCRIPTION OF EVEN DATE HAS BEEN PREPARED IN CONJUNCTION WITH AND ACCOMPANIES THIS EXHIBIT.

ABBREVIATIONS

B.L. = BUILDING LINE

ESMT. = EASEMENT

CAB. = CABINET

L.C.C.F. = LUBBOCK COUNTY CLERK'S FILE

L.C.D.R. = LUBBOCK COUNTY DEED RECORDS L.C.P.R. = LUBBOCK COUNTY PLAT RECORDS

L.C.T. = LUBBOCK COUNTY, TEXAS

No. = NUMBER

PG. = PAGE

R.O.W. = RIGHT OF WAY

S.F. = SQUARE FEET

U.E. = UTILITY EASEMENT

VOL. = VOLUME

W.L.E. = WATER LINE EASEMENT

FND. = FOUND

I.R. = IRON ROD

C.I.R. = CAPPED IRON ROD

P.O.C. = POINT OF COMMENCEMENT

P.O.B. = POINT OF BEGINNING

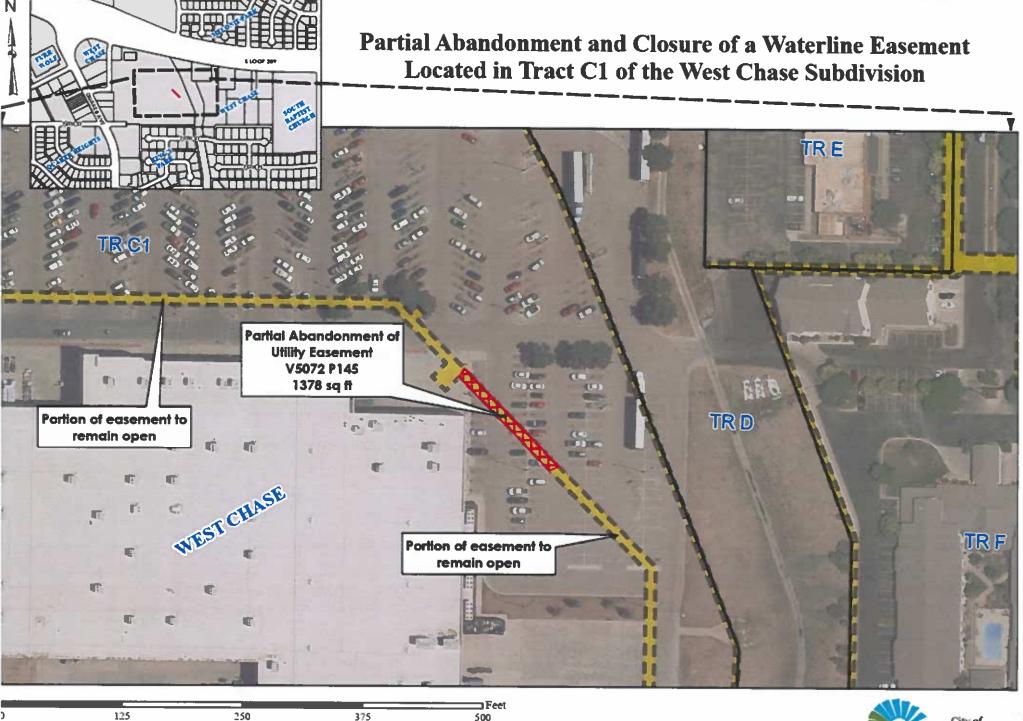


0.0316 ACRE EXHIBIT

OUT OF TRACT C-1, OF TRACT C-1 AND C-2 OF THE WEST CHASE ADDITION, A SUBDIVISION OF RECORD IN L.C.C.F. No. 20090153691, SAME BEING RECORDED IN THE NAME OF WAL-MART REAL ESTATE BUSINESS TRUST IN L.C.C.F. No. 20100036025, IN THE

> B&B SURVEY, SECTION 11, BLOCK 2 ABSTRACT NO. 11

LUBBOCK COUNTY, TEXAS JOB#: 23003 APRIL 14, 2023







Information

Agenda Item

Ordinance 2nd Reading - Right-of-Way: Consider Ordinance No. 2023-O0069 abandoning and closing portions of a Drainage Easement located west of Indiana Avenue and north of 114th Street, in Section 18, Block E-2, Lubbock County, Texas.

Item Summary

On June 13, 2023, the City Council approved the first reading of the ordinance.

The City of Lubbock is in receipt of a request to abandon and close portions of a Drainage Easement located in Section 18, Block E-2, Lubbock County, Texas. This property is located west of Indiana Avenue and north of 114th Street.

The total area of the easement being requested to be closed is 45,865 square feet. This request is to support new development at this location. A cut/fill plan has been submitted and approved in order to support this closure request. Staff is in support of this request.

Fiscal Impact

None

Staff/Board Recommending

Erik Rejino, Assistant City Manager Michael G. Keenum, P.E., Division Director of Engineering/City Engineer

Attachments

Ordinance Sec 18, Blk E-2 (The Gates) Exhibit A Map, Section 18, Block E-2

ORDINANCE	NO.	

AN ORDINANCE ABANDONING AND CLOSING PORTIONS OF A DRAINAGE EASEMENT LOCATED IN SECTION 18, BLOCK E-2, 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:

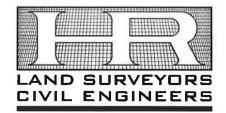
BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LUBBOCK:

- 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 Exhibits "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	, 2023.
Passed by the City Council on second reading this	day of	, 2023.
TRA	Y PAYNE, MAYOF	<u> </u>

Ord.Drainage Easements Section 18 Block E-2, 5.10.23



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

DRAINAGE EASEMENT CLOSURE

METES AND BOUNDS DESCRIPTION of a 1.053-acre tract of land located in Section 18, Block E-2, Lubbock County, Texas, being a portion of that Stormwater Drainage and Impoundment easement described under County Clerk File Number 2016005271, Official Public Records of Lubbock County, Texas, said 1.053-acre tract being further described as follows:

BEGINNING at a 1/2" iron rod with cap marked "HUGO REED & ASSOC." set for the Southwest corner of this tract which bears S. 88°17'04" E. a distance of 2011.29 feet and N. 01°42'56" E. a distance of 693.22 feet from the Southwest corner of Section 18, Block E-2, Lubbock County, Texas;

THENCE N. 31°44'19" E. a distance of 402.90 feet to a point in the Eastern boundary of said Stormwater Drainage and Impoundment easement for the Northeast corner of this tract;

THENCE S. 01°43'43" W., along said Eastern boundary, a distance of 396.86 feet to a point;

THENCE S. 31°44'19" W. a distance of 59.24 feet to a 1/2" iron rod with cap marked "HUGO REED & ASSOC." set for the Southeast corner of this tract;

THENCE N. 58°15'41" W. a distance of 198.49 feet to the Point of Beginning.

Bearings are relative to Grid North, Texas Coordinate System of 1983, North-Central Zone, 2011 (epoch 2010.0). Distances are Surface, U.S. Survey Feet.

Contains: 45,865 square feet

April 22, 2022

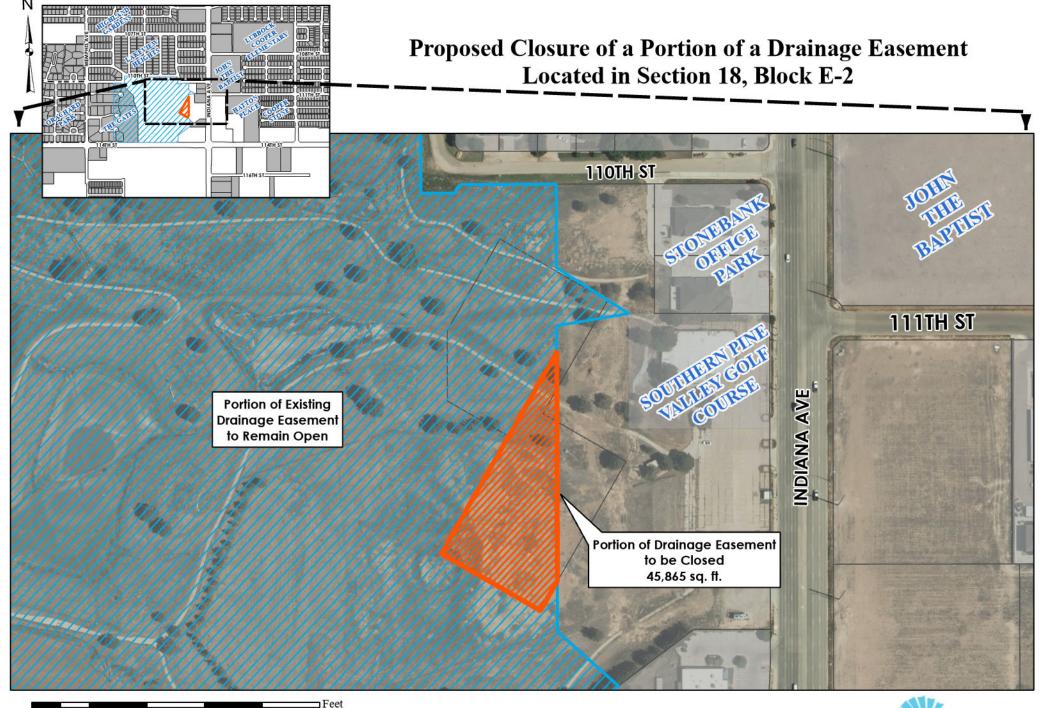
Robert A. Christopher

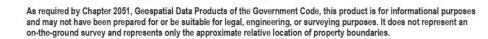
Registered Professional Land Surveyor No. 5167

Licensed State Land Surveyor

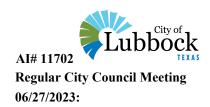
State of Texas











Information

Agenda Item

Ordinance 1st Reading - Right-of-Way: Consider an ordinance abandoning and closing portions of an Underground Streetlight Cable Easement, located on Lot 181, Stratford Pointe, Lubbock County, Texas.

Item Summary

The City of Lubbock is in receipt of a request to abandon and close an Underground Streetlight Cable Easement located on Lot 181, Stratford Pointe, 142nd Street and Salem Avenue. The Stratford Pointe Subdivision is located south of 138th Street and west of Quaker Avenue. The easement was recorded in County Clerk File Number 2021026911 of the Official Public Records of Lubbock County, Texas.

Following this closure, the re-platting of Lots 181 and 182 will dedicate an Underground Streetlight Cable Easement to take the place of this easement.

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

Fiscal Impact

None

Staff/Board Recommending

Erik Rejino, Assistant City Manager

Attachments

Lot 181, Stratford Pointe Ordinance Lot 181, Stratford Pointe GIS Map

ORDINANCE NO.	

AN ORDINANCE ABANDONING AND CLOSING PORTIONS OF AN UNDREGROUND STREET LIGHT CABLE EASEMENT LOCATED ON LOT 181, STRATFORD POINTE, 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:

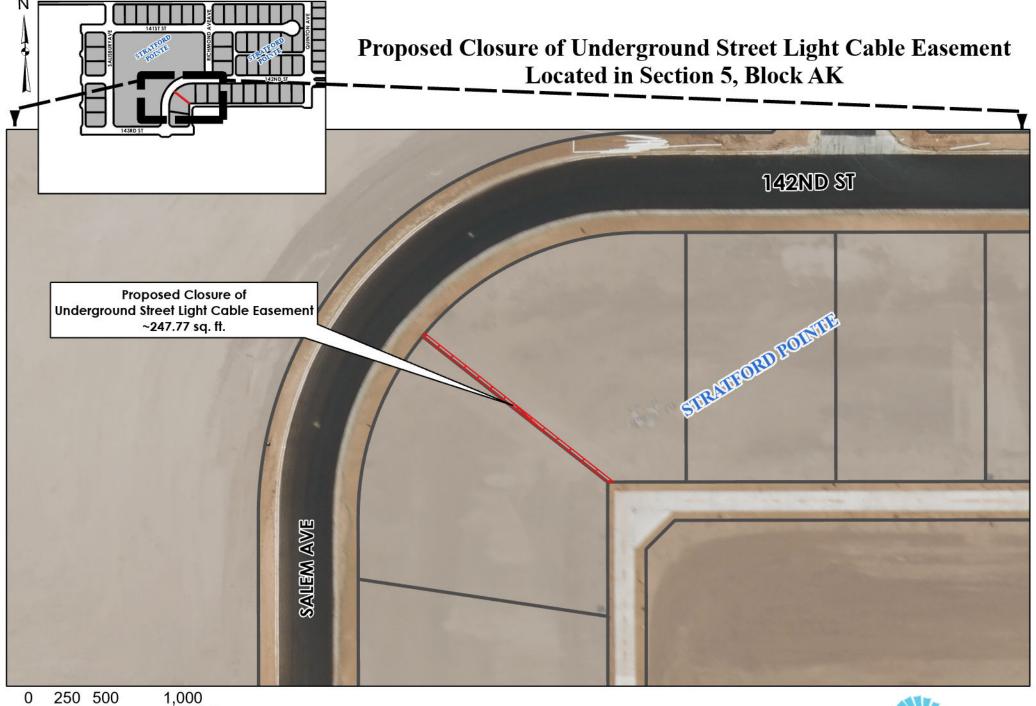
BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LUBBOCK:

- 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, 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.

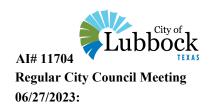
Passed by the City Council on first reading the	is, 2023.
Passed by the City Council on second readin	g thisday of, 2023.
	TRAY PAYNE, MAYOR

Ord.Southern Homes Right-of-Way, Lot 181, Stratford Pointe 6.9.23





Feet



Information

Agenda Item

Resolution - Right-of-Way: Consider a resolution authorizing the Mayor to execute a Street Use License Agreement, and related documents, with Westminster Presbyterian Church at 3321 33rd Street, Lubbock, Texas.

Item Summary

Westminster Presbyterian Church is requesting a Street Use License to utilize a 252 square-foot portion of the right-of-way, at 3321 33rd Street, Lubbock, Texas, as a foyer for the church building.

The minimum license fee of \$100 per year will apply to the encroachment. The term of this license will be for 5 years, and will be automatically extended for successive 5-year terms, not to exceed 20 years. The license fee for each 5-year period is \$500 paid in advance, pursuant to current City policy.

Fiscal Impact

\$500 to the General Fund

Staff/Board Recommending

Erik Rejino, Assistant City Manager Michael G. Keenum, P.E., Division Director of Engineering/City Engineer

Attachments

Resolution - Westminister Presbyterian (s) Lot 11, Blk 4, SUL Lot 11, Blk 4, Exhibit A Lot 11, Blk 4, GIS Map

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 Street Use License Agreement by and between the City of Lubbock and Westminster Presbyterian Church, 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	
	te 2 - 300000 - 220000
	TRAY PAYNE, MAYOR
ATTEST:	
Courtney Paz, City Secretary	
APPROVED AS TO CONTENT:	
Michael Delumin	
Michael Keenum, P.E., Division Director o	f Engineering/City Engineer
APPROVED AS TO FORM:	
629	•
Amy L. Sims, Deputy City Attorney	The same of the sa

RES.Street Use License Agreement- Westminster Presbyterian Church 4.27.23

STREET USE LICENSE

Corporation, and Westminster Pr	esbyteri	ian Church, hereinaft	er called "LICENSEE."
date of this Agreement between the CITY OF LUBBOCK, TEXAS, a Home Rule Municipal			
This License made this			, 2023, being the
COUNTY OF LUBBOCK	§	KNOW ALL MEN BY THESE PRESENT	DI IIILGEI REGENIG.
THE STATE OF TEXAS	§		RV THESE PRESENTS:

WITNESSETH:

Subject to the terms, conditions, and provisions herein, the CITY OF LUBBOCK does hereby grant to the LICENSEE, the right, privilege and License to use a portion of a dedicated street for a building foyer/ lobby, and being further described as follows:

Block 4, Lots 2-11, Westminster Heights Addition to the City of Lubbock, Lubbock County, Texas.

Said portion of a dedicated street being further described in the attached Exhibit "A".

The term of this License shall be for five (5) years from date hereof, and shall be automatically extended for successive five (5) year terms not to exceed twenty (20) years in any event unless either party shall give written notice of termination to the other party before the expiration of the first, second or third five (5) year term, as the case may be, and the CITY OF LUBBOCK retains the right at its election to cancel and revoke this License, with or without cause, upon thirty (30) days notice to LICENSEE. Said notice shall be deemed properly served if deposited in the post office, postage paid, addressed to LICENSEE at 3321 33rd Street, Lubbock, TX 79410, or the last known address of LICENSEE.

Upon the expiration or cancellation and revocation of this License by the CITY OF LUBBOCK, or the abandonment of this License by the LICENSEE, the improvements that are permitted under this License shall be removed by the LICENSEE and the property shall be restored to its original condition at no cost or expense to the CITY OF LUBBOCK. In the event LICENSEE fails or refuses to remove such improvements after demand by the CITY OF LUBBOCK, the CITY OF LUBBOCK shall take possession and remove or cause to be removed such improvements, and the expense incurred shall be assessed against LICENSEE, for which LICENSEE shall be liable.

1. LICENSEE shall pay to the CITY OF LUBBOCK as compensation for such grant the sum of FIVE HUNDRED AND 00/100 DOLLARS (\$500.00) cash in advance contemporaneously with the acceptance and execution hereof by LICENSEE for the first five (5) year term of this License, and thereafter such rate of compensation may be changed for each succeeding five (5) year term by the CITY OF LUBBOCK to a rate of compensation which is based on procedures and policies as established by the City Council of the CITY OF LUBBOCK, based on an appraisal of the fair market value of such land by the Right-of-Way Department of the CITY OF LUBBOCK, as applied to the formula for determining such rate

established by the City Council. If such rate is not changed by the CITY OF LUBBOCK, the rate for the preceding five (5) year term shall apply. The CITY OF LUBBOCK shall notify the LICENSEE of any change in rates in writing ninety (90) days before the start of the five (5) year term to which such change in rate shall apply, and if such notification is not made, then the rate for the preceding five (5) year term shall apply.

- 2. The LICENSEE agrees to pay all costs arising out of the exercise of this License herein granted including, but not limited to, the cost of cleanup of any oil, hazardous substance, or other material, the replacement and repair of paving, sidewalks and utilities of any nature damaged as a result of the construction authorized by the License.
- 3. In the event the CITY OF LUBBOCK determines that the License herein granted interferes with or causes the rerouting or realignment of any public utility, franchised utility or sanitary or storm sewer line constructed or to be constructed by the CITY OF LUBBOCK or franchised utility, LICENSEE agrees to reimburse the CITY OF LUBBOCK or such utility, as the case may be, for its expense in relocating or rerouting over and above the expense which would have been incurred except for LICENSEE'S use herein.
- 4. This License is not transferable by the LICENSEE without first receiving the written consent of the City Manager of the CITY OF LUBBOCK.
- This License is made subject to the condition that should the LICENSEE exercise any right under this License and prepare or begin or complete any part of the construction as herein contemplated across any or all of the above described property, then and in that event, said LICENSEE, its successors and assigns, will at all time defend, indemnify and otherwise hold the CITY OF LUBBOCK, its agents, servants and employees harmless from any and all claims, demands, actions, causes of action and suits at law or in equity of whatsoever kind or nature which may grow out of or be related to the making of this License or the construction or maintenance use permitted herein. The CITY OF LUBBOCK, at its option, may require an agreement with any contractors hired by LICENSEE to perform the construction, repair or maintenance permitted herein, which agreement will indemnify the CITY OF LUBBOCK from and against all claims, liability, cost and expense growing out of the performance of the work to be done by such contractors. The CITY OF LUBBOCK may further require any of said contractors, when engaged in the construction, repair or maintenance permitted herein, to furnish, without expense to the CITY OF LUBBOCK, a reliable surety bond, in an amount and in a form satisfactory to the said CITY OF LUBBOCK, guaranteeing the faithful performance of all the terms, covenants and conditions contained in said agreement, and a certified copy of a policy of public liability insurance assumed by said contractors in said agreement with the CITY OF LUBBOCK. The CITY OF LUBBOCK agrees to give notice to LICENSEE prior to incurring any costs or expenses or the payment of any such claims or demands in order to give LICENSEE a reasonable opportunity to settle or adjust the same.
- 6. LICENSEE agrees and is required to furnish a policy of public liability and property damage insurance within limits specified by and in a form satisfactory to the City Attorney for the CITY OF LUBBOCK, and which names the CITY OF LUBBOCK as the insured, said policy covering the uses herein granted.

General Liability Insurance. Owner shall maintain general liability insurance with a combined single limit of a minimum of \$100,000 per occurrence and such insurance shall include the following:

- Bodily Injury and Property Damage
- Broad Form Contractual Liability

Owner shall provide a Certificate of Insurance to the City of Lubbock as evidence of the required insurance coverage. The Certificate will provide 30 days notice of cancellation. Such Certificate of Insurance shall name the City of Lubbock as an additional insured and must include wording which states that the policy shall be primary with respect to any insurance carried by City of Lubbock and be endorsed to include a waiver of subrogation in favor of the City of Lubbock.

- 7. All of the covenants and provisions of this License shall be binding upon and inure to the benefit of the successors, legal representatives, assigns and the duly authorized agents and contractors of the parties hereto to the same extent and effect as the same are binding upon and inure to the benefit of the parties hereto, but no assignment hereof by the LICENSEE, its successors or assigns shall be binding upon the CITY OF LUBBOCK without the consent of the CITY OF LUBBOCK in each instance, except as specified in numbered paragraph four (4).
- 8. LICENSEE, by the acceptance of the uses permitted herein, understands and agrees that no interest, title or rights of possession are intended or implied except those expressly set forth herein, and LICENSEE waives any and all claims in and to the public way it is permitted to use hereby and agrees to give peaceful possession of said property covered herein upon termination or cancellation of this license. No interest for real property is conveyed or granted by this License.
- 9. The CITY OF LUBBOCK 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 OF LUBBOCK 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.

AGREED TO AND ACCEPTED this	9th day of May , 2023.
CITY OF LUBBOCK:	Westminster Presbyterian Church:
TRAY PAYNE, MAYOR	By: Moreno Printed Name Christie Moreno
	Title: Executive Director
ATTEST:	
Courtney Paz, City Secretary	
APPROVED AS TO CONTENT:	
Michael Keenum, P.E., Division Director	of Engineering/City Engineer
APPROVED AS TO FORM:	
Amy L. Sims, Deputy City Attorney	

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§

COUNTY OF LUBBOCK

§

BEFORE ME, the undersigned authority, a Notary Public in and for said County and State, on this day personally appeared Tray Payne, Mayor of the City of Lubbock, known to me

	eribed to the foregoing instrument and acknowledged to me e purposes and consideration therein expressed and in the
GIVEN UNDER MY HAND of	AND SEAL OF OFFICE this day
	Notary Public in and for the State of Texas My Commission Expires:
THE STATE OF TEXAS §	;
COUNTY OF Lubbock 8	;
State, on this day personally appeared whose name is subscribed to the foreg	d authority, a Notary Public in and for said County and history Moreno, known to me to be the person joing instrument and acknowledged to me that he executed deration therein expressed and as an act and deed of said
GIVEN UNDER MY HAND	AND SEAL OF OFFICE this day day
·	Cynthia Nell Slaughter Notary Public in and for the State of Texas
CYNTHIA NELL SLAUGHTER Notary Public, State of Texas Comm. Expires 03-24-2024 Notary ID 124660349	Notary Public in and for the State of Texas My Commission Expires: 3-24-2024

Exhibit A

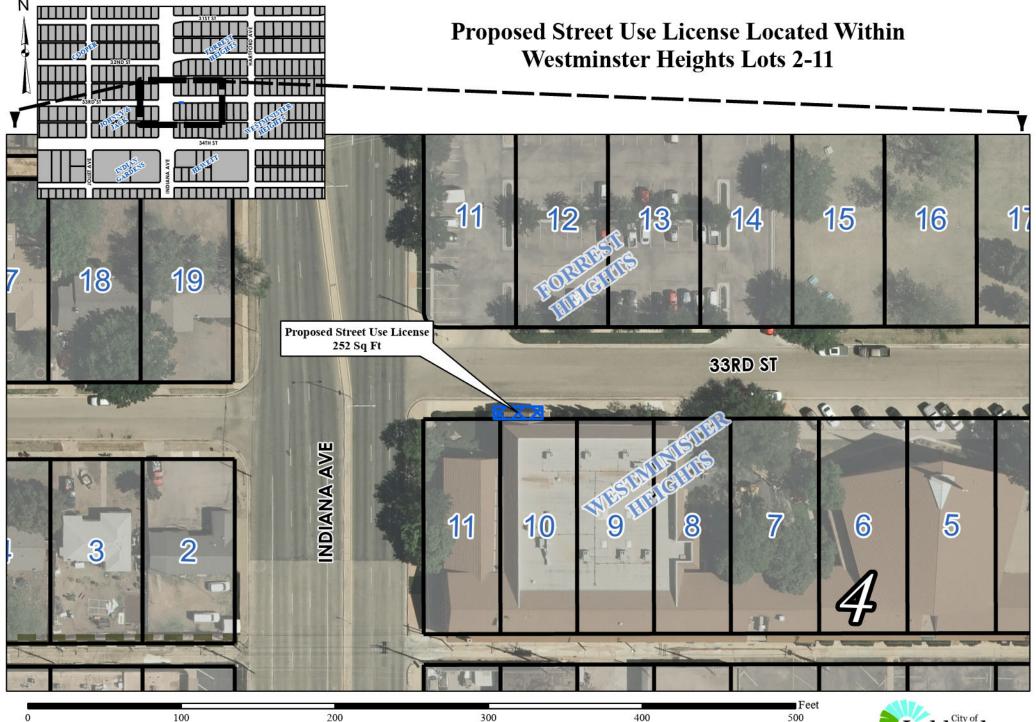
BEGINNING at a point which is forty-six (46) feet east of the northwest corner of Lot Eleven (11), Block Four (4), Westminister Heights Addition to the City of Lubbock, Lubbock County, Texas;

THENCE eight (8) feet north to a point;

THENCE thirty-one and a half (31.5) feet east to a point;

THENCE eight (8) feet south to a point;

THENCE thirty-one and a half (31.5) feet west to the POINT OF BEGINNING.





Information

Agenda Item

Resolution - Engineering: Consider a resolution authorizing the Mayor to execute Professional Services Agreement, Contract 17020, with Freese and Nichols, Inc., for the Northwest Sewer Interceptor Project.

Item Summary

This project is the first phase in the up-sizing of the existing sewer interceptor along Northwest Loop 289 from Quaker Avenue to Frankford Avenue. The existing 18/21/24-inch line will be up-sized to an approximately 30-inch wastewater line. Recent and near-term projected growth are the primary drivers for this up-sizing. Model results indicate the proposed 30-inch line will eliminate surcharging during modeled peak wet weather conditions. The proposed line will not only accommodate flows from the West End Addition, but also future flow from the 18-inch line along the existing Reese Sewer Line.

In response to RFQ 23-17020-MA, Statements of Qualifications for engineering design services for the project were received from 6 firms, that were evaluated by an RFQ Committee. Criteria used by the committee were: project team organization and qualifications - 30 points, experience on similar projects - 30 points, management approach - 30 points, and overall responsiveness to the RFQ - 10 points.

The following scores and rankings were developed by the RFQ Committee.

Consultant	Points
Freese and Nichols, Inc., Fort Worth, Texas	91.75
Kimley-Horn and Associates, Inc., Lubbock, Texas	86.50
Cobb, Fendley & Associates, Inc., Houston, Texas	83.50
DE Corp., Houston, Texas	77.00
Plummer Associates, Inc., Fort Worth, Texas	76.25
Provenance Engineering LLC., Weatherford, Texas	74.25

Based on the committee's recommendation, contract negotiations were conducted with Freese and Nichols, Inc., and a fair and reasonable hourly rate was agreed upon for a total contract amount not to exceed \$714,026.

The contract is for 240 calendar days and the scope of work will include preparation of a preliminary design report for identifying and analyzing 4 alternate routes, and a condition assessment of the existing sewer lines.

Fiscal Impact

Contract 17020 for \$714,026, is funded in Capital Improvements Project 92799, Northwest Sewer Interceptor Project.

Staff/Board Recommending

Erik Rejino, Assistant City Manager Michael G. Keenum, P.E., Division Director of Engineering/City Engineer

Attachments

Resolution
Professional Service Agreement
Location Exhibit
Budget Detail
CIP Detail
Project Summary Sheet - NWSIP

RESOLUTION

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

THAT the Mayor of the City of Lubbock is hereby authorized and directed to execute for and on behalf of the City of Lubbock, Professional Services Agreement Contract No. 17020 for the northwest sewer interceptor project, by and between the City of Lubbock and Freese and Nichols, Inc., 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.

	TRAY PAY	/NE, MAYOR	
ATTEST:			
Courtney Paz, City Secretary			
APPROVED AS TO CONTENT:			
Comi			
Erik Rejino, Assistant City Manager	Carlos de production de la carlos de la carl		
APPROVED AS TO FORM:			
Mi Lugure			
Kelli Leisure, Senior Assistant City Attorn	ney		

5.31.23

PROFESSIONAL SERVICES AGREEMENT

STATE OF TEXAS §

COUNTY OF LUBBOCK §

This Professional Service Agreement ("Agreement") Contract No. 17020 is entered into this _____ day of ______, 2023, is by and between the City of Lubbock (the "City"), a Texas home rule municipal corporation, and Freese and Nichols, (the" Engineer"), a Texas corporation.

WITNESSETH

WHEREAS, The City desires to contract with the Engineer to provide professional services for Northwest Sewer Interceptor Project, (the "Activities"); and

WHEREAS, the Engineer has a professional staff experienced and is qualified to provide professional engineering services related to Activities, and will provide the services, as defined below, for the price provided herein, said price stipulated by the City and the Engineer to be a fair and reasonable price; and

WHEREAS, the City desires to contract with the Engineer to provide professional services related to the Activities, and Engineer desires to provide the Services related to same.

NOW THEREFORE, for and in consideration of the terms, covenants and conditions set forth in this Agreement, the City and the Engineer hereby agree as follows:

ARTICLE I. TERM

The term of this Agreement commences on the Effective Date and continues without interruption for a term of 240 calendar days. If the Engineer determines that additional time is required to complete the Services, the City Engineer, may, but is not obligated to, in his or her discretion, execute an agreement to grant up to an additional six (6) months of time so long as the amount of the consideration does not increase. 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. SERVICES AND COMPENSATION

- A. The Engineer shall conduct all activities, and within such timeframes, as set forth on Exhibit "A", attached hereto (the "Services").
- B. The Engineer shall receive as consideration to be paid for the performance of the Services, in an amount not to exceed \$714,026, as set forth in Exhibit "B".

ARTICLE III. TERMINATION

- A. General. The City may terminate this Agreement, for any reason or convenience, upon thirty (30) days written notice to the Engineer. In the event this Agreement is so terminated, the City shall only pay the Engineer for services actually performed by the Engineer up to the date the Engineer is deemed to have received notice of termination, as provided herein.
- B. Termination and Remedies. In the event the Engineer 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 IV. 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 V. REPRESENTATIONS AND WARRANTIES

- A. Existence. The Engineer is a 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 Engineer 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 Engineer. This Agreement constitutes legal, valid, and binding obligations of the Engineer and is enforceable in accordance with the terms thereof.

- D. Engineer. The Engineer maintains a professional staff and employs, as needed, other qualified specialists experienced in providing the Services, and is familiar with all laws, rules, and regulations, both state and federal, including, without limitation the applicable laws, regarding the Activities contemplated hereby.
- E. Performance. The Engineer 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 professional 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 Engineer warrants that any materials provided by the Engineer 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 Engineer shall be solely responsible for ensuring that any materials provided by the Engineer pursuant to this Agreement satisfy this requirement and the Engineer 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 Engineer's failure to perform this duty.

ARTICLE VI. SCOPE OF WORK

The Engineer shall accomplish the following: Professional Services related to the Services, as provided in Exhibit "A", attached hereto and made a part hereof.

ARTICLE VII. INDEPENDENT CONTRACTOR STATUS

The Engineer and the City agree that the Engineer 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 Engineer 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 Engineer and the Engineer'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 Engineer 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 Engineer shall obtain and maintain in full force and effect during the term of this Agreement, and shall cause each approved subcontractor or subconsultant of the Engineer 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 Engineer shall further cause any approved subcontractor or sub-consultant to procure and carry, during the term of this Agreement, the insurance coverage required of Engineer herein, including without limitation, Professional Liability coverage, protecting the City against losses caused by the professional negligence of the approved subcontractor 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 Engineer 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 Engineer shall elect to obtain worker's compensation coverage pursuant to Section 406.002 of the Texas Labor Code. Further, the Engineer 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 Engineer maintains said coverage. The Engineer 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 Engineer fails to maintain the required insurance in full force and effect, the Engineer 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 Engineer'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 VIII shall survive the termination or expiration of this Agreement.

ARTICLE IX. EMPLOYMENT OF AGENTS/RETAINING OF CONSULTANTS

The Engineer may employ or retain consultants, contractors, or third parties (any of which are referred to herein as "Sub-consultant"), to perform certain duties of Engineer, as set forth on Exhibit A, attached hereto, under this Agreement, provided that the City approves the retaining of Sub-consultants. The Engineer is at all times responsible to the City to perform the Services as provided in this Agreement and the Engineer 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 Engineer shall be required by the Engineer to carry, for the protection and benefit of the City and the Engineer and naming said third parties as additional insureds, insurance as described above required to be carried by the Engineer in this Agreement.

The Engineer 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 Engineer 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

THE ENGINEER 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 ENGINEER, 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 Engineer 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 Engineer to the City or the City to the Engineer 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. Engineer's Address. The Engineer's address and numbers for the purposes of notice are:

Freese and Nichols Robb Otey 801 Cherry St #2800 Fort Worth, TX 76102 Telephone: 817-735-7562

Email: Robb.Otey@freese.com

C. City's Address. The City's address and numbers for the purposes of notice are:

James Dean City of Lubbock P.O. Box 2000 1314 Avenue K Lubbock, Texas 79457 Telephone: 806-775-3254

Email: jdean@mylubbock.us

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 Engineer non-confidential studies, reports and other available data in the possession of the City pertinent to the Engineer's Services, so long as the City is entitled to rely on such studies, reports and other data for the performance of the Engineer's Services under this Agreement (the "Provided Data"). The Engineer 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 Engineer 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 Engineer's books and records with respect to this Agreement between the Engineer and the City.
- C. Records. The Engineer shall maintain records that are necessary to substantiate the services provided by the Engineer.
- D. Assignability. The Engineer 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 Engineer, and in the case of the City, its respective successors, legal representatives, and assigns, and in the case of the Engineer, 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 Engineer and the City.
- I. Entire Agreement. This Agreement, including Exhibits "A" through "B" attached hereto, contains the entire agreement between the City and the Engineer, 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 Engineer and the City.
- K. Documents Owned by City. Any and all documents, drawings and specifications prepared by Engineer as part of the Services hereunder, shall become the property of the City when the Engineer has been compensated as set forth in Article II, above. The Engineer shall make copies of any and all work products for its files.
- L. Notice of Waiver. A waiver by either the City or the Engineer 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 Engineer.
- 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 Engineer 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, 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
- 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, 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.
- R. 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.
- S. 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.

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.

EXECUTED as of the Effective Date hereof.

CITY OF LUBBOCK

	TRAY PAYNE	, MAYOR
ATTEST:		
Courtney Paz, City Secretary		
APPROVED AS TO CONTENT:		
Undail Steemen		
Mike Keenum, P.E., CFM		
APPROVED AS TO FORM:		
Illi Lunire		
Kelli Leisure, Assistant City Attorney		

Firm

Freese and Nichols

Robb Otey

Email: Robb.Otey@freese.com

EXHIBIT A, SCOPE OF SERVICES

NORTHWEST LOOP 289 INTERCEPTOR ENGINEERING DESIGN SERVICES

General:

The City of Lubbock (Owner) is experiencing a period of growth throughout the city and surrounding areas, particularly within the Northwest Sewer Basin, which is the focus of this project. To respond to this growth, infrastructure improvements are required to meet the increasing population, non-residential development, and potential annexation areas, as identified in the Owner's 2020 Wastewater Master Plan (Project Nos. 4 and 5). The development of the proposed sewer interceptor (PROJECT), per the Master Plan, is to replace the existing 15/18/21/24-inch sewer interceptor along Iola Avenue, 19th Street, and Northwest Loop 289, to the Diversion Box located at Quaker Avenue. As an alternate design, the existing sewer interceptor, which would remain in service, would be supplemented with a parallel sewer system, whose combined sewer capacity is sufficient to convey the future flows. To address the projected future flows, the PROJECT's primary objectives consist of the following:

- A. The PROJECT includes the following BASIC and SPECIAL services:
 - 1. Project management, quality assurance, and quality reviews.
 - 2. Prepare Preliminary Design Report (PDR) Identifying and analyzing three alternate routes, in addition to the baseline route identified in the Owner's Wastewater Master Plan (refer to Attachment 1), Route Options 1, 2A, 2B, 3 and 4). Route Options 1, 2B, 3 and 4 would replace the existing sewer, while Route Option 2A would be sized accordingly based on the existing sewer to remain in service. Included in the PDR will be the determination of rehabilitation methods for portions of the existing sewer lines for Route Option 2A, if the existing sewer main is to remain in service, or if the existing sewer main is required to continue to convey only local flow.
 - 3. Condition Assessment A condition assessment of approximately fifty (50) existing manholes and 21,360 LF of existing sewer (2,820 LF 15-inch, 7,050 LF 18-inch, 9,020 LF 21-inch, and 2,470 LF 24-inch) will be performed. The purpose of this condition assessment will be to identify if rehabilitation is required, and if so, to select the method conducive to its condition. Per discussions with the Owner, it has been determined that Heavy Cleaning and/or Specialty Cleaning, as defined by NAASCO's PACP program, will not be required. These services can be provided as an Additional Service.
 - 4. Topographical Survey Topographical survey will be performed for approximately 25,000 LF along the Owner-approved route, selected from the Preliminary Design Report (PDR). The length of the survey is based on the longest route evaluated in the PDR (Route Option 4). Survey will also be provided for the existing sewer main including the next upstream manhole for all

lateral connections. There are approximately fifty (50) manholes on the existing sewer main, 34 of which have lateral connections. A total of eighty-four (84) manholes will be surveyed for the existing sewer main.

- 5. Geotechnical Investigation The proposed geotechnical scope of work for the PROJECT will consist of field exploration, laboratory testing, engineering analysis, and data reporting. Up to 11 exploratory borings will be performed with borings drilled to a minimum depth of 25 feet below existing grade. Exploratory borings will be located generally every 2500 linear feet along the selected alignment and on each end of any bored/tunneled crossings.
- 6. Environmental Evaluation The proposed environmental evaluation consists of a pedestrian survey, coordination with the Texas Historical Commission, and the preparation of an environmental permitting memorandum. It is anticipated that environmental permitting will not be required. Any permitting necessary can be provided as an Additional Service.
- B. The PROJECT does not include the following services:
 - 1. Resident Project Representation (RPR).
 - 2. General Representation during construction.
 - 3. Bidding or advertising the PROJECT.
 - 4. Disposal fees for waste material collected by the Contractor during the Condition Assessment of the existing sewer. It is understood that the Owner will provide, free of charge, a location for the Engineer's sub-consultant to dispose of all waste material.
 - 5. It is assumed that the geotechnical borings will not encounter a rock stratum. Therefore, the testing for such material is not included in the scope.
 - 6. Temporary flow monitoring will not be provided. Design flows will be based on the Owner's current Wastewater Master Plan and updated projections, currently being evaluated by FNI under a separate contract.
 - 7. Land acquisition services.
 - 8. The preparation of a Pre-Construction Notification, individual Section 404 permit application to the USACE, performing a survey for federally listed threatened or endangered species, providing a cultural resource survey (archaeological), preparation of a Phase I/II environmental site assessment, or any other type of environmental permit, is not included in the scope.

BASIC SERVICES:

TASK I – PROJECT MANAGEMENT

Engineer shall ensure efficient and effective use of Engineer and Owner's time and resources. Engineer shall manage change through effective communication, coordinate internally and externally as needed, and to proactively address issues with the Owner's Project Manager and others as necessary to make progress on the work.

1. Managing the Team

- a. Lead, manage and direct design team and sub-consultant activities.
- b. Ensure quality control is practiced in performance of the work.
- c. Communicate internally among team members.
- d. Task and allocate team resources.

2. Communications and Reporting

- a. Attend a kickoff meeting, via conference call, with Owner's staff to confirm and clarify scope, understand Owner's objectives, and ensure economical and functional designs meet Owner's requirements. Prepare meeting minutes of the PROJECT kick-off meeting and distribute to participants.
- b. Attend internal kickoff meeting with Engineer's design staff to confirm and clarify scope.
- c. Conduct one (1) review workshop, at Owner's office, to review the PROJECT.
- d. Conduct up to an additional two (2) design progress meetings (conference call) with Owner's staff.
- e. Prepare up to seven (8) invoices and submit monthly in the format acceptable to the Owner.
- f. Prepare and submit up to seven (8) monthly progress reports during the design phase.
- g. Prepare and submit baseline Project Schedule at PROJECT start-up, and project schedule updates with a schedule narrative monthly when the schedule is modified.
- h. Coordinate with other agencies (TxDOT, TCEQ, etc.) and franchise owners as necessary for the preparation of the PDR.
- i. Engineer shall maintain an Action Items and Decision Log to monitor PROJECT activity.
- j. Coordinate with subconsultants to confirm all design elements are compatible, integrated, and meet Owner performance requirements. Engineer's Project Manager shall be the primary client contact and lead communicator to Engineer's staff.

Assumptions:

- 1. 7 invoices and monthly progress reports.
- 2. 1 kickoff meeting with Owner's staff.
- 3. 1 internal kickoff meeting with design staff.
- 4. 1 review workshop with Owner's staff (in-person).

- 5. Up to 2 additional design progress meetings with Owner's staff (conference call).
- 6. 6 monthly internal design meetings.

Deliverables:

- 1. Meeting summaries with action items.
- 2. Monthly invoices and monthly progress reports.
- 3. Baseline design schedule.
- 4. Monthly schedule updates with schedule narrative describing any current or anticipated schedule changes.

TASK II - PRELIMINARY DESIGN REPORT (PDR)

Engineer will prepare a Preliminary Design Report (PDR) that evaluates up to three (3) options in addition to the baseline route established in the Owner's Wastewater Master Plan, to accommodate the needed hydraulic improvements to this segment. The following services will be performed:

- 1. Review existing materials and reports, including those obtained from the Owner, and perform field investigations to establish the final interceptor alignment. The data reviewed will be used in the development of the Project Documents and will include the following:
 - a. Latest system Infiltration/Inflow data.
 - b. Available wastewater flow data.
 - c. Existing pipeline numbering system and geographic information system (GIS) mapping.
 - d. Property ownership and tax plat information.
 - e. Existing wastewater closed-circuit television (CCTV) and inspection data, field logs, work order history, and reports, if available.
 - f. Existing utility, roadway, and site record drawings.
 - g. Engineer will define the average and maximum flow conditions based on existing hydraulic modeling as provided in the latest Owner Wastewater Master Plan and subsequent updates, developed under separate contract.
- 2. Evaluate construction of new interceptor along alternate routes.
- 3. Evaluate existing pipeline rehabilitation methods for the existing 15-, 18-, 21- and 24-inch pipelines, which may include traditional cured-in-place pipe (CIPP), sliplining, pipe bursting, and point repairs. Assess the structural viability of each rehabilitation option based upon the condition assessment and existing known soil conditions. Rehabilitation evaluation is not required if the selected alternate is the baseline route, which abandons the existing sewer.
- 4. Prepare exhibits showing the PROJECT and related interceptors and appurtenances. Each proposed alternative option will be shown on a separate exhibit, to be used during planning and presentations.

- 5. Determine the pipeline configuration needed to convey the projected flows.
- 6. Review the alignment of the existing pipeline and/or other applicable pipeline improvement(s) in areas to be paralleled and pertinent information regarding land boundaries and ownership in the potentially affected areas.
- 7. Develop preliminary pipeline profiles for alternative options. At a minimum the profiles shall be developed based on topographic information obtained from United States Geological Survey topographic maps along the proposed pipeline routes. The profiles will be reviewed with the Owner and the alternatives compared to determine advantages and disadvantages of the proposed alternatives based on the profile characteristics. Investigation of subsurface features (e.g., other utilities, pipelines, and structures) may be required in developing the profiles.
- 8. Desktop Environmental Evaluation Engineer will perform a desktop environmental evaluation of each alternate route to base our opinion on the potential environmental permits and regulations that may apply to each of the four routes. The desktop evaluation will include consideration of natural resources, cultural resources, and hazardous materials through the identification of potential waters of the U.S., known areas of contamination, environmentally sensitive areas (e.g., threatened and endangered species, parks, mitigation areas, government property), and known cultural resources in or abutting the alternate route alignments. Results of the desktop environmental review will be summarized in a Technical Memorandum and will be included in the PDR as an attachment.
- 9. Prepare up to four (4) preliminary OPCCs (three for alternate routes and one for the baseline route) for the proposed improvements. Estimate of land costs will utilize information furnished by the Owner.
- 10. Furnish preliminary alignment(s) to the Owner and assist the Owner in identification of the number and location of land parcels affected by the proposed pipeline alignment.
- 11. Submit one advance copy of the Draft PDR, cost opinions, and associated drawings to the Owner, in PDF format, for Owner review.
- 12. Participate in one workshop with the Owner to discuss the various alternative options for the PROJECT and probable environmental impacts in the area. This effort is covered in Task I.
- 13. Incorporate comments from the Owner and submit two (2) hard copies and one electronic copy (in searchable PDF format) of the Final PDR, including cost opinions and associated drawings.
- 14. Participate in one Final PDR implementation workshop that discusses the PROJECT recommendations and implementation. Workshop to be held via conference call.

Assumptions:

- 1. Review workshop to be held at the Owner's offices.
- 2. Final workshop to be held via conference call.

Deliverables:

- 1. Draft PDR (PDF format only).
- 2. Final PDR (2 hard copies and PDF format).

TASK III – CONDITION ASSESSMENT

1. Manhole Inspection:

- a. Engineer shall utilize a sub-consultant to locate and perform the inspection of up to fifty (50) manholes along the existing 15/18/21/24-inch sewer pipeline along lola Avenue, 19th Street and Northwest Loop 289, including the Diversion Structure located at Quaker Avenue including all manholes located in its proximity. The manhole inspection shall be provided in accordance with National Association of Sewer Service Companies (NASSCO) Manhole Assessment and Certification Program (MACP). Visual inspection will be performed at all manholes except where conditions do not allow. These conditions include pipes flowing more than half full, dangerous gas conditions, and offset manholes.
- b. Owner shall only provide assistance to Engineer in locating buried or unmarked manholes and opening any bolted manholes, or manhole lids unable to be opened without potentially causing damage to the manhole ring and lid.
- c. Analyze existing manhole inspection data to determine the need and prioritize line segments that may require further assessment.
- d. Analyze data and make recommendations for rehabilitation/replacement.
- e. Photographic images and video clips of found defects and observations will be provided in digital format via ftp link for file upload.
- f. Data shall be recorded on field forms consistent with NASSCO standards.
- a. Coordinate a plan and schedule with the Owner in accessing the interceptor and manholes for inspection.

2. Pipeline Inspection:

- b. Obtain from the Owner existing plans, reports, studies, records, and system inspection reports for the existing sewer, points of entry records, corrosion analysis data including defects list, and field condition data from the Owner, concerning the interceptor segment, if available.
- c. Review existing PROJECT flow data and previous general condition assessment reports, including defects list and field condition assessments for a maximum of 21,360 LF (2,820 LF 15-inch, 7,050 LF 18-inch, 9,020 LF 21-inch, and 2,470 LF 24-inch) of the existing sewer interceptor.
- d. Engineer's sub-consultant will determine the extent of the inspection based on limitations

- of the robotic equipment or field conditions, which prohibit full access.
- e. Conduct a diagnostic evaluation utilizing certified NASSCO technicians and CCTV inspection of the existing interceptor. The actual inspection techniques utilized for each segment will be based on data obtained during the manhole/visual inspection task. This diagnostic evaluation will comprise of depth of flow in pipe, identification of pipeline corrosion and debris, and high-resolution video imaging of problem areas in the pipeline.
- f. The method utilized shall include a pan/tilt/zoom camera mounted on a transporter specifically designed for a 15/18/21/24-inch pipe. A fully trained and certified CCTV technician will enter all observations, defects and all information related to the condition or state of the pipe into specifically designed CCTV software per NASSCO standards. The software shall produce information in a format that can be printed or delivered in PDF format. The electronic data and the MPEG/AVI videos will be exported and placed on an external thumb drive or uploaded via an ftp link for further evaluation.
- g. Light cleaning of the pipeline is anticipated for the entirety of the pipeline, which consists of three (3) passes of an 80 gpm Vactor style Jet-Vac. Additional passes to facilitate the CCTV inspection, will not be performed without written request by the Owner as an Additional Service.
- h. Coordinate a plan and schedule with the Owner in accessing the interceptor and manholes for inspection.
- i. Review the data collected during the pipeline assessment tasks to assess the overall condition of the interceptor.
- j. Submit two (2) hard copies and one (1) electronic copy (in searchable PDF format) of the draft condition assessment report. After Owner review and incorporating the Owner's comments, Engineer will provide same of the final condition assessment report to the Owner.
- k. Debris collected during pipe cleaning operations shall be delivered to an Owner-approved facility. Any fees and/or charges for using said facilities shall be at no cost to the Engineer.
- I. Traffic control will be provided by Engineer along residential and business streets. Basic residential traffic control (20 mph or less) shall be comprised of up to ten 18-inch safety cones. Residential or business streets exceeding 25 mph shall be comprised of up to twenty 18-inch safety cones and two advanced warning traffic signs. TxDOT or "heavy" traffic control shall be comprised of the requirements of any TxDOT permit and may include in excess of twenty 18-inch safety cones, advanced warning traffic signs, an arrow board or flagmen, a crash cushion, crash attenuator truck and possibly a Certified Traffic Control Plan sealed by a licensed Engineer in the State of Texas.
- 3. Engineer shall prepare Technical Memorandum documenting the manhole and pipeline findings and recommendations for any rehabilitation required. The TM shall include tables identifying defects of the pipeline and manholes. Included in the TM will be the reports provided by the Engineer's sub-consultant in their delivered form, as an appendix. The TM will be included in the PDR as an attachment.

Assumptions:

- 1. Condition Assessment will be performed prior to development of the PDR.
- 2. All manholes are accessible for CCTV equipment, and not buried. If any manholes are buried, Owner's maintenance staff will provide assistance in determining their location.

Deliverables:

1. One combined Technical Memorandum 2 hard copies and PDF format).

TASK IV - TOPOGRAPHIC SURVEY

- Prepare up to thirty (30) permit-to-survey letters and obtain permission from the owner of each
 affected property to conduct necessary surveys. If property owners do not respond to the initial
 letter, Engineer shall attempt to contact landowners by other means and send a follow-up
 request letter via certified U.S. Mail, return receipt requested. Engineer shall furnish the return
 receipt to the Owner as evidence of its compliance with this requirement.
- Provide surveying services to obtain all field information needed for design of the PROJECT, based on approximately fifty (50) manholes and 21,360 LF of existing sewer (2,820 LF 15-inch, 7,050 LF 18-inch, 9,020 LF 21-inch, and 2,470 LF 24-inch) and 25,000 linear feet (LF) of new pipeline per the selected.
- 3. Establish three (3) horizontal and vertical control points per mile for the PROJECT. The horizontal control shall be based on the Texas State Plane Coordinate System, North Central Zone North American Datum NAD-83 Coordinates and the vertical control being based on North American Vertical Datum NAVD-88. Provide survey notes on design drawings and electronic files with clear location and description of benchmarks and horizontal control points. Benchmarks shall be documented and retraceable.
- 4. Prepare planimetric detail based on the survey showing existing visible elements within street right-of-way including, but not limited to, the following:
 - a. Existing pavement, curbs, sidewalks, barrier free ramps, and similar objects.
 - b. Driveways.
 - c. Existing storm sewer inlets, manholes, junction boxes, outfalls, and erosion control.
 - d. Culverts and bridges.
 - e. Railroads.
 - f. Guardrails.
 - g. Top and bottom of slope for railroad or highway crossing.
 - h. Utility manholes, vaults, water valves, water meters, sprinkler heads, telephone poles, power poles, utility markers, other public utilities, and franchise utilities. Include measure down to top of nut for all water main gate valves.
 - i. Traffic signal poles, cabinets, and other signal equipment.
 - j. Signs, excluding temporary signs.
 - k. Trees over 4" (caliper at 3' above ground) and other landscape features (dense cluster or rows of trees to be indicated by outline rather than individual trees).

- I. Building footprints, including cleanouts.
- m. Retaining walls.
- n. Fence limits and material types.
- o. Flowlines of creeks, if applicable.
- p. Flowlines of manholes, inlets, culverts, and other utility structures, including all lateral connections (flowline, direction of flow, pipe size, and location).
- q. Property corners.
- r. Field sketches of manholes.
- s. Other applicable physical features that could impact design.
- 5. Stake bore holes (up to 11) and vertically and horizontally locate the bore holes no more than two weeks after drilling is completed.
- 6. Based on the survey, generate one-foot contours along the alignment corridor.
- 7. Prepare composite base map of all features located in the field through the survey.
- 8. Provide detail notes at each manhole invert including lateral connections. Information collected shall include the XYZ coordinates on existing rim, flowlines, direction of flow, and natural ground elevation at each manhole.
- 9. Identify existing property boundaries, right-of-way lines and easements that are shown on existing recorded plats and those depicted on the Owner's GIS map. PROJECT pertinent property and right-of-way lines will be established from monuments found on the ground. The existing electrical and gas utility easements shall be shown in the survey. The survey will locate and tie existing right-of-way, property lines, and easements including type, size, volume, and page, where applicable. Show Lot, Block, Abstract Number, and dimensions with adjacent Street Names. City and county boundaries will be shown where applicable.
- 10. Provide ownership research and obtain copies of deeds, easements, subdivision plats, and right-of-way maps as required (where easement acquisition is necessary) to establish the existing interests in property necessary to the construction of the PROJECT.
- 11. Establish the location of existing right-of-way lines and block lines throughout the PROJECT corridor.

Assumptions:

- 1. 30 permit-to-survey letters will be required.
- 2. Survey up to eighty-four (84) existing manholes and up to 25,000 LF of proposed sewer interceptor corridor, generally 100 to 150 feet wide.
- 3. Survey up to 11 geotechnical bore locations, which may require a separate site visit.

Deliverables:

1. Electronic base file in AutoCAD.

SPECIAL SERVICES:

TASK V – GEOTECHNICAL EVALUATION

1. Field Exploration:

- a. Engineer shall select and mark 11 boring locations along the proposed route. Engineer shall notify Texas 811, appropriate City department(s) to request location and marking of existing underground utilities prior to the field exploration.
- b. Engineer shall subcontract with a geotechnical drilling contractor to drill a total of 11 borings to a depth of 25 and 5 borings to a depth of 50 feet (total drilled length approximately 525 vertical feet). The deeper borings will be drilled in locations where trenchless excavation methods will be required at highway crossings. Samples will be collected intermittently using continuous flight augers and either split spoon or tube samplers. Rock and rock-like materials will be sampled using an NX core barrel and/or tested in-situ using a TxDOT Cone Penetration Test, as appropriate for the material.
- c. The budget is being estimated based upon the following approach:
 - i. Borings will be drilled through the roadway pavement areas.
 - Drilling through the pavement will include coring the pavement, drilling the boring, backfilling with auger cuttings, and patching the pavement surface with similar material.
 - iii. Traffic control will be provided and may require temporarily closing a lane of traffic.

 A traffic control plan will be sent to the Owner for approval prior to the field work.
- d. Provide an Engineer or Geologist experienced in logging borings to direct the drilling and logging of the borings. Visual classification of the subsurface stratigraphy shall be provided per the Unified Soil Classification System (USCS).

2. Laboratory Testing:

- a. Testing shall be performed on samples obtained from the borings to determine soil classification and pertinent engineering properties of the subsurface materials. FNI will select samples for laboratory testing, assign tests, and review the test results. Testing will be performed by a geotechnical testing sub-contractor.
- b. Laboratory tests will be assigned based on the specific subsurface materials encountered during exploration. Test type and quantity may vary, but are expected to include:
 - i. Classification tests (liquid and plastic limits and percent passing the No. 200 sieve).
 - ii. Moisture content.
 - iii. Grain Size Analysis through the 200-mesh sieve.
 - iv. Unconfined compression tests, if appropriate.

3. Engineering Analysis:

a. Prepare a Technical Memorandum summary report of the geotechnical investigation, which

shall include the following:

- i. Appendix with the boring locations, boring logs, laboratory test results, and a key to the symbols used.
- ii. Discussion of subsurface conditions and soil properties indicated by the field and laboratory work, and the implications for design.
- iii. Design considerations for excavation techniques, structures associated with the pipeline, and bores (trenchless excavation) that may be required at the highway crossings.
- iv. Lateral earth pressures will be provided when appropriate.
- v. Earthwork related recommendations for trench backfill for use during development of the plans and specifications.

TASK VI – ENVIRONMENTAL EVALUATION

- Conduct Pedestrian Survey After a route is selected for detailed design, the PROJECT Engineer's environmental scientist will conduct a site visit along the selected route to document existing environmental conditions and assess potential environmental impacts. The presence and locations of waterbodies, including wetlands, potential federally listed threatened and endangered species habitat, and vegetation cover types will be identified within the proposed project areas.
- 2. Coordinate with Texas Historical Commission Projects sponsored by a political subdivision of the State (including a city) that affect a cumulative area greater than five acres or that disturb more than 5,000 cubic yards require consultation with the Texas Historical Commission (THC) according to Section 191.0525 (d) of the Antiquities Code of Texas. If at least one of these thresholds is met, Engineer will draft a consultation letter to the THC for Owner's review and comment. Engineer will incorporate Owner's comments and submit the consultation letter to the THC. Any follow-up studies requested by the THC are not included in this scope of services but can be provided upon written authorization as an Additional Service.
- 3. Prepare Environmental Permitting Memorandum Information gathered during the desktop review, pedestrian survey, consultation with the THC, and coordination with the PROJECT Engineers will be used to prepare an environmental technical memorandum. The memorandum will document the Engineer's opinion on what, if any, environmental permits/authorizations are required.
- 4. Contact local, state and federal agencies to determine applicable rules and regulations and permitting requirements that apply to the PROJECT and prepare engineering data necessary and submit applications for routine permits required by the agencies. Anticipated permits could include:
 - (a) Street Cut/Crossing Permits: Contract drawings will reflect the design criteria outlined in the rules, codes, regulations, and ordinances identified in the review. The construction Contractor will obtain the permit at the time of construction.

- (b) Storm Water Pollution Prevention Plan and Permits (SWPPP): Construction Contractor will prepare the SWPPP. Engineer shall prepare the contract specification with the minimum requirements.
- (c) Texas Department of Transportation (TxDOT): Prepare TxDOT permits for any crossings and encroachments and gather all information necessary to secure required permits from TxDOT. Engineer shall meet with TxDOT to discuss review comments.

EXHIBIT A. ADDITIONAL SERVICES

NORTHWEST LOOP 289 INTERCEPTOR ENGINEERING DESIGN SERVICES

Various ADDITIONAL SERVICES incidental to the PROJECT, but not within the scope of the BASIC ENGINEERING SERVICES, which may be performed or arranged for separately by the Owner, or may be added to the Engineer's responsibilities by mutual agreement and written authorization include, but are not necessarily limited to, the following:

- 1. Perform site visits.
- 2. Evaluate additional pipeline routes.
- 3. Perform additional video inspection.
- 4. Provide pipeline cleaning and/or obstruction removal for any pipe segment not accessible to remote camera on a first pass.
- 5. Perform additional subsurface excavation in the event such excavation is required to locate existing facilities.
- 6. Prepare legal descriptions and plats.
- 7. Provide land acquisition services, including appraisals and attend condemnation hearings.
- 8. Perform temporary flow monitoring required to evaluate flows.
- 9. Observe on-site conditions to evaluate exposed conditions, dewatering techniques, or changed conditions.
- 10. Provide additional borings which may be occasioned by the depth to rock being deeper than anticipated or because of changes in geological conditions which necessitate additional evaluation to properly define the stratigraphic conditions.
- 11. Provide borings through rock strata.
- 12. Preparation of a Pre-Construction Notification or an Individual Section 404 permit application for submittal to the U.S. Army Corps of Engineers (USACE).
- 13. Preparation of a Jurisdictional Determination (JD) Report or a request for a USACE JD.

- 14. Prepare a presence/absence survey for federally listed threatened/endangered species.
- 15. Conducting cultural resources studies or archeological surveys.
- 16. Phase I/II Environmental Site Assessments.
- 17. Preparation of a Storm Water Pollution Prevention Plan (SWPPP).
- 18. Assist the Owner in procurement of state or federal funding.
- 19. Preparing data and reports for assistance to Owner in preparation for hearings before regulatory agencies, courts, arbitration panels or any mediator, giving testimony, personally or by deposition, and preparations therefore before any regulatory agency, court, arbitration panel or mediator.
- 20. Assisting Owner in preparing for, or appearing at litigation, mediation, arbitration, dispute review boards, or other legal and/or administrative proceedings in the defense or prosecution of claims disputes with the Contractor.
- 21. Assisting Owner in the defense or prosecution of litigation in connection with or in addition to those services contemplated by this AGREEMENT. Such services, if any, shall be furnished by FNI on a fee basis negotiated by the respective parties outside of and in addition to this AGREEMENT. This provision shall not apply to any expense related to a legal action to which FNI is a party.
- 22. Providing environmental support services including the design and implementation of ecological baseline studies, environmental monitoring, impact assessment and analyses, permitting assistance, and other assistance required to address environmental issues during construction.
- 23. Design, contract modifications, studies or analysis required to comply with local, State, Federal or other regulatory agencies that become effective after the date of this Agreement.
- 24. Providing services made necessary because of unforeseen, concealed, or differing site conditions or due to the presence of hazardous substances in any form, except as noted in the scope of services.
- 25. Providing value engineering studies or reviews of cost savings proposed by others.
- 26. Perform geotechnical assessments to determine soil, water table, or trenching characteristics.
- 27. Provide any other services otherwise excluded in this AGREEMENT but customarily furnished in accordance with generally accepted engineering practices.

EXHBIT A, RESPONSIBILITIES OF THE OWNER

NORTHWEST LOOP 289 INTERCEPTOR ENGINEERING DESIGN SERVICES

RESPONSIBILITIES OF OWNER: Owner shall perform the following in a timely manner so as not to delay the services of FNI:

- A. Designate in writing a person to act as Owner's representative with respect to the services to be rendered under this AGREEMENT. Such person shall have contract authority to transmit instructions, receive information, interpret, and define Owner's policies and decisions with respect to FNI's services for the Project.
- B. Provide all criteria and full information as to Owner's requirements for the PROJECT, including design objectives and constraints, space, capacity and performance requirements, flexibility and expandability, and any budgetary limitations; and furnish copies of all design and construction standards which Owner will require to be included in the drawings and specifications.
- C. Assist FNI by placing at FNI's disposal all available information pertinent to the PROJECT including previous reports and any other data relative to design or construction of the PROJECT as provided in this AGREEMENT.
- D. Arrange for access to and make all provisions for FNI to enter upon public and private property as required for FNI to perform services under this AGREEMENT.
- E. Examine all studies, reports, sketches, drawings, specifications, proposals, and other documents presented by FNI, obtain advice of an attorney, insurance counselor and other consultants as Owner deems appropriate for such examination and render in writing decisions pertaining thereto within a reasonable time so as not to delay the services of FNI.
- F. Furnish approvals and permits from all governmental authorities having jurisdiction over the PROJECT and such approvals and consents from others as may be necessary for completion of the PROJECT, except as otherwise the responsibility of FNI as provided in this AGREEEMENT.
- G. Give prompt written notice to FNI whenever Owner observes or otherwise becomes aware of any development that affects the scope or timing of FNI's services.
- H. Furnish, or direct FNI to provide, Additional Services as stipulated in Exhibit A, Additional Services, if deemed necessary by Owner.
- I. Bear all costs incident to compliance with the requirements of this Exhibit A, Responsibilities.
- J. Provide the following services, unless provided specifically otherwise in this Agreement:
 - a. Provide land acquisition services.
 - b. Pay all permit fees and mitigation costs.

EXHIBIT B, BUDGET

NORTHWEST LOOP 289 INTERCEPTOR ENGINEERING DESIGN SERVICES

CITY and ENGINEER have established a not-to-exceed budget of \$714,026. to complete all services under this AGREEMENT. This amount will not be exceeded without a contract amendment. CITY will pay the ENGINEER hourly, for services identified in EXHIBIT A, SCOPE OF SERVICES, based on ENGINEERS Fee Schedule presented as EXHIBIT B, HOURLY RATE SCHEDULE COMPENSATION. Subconsultant services will be billed at cost to ENGINEER with a 10 percent handling fee. The Budget is presented for the services of ENGINEER under this AGREEMENT are provided in this Exhibit B, BUDGET. CITY and ENGINEER agree to allow redistribution of funds between Tasks as appropriate to allow flexibility in providing the needed services within the not-to-exceed budget.

ENGINEER agrees to complete these services as delineated above. Should there be a Change in Scope of Work or Time of Performance, then this can result in an amendment to this contract which shall be negotiated at that time.

The budget assumes that all work will be completed within **240** calendar days from the Notice to Proceed.

EXHIBIT B, HOURLY RATE SCHEDULE COMPENSATION

NORTHWEST LOOP 289 INTERCEPTOR ENGINEERING DESIGN SERVICES

Compensation to FNI Services in Exhibit A, Scope of Services, shall be computed on the basis of the following Schedule of Charges but shall not exceed Seven Hundred Fourteen Thousand Twenty-Six Dollars (\$714,026).

If FNI sees the Scope of Services changing so that Additional Services are needed, including but not limited to those services described as Additional Services in Exhibit A, FNI will notify OWNER for OWNER'S approval before proceeding. Additional Services shall be computed based on the following Schedule of Charges.

LUBBOCK RATE SCHEDULE

Position	Rate		
Principal / Group Manager	305		
Technical Professional - 6	293		
Technical Professional - 5	234		
Technical Professional - 4	200		
Technical Professional - 3	173		
Technical Professional - 2	152		
Technical Professional - 1	125		
CAD Technician/Designer - 3	168		
CAD Technician/Designer - 2	126		
CAD Technician/Designer - 1	100		
Senior CAD Technician/Designer	207		
Construction Manager - 4	165		
Construction Manager - 3	135		
Construction Manager - 2	128		
Construction Manager - 1	100		
Corporate Project Support - 3	140		
Corporate Project Support - 2	126		
Corporate Project Support - 1	96		
Intern/ Coop	65		
Rates for In-House Services			
Technology Charge	Bulk Printing and Reproduct	ion	
\$8.50 per hour		B&W	Color
	Small Format (per copy)	\$0.10	\$0.25
Travel	Large Format (per sq. ft.)		
Standard IRS Rates	Bond	\$0.25	\$0.75
	Glossy / Mylar	\$0.75	\$1.25
	Vinyl / Adhesive	\$1.50	\$2.00
	Mounting (per sq. ft.)	\$2.00	
	Binding (per binding)	\$0.25	

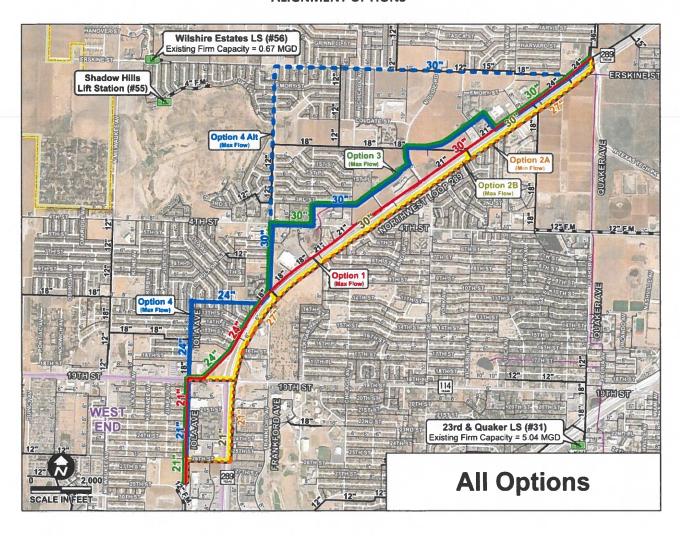
Other direct expenses are reimbursed at actual cost times a multiplier of 1.10. They include outside printing and reproduction expense, communication expense, travel, transportation and subsistence away from the FNI office and other miscellaneous expenses directly related to the work, including costs of laboratory analysis, test, and other work required to be done by independent persons other than staff members.

Rates shall remain constant for the duration of the contract.

City of Lubbock Northwest Loop 289 Interceptor (25,000 LF) 5/15/2023 Detailed Cost Breakdown

Task Description		FN	ll Fee	Sub	's Fee	Tota	al
1	Project Management	\$	45,336	\$	-	\$	45,336
II ,	Preliminary Design Report (PDR)	\$	120,221	\$	-	\$	120,221
111	Condition Assessment	\$	58,983	\$	208,982	\$	267,965
IV	Topographic Survey	\$	22,203	\$	141,360	\$	163,563
VIII	Geotechnical Evaluation	\$	43,335	\$	54,525	\$	97,860
IX	Environmental Evaluation	\$	19,081	\$	-	\$	19,081
	Total	\$	309,159	\$	404,867	\$	714,026

ATTACHMENT A ALIGNMENT OPTIONS



ATTACHMENT A ALIGNMENT OPTIONS



City of Lubbock, TX Northwest Loop 289 Interceptor Project Phase 1 Project Cost Detail June 27, 2023

Capital Project Number:	92799			
Capital Project Name:	Northwest Loop 289 Interceptor Project Phase 1			
Encumbered/Expended	Budget			
City of Lubbock Staff Time	\$4,053			
•				
Agenda Items, June 27, 2023				
Contract 17020 - Preliminary Desi	gn for NW Sewer			
Interceptor	714,026			
Encumbered/Expended To Date	718,079			
Estimated Costs for Remaining App	ropriation			
Final Project Design	531,921			
Remaining Appropriation	531,921			
Total Appropriation	\$1,250,000			

Managing Department Public Works Engineering

Project Manager Josh Kristinek

Project Classification Replacement Infrastructure

Project Status Approved



Project Scope

This project is the first phase in the up-sizing of the existing interceptor along Northwest Loop 289 from Quaker Avenue to Frankford Avenue. The existing 18/21/24-inch line will be up-sized to a 30-inch waste water line. Recent and near-term projected growth are the primary drivers for the upsizing. Model results indicate the proposed 30-inch line will eliminate surcharging during modeled peak wet weather conditions. The proposed line will not only accommodate flows from the West End Addition, but also future flow from the 18-inch line along the existing Reese sewer Line.

Bid Date - Design: 10/2022

Award Date for Bid – Design: 1/2023 Project Start Date – Design: 1/2023 Project End Date – Design: 10/23

Award Date for Bid – Construction: 1/2024 Project Start Date – Construction: 3/2024 Project End Date – Construction: 10/2026

Project Justification

The Wastewater Master Plan identifies the Northwest Loop 289 Interceptor for up-sizing. During the Wastewater Master Plan flow meters were placed within the Interceptor and the flow meters show the line be at capacity with no room for continued growth within the sewer shed.

Project History

\$1,250,000 was appropriated in the FY 2022-23 Budget, Ord. No. 2022-O0136, October 1, 2022.

			Unappropriated Planning Years					
Appropriation Detail	Appropriation to Date	FY 2022-23	FY 2023-24	FY 2024-25	FY 2025-26	FY 2026-27	FY 2027-28	Total Project Amount
Construction	0	0	0	12,500,000	0	0	0	12,500,000
Design and Engineering	0	1,250,000	0	0	0	0	0	1,250,000
Total Project Appropriation	0	1,250,000	0	12,500,000	0	0	0	13,750,000

		Unappropriated Planning Years						
Funding Detail	Funding to Date	FY 2022-23	FY 2023-24	FY 2024-25	FY 2025-26	FY 2026-27	FY 2027-28	Total Funding
FY 2023 Water/Wastewater Cash	0	1,250,000	0	0	0	0	0	1,250,000
FY 2025 Water/Wastewater Revenue CO's	0	0	0	12,500,000	0	0	0	12,500,000
Total Funding Sources	0	1,250,000	0	12,500,000	0	0	0	13,750,000



Purchasing and Contract Management

Project Summary 23-17020-MA RFQ Northwest Loop 289 Wastewater Interceptor Improvements Project

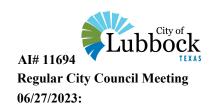
Notice was published on the Purchasing Web Site under Bid Opportunities. Notice was published on the State of Texas Electronic State Business Daily. Notice was published on Bonfire.com from January 5, 2023 thru January 26, 2023. 38 vendors downloaded the documents using Bonfire.com.

34 vendors were notified separately.

6 vendors submitted statements of qualifications.

RFQ 23-17020-MA - Northwest Loop 289 Wastewater Interceptor Improvements Project Final Scoring Summary

	Total	TEAM ORGANIZATION AND QUALIFICATIONS	EXPERIENCE ON RELEVANT PROJECTS	MANAGEMENT APPROACH	OVERALL RESPONSIVENESS TO THE RFQ
Supplier	/ 100 pts	/ 30 pts	/ 30 pts	/ 30 pts	/ 10 pts
Freese and Nichols, Inc. Lubbock, TX	91.75	28	26.75	27.5	9.5
Kimley-Horn and Associates, Inc. Lubbock, TX	86.5	27.5	27	22.75	9.25
Cobb, Fendley & Associates, Inc. Lubbock, TX	83.5	26.75	25.5	21.75	9.5
DE Corp. Dallas, TX	77	24.25	22.75	20.5	9.5
Plummer Lubbock, Tx	76.25	24.75	22.75	19.75	9
Provenance Engineering Fort Worth, TX	74.25	24.5	20	21	8.75



Information

Agenda Item

Resolution - Engineering: Consider a resolution authorizing the Mayor to execute Public Works Contract 17342, with Lone Star Dirt & Paving, Ltd., for the Unpaved Roads Improvements Project, through Certificate of Obligation Bonds, Phase 3.

Item Summary

This project will improve various dirt roads with asphalt pavement. The main components of the project will include construction of approximately 24,000 linear feet of curb and gutter and 55,000 square yards of asphalt pavement. Roads selected for improvements include portions of North Waco Avenue, 21st Street, Wasau Avenue, 22nd Street, 26th Street, East 49th Street, East 81st Street, Iola Avenue, and Ash Avenue. These improvements are being funded through the Certificate of Obligation bonds approved by the City Council in 2021.

In response to RFP-23-17342-KM, 2 proposals were received and opened on May 31, 2023, as follows:

Contractor	Amount
Lone Star Dirt & Paving, Ltd., Lubbock, Texas	\$5,186,636
West Texas Paving Inc., Wolfforth, Texas	\$6,443,528

The proposals were evaluated using the following criteria: Price (60 points), Contractor Qualifications (30 points), Construction Time (10 points), for the maximum point value of 100 points per evaluator. After the proposals were evaluated by the RFP committee, the following ranking was obtained by the Evaluation Committee:

Contractor			
Lone Star Dirt & Paving, Ltd., Lubbock, Texas	96.12		
West Texas Paving Inc., Wolfforth, Texas	83.92		

Staff recommends award to the highest ranked proposer, Lone Star Dirt and Paving, Ltd., of Lubbock, Texas, for the contract amount of \$5,186,636. Time for substantial completion is 335 calendar days with liquidated damages of \$500 per day. This contract is awarded by the unit price and actual expenditures may be more or less depending on field conditions.

Fiscal Impact

This contract for \$5,186,636, is funded in Capital Improvements Project 92712, Transportation Improvements/Unpaved, and 92739 Iola Avenue from 122nd Street to FM 1585.

Staff/Board Recommending

Attachments

Resolution
Construction Contract
COPhase3 - map
Budget Detail
CIP Detail
CIP Detail

Project Summary Sheet

RESOLUTION

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

THAT the Mayor of the City of Lubbock is hereby authorized and directed to execute for and on behalf of the City of Lubbock, Public Works Contract No. 17342 for unpaved roads improvements C.O. Phase 3 as per RFP 23-17342-KM, by and between the City of Lubbock and Lone Star Dirt & Paving, Ltd 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	•	
	TRAY PAYNE, MAYOR	
ATTEST:		
Courtney Paz, City Secretary		
APPROVED AS TO CONTENT:		
65		
Erik Rejino, Assistant City Manager		
APPROVED AS TO FORM:		
Ulli Rumri		
Kelli Leisure, Senior Assistant City Attorne	y	

 ${\tt ccdocs/RES.Public\ Works\ Contract\ 17342\ unpaved\ roads\ phase\ 3}$ 6.1.23

PROPOSAL SUBMITTAL FORM **UNIT PRICE PROPOSAL CONTRACT**

	DATE:
	PROJECT NUMBER: RFP 23-17342-KM Unpaved Roads Improvements C.O. Phase 3
	Proposal of Lone Star Dint & Paving (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 construction of the referenced 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. The price to cover all expenses incurred in performing the work required under the contract documents.
PF	ROPOSED CONSTRUCTION TIME:
1.	Contractors proposed CONSTRUCTION TIME for completion:
	TOTAL CONSECUTIVE CALENDAR DAYS: 335 (to Substantial Completion)
	TOTAL CONSECUTIVE CALENDAR DAYS: 365 (to Final Completion)
<u>(n</u>	not to exceed 335 consecutive calendar days to Substantial Completion / 365 consecutive calendar days
	to Final Completion).

1.

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 335 Consecutive Calendar Days with final completion within 365 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 \$500 for each consecutive calendar day after substantial completion and liquidated damages in the sum of \$300 for each consecutive calendar day after final completion set forth herein above for completion of this project, all

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

as more fully set forth in the General Conditions of the Agreement.

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.

Unpaved Roads Improvements C.O. Phase 3

Lone Star Dirt & Paving of Lubbock, TX

# Items	QTY +/-	U/M	Unit Price	Extended Cost
1 N. Waco Ave from 1st Street to Auburn Street				
#1-1 MOBILIZATION	1	LS	9,000.00	9,000.00
#1-2 SWPPP	1	LS	4,000.00	4,000.00
#1-3 PREPARING OF RIGHT-OF-WAY	6	STA	3,500.00	21,000.00
#1-4 ASPHALT REMOVAL	57	SY	25.00	1,425.00
#1-5 CONCRETE REMOVAL	400	SY	50.00	20,000.00
#1-6 24" COL TYPE A OR B CURB AND GUTTER CURB	1401	LF	32.00	44,832.00
#1-7 1' X1 RIBBON CURB	0	LF	40.00	-
#1-8 2" HMAC COL TYPE C	1950	SY	42.00	81,900.00
#1-9 6" CONCRETE VALLEY GUTTER AND FILLET	105	SY	80.00	8,400.00
#1-10 6" CONCRETE ALLEY RETURNS AND DRIVEWAYS	0	SY	80.00	-
#1-11 ADA RAMP	4	EA	1,800.00	7,200.00
#1-12 MANHOLE / VALVE ADJUSTMENTS	1	EA	2,500.00	2,500.00
#1-13 TRAFFIC CONTROL	1	EA	500.00	500.00
2 26th Street from Yuma Ave to Upland Ave, FNI				
#2-1 MOBILIZATION	1	LS	35,000.00	35,000.00
#2-2 SWPPP	1	LS	4,000.00	4,000.00
#2-3 PREPARING OF RIGHT-OF-WAY	38	STA	3,500.00	133,000.00
#2-4 ASPHALT REMOVAL	1027	SY	25.00	25,675.00
#2-5 CONCRETE REMOVAL	52	SY	50.00	2,600.00
#2-6 24" COL TYPE A OR B CURB AND GUTTER CURB	3665	LF	32.00	117,280.00
#2-7 1' X1 RIBBON CURB	0	LF	40.00	-
#2-8 2" HMAC COL TYPE C	9355	SY	42.00	392,910.00
#2-9 6" CONCRETE VALLEY GUTTER AND FILLET	329	SY	80.00	26,320.00
#2-10 6" CONCRETE ALLEY RETURNS AND DRIVEWAYS	286	SY	80.00	22,880.00
#2-11 ADA RAMP	0	EA	1,800.00	-
#2-12 MANHOLE / VALVE ADJUSTMENTS	2	EA	2,500.00	5,000.00
#2-13 TRAFFIC CONTROL	1	EA	500.00	500.00
3 Wausau Ave from 19th St to 26th St, FNI				
#3-1 MOBILIZATION	1	LS	35,000.00	35,000.00
#3-2 SWPPP	1	LS	4,000.00	4,000.00
#3-3 PREPARING OF RIGHT-OF-WAY	26	STA	3,500.00	91,000.00
#3-4 ASPHALT REMOVAL	6	SY	25.00	150.00
#3-5 CONCRETE REMOVAL	0	SY	50.00	-
#3-6 24" COL TYPE A OR B CURB AND GUTTER CURB	0	LF	32.00	-
#3-7 1' X1 RIBBON CURB	4734	LF	40.00	189,360.00
#3-8 2" HMAC COL TYPE C	9591	SY	42.00	402,822.00
#3-9 6" CONCRETE VALLEY GUTTER AND FILLET	85	SY	80.00	6,800.00
#3-10 6" CONCRETE ALLEY RETURNS AND DRIVEWAYS	275	SY	80.00	22,000.00
#3-11 ADA RAMP	0	EA	1,800.00	-
	-		,	

Unpaved Roads Improvements C.O. Phase 3

#	Items	QTY +/-	U/M	Unit Price	Extended Cost
#3-12	MANHOLE / VALVE ADJUSTMENTS	0	EA	2,500.00	-
#3-13	TRAFFIC CONTROL	1	EA	500.00	500.00
4	22nd Street from west of Urbana Place to Upland Ave, FNI				
#4-1	MOBILIZATION	1	LS	19,000.00	19,000.00
#4-2	SWPPP	1	LS	4,000.00	4,000.00
#4-3	PREPARING OF RIGHT-OF-WAY	12	STA	3,500.00	42,000.00
#4-4	ASPHALT REMOVAL	466	SY	25.00	11,650.00
#4-5	CONCRETE REMOVAL	193	SY	50.00	9,650.00
#4-6	24" COL TYPE A OR B CURB AND GUTTER CURB	1508	LF	32.00	48,256.00
#4-7	1' X1 RIBBON CURB	0	LF	40.00	-
#4-8	2" HMAC COL TYPE C	4446	SY	42.00	186,732.00
#4-9	6" CONCRETE VALLEY GUTTER AND FILLET	169	SY	80.00	13,520.00
#4-10	6" CONCRETE ALLEY RETURNS AND DRIVEWAYS	456	SY	80.00	36,480.00
#4-11	ADA RAMP	0	EA	1,800.00	-
#4-12	MANHOLE / VALVE ADJUSTMENTS	11	EA	2,500.00	27,500.00
#4-13	TRAFFIC CONTROL	1	EA	500.00	500.00
5	21st Street from Research Blvd to East Dead End, FNI				
#5-1	MOBILIZATION	1	LS	16,000.00	16,000.00
#5-2	SWPPP	1	LS	4,000.00	4,000.00
#5-3	PREPARING OF RIGHT-OF-WAY	13	STA	3,500.00	45,500.00
#5-4	ASPHALT REMOVAL	6	SY	25.00	150.00
#5-5	CONCRETE REMOVAL	0	SY	50.00	-
#5-6	24" COL TYPE A OR B CURB AND GUTTER CURB	0	LF	32.00	-
#5-7	1' X1 RIBBON CURB	2318	LF	40.00	92,720.00
#5-8	2" HMAC COL TYPE C	3467	SY	42.00	145,614.00
#5-9	6" CONCRETE VALLEY GUTTER AND FILLET	327	SY	80.00	26,160.00
#5-10	6" CONCRETE ALLEY RETURNS AND DRIVEWAYS	0	SY	80.00	-
#5-11	ADA RAMP	0	EA	1,800.00	-
#5-12	MANHOLE / VALVE ADJUSTMENTS	0	EA	2,500.00	-
#5-13	TRAFFIC CONTROL	1	EA	500.00	500.00
6	E. 81st from Ash Ave to Cedar Ave, KHA				
#6-1	MOBILIZATION	1	LS	8,000.00	8,000.00
#6-2	SWPPP	1	LS	4,000.00	4,000.00
#6-3	PREPARING OF RIGHT-OF-WAY	7	STA	3,500.00	24,500.00
#6-4	ASPHALT REMOVAL	19	SY	25.00	475.00
#6-5	CONCRETE REMOVAL	46	SY	50.00	2,300.00
#6-6	24" COL TYPE A OR B CURB AND GUTTER CURB	1154	LF	32.00	36,928.00
#6-7	1' X1 RIBBON CURB	0	LF	40.00	-
#6-8	2" HMAC COL TYPE C	1978	SY	42.00	83,076.00
#6-9	6" CONCRETE VALLEY GUTTER AND FILLET	0	SY	80.00	-

Unpaved Roads Improvements C.O. Phase 3

#	Items	QTY +/-	U/M	Unit Price	Extended Cost
#6-10	6" CONCRETE ALLEY RETURNS AND DRIVEWAYS	51	SY	80.00	4,080.00
#6-11	ADA RAMP	0	EA	1,800.00	-
#6-12	MANHOLE / VALVE ADJUSTMENTS	0	EA	2,500.00	-
#6-13	TRAFFIC CONTROL	1	EA	500.00	500.00
7	E. 49th St from Globe Ave to Ivory Ave, KHA				
#7-1	MOBILIZATION	1	LS	7,500.00	7,500.00
#7-2	SWPPP	1	LS	4,000.00	4,000.00
#7-3	PREPARING OF RIGHT-OF-WAY	7	STA	3,500.00	24,500.00
#7-4	ASPHALT REMOVAL	274	SY	25.00	6,850.00
#7-5	CONCRETE REMOVAL	92	SY	50.00	4,600.00
#7-6	24" COL TYPE A OR B CURB AND GUTTER CURB	912	LF	32.00	29,184.00
#7-7	1' X1 RIBBON CURB	0	LF	40.00	-
#7-8	2" HMAC COL TYPE C	1951	SY	42.00	81,942.00
#7-9	6" CONCRETE VALLEY GUTTER AND FILLET	0	SY	80.00	-
#7-10	6" CONCRETE ALLEY RETURNS AND DRIVEWAYS	29	SY	80.00	2,320.00
#7-11	ADA RAMP	0	EA	1,800.00	-
#7-12	MANHOLE / VALVE ADJUSTMENTS	0	EA	2,500.00	-
#7-13	TRAFFIC CONTROL	1	EA	500.00	500.00
8	Ash Ave				
#8-1	MOBILIZATION	1	LS	50,000.00	50,000.00
#8-2	TEMPORARY STORMWATER POLLUTION	1	LS	4,500.00	4,500.00
	PREVENTION AND EROSION CONTROL MEASURES				
#8-3	TRAFFIC CONTROL	1	LS	12,000.00	12,000.00
#8-4	TREE REMOVAL	1	LS	25,000.00	25,000.00
#8-5	ASPHALT REMOVAL	2157	SY	25.00	53,925.00
#8-6	CONCRETE REMOVAL	95	SY	50.00	4,750.00
#8-7	EXCAVATION FOR ROADWAYS	1310	CY	12.00	15,720.00
#8-8	ROADWAY EMBANKMENT (PLACEMENT OF ON-SITE EXCAVATED MATERIAL)	1118	CY	12.00	13,416.00
#8-9	PAVEMENT SECTION (2.5" HMAC, 10" FLEXIBLE BASE COURSE, 12" COMPACTED SUBGRADE)	9366	SY	68.00	636,888.00
#8-10	24" CONCRETE CURB AND GUTTER	3442	LF	32.00	110,144.00
	6" CONCRETE DRIVEWAYS	131	SY	80.00	10,480.00
	8" CONCRETE PAVING	142	SY	87.00	12,354.00
	8" CONCRETE FILLETS AND VALLEY GUTTERS	731	SY	90.00	65,790.00
	5" CURBED CONCRETE DRAINAGE FLUME	29	SY	80.00	2,320.00
	WATER VALVE BOX ADJUSTMENT	4	EA	1,800.00	7,200.00
	WATER VALVE BOX ADJUSTMENT WATER VALVE VAULT MANHOLE RIM ADJUSTMENT	1	EA	2,500.00	2,500.00
110-10	THE TELL TOOL WENT OLD KIN ADJUST WENT	1	1-11 1	2,200.00	2,500.00

Unpaved Roads Improvements C.O. Phase 3

#	Items	QTY +/-	U/M	Unit Price	Extended Cost
9	Iola Ave	+/-	-	Price	Cost
#9-1	MOBILIZATION	1	LS	60,000.00	60,000.00
#9-2	SWPPP	1	LS	4,500.00	4,500.00
#9-3	TRAFFIC CONTROL	1	LS	12,000.00	12,000.00
#9-4	TREE REMOVAL	1	LS	20,000.00	20,000.00
#9-5	ASPHALT REMOVAL	32	SY	25.00	800.00
#9-6	EXCAVATION FOR ROADWAYS	6035	CY	12.00	72,420.00
#9-7	ROADWAY EMBANKMENT	822	CY	12.00	9,864.00
#9-8	PAVEMENT SECTION (2.5" HMAC, 8" FLEXIBLE BASE COURSE, 12" COMPACTED SUBGRADE)	E 12250	SY	68.00	833,000.00
#9-9	24" CONCRETE CURB AND GUTTER	4850	LF	32.00	155,200.00
#9-10	8"CONCRETE DRIVEWAYS AND ALLEY RETURN	192	SY	87.00	16,704.00
#9-11	8" CONCRETE FILLETS AND VALLEY GUTTER	120	SY	87.00	10,440.00
#9-12	4" CONCRETE SIDEWALK AND DRAINAGE FLARE FLATWORKS	230	SY	56.00	12,880.00
#9-13	6' X 3' BOX CULVERT WITH SAFETY END TREATMENTS	130	LF	1,350.00	175,500.00
#9-14	ADA RAMP	2	LF	1,800.00	3,600.00
		Total (Item	s 1-1 t	through 1-13):	\$200,757.00
		Total (Item	s 2-2 t	through 2-13):	\$765,165.00
		Total (Item	s 3-1 t	through 3-13):	\$751,632.00
		•		through 4-13):	\$399,288.00
		•		through 5-13):	\$330,644.00
		`		through 6-13):	\$163,859.00
		•		through 7-13):	\$161,396.00
		`		through 8-16):	\$1,026,987.00
		`		through 9-14):_	\$1,386,908.00
		ı otal (Item	s 1-1 t	through 9-14): =	\$5,186,636.00

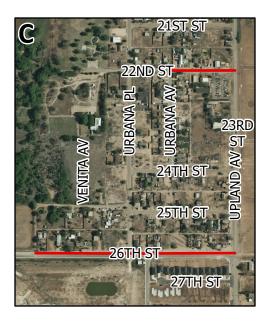
Offerors are required, whether or not a payment or performance bond is required, to submit a cashier's check or certified check issued by a bank satisfactory to the City of Lubbock, or a proposal bond from a reliable surety company, payable without recourse to the order of the City of Lubbock in an amount 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.

Dollars (\$	or a Proposal Bond in the sum, which it is agreed shall be	
collected and retained by the Owner as liquidated dam accepted by the Owner and the undersigned fails to excepted by the Owner and the undersigned fails to except documents, insurance certificates, and the required botten (10) business days after the date of receipt of written proposal; otherwise, said check or bond shall be return demand.	nages in the event the proposal is ecute the necessary contract and (if any) with the Owner within en notification of acceptance of said	
Offeror understands and agrees that the contract to and include all contract documents made available to him 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: 5-31-23 Aothorized Signature (Printed or Typed Name)	_ _
(Seal if Offeror is a Corporation)	Lone Standirt & Par	
ATTEST:	Company —— 1/820 Univ	
Secretary	Address Lub	
Offeror acknowledges receipt of the following addenda: Addenda No. 2 Date 5-23 Addenda No. 3 Date 5-24 Addenda No. Date 5-24 Addenda No. Date 5-24	City, County 7942 State Zip Code Telephone: 806 - 745 6011 Fax: 806 745 4074 Email: FEDERAL TAX ID or SOCIAL SECUNO.	

- 1	i .		1		1
M/WBE Firm:	 Woman	Black American		Native American	
	His anic American	Asian Pacific American		Other (\$\subsetext{S}^\civ)	







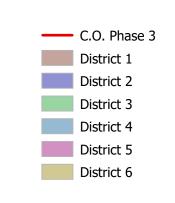


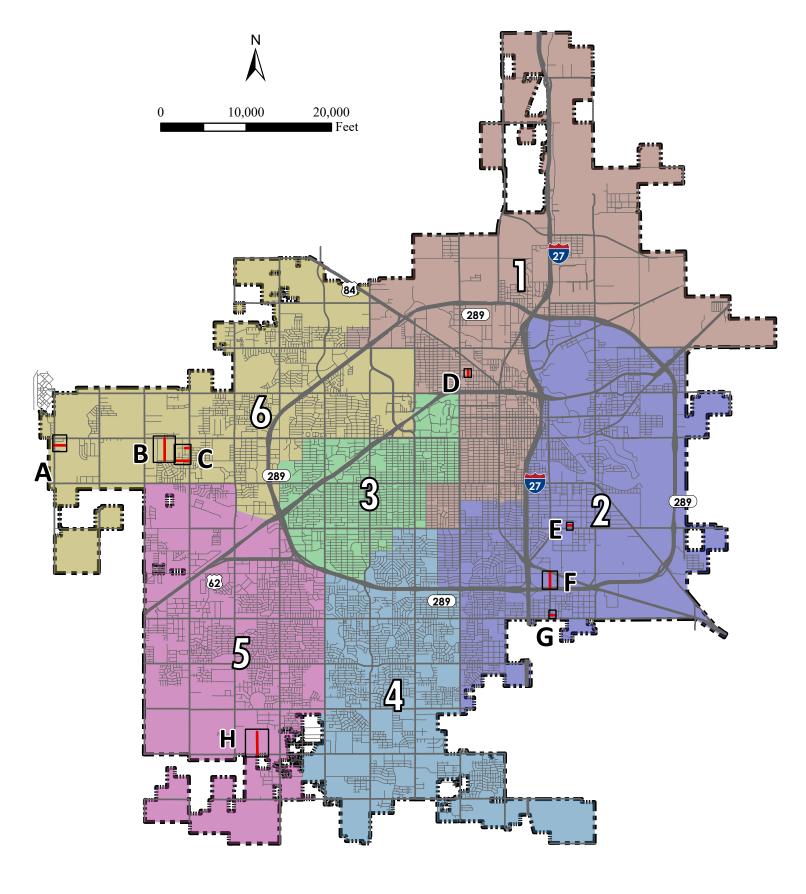












As required by Chapter 2051, Geospatial Data Products of the Government Code, this product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative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

Unpaved Roads Improvements C.O. Phase 3 Project



City of Lubbock Capital Project Project Cost Detail June 27, 2023

Capital Project Number:			92739		
Capital Project Name:	Iola Avenue from 122nd St. to FM 158				
Capital Project Number:			92712		
Capital Project Name:	Transportation Improvements/Unpaved Road				
		Budget			
Encumbered/Expended	92739	92712	Total		
Staff Time	\$8,879	121,745	\$130,625		
Professional Services Advertisement		631	631		
System Capital Improvements Construction		39,053	39,053		
Construction Contract 16211, West Texas Paving, Inc.,		1,346,097	1,346,097		
PSA 16363 with Freese and Nichols		250,000	250,000		
PSA 16440 with Kimley-Horn and Associates, Inc.		175,000	175,000		
Surveying Services by Hugo Reed and Associates, Inc.	4,700	13,974	18,674		
Construction Contract 17342, Lone Star Dirt & Paving		2,118,230	2,118,230		
Amendment 1 to Contract 16363 with FNI		30,306	30,306		

	, ,	5,186,636
1,275,000	8,020,251	9,295,251
	1,275,000	1,275,000 8,020,251

Agenda Item June 27, 2023

Total Appropriation

Estimated Cost for Remaining Appropriation			
Unimproved Roadway Construction and Design		1,038,911	1,038,911
Remaining Appropriation	-	1,038,911	1,038,911

\$1,275,000

\$9,059,162

\$10,334,162

Managing Department Unpaved Streets

Project Manager Josh Kristinek

Project Classification Upgrade/Major Maintenance

Project Status Approved



Project Scope

This project will fund the paving and improvement of existing local residential and collector gravel roads in existing subdivisions where the roads were never improved by the developer. This project will fund the design and construction of various inadequate transportation elements within these areas of the City including unimproved roadway surfaces, unsafe roadway widths, drainage improvements, street lighting, and ADA compliance.

Project Justification

Areas of the City of Lubbock have existing local residential roadways that are gravel and not improved with a paved surface. These roadways were part of developments where the roads were never improved by the developer. These roadways do not meet the City's Standard Specifications and this project will help improve mobility and safety in these residential areas.

Project History

\$9,000,000 was appropriated in FY 2020-21, Budget Amendment No. 35, Ord. No. 2020-00077, July 13, 2021.

				Unappropriated Planning Years				
Appropriation Detail	Appropriation to Date	FY 2022-23	FY 2023-24	FY 2024-25	FY 2025-26	FY 2026-27	FY 2027-28	Total Project Amount
Construction	9,000,000	0	0	0	0	0	0	9,000,000
Total Project Appropriation	9,000,000	0	0	0	0	0	0	9,000,000

	Unappropriated Planning Years							
Funding Detail	Funding to Date	FY 2022-23	FY 2023-24	FY 2024-25	FY 2025-26	FY 2026-27	FY 2027-28	Total Funding
FY 2021 Tax Supported Revenue CO's	9,000,000	0	0	0	0	0	0	9,000,000
Total Funding Sources	9,000,000	0	0	0	0	0	0	9,000,000

	Unappropriated Planning Years						
Operating Budget Impact	FY 2022-23	FY 2023-24	FY 2024-25	FY 2025-26	FY 2026-27	FY 2027-28	Total Impact
No Impact Anticipated	0	0	0	0	0	0	0
Total Operating Budget Impact	0	0	0	0	0	0	0

Managing Department Engineering

Project Manager Josh Kristinek

Project Classification New Roadways

Project Status Approved



Project Scope

This project will pave full width of a collector with curb and gutter along Iola Avenue from 122nd Street to FM 1585.

Start Date In House Design: 10/2021

Project End Date: 7/2022

Bid Date - Construction: 10/2022

Award Date for Construction Bid: 01/2022 Project Start Date - Construction: 03/2022 Project End Date - Construction: 11/2022

Project Justification

The City of Lubbock has a parks facility on the eastern half of Iola Avenue and south of 122nd street. Both roadways are collectors which should have been paved half width when the parks facility was built by development standards. A preliminary agreement has been reached with the developer adjacent to this area for the City to pave the full width of Iola Avenue and the Developer would pave the full width of 122nd Street when developed.

This is also in anticipation of a future Lubbock Cooper school to be constructed in this area.

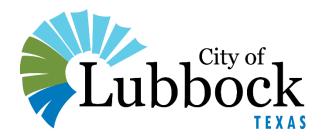
Project History

\$75,000 was appropriated in the FY 2021-22 Budget, Ord. No. 2021-O0126, October 1, 2021.

\$1,200,000 was appropriated in the FY 2022-23 Budget, Ord. No. 2022-O0136, October 1, 2022.

	Unappropriated Planning Years							
Appropriation Detail	Appropriation to Date	FY 2022-23	FY 2023-24	FY 2024-25	FY 2025-26	FY 2026-27	FY 2027-28	Total Project Amount
Construction	0	1,200,000	0	0	0	0	0	1,200,000
Design and Engineering	75,000	0	0	0	0	0	0	75,000
Total Project Appropriation	75,000	1,200,000	0	0	0	0	0	1,275,000

	Unappropriated Planning Years								
Funding Detail	Funding to Date	FY 2022-23	FY 2023-24	FY 2024-25	FY 2025-26	FY 2026-27	FY 2027-28	Total Funding	
FY 2022 General Fund Cash	75,000	0	0	0	0	0	0	75,000	
FY 2023 General Fund Cash	0	1,200,000	0	0	0	0	0	1,200,000	
Total Funding Sources	75,000	1,200,000	0	0	0	0	0	1,275,000	



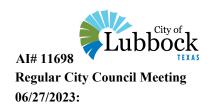
Purchasing and Contract Management

Project Summary

RFP 23-17342-KM Unpaved Roads Improvements C.O. Phase 3

Notice was published in the Lubbock Avalanche Journal on May 9 & May 16, 2023 Notice was published on the Purchasing Web Site under Bid Opportunities. Notice was published on the State of Texas Electronic State Business Daily. Notice was published on Bonfire.com from May 8 to May 31, 2023. 6 individuals attended the pre-proposal meeting.

- 44 vendors downloaded the documents using Bonfire.com.
- 26 vendors were notified separately.
- 2 vendors submitted proposals.



Information

Agenda Item

Resolution - Engineering: Consider a resolution authorizing the Mayor to execute Development Agreement Contract 17207, with Red Canyon Development, LLC., for the construction of drainage improvements along Memphis Avenue and 114th Street.

Item Summary

The developer of property adjacent to Memphis Avenue and 114th Street requested that the City participate in the costs associated with the Memphis Avenue Drainage Improvements Project.

These improvements will occur along the east side of Memphis Avenue and will include surface and subsurface drainage improvements to convey surface water that comes to this location from Memphis Avenue. This agreement will utilize the established Capital Improvement Project 92708, Memphis Avenue Drainage Improvements, and appropriate funding in the amount of \$120,583 from the Stormwater Fund for a development agreement between the City of Lubbock and Red Canyon Development, LLC.

Fiscal Impact

This development agreement in the amount of \$120,583 is funded in Capital Improvement Project 92708, Memphis Avenue Drainage Improvements.

Staff/Board Recommending

Erik Rejino, Assistant City Manager Michael G. Keenum, P.E., Division Director of Engineering/City Engineer

Attachments

Resolution
Agreement
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, the Development Agreement Contract No. 17207 for the construction of drainage improvements, by and between the City of Lubbock and Red Canyon Development, LLC, of Lubbock, 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.

minutes of the City Council.	v v
Passed by the City Council on	·
*	
	TRAY PAYNE, MAYOR
ATTEST:	
Courtney Paz, City Secretary	
APPROVED AS TO CONTENT:	
201/-	
Erik Rejing, Assistant City Manager	fa
APPROVED AS TO FORM:	
V/10 - Lan -	
Walli Laigura Saniar Aggistant City Attama	NV.
Kelli Leisure, Senior Assistant City Attorno	5y

 ${\tt ccdocs/RES. development\ agreement-Gates\ drainage}\\ {\tt 6.8.23}$

STATE OF TEXAS

§

COUNTY OF LUBBOCK §

DEVELOPMENT AGREEMENT FOR CONSTRUCTION OF DRAINAGE IMPROVEMENTS – THE GATES DEVELOPMENT

This Develop	ment Agreement ("Agreement") No. 17207 is entered into this
day of	, 2023, by and between the City of Lubbock, Texas, a Texas
home rule municipal	corporation (the "City") and, Red Canyon Development, LLC, (the
"Developer").	

WITNESSETH:

WHEREAS, Developer is the developer of certain real property adjacent to Memphis Avenue, the Gates development, located within the corporate limits of the City;

WHEREAS, Developer shall build drainage improvements related to the flow of public surface water from Memphis Avenue and over and into the Playa Lake located to the east of the Gates development in order to manage the flow of surface water to avoid surface flooding;

WHEREAS, those certain Drainage Improvements (the "Drainage Improvements") are related to the Developer's Gates development and are depicted on Exhibit "A" attached hereto and incorporated herein;

WHEREAS, the City desires that such Drainage Improvements be made;

WHEREAS, the City, to realize cost savings due to the Developers participation in, and installation of, the Drainage Improvements, now desires that Developer perform such Drainage Improvements, and that the City participate in costs for said improvements; and

WHEREAS, in compliance with the Texas Local Government Code Chapter 212, the City and Developer now desire to enter into this Agreement wherein City agrees to participate in the cost of the Drainage Improvements in a level not to exceed 30 percent (30%) of the total contract price.

NOW, THEREFORE, in consideration of the mutual covenants, promises and obligations set forth herein, the sufficiency of which is hereby acknowledged, the City and Developer hereby agree as follows:

SECTION 1 Developer Activities

- 1.01 Developer shall proceed in a diligent manner to complete the Drainage Improvements in accordance with all applicable laws, City of Lubbock Code of Ordinances, and City of Lubbock policies. Completion of such improvements shall occur on or before December 31, 2023. Completion of the Drainage Improvements herein shall not be deemed to have occurred unless and until the City has accepted such improvements as being in compliance with the terms of this Agreement.
- 1.02 Developer shall comply with applicable laws related to private performance of public improvements, including without limitation, Subchapter C of Chapter 212 of the Local Government Code.

SECTION 2 City Participation

- Improvements in an amount not to exceed, one hundred twenty thousand five hundred eighty-two and 10/100 Dollars (\$120,582.10), based on the Opinion of Probable Cost Estimate of the Drainage Improvements, attached hereto as Exhibit A and incorporated herein. It is expressly hereby represented and warranted by Developer to City that the 2021 total Contract Price regarding this project was estimated to be four hundred one thousand nine hundred forty and 35/100 Dollars (\$401,940.35). Further the Developer warrants that the current pricing for the Drainage Improvements has increased since the 2021 cost estimates performed, and the Developer shall pay for, and agrees to pay for, all said costs above and beyond the City's contributed as stated herein.
- 2.02 The City shall pay to Developer the actual bid price amount, as limited herein not to exceed the lesser of \$120,582.10 or thirty percent (30%) of the Contract Price upon completion of the Drainage Improvements herein, and inspection and

acceptance thereof by the City. It is expressly stipulated that the City shall owe no funds to Developer unless and until the Drainage Improvements herein are completed in accordance with all laws, City of Lubbock Code of Ordinance provisions, and City of Lubbock policies.

2.03 Under no circumstance or event shall the participation of the City exceed the lesser of \$120,582.10 or thirty percent (30%) of the total contract price as required by subchapter C of Chapter 212 of the Texas Local Government Code. In the event such participation, as computed and limited herein by the "not to exceed" sum provided in Section 2.01, above, shall so exceed thirty percent (30%) of the Contract Price, the City shall be obligated to pay only the lesser of \$120,582.10 or thirty percent (30%) of the Contract Price, but never more than the "not to exceed" sum provided in Section 2.01, above.

SECTION 3 Performance Bond

3.01 Developer shall execute a Performance Bond for the construction of the Drainage Improvements herein to insure completion of the project. The bond must be executed by a corporate surety in accordance with Chapter 2253, Government Code, State of Texas. The bond shall be submitted to the City Engineer of the City of Lubbock on or before beginning any work on the Drainage Improvements. In the event such performance bond is not so submitted, this Contract shall be null and void and of no force and effect.

SECTION 4 Additional Safeguards

- 4.01 All of Developer's books and other records related to the Developer's Drainage Improvements project shall be available for inspection by the City.
- 4.02 Developer shall furnish actual contract documentation to the City that depicts the actual costs of construction of the Drainage Improvements prior to request for payment from the City.

SECTION 5 Term

5.01 The term of this Agreement shall begin on the date of execution of this Agreement by City and end upon the complete performance of all obligations by each party to this Agreement.

SECTION 6 Indemnity

6.01 Developer agrees to defend, indemnify, and hold City, its officers, agents, employees, and elected officials, harmless from and against any and all claims, lawsuits, liabilities, judgments, costs and expenses for any harm for which recovery of damages is sought that may arise out of, be occasioned by or related to Developer's breach of any of the terms or provisions of this Agreement.

SECTION 7 Events of Default / Remedies

- 7.01 A default shall exist if either party fails to perform or observe any material covenant or obligation contained in this Agreement, or if any material representation and/or warranty provided for herein is not true or correct. The non-defaulting party shall notify the defaulting party in writing upon becoming aware of any event that constitutes a default. Such notice shall specify the nature of the default and what action, if any, the non-defaulting party requires or proposes to require with respect to curing the default.
- 7.02 If a default shall occur and be continuing, after ten (10) days written notice to cure such default, the non-defaulting party may pursue any and all remedies it may be entitled to at law, contract, equity, or otherwise, including without limitation, termination of this Agreement. It is agreed that failure to declare this Agreement terminated upon the default of Developer for any of the reasons set forth above shall not be construed as a waiver of any of the City's rights hereunder or otherwise bar or preclude City from declaring this Agreement terminated as a result of any subsequent violation of any of the terms or conditions of this Agreement. All of such remedies are expressly cumulative and the exercise of one or more remedies shall not preclude the simultaneous or subsequent exercise of different or additional remedies.

SECTION 8 Miscellaneous

- 8.01 This Agreement is performable in Lubbock County, Texas, and venue for any action arising out of this Agreement shall be exclusively in Lubbock County, Texas. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas.
- 8.02 Any notice required by this Agreement shall be deemed to be properly served, if
 (i) provided in person or by telephonic facsimile; or (ii) deposited in the United
 States mail by certified letter, return receipt requested, addressed to the recipient

at recipient's address shown below, subject to the right of either party to designate a different address by notice given in the manner just described. Notice shall be deemed to be received when delivered if provided in person or by telephonic facsimile or, if deposited in the United States mail, as set forth above, (4) days after depositing such notice in the United States mail, as set forth above. For City:

Jarrett Atkinson, City Manager City of Lubbock P. O. Box 2000 Lubbock, Texas 79457 Email: jatkinson@mylubbock.us

with copy to:

Michael G. Keenum, P.E., CFM
Division Director of Engineering/City Engineer
City of Lubbock
P.O. Box 2000
Lubbock, Texas 79457
Email: mkeenum@mylubbock.us

For Developer:

Thomas K. Payne
Red Canyon Development, LLC
P.O. Box 64664
Lubbock, TX 79464
Email: tpayn3@gmail.com

- 8.03 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, except as may otherwise be provided herein, such invalidity, illegality or unenforceability shall not in any way affect any other provision hereof and this Agreement shall be considered as if such invalid, illegal or unenforceable provision had never been contained in this Agreement.
- 8.04 City and Developer each bind themselves and their successors and assigns to the other parties of this Agreement. Developer represents and warrants to City that it (i) possesses the requisite power and authority to execute, deliver and perform this

Agreement; (ii) has taken all actions and formalities necessary to authorize Developer to execute, deliver and perform this Agreement; and (iii) the party executing for and on behalf of Developer has been duly authorized to act in such behalf for Developer.

- 8.05 City and Developer herein recognize that the continuation of any agreement at the close of any given fiscal year of the City of Lubbock, Texas, which fiscal year ends on September 30 of each year, shall be subject to Council budget approval of the City, providing for or covering such agreement item as an expenditure therein. The City does not represent that said budget item will actually be adopted as this determination is within the sole discretion of the City Council.
- 8.06 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.
- 8.07 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
- 8.08 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.
- 8.09 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.

- 8.10 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.
- 8.11 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.

The parties enter into this Agreement on the	ne, 2023
CITY OF LUBBOCK:	RED CANYON DEVELOPMENT, LLC:
TRAY PAYNE, MAYOR	THOMAS PAYNE, MANAGER
ATTEST:	
Courtney Paz, City Secretary	
APPROVED AS TO CONTENT:	
Michael G. Keenum, P.E., Division Director of	Engineering/City Engineer
APPROVED AS TO FORM:	
Willi Leisure, Senior Assistant City Attorney	



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

Stormwater Drainage Improvements along Memphis



City of Lubbock, TX Capital Project Project Cost Detail June 27, 2023

Capital Project Number:	92708				
Capital Project Name:	Memphis Ave Drainage Improvements				
Encumbered/Expended	Budget 92708 \$-				
Agenda Item June 27, 2023					
Developer Agreement Contract 17207	120,583				
Encumbered/Expended to Date	120,583				

92708

Managing Department Storm Water Utility

Project Manager Josh Kristinek

Project Classification Infrastructure Improvements

Project Status Approved



Project Scope

These project includes drainage improvements along Memphis Avenue from 111th Street to 114th Street. The stormwater improvements will convey water from Memphis Avenue to Playa Lake 90A.

Project Justification

The developer of the property adjacent to Memphis Avenue requested the City of Lubbock participate in a development agreement that would improve the stormwater system along Memphis Ave from 111th to 114th Street.

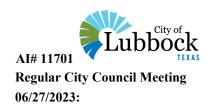
Project History

\$120,583 was appropriated in FY 2020-21, Budget Amendment No. 11, Ord. No. 2020-O0024, March 23, 2021.

		Unappropriated Planning Years						
Appropriation Detail	Appropriation to Date	FY 2022-23	FY 2023-24	FY 2024-25	FY 2025-26	FY 2026-27	FY 2027-28	Total Project Amount
Construction	120,583	0	0	0	0	0	0	120,583
Total Project Appropriation	120,583	0	0	0	0	0	0	120,583

Funding Detail	Funding to Date	FY 2022-23	FY 2023-24	FY 2024-25	FY 2025-26	FY 2026-27	FY 2027-28	Total Funding
FY 2021 Storm Water Cash	120,583	0	0	0	0	0	0	120,583
Total Funding Sources	120,583	0	0	0	0	0	0	120,583

	Unappropriated Planning Years						
Operating Budget Impact	FY 2022-23	FY 2023-24	FY 2024-25	FY 2025-26	FY 2026-27	FY 2027-28	Total Impact
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 - Water Operations: Consider a resolution rejecting all bids, in response to ITB 23-17324-YB, for wooden power poles to be used at the Bailey County Well Field.

Item Summary

The Bailey County Well Field (BCWF) is an important water supply for the City of Lubbock. About 16% of the water used each year by the citizens of Lubbock comes from the BCWF. The Water Utility owns and operates the well field which includes wells, pumps, and electrical distribution infrastructure that provides power to the pumps. Many miles of damaged and aged wood power poles are currently being replaced in the well field, in order to maintain the integrity of the power supply to the wells.

ITB 23-17324-YB was advertised for the purchase of additional wood power poles to be used in the Bailey County Well Field to maintain the electrical distribution infrastructure. A sole bid for \$51,480 was submitted to the Purchasing Department, by Telecom Electric Supply Company, of Plano, Texas. The unit cost of \$1,716 exceeded that which was approved for purchase on November 17, 2022, under Purchase Order 22105266, by 53%. This price increase appears to be excessive. Therefore, Water Utilities Staff recommends rejecting the only bid, and rebidding this item to encourage a more competitive bidding process.

Fiscal Impact

Staff recommends rejecting the sole bid submitted by Telecom Electric Supply Company for \$51,480.

Staff/Board Recommending

Erik Rejino, Assistant City Manager L. Wood Franklin, P.E., Division Director of Public Works

Attachments

Resolution

RESOLUTION

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

THAT the City Council of the City of Lubbock hereby rejects any and all bids received for the wood poles for Bailey County pursuant to ITB 23-17324-YB and orders that no contract be entered into pursuant to said invitation to bid.

Daggad houtho City Council on	
Passed by the City Council on	·
	TRAY PAYNE, MAYOR
ATTEST:	
ATTEST.	
Courtney Paz, City Secretary	
APPROVED AS TO CONTENT:	
File	
Erik Rejino, Assistant City Manager	
ADDDOVED AS TO FORM	
APPROVED AS TO FORM:	
C - S	1
Amy L. Sims, Deputy City Attorney	
RES.Rejection of Bids- ITB 23-17324-YB 5.26.23	

Information

Agenda Item

Resolution - Wastewater Utility: Consider a resolution authorizing the Mayor to execute Purchase Order 23105667, with James, Cooke and Hobson, Inc., for three wastewater submersible Flygt pumps for the Southeast Water Reclamation Plant.

Item Summary

The intermediate lift station at the Southeast Water Reclamation Plant (SEWRP) lifts wastewater into Plant #4 for wastewater treatment. This lift station was designed specifically for Flygt submersible pumps and can operate using up to 5, 70-Horsepower submersible Flygt pumps. Of the current Flygt pumps, 1 needs to be replaced.

Lift station #48 lifts wastewater from 2 of the 7 primary wastewater collection system sewer pipelines that deliver wastewater into the SEWRP. This lift station is designed to operate with 4, 60-Horsepower submersible Flygt pumps. Of these 4 Flygt pumps, 2 need to be replaced.

The pumps for both lift stations, move wastewater through the wastewater treatment system 24 hours a day, 7 days a week. Due to the harsh conditions of wastewater, the Flygt pumps have reached their useful life and need to be replaced.

The purchase of these 3 Flygt pumps is a direct replacement of the current pumps with little or no modification to the existing controllers or electrical equipment. This will be a sole source purchase with James, Cooke, and Hobson, Inc. of Albuquerque, New Mexico, which is the assigned representative of Flygt pumps in Lubbock.

Fiscal Impact

Purchase Order 23105667 for \$226,132 is funded in Capital Improvement Project 92803 Water Reclamation Plant Replacement FY2022-23.

Staff/Board Recommending

Erik Rejino, Assistant City Manager L. Wood Franklin, P.E., Division Director of Public Works

Attachments

Resolution Purchase Order Budget Detail CIP detail

RESOLUTION

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

THAT the Mayor of the City of Lubbock is hereby authorized and directed to execute for and on behalf of the City of Lubbock, Purchase Order No. 23105667 for the purchase of Flygt Pumps for Lift Station 48 and Intermediate Lift Station at the SEWRP, by and between the City of Lubbock and James, Cooke and Hobson, Inc. of Albuquerque, NM, 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.

ATTEST:	TRAY PAYNE, MAY	OR
ATTEST:	TRAY PAYNE, MAY	OR
ATTEST:		
Courtney Paz, City Secretary		
APPROVED AS TO CONTENT:		
Coci		
Erik Rejino, Assistant City Manager		
APPROVED AS TO FORM:		
122		
Amy L. Sims, Deputy City Attorney		

RES.James, Cooke and Hobson-PurchaseOrd 23105667



Page	-	1 of 2
Date	_	6/7/2023

Order Number 23105667 000 OP

Branch/Plant

231

JAMES, COOKE AND HOBSON, INC. TO: 4210 HAWKINS ST NE

ALBUQUERQUE NM 87109-4510

SHIP TO:

CITY OF LUBBOCK WATER RECLAMATION PLANT 3603 GUAVA AVENUE LUBBOCK TX 79403

INVOICE TO:

CITY OF LUBBOCK ACCOUNTS PAYABLE P.O. BOX 2000 LUBBOCK, TX 79457

varez, Director of Purchasing & Contract Management

Ordered

6/7/2023

Freight

Requested

11/14/2023

Taken By

S BALLANCE

Delivery PER M GONZALES REQ 60281

PUR 17418/ SOLE SOURCE

If you should have any questions, please contact Mary Gonzales: MHGonzales@mylubbock.us or 806-775-3229

Description/Supplier Item	Ordered	Unit Cost	UM	Extension	Request Date
Flygt NP3202 614imp 60 hp	2.000	70,800.0000	EA	141,600.00	11/14/2023
Flygt NP3301 626imp 70hp	1.000	84,532.0000	EA	84,532.00	11/14/2023
			Tot	tal Order	
Terms NET 30				226,132.00	

This purchase order encumbers funds in the amount of \$226,132.00 awarded to James, Cooke and Hobson, Inc. of
Albuquerque, NM, on, 2023. The following is incorporated into and made part of this purchase order
by reference: Quote dated April 25, 2023, from James, Cooke and Hobson, Inc. of Albuquerque, NM.
Resolution #

CITY OF LUBBOCK:

ATTEST:

Tray Payne, Mayor

Courtney Paz, City Secretary



Page -

Date

6/7/2023

2 of 2

Order Number 23105667 000 OP

Branch/Plant 231

TO:

JAMES, COOKE AND HOBSON, INC.

4210 HAWKINS ST NE

ALBUQUERQUE NM 87109-4510

SHIP TO:

CITY OF LUBBOCK WATER RECLAMATION PLANT 3603 GUAVA AVENUE LUBBOCK TX 79403

INVOICE TO:

CITY OF LUBBOCK ACCOUNTS PAYABLE P.O. BOX 2000 LUBBOCK, TX 79457 BY:

Marta Alvarez, Director of Purchasing & Contract Management

Ordered

6/7/2023

Freight

Requested

11/14/2023

Taken By

S BALLANCE

Delivery PER M GONZALES REQ 60281

PUR 17418/ SOLE SOURCE

If you should have any questions, please contact Mary Gonzales: MHGonzales@mylubbock.us or 806-775-3229

INSURANCE REQUIRED:

Commercial General Liability:

\$1,000,000 occurrence / \$2,000,000 aggregate (can be combined with an Excess Liability to meet requirement). CGL is required in ALL contracts. It is perhaps the most important of all insurance policies in a contractual relationship. It insures the Contractor has broad liability coverage for contractual activities and for completed operations.

Commercial General Liability to include Products – Completion/OP, Personal and Advertising Injury, Contractual Liability, Fire Damage (any one fire), and Medical Expenses (any one person).

Workers Compensation and Employer Liability:

Statutory. If the vendor is an independent contractor with no employees and are exempt from providing Workers' Compensation coverage, they must sign a waiver (obtained from COL Purchasing) and include a copy of their driver's license. Employer Liability (\$1M) is required with Workers Compensation.

Additional Policies: N/A

Automotive Liability:

Combined Single limit for Any Auto - \$1,000,000

*The City of Lubbock (including its officials, employees and volunteers) shall be afforded additional insured status on a primary and non-contributory basis on all liability policies except professional liabilities and workers' comp. *Waivers of Subrogation are required for CGL, AL, and WC. *To Include Products of Completed Operations endorsement. *Carrier will provide a 30-day written notice of cancellation, 10-day written notice for non-payment. *Carriers must meet an A.M. Best rating of A- or better. *Subcontractors must carry same limits as listed above.

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.

- 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 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 viciation 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
- 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 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,
- 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/departmentalwebsites/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: orr@mylubbock.us. Plea send this request to this email address for it to be processed



Address: 102 Nena Amarillo, TX 79119
Phone: (806) 676-0017 Web: jchinc.com

4/25/2023

Attention: Mary

Subject: Quote for new Flygt pumps for the LS 48 and Intermediate LS

Dear Mary:

Thank you for giving us the opportunity to quote you new Flgyt pumps for the above-mentioned locations at the WWTP. All these will have to come from factory with an 18–20-week delivery on Ocean freight. We will pass along updates on the delivery as we get notification from Flygt on the progress. I'm hoping that the delivery will be a few weeks shorter. Please use the below pricing and please remember we have added shielded cable to each of these pumps since they all run on VFD:

- Lift_station #48
 - o NP3202 614imp., 60hp, 460VAC 3phase, 12" discharge, 65' shielded cable, FLS(Float Leakage sensor), FV(Flush valve port).
 - Your cost is \$70,800.00 each.
 - Quantity of (2) the total would be \$141,600.00
- Intermediate Lift station
 - o NP3301 626imp. 70hp, 460VAC 3phase, 12" discharge, 65' shielded cable, FLS (Float leakage sensor), FV(Flush valve port), FM(explosion proof)
 - Your cost is \$84,532.00 each.
 - Quantity of (1) the total would be \$84,532.00

Price is fob job site (no freight charges)

Terms are Net 30. Quote is valid for 90 days.

Please review above carefully and feel free to call with any questions. Thank you!!

Mike Neill Sales Engineer



Cell: 806-336-5913 Office: 806-641-8750

Email: Mike.neill@jchinc.com

www.jchinc.com



City of Lubbock Capital Project Project Cost Detail June 27, 2023

Capital Project Number:	92803
Capital Project Name:	Water Reclamation Plant Replacement FY 2022-23

	Budget
Encumbered/Expended	
Flygt Headworks Repair	\$36,575
Construction of Pad and Installation Plant # 3 Blower	31,664
Repair of 18" Vavle NWWRP Equilization Basin	14,077
Repair of Digester 9 Boiler	38,617
Repairs and Rehab of Pumps	53,839
LS # 48 Check Valves and Gaskets	48,623
NW MCC Basin Membrane Air Control System	25,488
Incline Conveyor Repairs	51,145
Rotary Drum Thickener Repairs	37,469
NWWRP Grit Rehab	49,999
SEWRP Sampler Replacement	21,864
Agenda Item June 27, 2023	
Wastewater Flygt Pumps	226,132
Encumbered/Expended To Date	635,492
Estimated Cost for Remainaing Appropriation	
SEWRP & NWWRP Rehab & Improvements	264,508
Remaining Appropriation	264,508
Total Appropriation	\$900,000

Managing Department

Wastewater Treatment

Project Manager

Project Name

Mary Gonzales

Project Classification

Upgrade/Major Maintenance

Project Status

Approved

Project Scope

This project is for the purchase and installation of new equipment, modifying and/or rehabilitating existing equipment and piping systems. The project also includes other major maintenance activities at the Southeast and Northwest Water Reclamation Plants. FY 2022-23 – Southeast Water Reclamation Plant - add additional multistage blower on Plant #4 and electrical components for redundancy. Replace one blower on Plant #3. Replace aging submersible pumps at intermediate lift station, headworks, and lift station 48.

Project Justification

Replacing aging infrastructure reduces emergency maintenance expenditures and system failures.

Project History

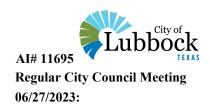
\$1,000,000 was appropriated in the FY 2022-23 Budget, Ord. No. 2022-O0136, October 1, 2022.

Reduced appropriation by \$100,000 in FY 2022-23 Budget, BCR 2023-7, December 9, 2022.

			Unappropriated Planning Years					
Appropriation Detail	Appropriation to Date	FY 2023-24	FY 2024-25	FY 2025-26	FY 2026-27	FY 2027-28	FY 2028-29	Total Project Amount
Construction	900,000	300,000	300,000	300,000	300,000	300,000	0	2,400,000
Total Project Appropriation	900,000	300,000	300,000	300,000	300,000	300,000	0	2,400,000

	Unappropriated Planning Years							
Funding Detail	Funding to Date	FY 2023-24	FY 2024-25	FY 2025-26	FY 2026-27	FY 2027-28	FY 2028-29	Total Funding
FY 2023 Water/Wastewater Cash	900,000	0	0	0	0	0	0	900,000
FY 2024 Water/Wastewater Cash	0	300,000	0	0	0	0	0	300,000
FY 2025 Water/Wastewater Cash	0	0	300,000	0	0	0	0	300,000
FY 2026 Water/Wastewater Cash	0	0	0	300,000	0	0	0	300,000
FY 2027 Water/Wastewater Cash	0	0	0	0	300,000	0	0	300,000
FY 2028 Water/Wastewater Cash	0	0	0	0	0	300,000	0	300,000
Total Funding Sources	900,000	300,000	300,000	300,000	300,000	300,000	0	2,400,000

		Unappropriated Planning Years					
Operating Budget Impact	FY 2023-24	FY 2024-25	FY 2025-26	FY 2026-27	FY 2027-28	FY 2028-29	Total Impact
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 - Public Works Streets: Consider a resolution authorizing the Mayor to execute Contract 17328, with West Texas Paving, to establish the annual pricing of asphalt materials.

Item Summary

This contract establishes the pricing for certain asphalt products used in the construction, maintenance, and repair of public streets, alleys, and utility installations. The term of this contract is one year, with the option of 4, one-year extensions.

Multiple vendors were notified of this ITB. One bid was received and opened on the afternoon of May 16, 2023, from West Texas Paving, Inc. of Wolfforth, Texas with identified unit price costs for 6 of the 8 asphalt products specified. The total for all unit pricing is \$1,540,000.

Staff recommends award of this ITB to West Texas Paving for the estimated cost of \$1,540,000.

This contract is awarded by the unit price. The total amount of the award is estimated based on expected quantities and actual expenditures may be more or less depending on actual quantities. The price per unit will not change.

Fiscal Impact

Contract 17328 for \$1,540,000, is funded in the Street Maintenance Department 2023 Operating Budget.

Staff/Board Recommending

Erik Rejino, Assistant City Manager L. Wood Franklin, P.E., Division Director of Public Works

Attachments

Resolution - West Texas Paving Contract - West Texas Paving Project Summary - Asphalt Materials

RESOLUTION

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

THAT the Mayor of the City of Lubbock is hereby authorized and directed to execute for and on behalf of the City of Lubbock, Service Contract No. 17328 for asphalt materials used in construction and maintenance as per ITB 23-17328-SB, by and between the City of Lubbock and West Texas Paving, Inc. of Wolfforth, TX 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	·
	TRAY PAYNE, MAYOR
ATTEST:	
Courtney Paz, City Secretary	
APPROVED AS TO CONTENT:	
Erik Rejino, Assistant City Manager	
APPROVED AS TO FORM: Continue	ey

ccdocs/RES.ServiceContract 17328 asphalt materials 6.1.23

City of Lubbock Contract for ITB 23-17328-SB

Asphalt Materials Used in Construction and Maintenance

THIS CONTRACT made and entered into this _	day of	, 2023, by and between the
City of Lubbock ("City"), and West Texas Paving	g, Inc., ("Cont	ractor").

WITNESSETH:

WHEREAS, the City of Lubbock duly advertised for bids for Asphalt Materials Used in Construction and Maintenance and bids were received and duly opened as required by law; and

WHEREAS, after careful consideration of the bid submitted by Contractor, the City authorized the execution, in the name of the City of Lubbock a contract with said Contractor covering the purchase and delivery of the said Asphalt Materials Used in Construction and Maintenance.

NOW, THEREFORE, in consideration of the mutual agreement contained herein, as well as the financial consideration hereinafter referred to, the parties hereby covenant and agree as follows:

- 1. In accordance with City's specifications and Contractor's bid, copies of which are attached hereto and made part hereof, Contractor will deliver to the City, Asphalt Materials Used in Construction and Maintenance, and more specifically referred to as **Items 0-1 through 0-6** on the bid submitted by the Contractor or in the specifications attached hereto.
- The City promises and agrees to employ, and does employ, the Contractor to cause to be done the work provided for in this Contract and to complete and finish the same according to the attached specifications, offer, and terms and conditions contained herein.
- 3. The contract shall be for a term of one (1) year, with the option of four (4), one year extensions, said date of term beginning upon formal approval. This Contract will renew automatically for the additional terms, unless either Party gives 90-day written notice to terminate the Contract.
- 4. All stated annual quantities are approximations of usage during the time period to be covered by pricing established by this bid. Actual usage may be more or less. Order quantities will be determined by actual need. The City of Lubbock does not guarantee any specific amount of compensation, volume, minimum, or maximum amount of services under this bid and resulting contract.
- 5. The Contractor must maintain the insurance coverage required during the term of this contract including any extensions. It is the responsibility of the Contractor to ensure that valid insurance is on file with the Purchasing and Contract Management Department as required by contract or contract may be terminated for non-compliance.
- 6. A) Prices quoted shall be guaranteed for a period for six (6) months upon City approval. The rate may be adjusted at the City's discretion for the effective change in Consumer Price Index (CPI) or Product Price Index (PPI) as appropriate.
 - B) Further, if the Contractor can provide documentation for actual charges for material, labor, etc. that demonstrates that the change in CPI or PPI is not sufficient, the Contractor shall provide such documentation to the City, and at the City's sole discretion, the contractual rate may be

further adjusted. If agreement regarding a new rate cannot be reached, the City shall terminate at the end of the current contract period.

- C) If an adjustment to pricing is granted under this section, the Contractor must provide the Director of Purchasing and Contract Management written, quarterly documentation to justify the ongoing adjustment. If no such documentation is timely received, the rate will automatically revert to the initial, awarded rate.
- 7. This contract shall remain in effect until the first of the following occurs: (1) the expiration date, (2) performance of services ordered, or (3) termination of by either party with a 30 day written notice. The City of Lubbock reserves the right to award the canceled contract to the next lowest and best bidder as it deems to be in the best interest of the city.
- 8. Contractor shall at all times be an independent contractor and not an agent or representative of City with regard to performance of the Services. Contractor shall not represent that it is, or hold itself out as, an agent or representative of City. In no event shall Contractor be authorized to enter into any agreement or undertaking for or on behalf of City.

9. Insurance Requirements

SECTION A. Prior to the approval of this contract by the City, the Contractor shall furnish a completed Insurance Certificate to the City, which shall be completed by an agent authorized to bind the named underwriter(s) to the coverages, limits, and termination provisions shown thereon, and which shall furnish and contain all required information referenced or indicated thereon. THE CITY SHALL HAVE NO DUTY TO PAY OR PERFORM UNDER THIS CONTRACT UNTIL SUCH CERTIFICATE SHALL HAVE BEEN DELIVERED TO THE CITY.

SECTION B. The City reserves the right to review the insurance requirements of this section during the effective period of the contract and to require adjustment of insurance coverages and their limits when deemed necessary and prudent by the City based upon changes in statutory law, court decisions, or the claims history of the industry as well as the Contractor.

SECTION C. Subject to the Contractor's right to maintain reasonable deductibles in such amounts as are approved by the City, the Contractor shall obtain and maintain in full force and effect for the duration of this contract, and any extension hereof, at Contractor's sole expense, insurance coverage written by companies approved by the State of Texas and acceptable to the City, in the following type(s) and amount(s):

<u>Commercial General Liability Requirements</u>: \$1M occurrence / \$2M aggregate (can be combined with an Excess Liability to meet requirement). CGL is required in ALL contracts. It is perhaps the most important of all insurance policies in a contractual relationship. It insures the Contractor has broad liability coverage for contractual activities and for completed operations.

Commercial General Liability to include Products – Completion/OP, Personal and Advertising Injury, Contractual Liability, Fire Damage (any one fire), and Medical Expenses (any one person).

Automobile Liability Requirements: \$1M/occurrence is needed.

Workers Compensation and Employer Liability Requirements: Statutory. If the vendor is an independent contractor with no employees and are exempt from providing Workers' Compensation coverage, they must sign a waiver (obtained from COL Purchasing) and include a copy of their driver's license.. Employer Liability (\$1M) is required with Workers Compensation.

- * The City of Lubbock (including its officials, employees and volunteers) shall be afforded additional insured status on a primary and non-contributory basis on all liability policies except professional liabilities and workers' comp.
- * Waivers of Subrogation are required for CGL, AL, and WC.
- * To Include Products of Completed Operations endorsement.
- * Carrier will provide a 30-day written notice of cancellation, 10-day written notice for non-payment.
- * Carriers must meet an A.M. Best rating of A- or better.
- * Subcontractors must carry same limits as listed above.

IMPORTANT: POLICY ENDORSEMENTS

The Contractor will provide copies of the policies without expense, to the City and <u>all endorsements</u> thereto and may make any reasonable request for deletion, revision, or modification of particular policy terms, conditions, limitations, or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any of such policies). Upon such request by the City, the Contractor shall exercise reasonable efforts to accomplish such changes in policy coverages, and shall pay the cost thereof. Any costs will be paid by the Contractor.

REQUIRED PROVISIONS

The Contractor agrees that with respect to the above required insurance, all insurance contracts and certificate(s) of insurance will contain and state, in writing, on the certificate or its attachment, the following required provisions:

- a. Name the City of Lubbock and its officers, employees, and elected representatives as additional insureds, (as the interest of each insured may appear) as to all applicable coverage;
- b. Provide for 30 days notice to the City for cancellation, nonrenewal, or material change;
- c. Provide for notice to the City at the address shown below by registered mail;
- d. The Contractor agrees to waive subrogation against the City of Lubbock, its officers, employees, and elected representatives for injuries, including death, property damage, or any other loss to the extent same may be covered by the proceeds of insurance;
- e. Provide that all provisions of this contract concerning liability, duty, and standard of care together with the indemnification provision, shall be underwritten by contractual liability coverage sufficient to include such obligations within applicable policies.

NOTICES

The Contractor shall notify the City in the event of any change in coverage and shall give such notices not less than 30 days prior the change, which notice must be accompanied by a replacement CERTIFICATE OF INSURANCE.

All notices shall be given to the City at the following address:

Marta Alvarez, Director of Purchasing & Contract Management City of Lubbock 1314 Avenue K, 9th Floor Lubbock, Texas 79401 **SECTION D.** Approval, disapproval, or failure to act by the City regarding any insurance supplied by the Contractor shall not relieve the Contractor of full responsibility or liability for damages and accidents as set forth in the contract documents. Neither shall the bankruptcy, insolvency, or denial of liability by the insurance company exonerate the Contractor from liability.

- 10. Neither the City nor the Contractor shall assign, transfer or encumber any rights, duties or interests accruing from this Contract without the written consent of the other.
- 11. 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.
- 12. 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.
- 13. All funds for payment by the City under this contract are subject to the availability of an annual appropriation for this purpose by the City. In the event of non-appropriation of funds by the City Council of the City of Lubbock for the goods or services provided under the contract, the City will terminate the contract, without termination charge or other liability, on the last day of the then-current fiscal year or when the appropriation made for the then-current year for the goods or services covered by this contract is spent, whichever event occurs first. If at any time funds are not appropriated for the continuance of this contract, cancellation shall be accepted by the Seller on 30 days prior written notice, but failure to give such notice shall be of no effect and the City shall not be obligated under this contract beyond the date of termination.
- 14. The Contractor shall not assign or sublet the contract, or any portion of the contract, without written consent from the Director of Purchasing and Contract Management. Should consent be given, the Contractor shall insure the Subcontractor or shall provide proof on insurance from the Subcontractor that complies with all contract Insurance requirements.
- 15. 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.
- 16. The Contractor (i) does not engage in business with Iran, Sudan or any foreign terrorist organization and (ii) it is not listed by the Texas Comptroller under Section 2252.153, Texas Government Code, as a company known to have contracts with or provide supplies or services

to a foreign terrorist organization. As used in the immediately preceding sentence, "foreign terrorist organization" shall have the meaning given such term in Section 2252.151, Texas Government Code.

17. 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 contact 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.

- 18. 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.
- 19. 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.

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.

- 20. 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.
- 21. 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.
- 22. This Contract consists of the following documents set forth herein; Invitation to Bid No. 23-17328-SB, Specifications, and the Bid Form.

----INTENTIONALLY LEFT BLANK----

IN WITNESS WHEREOF, the parties hereto have caused this Contract to be executed the day and year first above written. Executed in triplicate.

CITY OF LUBBOCK	CONTRACTOR
	BY and Tayour
Tray Payne, Mayor	Authorized Representative
ATTEST:	DARLEW JARNAGIN Print Name
	10104 ALCOVE AUX
Courtney Paz, City Secretary	Address
	WOLFFORTH / 15382
APPROVED AS TO CONTENT:	City, State, Zip Code
Manh	
Wood Franklin, P.E., Division Director of Public	Works
APPROVED AS TO FORM:	
Kelli Leisure, Senior Assistant City Attorney	

City of Lubbock, TX ITB 23-17328-SB Asphalt Materials Used in Construction and Maintenance

Specifications

1. Introduction, Purpose and Intent:

The intent of this Invitation for Bid (hereinafter referred to as ITB) is to solicit qualified vendors to enter a contract with the City of Lubbock (hereinafter referred to as the City) for asphalt materials used in construction and maintenance of City right-of-ways and responsibilities. The City is seeking a contract with one or more vendors. In order to secure sufficient coverage, the City may make multiple awards, selecting multiple vendors to provide the materials desired, if multiple awards are in the best interest of the City. A decision to make a multiple award of the bid, however, is an option reserved by the City, based on the needs.

2. Scope of Work

Furnish and deliver asphalt materials to the City.

3. Materials

500 Ton Asphalt Stabilized Base (Refer to City of Lubbock Engineering Minimum Design Standards and Specifications, section 8.08.03)

3,500 Ton TxDOT HMAC Type C

3,500 Ton TxDOT HMAC Type D

2,000 Ton TxDOT HMAC Type C (To include price to deliver on-site)

2,000 Ton TxDOT HMAC Type D (To include price to deliver on-site)

500 Ton Cold Mix (TxDOT approved)

3,000 Gal. MC 30 Prime Oil (TxDOT Approved)

3,000 Gal. PG, AC-10 Tack Oil (TxDOT Approved)

4. Delivery

Asphalt materials shall be delivered to a specified destination limits commencing within forty-eight (48) hours of an order being placed with the vendor and completed within five (5) business days from when the order was placed.

5. Term

The contract shall be for a term of one (1) year, with the option of four (4), one year extensions, said date of term beginning upon formal approval. This Contract will renew automatically for the additional terms, unless either Party gives 90-day written notice to terminate the Contract. All stated annual quantities are approximations of usage during the time period to be covered by pricing established by this bid. Actual usage may be more or less. Order quantities will be determined by actual need. The City of Lubbock does not guarantee any specific amount of compensation, volume, minimum, or maximum amount of services under this bid and resulting contract. The Contractor must maintain the insurance coverage required during the term of this contract including any extensions. It is the responsibility of the Contractor to ensure that valid insurance is on file with the Purchasing

and Contract Management Department as required by contract or contract may be terminated for non-compliance.

6. Invoicing

Invoices shall be **daily** and include Contract 17328, job number, day of delivery, delivery location, delivery ticket, and sent to Department contact for each order:

Glenda Mayfield: GMayfield@mylubbock.us.

City of Lubbock, TX Purchasing and Contract Management Vendor Acknowledgement Form

In compliance with the **Invitation to Bid**, the undersigned Bidder having examined the Invitation to Bid, instructions to bidders, General Conditions of the Agreement, Specifications, and being familiar with the conditions to be met, hereby submits the following bid for furnishing the material, equipment, labor and everything necessary for providing the items listed and agrees to deliver said items at the locations and for the prices set forth on the bid form and/or the bid table associated with this bid.

A bid will be subject to being considered irregular and may be rejected if it shows omissions, **alterations of form**, conditional alternate bids, additions or alternates in lieu of the items specified, if the unit prices are obviously unbalanced (either in excess of or below reasonably expected values), or irregularities of any kind. The Invitation to Bid is by reference incorporated in this contract.

Where applicable, prices are quoted as: F.O.B. Destination, Freight Pre-Paid and Allowed Where applicable, delivery days are: Days After Receipt of Order (ARO)

Unless otherwise specified herein, the City may award the bid either item-by-item or on an all-ornone basis for any item or group of items shown on the bid.

The City of Lubbock is seeking a contract for with one or more contractors. In order to assure adequate coverage, the City may make multiple awards, selecting multiple vendors to provide the products desired, if multiple awards are in the best interest of the City. A decision to make a multiple award of this Bid, however, is an option reserved by the City, based on the needs of the City.

MOST FAVORED PRICING: The Bidder certifies that the price quoted is not in excess of the lowest price charged anyone else, including its most favored customer, for like quality and quantity of the products/services; does not include an element of profit on the sale in excess of that normally obtained by the Bidder on the sale of products/services of like quality and quantity; and does not include any provision for discounts to selling agents. If at any time during the contract period, the supplier should sell or offer for sale to any other customer, an equal or less quantity of similar contract products of like or better quality, at a lower net price(s) than provided herein, supplier agrees to notify the City and sell same product(s) at the lower price(s) on all deliveries made during the period in which such lower price(s) is effective.

INTERLOCAL PURCHASING (optional): The City desires to make available to other local governmental entities of the State of Texas, by mutual agreement with the successful bidder, and properly authorized interlocal purchasing agreements as provided for by the Interlocal Cooperation Act (Chapter 791, Government Code), the right to purchase the same services, at the prices quoted, for the period of this contract. Each bidder shall indicate on the Bid Form in the space provided below if he/she will honor Political Subdivision orders in addition to orders from the City of Lubbock. Should these other governmental entities decide to participate in this contract, would you (the bidder) agree that all terms, conditions, specifications, and pricing would apply?

The City of Lubbock ITB 23-17328-SB Asphalt Materials Used in Construction and Maintenance

Bid Form

			Total Cost Location	West Texas Paving, Inc. \$1,540,000.00 Wolfforth, TX		
#	Items	Quantity Required (+/-)	UOM	Unit Price	Total Cost	Delivery Days ARO
#0-1	Asphalt Stabilized Base (Refer to City of Lubbock Engineering Minimum Design Standards and Specifications, section 8.08.03)	500	Ton	\$125.00	\$62,500.00	1
#0-2	TxDOT HMAC Type C	3500	Ton	\$125.00	\$437,500.00	1
#0-3	TxDOT HMAC Type D	3500	Ton	\$125.00	\$437,500.00	1
#0-4	TxDOT HMAC Type C (To include price to deliver on-site)	2000	Ton	\$135.00	\$270,000.00	1
#0-5	TxDOT HMAC Type D (To include price to deliver on-site)	2000	Ton	\$135.00	\$270,000.00	1
#0-6	Cold Mix (TxDOT approved)	500	Ton	\$125.00	\$62,500.00	1
#0-7	-MC 30 Prime Oil (TxDOT Approved)		-Gallons-	-No Bid-	No Bid	- Ne Bi
#0-8	-PG, AC-10 Tack Oil (TxDOT Approved)		-Gallons-	No Bid	- No Bid	- No Bi

Other governmental entities that might have interests in this contract are Frenship Independent School District, Lubbock Housing Authority, Lubbock County, Lubbock County Hospital District, Lubbock Independent School District, South Plains Association of Governments, City of Texarkana, Texas Tech University, West Texas Municipal Power Agency, Lynn County, and City of Wolfforth.

	1	
YES		NO
ILD_		NO

- If you (the bidder) checked YES, the following will apply:
- Governmental entities utilizing Interlocal Agreements for Cooperative Purchasing with the City of
 Lubbock will be eligible, but not obligated, to purchase materials/services under the contract(s)
 awarded as a result of this solicitation. All purchases by governmental entities other than the City of
 Lubbock will be billed directly to that governmental entity and paid by that governmental entity. City
 of Lubbock will not be responsible for another governmental entity's debts. Each governmental entity
 will order their own materials/service as needed.

ADDENDA

Bidder acknowledges receipt of addenda issued in regard to this solicitation:

Addenda No.	Date
Addenda No.	Date
Addenda No.	Date
Addenda No.	Date

INSURANCE REQUIREMENTS

I, the undersigned Bidder certify that the insurance requirements contained in this bid document have been reviewed by me and my Insurance Agent/Broker. If I am awarded this contract by the City of Lubbock, I will be able to, within ten (10) business days after being notified of such award by the City of Lubbock, furnish a valid insurance certificate to the City meeting all of the requirements defined in this bid.

If the time requirement specified above is not met, the City has the right to reject this proposal and award the contract to another contractor. If you have any questions concerning these requirements, please contact the Director of Purchasing & Contract Management for the City of Lubbock at (806) 775-2572.

SUSPENSION AND DEBARMENT CERTIFICATION

Federal Law (A-102 Common Rule and OMB Circular A-110) prohibits non-Federal entities from contracting with or making sub-awards under covered transactions to parties that are suspended or debarred or whose principals are suspended or debarred. Covered transactions include procurement contracts for goods or services equal to or in excess of \$25,000 and all non-procurement transactions (e.g., sub-awards to sub-recipients).

Contractors receiving individual awards of \$25,000 or more and all sub-recipients must certify that their organization and its principals are not suspended or debarred by a Federal agency.

Before an award of \$25,000 or more can be made to your firm, you must certify that your organization and its principals are not suspended or debarred by a Federal agency.

I, the undersigned agent for the firm named below, certify that neither this firm nor its principals are suspended or debarred by a Federal agency.

TEXAS GOVERNMENT CODE SECTION 2252.152

The undersigned representative of the undersigned company or business, being an adult over the age of eighteen (18) years of age, pursuant to Texas Government Code, Chapter 2252, Section 2252.152, certify that the company named above is not listed on the website of the Comptroller of the State of Texas concerning the listing of companies that are identified under Section 806.051, Section 807.051 or Section 2253.153. I further certify that should the above-named company enter into a contract that is on said listing of companies on the website of the Comptroller of the State of Texas, which do business with Iran, Sudan or any Foreign Terrorist Organization, I will immediately notify the City of Lubbock Purchasing and Contract Department.

TEXAS GOVERNMENT CODE SECTION 2271.002

Company hereby certifies the following:

- 1. Company does not boycott Israel; and
- 2. Company will not boycott Israel during the term of the contract.

The following definitions apply to this state statute:

- (1) "Boycott Israel" means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes; and
- (2) "Company" means an organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations that exists to make a profit.

This Certification is required from a Company if the Company has 10 or more full-time employees and the contract for goods or services (which includes contracts formed through purchase orders) has a value of \$100,000 or more that is to be paid wholly or partly from public funds of the governmental entity.

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.

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.

FEDERAL AND STATE SAFETY REGULATIONS

Contractor shall comply with all federal and state safety regulation including but not limited to Occupational, Safety and Health Administration (OSHA) and the Department of Workforce Development (DWD) regulations. This agreement includes incorporation of Federal Transit Administration (FTA) Terms. The preceding provisions include, in part, certain Standard Terms and Conditions required by the Department of Transportation (DOT), whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any requests which would cause Bus to be in violation of the FTA terms and conditions.

All Environmental Protection Agency (EPA) rules and regulations must be followed by the Contractor.

MASTER AGREEMENT

For Federal Transit Administration Agreements authorized by 49 U.S.C. chapter 53, Title 23, United States Code (Highways), the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, as amended by the SAFETEA-LU Technical Corrections Act of 2008, the Transportation Equity Act for the 21st Century, as amended, the National Capital Transportation Act of 1969, as amended, the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, February 17, 2009, or other Federal laws that FTA administers.

https://www.transit.dot.gov/funding/grantee-resources/sample-fta-agreements/fta-grant-agreements

The Master Agreement can be found in its entirety on the City of Lubbock website www.ci.lubbock.tx.us

INCOMPLETE INFORMATION

Failure to complete or provide any of the information requested in this Request for Proposal, including references, and/or additional information as information as indicated, may results in disqualification by reason of "non-responsiveness".

CONTRACTOR ACKNOWLEDGEMENT

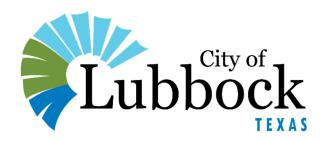
In compliance with this solicitation, the undersigned bidder, having examined the bid documents, instructions to bidders, documents associated with the invitation to bid, and being familiar with the conditions to be met has reviewed the above information regarding:

- Insurance Requirements
- Suspension and Debarment Certification
- Texas Government Code Section 2252.152
- Texas Government Code Section 2271.002
- Texas Government Code 2274
- · Federal and State Regulations
- Master Agreement

SUBMISSION INFORMATION

An individual authorized to bind the company must sign the following section. Failure to execute this portion may result in bid rejection.

THIS BID IS SUBMITTED BY West To	exas Paving, Inc.	a
corporation organized under the laws of t		or a partnership consisting of
	or individual trading as	of
the City of		
Tax ID No.: 75-2028682		
Address: 10104 Alcove Avenue		
City: Wolfforth	State: Texas Zip	79382
M/WBE Firm: Woman Hispanic American	Black American Asian Pacific American	Native American Other (Specify)
Please o	complete the information below.	
By Mashul Janny Authorized Representative - must sig	Date: 05-1	5-2023
Officer Name and Title: Marshal Jarnagir	n, CFO	
Business Telephone Number (806) 833-2	2882 FAX: <u>(80</u>	6) 833-2884
E-mail Address: marshal@wtxpaving.c	om	



Purchasing and Contract Management

Project Summary

ITB 23-17328-SB Asphalt Materials Used in Construction and Maintenance

Notice was published in the Lubbock Avalanche Journal on April 30 & May 7, 2023. Notice was published on the Purchasing Web Site under Bid Opportunities. Notice was published on the State of Texas Electronic State Business Daily. Notice was published on Bonfire.com from April 28 to May 16, 2023.

15 vendors downloaded the documents using Bonfire.com.

5 vendors were notified separately.

1 vendor submitted a bid.



Information

Agenda Item

Resolution - Public Works Streets: Consider a resolution authorizing the Mayor to execute Contract 17369, with West Infrastructure Construction, LLC, for rebuilding certain streets with concrete paving in the North Overton area.

Item Summary

This project will rebuild 5th Street, 7th Street, 9th Street, and 10th Street between Avenue R and Avenue Q, and a portion of Avenue R. The existing roadway has a 2-inch asphalt surface and a 6-inch compacted caliche base, and is failing because of very heavy traffic, including bus routes and delivery truck traffic. This project will mill out 8 inches of existing material and rebuild with 8 inches of reinforced concrete paving. Details of the concrete paving and reinforcement specifications are called out in the City of Lubbock Minimum Design Standards for collector street concrete paving.

In response to ITB 23-17328-SB, bids were received and opened on June 7, 2023, from the following vendors.

Contractor	Total Estimated Cost
West Infrastructure Construction, LLC, Lubbock, Texas	\$887,995.26
Ty-Zack Concrete Inc., Le Center, Minnesota	\$975,155.00
West Texas Paving, Inc., Wolfforth, Texas	\$995,000.00
Lone Star Dirt and Paving, Inc., Lubbock, Texas	\$1,117,410.00
MH Civil Contractors Inc., Amarillo, Texas	\$1,450,000.00
Permian Paving, Inc., Midland, Texas	\$1,703,450.00
**Shepherd Concrete, Amarillo, Texas	\$4,996,071,100.00

^{**}This bid tab was filled out incorrectly, resulting in an out-of-range bid.

Staff recommends award of this contract to the lowest bidder, West Infrastructure Construction, LLC, for the estimated cost of \$887,995.26

The contract is awarded by the unit price. The total amount of the award is estimated based on proposed quantities and actual expenditures may be more or less depending on actual quantities. The price per unit will not change. The contract has a term of 60 calendar days from the Notice to Proceed and contains appropriate liquidated damages.

Fiscal Impact

Contract 17369 is funded in the Capital Improvement Project 92704.

Staff/Board Recommending

Attachments

Resolution - West Infrastructure

Contract - West Infrastructure Construction

CIP Budget Detail

Project Summary Sheet - North Overton Concrete Paving

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. 17369 for North Overton Streets (5th,7th,9th,10th, and Ave R) Asphalt to 8' Concrete as per ITB 23-17369-DH, by and between the City of Lubbock and West Infrastructure Construction, LLC of Lubbock, TX, 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	·
	TRAY PAYNE, MAYOR
ATTEST:	
ATTEST.	
Courtney Paz, City Secretary	
APPROVED AS TO CONTENT:	
Elai	
Erik Rejino, Assistant City Manager	
APPROVED AS TO FORM:	
Ullekunire	
Kelli Leisure Senior Assistant City Attorne	ev

ccdocs/RES.Public Works Contract 17369 North Overton Streets 6.8.23

BID SUBMITTAL FORM UNIT PRICE BID CONTRACT

DATE: _	06/0	7/2023				
PROJEC 8' Conc		BER: ITB 23-17369- 1	DH, North Overto	n Streets (5th,7t	th,9th,10th and	Ave R) Asphalt to
Bid of _ Bidder)	West	Infrastructure	Construction	LLC		(hereinafter called
To the H	lonorabl	e Mayor and City Cou	ncil City of Lubboo	k, Texas (herein	after called Own	ner)

Ladies and Gentlemen:

The Bidder, in compliance with your Invitation to Bid for the construction of the referenced project, having carefully examined the plans, specifications, instructions to bidders, notice to bidders and all other related contract documents and the site of the intended work, and being familiar with all of the conditions surrounding the construction of the intended project including the availability of materials and labor, hereby intends to furnish all labor, materials, and supplies; and to construct the project in accordance with the plans, specifications and contract documents, within the time set forth therein and at the price stated.

The bidder binds himself on acceptance of his bid to execute a contract and any required bonds, according to the accompanying forms, for performing and completing the said work within the time stated and for the prices stated.

Bidder 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 **85 consecutive calendar days** with **final completion** of the project within **90 consecutive calendar days** as stipulated in the specification and other contract documents. Bidder hereby further agrees to pay to Owner as liquidated damages in the sum of \$1204.28 for each consecutive calendar day after **substantial completion** and liquidated damages in the sum of \$1204.28 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.

Bidder understands and agrees that this bid submittal shall be completed and submitted in accordance with instruction number 29 of the General Instructions to Bidders.

Bidder understands that the Owner reserves the right to reject any or all bids and to waive any formality in the bidding.

The Bidder agrees that this bid shall be good and may not be withdrawn for a period of 60 calendar days after the scheduled closing time for receiving bids.

The undersigned Bidder 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 bid, and he further agrees to commence work on or before the date specified in the written notice to proceed, and to substantially complete the work on which he has bid; as provided in the contract documents.

Bidders 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 bid 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 bid submitted as a guarantee that bidder will enter into a contract, obtain all

required insurance policies, and exe of award of the contract to him.	ecute all necessary bon	ds (if required) withi	n 10 business days after notice

City of Lubbock, TX Public Works ITB 23-17369-DH

North Overton Streets (5th,7th,9th,10th and Ave R) Asphalt to 8' Concrete

West Infrastructure Construction, LLC of Lubbock, TX

		QTY	U/M	Unit	Extended
#	Items	+/-	0/1/1	Price	Cost
Base	Bid				
#1-1	Concrete Paving, 8" Class "C" Concrete (3600 PSI @ 28 Days)	5650	SY	\$126.37	713,990.50
	Reinforced (ref. section 8.7.12 for specifications for				
	Reinforcement Information); Including labor, equipment,				
	removal and disposal of existing materials, subgrade prep, saw				
	joints, complete and in place. (All Millings will go to the City of				
	Lubbock.)				
#1-2	30" Curb & Gutter, Class B Concrete (3,000 psi @ 7 days), 30"	300	LF	53.92	16,176.00
	wide separate gutter or saw-tooth curb & gutter; including labor,				
	equipment, removal and disposal of existing materials, sub-grade				
	preparation, complete and in place.				
#1-3	Concrete Ramp (Class A), 4" reinforced concrete and Detectable	240	SY	181.29	43,509.60
	Warning Tile; including labor, equipment, sub-grade preparation,				
	Installed and complete in place.				
#1-4	Type I Thermoplastic pavement marking .125 Mil 24" white stop	120	LF	60.85	7,302.00
	line (TX DOT DMS 8220). Including labor, equipment, and				
	preparation of existing surface. Complete and in place.				
#1-5	4" lane line elimination. Including labor, equipment, and All	400	LF	45.64	18,256.00
	tools necessary to remove and relay markings.				
#1-6	Mobilization	1	EA	88,761.16	88,761.16
	To	otal (Iter	ns 1-1 tł	1-6):	\$887,995.26
				•	

retained by the Owner as liquidated damages in the even undersigned fails to execute the necessary contract docu bond (if any) with the Owner within 10 business days after acceptance of said bid; otherwise, said check or bond shademand.	ments, insurance certificates, and the required ter the date of receipt of written notification of
Bidder understands and agrees that the contract to be executed documents made available to him for his inspection in accordance.	rdance with the Notice to Bidders.
Pursuant to Texas Local Government Code 252.043(g), a competitive sealed bid that has been opened may not be changed for the purpose of correcting an error in the bid price. THEREFORE, ANY CORRECTIONS TO THE BID PRICE MUST BE MADE ON THE BID SUBMITTAL FORM PRIOR TO BID OPENING.	Date: 06/07/2023 Authorized Signature Bryan Arellano (Printed or Typed Name)
(Seal if Bidder is a Corporation) ATTEST:	Company 2836 Clovis Road Address Lubbock City, Texas Lubatter Construction LLC Company 2836 Clovis Road Lubbock County 79415
Secretary Bidder acknowledges receipt of the following addenda:	State Zip Code Telephone: 806 - 771-6440 Fax: -
Addenda No Date Addenda No Date	FEDERAL TAX ID or SOCIAL SECURITY No. 27-3204063
Addenda No. Date Date	EMAIL: estimating@westindustries.

\mathbf{M}	W	RE
Fir	m:	

Woman	Black	American	Native American
Hispanio America		Pacific can	Other (Specify)

City of Lubbock, TX Capital Project Project Cost Detail June 27, 2023

Capital Project Number:			92704
Capital Project Name:	North Overton TIF	Street Upgrad	e / Replacement
Encumbered/Expended			Budget
Blackstone Concrete Ve	ntures Contract 15949	\$	598,359
Ti-Zack Concrete Contra	act 16655		1,228,562
Agenda Item June 27, 202	3		
West Infrastructure Con	struction, LLC Contract	Ī	
17369			887,995
Encumbered/Expende	ed to Date		2,714,916
Estimated Costs for Rema	ining Appropriation		
Contingency			1,634,764
Remaining Appropria	tion		1,634,764
Total Appropriati	on To Date	\$	4,349,680



Purchasing and Contract Management

Project Summary

ITB 23-17369-DH North Overton Streets (5th,7th,9th,10th and Ave R) Asphalt to 8' Concrete

Notice was published in the Lubbock Avalanche Journal on May 21 & May 28, 2023.

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

Notice was published on the State of Texas Electronic State Business Daily.

Notice was published on Bonfire.com from May 19, 2023 to June 7, 2023.

3 individuals attended the pre-bid meeting.

36 vendors downloaded the documents using Bonfire.com.

22 vendors were notified separately.

7 vendors submitted bids.



Information

Agenda Item

Resolution - Solid Waste: Consider a resolution authorizing the Mayor to execute Contract 17319, with Product Recovery Management, for the Caliche Canyon Gas Blower and Flare Unit.

Item Summary

Caliche Canyon Landfill Gas Blower and Flare Unit is over 30 years old and is past its useful life. The City issued ITB 23-17319-TF, for the replacement of the existing gas blower and flare unit, as well as bid alternates for the removal and disposal of the existing flares and a 2,000-gallon propane tank connected to the Flare Pilot System.

In response to ITB 23-17319-TF, the following bids were received and opened on May 18, 2023.

Contractor	Amount
Product Recovery Management Butner, North Carolina	\$485,874.89 (with bid alternates)
Stearns, Conrad and Schmidt Engineers, Inc. dba SCS Field Services Reston, Virginia	\$896,030.00 (with bid alternates)

Staff recommends award of the contract to the qualified lowest bidder, Product Recovery Management of Butner, North Carolina, for \$482,879.89.

The contract will be for a term of 180 consecutive calendar days to substantial completion, and 225 consecutive calendar days to final completion.

Fiscal Impact

Contract 17319 for \$485,874.89, is funded in Capital Improvements Project 92557, Landfill 69 Gas Collection System Replacement.

Staff/Board Recommending

Erik Rejino, Assistant City Manager L. Wood Franklin, P.E., Division Director of Public Works.

Attachments

Resolution Contract 17319 Budget Detail CIP Detail Project Summary Sheet

RESOLUTION

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

THAT the Mayor of the City of Lubbock is hereby authorized and directed to execute for and on behalf of the City of Lubbock, Contract No. 17319, as per ITB 23-17319-TF, for a Caliche Canyon Landfill Gas Blower and Flare Unit, by and between the City of Lubbock and Product Recovery Management of Butner, North Carolina, 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		·
	TRAY PAYNE, MAYOR	
ATTEST:		
Courtney Paz, City Secretary		
APPROVED AS TO CONTENT:		
Erik Rejino, Assistant City Manager		
APPROVED AS TO FORM:		
Ryan Brooke, Senior Assistant City Attorney		

RES.Contract No. 17319, Product Recovery Management 5.30.23

BID SUBMITTAL FORM UNIT PRICE BID CONTRACT

DATE: _	5/17/23	
PROJEC	T NUMBER: ITB 23-17319-TF, Caliche Canyon Landfill Gas Blower and	l Flare Unit
Bid of _	Product Recovery Management	(hereinafter called
Bidder)		, ,
To the H	onorable Mayor and City Council City of Lubbock, Texas (hereinafter called	Owner)

Ladies and Gentlemen:

The Bidder, in compliance with your Invitation to Bid for the construction of the referenced project, having carefully examined the plans, specifications, instructions to bidders, notice to bidders and all other related contract documents and the site of the intended work, and being familiar with all of the conditions surrounding the construction of the intended project including the availability of materials and labor, hereby intends to furnish all labor, materials, and supplies; and to construct the project in accordance with the plans, specifications and contract documents, within the time set forth therein and at the price stated.

The bidder binds himself on acceptance of his bid to execute a contract and any required bonds, according to the accompanying forms, for performing and completing the said work within the time stated and for the prices stated.

Bidder 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 180 consecutive calendar days with final completion of the project within 225 consecutive calendar days as stipulated in the specification and other contract documents. Bidder hereby further agrees to pay to Owner as liquidated damages in the sum of \$350 for each consecutive calendar day after substantial completion and liquidated damages in the sum of \$250 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.

Bidder understands and agrees that this bid submittal shall be completed and submitted in accordance with instruction number 29 of the General Instructions to Bidders.

Bidder understands that the Owner reserves the right to reject any or all bids and to waive any formality in the bidding.

The Bidder agrees that this bid shall be good and may not be withdrawn for a period of **60** calendar days after the scheduled closing time for receiving bids.

The undersigned Bidder 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 bid, and he further agrees to commence work on or before the date specified in the written notice to proceed, and to substantially complete the work on which he has bid; as provided in the contract documents.

Bidders 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 bid 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 bid submitted as a guarantee that bidder will enter into a contract, obtain all required insurance policies, and execute all necessary bonds (if required) within 10 business days after notice of award of the contract to him.

City of Lubbock, TX Solid Waste ITB 23-17319-TF

Caliche Canyon Landfill Gas Blower and Flare Unit

Product Recovery Management of Butner, NC

			•	Unit	Extended	
#	Items	+/-	U/M	Price	Cost	
Installation of New Blower / Flare Unit						
#1-1	Mobilization/Demobilization (Not to Exceed 5%)	1	LS	\$8,749.47	8,749.47	
#1-2	Decommission of Existing Flare Units	1	LS	19,910.72	19,910.72	
#1-3	Decommissioon of Existing Electrical Services	1	LS	5,164.61	5,164.61	
#1-4	LFG Blower / Flare Skid Mounted Unit	1	LS	348,897.18	348,897.18	
#1-5	12" HDPA, SDR 11 Piping, Flanges, Bends	1	LS	22,415.14	22,415.14	
#1-6	Electrical Connection of LFG Blower/Flare Unit	1	LS	18,990.08	18,990.08	
#1-7	Installation of New Skid Unit	1	LS	31,399.44	31,399.44	
#1-8	Supplemental Propana Connection	1	LS	4,502.69	4,502.69	
#1-9	Start Up, Calibration, Operation Training	1	LS	3,816.46	3,816.46	
Additive Alternates						
#2-1	Removal and Disposal of Flares	1	LS	6,214.42	6,214.42	
#2-2	2,000 Gallon Propane Tank, Connected to Flare Pilot System & Supplemental Flame	1	LS	15,814.68	15,814.68	
	Tota	ıl (Iten	ns 1-1 t	hrough 2-2):	\$485,874.89	

Enclosed with this bid is a Cashier's Check or ***********************************	or a Bid Bond in the sum of 93.75), which it is agreed shall be collected and vent the bid is accepted by the Owner and the ocuments, insurance certificates, and the required after the date of receipt of written notification of		
Bidder understands and agrees that the contract to be exec			
documents made available to him for his inspection in ac			
Pursuant to Texas Local Government Code 252.043(g), a	Date: 5/17/23		
competitive sealed bid that has been opened may not be	J. Stall		
changed for the purpose of correcting an error in the bid price THEREFORE, ANY CORRECTIONS TO THE BID PRICE	Authorized Signature		
MUST BE MADE ON THE BID SUBMITTAL FORM PRIOR	<u> </u>		
TO BID OPENING.	(Printed or Typed Name)		
	Product Recovery Management		
	Company 200 20th Street		
(Seal if Bidder is a Corporation)	Address		
ATTEST:	Butner , Granville		
Brian Phillps VP	City, County North Carolina , 27509		
Secretary	State Zip Code		
Sociotaly	Telephone: 919 - 957-8890		
Bidder acknowledges receipt of the following addenda:	Fax:		
5/16/23	FEDERAL TAX ID or SOCIAL SECURITY No.		
Addenda Nox Date5/16/23 Addenda No Date	45-4185593		
Addenda No Date			
Addenda No Date Addenda No Date	EMAIL:Justin.Stahl@prmfiltration.com		
Addenda No Date			
M/WBE Woman Black A	American Native American		

M /	W	Вŀ	
Fir	m:		

Woman	Black American	Native American
Hispanic American	Asian Pacific American	Other (Specify)

City of Lubbock, TX Capital Project Project Cost Detail June 27, 2023

Capital Project Number:	92557
Capital Project Name:	Landfill 69 Gas Collection System Replacement
Encumbered/Expended	Budget
Professional Services Equipment	\$12,232 24,024
Agenda Item June 27, 2023	
Gas Blower and Flare Unit	485,875
Encumbered/Expended to Date	522,131
Estimated Costs for Remaining Appro	opriation
Other Costs	2,599
Remaining Appropriation	2,599
Total Appropriation To Date	<u>\$524,730</u>

Managing Department Solid Waste Disposal

Project Manager Brenda Haney

Project Classification Upgrade/Major Maintenance

Project Status Approved



Project Scope

The methane gas lines that collect gas from the eastern portion of the landfill will be excavated and either replaced or regraded to ensure maximum methane gas flow to the flare.

The gas collection system is currently being evaluated to define the exact locations of gas lines that need to be repaired or replaced. Additionally, work will be conducted on the existing gas flare to ensure that it is properly operating.

Current efforts are in progress to repair and balance the existing gas well field. Work to evaluate the vibility of a new flare system will begin in FY2021.

Project Justification

The methane gas collection system was required to be installed at the Caliche Canyon Landfill 14 years ago. Over time buried waste subsides and shifts under the landfill cap. The methane gas collection lines are made of HDPE plastic pipe and have settled inhibiting the methane gas to properly flow to the flare.

The proper removal and flaring of methane gas is also essential in reducing groundwater contamination at the site.

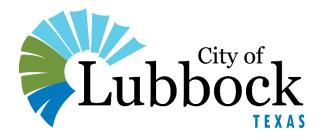
Project History

FY 2015-16 funding was utilized to begin the assessment of the current gas lines and flow.

\$344,730 was appropriated on 4/25/18 per Management. Funding comes from original Capital Project number 92422. \$180,000 was appropriated in the FY 2022-23 budget, BCR# 2023-1, November 1, 2022.

			Unappropriated Planning Years					
Appropriation Detail	Appropriation to Date	FY 2022-23	FY 2023-24	FY 2024-25	FY 2025-26	FY 2026-27	FY 2027-28	Total Project Amount
Construction	524,730	0	0	0	0	0	0	524,730
Total Project Appropriation	524,730	0	0	0	0	0	0	524,730

		Unappropriated Planning Years						
Funding Detail	Funding to Date	FY 2022-23	FY 2023-24	FY 2024-25	FY 2025-26	FY 2026-27	FY 2027-28	Total Funding
FY 2016 7-Year Solid Waste	344,730	0	0	0	0	0	0	344,730
Revenue CO's FY 2022 General Fund Cash	180,000	0	0	0	0	0	0	180,000
Total Funding Sources	524,730	0	0	0	0	0	0	524,730



Purchasing and Contract Management

Project Summary

ITB 23-17319-TF Caliche Canyon Landfill Gas Blower and Flare Unit

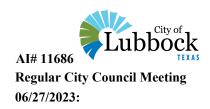
Notice was published in the Lubbock Avalanche Journal on April 30 & May 7, 2023. Notice was published on the Purchasing Web Site under Bid Opportunities. Notice was published on the State of Texas Electronic State Business Daily. Notice was published on Bonfire.com from April 30 to May 18, 2023.

7 individuals attended the pre-bid meeting.

27 vendors downloaded the documents using Bonfire.com.

24 vendors were notified separately.

2 vendors submitted bids.



Information

Agenda Item

Ordinance 2nd Reading - Codes Administration: Consider Ordinance No. 2023-O0070, amending Sections 34.06.001 - 34.06.013, of the City of Lubbock Code of Ordinances, regarding junked vehicles.

Item Summary

On June 13, 2023, the City Council approved the first reading of the ordinance.

This ordinance amending Sections 34.06.001 - 36.06.013 of the City of Lubbock Code of Ordinances, regarding junked vehicles, will update the City's regulations regarding junked vehicles.

The proposed amendments ensure the City's regulations regarding junked vehicles comply with state law and also increases enforcement where allowed by state law, such as including aircraft and watercraft, as part of the junked vehicle definition. The proposed amendments also change the reference from the Junked Vehicle Compliance Board (JVCB) to the Permit and License Appeal Board (PLAB).

Fiscal Impact

None

Staff/Board Recommending

Erik Rejino, Assistant City Manager Stuart Walker, Director of Code Enforcement

Attachments

Ordinance

ORDINANCE	NO.	

AN ORDINANCE AMENDING ARTICLE 34.06 OF THE CODE OF ORDINANCES OF THE CITY OF LUBBOCK, TEXAS WITH REGARD TO JUNKED VEHICLES; PROVIDING FOR A PENALTY; PROVIDING A SAVINGS CLAUSE; PROVIDING FOR PUBLICATION; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council of the City of Lubbock, Texas deems it in the best interest of the citizens of the City of Lubbock to protect their health, safety, and welfare to make the following amendments to Article 34.06 of the Code of Ordinances with regard to junked vehicles; and

WHEREAS, the City Council hereby exercises its authority under Article 11, Section 5, of the Texas Constitution as a home rule city to enact regulations not inconsistent with the general laws of the State of Texas in the interest of the health, safety and welfare of the citizens of the City of Lubbock; NOW THEREFORE:

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

SECTION 1. THAT Article 34.06 of the Code of Ordinances of the City of Lubbock is hereby amended to read as follows:

Article 34.06 Junked Vehicles

Sec. 34.06.001. Definitions.

As used in this article:

Antique auto. means a passenger car or truck that is at least 25 years old.

<u>Junked vehicle</u>. means any motor vehicle as defined in chapter 683 of the Transportation Code, subchapter E, section 683.071, Vernon's Texas Civil Statutes, as amended:

- (a) A vehicle that is self-propelled and:
 - (1) is self-propelled; and
 - (2) is:
 - (A) wrecked, dismantled or partially dismantled, or discarded; or
 - (B) inoperable and has remained inoperable for more than:
 - (i) 72 consecutive hours, if the vehicle is on public property; or
 - (ii) 30 consecutive days, if the vehicle is on private property.

- (b) For purposes of this article, "junked vehicle" includes a motor vehicle, aircraft, or watercraft. This article applies only to:
 - (1) a motor vehicle that displays an expired license plate or does not display a license plate;
 - (2) an aircraft that does not have lawfully printed on the aircraft an unexpired federal aircraft identification number registered under Federal Aviation Administration aircraft registration regulations in 14 C.F.R. Part 47; or
 - (3) a watercraft that:
 - (A) does not have lawfully on board an unexpired certificate of number; and
 - (B) is not a watercraft described by Section 31.055, Parks and Wildlife Code.

Motor vehicle collector. means a person who:

- (a) owns one or more antique or special interest vehicles; and
- (b) acquires, collects, or disposes of an antique or special interest vehicle or part of an antique or special interest vehicle for personal use to restore and preserve an antique or special interest vehicle for historic interest.

<u>Special interest vehicle</u>. means a motor vehicle of any age that has not been changed from original manufacturer's specifications and, because of its historic interest, is being preserved by a hobbyist.

Sec. 34.06.002. Administration.

The administration and enforcement of this article shall be the responsibility of the director of code enforcement, his assistants or designated city employees and such persons shall have the powers stated in subchapter E of Chapter 683 of the Texas Transportation Code, as may be amended.

Sec. 34.06.003. Authority to enter private property.

The employees of the code enforcement department may enter private property to examine a public nuisance, as described in section 43.06.009, to obtain information to identify said nuisance, and to remove or direct the removal of said nuisance.

Sec. 34.06.004. Exceptions-Lawfully parked or stored vehicles.

This article shall not apply to a vehicle or vehicle part:

(1) that is completely enclosed in a building in a lawful manner and is not visible from the street or other public or private property; or

- (2) that is stored or parked in a lawful manner on private property in connection with the business of a licensed vehicle dealer or junkyard, or that is an antique or special interest vehicle stored by a motor vehicle collector on the collector's property, if the vehicle or part and the outdoor storage area, if any, are:
 - (A) maintained in an orderly manner;
 - (B) not a health hazard; and
 - (C) screened from ordinary public view by appropriate means, including a fence, rapidly growing trees, or shrubbery.

Sec. 34.06.005. Vehicles obstructing traffic.

Nothing in this article shall affect ordinances or state statutes that permit immediate removal of a vehicle left on public property which constitutes an obstruction to traffic.

Sec. 34.06.006. Junked vehicles declared to be a public nuisance; adoption of procedures for abatement and removal.

- (a) Junked vehicles, as defined in this article, are detrimental to the safety and welfare of the general public, tending to reduce the value of private property, to invite vandalism, to create fire hazards, to constitute an attractive nuisance creating a hazard to the health and safety of minors, and are detrimental to the economic welfare of the city by producing urban blight which is adverse to the maintenance and continuing development of the city; and such vehicles are, therefore, declared to be a public nuisance.
- (b) This declaration is made pursuant to Tex. Transportation Code Chapter 683, Subchapter E. This division adopts municipal procedures that conform to Tex. Transportation Code Chapter 683, Subchapter E for the abatement and removal from private or public property or a public right-of-way of a junked vehicle or part of a junked vehicle as a public nuisance.

Sec. 34.06.007. Notice.

- (a) Prior to any official action being taken to abate and remove a junked vehicle, from private or public property or a public right-of-way, the director of code enforcement shall send written notice, by certified mail with a five- day return requested, or delivered by the United States Postal Service with signature confirmation service, to:
 - (1) the last known registered owner of the nuisance;
 - (2) each lienholder of record of the nuisance; and
 - (3) the owner or occupant of:
 - (A) the property on which the nuisance is located; or

(B) if the nuisance is located on a public right-of-way, the property adjacent to the right-of-way.

(b) Such notice shall state:

- (1) the nature of the public nuisance and the nuisance must be abated and removed not later than the tenth (10th) day after the date on which the notice was personally delivered or mailed;
- (2) any request for a hearing must be made before that 10-day period expires; and
- (3) that the director of code enforcement of the City of Lubbock will seek an order from the permit and license appeal board requiring the removal of such junk vehicle..
- (c) If the post office address of the last known registered owner of the nuisance is unknown, notice may be placed on the nuisance or, if the owner is located, personally delivered.
- (d) If notice is returned undelivered, action to abate the nuisance shall be continued to a date not earlier than the 11th day after the date of the return.

Sec. 34.06.008. Relocation of public nuisance to another location.

The relocation of a junked vehicle that is a public nuisance to another location within the city limits after a proceeding for the abatement and removal of the public nuisance has commenced has no effect on the proceeding if the junked vehicle constitutes a public nuisance at the new location.

Sec. 34.06.009. Hearing.

- (a) A public hearing prior to the removal of a junk vehicle or part thereof under this article as a public nuisance, shall be held before the permit and license appeal board, when such a hearing is requested by the owner or occupant of the public or private premises on which said vehicle is located, or by the owner or occupant of the premises adjacent to the public right-of-way.
 - (1) The hearing shall be held not earlier than the eleventh (11th) day after the date of the service of notice to abate the nuisance.
 - (2) At the hearing, the junked motor vehicle is presumed, unless demonstrated otherwise by the owner, to be inoperable.
 - (3) The director of code enforcement, on behalf of the city, shall request that the permit and license appeal board enter an order requiring the owner or other responsible person for such junk vehicle remove said vehicle, and further ordering and authorizing the City of Lubbock to remove said

vehicle in the event said vehicle is not removed by the owner or other responsible person within five (5) days from the date of said order.

- (b) In the event such junk vehicle has not been removed and the public nuisance abated after due notice as set forth in section 34.06.007 of this article, a public hearing shall be held before the permit and license appeal board prior to the removal of a junk vehicle or part thereof under this article as a public nuisance.
- (c) At every public hearing held by the permit and license appeal board, the board shall in each case determine the following:
 - (1) Whether or not the vehicle in question is a junk vehicle as defined in section 34.06.001 of the Code of Ordinances of the City of Lubbock.
 - (2) That the vehicle in question is not excepted from the provisions of this article by section 34.06.004 of the Code of Ordinances of the City of Lubbock.
 - (3) That the vehicle constitutes a public nuisance as set forth in section 34.06.006(a) of the Code of Ordinances of the City of Lubbock and should be abated.
- (d) The failure to abate and remove the nuisance or failure to attend the hearing after notice constitutes a waiver by the owner and lienholders of all right, title and interest in the vehicle and their consent to disposal of the junked vehicle in accordance with the provisions of Tex. Transportation Code Chapter 683, Subchapter E.
- (e) The person in whose name a junked vehicle is last registered shall be presumed to be the owner and person in control of such vehicle for purposes of prosecution under this article. Proof of ownership may be made by production of a copy or facsimile of the registration of a vehicle with the state department of transportation or the county motor vehicle licensing department or any other licensing authority showing the name of the person to whom the license plates for the vehicle were issued. This proof shall constitute prima facie evidence of the fact that the person to whom such certificate of registration was issued was the owner and person in control of the junked motor vehicle determined to be a public nuisance. This presumption may be rebutted by competent evidence.
- (f) In every case where the permit and license appeal board finds that the factors set forth in subsection (c) of this section exist, the board shall issue its order authorizing and requiring the director of code enforcement of the city to remove the vehicle in question. If the information is available at the location of the nuisance, an order requiring removal of the nuisance must include:
 - (1) for a motor vehicle, the vehicle's:
 - (A) description;
 - (B) vehicle identification number; and

- (C) license plate number;
- (2) for an aircraft, the aircraft's:
 - (A) description; and
 - (B) federal aircraft identification number as described by Federal Aviation Administration aircraft registration regulations in 14 C.F.R. Part 47; and
- (3) for a watercraft, the watercraft's:
 - (A) description; and
 - (B) identification number as set forth in the watercraft's certificate of number.

Sec. 34.06.010. Rules governing procedures for conduct of hearing.

The permit and license appeal board designated by the city council may adopt such rules governing the procedures for the conduct of hearings undertaken by said board not inconsistent with the terms of this article.

Sec. 34.06.011. Disposition.

- (a) If the permit and licensee appeal board orders removal of the public nuisance, the city or any duly authorized person may abate such nuisance by removal and disposal of the junked vehicle in accordance with the provisions of Tex. Transportation Code Chapter 683, Subchapter E.
- (b) Notice shall be given by the city to the Texas Department of Transportation within five (5) days after the removal of and orders for disposal are issued for such junked vehicle, identifying the vehicle or part thereof.
- (c) Junked vehicles or parts thereof may be disposed of by removal to a scrapyard, demolishers or any suitable site operated by the city for processing as scrap or salvage in accordance with the subchapter E of Chapter 683 of the Texas Transportation Code, as may be amended.
- (d) Junked vehicles which have been removed pursuant to this article shall not be reconstructed or made operable.

Sec. 34.06.012. Removal with permission.

If within ten (10) days after receipt of notice from the director of code enforcement and/or his employees, or his duly authorized agent, to abate the nuisance, as herein provided, the owner or occupant of the premises shall give his written permission to the director of code enforcement and/or his employees or his duly authorized agent for removal of the junked motor vehicle from the premises, the giving of such permission shall be considered compliance with the provisions of this article.

Sec. 34.06.013. Offense; penalty for violation; order of abatement upon conviction.

- (a) A person commits an offense if the person maintains, permits, or allows a public nuisance described by Sec.34.06.006(a) of this code.
- (b) Whenever such a public nuisance is found to exist within the city, the city may, without notice, pursue the filing of an immediate criminal complaint against the person or persons in violation of this section.
- (c) An offense under this section is a misdemeanor punishable by a fine not to exceed \$200.
- (d) Upon conviction, the court shall, in connection with its guilty finding, enter an order directing the guilty party to abate and remove the public nuisance which was the subject of the criminal complaint. Any order so entered shall take effect immediately upon conviction becoming final. If abatement is not accomplished as ordered by the court, the city is authorized to abate the nuisance and assess the reasonable costs of abatement against the guilty party.
- **SECTION 2.** THAT violation of any provision of this Ordinance shall be deemed a misdemeanor punishable as provided by Section 1.01.004 of the Code of Ordinances of the City of Lubbock, Texas.
- **SECTION 3.** THAT should any 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.
- **SECTION 4.** THAT the City Secretary is hereby authorized 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 o	n	
Passed by the City Council on second readir	ng on	
	TRAY PAYNE, MAYOR	
ATTEST:		
Courtney Paz, City Secretary		
APPROVED AS TO CONTENT:		
CT D		
Stuart Walker, Director of Code Enforceme	ent	
APPROVED AS TO FORM:		
APPROVED AS TO FORM:		
25		
Amy Sims, Deputy City Attorney		

Information

Agenda Item

Resolution - Public Health Services: Consider a resolution authorizing the Mayor to execute the Department of State Health Services (DSHS) Contract No. HHS001331300015, and all related documents, under the Immunization Locals Grant Program, by and between the City of Lubbock, and the State of Texas DSHS.

Item Summary

This is an existing grant. The purpose of this Grant Agreement is to prevent and control the transmission of vaccine-preventable diseases in children and adults, with emphasis on accelerating strategic interventions to improve their vaccine coverage levels.

This Grant Agreement is effective on September 1, 2023, and expires on August 31, 2024, unless it is terminated, renewed, or extended sooner.

This grant requires an electronic signature.

Fiscal Impact

The total amount of this Grant Agreement will not exceed \$232,115, and does not require matching funds.

Staff/Board Recommending

Bill Howerton, Deputy City Manager Katherine Wells, Director of Public Health

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, Department of State Health Services Contract No. HHS001331300015 under the Immunization Locals Grant Program, by and between the City of Lubbock and the State of Texas' Department of State Health Services (DSHS), 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	<u> </u>
	TRAY PAYNE, MAYOR
ATTEST:	
Courtney Paz, City Secretary	
APPROVED AS TO CONTENT:	1
Bill Howerton, Deputy City Manager	
APPROVED AS TO FORM:	
Rachael Foster, Assistant City Attorney	

RES.DSHS-HHS001331300015 Immunization Locals Grant Program 6.5.23



Texas Department of State Health Services

Jennifer A. Shuford, M.D., M.P.H.

Commissioner

The Honorable Tray Payne, Mayor City of Lubbock PO Box 2000 Lubbock, Texas 79408

Subject: IMM/LOCALS

Contract Number: HHS001331300015

Contract Amount: \$232,115.00

Contract Term: September 1, 2023, through August 31, 2024

Dear Mayor Payne:

Enclosed is the IMM/LOCALS contract between the Department of State Health Services and City of Lubbock.

The purpose of this contract is to prevent and control the transmission of vaccinepreventable diseases in children and adults, with emphasis on accelerating strategic interventions to improve their vaccine coverage levels.

Please let me know if you have any questions or need additional information.

Sincerely,

Shelva Mays, CTCM Contract Manager Shelva.mays@dshs.texas.gov

SIGNATURE DOCUMENT FOR DEPARTMENT OF STATE HEALTH SERVICES GRANT AGREEMENT, CONTRACT NO. HHS001331300015 UNDER THE IMMUNIZATION LOCALS GRANT PROGRAM

The parties to this agreement ("Grant Agreement" or "Contract") are the **DEPARTMENT OF STATE HEALTH SERVICES** ("System Agency" or "DSHS"), a pass-through entity, and **CITY OF LUBBOCK** ("Grantee"), having its principal office at 1314 Avenue K, Lubbock, Texas 79401 (each a "Party" and collectively the "Parties").

I. PURPOSE

The purpose of this Grant Agreement is to prevent and control the transmission of vaccinepreventable diseases in children and adults, with emphasis on accelerating strategic interventions to improve their vaccine coverage levels.

II. LEGAL AUTHORITY

This Grant Agreement is entered into pursuant to Sections 317, 317(k)(2) of the Public Health Service Act (42 USC Sections 247b, 247b(k)(2) and 247c), as amended. This Contract is authorized by and in compliance with 42 USC 247b; 42 USC 243; 42 USC 300aa-3, 300aa-25, and 300aa-26; 42 USC 1396s; Chapter 791 of the Texas Government Code; and Chapters 12, 81, 161 and 1001 of the Texas Health and Safety Code.

III. DURATION

This Grant Agreement is effective on September 1, 2023, and expires on August 31, 2024, unless sooner terminated or renewed or extended. System Agency, at its sole discretion, may extend this Grant Agreement for up to four (4) additional one-year terms for a maximum term of five (5) years.

IV. STATEMENT OF WORK

The Scope of Grant Project to which Grantee is bound is incorporated into and made a part of this Grant Agreement for all purposes and included as ATTACHMENT A, STATEMENT OF WORK.

V. BUDGET AND INDIRECT COST RATE

The total amount of this Grant Agreement will not exceed \$232,115.00. Grantee is not required to provide matching funds.

The total not-to-exceed amount includes the following:

Total Federal Funds: \$103,276.00

Total State Funds: \$128,839.00

All expenditures under the Grant Agreement will be in accordance with ATTACHMENT B. BUDGET.

VI. REPORTING REQUIREMENTS

Grantee shall submit reports in accordance with the requirements specified in ATTACHMENT A, STATEMENT OF WORK.

VII. CONTRACT REPRESENTATIVES

The following will act as the representative authorized to administer activities under this Grant Agreement on behalf of their respective Party.

System Agency

Shelva Mays Department of State Health Services P.O. Box 149347 – Mail Code 1990 Austin, Texas 78714-9347 cms covidimm@dshs.texas.gov

Grantee

Katherine Wells City of Lubbock PO Box 2000 Lubbock, Texas 79408 kwells@mylubbock.us

VIII. **NOTICE REQUIREMENTS**

- A. All notices given by Grantee shall be in writing, include the Grant Agreement contract number, comply with all terms and conditions of the Grant Agreement, and be delivered to the System Agency's Contract Representative identified above.
- B. Grantee shall send legal notices to System Agency at the address below and provide a copy to the System Agency's Contract Representative:

Health and Human Services Commission 4601 W. Guadalupe, Mail Code 1100 Austin, Texas 78751 Attn: Office of Chief Counsel

With a copy to:

Department of State Health Services 1100 W. 49th Street, Mail Code 1919 Austin, Texas 78756 Attention: Office of General Counsel

C. Notices given by System Agency to Grantee may be emailed, mailed or sent by common carrier. Email notices shall be deemed delivered when sent by System Agency. Notices sent by mail shall be deemed delivered when deposited by the System Agency in the United States mail, postage paid, certified, return receipt requested. Notices sent by common carrier shall be deemed delivered when deposited by the System Agency with a common carrier, overnight, signature required.

- D. Notices given by Grantee to System Agency shall be deemed delivered when received by System Agency.
- E. Either Party may change its Contract Representative or Legal Notice contact by providing written notice to the other Party.

IX. FEDERAL AWARD INFORMATION

GRANTEE'S UNIQUE ENTITY IDENTIFIER IS: LXDNEKWRVKJ6

Federal funding under this Grant Agreement is a subaward under the following federal award.

Federal Award Identification Number (FAIN): NH23IP922616

- A. Assistance Listings Title: Immunization Cooperative Agreements
- B. Assistance Listing Number: 93.268
- C. Assistance Listing Dollar Amount: \$23,869,537.00
- D. Federal Award Date: 07/01/2022
- E. Federal Award Period: 07/01/2019 06/30/2024
- F. Name of Federal Awarding Agency: Centers for Disease Control and Prevention, Office of Financial Resources
- G. Federal Award Project Description: CDC-RFA-IP19-1901, Immunization and Vaccines for Children
- H. Awarding Official Contact Information:

Name: Kathy Raible, GMS Email: <u>kcr8@cdc.gov</u> Phone: 770-488-2045

- I. Total Amount of Federal Funds Awarded to System Agency: \$23,869,537.00
- J. Amount of Funds Awarded to Grantee: \$232,115.00
- K. Identification of Whether the Award is for Research and Development: No

X. CONTRACT DOCUMENTS

The following documents are incorporated by reference and made a part of this Grant Agreement for all purposes.

Unless expressly stated otherwise in this Grant Agreement, in the event of conflict, ambiguity or inconsistency between or among any documents, all System Agency documents take precedence over Grantee's documents and the Data Use Agreement takes precedence over all other contract documents.

ATTACHMENT A -STATEMENT OF WORK

ATTACHMENT B - BUDGET

ATTACHMENT C – HHS CONTRACT AFFIRMATIONS V. 2.2 (MAY 2022)

ATTACHMENT D – HHS UNIFORM TERMS AND CONDITIONS – GRANT v. 3.2 (JULY 2022)

ATTACHMENT E – DATA USE AGREEMENT-TACCHO VERSION (OCTOBER 23, 2019)

ATTACHMENT E-1 DATA USE AGREEMENT-SECURITY AND PRIVACY INQUIRY

ATTACHMENT F - ADDITIONAL PROVISIONS

ATTACHMENT G - FEDERAL ASSURANCES

ATTACHMENT H - CERTIFICATION REGARDING LOBBYING

ATTACHMENT I – DISCLOSURE OF LOBBYING ACTIVITIES (SF-LLL)

ATTACHMENT J – FFATA CERTIFICATION FORM

XI. SIGNATURE AUTHORITY

Each Party represents and warrants that the person executing this Grant Agreement on its behalf has full power and authority to enter into this Grant Agreement. Any services or work performed by Grantee before this Grant Agreement is effective or after it ceases to be effective is performed at the sole risk of Grantee.

SIGNATURE PAGE FOLLOWS

SIGNATURE PAGE FOR SYSTEM AGENCY GRANT AGREEMENT, CONTRACT NO. HHS001331300015

TEXAS DEPARTMENT OF STATE HEALTH SERVICES	CITY OF LUBBOCK
Signature	Signature
Printed Name:	Printed Name:
Title:	Title:
Date of Signature:	Date of Signature:

ATTACHMENT A STATEMENT OF WORK

I. GRANTEE RESPONSIBILITIES

Grantee shall:

- **A.** Implement and operate an immunization program for children, adolescents, and adults, with special emphasis on accelerating interventions to improve the immunization coverage of children three (3) years of age or younger (birth to 35 months of age). Grantee shall incorporate traditional and non-traditional systematic approaches designed to eliminate barriers, expand immunization capacity, and establish uniform operating policies, as described herein.
- **B.** Be enrolled as a provider in the Texas Vaccines for Children (TVFC) and the Adult Safety Net (ASN) Programs by the effective date of this Contract. This includes a signed *Deputization Addendum Form (EF11-13999)*.
- C. Maintain staffing levels to meet required activities of the Contract and ensure staff funded by this Contract attend required training.
- **D.** Report all notifiable conditions as specified in Texas Administrative Code (TAC) Title 25, Part I §§ 97.1-97.6, as amended, and as otherwise required by law.
- E. Report all vaccine adverse event occurrences in accordance with the 1986 National Childhood Vaccine Injury Act (NCVIA) 42 U.S.C. § 300aa-25 (located at http://vaers.hhs.gov/ or 1-800-822-7967, as amended.
- **F.** Sustain a network of TVFC/ASN providers to administer vaccines to program-eligible populations by conducting the following activities:
 - 1. Ensuring New Provider Checklist is completed;
 - 2. Conducting quality assurance reviews;
 - 3. Ensuring annual influenza pre-book survey is completed;
 - 4. Conducting compliance site visits;
 - 5. Conducting unannounced storage and handling visits; and
 - 6. Ensuring providers adhere to the vaccine borrowing procedure.
- **G.** Participate in audits and assessments through the following activities:
 - 1. Completing and submitting through Child Health Reporting System (CHRS) all audits and assessments conducted on childcare facilities and Head Start Centers;
 - 2. Completing audits, assessments and retrospective surveys of public and private schools;
 - 3. Reviewing monthly reports to ensure data quality;
 - 4. Reviewing the monthly Provider Activity Reports;

- 5. Reviewing the quarterly Consent Accepted Rate Evaluations; and
- 6. Conducting quality improvement assessments of Texas Immunization Registry organizations.
- **H.** Provide education and outreach activities regarding vaccines and vaccine-preventable diseases, Texas Immunization Registry, and TVFC and ASN Programs to the following:
 - 1. American Indian Tribes;
 - 2. Schools and childcare facilities:
 - 3. Healthcare workers; and
 - 4. Community and general public.
- I. Not deny vaccinations to recipients because they do not reside within Grantee's jurisdiction or because of an inability to pay an administration fee.
- J. Be responsible for identification and case management of all hepatitis B surface antigen (HBsAg)-positive pregnant women. Grantee shall ensure timely newborn post-exposure prophylaxis (PEP) with hepatitis B vaccine and hepatitis B immune globulin (HBIG), timely completion of doses two and three of hepatitis B vaccine, and timely completion of post-vaccination serologic testing (PVST).
- **K.** Be responsible for assessing and/or auditing coverage rates and/or compliance with vaccine requirements at assigned schools and childcare facilities in accordance with the Population Assessment Manual, which is distributed annually from DSHS.
- L. Transfer (which may include shipping) overstocked vaccines and vaccines approaching expiration to alternate providers for immediate use when instructed to do so by the DSHS Public Health Region (PHR) Immunization Program Manager to avoid vaccine waste. Grantee is responsible for covering the cost to ship overstocked vaccines and vaccines approaching expiration.
- **M.** Receive written approval from DSHS before varying from applicable policies, procedures, protocols, and/or work plans, and must update and disseminate its implementation documentation to its staff involved in activities under this Contract within forty-eight (48) hours of making approved changes.
- **N.** Review monthly Contract funding expenditures and salary savings from any Contract-paid staff vacancies and revise spending plan to ensure that all funds will be properly expended under this Contract before the end of the Contract term.
- **O.** Submit out-of-state travel requests to the Immunization Section for approval when utilizing Contract funds or program income.

II. REPORTING REQUIREMENTS

Grantee shall:

- **A.** Report the number of doses administered to underinsured children monthly, as directed by DSHS.
- **B.** Report the number of unduplicated underinsured clients served, as directed by DSHS.
- C. Complete and submit Immunization Inter-Local Agreement (ILA) Quarterly Report form, utilizing the format provided by the DSHS Immunization Section and available at https://dshs.texas.gov/immunize/lhd.shtm by the report due date. If the due date falls on a weekend or state approved holiday, the report is due the next business day.

Report Type	Reporting Period	Report Due Date
Programmatic	09/01/2023 to 11/30/2023	12/31/2023
Programmatic	12/01/2023 to 02/29/2024	03/31/2024
Programmatic	03/01/2024 to 05/31/2024	06/30/2024
Programmatic	06/01/2024 to 08/31/2024	09/30/2024

Submit quarterly reports electronically through an online tool according to the timeframes stated above. DSHS Immunization Section will provide instructions at the beginning of each state fiscal year through CMS. Supplemental report documents (PEAR and AFIX reports, vacancy letters, etc.) should be sent to dshsimmunizationcontracts@dshs.texas.gov.

D. Submit the Financial Status Report (FSR-269A) biannually as outlined below. Grantee shall email the Financial Status Report (FSR-269A) to the following email address: FSRgrants@dshs.texas.gov.

Period Covered	Due Date
September 1, 2023 – February 29, 2024	February 29, 2024
March 1, 2024 - August 31, 2024	September 31, 2024

- E. Maintain an inventory of equipment, supplies defined as Controlled Assets, and real property. Submit an annual cumulative report of the equipment and other property on HHS System Agency Grantee's Property Inventory Report to the designated DSHS Contract Manager and fsoequip@dshs.texas.gov by email not later than October 15 of each year. 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.
- **F.** Provide written notification of budget transfers by submission of a revised Categorical Budget Form to the designated DSHS Contract Manager, highlighting the areas affected by the budget transfer. Grantee is advised as follows:

- 1. Transferring funds between budget categories, other than the equipment and indirect cost categories, is allowable, but cannot exceed 25% of the total Contract value during a Contract budget period. If the budget transfer(s) exceeds 25% of the total Contract value, alone or cumulatively, a formal Contract amendment is required; and
- **2.** After review, the designated DSHS Contract Manager shall provide notification of acceptance to Grantee via email, upon receipt of which, the revised budget shall be incorporated into the Contract.
- **3.** Grantee's budget revision is not authorized, and funds cannot be utilized until the contract amendment is executed.

III. RULES

Grantee shall:

- **A.** Provide services in accordance with all applicable federal and state laws, rules, regulations, standards and guidelines, as amended, including, but not limited to, the following:
 - 1. Written policies and procedures provided by DSHS in managing vaccines supplied through the ASN and TVFC Programs, including guidelines for proper storage, handling, and safeguarding of vaccines in the event of natural disaster.
 - 2. DSHS Immunization updated guidance according to the *FY2024 Contractors Guide*, located at: https://www.dshs.texas.gov/immunize/Responsible-Entities/Contract
 - https://www.dshs.texas.gov/immunize/Responsible-Entities/Contract-Management/.
 - 3. Texas Health and Safety Code § 1001.089 and maintain the confidentiality of any public health data obtained through provision of essential public health services as those services are defined in Texas Health and Safety Code §121.002.
 - 4. Those terms and conditions set forth in ATTACHMENT E, DATA USE AGREEMENT.

IV. PERFORMANCE MEASURES

System Agency will monitor the Grantee's performance of the requirements in this **ATTACHMENT A** and compliance with the Contract's terms and conditions.

V. INVOICE AND PAYMENT

Grantee shall request monthly payments by the 30th day following the service month using the State of Texas Purchase Voucher (Form B-13) at http://www.dshs.texas.gov/grants/forms.shtm. System Agency will issue reimbursement payments to Grantees on a monthly basis for reported actual cash disbursements which are supported by adequate documentation. Invoices must be submitted monthly to prevent delays in subsequent months. Grantees that do not incur expenses within a month are required to submit a "zero dollar" invoice on a monthly basis. Grantee must submit a final

close-out invoice and final financial status report no later than 45 days following the end of the Contract term. Invoices received more than 45 days after the end of the Contract term are subject to denial of payment. Grantee shall electronically submit all invoices with supporting documentation to: invoices@dshs.texas.gov and CMSinvoices@dshs.texas.gov and a copy to the assigned DSHS Contract Representative identified in the Signature Document.

- **A.** At a minimum, voucher should include:
 - 1. Grantee name, address, email address, vendor identification number, and telephone number;
 - 2. DSHS Contract or Purchase Order number;
 - 3. Dates services were completed and/or products were delivered;
 - 4. The total invoice amount; and
 - 5. Any additional supporting documentation which is required by the Statement of Work or as requested by DSHS.

Failure to submit required information may result in delay of payment or return of invoice. Billing invoices must be legible. Illegible or incomplete invoices which cannot be verified will be disallowed for payment.

B. DSHS will pay Grantee monthly on a cost reimbursement basis and in accordance with **ATTACHMENT B, BUDGET**, of this Contract. DSHS will reimburse Grantee only for allowable and reported expenses incurred within the grant term.

ATTACHMENT B BUDGET

Organization Name: City of Lubbock

Program ID: IMM/LOCALS

Contract Number: HHS001331300015

Budget Category	Budget Period 9/1/2023-8/31/2024	Category Total
Personnel	\$150,412.00	\$150,412.00
Fringe Benefits	\$63,173.00	\$63,173.00
Travel	\$0.00	\$0.00
Equipment	\$0.00	\$0.00
Supplies	\$1,726.00	\$1,726.00
Contractual	\$12,804.00	\$12,804.00
Other	\$4000.00	\$4000.00
Total Direct Charges	\$232,115.00	\$232,115.00
Indirect Charges	\$0.00	\$0.00
Total	\$232,115.00	\$232,115.00

HEALTH AND HUMAN SERVICES Contract Number HHS001331300015

Attachment <u>C</u> CONTRACT AFFIRMATIONS

For purposes of these Contract Affirmations, HHS includes both the Health and Human Services Commission (HHSC) and the Department of State Health Services (DSHS). System Agency refers to HHSC, DSHS, or both, that will be a party to this Contract. These Contract Affirmations apply to all Contractors and Grantees (referred to as "Contractor") regardless of their business form (e.g., individual, partnership, corporation).

By entering into this Contract, Contractor affirms, without exception, understands, and agrees to comply with the following items through the life of the Contract:

1. Contractor represents and warrants that these Contract Affirmations apply to Contractor and all of Contractor's principals, officers, directors, shareholders, partners, owners, agents, employees, subcontractors, independent contractors, and any other representatives who may provide services under, who have a financial interest in, or otherwise are interested in this Contract and any related Solicitation.

2. Complete and Accurate Information

Contractor represents and warrants that all statements and information provided to HHS are current, complete, and accurate. This includes all statements and information in this Contract and any related Solicitation Response.

3. Public Information Act

Contractor understands that HHS will comply with the Texas Public Information Act (Chapter 552 of the Texas Government Code) as interpreted by judicial rulings and opinions of the Attorney General of the State of Texas. Information, documentation, and other material prepared and submitted in connection with this Contract or any related Solicitation may be subject to public disclosure pursuant to the Texas Public Information Act. In accordance with Section 2252.907 of the Texas Government Code, Contractor is required to make any information created or exchanged with the State pursuant to the Contract, and not otherwise excepted from disclosure under the Texas Public Information Act, available in a format that is accessible by the public at no additional charge to the State.

4. Contracting Information Requirements

Contractor represents and warrants that it will comply with the requirements of Section 552.372(a) of the Texas Government Code. Except as provided by Section 552.374(c) of the Texas Government Code, the requirements of Subchapter J (Additional Provisions Related to Contracting Information), Chapter 552 of the Government Code, may apply to the Contract and the Contractor agrees that the Contract can be terminated if the Contractor knowingly or intentionally fails to comply with a requirement of that subchapter.

5. Assignment

- A. Contractor shall not assign its rights under the Contract or delegate the performance of its duties under the Contract without prior written approval from System Agency. Any attempted assignment in violation of this provision is void and without effect.
- B. Contractor understands and agrees the System Agency may in one or more transactions assign, pledge, or transfer the Contract. Upon receipt of System Agency's notice of assignment, pledge, or transfer, Contractor shall cooperate with System Agency in giving effect to such assignment, pledge, or transfer, at no cost to System Agency or to the recipient entity.

6. Terms and Conditions

Contractor accepts the Solicitation terms and conditions unless specifically noted by exceptions advanced in the form and manner directed in the Solicitation, if any, under which this Contract was awarded. Contractor agrees that all exceptions to the Solicitation, as well as terms and conditions advanced by Contractor that differ in any manner from HHS' terms and conditions, if any, are rejected unless expressly accepted by System Agency in writing.

7. HHS Right to Use

Contractor agrees that HHS has the right to use, produce, and distribute copies of and to disclose to HHS employees, agents, and contractors and other governmental entities all or part of this Contract or any related Solicitation Response as HHS deems necessary to complete the procurement process or comply with state or federal laws.

8. Release from Liability

Contractor generally releases from liability and waives all claims against any party providing information about the Contractor at the request of System Agency.

9. Dealings with Public Servants

Contractor has not given, has not offered to give, and does not intend to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with this Contract or any related Solicitation, or related Solicitation Response.

10. Financial Participation Prohibited

Under Section 2155.004, Texas Government Code (relating to financial participation in preparing solicitations), Contractor certifies that the individual or business entity named in this Contract and any related Solicitation Response is not ineligible to receive this Contract and acknowledges that this Contract may be terminated and payment withheld if this certification is inaccurate.

11. Prior Disaster Relief Contract Violation

Under Sections 2155.006 and 2261.053 of the Texas Government Code (relating to convictions and penalties regarding Hurricane Rita, Hurricane Katrina, and other disasters), the Contractor certifies that the individual or business entity named in this Contract and any related Solicitation Response is not ineligible to receive this Contract

and acknowledges that this Contract may be terminated and payment withheld if this certification is inaccurate.

12. Child Support Obligation

Under Section 231.006(d) of the Texas Family Code regarding child support, Contractor certifies that the individual or business entity named in this Contract and any related Solicitation Response is not ineligible to receive the specified payment and acknowledges that the Contract may be terminated and payment may be withheld if this certification is inaccurate. If the certification is shown to be false, Contractor may be liable for additional costs and damages set out in 231.006(f).

13. Suspension and Debarment

Contractor certifies that it and its principals are not suspended or debarred from doing business with the state or federal government as listed on the *State of Texas Debarred Vendor List* maintained by the Texas Comptroller of Public Accounts and the *System for Award Management (SAM)* maintained by the General Services Administration. This certification is made pursuant to the regulations implementing Executive Order 12549 and Executive Order 12689, Debarment and Suspension, 2 C.F.R. Part 376, and any relevant regulations promulgated by the Department or Agency funding this project. This provision shall be included in its entirety in Contractor's subcontracts, if any, if payment in whole or in part is from federal funds.

14. Excluded Parties

Contractor certifies that it is not listed in the prohibited vendors list authorized by Executive Order 13224, "Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism," published by the United States Department of the Treasury, Office of Foreign Assets Control.'

15. Foreign Terrorist Organizations

Contractor represents and warrants that it is not engaged in business with Iran, Sudan, or a foreign terrorist organization, as prohibited by Section 2252.152 of the Texas Government Code.

16. Executive Head of a State Agency

In accordance with Section 669.003 of the Texas Government Code, relating to contracting with the executive head of a state agency, Contractor certifies that it is not (1) the executive head of an HHS agency, (2) a person who at any time during the four years before the date of this Contract was the executive head of an HHS agency, or (3) a person who employs a current or former executive head of an HHS agency.

17. Human Trafficking Prohibition

Under Section 2155.0061 of the Texas Government Code, Contractor certifies that the individual or business entity named in this Contract is not ineligible to receive this Contract and acknowledges that this Contract may be terminated and payment withheld if this certification is inaccurate.

18. Franchise Tax Status

Contractor represents and warrants that it is not currently delinquent in the payment of any franchise taxes owed the State of Texas under Chapter 171 of the Texas Tax Code.

19. Debts and Delinquencies

Contractor agrees that any payments due under this Contract shall be applied towards any debt or delinquency that is owed to the State of Texas.

20. Lobbying Prohibition

Contractor represents and warrants that payments to Contractor and Contractor's receipt of appropriated or other funds under this Contract or any related Solicitation are not prohibited by Sections 556.005, 556.0055, or 556.008 of the Texas Government Code (relating to use of appropriated money or state funds to employ or pay lobbyists, lobbying expenses, or influence legislation).

21. Buy Texas

Contractor agrees to comply with Section 2155.4441 of the Texas Government Code, requiring the purchase of products and materials produced in the State of Texas in performing service contracts.

22. Disaster Recovery Plan

Contractor agrees that upon request of System Agency, Contractor shall provide copies of its most recent business continuity and disaster recovery plans.

23. Computer Equipment Recycling Program

If this Contract is for the purchase or lease of computer equipment, then Contractor certifies that it is in compliance with Subchapter Y, Chapter 361 of the Texas Health and Safety Code related to the Computer Equipment Recycling Program and the Texas Commission on Environmental Quality rules in 30 TAC Chapter 328.

24. Television Equipment Recycling Program

If this Contract is for the purchase or lease of covered television equipment, then Contractor certifies that it is compliance with Subchapter Z, Chapter 361 of the Texas Health and Safety Code related to the Television Equipment Recycling Program.

25. Cybersecurity Training

- A. Contractor represents and warrants that it will comply with the requirements of Section 2054.5192 of the Texas Government Code relating to cybersecurity training and required verification of completion of the training program.
- B. Contractor represents and warrants that if Contractor or Subcontractors, officers, or employees of Contractor have access to any state computer system or database, the Contractor, Subcontractors, officers, and employees of Contractor shall complete cybersecurity training pursuant to and in accordance with Government Code, Section 2054.5192.

26. Restricted Employment for Certain State Personnel

Contractor acknowledges that, pursuant to Section 572.069 of the Texas Government Code, a former state officer or employee of a state agency who during the period of state service or employment participated on behalf of a state agency in a procurement or contract negotiation involving Contractor may not accept employment from Contractor before the second anniversary of the date the Contract is signed or the procurement is terminated or withdrawn.

27. No Conflicts of Interest

- A. Contractor represents and warrants that it has no actual or potential conflicts of interest in providing the requested goods or services to System Agency under this Contract or any related Solicitation and that Contractor's provision of the requested goods and/or services under this Contract and any related Solicitation will not constitute an actual or potential conflict of interest or reasonably create an appearance of impropriety.
- B. Contractor agrees that, if after execution of the Contract, Contractor discovers or is made aware of a Conflict of Interest, Contractor will immediately and fully disclose such interest in writing to System Agency. In addition, Contractor will promptly and fully disclose any relationship that might be perceived or represented as a conflict after its discovery by Contractor or by System Agency as a potential conflict. System Agency reserves the right to make a final determination regarding the existence of Conflicts of Interest, and Contractor agrees to abide by System Agency's decision.

28. Fraud, Waste, and Abuse

Contractor understands that HHS does not tolerate any type of fraud, waste, or abuse. Violations of law, agency policies, or standards of ethical conduct will be investigated, and appropriate actions will be taken. Pursuant to Texas Government Code, Section 321.022, if the administrative head of a department or entity that is subject to audit by the state auditor has reasonable cause to believe that money received from the state by the department or entity or by a client or contractor of the department or entity may have been lost, misappropriated, or misused, or that other fraudulent or unlawful conduct has occurred in relation to the operation of the department or entity, the administrative head shall report the reason and basis for the belief to the Texas State Auditor's Office (SAO). All employees or contractors who have reasonable cause to believe that fraud, waste, or abuse has occurred (including misconduct by any HHS employee, Grantee officer, agent, employee, or subcontractor that would constitute fraud, waste, or abuse) are required to immediately report the questioned activity to the Health and Human Services Commission's Office of Inspector General. Contractor agrees to comply with all applicable laws, rules, regulations, and System Agency policies regarding fraud, waste, and abuse including, but not limited to, HHS Circular C-027.

A report to the SAO must be made through one of the following avenues:

• SAO Toll Free Hotline: 1-800-TX-AUDIT

• SAO website: http://sao.fraud.state.tx.us/

All reports made to the OIG must be made through one of the following avenues:

• OIG Toll Free Hotline 1-800-436-6184

• OIG Website: ReportTexasFraud.com

• Internal Affairs Email: Internal Affairs Referral@hhsc.state.tx.us

• OIG Hotline Email: OIGFraudHotline@hhsc.state.tx.us.

• OIG Mailing Address: Office of Inspector General

Attn: Fraud Hotline MC 1300 P.O. Box 85200

Austin, Texas 78708-5200

29. Antitrust

The undersigned affirms under penalty of perjury of the laws of the State of Texas that:

- A. in connection with this Contract and any related Solicitation Response, neither I nor any representative of the Contractor has violated any provision of the Texas Free Enterprise and Antitrust Act, Tex. Bus. & Comm. Code Chapter 15;
- B. in connection with this Contract and any related Solicitation Response, neither I nor any representative of the Contractor has violated any federal antitrust law; and
- C. neither I nor any representative of the Contractor has directly or indirectly communicated any of the contents of this Contract and any related Solicitation Response to a competitor of the Contractor or any other company, corporation, firm, partnership or individual engaged in the same line of business as the Contractor.

30. Legal and Regulatory Actions

Contractor represents and warrants that it is not aware of and has received no notice of any court or governmental agency proceeding, investigation, or other action pending or threatened against Contractor or any of the individuals or entities included in numbered paragraph 1 of these Contract Affirmations within the five (5) calendar years immediately preceding execution of this Contract or the submission of any related Solicitation Response that would or could impair Contractor's performance under this Contract, relate to the contracted or similar goods or services, or otherwise be relevant to System Agency's consideration of entering into this Contract. If Contractor is unable to make the preceding representation and warranty, then Contractor instead represents and warrants that it has provided to System Agency a complete, detailed disclosure of any such court or governmental agency proceeding, investigation, or other action that would or could impair Contractor's performance under this Contract, relate to the contracted or similar goods or services, or otherwise be relevant to System Agency's consideration of entering into this Contract. In addition, Contractor acknowledges this is a continuing disclosure requirement. Contractor represents and warrants that Contractor shall notify System Agency in writing within five (5) business days of any changes to the representations or warranties in this clause and understands that failure to so timely update System Agency shall constitute breach of contract and may result in immediate contract termination.

31. No Felony Criminal Convictions

Contractor represents that neither Contractor nor any of its employees, agents, or representatives, including any subcontractors and employees, agents, or representative of such subcontractors, have been convicted of a felony criminal offense or that if such a conviction has occurred Contractor has fully advised System Agency in writing of the facts and circumstances surrounding the convictions.

32. Unfair Business Practices

Contractor represents and warrants that it has not been the subject of allegations of Deceptive Trade Practices violations under Chapter 17 of the Texas Business and Commerce Code, or allegations of any unfair business practice in any administrative hearing or court suit and that Contractor has not been found to be liable for such practices in such proceedings. Contractor certifies that it has no officers who have served as officers of other entities who have been the subject of allegations of Deceptive Trade Practices violations or allegations of any unfair business practices in an administrative hearing or court suit and that such officers have not been found to be liable for such practices in such proceedings.

33. Entities that Boycott Israel

Contractor represents and warrants that (1) it does not, and shall not for the duration of the Contract, boycott Israel or (2) the verification required by Section 2271.002 of the Texas Government Code does not apply to the Contract. If circumstances relevant to this provision change during the course of the Contract, Contractor shall promptly notify System Agency.

34. E-Verify

Contractor certifies that for contracts for services, Contractor shall utilize the U.S. Department of Homeland Security's E-Verify system during the term of this Contract to determine the eligibility of:

- 1. all persons employed by Contractor to perform duties within Texas; and
- 2. all persons, including subcontractors, assigned by Contractor to perform work pursuant to this Contract within the United States of America.

35. Former Agency Employees – Certain Contracts

If this Contract is an employment contract, a professional services contract under Chapter 2254 of the Texas Government Code, or a consulting services contract under Chapter 2254 of the Texas Government Code, in accordance with Section 2252.901 of the Texas Government Code, Contractor represents and warrants that neither Contractor nor any of Contractor's employees including, but not limited to, those authorized to provide services under the Contract, were former employees of an HHS Agency during the twelve (12) month period immediately prior to the date of the execution of the Contract.

36. Disclosure of Prior State Employment – Consulting Services

If this Contract is for consulting services,

- A. In accordance with Section 2254.033 of the Texas Government Code, a Contractor providing consulting services who has been employed by, or employs an individual who has been employed by, System Agency or another State of Texas agency at any time during the two years preceding the submission of Contractor's offer to provide services must disclose the following information in its offer to provide services. Contractor hereby certifies that this information was provided and remains true, correct, and complete:
 - 1. Name of individual(s) (Contractor or employee(s));
 - 2. Status;
 - 3. The nature of the previous employment with HHSC or the other State of Texas agency;
 - 4. The date the employment was terminated and the reason for the termination; and
 - 5. The annual rate of compensation for the employment at the time of its termination.
- B. If no information was provided in response to Section A above, Contractor certifies that neither Contractor nor any individual employed by Contractor was employed by System Agency or any other State of Texas agency at any time during the two years preceding the submission of Contractor's offer to provide services.

37. Abortion Funding Limitation

Contractor understands, acknowledges, and agrees that, pursuant to Article IX of the General Appropriations Act (the Act), to the extent allowed by federal and state law, money appropriated by the Texas Legislature may not be distributed to any individual or entity that, during the period for which funds are appropriated under the Act:

- 1. performs an abortion procedure that is not reimbursable under the state's Medicaid program;
- 2. is commonly owned, managed, or controlled by an entity that performs an abortion procedure that is not reimbursable under the state's Medicaid program; or
- 3. is a franchise or affiliate of an entity that performs an abortion procedure that is not reimbursable under the state's Medicaid program.

The provision does not apply to a hospital licensed under Chapter 241, Health and Safety Code, or an office exempt under Section 245.004(2), Health and Safety Code. Contractor represents and warrants that it is not ineligible, nor will it be ineligible during the term of this Contract, to receive appropriated funding pursuant to Article IX.

38. Funding Eligibility

Contractor understands, acknowledges, and agrees that, pursuant to Chapter 2272 (eff. Sept. 1, 2021, Ch. 2273) of the Texas Government Code, except as exempted under that Chapter, HHSC cannot contract with an abortion provider or an affiliate of an abortion provider. Contractor certifies that it is not ineligible to contract with HHSC under the terms of Chapter 2272 (eff. Sept. 1, 2021, Ch. 2273) of the Texas Government Code.

39. Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment (2 CFR 200.216)

Contractor certifies that the individual or business entity named in this Response or Contract is not ineligible to receive the specified Contract or funding pursuant to 2 CFR 200.216.

40. COVID-19 Vaccine Passports

Pursuant to Texas Health and Safety Code, Section 161.0085(c), Contractor certifies that it does not require its customers to provide any documentation certifying the customer's COVID-19 vaccination or post-transmission recovery on entry to, to gain access to, or to receive service from the Contractor's business. Contractor acknowledges that such a vaccine or recovery requirement would make Contractor ineligible for a state-funded contract.

41. Entities that Boycott Energy Companies

In accordance with Senate Bill 13, Acts 2021, 87th Leg., R.S., pursuant to Section 2274.002 of the Texas Government Code (relating to prohibition on contracts with companies boycotting certain energy companies), 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 circumstances relevant to this provision change during the course of the Contract, Contractor shall promptly notify System Agency.

42. Entities that Discriminate Against Firearm and Ammunition Industries

In accordance with Senate Bill 19, Acts 2021, 87th Leg., R.S., pursuant to Section 2274.002 of the Texas Government Code (relating to prohibition on contracts with companies that discriminate against firearm and ammunition industries), 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 circumstances relevant to this provision change during the course of the Contract, Contractor shall promptly notify System Agency.

43. Security Controls for State Agency Data

In accordance with Senate Bill 475, Acts 2021, 87th Leg., R.S., pursuant to Texas Government Code, Section 2054.138, Contractor understands, acknowledges, and agrees that if, pursuant to this Contract, Contractor is or will be authorized to access, transmit, use, or store data for System Agency, Contractor is required to meet the security controls the System Agency determines are proportionate with System Agency's risk under the Contract based on the sensitivity of System Agency's data and that Contractor must periodically provide to System Agency evidence that Contractor meets the security controls required under the Contract.

44. Cloud Computing State Risk and Authorization Management Program (TX-RAMP)

In accordance with Senate Bill 475, Acts 2021, 87th Leg., R.S., pursuant to Texas Government Code, Section 2054.0593, Contractor acknowledges and agrees that, if providing cloud computing services for System Agency, Contractor must comply with the requirements of the state risk and authorization management program and that System Agency may not enter or renew a contract with Contractor to purchase cloud computing services for the agency that are subject to the state risk and authorization management program unless Contractor demonstrates compliance with program requirements. If providing cloud computing services for System Agency that are subject to the state risk and authorization management program, Contractor certifies it will maintain program compliance and certification throughout the term of the Contract.

45. Office of Inspector General Investigative Findings Expert Review

In accordance with Senate Bill 799, Acts 2021, 87th Leg., R.S., if Texas Government Code, Section 531.102(m-1)(2) is applicable to this Contract, Contractor affirms that it possesses the necessary occupational licenses and experience.

46. Contract for Professional Services of Physicians, Optometrists, and Registered Nurses

In accordance with Senate Bill 799, Acts 2021, 87th Leg., R.S., if Texas Government Code, Section 2254.008(a)(2) is applicable to this Contract, Contractor affirms that it possesses the necessary occupational licenses and experience.

47. Foreign-Owned Companies in Connection with Critical Infrastructure

If Texas Government Code, Section 2274.0102(a)(1) (relating to prohibition on contracts with certain foreign-owned companies in connection with critical infrastructure) is applicable to this Contract, pursuant to Government Code Section 2274.0102, Contractor certifies that neither it nor its parent company, nor any affiliate of Contractor or its parent company, is: (1) majority owned or controlled by citizens or governmental entities of China, Iran, North Korea, Russia, or any other country designated by the Governor under Government Code Section 2274.0103, or (2) headquartered in any of those countries.

48. Critical Infrastructure Subcontracts

For purposes of this Paragraph, the designated countries are China, Iran, North Korea, Russia, and any countries lawfully designated by the Governor as a threat to critical infrastructure. Pursuant to Section 113.002 of the Business and Commerce Code, Contractor shall not enter into a subcontract that will provide direct or remote access to or control of critical infrastructure, as defined by Section 113.001 of the Texas Business and Commerce Code, in this state, other than access specifically allowed for product warranty and support purposes to any subcontractor unless (i) neither the subcontractor nor its parent company, nor any affiliate of the subcontractor or its parent company, is majority owned or controlled by citizens or governmental entities of a designated country; and (ii) neither the subcontractor nor its parent company, nor any affiliate of the subcontractor or its parent company, is headquartered in a designated country. Contractor will notify the System Agency before entering into any subcontract that will provide direct or remote

access to or control of critical infrastructure, as defined by Section 113.001 of the Texas Business & Commerce Code, in this state.

49. Enforcement of Certain Federal Firearms Laws Prohibited

In accordance with House Bill 957, Acts 2021, 87th Leg., R.S., if Texas Government Code, Section 2.101 is applicable to Contractor, Contractor certifies that it is not ineligible to receive state grant funds pursuant to Texas Government Code, Section 2.103.

50. Prohibition on Abortions

Contractor understands, acknowledges, and agrees that, pursuant to Article II of the General Appropriations Act, (1) no funds shall be used to pay the direct or indirect costs (including marketing, overhead, rent, phones, and utilities) of abortion procedures provided by contractors of HHSC; and (2) no funds appropriated for Medicaid Family Planning, Healthy Texas Women Program, or the Family Planning Program shall be distributed to individuals or entities that perform elective abortion procedures or that contract with or provide funds to individuals or entities for the performance of elective abortion procedures. Contractor represents and warrants that it is not ineligible, nor will it be ineligible during the term of this Contract, to receive appropriated funding pursuant to Article II.

51. False Representation

Contractor understands, acknowledges, and agrees that any false representation or any failure to comply with a representation, warranty, or certification made by Contractor is subject to all civil and criminal consequences provided at law or in equity including, but not limited to, immediate termination of this Contract.

52. False Statements

Contractor represents and warrants that all statements and information prepared and submitted by Contractor in this Contract and any related Solicitation Response are current, complete, true, and accurate. Contractor acknowledges any false statement or material misrepresentation made by Contractor during the performance of this Contract or any related Solicitation is a material breach of contract and may void this Contract. Further, Contractor understands, acknowledges, and agrees that any false representation or any failure to comply with a representation, warranty, or certification made by Contractor is subject to all civil and criminal consequences provided at law or in equity including, but not limited to, immediate termination of this Contract.

53. Permits and License

Contractor represents and warrants that it will comply with all applicable laws and maintain all permits and licenses required by applicable city, county, state, and federal rules, regulations, statutes, codes, and other laws that pertain to this Contract.

54. Equal Employment Opportunity

Contractor represents and warrants its compliance with all applicable duly enacted state and federal laws governing equal employment opportunities.

55. Federal Occupational Safety and Health Law

Contractor represents and warrants that all articles and services shall meet or exceed the safety standards established and promulgated under the Federal Occupational Safety and Health Act of 1970, as amended (29 U.S.C. Chapter 15).

56. Signature Authority

Contractor represents and warrants that the individual signing this Contract Affirmations document is authorized to sign on behalf of Contractor and to bind the Contractor.

Signature Page Follows

Authorized representative on behalf of Contractor must complete and sign the following:			
Legal Name of Contractor			
Assumed Business Name of Contractor, if applicab	ole (d/b/a or 'doing business as')		
Texas County(s) for Assumed Business Name (d/b/Attach Assumed Name Certificate(s) filed with the Name Certificate(s), if any, for each Texas County been filed.	Texas Secretary of State and Assumed		
Signature of Authorized Representative	Date Signed		
Printed Name of Authorized Representative First, Middle Name or Initial, and Last Name	Title of Authorized Representative		
Physical Street Address	City, State, Zip Code		
Mailing Address, if different	City, State, Zip Code		
Phone Number	Fax Number		
Email Address	DUNS Number		
Federal Employer Identification Number	Texas Identification Number (TIN)		
Texas Franchise Tax Number	Texas Secretary of State Filing Number		
SAM.gov Unique Entity Identifier (UEI)			



Health and Human Services (HHS)

Uniform Terms and Conditions - Grant

Version 3.2

Published and Effective - July 2022

Responsible Office: Chief Counsel

ABOUT THIS DOCUMENT

In this document, Grantees (also referred to in this document as subrecipients or contractors) will find requirements and conditions applicable to grant funds administered and passed-through by both the Texas Health and Human Services Commission (HHSC) and the Department of State Health Services (DSHS). These requirements and conditions are incorporated into the Grant Agreement through acceptance by Grantee of any funding award by HHSC or DSHS.

The terms and conditions in this document are in addition to all requirements listed in the RFA, if any, under which applications for this grant award are accepted, as well as all applicable federal and state laws and regulations. Applicable federal and state laws and regulations may include, but are not limited to: 2 CFR Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards; requirements of the entity that awarded the funds to HHS; Chapter 783 of the Texas Government Code; Texas Comptroller of Public Accounts' agency rules (including Uniform Grant and Contract Standards set forth in Title 34, Part 1, Chapter 20, Subchapter E, Division 4 of the Texas Administrative Code); the Texas Grant Management Standards (TxGMS) developed by the Texas Comptroller of Public Accounts; and the Funding Announcement, Solicitation, or other instrument/documentation under which HHS was awarded funds. HHS, in its sole discretion, reserves the right to add requirements, terms, or conditions.

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ARTICLE I. DEFINITIONS AND INTERPRETIVE PROVISIONS

1.1 **DEFINITIONS**

As used in this Grant Agreement, unless a different definition is specified, or the context clearly indicates otherwise, the following terms and conditions have the meanings assigned below:

- "Amendment" means a written agreement, signed by the Parties, which documents changes to the Grant Agreement.
- "Contract" or "Grant Agreement" means the agreement entered into by the Parties, including the Signature Document, these Uniform Terms and Conditions, along with any attachments and amendments that may be issued by the System Agency.
- "<u>Deliverables</u>" means the goods, services, and work product, including all reports and project documentation, required to be provided by Grantee to the System Agency.
- "DSHS" means the Department of State Health Services.
- "Effective Date" means the date on which the Grant Agreement takes effect.
- "Federal Fiscal Year" means the period beginning October 1 and ending September 30 each year, which is the annual accounting period for the United States government.
- "GAAP" means Generally Accepted Accounting Principles.
- "GASB" means the Governmental Accounting Standards Board.
- "Grantee" means the Party receiving funds under this Grant Agreement. May also be referred to as "subrecipient" or "contractor" in this document.
- "HHSC" means the Texas Health and Human Services Commission.
- "Health and Human Services" or "HHS" includes HHSC and DSHS.
- "Intellectual Property Rights" means the worldwide proprietary rights or interests, including patent, copyright, trade secret, and trademark rights, as such right may be evidenced by or embodied in:
 - i. any idea, design, concept, personality right, method, process, technique, apparatus, invention, discovery, or improvement;
 - ii. any work of authorship, including any compilation, computer code, website or web page design, literary work, pictorial work, or graphic work;
 - iii. any trademark, service mark, trade dress, trade name, branding, or other indicia of source or origin;
 - iv. domain name registrations; and
 - v. any other proprietary or similar rights. The Intellectual Property Rights of a Party include all worldwide proprietary rights or interests that the Party may have acquired by assignment, by exclusive license, or by license with the right to grant sublicenses.
- "Parties" means the System Agency and Grantee, collectively.
- "Party" means either the System Agency or Grantee, individually.

- "Project" means specific activities of the Grantee that are supported by funds provided under this Grant Agreement.
- "Signature Document" means the document executed by all Parties for this Grant Agreement.
- "Solicitation," "Funding Announcement" or "Request for Applications (RFA)" means the document (including all exhibits, attachments, and published addenda), issued by the System Agency under which applications for grant funds were requested, which is incorporated by reference in the Grant Agreement for all purposes in its entirety.
- "<u>Solicitation Response</u>" or "<u>Application</u>" means Grantee's full and complete Solicitation response (including any attachments and addenda), which is incorporated by reference in the Grant Agreement for all purposes in its entirety.
- "State Fiscal Year" means the period beginning September 1 and ending August 31 each year, which is the annual accounting period for the State of Texas.
- "State of Texas *Textravel*" means the Texas Comptroller of Public Accounts' state travel rules, policies, and guidelines.
- "Statement of Work" means the description of activities Grantee must perform to complete the Project, as specified in the Grant Agreement and as may be amended.
- "System Agency" means HHSC or DSHS, as applicable.
- "Work Product" means any and all works, including work papers, notes, materials, approaches, designs, specifications, systems, innovations, improvements, inventions, software, programs, source code, documentation, training materials, audio or audiovisual recordings, methodologies, concepts, studies, reports, whether finished or unfinished, and whether or not included in the deliverables, that are developed, produced, generated or provided by Grantee in connection with Grantee's performance of its duties under the Grant Agreement or through use of any funding provided under this Grant Agreement.
- "Texas Grant Management Standards" or "TxGMS" means uniform grant and contract administration procedures, developed under the authority of Chapter 783 of the Texas Government Code, to promote the efficient use of public funds in local government and in programs requiring cooperation among local, state, and federal agencies. Under this Grant Agreement, TxGMS applies to Grantee except as otherwise provided by applicable law or directed by System Agency. Additionally, except as otherwise provided by applicable law, in the event of a conflict between TxGMS and applicable federal or state law, federal law prevails over state law and state law prevails over TxGMS.

1.2 Interpretive Provisions

- A. The meanings of defined terms include the singular and plural forms.
- B. The words "hereof," "herein," "hereunder," and similar words refer to this Grant Agreement as a whole and not to any particular provision, section, attachment, or schedule of this Grant Agreement unless otherwise specified.
- C. The term "including" is not limiting and means "including without limitation" and, unless otherwise expressly provided in this Grant Agreement, (i) references to contracts

(including this Grant Agreement) and other contractual instruments shall be deemed to include all subsequent Amendments and other modifications, but only to the extent that such Amendments and other modifications are not prohibited by the terms of this Grant Agreement, and (ii) references to any statute or regulation are to be construed as including all statutory and regulatory provisions consolidating, amending, replacing, supplementing, or interpreting the statute or regulation.

- D. Any references to agreements, contracts, statutes, or administrative rules or regulations in the Grant Agreement are references to these documents as amended, modified, or supplemented during the term of the Grant Agreement.
- E. The captions and headings of this Grant Agreement are for convenience of reference only and do not affect the interpretation of this Grant Agreement.
- F. All attachments, including those incorporated by reference, and any Amendments are considered part of the terms of this Grant Agreement.
- G. This Grant Agreement may use several different limitations, regulations, or policies to regulate the same or similar matters. All such limitations, regulations, and policies are cumulative.
- H. Unless otherwise expressly provided, reference to any action of the System Agency or by the System Agency by way of consent, approval, or waiver will be deemed modified by the phrase "in its sole discretion."
- I. Time is of the essence in this Grant Agreement.
- J. Prior to execution of the Grant Agreement, Grantee must notify System Agency's designated contact in writing of any ambiguity, conflict, discrepancy, omission, or other error. If Grantee fails to notify the System Agency designated contact of any ambiguity, conflict, discrepancy, omission or other error in the Grant Agreement prior to Grantee's execution of the Grant Agreement, Grantee:
 - i. Shall have waived any claim of error or ambiguity in the Grant Agreement; and
 - ii. Shall not contest the interpretation by the System Agency of such provision(s).

No grantee will be entitled to additional reimbursement, relief, or time by reason of any ambiguity, conflict, discrepancy, exclusionary specification, omission, or other error or its later correction.

ARTICLE II. PAYMENT PROVISIONS

2.1 PROMPT PAYMENT

Payment shall be made in accordance with Chapter 2251 of the Texas Government Code, commonly known as the Texas Prompt Payment Act. Chapter 2251 of the Texas Government Code shall govern remittance of payment and remedies for late payment and non-payment.

2.2 TAXES

Grantee represents and warrants that it shall pay all taxes or similar amounts resulting from the Grant Agreement, including, but not limited to, any federal, State, or local income, sales or excise taxes of Grantee or its employees. System Agency shall not be liable for any taxes resulting from the Grant Agreement.

2.3 ANCILLARY AND TRAVEL EXPENSES

- A. Except as otherwise provided in the Grant Agreement, no ancillary expenses incurred by the Grantee in connection with its provision of the services or deliverables will be reimbursed by the System Agency. Ancillary expenses include, but are not limited to, costs associated with transportation, delivery, and insurance for each deliverable.
- B. Except as otherwise provided in the Grant Agreement, when the reimbursement of travel expenses is authorized by the Grant Agreement, all such expenses will be reimbursed in accordance with the rates set by the Texas Comptroller's *Textravel* guidelines, which can currently be accessed at: https://fmx.cpa.texas.gov/fmx/travel/textravel/.

2.4 BILLING

Unless otherwise provided in the Grant Agreement, Grantee shall bill the System Agency in accordance with the Grant Agreement. Unless otherwise specified in the Grant Agreement, Grantee shall submit requests for reimbursement or payment monthly by the last business day of the month following the month in which expenses were incurred or services provided. Grantee shall maintain all documentation that substantiates invoices and make the documentation available to the System Agency upon request.

2.5 Use of Funds

Grantee shall expend funds under this Grant Agreement only for approved services and for reasonable and allowable expenses directly related to those services.

2.6 USE FOR MATCH PROHIBITED

Grantee shall not use funds provided under this Grant Agreement for matching purposes in securing other funding without the written approval of the System Agency.

2.7 PROGRAM INCOME

Program income refers to gross income directly generated by a supporting activity during the period of performance. Unless otherwise required under the Grant Agreement, Grantee shall use Program Income, as provided in TxGMS, to further the Project, and Grantee shall spend the Program Income on the Project. Grantee shall identify and report Program Income in accordance with the Grant Agreement, applicable law, and any programmatic guidance. Grantee shall expend Program Income during the Grant Agreement term, when earned, and may not carry Program Income forward to any succeeding term. Grantee shall refund Program Income to the System Agency if the Program Income is not expended in the term in which it is earned. The System Agency may base future funding levels, in part, upon Grantee's proficiency in identifying, billing, collecting, and reporting Program Income, and in using Program Income for the purposes and under the conditions specified in this Grant Agreement.

2.8 Nonsupplanting

Grant funds must be used to supplement existing, new or corresponding programming and related activities. Grant funds may not be used to supplant (replace) existing funds that have been appropriated, allocated, or disbursed for the same purpose. System Agency may conduct Grant monitoring or audits may be conducted to review, among other things, Grantee's compliance with this provision.

2.9 Indirect Cost Rates

The System Agency may acknowledge an indirect cost rate for Grantees that is utilized for all applicable Grant Agreements. For subrecipients receiving federal funds, indirect cost rates will be determined in accordance with applicable law including, but not limited to, 2 CFR 200.414(f). For recipients receiving state funds, indirect costs will be determined in accordance with applicable law including, but not limited to, TxGMS. Grantees funded with blended federal and state funding will be subject to both state and federal requirements when determining indirect costs. In the event of a conflict between TxGMS and applicable federal law or regulation, the provisions of federal law or regulation will apply. Grantee will provide any necessary financial documents to determine the indirect cost rate in accordance with the Uniform Grant Guidance (UGG) and TxGMS.

ARTICLE III. STATE AND FEDERAL FUNDING

3.1 EXCESS OBLIGATIONS PROHIBITED

This Grant Agreement is subject to termination or cancellation, without penalty to System Agency, either in whole or in part, subject to the availability and actual receipt by System Agency of state or federal funds. System Agency is a state agency whose authority and appropriations are subject to actions of the Texas Legislature. If System Agency becomes subject to a legislative change, revocation of statutory authority, or lack of appropriated funds that would render either System Agency's or Grantee's delivery or performance under the Grant Agreement impossible or unnecessary, the Grant Agreement will be terminated or cancelled and be deemed null and void. In the event of a termination or cancellation under this Section, System Agency will not be liable to Grantee for any damages that are caused or associated with such termination or cancellation, and System Agency will not be required to give prior notice. Additionally, System Agency will not be liable to Grantee for any remaining unpaid funds under this Grant Agreement at time of termination.

3.2 NO DEBT AGAINST THE STATE

This Grant Agreement will not be construed as creating any debt by or on behalf of the State of Texas.

3.3 DEBTS AND DELINQUENCIES

Grantee agrees that any payments due under the Grant Agreement shall be directly applied towards eliminating any debt or delinquency it has to the State of Texas including, but not limited to, delinquent taxes, delinquent student loan payments, and delinquent child support during the entirety of the Grant Agreement term.

3.4 REFUNDS AND OVERPAYMENTS

A. At its sole discretion, the System Agency may (i) withhold all or part of any payments to Grantee to offset overpayments, unallowable or ineligible costs made to the Grantee, or if any required financial status report(s) is not submitted by the due date(s); or (ii) require Grantee to promptly refund or credit - within thirty (30) calendar days of written notice – to System Agency any funds erroneously paid by System Agency which are not expressly authorized under the Grant Agreement.

B. "Overpayments" as used in this Section include payments (i) made by the System Agency that exceed the maximum allowable rates; (ii) that are not allowed under applicable laws, rules, or regulations; or (iii) that are otherwise inconsistent with this Grant Agreement, including any unapproved expenditures. Grantee understands and agrees that it shall be liable to the System Agency for any costs disallowed pursuant to financial and compliance audit(s) of funds received under this Grant Agreement. Grantee further understands and agrees that reimbursement of such disallowed costs shall be paid by Grantee from funds which were not provided or otherwise made available to Grantee under this Grant Agreement.

ARTICLE IV. ALLOWABLE COSTS AND AUDIT REQUIREMENTS

4.1 ALLOWABLE COSTS

- A. Allowable Costs are restricted to costs that are authorized under Texas Uniform Grant Management Standards (TxGMS) and applicable state and federal rules and laws. This Grant Agreement is subject to all applicable requirements of TxGMS, including the criteria for Allowable Costs. Additional federal requirements apply if this Grant Agreement is funded, in whole or in part, with federal funds.
- B. System Agency will reimburse Grantee for actual, allowable, and allocable costs incurred by Grantee in performing the Project, provided the costs are sufficiently documented. Grantee must have incurred a cost prior to claiming reimbursement and within the applicable term to be eligible for reimbursement under this Grant Agreement. At its sole discretion, the System Agency will determine whether costs submitted by Grantee are allowable and eligible for reimbursement. The System Agency may take repayment (recoup) from remaining funds available under this Grant Agreement in amounts necessary to fulfill Grantee's repayment obligations. Grantee and all payments received by Grantee under this Grant Agreement are subject to applicable cost principles, audit requirements, and administrative requirements including applicable provisions under 2 CFR 200, 48 CFR Part 31, and TxGMS.
- C. OMB Circulars will be applied with the modifications prescribed by TxGMS with effect given to whichever provision imposes the more stringent requirement in the event of a conflict.

4.2 AUDITS AND FINANCIAL STATEMENTS

A. Audits

- Grantee understands and agrees that Grantee is subject to any and all applicable audit requirements found in state or federal law or regulation or added by this Grant Agreement
- ii. HHS Single Audit Unit will notify Grantee to complete the Single Audit Determination Form. If Grantee fails to complete the form within thirty (30) calendar days after receipt of notice, Grantee maybe subject to sanctions and remedies for non-compliance.
- iii. If Grantee, within Grantee's fiscal year, expends at least SEVEN HUNDRED FIFTY THOUSAND DOLLARS (\$750,000) in federal funds awarded, Grantee shall have a single audit or program-specific audit in accordance with 2 CFR 200. The federal

- threshold amount includes federal funds passed through by way of state agency awards.
- iv. If Grantee, within Grantee's fiscal year, expends at least SEVEN HUNDRED FIFTY THOUSAND DOLLARS (\$750,000) in state funds awarded, Grantee shall have a single audit or program-specific audit in accordance with TxGMS. The audit must be conducted by an independent certified public accountant and in accordance with 2 CFR 200, Government Auditing Standards, and TxGMS.
- v. For-profit Grantees whose expenditures meet or exceed the federal or state expenditure thresholds stated above shall follow the guidelines in 2 CFR 200 or TxGMS, as applicable, for their program-specific audits.
- vi. Each Grantee required to obtain a single audit must competitively re-procure single audit services once every six years. Grantee shall procure audit services in compliance with this section, state procurement procedures, as well as with applicable provisions of 2 CFR 200 and TxGMS.
- B. Financial Statements.

Each Grantee that does not meet the expenditure threshold for a single audit or programspecific audit, must provide financial statements for the audit period.

4.3 SUBMISSION OF AUDITS AND FINANCIAL STATEMENTS

A. Audits.

Due the earlier of 30 days after receipt of the independent certified public accountant's report or nine months after the end of the fiscal year, Grantee shall submit one electronic copy of the single audit or program-specific audit to the System Agency via:

- i. HHS portal at https://hhsportal.hhs.state.tx.us/heartwebextr/hhscSau or,
- ii. Email to: single audit report@hhsc.state.tx.us.
- B. Financial Statements.

Due no later than nine months after the Grantee's fiscal year-end, Grantees not required to submit an audit, shall submit one electronic copy of their financial statements via:

- i. HHS portal at https://hhsportal.hhs.state.tx.us/heartwebextr/hhscSau; or,
- ii. Email to: single_audit_report@hhsc.state.tx.us.

ARTICLE V. WARRANTY, AFFIRMATIONS, ASSURANCES AND CERTIFICATIONS

5.1 WARRANTY

Grantee warrants that all work under this Grant Agreement shall be completed in a manner consistent with standards under the terms of this Grant Agreement, in the applicable trade, profession, or industry; shall conform to or exceed the specifications set forth in the Grant Agreement; and all deliverables shall be fit for ordinary use, of good quality, and with no material defects. If System Agency, in its sole discretion, determines Grantee has failed to complete work timely or to perform satisfactorily under conditions required by this Grant Agreement, the System Agency may require Grantee, at its sole expense, to:

- i. Repair or replace all defective or damaged work;
- ii. Refund any payment Grantee received from System Agency for all defective or damaged work and, in conjunction therewith, require Grantee to accept the return of such work: and.

iii. Take necessary action to ensure that Grantee's future performance and work conform to the Grant Agreement requirements.

5.2 GENERAL AFFIRMATIONS

Grantee certifies that, to the extent affirmations are incorporated into the Grant Agreement, the Grantee has reviewed the affirmations and that Grantee is in compliance with all requirements.

5.3 FEDERAL ASSURANCES

Grantee further certifies that, to the extent federal assurances are incorporated into the Grant Agreement, the Grantee has reviewed the federal assurances and that Grantee is in compliance with all requirements.

5.4 FEDERAL CERTIFICATIONS

Grantee further certifies that, to the extent federal certifications are incorporated into the Grant Agreement, the Grantee has reviewed the federal certifications and that Grantee is in compliance with all requirements. In addition, Grantee certifies that it is in compliance with all applicable federal laws, rules, and regulations, as they may pertain to this Grant Agreement.

5.5 STATE ASSURANCES

Except to the extent of any conflict under applicable law or requirements or guidelines of any federal awarding agency from which funding for this Grant Agreement originated, the Grantee must comply with the applicable state assurances included within the TxGMS which are incorporated here by reference.

ARTICLE VI. INTELLECTUAL PROPERTY

6.1 OWNERSHIP OF WORK PRODUCT

- A. All right, title, and interest in the Work Product, including all Intellectual Property Rights therein, is exclusively owned by System Agency. Grantee and Grantee's employees will have no rights in or ownership of the Work Product or any other property of System Agency.
- B. Any and all Work Product that is copyrightable under United States copyright law is deemed to be "work made for hire" owned by System Agency, as provided by Title 17 of the United States Code. To the extent that Work Product does not qualify as a "work made for hire" under applicable federal law, Grantee hereby irrevocably assigns and transfers to System Agency, its successors and assigns, the entire right, title, and interest in and to the Work Product, including any and all Intellectual Property Rights embodied therein or associated therewith, and in and to all works based upon, derived from, or incorporating the Work Product, and in and to all income, royalties, damages, claims and payments now or hereafter due or payable with respect thereto, and in and to all causes of action, either in law or in equity for past, present or future infringement based on the copyrights, and in and to all rights corresponding to the foregoing.
- C. Grantee agrees to execute all papers and to perform such other acts as System Agency may deem necessary to secure for System Agency or its designee the rights herein assigned.

- D. In the event that Grantee has any rights in and to the Work Product that cannot be assigned to System Agency, Grantee hereby grants to System Agency an exclusive, worldwide, royalty-free, transferable, irrevocable, and perpetual license, with the right to sublicense, to reproduce, distribute, modify, create derivative works of, publicly perform and publicly display, make, have made, use, sell and offer for sale the Work Product and any products developed by practicing such rights.
- E. The foregoing does not apply to Incorporated Pre-existing Works or Third Party IP that are incorporated in the Work Product by Grantee. Grantee shall provide System Agency access during normal business hours to all Grantee materials, premises, and computer files containing the Work Product.

6.2 Grantee's Pre-Existing Works

- A. To the extent that Grantee incorporates into the Work Product any works of Grantee that were created by Grantee or that Grantee acquired rights in prior to the Effective Date of this Grant Agreement ("Incorporated Pre-existing Works"), Grantee retains ownership of such Incorporated Pre-existing Works.
- B. Grantee hereby grants to System Agency an irrevocable, perpetual, non-exclusive, royalty-free, transferable, worldwide right and license, with the right to sublicense, to use, reproduce, modify, copy, create derivative works of, publish, publicly perform and display, sell, offer to sell, make and have made, the Incorporated Pre-existing Works, in any medium, with or without the associated Work Product.
- C. Grantee represents, warrants, and covenants to System Agency that Grantee has all necessary right and authority to grant the foregoing license in the Incorporated Preexisting Works to System Agency.

6.3 THIRD PARTY IP

- A. To the extent that any Third Party IP is included or incorporated in the Work Product by Grantee, Grantee hereby grants to System Agency, or shall obtain from the applicable third party for System Agency's benefit, the irrevocable, perpetual, non-exclusive, worldwide, royalty-free right and license, for System Agency's internal business or governmental purposes only, to use, reproduce, display, perform, distribute copies of, and prepare derivative works based upon such Third Party IP and any derivative works thereof embodied in or delivered to System Agency in conjunction with the Work Product, and to authorize others to do any or all of the foregoing.
- B. Grantee shall obtain System Agency's advance written approval prior to incorporating any Third Party IP into the Work Product, and Grantee shall notify System Agency on delivery of the Work Product if such materials include any Third Party IP.
- C. Grantee shall provide System Agency all supporting documentation demonstrating Grantee's compliance with this Section 6.3, including without limitation documentation indicating a third party's written approval for Grantee to use any Third Party IP that may be incorporated in the Work Product.

6.4 AGREEMENTS WITH EMPLOYEES AND SUBCONTRACTORS

Grantee shall have written, binding agreements with its employees and subcontractors that include provisions sufficient to give effect to and enable Grantee's compliance with Grantee's obligations under this Article VI, Intellectual Property.

6.5 DELIVERY UPON TERMINATION OR EXPIRATION

No later than the first calendar day after the termination or expiration of the Grant Agreement or upon System Agency's request, Grantee shall deliver to System Agency all completed, or partially completed, Work Product, including any Incorporated Pre-existing Works, and any and all versions thereof. Grantee's failure to timely deliver such Work Product is a material breach of the Grant Agreement. Grantee will not retain any copies of the Work Product or any documentation or other products or results of Grantee's activities under the Grant Agreement without the prior written consent of System Agency.

6.6 SURVIVAL

The provisions and obligations of this Article survive any termination or expiration of the Grant Agreement.

6.7 SYSTEM AGENCY DATA

- A. As between the Parties, all data and information acquired, accessed, or made available to Grantee by, through, or on behalf of System Agency or System Agency contractors, including all electronic data generated, processed, transmitted, or stored by Grantee in the course of providing data processing services in connection with Grantee's performance hereunder (the "System Agency Data"), is owned solely by System Agency.
- B. Grantee has no right or license to use, analyze, aggregate, transmit, create derivatives of, copy, disclose, or process the System Agency Data except as required for Grantee to fulfill its obligations under the Grant Agreement or as authorized in advance in writing by System Agency.
- C. For the avoidance of doubt, Grantee is expressly prohibited from using, and from permitting any third party to use, System Agency Data for marketing, research, or other non-governmental or commercial purposes, without the prior written consent of System Agency.
- D. Grantee shall make System Agency Data available to System Agency, including to System Agency's designated vendors, as directed in writing by System Agency. The foregoing shall be at no cost to System Agency.
- E. Furthermore, the proprietary nature of Grantee's systems that process, store, collect, and/or transmit the System Agency Data shall not excuse Grantee's performance of its obligations hereunder.

ARTICLE VII. PROPERTY

7.1 USE OF STATE PROPERTY

- A. Grantee is prohibited from using State Property for any purpose other than performing Services authorized under the Grant Agreement.
- B. State Property includes, but is not limited to, System Agency's office space, identification badges, System Agency information technology equipment and networks (*e.g.*, laptops, portable printers, cell phones, iPads or tablets, external hard drives, data storage devices, any System Agency-issued software, and the System Agency Virtual Private Network (VPN client)), and any other resources of System Agency.

- C. Grantee shall not remove State Property from the continental United States. In addition, Grantee may not use any computing device to access System Agency's network or email while outside of the continental United States.
- D. Grantee shall not perform any maintenance services on State Property unless the Grant Agreement expressly authorizes such Services.
- E. During the time that State Property is in the possession of Grantee, Grantee shall be responsible for:
 - i. all repair and replacement charges incurred by State Agency that are associated with loss of State Property or damage beyond normal wear and tear, and
 - ii. all charges attributable to Grantee's use of State Property that exceeds the Grant Agreement scope. Grantee shall fully reimburse such charges to System Agency within ten (10) calendar days of Grantee's receipt of System Agency's notice of amount due. Use of State Property for a purpose not authorized by the Grant Agreement shall constitute breach of contract and may result in termination of the Grant Agreement and the pursuit of other remedies available to System Agency under contract, at law, or in equity.

7.2 DAMAGE TO STATE PROPERTY

- A. In the event of loss, destruction, or damage to any System Agency or State of Texas owned, leased, or occupied property or equipment by Grantee or Grantee's employees, agents, Subcontractors, or suppliers, Grantee shall be liable to System Agency and the State of Texas for the full cost of repair, reconstruction, or replacement of the lost, destroyed, or damaged property.
- B. Grantee shall notify System Agency of the loss, destruction, or damage of equipment or property within one (1) business day. Grantee shall reimburse System Agency and the State of Texas for such property damage within ten (10) calendar days after Grantee's receipt of System Agency's notice of amount due.

7.3 PROPERTY RIGHTS UPON TERMINATION OR EXPIRATION OF CONTRACT

In the event the Grant Agreement is terminated for any reason or expires, State Property remains the property of the System Agency and must be returned to the System Agency by the earlier of the end date of the Grant Agreement or upon System Agency's request.

7.4 EQUIPMENT AND PROPERTY

- A. The Grantee must ensure equipment with a per-unit cost of \$5,000 or greater purchased with grant funds under this award is used solely for the purpose of this Grant or is properly pro-rated for use under this Grant. Grantee must have control systems to prevent loss, damage, or theft of property funded under this Grant. Grantee shall maintain equipment management and inventory procedures for equipment, whether acquired in part or whole with grant funds, until disposition occurs.
- B. When equipment acquired by Grantee under this Grant Agreement is no longer needed for the original project or for other activities currently supported by System Agency, the Grantee must properly dispose of the equipment pursuant to 2 CFR and/or TxGMS, as applicable. Upon termination of this Grant Agreement, use and disposal of equipment by the Grantee shall conform with TxGMS requirements.
- C. Grantee shall initiate the purchase of all equipment approved in writing by the System Agency in accordance with the schedule approved by System Agency, as applicable.

- Failure to timely initiate the purchase of equipment may result in the loss of availability of funds for the purchase of equipment. Requests to purchase previously approved equipment after the first quarter in the Grant Agreement must be submitted to the assigned System Agency contract manager.
- D. 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.
- E System Agency funds must not be used to purchase buildings or real property without prior written approval from System Agency. Any costs related to the initial acquisition of the buildings or real property are not allowable without written pre-approval.

ARTICLE VIII. RECORD RETENTION, AUDIT, AND CONFIDENTIALITY

8.1 RECORD MAINTENANCE AND RETENTION

- A. Grantee shall keep and maintain under GAAP or GASB, as applicable, full, true, and complete records necessary to fully disclose to the System Agency, the Texas State Auditor's Office, the United States Government, and their authorized representatives sufficient information to determine compliance with the terms and conditions of this Grant Agreement and all state and federal rules, regulations, and statutes.
- B. Grantee shall maintain and retain legible copies of this Grant Agreement and all records relating to the performance of the Grant Agreement, including supporting fiscal documents adequate to ensure that claims for grant funds are in accordance with applicable State of Texas requirements. These records shall be maintained and retained by the Grantee for a minimum of seven (7) years after the Grant Agreement expiration date or seven (7) years after all audits, claims, litigation or disputes involving the Grant Agreement are resolved, whichever is later.

8.2 AGENCY'S RIGHT TO AUDIT

- A. Grantee shall make available at reasonable times and upon reasonable notice, and for reasonable periods, work papers, reports, books, records, supporting documents kept current by Grantee pertaining to the Grant Agreement for purposes of inspecting, monitoring, auditing, or evaluating by System Agency and the State of Texas.
- B. In addition to any right of access arising by operation of law, Grantee and any of Grantee's affiliate or subsidiary organizations, or Subcontractors shall permit the System Agency or any of its duly authorized representatives, as well as duly authorized federal, state or local authorities, unrestricted access to and the right to examine any site where business is conducted or services are performed, and all records, which includes but is not limited to financial, client and patient records, books, papers or documents related to this Grant Agreement. If the Grant Agreement includes federal funds, federal agencies that shall have a right of access to records as described in this section include: the federal agency providing the funds, the Comptroller General of the United States, the General Accounting Office, the Office of the Inspector General, and any of their authorized

- representatives. In addition, agencies of the State of Texas that shall have a right of access to records as described in this section include: the System Agency, HHS's contracted examiners, the State Auditor's Office, the Office of the Texas Attorney General, and any successor agencies. Each of these entities may be a duly authorized authority.
- C. If deemed necessary by the System Agency or any duly authorized authority, for the purpose of investigation or hearing, Grantee shall produce original documents related to this Grant Agreement.
- D. The System Agency and any duly authorized authority shall have the right to audit billings both before and after payment, and all documentation that substantiates the billings.
- E. Grantee shall include this provision concerning the right of access to, and examination of, sites and information related to this Grant Agreement in any Subcontract it awards.

8.3 RESPONSE/COMPLIANCE WITH AUDIT OR INSPECTION FINDINGS

- A. Grantee must act to ensure its and its Subcontractors' compliance with all corrections necessary to address any finding of noncompliance with any law, regulation, audit requirement, or generally accepted accounting principle, or any other deficiency identified in any audit, review, or inspection of the Grant Agreement and the services and Deliverables provided. Any such correction will be at Grantee's or its Subcontractor's sole expense. Whether Grantee's action corrects the noncompliance shall be solely the decision of the System Agency.
- B. As part of the services, Grantee must provide to HHS upon request a copy of those portions of Grantee's and its Subcontractors' internal audit reports relating to the services and Deliverables provided to the State under the Grant Agreement.

8.4 STATE AUDITOR'S RIGHT TO AUDIT

The state auditor may conduct an audit or investigation of any entity receiving funds from the state directly under the Grant Agreement or indirectly through a subcontract under the Grant Agreement. The acceptance of funds directly under the Grant Agreement or indirectly through a subcontract under the Grant 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. Under the direction of the legislative audit committee, an entity that is the subject of an audit or investigation by the state auditor must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit.

8.5 CONFIDENTIALITY

Grantee shall maintain as confidential and shall not disclose to third parties without System Agency's prior written consent, any System Agency information including but not limited to System Agency's business activities, practices, systems, conditions and services. This section will survive termination or expiration of this Grant Agreement. This requirement must be included in all subcontracts awarded by Grantee.

ARTICLE IX. GRANT REMEDIES, TERMINATION AND PROHIBITED ACTIVITIES

9.1 REMEDIES

- A. To ensure Grantee's full performance of the Grant Agreement and compliance with applicable law, System Agency reserves the right to hold Grantee accountable for breach of contract or substandard performance and may take remedial or corrective actions, including, but not limited to the following:
 - i. temporarily withholding cash disbursements or reimbursements pending correction of the deficiency;
 - ii. disallowing or denying use of funds for the activity or action deemed not to be in compliance;
 - iii. disallowing claims for reimbursement that may require a partial or whole return of previous payments or reimbursements;
 - iv. suspending all or part of the Grant Agreement;
 - v. requiring the Grantee to take specific actions in order to remain in compliance with the Grant Agreement;
 - vi. recouping payments made by the System Agency to the Grantee found to be in error;
 - vii. suspending, limiting, or placing conditions on the Grantee's continued performance of the Project;
 - viii. prohibiting the Grantee from receiving additional funds for other grant programs administered by the System Agency until satisfactory compliance resolution is obtained;
 - ix. withholding release of new grant agreements; and
 - x. imposing any other remedies, sanctions or penalties authorized under this Grant Agreement or permitted by federal or state statute, law, regulation or rule.
- B. Unless expressly authorized by System Agency, Grantee may not be entitled to reimbursement for expenses incurred while the Grant Agreement is suspended.
- C. No action taken by System Agency in exercising remedies or imposing sanctions will constitute or operate as a waiver of any other rights or remedies available to System Agency under the Grant Agreement or pursuant to law. Additionally, no action taken by System Agency in exercising remedies or imposing sanctions will constitute or operate as an acceptance, waiver, or cure of Grantee's breach. Unless expressly authorized by System Agency, Grantee may not be entitled to reimbursement for expenses incurred while the Grant Agreement is suspended or after termination.

9.2 TERMINATION FOR CONVENIENCE

The System Agency may terminate the Grant Agreement, in whole or in part, at any time when, in its sole discretion, the System Agency determines that termination is in the best interests of the State of Texas. The termination will be effective on the date specified in the System Agency's notice of termination.

9.3 TERMINATION FOR CAUSE

A. Except as otherwise provided by the U.S. Bankruptcy Code, or any successor law, the System Agency may terminate the Grant Agreement, in whole or in part, upon either of the following conditions:

i. Material Breach

The System Agency may terminate the Grant Agreement, in whole or in part, if the System Agency determines, in its sole discretion, that Grantee has materially breached the Grant Agreement or has failed to adhere to any laws, ordinances, rules, regulations or orders of any public authority having jurisdiction, whether or not such violation prevents or substantially impairs performance of Grantee's duties under the Grant Agreement. Grantee's misrepresentation in any aspect including, but not limited to, of Grantee's Solicitation Application, if any, or Grantee's addition to the SAM exclusion list (identification in SAM as an excluded entity) may also constitute a material breach of the Grant Agreement.

ii. Failure to Maintain Financial Viability

The System Agency may terminate the Grant Agreement if the System Agency, in its sole discretion, determines that Grantee no longer maintains the financial viability required to complete the services and deliverables, or otherwise fully perform its responsibilities under the Grant Agreement.

B. System Agency will specify the effective date of such termination in the notice to Grantee. If no effective date is specified, the Grant Agreement will terminate on the date of the notification.

9.4 Grantee Responsibility for System Agency's Termination Costs

If the System Agency terminates the Grant Agreement for cause, the Grantee shall be responsible to the System Agency for all costs incurred by the System Agency and the State of Texas to replace the Grantee. These costs include, but are not limited to, the costs of procuring a substitute grantee and the cost of any claim or litigation attributable to Grantee's failure to perform any work in accordance with the terms of the Grant Agreement.

9.5 INHERENTLY RELIGIOUS ACTIVITIES

Grantee may not use grant funding to engage in inherently religious activities, such as proselytizing, scripture study, or worship. Grantees may engage in inherently religious activities; however, these activities must be separate in time or location from the grantfunded program. Moreover, grantees must not compel program beneficiaries to participate in inherently religious activities. These requirements apply to all grantees, not just faith-based organizations.

9.6 POLITICAL ACTIVITIES

Grant funds cannot be used for the following activities:

- A. Grantees and their relevant sub-grantees or subcontractors are prohibited from using grant funds directly or indirectly for political purposes, including lobbying, advocating for legislation, campaigning for, endorsing, contributing to, or otherwise supporting political candidates or parties, and voter registration campaigns. Grantees may use private, or non-System Agency money or contributions for political purposes but may not charge to, or be reimbursed from, System Agency contracts or grants for the costs of such activities.
- B. Grant-funded employees may not use official authority or influence to achieve any political purpose and grant funds cannot be used for the salary, benefits, or any other compensation of an elected official.

- C. Grant funds may not be used to employ, in any capacity, a person who is required by Chapter 305 of the Texas Government Code to register as a lobbyist. Additionally, grant funds cannot be used to pay membership dues to an organization that partially or wholly pays the salary of a person who is required by Chapter 305 of the Texas Government Code to register as a lobbyist.
- D. As applicable, Grantee will comply with 31 USC § 1352, relating to the limitation on use of appropriated funds to influence certain Federal contracting and financial transactions.

ARTICLE X. INDEMNITY

10.1 GENERAL INDEMNITY

- A. GRANTEE SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS THE STATE OF TEXAS AND SYSTEM AGENCY, AND/OR THEIR OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEYS' FEES, AND EXPENSES ARISING OUT OF OR RESULTING FROM ANY ACTS OR OMISSIONS OF GRANTEE OR ITS AGENTS, EMPLOYEES, SUBCONTRACTORS, ORDER FULFILLERS, OR SUPPLIERS OF SUBCONTRACTORS IN THE EXECUTION OR PERFORMANCE OF THE GRANT AGREEMENT AND ANY PURCHASE ORDERS ISSUED UNDER THE GRANT AGREEMENT.
- B. THIS PARAGRAPH IS NOT INTENDED TO AND WILL NOT BE CONSTRUED TO REQUIRE GRANTEE TO INDEMNIFY OR HOLD HARMLESS THE STATE OR THE SYSTEM AGENCY FOR ANY CLAIMS OR LIABILITIES RESULTING FROM THE NEGLIGENT ACTS OR OMISSIONS OF THE SYSTEM AGENCY OR ITS EMPLOYEES.
- C. For the avoidance of doubt, System Agency shall not indemnify Grantee or any other entity under the Grant Agreement.

10.2 INTELLECTUAL PROPERTY

GRANTEE SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS THE SYSTEM AGENCY AND THE STATE OF TEXAS FROM AND AGAINST ANY AND ALL CLAIMS, VIOLATIONS, MISAPPROPRIATIONS, OR INFRINGEMENT OF ANY PATENT, TRADEMARK, COPYRIGHT, TRADE SECRET, OR OTHER INTELLECTUAL PROPERTY RIGHTS AND/OR OTHER INTANGIBLE PROPERTY, PUBLICITY OR PRIVACY RIGHTS, AND/OR IN CONNECTION WITH OR ARISING FROM:

- i. THE PERFORMANCE OR ACTIONS OF GRANTEE PURSUANT TO THIS GRANT AGREEMENT;
- ii. ANY DELIVERABLE, WORK PRODUCT, CONFIGURED SERVICE OR OTHER SERVICE PROVIDED HEREUNDER; AND/OR
- iii. SYSTEM AGENCY'S AND/OR GRANTEE'S USE OF OR ACQUISITION OF ANY REQUESTED SERVICES OR OTHER ITEMS PROVIDED TO SYSTEM AGENCY BY GRANTEE OR OTHERWISE TO WHICH SYSTEM

AGENCY HAS ACCESS AS A RESULT OF GRANTEE'S PERFORMANCE UNDER THE GRANT AGREEMENT.

10.3 ADDITIONAL INDEMNITY PROVISIONS

- A. GRANTEE AND SYSTEM AGENCY AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY INDEMNITY CLAIM. GRANTEE SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE, INCLUDING ATTORNEYS' FEES.
- B. THE DEFENSE SHALL BE COORDINATED BY THE GRANTEE WITH THE OFFICE OF THE TEXAS ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND GRANTEE MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE TEXAS ATTORNEY GENERAL.
- C. GRANTEE SHALL REIMBURSE SYSTEM AGENCY AND THE STATE OF TEXAS FOR ANY CLAIMS, DAMAGES, COSTS, EXPENSES OR OTHER AMOUNTS, INCLUDING, BUT NOT LIMITED TO, ATTORNEYS' FEES AND COURT COSTS, ARISING FROM ANY SUCH CLAIM. IF THE SYSTEM AGENCY DETERMINES THAT A CONFLICT EXISTS BETWEEN ITS INTERESTS AND THOSE OF GRANTEE OR IF SYSTEM AGENCY IS REQUIRED BY APPLICABLE LAW TO SELECT SEPARATE COUNSEL, SYSTEM AGENCY WILL BE PERMITTED TO SELECT SEPARATE COUNSEL AND GRANTEE SHALL PAY ALL REASONABLE COSTS OF SYSTEM AGENCY'S COUNSEL.

ARTICLE XI. GENERAL PROVISIONS

11.1 AMENDMENTS

Except as otherwise expressly provided, the Grant Agreement may only be amended by a written Amendment executed by both Parties.

11.2 NO QUANTITY GUARANTEES

The System Agency makes no guarantee of volume or usage of work under this Grant Agreement. All work requested may be on an irregular and as needed basis throughout the Grant Agreement term.

11.3 CHILD ABUSE REPORTING REQUIREMENTS

- A. Grantees shall comply with child abuse and neglect reporting requirements in Texas Family Code Chapter 261. This section is in addition to and does not supersede any other legal obligation of the Grantee to report child abuse.
- B. Grantee shall use the Texas Abuse Hotline Website located at https://www.txabusehotline.org/Login/Default.aspx as required by the System Agency. Grantee shall retain reporting documentation on site and make it available for inspection by the System Agency.

11.4 CERTIFICATION OF MEETING OR EXCEEDING TOBACCO-FREE WORKPLACE POLICY MINIMUM STANDARDS

- A. Grantee certifies that it has adopted and enforces a Tobacco-Free Workplace Policy that meets or exceeds all of the following minimum standards of:
 - i. Prohibiting the use of all forms of tobacco products, including but not limited to cigarettes, cigars, pipes, water pipes (hookah), bidis, kreteks, electronic cigarettes, smokeless tobacco, snuff and chewing tobacco;
 - ii. Designating the property to which this Policy applies as a "designated area," which must at least comprise all buildings and structures where activities funded under this Grant Agreement are taking place, as well as Grantee owned, leased, or controlled sidewalks, parking lots, walkways, and attached parking structures immediately adjacent to this designated area;
 - iii. Applying to all employees and visitors in this designated area; and
 - iv. Providing for or referring its employees to tobacco use cessation services.
- B. If Grantee cannot meet these minimum standards, it must obtain a waiver from the System Agency.

11.5 Insurance and Bonds

Unless otherwise specified in this Contract, Grantee shall acquire and maintain, for the duration of this Contract, insurance coverage necessary to ensure proper fulfillment of this Contract and potential liabilities thereunder with financially sound and reputable insurers licensed by the Texas Department of Insurance, in the type and amount customarily carried within the industry as determined by the System Agency. Grantee shall provide evidence of insurance as required under this Contract, including a schedule of coverage or underwriter's schedules establishing to the satisfaction of the System Agency the nature and extent of coverage granted by each such policy, upon request by the System Agency. In the event that any policy is determined by the System Agency to be deficient to comply with the terms of this Contract, Grantee shall secure such additional policies or coverage as the System Agency may reasonably request or that are required by law or regulation. If coverage expires during the term of this Contract, Grantee must produce renewal certificates for each type of coverage. In addition, if required by System Agency, Grantee must obtain and have on file a blanket fidelity bond that indemnifies System Agency against the loss or theft of any grant funds, including applicable matching funds. The fidelity bond must cover the entirety of the grant term and any subsequent renewals. The failure of Grantee to comply with these requirements may subject Grantee to remedial or corrective actions detailed in section 10.1, General Indemnity, above.

These and all other insurance requirements under the Grant apply to both Grantee and its Subcontractors, if any. Grantee is responsible for ensuring its Subcontractors' compliance with all requirements.

11.6 LIMITATION ON AUTHORITY

A. Grantee shall not have any authority to act for or on behalf of the System Agency or the State of Texas except as expressly provided for in the Grant Agreement; no other authority, power, or use is granted or implied. Grantee may not incur any debt,

- obligation, expense, or liability of any kind on behalf of System Agency or the State of Texas.
- B. Grantee may not rely upon implied authority and is not granted authority under the Grant Agreement to:
 - i. Make public policy on behalf of the System Agency;
 - ii. Promulgate, amend, or disregard administrative regulations or program policy decisions made by State and federal agencies responsible for administration of a System Agency program; or
 - iii. Unilaterally communicate or negotiate with any federal or state agency or the Texas Legislature on behalf of the System Agency regarding System Agency programs or the Grant Agreement. However, upon System Agency request and with reasonable notice from System Agency to the Grantee, the Grantee shall assist the System Agency in communications and negotiations regarding the Work under the Grant Agreement with state and federal governments.

11.7 CHANGE IN LAWS AND COMPLIANCE WITH LAWS

Grantee shall comply with all laws, regulations, requirements and guidelines applicable to a Grantee providing services and products required by the Grant Agreement to the State of Texas, as these laws, regulations, requirements and guidelines currently exist and as amended throughout the term of the Grant Agreement. Notwithstanding Section 11.1, Amendments, above, System Agency reserves the right, in its sole discretion, to unilaterally amend the Grant Agreement to incorporate any modifications necessary for System Agency's compliance, as an agency of the State of Texas, with all applicable state and federal laws, regulations, requirements and guidelines.

11.8 SUBCONTRACTORS

Grantee may not subcontract any or all of the Work and/or obligations under the Grant Agreement without prior written approval of the System Agency. Subcontracts, if any, entered into by the Grantee shall be in writing and be subject to the requirements of the Grant Agreement. Should Grantee subcontract any of the services required in the Grant Agreement, Grantee expressly understands and acknowledges System Agency is in no manner liable to any subcontractor(s) of Grantee. In no event shall this provision relieve Grantee of the responsibility for ensuring that the services performed under all subcontracts are rendered in compliance with the Grant Agreement.

11.9 PERMITTING AND LICENSURE

At Grantee's sole expense, Grantee shall procure and maintain for the duration of this Grant Agreement any state, county, city, or federal license, authorization, insurance, waiver, permit, qualification or certification required by statute, ordinance, law, or regulation to be held by Grantee to provide the goods or services required by this Grant Agreement. Grantee shall be responsible for payment of all taxes, assessments, fees, premiums, permits, and licenses required by law. Grantee shall be responsible for payment of any such government obligations not paid by its Subcontractors during performance of this Grant Agreement.

11.10 INDEPENDENT CONTRACTOR

Grantee and Grantee's employees, representatives, agents, Subcontractors, suppliers, and third-party service providers shall serve as independent contractors in providing the services

under the Grant Agreement. Neither Grantee nor System Agency is an agent of the other and neither may make any commitments on the other party's behalf. The Grantee is not a "governmental body" solely by virtue of this Grant Agreement or receipt of grant funds under this Grant Agreement. Grantee shall have no claim against System Agency for vacation pay, sick leave, retirement benefits, social security, worker's compensation, health or disability benefits, unemployment insurance benefits, or employee benefits of any kind. The Grant Agreement shall not create any joint venture, partnership, agency, or employment relationship between Grantee and System Agency.

11.11 GOVERNING LAW AND VENUE

The Grant Agreement shall be governed by and construed in accordance with the laws of the State of Texas, without regard to the conflicts of law provisions. The venue of any suit arising under the Grant Agreement is fixed in any court of competent jurisdiction of Travis County, Texas, unless the specific venue is otherwise identified in a statute which directly names or otherwise identifies its applicability to the System Agency.

11.12 SEVERABILITY

If any provision contained in this Grant Agreement is held to be unenforceable by a court of law or equity, such construction will not affect the legality, validity, or enforceability of any other provision or provisions of this Grant Agreement. It is the intent and agreement of the Parties this Grant Agreement shall be deemed amended by modifying such provision to the extent necessary to render it valid, legal and enforceable while preserving its intent or, if such modification is not possible, by substituting another provision that is valid, legal and enforceable and that achieves the same objective. All other provisions of this Grant Agreement will continue in full force and effect.

11.13 SURVIVABILITY

Expiration or termination of the Grant Agreement for any reason does not release Grantee from any liability or obligation set forth in the Grant Agreement that is expressly stated to survive any such expiration or termination, that by its nature would be intended to be applicable following any such expiration or termination, or that is necessary to fulfill the essential purpose of the Grant Agreement, including without limitation the provisions regarding return of grant funds, audit requirements, records retention, public information, warranty, indemnification, confidentiality, and rights and remedies upon termination.

11.14 FORCE MAJEURE

Neither Grantee nor System Agency shall be liable to the other for any delay in, or failure of performance, of any requirement included in the Grant Agreement caused by force majeure. The existence of such causes of delay or failure shall extend the period of performance until after the causes of delay or failure have been removed provided the non-performing party exercises all reasonable due diligence to perform. Force majeure is defined as acts of God, war, fires, explosions, hurricanes, floods, failure of transportation, or other causes that are beyond the reasonable control of either party and that by exercise of due foresight such party could not reasonably have been expected to avoid, and which, by the exercise of all reasonable due diligence, such party is unable to overcome.

11.15 NO IMPLIED WAIVER OF PROVISIONS

The failure of the System Agency to object to or to take affirmative action with respect to any conduct of the Grantee which is in violation or breach of the terms of the Grant Agreement shall not be construed as a waiver of the violation or breach, or of any future violation or breach.

11.16 FUNDING DISCLAIMERS AND LABELING

- A. Grantee shall not use System Agency's name or refer to System Agency directly or indirectly in any media appearance, public service announcement, or disclosure relating to this Grant Agreement including any promotional material without first obtaining written consent from System Agency. The foregoing prohibition includes, without limitation, the placement of banners, pop-up ads, or other advertisements promoting Grantee's or a third party's products, services, workshops, trainings, or other commercial offerings on any website portal or internet-based service or software application hosted or managed by Grantee. This does not limit the Grantee's responsibility to comply with obligations related to the Texas Public Information Act or Texas Open Meetings Act.
- B. In general, no publication (including websites, reports, projects, etc.) may convey System Agency's recognition or endorsement of the Grantee's project without prior written approval from System Agency. Publications funded in part or wholly by HHS grant funding must include a statement that "HHS and neither any of its components operate, control, are responsible for, or necessarily endorse, this publication (including, without limitation, its content, technical infrastructure, and policies, and any services or tools provided)" at HHS's request.

11.17 MEDIA RELEASES

- A. Grantee shall not use System Agency's name, logo, or other likeness in any press release, marketing material or other announcement without System Agency's prior written approval. System Agency does not endorse any vendor, commodity, or service. Grantee is not authorized to make or participate in any media releases or public announcements pertaining to this Grant Agreement or the Services to which they relate without System Agency's prior written consent, and then only in accordance with explicit written instruction from System Agency.
- B. Grantee may publish, at its sole expense, results of Grantee performance under the Grant Agreement with the System Agency's prior review and approval, which the System Agency may exercise at its sole discretion. Any publication (written, visual, or sound) will acknowledge the support received from the System Agency and any Federal agency, as appropriate.

11.18 PROHIBITION ON NON-COMPETE RESTRICTIONS

Grantee shall not require any employees or Subcontractors to agree to any conditions, such as non-compete clauses or other contractual arrangements, that would limit or restrict such persons or entities from employment or contracting with the State of Texas.

11.19 SOVEREIGN IMMUNITY

Nothing in the Grant Agreement will be construed as a waiver of the System Agency's or the State's sovereign immunity. This Grant Agreement shall not constitute or be construed as a waiver of any of the privileges, rights, defenses, remedies, or immunities available to the System Agency or the State of Texas. The failure to enforce, or any delay in the enforcement, of any privileges, rights, defenses, remedies, or immunities available to the System Agency or the State of Texas under the Grant Agreement or under applicable law shall not constitute a waiver of such privileges, rights, defenses, remedies, or immunities or be considered as a basis for estoppel. System Agency does not waive any privileges, rights, defenses, or immunities available to System Agency by entering into the Grant Agreement or by its conduct prior to or subsequent to entering into the Grant Agreement.

11.20 Entire Contract and Modification

The Grant Agreement constitutes the entire agreement of the Parties and is intended as a complete and exclusive statement of the promises, representations, negotiations, discussions, and other agreements that may have been made in connection with the subject matter hereof. Any additional or conflicting terms in any future document incorporated into the Grant Agreement will be harmonized with this Grant Agreement to the extent possible.

11.21 COUNTERPARTS

This Grant Agreement may be executed in any number of counterparts, each of which will be an original, and all such counterparts will together constitute but one and the same Grant Agreement.

11.22 PROPER AUTHORITY

Each Party represents and warrants that the person executing this Grant Agreement on its behalf has full power and authority to enter into this Grant Agreement.

11.23 E-VERIFY PROGRAM

Grantee certifies that it utilizes and will continue to utilize the U.S. Department of Homeland Security's E-Verify system to determine the eligibility of:

- A. all persons employed to perform duties within Texas during the term of the Grant Agreement; and
- B. all persons, (including subcontractors) assigned by the Grantee to perform work pursuant to the Grant Agreement within the United States of America.

11.24 CIVIL RIGHTS

- A. Grantee agrees to comply with state and federal anti-discrimination laws, including:
 - i. Title VI of the Civil Rights Act of 1964 (42 U.S.C. §2000d et seq.);
 - ii. Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. §794);
 - iii. Americans with Disabilities Act of 1990 (42 U.S.C. §12101 et seq.);
 - iv. Age Discrimination Act of 1975 (42 U.S.C. §§6101-6107);
 - v. Title IX of the Education Amendments of 1972 (20 U.S.C. §§1681-1688);
 - vi. Food and Nutrition Act of 2008 (7 U.S.C. §2011 et seq.); and
 - vii. The System Agency's administrative rules, as set forth in the Texas Administrative Code, to the extent applicable to this Grant Agreement.
- B. Grantee agrees to comply with all amendments to the above-referenced laws, and all requirements imposed by the regulations issued pursuant to these laws. These laws provide in part that no persons in the United States may, on the grounds of race, color, national origin, sex, age, disability, political beliefs, or religion, be excluded from

- participation in or denied any aid, care, service or other benefits provided by Federal or State funding, or otherwise be subjected to discrimination.
- C. Grantee agrees to comply with Title VI of the Civil Rights Act of 1964, and its implementing regulations at 45 C.F.R. Part 80 or 7 C.F.R. Part 15, prohibiting a contractor from adopting and implementing policies and procedures that exclude or have the effect of excluding or limiting the participation of clients in its programs, benefits, or activities on the basis of national origin. State and federal civil rights laws require contractors to provide alternative methods for ensuring access to services for applicants and recipients who cannot express themselves fluently in English. Grantee agrees to take reasonable steps to provide services and information, both orally and in writing, in appropriate languages other than English, in order to ensure that persons with limited English proficiency are effectively informed and can have meaningful access to programs, benefits, and activities.
- D. Grantee agrees to post applicable civil rights posters in areas open to the public informing clients of their civil rights and including contact information for the HHS Civil Rights Office. The posters are available on the HHS website at: https://hhs.texas.gov/about-hhs/your-rights/civil-rights-office/civil-rights-posters.
- E. Grantee agrees to comply with Executive Order 13279, and its implementing regulations at 45 C.F.R. Part 87 or 7 C.F.R. Part 16. These provide in part that any organization that participates in programs funded by direct financial assistance from the United States Department of Agriculture or the United States Department of Health and Human Services shall not discriminate against a program beneficiary or prospective program beneficiary on the basis of religion or religious belief.
- F. Upon request, Grantee shall provide HHSC's Civil Rights Office with copies of the Grantee's civil rights policies and procedures.
- G. Grantee must notify HHSC's Civil Rights Office of any complaints of discrimination received relating to its performance under this Grant Agreement. This notice must be delivered no more than ten (10) calendar days after receipt of a complaint. Notice provided pursuant to this section must be directed to:

HHSC Civil Rights Office

701 W. 51st Street, Mail CodeW206

Austin, Texas 78751

Phone Toll Free: (888) 388-6332

Phone: (512) 438-4313 Fax: (512) 438-5885

Email: HHSCivilRightsOffice@hhsc.state.tx.us.

11.25 ENTERPRISE INFORMATION MANAGEMENT STANDARDS

Grantee shall conform to HHS standards for data management as described by the policies of the HHS Office of Data, Analytics, and Performance. These include, but are not limited to, standards for documentation and communication of data models, metadata, and other data definition methods that are required by HHS for ongoing data governance, strategic portfolio analysis, interoperability planning, and valuation of HHS System data assets.

11.26 DISCLOSURE OF LITIGATION

A. The Grantee must disclose in writing to the contract manager assigned to this Grant Agreement any material civil or criminal litigation or indictment either threatened or

pending involving the Grantee. "Threatened litigation" as used herein shall include governmental investigations and civil investigative demands. "Litigation" as used herein shall include administrative enforcement actions brought by governmental agencies. The Grantee must also disclose any material litigation threatened or pending involving Subcontractors, consultants, and/or lobbyists. For purposes of this section, "material" refers, but is not limited, to any action or pending action that a reasonable person knowledgeable in the applicable industry would consider relevant to the Work under the Grant Agreement or any development such a person would want to be aware of in order to stay fully apprised of the total mix of information relevant to the Work, together with any litigation threatened or pending that may result in a substantial change in the Grantee's financial condition.

B. This is a continuing disclosure requirement; any litigation commencing after Grant Agreement Award must be disclosed in a written statement to the assigned contract manager within seven calendar days of its occurrence.

11.27 No Third Party Beneficiaries

The Grant Agreement is made solely and specifically among and for the benefit of the Parties named herein and their respective successors and assigns, and no other person shall have any right, interest, or claims hereunder or be entitled to any benefits pursuant to or on account of the Grant Agreement as a third-party beneficiary or otherwise.

11.28 BINDING EFFECT

The Grant Agreement shall inure to the benefit of, be binding upon, and be enforceable against each Party and their respective permitted successors, assigns, transferees, and delegates.

ATTACHMENT E

HHS DATA USE AGREEMENT

This Data Use Agreement ("DUA"), effective as of the date the Base Contract into which it is incorporated is signed ("Effective Date"), is entered into by and between a Texas Health and Human Services Enterprise agency ("HHS"), and the Contractor identified in the Base Contract, a political subdivision of the State of Texas ("CONTRACTOR.

ARTICLE 1. PURPOSE; APPLICABILITY; ORDER OF PRECEDENCE

The purpose of this DUA is to facilitate creation, receipt, maintenance, use, disclosure or access to <u>Confidential Information</u> with CONTRACTOR, and describe CONTRACTOR's rights and obligations with respect to the <u>Confidential Information</u>. 45 CFR 164.504(e)(1)-(3). This DUA also describes HHS's remedies in the event of CONTRACTOR's noncompliance with its obligations under this DUA. This DUA applies to both <u>Business Associates</u> and contractors who are not <u>Business Associates</u> who create, receive, maintain, use, disclose or have access to <u>Confidential Information</u> on behalf of HHS, its programs or clients as described in the Base Contract.

As of the Effective Date of this DUA, if any provision of the Base Contract, including any General Provisions or Uniform Terms and Conditions, conflicts with this DUA, this DUA controls.

ARTICLE 2. DEFINITIONS

For the purposes of this DUA, capitalized, underlined terms have the meanings set forth in the following: Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 (42 U.S.C. §1320d, et seq.) and regulations thereunder in 45 CFR Parts 160 and 164, including all amendments, regulations and guidance issued thereafter; The Social Security Act, including Section 1137 (42 U.S.C. §§ 1320b-7), Title XVI of the Act; The Privacy Act of 1974, as amended by the Computer Matching and Privacy Protection Act of 1988, 5 U.S.C. § 552a and regulations and guidance thereunder; Internal Revenue Code, Title 26 of the United States Code and regulations and publications adopted under that code, including IRS Publication 1075; OMB Memorandum 07-18; Texas Business and Commerce Code Ch. 521; Texas Government Code, Ch. 552, and Texas Government Code §2054.1125. In addition, the following terms in this DUA are defined as follows:

"Authorized Purpose" means the specific purpose or purposes described in the Statement of Work of the Base Contract for CONTRACTOR to fulfill its obligations under the Base Contract, or any other purpose expressly authorized by HHS in writing in advance.

"Authorized User" means a Person:

(1) Who is authorized to create, receive, maintain, have access to, process, view, handle, examine, interpret, or analyze <u>Confidential Information</u> pursuant to this DUA;

- (2) For whom CONTRACTOR warrants and represents has a demonstrable need to create, receive, maintain, use, disclose or have access to the <u>Confidential Information</u>; and
- (3) Who has agreed in writing to be bound by the disclosure and use limitations pertaining to the Confidential Information as required by this DUA.
- "Confidential Information" means any communication or record (whether oral, written, electronically stored or transmitted, or in any other form) provided to or made available to CONTRACTOR, or that CONTRACTOR may, for an <u>Authorized Purpose</u>, create, receive, maintain, use, disclose or have access to, that consists of or includes any or all of the following:
 - (1) <u>Client Information</u>;
- (2) <u>Protected Health Information</u> in any form including without limitation, <u>Electronic</u> Protected Health Information or Unsecured Protected Health Information (herein "PHI");
- (3) <u>Sensitive Personal Information</u> defined by Texas Business and Commerce Code Ch. 521;
 - (4) <u>Federal Tax Information</u>;
- (5) <u>Individually Identifiable Health Information</u> as related to HIPAA, Texas HIPAA and <u>Personal Identifying Information</u> under the Texas Identity Theft Enforcement and Protection Act;
- (6) <u>Social Security Administration Data</u>, including, without limitation, Medicaid information;
 - (7) All privileged work product;
- (8) All information designated as confidential under the constitution and laws of the State of Texas and of the United States, including the Texas Health & Safety Code and the Texas Public Information Act, Texas Government Code, Chapter 552.
- "Legally Authorized Representative" of the Individual, as defined by Texas law, including as provided in 45 CFR 435.923 (Medicaid); 45 CFR 164.502(g)(1) (HIPAA); Tex. Occ. Code § 151.002(6); Tex. H. & S. Code § 166.164; and Estates Code Ch. 752.

ARTICLE 3. CONTRACTOR'S DUTIES REGARDING CONFIDENTIAL INFORMATION

3.01 Obligations of CONTRACTOR

CONTRACTOR agrees that:

(A) CONTRACTOR will exercise reasonable care and no less than the same degree of care CONTRACTOR uses to protect its own confidential, proprietary and trade secret information to prevent any portion of the <u>Confidential Information</u> from being used in HHS Data Use Agreement

a manner that is not expressly an <u>Authorized Purpose</u> under this DUA or as <u>Required by Law</u>. 45 CFR 164.502(b)(1); 45 CFR 164.514(d)

(B) Except as Required by Law, CONTRACTOR will not disclose or allow access to any portion of the Confidential Information to any Person or other entity, other than Authorized User's Workforce or Subcontractors (as defined in 45 C.F.R. 160.103) of CONTRACTOR who have completed training in confidentiality, privacy, security and the importance of promptly reporting any Event or Breach to CONTRACTOR's management, to carry out CONTRACTOR's obligations in connection with the Authorized Purpose.

HHS, at its election, may assist CONTRACTOR in training and education on specific or unique HHS processes, systems and/or requirements. CONTRACTOR will produce evidence of completed training to HHS upon request. 45 C.F.R. 164.308(a)(5)(i); Texas Health & Safety Code §181.101

All of CONTRACTOR's <u>Authorized Users</u>, <u>Workforce</u> and <u>Subcontractors</u> with access to a state computer system or database will complete a cybersecurity training program certified under Texas Government Code Section 2054.519 by the Texas Department of Information Resources.

- (C) CONTRACTOR will establish, implement and maintain appropriate sanctions against any member of its <u>Workforce</u> or <u>Subcontractor</u> who fails to comply with this DUA, the Base Contract or applicable law. CONTRACTOR will maintain evidence of sanctions and produce it to HHS upon request. 45 C.F.R. 164.308(a)(1)(ii)(C); 164.530(e); 164.410(b); 164.530(b)(1)
- (D) CONTRACTOR will not, except as otherwise permitted by this DUA, disclose or provide access to any Confidential Information on the basis that such act is Required by Law without notifying either HHS or CONTRACTOR's own legal counsel to determine whether CONTRACTOR should object to the disclosure or access and seek appropriate relief. CONTRACTOR will maintain an accounting of all such requests for disclosure and responses and provide such accounting to HHS within 48 hours of HHS' request. 45 CFR 164.504(e)(2)(ii)(A)
- (E) CONTRACTOR will not attempt to re-identify or further identify Confidential Information or De-identified Information, or attempt to contact any Individuals whose records are contained in the Confidential Information, except for an Authorized Purpose, without express written authorization from HHS or as expressly permitted by the Base Contract. 45 CFR 164.502(d)(2)(i) and (ii) CONTRACTOR will not engage in prohibited marketing or sale of Confidential Information. 45 CFR 164.501, 164.508(a)(3) and (4); Texas Health & Safety Code Ch. 181.002
- (F) CONTRACTOR will not permit, or enter into any agreement with a <u>Subcontractor</u> to, create, receive, maintain, use, disclose, have access to or transmit <u>Confidential Information</u> to carry out CONTRACTOR's obligations in connection with the <u>Authorized Purpose</u> on behalf of CONTRACTOR, unless <u>Subcontractor</u> agrees to comply with all applicable laws, rules and regulations. 45 CFR 164.502(e)(1)(ii); 164.504(e)(1)(i) and (2).

- (G) CONTRACTOR is directly responsible for compliance with, and enforcement of, all conditions for creation, maintenance, use, disclosure, transmission and <u>Destruction</u> of <u>Confidential Information</u> and the acts or omissions of <u>Subcontractors</u> as may be reasonably necessary to prevent unauthorized use. *45 CFR 164.504(e)(5)*; *42 CFR 431.300*, *et seq.*
- (H) If CONTRACTOR maintains <u>PHI</u> in a <u>Designated Record Set</u> which is <u>Confidential Information</u> and subject to this Agreement, CONTRACTOR will make <u>PHI</u> available to HHS in a Designated Record Set upon request. CONTRACTOR will provide <u>PHI</u> to an <u>Individual</u>, or <u>Legally Authorized Representative</u> of the <u>Individual</u> who is requesting <u>PHI</u> in compliance with the requirements of the <u>HIPAA Privacy Regulations</u>. CONTRACTOR will release <u>PHI</u> in accordance with the <u>HIPAA Privacy Regulations</u> upon receipt of a valid written authorization. CONTRACTOR will make other <u>Confidential Information</u> in CONTRACTOR's possession available pursuant to the requirements of <u>HIPAA</u> or other applicable law upon a determination of a <u>Breach</u> of <u>Unsecured PHI</u> as defined in HIPAA. CONTRACTOR will maintain an accounting of all such disclosures and provide it to HHS within 48 hours of HHS' request. *45 CFR 164.524and 164.504(e)(2)(ii)(E)*.
- (I) If <u>PHI</u> is subject to this Agreement, CONTRACTOR will make <u>PHI</u> as required by <u>HIPAA</u> available to HHS for review subsequent to CONTRACTOR's incorporation of any amendments requested pursuant to <u>HIPAA</u>. 45 CFR 164.504(e)(2)(ii)(E) and (F).
- (J) If <u>PHI</u> is subject to this Agreement, CONTRACTOR will document and make available to HHS the <u>PHI</u> required to provide access, an accounting of disclosures or amendment in compliance with the requirements of the <u>HIPAA Privacy Regulations</u>. 45 CFR 164.504(e)(2)(ii)(G) and 164.528.
- (K) If CONTRACTOR receives a request for access, amendment or accounting of <u>PHI</u> from an individual with a right of access to information subject to this DUA, it will respond to such request in compliance with the <u>HIPAA Privacy Regulations</u>. CONTRACTOR will maintain an accounting of all responses to requests for access to or amendment of <u>PHI</u> and provide it to HHS within 48 hours of HHS' request. *45 CFR* 164.504(e)(2).
- (L) CONTRACTOR will provide, and will cause its <u>Subcontractors</u> and agents to provide, to HHS periodic written certifications of compliance with controls and provisions relating to information privacy, security and breach notification, including without limitation information related to data transfers and the handling and disposal of Confidential Information. *45 CFR 164.308*; *164.530(c)*; *1 TAC 202*.
- (M) Except as otherwise limited by this DUA, the Base Contract, or law applicable to the <u>Confidential Information</u>, CONTRACTOR may use <u>PHI</u> for the proper management and administration of CONTRACTOR or to carry out CONTRACTOR's legal responsibilities. Except as otherwise limited by this DUA, the Base Contract, or law applicable to the <u>Confidential Information</u>, CONTRACTOR may disclose <u>PHI</u> for the

proper management and administration of CONTRACTOR, or to carry out CONTRACTOR's legal responsibilities, if: 45 CFR 164.504(e)(4)(A).

- (1) Disclosure is <u>Required by Law</u>, provided that CONTRACTOR complies with Section 3.01(D); or
- (2) CONTRACTOR obtains reasonable assurances from the person or entity to which the information is disclosed that the person or entity will:
 - (a) Maintain the confidentiality of the <u>Confidential Information</u> in accordance with this DUA;
 - (b) Use or further disclose the information only as <u>Required by Law</u> or for the Authorized Purpose for which it was disclosed to the Person; and
 - (c) Notify CONTRACTOR in accordance with Section 4.01 of any Event or Breach of Confidential Information of which the Person discovers or should have discovered with the exercise of reasonable diligence. 45 CFR 164.504(e)(4)(ii)(B).
- (N) Except as otherwise limited by this DUA, CONTRACTOR will, if required by law and requested by HHS, use commercially reasonable efforts to use <u>PHI</u> to provide data aggregation services to HHS, as that term is defined in the <u>HIPAA</u>, 45 C.F.R. §164.501 and permitted by <u>HIPAA</u>. 45 CFR 164.504(e)(2)(i)(B)
- CONTRACTOR will, on the termination or expiration of this DUA or the Base Contract, at its expense, send to HHS or Destroy, at HHS's election and to the extent reasonably feasible and permissible by law, all Confidential Information received from HHS or created or maintained by CONTRACTOR or any of CONTRACTOR's agents or Subcontractors on HHS's behalf if that data contains Confidential Information. CONTRACTOR will certify in writing to HHS that all the Confidential Information that has been created, received, maintained, used by or disclosed to CONTRACTOR, has been Destroyed or sent to HHS, and that CONTRACTOR and its agents and Subcontractors have retained no copies thereof. Notwithstanding the foregoing, HHS acknowledges and agrees that CONTRACTOR is not obligated to send to HHSC and/or Destroy any Confidential Information if federal law, state law, the Texas State Library and Archives Commission records retention schedule, and/or a litigation hold notice prohibit such delivery or <u>Destruction</u>. If such delivery or <u>Destruction</u> is not reasonably feasible, or is impermissible by law, CONTRACTOR will immediately notify HHS of the reasons such delivery or <u>Destruction</u> is not feasible, and agree to extend indefinitely the protections of this DUA to the Confidential Information and limit its further uses and disclosures to the purposes that make the return delivery or Destruction of the Confidential Information not feasible for as long as CONTRACTOR maintains such Confidential Information. 45 CFR 164.504(e)(2)(ii)(J)
- (P) CONTRACTOR will create, maintain, use, disclose, transmit or <u>Destroy</u> <u>Confidential Information</u> in a secure fashion that protects against any reasonably anticipated

threats or hazards to the security or integrity of such information or unauthorized uses. 45 CFR 164.306; 164.530(c)

- (O) If CONTRACTOR accesses, transmits, stores, and/or maintains Confidential Information, CONTRACTOR will complete and return HHS infosecurity@hhsc.state.tx.us the HHS information security and privacy initial inquiry (SPI) at Attachment 1. The SPI identifies basic privacy and security controls with which CONTRACTOR must comply to protect HHS Confidential Information. CONTRACTOR will comply with periodic security controls compliance assessment and monitoring by HHS as required by state and federal law, based on the type of Confidential Information CONTRACTOR creates, receives, maintains, uses, discloses or has access to and the Authorized Purpose and level of risk. CONTRACTOR's security controls will be based on the National Institute of Standards and Technology (NIST) Special Publication 800-53. CONTRACTOR will update its security controls assessment whenever there are significant changes in security controls for HHS Confidential Information and will provide the updated document to HHS. HHS also reserves the right to request updates as needed to satisfy state and federal monitoring requirements. 45 CFR 164.306.
- (R) CONTRACTOR will establish, implement and maintain reasonable procedural, administrative, physical and technical safeguards to preserve and maintain the confidentiality, integrity, and availability of the Confidential Information, and with respect to PHI, as described in the HIPAA Privacy and Security Regulations, or other applicable laws or regulations relating to Confidential Information, to prevent any unauthorized use or disclosure of Confidential Information as long as CONTRACTOR has such Confidential Information in its actual or constructive possession. 45 CFR 164.308 (administrative safeguards); 164.310 (physical safeguards); 164.312 (technical safeguards); 164.530(c)(privacy safeguards).
- (S) CONTRACTOR will designate and identify, a <u>Person</u> or <u>Persons</u>, as <u>Privacy Official</u> 45 CFR 164.530(a)(1) and <u>Information Security Official</u>, each of whom is authorized to act on behalf of CONTRACTOR and is responsible for the development and implementation of the privacy and security requirements in this DUA. CONTRACTOR will provide name and current address, phone number and e-mail address for such designated officials to HHS upon execution of this DUA and prior to any change. If such persons fail to develop and implement the requirements of the DUA, CONTRACTOR will replace them upon HHS request. 45 CFR 164.308(a)(2).
- (T) CONTRACTOR represents and warrants that its <u>Authorized Users</u> each have a demonstrated need to know and have access to <u>Confidential Information</u> solely to the minimum extent necessary to accomplish the <u>Authorized Purpose</u> pursuant to this DUA and the Base Contract, and further, that each has agreed in writing to be bound by the disclosure and use limitations pertaining to the <u>Confidential Information</u> contained in this DUA. *45 CFR 164.502; 164.514(d).*
- (U) CONTRACTOR and its <u>Subcontractors</u> will maintain an updated, complete, accurate and numbered list of Authorized Users, their signatures, titles and the date they

agreed to be bound by the terms of this DUA, at all times and supply it to HHS, as directed, upon request.

- (V) CONTRACTOR will implement, update as necessary, and document reasonable and appropriate policies and procedures for privacy, security and <u>Breach</u> of <u>Confidential Information</u> and an incident response plan for an <u>Event</u> or <u>Breach</u>, to comply with the privacy, security and breach notice requirements of this DUA prior to conducting work under the Statement of Work. 45 CFR 164.308; 164.316; 164.514(d); 164.530(i)(1).
- (W) CONTRACTOR will produce copies of its information security and privacy policies and procedures and records relating to the use or disclosure of <u>Confidential Information</u> received from, created by, or received, used or disclosed by CONTRACTOR for an <u>Authorized Purpose</u> for HHS's review and approval within 30 days of execution of this DUA and upon request by HHS the following business day or other agreed upon time frame. **45** CFR 164.308; 164.514(d).
- (X) CONTRACTOR will make available to HHS any information HHS requires to fulfill HHS's obligations to provide access to, or copies of, <u>PHI</u> in accordance with <u>HIPAA</u> and other applicable laws and regulations relating to <u>Confidential Information</u>. CONTRACTOR will provide such information in a time and manner reasonably agreed upon or as designated by the <u>Secretary</u> of the U.S. Department of Health and Human Services, or other federal or state law. *45 CFR 164.504(e)(2)(i)(I)*.
- (Y) CONTRACTOR will only conduct secure transmissions of <u>Confidential Information</u> whether in paper, oral or electronic form, in accordance with applicable rules, regulations and laws. A secure transmission of electronic <u>Confidential Information</u> in motion includes, but is not limited to, Secure File Transfer Protocol (SFTP) or <u>Encryption</u> at an appropriate level. If required by rule, regulation or law, HHS <u>Confidential Information</u> at rest requires <u>Encryption</u> unless there is other adequate administrative, technical, and physical security. All electronic data transfer and communications of <u>Confidential Information</u> will be through secure systems. Proof of system, media or device security and/or Encryption must be produced to HHS no later than 48 hours after HHS's written request in response to a compliance investigation, audit or the <u>Discovery</u> of an <u>Event</u> or <u>Breach</u>. Otherwise, requested production of such proof will be made as agreed upon by the parties. <u>De-identification</u> of HHS <u>Confidential Information</u> is a means of security. With respect to de-identification of <u>PHI</u>, "secure" means de-identified according to <u>HIPAA Privacy</u> standards and regulatory guidance. 45 CFR 164.312; 164.530(d).
- (Z) For each type of <u>Confidential Information</u> CONTRACTOR creates, receives, maintains, uses, discloses, has access to or transmits in the performance of the Statement of Work, CONTRACTOR will comply with the following laws rules and regulations, only to the extent applicable and required by law:
 - Title 1, Part 10, Chapter 202, Subchapter B, Texas Administrative Code;
 - The Privacy Act of 1974;

- OMB Memorandum 07-16;
- The Federal Information Security Management Act of 2002 (FISMA);
- The Health Insurance Portability and Accountability Act of 1996 (HIPAA) as defined in the DUA;
- Internal Revenue Publication 1075 Tax Information Security Guidelines for Federal, State and Local Agencies;
- National Institute of Standards and Technology (NIST) Special Publication 800-66 Revision 1 – An Introductory Resource Guide for Implementing the Health Insurance Portability and Accountability Act (HIPAA) Security Rule;
- NIST Special Publications 800-53 and 800-53A Recommended Security Controls for Federal Information Systems and Organizations, as currently revised;
- NIST Special Publication 800-47 Security Guide for Interconnecting Information Technology Systems;
- NIST Special Publication 800-88, Guidelines for Media Sanitization;
- NIST Special Publication 800-111, Guide to Storage of Encryption Technologies for End User Devices containing PHI; and

Any other State or Federal law, regulation, or administrative rule relating to the specific HHS program area that CONTRACTOR supports on behalf of HHS.

(AA) Notwithstanding anything to the contrary herein, CONTRACTOR will treat any <u>Personal Identifying Information</u> it creates, receives, maintains, uses, transmits, destroys and/or discloses in accordance with Texas Business and Commerce Code, Chapter 521 and other applicable regulatory standards identified in Section 3.01(Z), and <u>Individually Identifiable Health Information</u> CONTRACTOR creates, receives, maintains, uses, transmits, destroys and/or discloses in accordance with <u>HIPAA</u> and other applicable regulatory standards identified in Section 3.01(Z).

ARTICLE 4. BREACH NOTICE, REPORTING AND CORRECTION REQUIREMENTS

4.01 Breach or Event Notification to HHS. 45 CFR 164.400-414.

(A) CONTRACTOR will cooperate fully with HHS in investigating, mitigating to the extent practicable and issuing notifications directed by HHS, for any <u>Event</u> or <u>Breach</u> of <u>Confidential Information</u> to the extent and in the manner determined by HHS.

(B) CONTRACTOR'S obligation begins at the <u>Discovery</u> of an <u>Event</u> or <u>Breach</u> and continues as long as related activity continues, until all effects of the <u>Event</u> are mitigated to HHS's reasonable satisfaction (the "incident response period"). *45 CFR 164.404*.

(C) Breach Notice:

- (1) Initial Notice.
 - (a) For federal information, including without limitation, <u>Federal Tax Information</u>, <u>Social Security Administration Data</u>, and Medicaid <u>Client Information</u>, within the first, consecutive clock hour of <u>Discovery</u>, and for all other types of <u>Confidential Information</u> not more than 24 hours after <u>Discovery</u>, or in a timeframe otherwise approved by HHS in writing, initially report to HHS's Privacy and Security Officers via email at: privacy@HHSC.state.tx.us and to the HHS division responsible for this DUA; and IRS Publication 1075; Privacy Act of 1974, as amended by the Computer Matching and Privacy Protection Act of 1988, 5 U.S.C. § 552a; OMB Memorandum 07-16 as cited in HHSC-CMS Contracts for information exchange.
 - (b) Report all information reasonably available to CONTRACTOR about the <u>Event</u> or <u>Breach</u> of the privacy or security of Confidential Information. *45 CFR 164.410*.
 - (c) Name, and provide contact information to HHS for, CONTRACTOR's single point of contact who will communicate with HHS both on and off business hours during the incident response period.
- (2) Formal Notice. No later than two business days after the Initial Notice above, provide formal notification to privacy@HHSC.state.tx.us and to the HHS division responsible for this DUA, including all reasonably available information about the <u>Event</u> or <u>Breach</u>, and CONTRACTOR's investigation, including without limitation and to the extent available: *For (a) (m) below: 45 CFR 164.400-414*.
 - (a) The date the Event or Breach occurred;
 - (b) The date of CONTRACTOR's and, if applicable, <u>Subcontractor's Discovery</u>;
 - (c) A brief description of the <u>Event or Breach</u>; including how it occurred and who is responsible (or hypotheses, if not yet determined);
 - (d) A brief description of CONTRACTOR's investigation and the status of the investigation;
 - (e) A description of the types and amount of <u>Confidential</u> Information involved;

- (f) Identification of and number of all <u>Individuals</u> reasonably believed to be affected, including first and last name of the <u>Individual</u> and if applicable the, <u>Legally Authorized Representative</u>, last known address, age, telephone number, and email address if it is a preferred contact method, to the extent known or can be reasonably determined by CONTRACTOR at that time;
- (g) CONTRACTOR's initial risk assessment of the <u>Event</u> or <u>Breach</u> demonstrating whether individual or other notices are required by applicable law or this DUA for HHS approval, including an analysis of whether there is a low probability of compromise of the <u>Confidential Information</u> or whether any legal exceptions to notification apply;
- (h) CONTRACTOR's recommendation for HHS's approval as to the steps <u>Individuals</u> and/or CONTRACTOR on behalf of <u>Individuals</u>, should take to protect the <u>Individuals</u> from potential harm, including without limitation CONTRACTOR's provision of notifications, credit protection, claims monitoring, and any specific protections for a <u>Legally Authorized Representative</u> to take on behalf of an <u>Individual</u> with special capacity or circumstances;
- (i) The steps CONTRACTOR has taken to mitigate the harm or potential harm caused (including without limitation the provision of sufficient resources to mitigate);
- (j) The steps CONTRACTOR has taken, or will take, to prevent or reduce the likelihood of recurrence of a similar Event or Breach;
- (k) Identify, describe or estimate the <u>Persons</u>, <u>Workforce</u>, <u>Subcontractor</u>, or <u>Individuals</u> and any law enforcement that may be involved in the Event or Breach;
- (l) A reasonable schedule for CONTRACTOR to provide regular updates during normal business hours to the foregoing in the future for response to the <u>Event</u> or <u>Breach</u>, but no less than every three (3) business days or as otherwise directed by HHS, including information about risk estimations, reporting, notification, if any, mitigation, corrective action, root cause analysis and when such activities are expected to be completed; and
- (m) Any reasonably available, pertinent information, documents or reports related to an <u>Event</u> or <u>Breach</u> that HHS requests following <u>Discovery</u>.

4.02 Investigation, Response and Mitigation. 45 CFR 164.308, 310 and 312; 164.530

(A) CONTRACTOR will immediately conduct a full and complete investigation, respond to the <u>Event</u> or <u>Breach</u>, commit necessary and appropriate staff and resources to

expeditiously respond, and report as required to and by HHS for incident response purposes and for purposes of HHS's compliance with report and notification requirements, to the reasonable satisfaction of HHS.

- (B) CONTRACTOR will complete or participate in a risk assessment as directed by HHS following an <u>Event</u> or <u>Breach</u>, and provide the final assessment, corrective actions and mitigations to HHS for review and approval.
- (C) CONTRACTOR will fully cooperate with HHS to respond to inquiries and/or proceedings by state and federal authorities, <u>Persons</u> and/or <u>Individuals</u> about the <u>Event</u> or Breach.
- (D) CONTRACTOR will fully cooperate with HHS's efforts to seek appropriate injunctive relief or otherwise prevent or curtail such <u>Event</u> or <u>Breach</u>, or to recover or protect any Confidential Information, including complying with reasonable corrective action or measures, as specified by HHS in a Corrective Action Plan if directed by HHS under the Base Contract.
- 4.03 Breach Notification to Individuals and Reporting to Authorities. Tex. Bus. & Comm. Code §521.053; 45 CFR 164.404 (Individuals), 164.406 (Media); 164.408 (Authorities)
 - (A) HHS may direct CONTRACTOR to provide <u>Breach</u> notification to Individuals, regulators or third-parties, as specified by HHS following a <u>Breach</u>.
 - (B) CONTRACTOR shall give HHS an opportunity to review and provide feedback to CONTRACTOR and to confirm that CONTRACTOR's notice meets all regulatory requirements regarding the time, manner and content of any notification to Individuals, regulators or third-parties, or any notice required by other state or federal authorities, including without limitation, notifications required by Texas Business and Commerce Code, Chapter 521.053(b) and HIPAA. HHS shall have ten (10) business days to provide said feedback to CONTRACTOR. Notice letters will be in CONTRACTOR's name and on CONTRACTOR's letterhead, unless otherwise directed by HHS, and will contain contact information, including the name and title of CONTRACTOR's representative, an email address and a toll-free telephone number, if required by applicable law, rule, or regulation, for the Individual to obtain additional information.
 - (C) CONTRACTOR will provide HHS with copies of distributed and approved communications.
 - (D) CONTRACTOR will have the burden of demonstrating to the reasonable satisfaction of HHS that any notification required by HHS was timely made. If there are delays outside of CONTRACTOR's control, CONTRACTOR will provide written documentation of the reasons for the delay.

(E) If HHS delegates notice requirements to CONTRACTOR, HHS shall, in the time and manner reasonably requested by CONTRACTOR, cooperate and assist with CONTRACTOR's information requests in order to make such notifications and reports.

ARTICLE 5. STATEMENT OF WORK

"Statement of Work" means the services and deliverables to be performed or provided by CONTRACTOR, or on behalf of CONTRACTOR by its <u>Subcontractors</u> or agents for HHS that are described in detail in the Base Contract. The Statement of Work, including any future amendments thereto, is incorporated by reference in this DUA as if set out word-for-word herein.

ARTICLE 6. GENERAL PROVISIONS

6.01 Oversight of Confidential Information

CONTRACTOR acknowledges and agrees that HHS is entitled to oversee and monitor CONTRACTOR's access to and creation, receipt, maintenance, use, disclosure of the <u>Confidential Information</u> to confirm that CONTRACTOR is in compliance with this DUA.

6.02 HHS Commitment and Obligations

HHS will not request CONTRACTOR to create, maintain, transmit, use or disclose <u>PHI</u> in any manner that would not be permissible under applicable law if done by HHS.

6.03 HHS Right to Inspection

At any time upon reasonable notice to CONTRACTOR, or if HHS determines that CONTRACTOR has violated this DUA, HHS, directly or through its agent, will have the right to inspect the facilities, systems, books and records of CONTRACTOR to monitor compliance with this DUA. For purposes of this subsection, HHS's agent(s) include, without limitation, the HHS Office of the Inspector General or the Office of the Attorney General of Texas, outside consultants or legal counsel or other designee.

6.04 Term; Termination of DUA; Survival

This DUA will be effective on the date on which CONTRACTOR executes the DUA, and will terminate upon termination of the Base Contract and as set forth herein. If the Base Contract is extended or amended, this DUA shall be extended or amended concurrent with such extension or amendment.

(A) HHS may immediately terminate this DUA and Base Contract upon a material violation of this DUA.

- (B) Termination or Expiration of this DUA will not relieve CONTRACTOR of its obligation to return or <u>Destroy</u> the <u>Confidential Information</u> as set forth in this DUA and to continue to safeguard the Confidential Information until such time as determined by HHS.
- (C) If HHS determines that CONTRACTOR has violated a material term of this DUA; HHS may in its sole discretion:
 - (1) Exercise any of its rights including but not limited to reports, access and inspection under this DUA and/or the Base Contract; or
 - (2) Require CONTRACTOR to submit to a Corrective Action Plan, including a plan for monitoring and plan for reporting, as HHS may determine necessary to maintain compliance with this DUA; or
 - (3) Provide CONTRACTOR with a reasonable period to cure the violation as determined by HHS; or
 - (4) Terminate the DUA and Base Contract immediately, and seek relief in a court of competent jurisdiction in Texas.

Before exercising any of these options, HHS will provide written notice to CONTRACTOR describing the violation, the requested corrective action CONTRACTOR may take to cure the alleged violation, and the action HHS intends to take if the alleged violated is not timely cured by CONTRACTOR.

- (D) If neither termination nor cure is feasible, HHS shall report the violation to the Secretary of the U.S. Department of Health and Human Services.
- (E) The duties of CONTRACTOR or its <u>Subcontractor</u> under this DUA survive the expiration or termination of this DUA until all the <u>Confidential Information</u> is <u>Destroyed</u> or returned to HHS, as required by this DUA.

6.05 Governing Law, Venue and Litigation

- (A) The validity, construction and performance of this DUA and the legal relations among the Parties to this DUA will be governed by and construed in accordance with the laws of the State of Texas.
- (B) The Parties agree that the courts of Texas, will be the exclusive venue for any litigation, special proceeding or other proceeding as between the parties that may be brought, or arise out of, or in connection with, or by reason of this DUA.

6.06 Injunctive Relief

(A) CONTRACTOR acknowledges and agrees that HHS may suffer irreparable injury if CONTRACTOR or its <u>Subcontractor</u> fails to comply with any of the terms of this

DUA with respect to the <u>Confidential Information</u> or a provision of HIPAA or other laws or regulations applicable to <u>Confidential Information</u>.

(B) CONTRACTOR further agrees that monetary damages may be inadequate to compensate HHS for CONTRACTOR's or its <u>Subcontractor's</u> failure to comply. Accordingly, CONTRACTOR agrees that HHS will, in addition to any other remedies available to it at law or in equity, be entitled to seek injunctive relief without posting a bond and without the necessity of demonstrating actual damages, to enforce the terms of this DUA.

6.07 Responsibility.

To the extent permitted by the Texas Constitution, laws and rules, and without waiving any immunities or defenses available to CONTRACTOR as a governmental entity, CONTRACTOR shall be solely responsible for its own acts and omissions and the acts and omissions of its employees, directors, officers, <u>Subcontractors</u> and agents. HHS shall be solely responsible for its own acts and omissions.

6.08 Insurance

- (A) As a governmental entity, and in accordance with the limits of the Texas Tort Claims Act, Chapter 101 of the Texas Civil Practice and Remedies Code, CONTRACTOR either maintains commercial insurance or self-insures with policy limits in an amount sufficient to cover CONTRACTOR's liability arising under this DUA. CONTRACTOR will request that HHS be named as an additional insured. HHSC reserves the right to consider alternative means for CONTRACTOR to satisfy CONTRACTOR's financial responsibility under this DUA. Nothing herein shall relieve CONTRACTOR of its financial obligations set forth in this DUA if CONTRACTOR fails to maintain insurance.
- (B) CONTRACTOR will provide HHS with written proof that required insurance coverage is in effect, at the request of HHS.

6.08 Fees and Costs

Except as otherwise specified in this DUA or the Base Contract, if any legal action or other proceeding is brought for the enforcement of this DUA, or because of an alleged dispute, contract violation, <u>Event</u>, <u>Breach</u>, default, misrepresentation, or injunctive action, in connection with any of the provisions of this DUA, each party will bear their own legal expenses and the other cost incurred in that action or proceeding.

6.09 Entirety of the Contract

This DUA is incorporated by reference into the Base Contract as an amendment thereto and, together with the Base Contract, constitutes the entire agreement between the parties. No change, waiver, or discharge of obligations arising under those documents will be valid unless in writing and executed by the party against whom such change, waiver, or discharge is sought to be enforced. If any provision of the Base Contract, including any General Provisions or Uniform Terms and Conditions, conflicts with this DUA, this DUA controls.

6.10 Automatic Amendment and Interpretation

If there is (i) a change in any law, regulation or rule, state or federal, applicable to <u>HIPPA</u> and/or <u>Confidential Information</u>, or (ii) any change in the judicial or administrative interpretation of any such law, regulation or rule,, upon the effective date of such change, this DUA shall be deemed to have been automatically amended, interpreted and read so that the obligations imposed on HHS and/or CONTRACTOR remain in compliance with such changes. Any ambiguity in this DUA will be resolved in favor of a meaning that permits HHS and CONTRACTOR to comply with <u>HIPAA</u> or any other law applicable to <u>Confidential Information</u>.



Texas HHS System - Data Use Agreement - Attachment 2 SECURITY AND PRIVACY INQUIRY (SPI)

If you are a bidder for a new procurement/contract, in order to participate in the bidding process, you must have corrected any "No" responses (except A9a) prior to the contract award date. If you are an applicant for an open enrollment, you must have corrected any "No" answers (except A9a and A11) prior to performing any work on behalf of any Texas HHS agency.

For any questions answered "No" (except A9a and A11), an *Action Plan for Compliance with a Timeline* must be documented in the designated area below the question. The timeline for compliance with HIPAA-related requirements for safeguarding Protected Health Information is 30 calendar days from the date this form is signed. Compliance with requirements related to other types of Confidential Information must be confirmed within 90 calendar days from the date the form is signed.

SEC	CTION A: APPLICANT/BIDDER INFORMATION (To be co	mpleted by Applicar	nt/Bidder)	
1.	Does the applicant/bidder access, create, disclose, receive, transmit, maintain, or store Texas HHS Confidential Information in electronic systems (e.g., laptop, personal use computer, mobile device, database, server, etc.)? IF NO, STOP. THE SPI FORM IS NOT REQUIRED.			O Yes O No
2.	Entity or Applicant/Bidder Legal Name	Legal Name: City	of Lubbock	
		Legal Entity Tax Identification Number (TIN) (Last Four Numbers Only): 590		
		Procurement/Con	tract#: HHS0013313	300015
		Address:		
		City:	State:	ZIP:
		Telephone #:		
		Email Address:		
3.	• • •	Total Employees:		
	Applicant/Bidder's Workforce "Workforce" means all employees, volunteers, trainees, and other Persons whose conduct is under the direct control of Applicant/Bidder, whether or not they are paid by Applicant/Bidder. If Applicant/Bidder is a sole proprietor, the workforce may be only one employee.			
4.	Number of Subcontractors (if Applicant/Bidder will not use subcontractors, enter "0")	Total Subcontracto	rs:	
5.	Name of Information Technology Security Official	A. Security Official	:	
	and Name of Privacy Official for Applicant/Bidder (Privacy and Security Official may be the same person.)	Legal Name:		
	,	Address:		
		City:	State:	ZIP:
		Telephone #:		
		Email Address:		
		B. Privacy Official:		
		Legal Name:		
		Address:		
		City:	State:	ZIP:
		Telephone #:		
		Email Address:		

DocuSign Envelope ID: 840D3DFE-E919-447C-871D-17373C8C6C32 6. Type(s) of Texas HHS Confidential Information the	HIPAA	CJIS	IRS FTI	CMS	SSA	PII
Applicant/Bidder will create, receive, maintain, use,		ΙΠ̈́		Ϊ́Π̈́		
disclose or have access to: (Check all that apply) • Health Insurance Portability and Accountability Act (HIPAA) data • Criminal Justice Information Services (CJIS) data • Internal Revenue Service Federal Tax Information (IRS FTI) data • Centers for Medicare & Medicaid Services (CMS) • Social Security Administration (SSA) • Personally Identifiable Information (PII)	Other (Ple	ease List)			, <u> </u>	, <u> </u>
7. Number of Storage Devices for Texas HHS Confiden	ntial Inforn	nation (as	defined in	the	Tot	tal #
Texas HHS System Data Use Agreement (DUA))		·				n a-d)
Cloud Services involve using a network of remote server	s hosted on	the Interne	t to store,			^
manage, and process data, rather than a local server or a	a personal c	omputer.			(0
A Data Center is a centralized repository, either physical	or virtual, fo	or the stora	ge,			
management, and dissemination of data and informatio	n organized	around a pa	articular bo	dy		
of knowledge or pertaining to a particular business.						
 a. Devices. Number of personal user computers, de devices and mobile drives. 	vices or dr	ives, includ	ling mobile	9		
b. Servers. Number of Servers that are not in a data	center or i	using Cloud	d Services.			
c. Cloud Services. Number of Cloud Services in use.						
d. Data Centers. Number of Data Centers in use.						
8. Number of unduplicated individuals for whom Application handle Texas HHS Confidential Information during	- · · · · · · · · · · · · · · · · · · ·	der reasor	ably expe	cts to		Option -d)
a. 499 individuals or less					Oã	Э.
b. 500 to 999 individuals					Ŏ k	o.
c. 1,000 to 99,999 individuals					Ō	. .
d. 100,000 individuals or more					0	d
9. HIPAA Business Associate Agreement						
a. Will Applicant/Bidder use, disclose, create, rece health information on behalf of a HIPAA-covere covered function?			•		O N	
b. Does Applicant/Bidder have a Privacy Notice pro	minently c	lisplayed o	n a Webp	age or a	O Ye	es
Public Office of Applicant/Bidder's business oper					O N	0
HIPAA requirement. Answer "N/A" if not applica	able, such	as for age	ncies not	covered	O N	/A
by HIPAA.)						
Action Plan for Compliance with a Timeline:					Complian	<u>ice Date:</u>
10. Subcontractors. If the Applicant/Bidder responded	"0" to Oue	estion 4 (in	dicating no)		
subcontractors), check "N/A" for both 'a.' and 'b.'	0 00 00					
a. Does Applicant/Bidder require subcontractors to	execute th	ne DUA Att	achment 1		O Ye	
Subcontractor Agreement Form?					ΟN	
					O N	/A
Action Plan for Compliance with a Timeline:					Complian	ice Date:

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b. Will Applicant/Bidder agree to require subcontractors who will access Confidential Information to comply with the terms of the DUA, not disclose any Confidential Information to them until they have agreed in writing to the same safeguards and to discontinue their access to the Confidential Information if they fail to comply?	U NO
Action Plan for Compliance with a Timeline:	Compliance Date:
11. Does Applicant/Bidder have any Optional Insurance currently in place? Optional Insurance provides coverage for: (1) Network Security and Privacy; (2) Data Breach; (3) Cyber Liability (lost data, lost use or delay/suspension in business, denial of service with e-business, the Internet, networks and informational assets, such as privacy, intellectual property, virus transmission, extortion, sabotage or web activities); (4) Electronic Media Liability; (5) Crime/Theft; (6) Advertising Injury and Personal Injury Liability; and (7) Crisis Management and Notification Expense Coverage.	O Yes O No O N/A

SECTION B: PRIVACY RISK ANALYSIS AND ASSESSMENT (To be completed by Applicant/Bidder)

For any questions answered "No," an Action Plan for Compliance with a Timeline must be documented in the designated area below the question. The timeline for compliance with HIPAA-related requirements for safeguarding Protected Health Information is 30 calendar days from the date this form is signed. Compliance with requirements related to other types of Confidential Information must be confirmed within 90 calendar days from the date the form is signed.

Written Policies & Procedures. Does Applicant/Bidder have current written privacy and security policies and procedures that, at a minimum:	Yes or No
a. Does Applicant/Bidder have current written privacy and security policies and procedures that identify Authorized Users and Authorized Purposes (as defined in the DUA) relating to creation, receipt, maintenance, use, disclosure, access or transmission of Texas HHS Confidential Information?	○ Yes ○ No
Action Plan for Compliance with a Timeline:	Compliance Date:
b. Does Applicant/Bidder have current written privacy and security policies and procedures that require Applicant/Bidder and its Workforce to comply with the applicable provisions of HIPAA and other laws referenced in the DUA, relating to creation, receipt, maintenance, use, disclosure, access or transmission of Texas HHS Confidential Information on behalf of a Texas HHS agency?	○ Yes ○ No
Action Plan for Compliance with a Timeline:	Compliance Date:
c. Does Applicant/Bidder have current written privacy and security policies and procedures that limit use or disclosure of Texas HHS Confidential Information to the minimum that is necessary to fulfill the Authorized Purposes?	○ Yes ○ No
Action Plan for Compliance with a Timeline:	Compliance Date:
d. Does Applicant/Bidder have current written privacy and security policies and procedures that respond to an actual or suspected breach of Texas HHS Confidential Information, to include at a minimum (if any responses are "No" check "No" for all three):	○ Yes ○ No
 i. Immediate breach notification to the Texas HHS agency, regulatory authorities, and other required Individuals or Authorities, in accordance with Article 4 of the DUA; ii. Following a documented breach response plan, in accordance with the DUA and applicable law; & 	
iii. Notifying Individuals and Reporting Authorities whose Texas HHS Confidential Information has been breached, as directed by the Texas HHS agency?	

e. Does Applicant/Bidder have current written privacy and security policies and procedures that conduct annual workforce training and monitoring for and correction of any training delinquencies? Action Plan for Compliance with a Timeline: F. Does Applicant/Bidder have current written privacy and security policies and procedures that permit or deny individual rights of access, and amendment or correction, when appropriate? Action Plan for Compliance with a Timeline: Gempliance Date: Compliance Date: Compliance Date: Description: Action Plan for Compliance with a Timeline: Gempliance Date: Gempliance Date: Gempliance Date: Compliance Date: Oescription: Action Plan for Compliance with a Timeline: Gempliance Date: Compliance Date: Oescription: Oescription: Action Plan for Compliance with a Timeline: Gempliance Date: Compliance Date: Compliance Date: Oescription: Oescr	Docusi	gn Envelope ID: 840D3DFE-E919-447C-871D-17373C8C6C32	
that conduct annual workforce training and monitoring for and correction of any training delinquencies? Action Plan for Compliance with a Timeline: Compliance Date: 6. Does Applicant/Bidder have current written privacy and security policies and procedures that permit or deny individual rights of access, and amendment or correction, when appropriate? Action Plan for Compliance with a Timeline: Compliance Date: Complia		Action Plan for Compliance with a Timeline:	Compliance Date:
f. Does Applicant/Bidder have current written privacy and security policies and procedures that permit or deny individual rights of access, and amendment or correction, when appropriate? Action Plan for Compliance with a Timeline: Compliance Date: g. Does Applicant/Bidder have current written privacy and security policies and procedures that permit only Authorized Users with up-to-date privacy and security training, and with a reasonable and demonstrable need to use, disclose, create, receive, maintain, access or transmit the Texas HHS Confidential Information, to carry out an obligation under the DUA for an Authorized Purpose, unless otherwise approved in writing by a Texas HHS agency? Action Plan for Compliance with a Timeline: Compliance Date: h. Does Applicant/Bidder have current written privacy and security policies and procedures that establish, implement and maintain proof of appropriate sanctions against any Workforce or Subcontractors who fail to comply with an Authorized Purpose or who is not an Authorized User, and used or disclosed Texas HHS Confidential Information in violation of the DUA, the Base Contract or applicable law? Action Plan for Compliance with a Timeline: Compliance Date: i. Does Applicant/Bidder have current written privacy and security policies and procedures that require updates to policies, procedures and plans following major changes with use or disclosure of Texas HHS Confidential Information within 60 days of identification of a need for update?	e	that conduct annual workforce training and monitoring for and correction of any training	9
g. Does Applicant/Bidder have current written privacy and security policies and procedures that permit only Authorized Users with up-to-date privacy and security training, and with a reasonable and demonstrable need to use, disclose, create, receive, maintain, access or transmit the Texas HHS Confidential Information, to carry out an obligation under the DUA for an Authorized Purpose, unless otherwise approved in writing by a Texas HHS agency? Action Plan for Compliance with a Timeline: Compliance Date: Compliance Date: Compliance Date: Compliance Date: Compliance Date: Compliance Date: Des Applicant/Bidder have current written privacy and security policies and procedures that establish, implement and maintain proof of appropriate sanctions against any Workforce or Subcontractors who fail to comply with an Authorized Purpose or who is not an Authorized User, and used or disclosed Texas HHS Confidential Information in violation of the DUA, the Base Contract or applicable law? Action Plan for Compliance with a Timeline: Compliance Date: 1. Does Applicant/Bidder have current written privacy and security policies and procedures that require updates to policies, procedures and plans following major changes with use or disclosure of Texas HHS Confidential Information within 60 days of identification of a need for update?		Action Plan for Compliance with a Timeline:	Compliance Date:
g. Does Applicant/Bidder have current written privacy and security policies and procedures that permit only Authorized Users with up-to-date privacy and security training, and with a reasonable and demonstrable need to use, disclose, create, receive, maintain, access or transmit the Texas HHS Confidential Information, to carry out an obligation under the DUA for an Authorized Purpose, unless otherwise approved in writing by a Texas HHS agency? Action Plan for Compliance with a Timeline: Compliance Date: h. Does Applicant/Bidder have current written privacy and security policies and procedures that establish, implement and maintain proof of appropriate sanctions against any Workforce or Subcontractors who fail to comply with an Authorized Purpose or who is not an Authorized User, and used or disclosed Texas HHS Confidential Information in violation of the DUA, the Base Contract or applicable law? Action Plan for Compliance with a Timeline: i. Does Applicant/Bidder have current written privacy and security policies and procedures that require updates to policies, procedures and plans following major changes with use or disclosure of Texas HHS Confidential Information within 60 days of identification of a need for update?	f.	procedures that permit or deny individual rights of access, and amendment	_
that permit only Authorized Users with up-to-date privacy and security training, and with a reasonable and demonstrable need to use, disclose, create, receive, maintain, access or transmit the Texas HHS Confidential Information, to carry out an obligation under the DUA for an Authorized Purpose, unless otherwise approved in writing by a Texas HHS agency? Action Plan for Compliance with a Timeline: Compliance Date: h. Does Applicant/Bidder have current written privacy and security policies and procedures that establish, implement and maintain proof of appropriate sanctions against any Workforce or Subcontractors who fail to comply with an Authorized Purpose or who is not an Authorized User, and used or disclosed Texas HHS Confidential Information in violation of the DUA, the Base Contract or applicable law? Action Plan for Compliance with a Timeline: Compliance Date: i. Does Applicant/Bidder have current written privacy and security policies and procedures that require updates to policies, procedures and plans following major changes with use or disclosure of Texas HHS Confidential Information within 60 days of identification of a need for update?		Action Plan for Compliance with a Timeline:	Compliance Date:
h. Does Applicant/Bidder have current written privacy and security policies and procedures that establish, implement and maintain proof of appropriate sanctions against any Workforce or Subcontractors who fail to comply with an Authorized Purpose or who is not an Authorized User, and used or disclosed Texas HHS Confidential Information in violation of the DUA, the Base Contract or applicable law? Action Plan for Compliance with a Timeline: Compliance Date: i. Does Applicant/Bidder have current written privacy and security policies and procedures that require updates to policies, procedures and plans following major changes with use or disclosure of Texas HHS Confidential Information within 60 days of identification of a need for update?	g.	that permit only Authorized Users with up-to-date privacy and security training, and with a reasonable and demonstrable need to use, disclose, create, receive, maintain, access or transmit the Texas HHS Confidential Information, to carry out an obligation under the DUA for an Authorized Purpose, unless otherwise approved in writing by a	_
that establish, implement and maintain proof of appropriate sanctions against any Workforce or Subcontractors who fail to comply with an Authorized Purpose or who is not an Authorized User, and used or disclosed Texas HHS Confidential Information in violation of the DUA, the Base Contract or applicable law? Action Plan for Compliance with a Timeline: Compliance Date: i. Does Applicant/Bidder have current written privacy and security policies and procedures that require updates to policies, procedures and plans following major changes with use or disclosure of Texas HHS Confidential Information within 60 days of identification of a need for update?		Action Plan for Compliance with a Timeline:	<u>Compliance Date:</u>
 i. Does Applicant/Bidder have current written privacy and security policies and procedures that require updates to policies, procedures and plans following major changes with use or disclosure of Texas HHS Confidential Information within 60 days of identification of a need for update? 	h	that establish, implement and maintain proof of appropriate sanctions against any Workforce or Subcontractors who fail to comply with an Authorized Purpose or who is not an Authorized User, and used or disclosed Texas HHS Confidential Information in	0
procedures that require updates to policies, procedures and plans following major changes with use or disclosure of Texas HHS Confidential Information within 60 days of identification of a need for update?		Action Plan for Compliance with a Timeline:	Compliance Date:
Action Plan for Compliance with a Timeline: Compliance Date:	i.	procedures that require updates to policies, procedures and plans following major changes with use or disclosure of Texas HHS Confidential Information within 60	_
		Action Plan for Compliance with a Timeline:	Compliance Date:

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	j. Does Applicant/Bidder have current written privacy and security policies and	Yes
	procedures that restrict permissions or attempts to re-identify or further identify	O No
	de-identified Texas HHS Confidential Information, or attempt to contact any Individuals	
	whose records are contained in the Texas HHS Confidential Information, except for an	
	Authorized Purpose, without express written authorization from a Texas HHS agency or as expressly permitted by the Base Contract?	
	Action Plan for Compliance with a Timeline:	<u>Compliance Date:</u>
	k. If Applicant/Bidder intends to use, disclose, create, maintain, store or transmit Texas HHS	O Voc
	Confidential Information outside of the United States, will Applicant/Bidder obtain the	0.33
	express prior written permission from the Texas HHS agency and comply with the Texas	○ No
	HHS agency conditions for safeguarding offshore Texas HHS Confidential Information?	
	Action Plan for Compliance with a Timeline:	Compliance Date:
	I. Does Applicant/Bidder have current written privacy and security policies and procedures	O Yes
	that require cooperation with Texas HHS agencies' or federal regulatory inspections,	O No
	audits or investigations related to compliance with the DUA or applicable law?	
	Action Plan for Compliance with a Timeline:	<u>Compliance Date:</u>
	m. Does Applicant/Bidder have current written privacy and security policies and	O Voc
	procedures that require appropriate standards and methods to destroy or dispose of	O Yes
	Texas HHS Confidential Information?	○ No
	Action Plan for Compliance with a Timeline:	Compliance Date:
	Action Flati for Compliance with a filleline.	<u> </u>
	n. Does Applicant/Bidder have current written privacy and security policies and procedures	O Yes
	that prohibit disclosure of Applicant/Bidder's work product done on behalf of Texas HHS	O No
	pursuant to the DUA, or to publish Texas HHS Confidential Information without express	<u> </u>
	prior approval of the Texas HHS agency?	
	Action Plan for Compliance with a Timeline:	Compliance Date:
2	Does Applicant/Bidder have a current Workforce training program?	
۷.	Training of Workforce must occur at least once every year, and within 30 days of date of hiring a new	O Yes
	Workforce member who will handle Texas HHS Confidential Information. Training must include: (1) privacy and	O No
	security policies, procedures, plans and applicable requirements for handling Texas HHS Confidential	
	Information, (2) a requirement to complete training before access is given to Texas HHS Confidential	
	Information, and (3) written proof of training and a procedure for monitoring timely completion of training.	

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Action Plan for Compliance with a Timeline:	Compliance Date:
3. Does Applicant/Bidder have Privacy Safeguards to protect Texas HHS Confidential Information in oral, paper and/or electronic form?	O Yes
"Privacy Safeguards" means protection of Texas HHS Confidential Information by establishing, implementing and maintaining required Administrative, Physical and Technical policies, procedures, processes and controls, required by the DUA, HIPAA (45 CFR 164.530), Social Security Administration, Medicaid and laws, rules or regulations, as applicable. Administrative safeguards include administrative protections, policies and procedures for matters such as training, provision of access, termination, and review of safeguards, incident management, disaster recovery plans, and contract provisions. Technical safeguards include technical protections, policies and procedures, such as passwords, logging, emergencies, how paper is faxed or mailed, and electronic protections such as encryption of data. Physical safeguards include physical protections, policies and procedures, such as locks, keys, physical access, physical storage and trash.	
Action Plan for Compliance with a Timeline:	Compliance Date:
4. Does Applicant/Bidder and all subcontractors (if applicable) maintain a current list of Authorized Users who have access to Texas HHS Confidential Information, whether oral, written or electronic?	O Yes O No
Action Plan for Compliance with a Timeline:	Compliance Date:
5. Does Applicant/Bidder and all subcontractors (if applicable) monitor for and remove	○ Yes
terminated employees or those no longer authorized to handle Texas HHS Confidential Information from the list of Authorized Users?	○ No
Action Plan for Compliance with a Timeline:	Compliance Date:

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SECTION C: SECURITY RISK ANALYSIS AND ASSESSMENT (to be completed by Applicant/Bidder	•)
This section is about your electronic system. If your business DOES NOT store, access, or transmit Texas HHS Confidential Information in electronic systems (e.g., laptop, personal use computer, mobile device, database, server, etc.) select the box to the right, and	No Electronic Systems
"YES" will be entered for all questions in this section.	
For any questions answered "No," an Action Plan for Compliance with a Timeline must be do designated area below the question. The timeline for compliance with HIPAA-related items days, PII-related items is 90 calendar days.	
 Does the Applicant/Bidder ensure that services which access, create, disclose, receive, transmit, maintain, or store Texas HHS Confidential Information are maintained IN the United States (no offshoring) unless ALL of the following requirements are met? The data is encrypted with FIPS 140-2 validated encryption The offshore provider does not have access to the encryption keys The Applicant/Bidder maintains the encryption key within the United States The Application/Bidder has obtained the express prior written permission of the Texas HHS agency For more information regarding FIPS 140-2 encryption products, please refer to: http://csrc.nist.gov/publications/fips	○ Yes ○ No
Action Plan for Compliance with a Timeline:	Compliance Date:
2. Does Applicant/Bidder utilize an IT security-knowledgeable person or company to maintain or oversee the configurations of Applicant/Bidder's computing systems and devices?	O Yes O No
Action Plan for Compliance with a Timeline:	Compliance Date:
3. Does Applicant/Bidder monitor and manage access to Texas HHS Confidential Information (e.g., a formal process exists for granting access and validating the need for users to access Texas HHS Confidential Information, and access is limited to Authorized Users)?	○ Yes ○ No
Action Plan for Compliance with a Timeline:	Compliance Date:
4. Does Applicant/Bidder a) have a system for changing default passwords, b) require user password changes at least every 90 calendar days, and c) prohibit the creation of weak passwords (e.g., require a minimum of 8 characters with a combination of uppercase, lowercase, special characters, and numerals, where possible) for all computer systems that access or store Texas HHS Confidential Information. If yes, upon request must provide evidence such as a screen shot or a system report.	○ Yes ○ No
Action Plan for Compliance with a Timeline:	<u>Compliance</u> <u>Date:</u>

5. Does each member of Applicant/Bidder's Workforce who will use, disclose, create, receive, transmit or maintain Texas HHS Confidential Information have a unique user name (account) and private password?	○ Yes ○ No
Action Plan for Compliance with a Timeline:	Compliance Date:
6. Does Applicant/Bidder lock the password after a certain number of failed attempts and after 15 minutes of user inactivity in all computing devices that access or store Texas HHS Confidential Information?	○ Yes ○ No
Action Plan for Compliance with a Timeline:	Compliance Date:
7. Does Applicant/Bidder secure, manage and encrypt remote access (including wireless access) to computer systems containing Texas HHS Confidential Information? (e.g., a formal process exists for granting access and validating the need for users to remotely access Texas HHS Confidential Information, and remote access is limited to Authorized Users). Encryption is required for all Texas HHS Confidential Information. Additionally, FIPS 140-2 validated encryption is required for Health Insurance Portability and Accountability Act (HIPAA) data, Criminal Justice Information Services (CJIS) data, Internal Revenue Service Federal Tax Information (IRS FTI) data, and Centers for Medicare & Medicaid Services (CMS) data. For more information regarding FIPS 140-2 encryption products, please refer to: http://csrc.nist.gov/publications/fips	○ Yes ○ No
Action Plan for Compliance with a Timeline:	<u>Compliance Date:</u>
8. Does Applicant/Bidder implement computer security configurations or settings for all computers and systems that access or store Texas HHS Confidential Information? (e.g., non-essential features or services have been removed or disabled to reduce the threat of breach and to limit exploitation opportunities for hackers or intruders, etc.)	O Yes O No
Action Plan for Compliance with a Timeline:	Compliance Date:
9. Does Applicant/Bidder secure physical access to computer, paper, or other systems containing Texas HHS Confidential Information from unauthorized personnel and theft (e.g., door locks, cable locks, laptops are stored in the trunk of the car instead of the passenger area, etc.)?	○ Yes ○ No
Action Plan for Compliance with a Timeline:	Compliance Date:

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10. Does Applicant/Bidder use encryption products to protect Texas HHS Confidential	○ Yes
Information that is <u>transmitted</u> over a public network (e.g., the Internet, WiFi, etc.)?	O No
If yes, upon request must provide evidence such as a screen shot or a system report.	
Encryption is required for all HHS Confidential Information. Additionally, FIPS 140-2 validated encryption is required for Health Insurance Portability and Accountability Act (HIPAA) data, Criminal Justice Information Services (CJIS) data, Intern Revenue Service Federal Tax Information (IRS FTI) data, and Centers for Medicare & Medicaid Services (CMS) data.	nal
For more information regarding FIPS 140-2 encryption products, please refer to: http://csrc.nist.gov/publications/fips	
Action Plan for Compliance with a Timeline:	Compliance Date:
11. Does Applicant/Bidder use encryption products to protect Texas HHS Confidential	○ Yes
Information <u>stored</u> on end user devices (e.g., laptops, USBs, tablets, smartphones, extern	
hard drives, desktops, etc.)?	O No
If yes, upon request must provide evidence such as a screen shot or a system report.	
Encryption is required for all Texas HHS Confidential Information. Additionally, FIPS 140-2 validated encryption is require for Health Insurance Portability and Accountability Act (HIPAA) data, Criminal Justice Information Services (CJIS) data, Internal Revenue Service Federal Tax Information (IRS FTI) data, and Centers for Medicare & Medicaid Services (CMS) dat	
For more information regarding FIPS 140-2 encryption products, please refer to: http://csrc.nist.gov/publications/fips	
Action Plan for Compliance with a Timeline:	Compliance Date:
12. Does Applicant/Bidder require Workforce members to formally acknowledge rules outlining their responsibilities for protecting Texas HHS Confidential Information and associated systems containing HHS Confidential Information before their access is provided?	ng O Yes O No
Action Plan for Compliance with a Timeline:	Compliance Date:
13. Is Applicant/Bidder willing to perform or submit to a criminal background check on Authorized Users?	O Yes O No
Action Plan for Compliance with a Timeline:	Compliance Date:
14. Does Applicant/Bidder prohibit the access, creation, disclosure, reception, transmission,	○ Yes
maintenance, and storage of Texas HHS Confidential Information with a subcontractor (e.g., cloud services, social media, etc.) unless Texas HHS has approved the subcontractor agreement which must include compliance and liability clauses with the same requirements as the Applicant/Bidder?	O No
Action Plan for Compliance with a Timeline:	Compliance Date:

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15. Does Applicant/Bidder keep current on security updates/patches (including firmware, software and applications) for computing systems that use, disclose, access, create, transmit, maintain or store Texas HHS Confidential Information?	○ Yes ○ No
Action Plan for Compliance with a Timeline:	Compliance Date:
16. Do Applicant/Bidder's computing systems that use, disclose, access, create, transmit, maintain or store Texas HHS Confidential Information contain up-to-date antimalware and antivirus protection?	○ Yes ○ No
Action Plan for Compliance with a Timeline:	Compliance Date:
17. Does the Applicant/Bidder review system security logs on computing systems that access or store Texas HHS Confidential Information for abnormal activity or security concerns on a regular basis?	O Yes O No
Action Plan for Compliance with a Timeline:	Compliance Date:
18. Notwithstanding records retention requirements, does Applicant/Bidder's disposal processes for Texas HHS Confidential Information ensure that Texas HHS Confidential Information is destroyed so that it is unreadable or undecipherable?	○ Yes ○ No
Action Plan for Compliance with a Timeline:	Compliance Date:
19. Does the Applicant/Bidder ensure that all public facing websites and mobile applications containing Texas HHS Confidential Information meet security testing standards set forth within the Texas Government Code (TGC), Section 2054.516; including requirements for implementing vulnerability and penetration testing and addressing identified vulnerabilities? For more information regarding TGC, Section 2054.516 DATA SECURITY PLAN FOR ONLINE AND MOBILE APPLICATIONS, please refer to: https://legiscan.com/TX/text/HB8/2017	○ Yes ○ No
Action Plan for Compliance with a Timeline:	Compliance Date:

SECTION D: SIGNATURE AND SUBM	ISSION (to be comple	ted by Applicant/	Bidder)
Please sign the form a	ligitally, if possible. If	you can't, provide	e a handwritten signature.
1. I certify that all of the information of the inf	•		correct to the best of my knowledge. s HHS of this immediately.
2. Signature	3. Title		4. Date:
To submit the completed, signed form:	1		I
Email the form as an attachment to th	e appropriate Texas HHS	Contract Manager(s).	
Section E: To Be Completed by Texa	s HHS Agency Staff:		
Agency(s):		Requesting Departi	ment(s):
HHSC: DFPS: DFPS:	DSHS:		
Legal Entity Tax Identification Number (TIN) (Last four Only):	PO/Contract(s) #:	
Contract Manager:	Contract Manager B	Email Address:	Contract Manager Telephone #:
Contract Manager:	Contract Manager E	Email Address:	Contract Manager Telephone #:
Contract Manager:	Contract Manager E	Email Address:	Contract Manager Telephone #:
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Contract Manager:	Contract Manager E	Email Address:	Contract Manager Telephone #:
Contract Manager:	Contract Manager E	Email Address:	Contract Manager Telephone #:

Below are instructions for Applicants, Bidders and Contractors for Texas Health and Human Services requiring the Attachment 2, Security and Privacy Inquiry (SPI) to the Data Use Agreement (DUA). Instruction item numbers below correspond to sections on the SPI form.

If you are a bidder for a new procurement/contract, in order to participate in the bidding process, you must have corrected any "No" responses (except A9a) prior to the contract award date. If you are an applicant for an open enrollment, you must have corrected any "No" answers (except A9a and A11) prior to performing any work on behalf of any Texas HHS agency.

For any questions answered "No" (except A9a and A11), an *Action Plan for Compliance with a Timeline* must be documented in the designated area below the question. The timeline for compliance with HIPAA-related requirements for safeguarding Protected Health Information is 30 calendar days from the date this form is signed. Compliance with requirements related to other types of Confidential Information must be confirmed within 90 calendar days from the date the form is signed.

SECTION A. APPLICANT / BIDDER INFORMATION

Item #1. Only contractors that access, transmit, store, and/or maintain Texas HHS Confidential Information will complete and email this form as an attachment to the appropriate Texas HHS Contract Manager.

Item #2. Entity or Applicant/Bidder Legal Name. Provide the legal name of the business (the name used for legal purposes, like filing a federal or state tax form on behalf of the business, and is not a trade or assumed named "dba"), the legal tax identification number (last four numbers only) of the entity or applicant/bidder, the address of the corporate or main branch of the business, the telephone number where the business can be contacted regarding questions related to the information on this form and the website of the business, if a website exists.

Item #3. Number of Employees, at all locations, in Applicant/Bidder's workforce. Provide the total number of individuals, including volunteers, subcontractors, trainees, and other persons who work for the business. If you are the only employee, please answer "1."

Item #4. Number of Subcontractors. Provide the total number of subcontractors working for the business. If you have none, please answer "0" zero.

Item #5. Number of unduplicated individuals for whom Applicant/Bidder reasonably expects to handle HHS Confidential Information during one year. Select the radio button that corresponds with the number of clients/consumers for whom you expect to handle Texas HHS Confidential Information during a year. Only count clients/consumers once, no matter how many direct services the client receives during a year.

Item #5. Name of Information Technology Security Official and Name of Privacy Official for Applicant/Bidder. As with all other fields on the SPI, this is a required field. This may be the same person and the owner of the business if such person has the security and privacy knowledge that is required to implement the requirements of the DUA and respond to questions related to the SPI. In 4.A. provide the name, address, telephone number, and email address of the person whom you have designated to answer any security questions found in Section C and in 4.B. provide this information for the person whom you have designated as the person to answer any privacy questions found in Section B. The business may contract out for this expertise; however, designated individual(s) must have knowledge of the business's devices, systems and methods for use, disclosure, creation, receipt, transmission and maintenance of Texas HHS Confidential Information and be willing to be the point of contact for privacy and security questions.

Item #6. Type(s) of HHS Confidential Information the Entity or Applicant/Bidder Will Create, Receive, Maintain, Use, Disclose or Have Access to: Provide a complete listing of all Texas HHS Confidential Information that the Contractor will create, receive, maintain, use, disclose or have access to. The DUA section Article 2, Definitions, defines Texas HHS Confidential Information as:

"Confidential Information" means any communication or record (whether oral, written, electronically stored or transmitted, or in any other form) provided to or made available to CONTRACTOR or that CONTRACTOR may create, receive, maintain, use, disclose or have access to on behalf of Texas HHS that consists of or includes any or all of the following:

- (1) Client Information;
- (2) Protected Health Information in any form including without limitation, Electronic Protected Health Information or Unsecured Protected Health Information;
- (3) Sensitive Personal Information defined by Texas Business and Commerce Code Ch. 521;

- (5) Personally Identifiable Information;
- (6) Social Security Administration Data, including, without limitation, Medicaid information;
- (7) All privileged work product;
- (8) All information designated as confidential under the constitution and laws of the State of Texas and of the United States, including the Texas Health & Safety Code and the Texas Public Information Act, Texas Government Code, Chapter 552.

Definitions for the following types of confidential information can be found the following sites:

- Health Insurance Portability and Accountability Act (HIPAA) http://www.hhs.gov/hipaa/index.html
- Criminal Justice Information Services (CJIS) https://www.fbi.gov/services/cjis/cjis-security-policy-resource-center
- Internal Revenue Service Federal Tax Information (IRS FTI) https://www.irs.gov/pub/irs-pdf/p1075.pdf
- Centers for Medicare & Medicaid Services (CMS) https://www.cms.gov/Regulations-and-Guidance/Regulations-and-Guidance.html
- Social Security Administration (SSA) https://www.ssa.gov/regulations/
- Personally Identifiable Information (PII) http://csrc.nist.gov/publications/nistpubs/800-122/sp800-122.pdf

Item #7. Number of Storage devices for Texas HHS Confidential Information. The total number of devices is automatically calculated by exiting the fields in lines a - d. Use the <Tab> key when exiting the field to prompt calculation, if it doesn't otherwise sum correctly.

- Item 7a. Devices. Provide the number of personal user computers, devices, and drives (including mobile devices, laptops, USB drives, and external drives) on which your business stores or will store Texas HHS Confidential Information.
- Item 7b. Servers. Provide the number of servers not housed in a data center or "in the cloud," on which Texas HHS Confidential Information is stored or will be stored. A server is a dedicated computer that provides data or services to other computers. It may provide services or data to systems on a local area network (LAN) or a wide area network (WAN) over the Internet. If none, answer "0" (zero).
- Item 7c. Cloud Services. Provide the number of cloud services to which Texas HHS Confidential Information is stored. Cloud Services involve using a network of remote servers hosted on the Internet to store, manage, and process data, rather than on a local server or a personal computer. If none, answer "0" (zero.)
- Item 7d. Data Centers. Provide the number of data centers in which you store Texas HHS Confidential Information. A Data Center is a centralized repository, either physical or virtual, for the storage, management, and dissemination of data and information organized around a particular body of knowledge or pertaining to a particular business. If none, answer "0" (zero).

Item #8. Number of unduplicated individuals for whom the Applicant/Bidder reasonably expects to handle Texas HHS Confidential Information during one year. Select the radio button that corresponds with the number of clients/consumers for whom you expect to handle Confidential Information during a year. Only count clients/consumers once, no matter how many direct services the client receives during a year.

Item #9. HIPAA Business Associate Agreement.

- Item #9a. Answer "Yes" if your business will use, disclose, create, receive, transmit, or store information relating to a client/consumer's healthcare on behalf of the Department of State Health Services, the Department of Disability and Aging Services, or the Health and Human Services Commission for treatment, payment, or operation of Medicaid or Medicaid clients. If your contract does not include HIPAA covered information, respond "no." If "no," a compliance plan is not required.
- Item #9b. Answer "Yes" if your business has a notice of privacy practices (a document that explains how you protect and use a client/consumer's healthcare information) displayed either on a website (if one exists for your business) or in your place of business (if that location is open to clients/consumers or the public). If your contract does not include HIPAA covered information, respond "N/A."

Item #10. Subcontractors. If your business responded "0" to question 4 (number of subcontractors), Answer "N/A" to Items 10a and 10b to indicate not applicable.

- Item #10a. Answer "Yes" if your business requires that all subcontractors sign Attachment 1 of the DUA.
- Item #10b. Answer "Yes" if your business obtains Texas HHS approval before permitting subcontractors to handle Texas HHS Confidential Information on your business's behalf.

Item #11. Optional Insurance. Answer "yes" if applicant has optional insurance in place to provide coverage for a Breach or any

SECTION B. PRIVACY RISK ANALYSIS AND ASSESSMENT

Reasonable and appropriate written Privacy and Security policies and procedures are required, even for sole proprietors who are the only employee, to demonstrate how your business will safeguard Texas HHS Confidential Information and respond in the event of a Breach of Texas HHS Confidential Information. To ensure that your business is prepared, all of the items below must be addressed in your written Privacy and Security policies and procedures.

Item #1. Answer "Yes" if you have written policies in place for each of the areas (a-o).

- Item #1a. Answer "yes" if your business has written policies and procedures that identify everyone, including subcontractors, who are authorized to use Texas HHS Confidential Information. The policies and procedures should also identify the reason why these Authorized Users need to access the Texas HHS Confidential Information and this reason must align with the Authorized Purpose described in the Scope of Work or description of services in the Base Contract with the Texas HHS agency.
- Item #1b. Answer "Yes" if your business has written policies and procedures that require your employees (including yourself), your volunteers, your trainees, and any other persons whose work you direct, to comply with the requirements of HIPAA, if applicable, and other confidentiality laws as they relate to your handling of Texas HHS Confidential Information. Refer to the laws and rules that apply, including those referenced in the DUA and Scope of Work or description of services in the Base Contract.
- Item #1c. Answer "Yes" if your business has written policies and procedures that limit the Texas HHS Confidential Information you disclose to the minimum necessary for your workforce and subcontractors (if applicable) to perform the obligations described in the Scope of Work or service description in the Base Contract. (e.g., if a client/consumer's Social Security Number is not required for a workforce member to perform the obligations described in the Scope of Work or service description in the Base Contract, then the Social Security Number will not be given to them.) If you are the only employee for your business, policies and procedures must not include a request for, or use of, Texas HHS Confidential Information that is not required for performance of the services.
- Item #1d. Answer "Yes" if your business has written policies and procedures that explain how your business would respond to an actual or suspected breach of Texas HHS Confidential Information. The written policies and procedures, at a minimum, must include the three items below. If any response to the three items below are no, answer "no."
 - O **Item #1di.** Answer "Yes" if your business has written policies and procedures that require your business to immediately notify Texas HHS, the Texas HHS Agency, regulatory authorities, or other required Individuals or Authorities of a Breach as described in Article 4, Section 4 of the DUA.

 Refer to <u>Article 4, Section 4.01:</u>

Initial Notice of Breach must be provided in accordance with Texas HHS and DUA requirements with as much information as possible about the Event/Breach and a name and contact who will serve as the single point of contact with HHS both on and off business hours. Time frames related to Initial Notice include:

- within one hour of Discovery of an Event or Breach of Federal Tax Information, Social Security Administration Data, or Medicaid Client Information
- within 24 hours of all other types of Texas HHS Confidential Information **48-hour Formal Notice** must be provided no later than 48 hours after Discovery for protected health information, sensitive personal information or other non-public information and must include applicable information as referenced in Section 4.01 (C) 2. of the DUA.
- O **Item #1dii.** Answer "Yes" if your business has written policies and procedures require you to have and follow a written breach response plan as described in Article 4 Section 4.02 of the DUA.
- O **Item #1diii.** Answer "Yes" if your business has written policies and procedures require you to notify Reporting Authorities and Individuals whose Texas HHS Confidential Information has been breached as described in Article 4 Section 4.03 of the DUA.
- Item #1e. Answer "Yes" if your business has written policies and procedures requiring annual training of your entire workforce on matters related to confidentiality, privacy, and security, stressing the importance of promptly reporting any Event or Breach, outlines the process that you will use to require attendance and track completion for employees who failed to complete annual training.

- Item #1f. Answer "Yes" if your business has written policies and procedures requiring you to allow individuals (clients/consumers) to access their individual record of Texas HHS Confidential Information, and allow them to amend or correct that information, if applicable.
- Item #1g. Answer "Yes" if your business has written policies and procedures restricting access to Texas HHS Confidential Information to only persons who have been authorized and trained on how to handle Texas HHS Confidential Information
- Item #1h. Answer "Yes" if your business has written policies and procedures requiring sanctioning of any subcontractor, employee, trainee, volunteer, or anyone whose work you direct when they have accessed Texas HHS Confidential Information but are not authorized to do so, and that you have a method of proving that you have sanctioned such an individuals. If you are the only employee, you must demonstrate how you will document the noncompliance, update policies and procedures if needed, and seek additional training or education to prevent future occurrences.
- **Item #1i.** Answer "Yes" if your business has written policies and procedures requiring you to update your policies within 60 days after you have made changes to how you use or disclose Texas HHS Confidential Information.
- Item #1j. Answer "Yes" if your business has written policies and procedures requiring you to restrict attempts to take de-identified data and re-identify it or restrict any subcontractor, employee, trainee, volunteer, or anyone whose work you direct, from contacting any individuals for whom you have Texas HHS Confidential Information except to perform obligations under the contract, or with written permission from Texas HHS.
- Item #1k. Answer "Yes" if your business has written policies and procedures prohibiting you from using, disclosing, creating, maintaining, storing or transmitting Texas HHS Confidential Information outside of the United States.
- Item #11. Answer "Yes" if your business has written policies and procedures requiring your business to cooperate with HHS agencies or federal regulatory entities for inspections, audits, or investigations related to compliance with the DUA or applicable law.
- Item #1m. Answer "Yes" if your business has written policies and procedures requiring your business to use appropriate standards and methods to destroy or dispose of Texas HHS Confidential Information. Policies and procedures should comply with Texas HHS requirements for retention of records and methods of disposal.
- Item #1n. Answer "Yes" if your business has written policies and procedures prohibiting the publication of the work you created or performed on behalf of Texas HHS pursuant to the DUA, or other Texas HHS Confidential Information, without express prior written approval of the HHS agency.

Item #2. Answer "Yes" if your business has a current training program that meets the requirements specified in the SPI for you, your employees, your subcontractors, your volunteers, your trainees, and any other persons under you direct supervision.

Item #3. Answer "Yes" if your business has privacy safeguards to protect Texas HHS Confidential Information as described in the SPI.

Item #4. Answer "Yes" if your business maintains current lists of persons in your workforce, including subcontractors (if applicable), who are authorized to access Texas HHS Confidential Information. If you are the only person with access to Texas HHS Confidential Information, please answer "yes."

Item #5. Answer "Yes" if your business and subcontractors (if applicable) monitor for and remove from the list of Authorized Users, members of the workforce who are terminated or are no longer authorized to handle Texas HHS Confidential Information. If you are the only one with access to Texas HHS Confidential Information, please answer "Yes."

SECTION C. SECURITY RISK ANALYSIS AND ASSESSMENT

This section is about your electronic systems. If you DO NOT store Texas HHS Confidential Information in electronic systems (e.g., laptop, personal computer, mobile device, database, server, etc.), select the "No Electronic Systems" box and respond "Yes" for all questions in this section.

Item #1. Answer "Yes" if your business does not "offshore" or use, disclose, create, receive, transmit or maintain Texas HHS Confidential Information outside of the United States. If you are not certain, contact your provider of technology services (application, cloud, data center, network, etc.) and request confirmation that they do not offshore their data.

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Item #2. Answer "Yes" if your business uses a person or company who is knowledgeable in IT security to maintain or oversee the configurations of your business's computing systems and devices. You may be that person, or you may hire someone who can provide that service for you.

Item #3. Answer "Yes" if your business monitors and manages access to Texas HHS Confidential Information (i.e., reviews systems to ensure that access is limited to Authorized Users; has formal processes for granting, validating, and reviews the need for remote access to Authorized Users to Texas HHS Confidential Information, etc.). If you are the only employee, answer "Yes" if you have implemented a process to periodically evaluate the need for accessing Texas HHS Confidential Information to fulfill your Authorized Purposes.

Item #4. Answer "Yes" if your business has implemented a system for changing the password a system initially assigns to the user (also known as the default password), and requires users to change their passwords at least every 90 days, and prohibits the creation of weak passwords for all computer systems that access or store Texas HHS Confidential Information (e.g., a strong password has a minimum of 8 characters with a combination of uppercase, lowercase, special characters, and numbers, where possible). If your business uses a Microsoft Windows system, refer to the Microsoft website on how to do this, see example: https://docs.microsoft.com/en-us/windows/security/threat-protection/security-policy-settings/password-policy

Item #5. Answer "Yes" if your business assigns a unique user name and private password to each of your employees, your subcontractors, your volunteers, your trainees and any other persons under your direct control who will use, disclose, create, receive, transmit or maintain Texas HHS Confidential Information.

Item #6. Answer "Yes" if your business locks the access after a certain number of failed attempts to login and after 15 minutes of user inactivity on all computing devices that access or store Texas HHS Confidential Information. If your business uses a Microsoft Windows system, refer to the Microsoft website on how to do this, see example:

https://docs.microsoft.com/en-us/windows/security/threat-protection/security-policy-settings/account-lockout-policy

Item #7. Answer "Yes" if your business secures, manages, and encrypts remote access, such as: using Virtual Private Network (VPN) software on your home computer to access Texas HHS Confidential Information that resides on a computer system at a business location or, if you use wireless, ensuring that the wireless is secured using a password code. If you do not access systems remotely or over wireless, answer "Yes."

Item #8. Answer "Yes" if your business updates the computer security settings for all your computers and electronic systems that access or store Texas HHS Confidential Information to prevent hacking or breaches (e.g., non-essential features or services have been removed or disabled to reduce the threat of breach and to limit opportunities for hackers or intruders to access your system). For example, Microsoft's Windows security checklist:

https://docs.microsoft.com/en-us/windows/security/threat-protection/security-policy-settings/how-to-configure-security-policy-settings

Item #9. Answer "Yes" if your business secures physical access to computer, paper, or other systems containing Texas HHS Confidential Information from unauthorized personnel and theft (e.g., door locks, cable locks, laptops are stored in the trunk of the car instead of the passenger area, etc.). If you are the only employee and use these practices for your business, answer "Yes."

Item #10. Answer "Yes" if your business uses encryption products to protect Texas HHS Confidential Information that is transmitted over a public network (e.g., the Internet, WIFI, etc.) or that is stored on a computer system that is physically or electronically accessible to the public (FIPS 140-2 validated encryption is required for Health Insurance Portability and Accountability Act (HIPAA) data, Criminal Justice Information Services (CJIS) data, Internal Revenue Service Federal Tax Information (IRS FTI) data, and Centers for Medicare & Medicaid Services (CMS) data.) For more information regarding FIPS 140-2 encryption products, please refer to: http://csrc.nist.gov/publications/fips).

Item #11. Answer "Yes" if your business stores Texas HHS Confidential Information on encrypted end-user electronic devices (e.g., laptops, USBs, tablets, smartphones, external hard drives, desktops, etc.) and can produce evidence of the encryption, such as, a screen shot or a system report (FIPS 140-2 encryption is required for Health Insurance Portability and Accountability Act (HIPAA) data, Criminal Justice Information Services (CJIS) data, Internal Revenue Service Federal Tax Information (IRS FTI) data, and Centers for Medicare & Medicaid Services (CMS) data). For more information regarding FIPS 140-2 validated encryption products, please refer to: http://csrc.nist.gov/publications/fips). If you do not utilize end-user electronic devices for storing Texas HHS Confidential Information, answer "Yes."

Item #12. Answer "Yes" if your business requires employees, volunteers, trainees and other workforce members to sign a document that clearly outlines their responsibilities for protecting Texas HHS Confidential Information and associated systems containing Texas HHS Confidential Information before they can obtain access. If you are the only employee answer "Yes" if you have signed or are willing to sign the DUA, acknowledging your adherence to requirements and responsibilities.

Item #13. Answer "Yes" if your business is willing to perform a criminal background check on employees, subcontractors, volunteers, or trainees who access Texas HHS Confidential Information. If you are the only employee, answer "Yes" if you are willing to submit to a background check.

Item #14. Answer "Yes" if your business prohibits the access, creation, disclosure, reception, transmission, maintenance, and storage of Texas HHS Confidential Information on Cloud Services or social media sites if you use such services or sites, and there is a Texas HHS approved subcontractor agreement that includes compliance and liability clauses with the same requirements as the Applicant/Bidder. If you do not utilize Cloud Services or media sites for storing Texas HHS Confidential Information, answer "Yes."

Item #15. Answer "Yes" if your business keeps current on security updates/patches (including firmware, software and applications) for computing systems that use, disclose, access, create, transmit, maintain or store Texas HHS Confidential Information. If you use a Microsoft Windows system, refer to the Microsoft website on how to ensure your system is automatically updating, see example:

https://portal.msrc.microsoft.com/en-us/

Item #16. Answer "Yes" if your business's computing systems that use, disclose, access, create, transmit, maintain or store Texas HHS Confidential Information contain up-to-date anti-malware and antivirus protection. If you use a Microsoft Windows system, refer to the Microsoft website on how to ensure your system is automatically updating, see example: https://docs.microsoft.com/en-us/windows/security/threat-protection/

Item #17. Answer "Yes" if your business reviews system security logs on computing systems that access or store Texas HHS Confidential Information for abnormal activity or security concerns on a regular basis. If you use a Microsoft Windows system, refer to the Microsoft website for ensuring your system is logging security events, see example:

https://docs.microsoft.com/en-us/windows/security/threat-protection/auditing/basic-security-audit-policies

Item #18. Answer "Yes" if your business disposal processes for Texas HHS Confidential Information ensures that Texas HHS Confidential Information is destroyed so that it is unreadable or undecipherable. Simply deleting data or formatting the hard drive is not enough; ensure you use products that perform a secure disk wipe. Please see NIST SP 800-88 R1, *Guidelines for Media Sanitization* and the applicable laws and regulations for the information type for further guidance.

Item #19. Answer "Yes" if your business ensures that all public facing websites and mobile applications containing HHS Confidential Information meet security testing standards set forth within the Texas Government Code (TGC), Section 2054.516

SECTION D. SIGNATURE AND SUBMISSION

Click on the signature area to digitally sign the document. Email the form as an attachment to the appropriate Texas HHS Contract Manager.

ATTACHMENT F



Health and Human Services (HHS)
Additional Provisions – Grant Funding
Version 1.0
Effective: February 2021

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ADDITIONAL PROVISIONS

The terms and conditions of these Additional Provisions are incorporated into and made a part of the Grant Agreement/ Contract. Terms included in these Additional Provisions and not otherwise defined have the meanings assigned to them in **HHS UNIFORM TERMS AND CONDITIONS**, **ATTACHMENT D.**

1. ELECTRICAL ITEMS

All electrical items purchased under this Grant Agreement/Contract or used in the performance of approved and eligible grant-funded activities must meet all applicable Occupational Safety and Health Administration (OSHA) standards and regulations, and bear the appropriate listing from Underwriters Laboratory (UL), Factory Mutual Resource Corporation (FMRC), or National Electrical Manufacturers Association (NEMA).

2. DISASTER SERVICES

In the event of a local, state, or federal emergency, including natural, man-made, criminal, terrorist, and/or bioterrorism events, declared as a state disaster by the Governor, or a federal disaster declared by the appropriate federal official, Grantee/Contractor may be called upon to assist the System Agency in providing the following services:

- i. Community evacuation;
- ii. Health and medical assistance:
- iii. Assessment of health and medical needs;
- iv. Health surveillance;
- v. Medical care personnel;
- vi. Health and medical equipment and supplies;
- vii. Patient evacuation:
- viii. In-hospital care and hospital facility status;
- ix. Food, drug and medical device safety;
- x. Worker health and safety;
- xi. Mental health and substance abuse;
- xii. Public health information;
- xiii. Vector control and veterinary services; and
- xiv. Victim identification and mortuary services.

3. NOTICE OF A LICENSE ACTION

Grantee/Contractor shall notify the assigned System Agency contract manager in writing of any action impacting Grantee/Contractor's license to provide services under this Grant Agreement/Contract within five business days of becoming aware of the action and include the following:

- i. Reason for such action;
- ii. Name and contact information of the local, state or federal department or agency or entity:
- iii. Date of the license action; and
- iv. License or case reference number.

4. Services and Information for Persons with Limited English Proficiency

- A. Grantee/Contractor shall take reasonable steps to provide services and information both orally and in writing, in appropriate languages other than English, to ensure that persons with limited English proficiency are effectively informed and can have meaningful access to programs, benefits and activities. Meaningful access may entail providing language assistance services, including oral interpretation and written translation, if necessary. More information can be found at https://www.lep.gov/.
- B. Grantee/Contractor shall identify and document on the client records the primary language/dialect of a client who has limited English proficiency and the need for translation or interpretation services and shall not require a client to provide or pay for the services of a translator or interpreter.
- C. Grantee/Contractor shall make every effort to avoid use of any persons under the age of 18 or any family member or friend of the client as an interpreter for essential communications with a client with limited English proficiency, unless the client has requested that person and using the person would not compromise the effectiveness of services or violate the client's confidentiality and the client is advised that a free interpreter is available.

5. THIRD PARTY PAYORS

- A. Except as provided in this Grant Agreement/Contract, Grantee/Contractor shall screen all clients and may not bill the System Agency for services eligible for reimbursement from third party payors, who are any person or entity who has the legal responsibility for paying for all or part of the services provided, including commercial health or liability insurance carriers, Medicaid, or other federal, state, local and private funding sources.
- B. As applicable, the Grantee/Contractor shall:
 - i. Enroll as a provider in Children's Health Insurance Program and Medicaid if providing approved services authorized under this Grant Agreement/Contract that may be covered by those programs and bill those programs for the covered services;
 - ii. Provide assistance to individuals to enroll in such programs when the screening process indicates possible eligibility for such programs;
 - iii. Allow clients that are otherwise eligible for System Agency services, but cannot pay a deductible required by a third party payor, to receive services and bill the System Agency for the deductible;
 - iv. Not bill the System Agency for any services eligible for third party reimbursement until all appeals to third party payors have been exhausted;
 - v. Maintain appropriate documentation from the third party payor reflecting attempts to obtain reimbursement;
 - vi. Bill all third party payors for services provided under this Grant Agreement/Contract before submitting any request for reimbursement to System Agency; and
 - vii. Provide third party billing functions at no cost to the client.

6. MEDICAL RECORDS RETENTION

Grantee/Contractor shall retain medical records in accordance with 22 TAC §165.1(b) or other applicable statutes, rules and regulations governing medical information.

7. Interim Extension Amendment

- A. Prior to or on the expiration date of this Grant Agreement/Contract, the Parties agree that this Grant Agreement/Contract can be extended as provided under this section.
- B. The System Agency shall provide written notice of interim extension amendment to the Grantee/Contractor under one of the following circumstances:
 - i. Continue provision of services in response to a disaster declared by the governor; or
 - ii. To ensure that services are provided to clients without interruption.
- C. The System Agency will provide written notice of the interim extension amendment that specifies the reason for it and period of time for the extension.
- D. Grantee/Contractor will provide and invoice for services in the same manner that is stated in the Grant Agreement/Contract.
- E. An interim extension under subsection (B)(i) of this section shall extend the term of the Grant Agreement/Contract not longer than 30 days after governor's disaster declaration is declared unless the Parties agree to a shorter period of time.
- F. An interim extension under subsection (B)(i) of this section shall be a one-time extension for a period of time determined by the System Agency.

8. NOTICE OF CRIMINAL ACTIVITY AND DISCIPLINARY ACTIONS

- A. Grantee/Contractor shall immediately report in writing to its assigned System Agency contract manager when Grantee/Contractor learns of or has any reason to believe it or any person with ownership or controlling interest in Grantee/Contractor, or their agent, employee, subcontractor or volunteer who is providing services under this Grant Agreement/Contract has been placed on community supervision, received deferred adjudication, or been indicted for or convicted of a criminal offense relating to involvement in any financial matter, federal or state program or felony sex crime.
- B. Grantee/Contractor shall not permit any person who engaged, or was alleged to have engaged, in any activity subject to reporting under this section to perform direct client services or have direct contact with clients, unless otherwise directed in writing by the System Agency.

9. NOTICE OF GRANT AGREEMENT/CONTRACT ACTION

Grantee/Contractor shall notify the assigned System Agency contract manager if Grantee/Contractor has any grant agreement or contract suspended or terminated for cause by any local, state or federal department or agency or nonprofit entity within five business days of becoming aware of the action and include the following:

- i. Reason for such action;
- ii. Name and contact information of the local, state or federal department or agency or entity;
- iii. Effective start date of the grant agreement/contract;
- iv. Date of suspension or termination; and
- v. Grant agreement/contract or case reference number.

10. NOTICE OF BANKRUPTCY

Grantee/Contractor shall notify in writing the assigned System Agency contract manager of its plan to seek bankruptcy protection within five business days of such action by Grantee/Contractor.

11. NOTICE OF CHANGE OF CONTACT PERSON OR KEY PERSONNEL

The Grantee/Contractor shall notify in writing the assigned System Agency contract manager within ten business days of any change to the Grantee/Contractor's Contact Person or Key Personnel.

12. BYRD ANTI-LOBBYING AMENDMENT

Grantee certifies that no federal appropriated funds have been paid or will be paid to any persons or organization 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 on its behalf to obtain, extend, or modify this contract or grant. If non-federal funds are used by Grantee to conduct such lobbying activities, Grantee shall promptly file the prescribed disclosure form. In accordance with 31 U.S.C. §1352(b)(5), Grantee acknowledges and agrees that it is responsible for ensuring that each subrecipient and subcontractor certifies its compliance with the expenditures prohibition and the declaration requirement.

13. CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT

Grantee represents and warrants that it will 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).

14. COMPLIANCE WITH LAWS, RULES, AND REQUIREMENTS

Grantee represents and warrants that it will comply, and assure the compliance of all its subrecipients and contractors, with all applicable federal and state laws, rules, regulations, and policies in effect or hereafter established. In addition, Grantee represents and warrants that it will comply with all requirements imposed by the awarding agency concerning special requirements of law, program requirements, and other administrative requirements. In instances where multiple requirements apply to Grantee, the more restrictive requirement applies.

15. DISCLOSURE OF VIOLATIONS OF FEDERAL CRIMINAL LAW

Grantee represents and warrants its compliance with 2 CFR §200.113 which requires the disclosure in writing of violations of federal criminal law involving fraud, bribery, and gratuity and the reporting of certain civil, criminal, or administrative proceedings to SAM. Grantee must disclose, in a timely manner in writing to System Agency and the Health and Human Services Office of Inspector General, all information related to violations of federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the federal award. Disclosures must be sent in writing to the Centers for Disease Control and to the Health and Human Services Office of Inspector General at the following addresses:

CDC, Office of Grants Services
Kathy Raible, Grants Management Officer/Specialist
Centers for Disease Control and Prevention
Branch 1
2939 Flowers Road, MS-TV2
Atlanta, GA 30341

Email: kcr8@cdc.gov (Include "Mandatory Grant Disclosures" in subject line)

AND

U.S. Department of Health and Human Services
Office of Inspector General
ATTN: Mandatory Grant Disclosures, Intake Coordinator
330 Independence Avenue, SW
Cohen Building, Room 5527
Washington, DC 20201

Fax: (202) 205-0604 (Include "Mandatory Grant Disclosures" in subject line" or

Email: MandatoryGranteeDisclosures@oig.hhs.gov

Failure to make the required disclosures can result in any of the remedies described in 45 CFR 75.371. Remedies for noncompliance, including suspension or debarment (See 2 CFR Parts 180 and 376, and 31 U.S.C. 3321).

16. EXCLUDED PARTIES

Grantee certifies that it is not listed in the prohibited vendors list authorized by Executive Order No. 13224, "Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism" published by the United States Department of Treasury, Office of Foreign Assets Control.

17. NO CONFLICTS OF INTEREST (FEDERAL)

Grantee represents and warrants its compliance with the Federal awarding agency's conflict of interest policies in accordance with 2 CFR § 200.112.

18. **OPEN MEETINGS**

If the Grantee is a governmental entity, Grantee represents and warrants its compliance with Chapter 551 of the Texas Government Code which requires all regular, special, and called meetings of a governmental body to be open to the public, except as otherwise provided by law.

19. RECORDS RETENTION (FEDERAL)

Grantee represents and warrants its compliance with the records retention requirements of 2 CFR §200.333. System Agency reserves the right to direct Grantee to retain documents for a longer period of time or transfer certain records to System Agency's custody when it is determined the records possess longer term retention value. Grantee must include the substance of this clause in all subaward and subcontracts.

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OMB Number: 4040-0007 Expiration Date: 02/28/2025

ASSURANCES - NON-CONSTRUCTION PROGRAMS

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0040), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

NOTE:

Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant, I certify that the applicant:

- Has the legal authority to apply for Federal assistance and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project cost) to ensure proper planning, management and completion of the project described in this application.
- Will give the awarding agency, the Comptroller General of the United States and, if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
- Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
- Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
- 5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§4728-4763) relating to prescribed standards for merit systems for programs funded under one of the 19 statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).
- 6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C.§§1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation

- Act of 1973, as amended (29 U.S.C. §794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U. S.C. §§6101-6107), which prohibits discrimination on the basis of age: (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§290 dd-3 and 290 ee- 3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and, (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.
- 7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally-assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.
- 8. Will comply, as applicable, with provisions of the Hatch Act (5 U.S.C. §§1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

- Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§276a to 276a-7), the Copeland Act (40 U.S.C. §276c and 18 U.S.C. §874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§327-333), regarding labor standards for federally-assisted construction subagreements.
- 10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is \$10,000 or more.
- 11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514: (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§1451 et seq.); (f) conformity of Federal actions to State (Clean Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. §§7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93-523); and, (h) protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93-205).
- Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

- 13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. §470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. §§469a-1 et seq.).
- 14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.
- 15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. §§2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.
- Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§4801 et seq.) which prohibits the use of lead-based paint in construction or rehabilitation of residence structures.
- 17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act Amendments of 1996 and OMB Circular No. A-133, "Audits of States, Local Governments, and Non-Profit Organizations."
- Will comply with all applicable requirements of all other Federal laws, executive orders, regulations, and policies governing this program.
- 19. Will comply with the requirements of Section 106(g) of the Trafficking Victims Protection Act (TVPA) of 2000, as amended (22 U.S.C. 7104) which prohibits grant award recipients or a sub-recipient from (1) Engaging in severe forms of trafficking in persons during the period of time that the award is in effect (2) Procuring a commercial sex act during the period of time that the award is in effect or (3) Using forced labor in the performance of the award or subawards under the award.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

Standard Form 424B (Rev. 7-97) Back

CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements

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 an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (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, the undersigned shall complete and submit Standard Form-LLL, "Disclosure of Lobbying Activities," 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, U.S. Code. 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.

Statement for Loan Guarantees and Loan Insurance

The undersigned states, to the best of his or her knowledge and belief, that:

If any 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 commitment providing for the United States to insure or guarantee a loan, the undersigned shall complete and submit Standard Form-LLL, "Disclosure of Lobbying Activities," in accordance with its instructions. Submission of this statement is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required statement shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

* APPLICANT'S ORGANIZATION	
* PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE Prefix:	Middle Name: Suffix:
* SIGNATURE:	* DATE:

DISCLOSURE OF LOBBYING ACTIVITIES

Complete this form to disclose lobbying activities pursuant to 31 U.S.C.1352

OMB Number: 4040-0013 Expiration Date: 02/28/2025

		T = 1 = 1 =
1. * Type of Federal Action:	2. * Status of Federal Action:	3. * Report Type:
a. contract	a. bid/offer/application	a. initial filing
b. grant	b. initial award	b. material change
c. cooperative agreement	c. post-award	
d. loan		
e. loan guarantee		
f. loan insurance		
4. Name and Address of Reporting	Entity:	
Prime SubAwardee		
* Name		
* Street 1	Street 2	
* City	State	Zip
Congressional District, if known:		
5. If Reporting Entity in No.4 is Subay	wardee, Enter Name and Address of P	rime:
6. * Federal Department/Agency:	7. * Federal Pro	gram Name/Description:
	CFDA Number, if applie	cable:
8. Federal Action Number, if known:	9. Award Amou	unt if known:
6.1 ederal Action Number, II known.		int, ii khowii.
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40 - November 1 Address - 61 - 11 - 12		
10. a. Name and Address of Lobbying	g Registrant:	
Prefix * First Name	Middle Name	
* Last Name	Suffix	
* Street 1	Street 2	
* City	State	Zip
Oily	Sidio	
b. Individual Performing Services (incli	iding address if different from No. 40a	
Prefix * First Name	Middle Name	
* Last Name	Suffix	
* Street 1	Street 2	
* City	State	Zip
	by title 31 U.S.C. section 1352. This disclosure of lobbying a	
	action was made or entered into. This disclosure is required public inspection. Any person who fails to file the required dis	oursuant to 31 U.S.C. 1352. This information will be reported to
\$10,000 and not more than \$100,000 for each such fa		2.2.2.2 Shall be easyest to a offit periodicy of flot loss than
* Signature:		
		<u></u>
*Name: Prefix * First Nam	Middle .	Vame
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Title:	Telephone No.:	Date:
		Authorized for Local Popreduction
Federal Use Only:		Authorized for Local Reproduction Standard Form - LLL (Rev. 7-97)



Fiscal Federal Funding Accountability and Transparency Act (FFATA)

The certifications enumerated below represent material facts upon which DSHS relies when reporting information to the federal government required under federal law. If the Department later determines that the Contractor knowingly rendered an erroneous certification, DSHS may pursue all available remedies in accordance with Texas and U.S. law. Signor further agrees that it will provide immediate written notice to DSHS if at any time Signor learns that any of the certifications provided for below were erroneous when submitted or have since become erroneous by reason of changed circumstances. *If the Signor cannot certify all of the statements contained in this section, Signor must provide written notice to DSHS detailing which of the below statements it cannot certify and why.*

Legal Name of Contractor:	FFATA Contact: (Name, Email and Phone Number):
Primary Address of Contractor:	Zip Code: 9-digits required www.usps.com
Unique Entity ID (UEI): This number replaces the DUNS www.sam.gov	State of Texas Comptroller Vendor Identification Number (VIN) – 14 digits:
Printed Name of Authorized Representative:	Signature of Authorized Representative
Title of Authorized Representative	Date Signed

Fiscal Federal Funding Accountability and Transparency Act (FFATA) CERTIFICATION

As the duly authorized representative (Signor) of the Contractor, I hereby certify that the statements made by me in this certification form are true, complete, and correct to the best of my knowledge.

,
Did your organization have a gross income, from all sources, of less than \$300,000 in your previous tax year? Yes No
If your answer is "Yes", skip questions "A", "B", and "C" and finish the certification. If your answer is "No", answer questions "A" and "B".
A. Certification Regarding % of Annual Gross from Federal Awards. Did your organization receive 80% or more of its annual gross revenue from federal awards during the preceding fiscal year? Yes No
B. Certification Regarding Amount of Annual Gross from Federal Awards. Did your organization receive \$25 million or more in annual gross revenues from federal awards in the preceding fiscal year? Yes No
If your answer is "Yes" to both question "A" and "B", you must answer question "C". If your answer is "No" to either question "A" or "B", skip question "C" and finish the certification.
C. Certification Regarding Public Access to Compensation Information. Does the public have access to information about the compensation of the senior executives in your business or organization (including parent organization, all branches, and all affiliates worldwide) through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986? Yes No
If your answer is "No" to this question, you must provide the names and total compensation of the top five highly compensated officers below. Provide compensation information here:

Certificate Of Completion

Envelope Id: 840D3DFEE919447C871D17373C8C6C32

Subject: Please DocuSign: HHS001331300015 - Lubbock - FY24 IMM/Locals

Source Envelope:

Document Pages: 101 Signatures: 0 Certificate Pages: 5 Initials: 0

AutoNav: Enabled

Envelopeld Stamping: Enabled

Time Zone: (UTC-06:00) Central Time (US & Canada)

Status: Sent

Envelope Originator:

CMS Internal Routing Mailbox 11493 Sunset Hills Road

#100

Reston, VA 20190

CMS. Internal Routing@dshs. texas.gov

IP Address: 167.137.1.11

Sent: 5/18/2023 10:37:46 AM

Record Tracking

Status: Original

5/18/2023 10:17:52 AM

Holder: CMS Internal Routing Mailbox

Signature

CMS.InternalRouting@dshs.texas.gov

Timestamp

Location: DocuSign

Signer Events

The Honorable Tray Payne

traypayne@mylubbock.us

Security Level: Email, Account Authentication

(None)

Electronic Record and Signature Disclosure:

Accepted: 5/10/2023 8:30:56 AM

ID: 4a9cb2ef-02ad-4e7d-bfcd-209d68dd0660

Helen Whittington

helen.whittington@dshs.texas.gov

Security Level: Email, Account Authentication

(None)

Electronic Record and Signature Disclosure:

Accepted: 5/18/2023 10:08:04 AM

ID: 8a5de6c8-5692-410d-a35f-d96e4b12a283

Patty Melchior

Patty.Melchior@dshs.texas.gov

Security Level: Email, Account Authentication

(None)

Electronic Record and Signature Disclosure:

Accepted: 5/5/2022 12:43:08 PM

ID: f01589da-43a7-481e-996a-7c50409e5d48

Kirk Cole

kirk.cole@dshs.texas.gov

Security Level: Email, Account Authentication

Electronic Record and Signature Disclosure:

Accepted: 5/16/2023 8:25:54 AM

ID: c80a0422-61bb-4d37-bb52-21db0d388ff7		
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

Status

COPIED

Timestamp

Gloria Diaz

gdiaz@mylubbock.us

Sent: 5/18/2023 10:37:45 AM Viewed: 5/18/2023 10:51:22 AM

Security Level: Email, Account Authentication

(None)

Electronic Record and Signature Disclosure:

Not Offered via DocuSign

Shelva Mays

shelva.mays@dshs.texas.gov

Security Level: Email, Account Authentication

(None)

Electronic Record and Signature Disclosure:

Not Offered via DocuSign

CMS Inbox

cmucontracts@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	Status	Timestamps	
Envelope Sent	Hashed/Encrypted	5/18/2023 10:37:45 AM	
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.



Information

Agenda Item

Resolution - Parks and Recreation: Consider a resolution authorizing the Mayor to execute Professional Services Agreement 17433, with PondMedics, Inc., d/b/a dredgeSMART, for a Cattail Control Plan for the Jim Bertram Canyon Lakes System.

Item Summary

In May 2022, the City Council approved \$7,000,000 of American Rescue Plan Act (ARPA) funding for the Parks and Recreation Department, with \$1,900,000 dedicated to cattail removal/dredging. The Parks and Recreation Department held multiple meetings with City Management and staff from other departments, including Engineering and Water, to determine the best course of action. Through collaboration, staff determined that establishing a baseline cattail management plan would be an essential first step in beginning the cattail mitigation and dredging process.

Staff contacted PondMedics, Inc., the umbrella company to dredgeSMART, who provide specialty engineering and surface water solutions, for a quote regarding a Cattail Control Plan for the Jim Bertram Canyon Lakes System.

The contract is for the following:

- Stream Morphology Study;
- Cattail Control Plan (including phases, if needed) Chemical and mechanical means with schedule/sequencing of tasks and activities;
- Estimated Opinion of Cost for management/control; and
- Training for Parks and Recreation staff for cattail maintenance after renovation is complete.

Fiscal Impact

The contract totaling \$89,400 is funded in Capital Improvement Project 92764, ARPA - Cattail Removal/Dredging.

Staff/Board Recommending

Brooke Witcher, Assistant City Manager

Attachments

Resolution Contract Budget Detail CIP Detail

RESOLUTION

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

THAT the Mayor of the City of Lubbock is hereby authorized and directed to execute for and on behalf of the City of Lubbock, Professional Services Agreement Contract No. 17433 for a Cattail Control Plan for the Jim Bertram Canyon Lakes System, by and between the City of Lubbock and PondMedics, Inc., d/b/a dredgeSMART, 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		
	TRAY PAYNE, MAYOR	
ATTEST:		
Courtney Paz, City Secretary	- 	
APPROVED AS TO CONTE		
Brooke Witcher, Assistant City		
APPROVED AS TO FORM:		
Racharlfort		
Rachael Foster, Assistant City	Attorney	

ccdocs/RES.PSA-No. 17433 - PondMedics, Inc. Cattail Control Plan- Canyon Lakes

6.15.23

PROFESSIONAL SERVICES AGREEMENT

STATE OF TEXAS §

COUNTY OF LUBBOCK §

This Professional Service Agreement ("Agreement") Contract No. 17433 is entered into this __ day of ______, 2023, is by and between the City of Lubbock (the "City"), a Texas home rule municipal corporation, and PondMedics, Inc., d/b/a dredgeSMART (the" Engineer"), a Texas corporation.

WITNESSETH

WHEREAS, The City desires to contract with the Engineer to provide professional services for a Cattail Control Plan for the Jim Bertram Canyon Lake System (the "Activities"); and

WHEREAS, the Engineer has a professional staff experienced and is qualified to provide professional engineering services related to Activities, and will provide the services, as defined below, for the price provided herein, said price stipulated by the City and the Engineer to be a fair and reasonable price; and

WHEREAS, the City desires to contract with the Engineer to provide professional services related to the Activities, and Engineer desires to provide the Services related to same.

NOW THEREFORE, for and in consideration of the terms, covenants and conditions set forth in this Agreement, the City and the Engineer hereby agree as follows:

ARTICLE I. TERM

The term of this Agreement commences on the Effective Date and continues without interruption for a term of three (3) months. If the Engineer determines that additional time is required to complete the Services, the City Engineer, may, but is not obligated to, in his or her discretion, execute an agreement to grant up to an additional six (6) months of time so long as the amount of the consideration does not increase. 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. SERVICES AND COMPENSATION

- A. The Engineer shall conduct all activities, and within such timeframes, as set forth on Exhibit "A", attached hereto (the "Services").
- B. The Engineer shall receive as consideration to be paid for the performance of the Services, in an amount not to exceed \$89,400.00, as set forth in Exhibit "A".

ARTICLE III. TERMINATION

- A. General. The City may terminate this Agreement, for any reason or convenience, upon thirty (30) days written notice to the Engineer. In the event this Agreement is so terminated, the City shall only pay the Engineer for services actually performed by the Engineer up to the date the Engineer is deemed to have received notice of termination, as provided herein.
- B. Termination and Remedies. In the event the Engineer 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 IV. 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 V. REPRESENTATIONS AND WARRANTIES

- A. Existence. The Engineer is a 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 Engineer 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 Engineer. This Agreement constitutes legal, valid, and binding obligations of the Engineer and is enforceable in accordance with the terms thereof.

D. Engineer. The Engineer maintains a professional staff and employs, as needed, other qualified specialists experienced in providing the Services, and is familiar with all laws, rules, and regulations, both state and federal, including, without limitation the applicable laws, regarding the Activities contemplated hereby.

E. Performance. The Engineer 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 professional 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 Engineer warrants that any materials provided by the Engineer 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 Engineer shall be solely responsible for ensuring that any materials provided by the Engineer pursuant to this Agreement satisfy this requirement and the Engineer 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 Engineer's failure to perform this duty.

ARTICLE VI. SCOPE OF WORK

The Engineer shall accomplish the following: Professional Services related to the Services, as provided in Exhibit "A", attached hereto and made a part hereof.

ARTICLE VII. INDEPENDENT CONTRACTOR STATUS

The Engineer and the City agree that the Engineer 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 Engineer 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 Engineer and the Engineer'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 Engineer 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 Engineer shall obtain and maintain in full force and effect during the term of this Agreement, and shall cause each approved subcontractor or subconsultant of the Engineer 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 Engineer shall further cause any approved subcontractor or sub-consultant to procure and carry, during the term of this Agreement, the insurance coverage required of Engineer herein, including without limitation, Professional Liability coverage, protecting the City against losses caused by the professional negligence of the approved subcontractor 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 Engineer 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 Engineer shall elect to obtain worker's compensation coverage pursuant to Section 406.002 of the Texas Labor Code. Further, the Engineer 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 Engineer maintains said coverage. The Engineer 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 Engineer fails to maintain the required insurance in full force and effect, the Engineer 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 Engineer'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 VIII shall survive the termination or expiration of this Agreement.

ARTICLE IX. EMPLOYMENT OF AGENTS/RETAINING OF CONSULTANTS

The Engineer may employ or retain consultants, contractors, or third parties (any of which are referred to herein as "Sub-consultant"), to perform certain duties of Engineer, as set forth on Exhibit "A" attached hereto, under this Agreement, provided that the City approves the retaining of Sub-consultants. The Engineer is at all times responsible to the City to perform the Services as provided in this Agreement and the Engineer 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 Engineer shall be required by the Engineer to carry, for the protection and benefit of the City and the Engineer and naming said third parties as additional insureds, insurance as described above required to be carried by the Engineer in this Agreement.

The Engineer 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 Engineer 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

THE ENGINEER 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 ENGINEER, 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

ARTICLE XII. COMPLIANCE WITH APPLICABLE LAWS

EXPIRATION OR TERMINATION OF THIS AGREEMENT.

The Engineer 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 Engineer to the City or the City to the Engineer 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. Engineer's Address. The Engineer's address and numbers for the purposes of notice are:

PondMedics, Inc., d/b/a dredgeSMART Trent Lewis, FPC PO Box 97 Gunter, TX 75058 Telephone: 972.334.0104

Email: trent@pondmedics.com

C. City's Address. The City's address and numbers for the purposes of notice are:

Kalee Robinson City of Lubbock P.0. Box 2000 1314 Avenue K Lubbock, Texas 79457 Telephone: 806.775.2672

Email: krobinson@mylubbock.us

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 Engineer non-confidential studies, reports and other available data in the possession of the City pertinent to the Engineer's Services, so long as the City is entitled to rely on such studies, reports and other data for the performance of the Engineer's Services under this Agreement (the "Provided Data"). The Engineer 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 Engineer 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 Engineer's books and records with respect to this Agreement between the Engineer and the City.
- C. Records. The Engineer shall maintain records that are necessary to substantiate the services provided by the Engineer.
- D. Assignability. The Engineer 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 Engineer, and in the case of the City, its respective successors, legal representatives, and assigns, and in the case of the Engineer, 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 Engineer and the City.
- I. Entire Agreement. This Agreement, including Exhibits "A" through "B" attached hereto, contains the entire agreement between the City and the Engineer, 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 Engineer and the City.
- K. Documents Owned by City. Any and all documents, drawings and specifications prepared by Engineer as part of the Services hereunder, shall become the property of the City when the Engineer has been compensated as set forth in Article II, above. The Engineer shall make copies of any and all work products for its files.
- L. Notice of Waiver. A waiver by either the City or the Engineer 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 Engineer.
- 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 Engineer 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, 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
- 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, 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.
- R. 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.
- S. 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.

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.

EXECUTED as of the Effective Date hereof.

CITY OF LUBBOCK

	TRAY PAYNE, MAYOR
ATTEST:	
Courtney Paz, City Secretary	
APPROVED AS TO CONTENT:	
Colby VanGundy, Director Parks and Recreation	
APPROVED AS TO FORM:	
Rachael Foster, Assistant City Attorney	
	Firm
	dredgeSMART
	By: Trent Lewis, FPC

Email: trent@pondmedics.com



PROFESSIONAL SERVICES AGREEMENT (PSA)

CATTAIL CONTROL PLAN – CANYON LAKES

THIS IS	S AN AGREEMENT effective a	s of May 31, 2023		
C/O Ka	en: City of Lubbock, TX dee Robinson evelopment Superintendent	(Owner)		
And				
dredge	SMART (Engineer).			
Owner's	s Project, of which Engineer's s	ervices under this Agreemen	t are a part, is generally identified a	s follows:
Project	: Name: Canyon Lakes Syste	m, Lubbock, TX – Cattail Co	ontrol Plan	
	Number: TBD Number: TBD			
See att	Engineer's Services under			
A.	Basis of Payment Using the procedures set fort	h in this agreement, Owner s	hall pay Engineer as follows:	
	Fee Identified in Exhib	t A: TASK, FEE AND SCOPE	SUMMARY	
В.	Fees identified in Exhibit A armeetings, travel and commun		work proposed. Additional, exhibit ourly or reimbursable rates.	reproduction, coordination,
	IN WITNESS WHEREOF, the	parties hereto have execute	d this Agreement, the Effective Dat	e of which is indicated on page 1.
	Owner:		Staff Biologist and FAA Lice	nsed sUAS Pilot:
			BY: dredgeSMART Trent Lewis, FPC.	Owner
	BY	Title		
	Signature	Date	Signature	Date
	Address	····		
	.			

Owner and Engineer further agree as follows:

Basic Agreement and Authorization to Proceed:

Engineer shall provide, or cause to be provided, the services set forth in this Agreement (contract). If authorized by Owner, or if required because of changes in the Project, Engineer shall furnish services in addition to those set forth above. Execution of this agreement will be recognized as authorization to proceed with professional services.

Payment Procedures:

Invoices: Engineer shall prepare invoices and submit the invoices to Owner every two (2) weeks. Invoices are due and payable within 15 days of receipt. Invoices will include the amount due based on percentage completion of one or more tasks as outlined in the Exhibits. If Owner fails to make any payment due Engineer for services and expenses within 30 days after receipt of Engineer's invoice, then the amounts due Engineer will be increased at the rate of 1.0% per month (or the maximum rate of interest permitted by law, if less) from said thirtieth day.

Termination:

Either the Owner or Engineer may terminate this contract by giving 14 days written notice to the other party. In such event Owner shall promptly pay Engineer in full for all work or work related product authorized to-date and performed prior to the date of termination.

Successors, Assigns, and Beneficiaries:

Owner and Engineer are hereby bound and the successors, executors, administrators, and legal representatives of Owner and Engineer (and to the extent permitted the assigns of Owner and Engineer) are hereby bound to the other party to this Agreement and to the successors, executors, administrators, and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements, and obligations of this Agreement. Neither Owner nor Engineer may assign, sublet, or transfer any rights under or interest (including, but without limitation, moneys that are due or may become due) in this Agreement without the written consent of the other, except to the extent that any assignment, subletting, or transfer is mandated or restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement. Unless expressly provided otherwise, nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by Owner or Engineer to any contractor, subcontractor, supplier, other individual or entity, or to any surety for or employee of any of them. All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of Owner and Engineer and not for the benefit of any other party. In the event that the Engineer is not licensed or registered in another jurisdiction to provide services under this contract, Engineer may assign, with owner's consent, this contract for professional services to an entity related to the Engineer and qualified to provide professional services in that jurisdiction.

General Considerations:

The standard of care for all professional engineering and related services performed or furnished by Engineer under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality. Engineer makes no warranties, express or implied, under this Agreement or otherwise, in connection with Engineer's services. Subject to the foregoing standard of care, Engineer and its consultants may use or rely upon design elements and information ordinarity or customarily furnished by others, including, but not limited to, specialty contractors, manufacturers, government entities, suppliers, and the publishers of technical standards. In the event the project is put on hold or work is put on hold for a period of two (2) months or more, Engineer shall have the right to renegotiate fees and services. In the event a project is restarted after a period of two (2) months or more, Engineer shall have the right to negotiate "restart" fees to update the design and restart services.

Construction Services:

The Engineer may review construction activity for general conformance to the construction documents from time to time. Engineer shall not at any time supervise, direct, control, or have authority over any contractor's work, nor shall Engineer have

authority over or be responsible for the means, methods, techniques, sequences, or procedures of construction selected or used by any contractor, or the safety precautions and programs incident thereto, for security or safety at the Project site, nor for any failure of a contractor to comply with laws and regulations applicable to such contractor's furnishing and performing of its work. This Agreement is to be governed by the law of the state or jurisdiction in which the Project is located. Engineer neither guarantees the performance of any contractor nor assumes responsibility for any contractor's failure to furnish and perform its work in accordance with the contract between Owner and such contractor. Engineer is not responsible for variations between actual construction bids or costs and Engineer's opinions or estimates regarding construction costs. Engineer shall not be responsible for the acts or omissions of any contractor, subcontractor, or supplier, or of any of their agents or employees or of any other persons (except Engineer's own employees) at the Project site or otherwise furnishing or performing any construction work; or for any decision made regarding the construction contract requirements, or any application, interpretation, or clarification of the construction contract other than those made by Engineer.

Ownership of Documents:

If requested by Owner, Engineer will transfer the electronic and paper data/material, design, specifications, and other documents furnished by or through Owner once full and complete payment is received for services performed to-date. The engineering documents are for use solely with respect to contracted project scope. Engineer shall be deemed the author of the work product and shall retain common law, common statutory, and any other reserved rights. Any reuse of the work product without written consent by Engineer for any related purpose for the project shall be at the Owners sole risk. The Engineer shall not incur any liability or legal exposure to the company, members, employees, officers, directors, agents, insurers, partners, and sub-consultants in the event the data is misused.

Limits of Liability:

To the fullest extent permitted by law, Owner and Engineer (1) waive against each other, and the other's employees, officers, directors, agents, insurers, partners, and consultants, any and all claims for or entitlement to special, incidental, indirect, or consequential damages including loss of use, profit or revenue, arising out of, resulting from, or in any way related to the Project, and(2) agree that Engineer's total liability to Owner under this Agreement shall be limited to the total amount of insurance Engineer has secured at time of this agreement.

Dispute Resolution:

Owner and Engineer agree to negotiate each dispute between them in good faith during the 30 days after notice of dispute. If negotiations are unsuccessful in resolving the dispute, then the dispute shall be mediated. If mediation is unsuccessful, then the parties may exercise their rights at law.

Direct Expenses:

Direct expenses, including but not limited to, standard mileage rates, material and printing incurred on or directly for the project will be on the basis of actual charges when provided by commercial sources or on the basis of usual commercial charges when furnished by the Engineer.

Additional Services:

For additional services provided by the Engineer, Owner shall pay Engineer an amount equal to the cumulative hours charged to the Project by each class of Engineer's employee times standard hourly rates for each applicable billing class; plus refimbursable expenses and Engineer's consultants' charges, if any. Engineer's standard hourly rates are attached. Outside technical or professional services and their reimbursable expenses if arranged and invoiced through this agreement shall be reimbursed at cost plus 15-percent.

Total Agreement:

This Agreement (including any expressly incorporated attachments), constitutes the entire agreement between Owner and Engineer and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented or modified by a duly executed written instrument.



EXHIBIT A - City of Lubbock, TX SCOPE OF SERVICES CANYON LAKES SYSTEM CATTAIL CONTROL PLAN

dredgeSMART (dS) will provide the following services for a proposed project within the delineated Limits of Work (body of water) as indicated in Exhibit B, within the City Limits of Lubbock, TX and the Canyon Lake System.

Prior to beginning work and if available, dS will be provided a current comprehensive boundary, topographic survey, and all electronic files previously prepared to be utilized for the work described in this agreement. dS will be entitled to rely on this data as being true and accurate in all respects and assume no liability for errors or conflicts that may arise as a result of inaccurate or incomplete information on provided files.

INCLUDED SCOPE OF SERVICES

A. For details of scope, sequence and cost, please refer to Exhibit A: Task, Scope and Fee Summary.

REIMBURSABLE EXPENSES:

The following items shall be considered as reimbursable expenses to this contract:

- Printing/reproduction services.
- Travel/mileage
- Equipment usage fees
- Courier/overnight fees
- All City or agency required fees including submittal and review fees

EXCLUSIONS: (Can be provided at agreed upon additional cost if requested by client.)

- a. Topographical/Land Survey Services
- b. Civil/Dredging Design Services
- c. Traffic studies
- d. Storm Water Pollution Prevention Plan (SWPPP)
- e. Subsurface Utility Engineering (SUE)
- f. Geotechnical Services
- Environmental Services

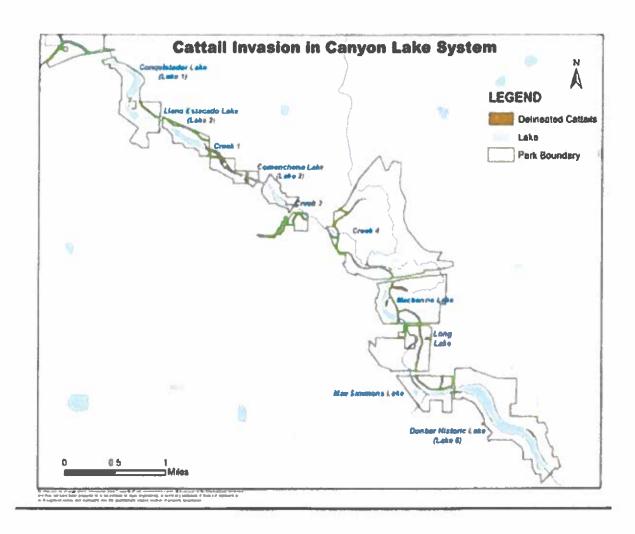


EXHIBIT A: TASK, SCOPE AND FEE SUM MARY (cont'd)

PHASE.TASK	DESCRIPTION	LUMP SUM FEE
T1.1a	GIS Data and Budget Sharing from Client	
T1.1b	Low Altitude Aerial Survey (LAAS) for mapping current conditions of Canyon Lakes System	
T1.2	Team meeting to discuss highest priority areas	
T1.3	Stream Morphology Study to determine control and protection zones	
T1.4	Cattail Control Plan (incl phases, if needed) Chemical and mechanical means with schedule/sequencing of tasks/activities	
T1.5	Project Estimated Opinion of Cost	
T1.6	Lubbock Parks and Rec Training for cattail maintenance after renovation is complete	
TOTAL	PLANNING TOTAL	\$89,400



EXHIBIT B: Limits of Work



City of Lubbock, TX Capital Project Project Cost Detail June 27, 2023

Capital Project Number: Capital Project Name:	92764 Park Playgrounds/Amenities - ARPA	
Encumbered/Expended	Budget	
	\$	-
Agenda Item June 27, 2023		
dredgeSMART contract 17433	89	,400
Encumbered/Expended To Date	89	,400
Estimated Costs for Remaining Appropria	ation	
Engineering and Design	1,810	,600
Remaining Appropriation	1,810	,600
Total Appropriation	\$ 1,900	,000

1,900,000

Managing Department **Park Development**

Project Manager Kalee Robinson

Project Classification Upgrade/Major Maintenance

Project Status **Approved**



Project Scope

Complete removal of the 1,355,780 sq. ft. of cattail growth from the Canyon Lake System. Contractor will utilize any method of removal (physical, chemical, or a combination of different strategies) considered necessary to perform the outlined job without harming the current landscape and fauna of the Canyon Lake System. Contractor must discuss with the client any reasonably foreseeable consequences for actions taken in the removal process. The growth areas are specified on the table below and the following aerial views of the Canyon Lake System. Table 1 is organized from upstream to downstream waterbodies.

Project Justification

Cattail growth has taken over a significant portion of the Canyon Lake System and has become a detriment to the experience of users of the city lakes and parks. Spreading for 1.3 million square feet of park land, cattail species extend across 12 public areas - Aztlan Corridor, Aztlan Park, Buddy Holly Recreation Area, Carrillo Family Recreation Area, Comancheria Lake, Dunbar Historical Lake, Fiesta Plaza, Llano Estacado, Mackenzie Park (North), Mackenzie Park (South), Mae Simmons Park, and Vaquero Lake. The American Rescue Plan Act provided funds allocated by the city for removal of the cattail zones.

Project History

Funding

Total Funding Sources

\$1,900,000 was appropriated in the FY 2021-22, Budget Amendment No. 24, Ord. No. 2022-O0071, May 10, 2022.

1,900,000

Appropriation Detail		Unappropriated Planning Years						
	Appropriation to Date	FY 2022-23	FY 2023-24	FY 2024-25	FY 2025-26	FY 2026-27	FY 2027-28	Total Project Amount
Construction	1,900,000	0	0	0	0	0	0	1,900,000
Total Project Appropriation	1,900,000	0	0	0	0	0	0	1,900,000
				Unappropri	ated Planning Yea	ars		
Funding Detail	Funding to Date	FY 2022-23	FY 2023-24	FY 2024-25	FY 2025-26	FY 2026-27	FY 2027-28	Total Funding
American Rescue Plan Act	1,900,000	0	0	0	0	0	0	1,900,000

		Unappropriated Planning Years					
Operating Budget Impact	FY 2022-23	FY 2023-24	FY 2024-25	FY 2025-26	FY 2026-27	FY 2027-28	Total Impact
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 - Parks and Recreation: Consider a resolution authorizing the Mayor to execute Contract 17444 with Turf Raider Lawn & Landscape, for turf management and mowing of Group 10 Class C Parks and Properties.

Item Summary

Contract 17444 is for turf maintenance throughout City Parks and Parklands.

In response to ITB 23-17132-YB, nine companies submitted bids for review for Group 10 - Class C Parks and Properties.

Company	Amount	
Raider Power Lawncare, Lubbock, Texas	\$110,500.00	
Turf Raider Lawn & Landscape, Lubbock, Texas	\$117,464.73	
Incircle Management, Inc., Colleyville, Texas	\$121,075.36	
M3 Landscape and Irrigation, LLC, Midland, Texas	\$140,530.50	
Gorman Outdoor, Inc. Shallowater, Texas	No Bid	
Cactus Co. Landscape, Lubbock, Texas	No Bid	
MDM Mowing, Lubbock, Texas	No Bid	
Green Plains Design, White Deer, Texas	No Bid	
Erlys Janitorial services, Lubbock, Texas	No Bid	

Contract 17424 for turf maintenance, which included Group 10 for the City Park and Parklands, was originally awarded to the lowest bidder and approved by City Council on April 11, 2023.

The vendor awarded Group 10, is not performing to contract standards therefore, in accordance to the Contract, the City may award the Group to next lowest vendor. Staff is recommending that Contract 17444 be awarded to Turf Raider Lawn & Landscape of Lubbock, Texas.

This contract is a one-year contract.

Fiscal Impact

Contract 17444 for \$117,464.73 is funded in the Mowing and Maintenance Contracts account of the Parks Maintenance Budget.

Staff/Board Recommending

Attachments

Resolution Contract

Draft Tab for Group 10 - Class C Parks and Properties

Project Summary

RESOLUTION

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

THAT the Mayor of the City of Lubbock is hereby authorized and directed to execute for and on behalf of the City of Lubbock, Contract No. 17444 for Parks Turf Maintenance as per ITB 23-17132-YB, by and between the City of Lubbock and Turf Raider Lawn & Landscape, 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	·
	m K
	TRAY PAYNE, MAYOR
ATTEST:	
Courtney Paz, City Secretary	
APPROVED AS TO CONTENT:	
Brooke Witcher, Assistant City Manager	
APPROVED AS TO FORM:	
Rachael Foster, Assistant City Attorney	

ccdocs/RES.ServiceContract 17444- Turf Raider Lawn & Landscape

6.21.23

City of Lubbock Contract for ITB 23-17132-YB Parks Turf Maintenance

THIS CONTRACT made and	entered into this	day of	, 2023 , by and between the
City of Lubbock ("City"), and	Turf Raider Lay	wn & Landscape	, ("Contractor").

WITNESSETH:

WHEREAS, the City of Lubbock duly advertised for bids for **Parks Turf Maintenance** and bids were received and duly opened as required by law; and

WHEREAS, after careful consideration of the bid submitted by Contractor, the City authorized the execution, in the name of the City of Lubbock a contract with said Contractor covering the purchase and delivery of the said **Parks Turf Maintenance**

NOW, THEREFORE, in consideration of the mutual agreement contained herein, as well as the financial consideration hereinafter referred to, the parties hereby covenant and agree as follows:

- 1. In accordance with City's specifications and Contractor's bid, copies of which are attached hereto and made part hereof, Contractor will deliver to the City, **Parks Turf Maintenance** and more specifically referred to as **Item 3 Group 10 Class C Parks and Properties 1 through 7** on the bid submitted by the Contractor or in the specifications attached hereto.
- 2. The City promises and agrees to employ, and does employ, the Contractor to cause to be done the work provided for in this Contract and to complete and finish the same according to the attached specifications, offer, and terms and conditions contained herein.
- 3. The contract shall be for a term of one (1) year, said date of term beginning upon formal approval.
- 4. All stated annual quantities are approximations of usage during the time period to be covered by pricing established by this bid. Actual usage may be more or less. Order quantities will be determined by actual need. The City of Lubbock does not guarantee any specific amount of compensation, volume, minimum, or maximum amount of services under this bid and resulting contract.
- 5. The Contractor must maintain the insurance coverage required during the term of this contract including any extensions. It is the responsibility of the Contractor to ensure that valid insurance is on file with the Purchasing and Contract Management Department as required by contract or contract may be terminated for non-compliance.
- 6. A) Prices quoted shall be guaranteed for a period for six (6) months upon City approval. The rate may be adjusted at the City's discretion for the effective change in Consumer Price Index (CPI) or Product Price Index (PPI) as appropriate.
 - B) Further, if the Contractor can provide documentation for actual charges for material, labor, etc. that demonstrates that the change in CPI or PPI is not sufficient, the Contractor shall provide such documentation to the City, and at the City's sole discretion, the contractual rate may be

further adjusted. If agreement regarding a new rate cannot be reached, the City shall terminate at the end of the current contract period.

- C) If an adjustment to pricing is granted under this section, the Contractor must provide the Director of Purchasing and Contract Management written, quarterly documentation to justify the ongoing adjustment. If no such documentation is timely received, the rate will automatically revert to the initial, awarded rate.
- 7. This contract shall remain in effect until the first of the following occurs: (1) the expiration date, (2) performance of services ordered, or (3) termination of by either party with a 30 day written notice. The City of Lubbock reserves the right to award the canceled contract to the next lowest and best bidder as it deems to be in the best interest of the city.
- 8. Contractor shall at all times be an independent contractor and not an agent or representative of City with regard to performance of the Services. Contractor shall not represent that it is, or hold itself out as, an agent or representative of City. In no event shall Contractor be authorized to enter into any agreement or undertaking for or on behalf of City.
- 9. Insurance Requirements

SECTION A. Prior to the approval of this contract by the City, the Contractor shall furnish a completed Insurance Certificate to the City, which shall be completed by an agent authorized to bind the named underwriter(s) to the coverages, limits, and termination provisions shown thereon, and which shall furnish and contain all required information referenced or indicated thereon. THE CITY SHALL HAVE NO DUTY TO PAY OR PERFORM UNDER THIS CONTRACT UNTIL SUCH CERTIFICATE SHALL HAVE BEEN DELIVERED TO THE CITY.

SECTION B. The City reserves the right to review the insurance requirements of this section during the effective period of the contract and to require adjustment of insurance coverages and their limits when deemed necessary and prudent by the City based upon changes in statutory law, court decisions, or the claims history of the industry as well as the Contractor.

SECTION C. Subject to the Contractor's right to maintain reasonable deductibles in such amounts as are approved by the City, the Contractor shall obtain and maintain in full force and effect for the duration of this contract, and any extension hereof, at Contractor's sole expense, insurance coverage written by companies approved by the State of Texas and acceptable to the City, in the following type(s) and amount(s):

<u>Commercial General Liability Requirements</u>: \$1M occurrence/\$2M aggregate (can be combined with an Excess Liability to meet requirement). COL is required in ALL contracts. It is perhaps the most important of all insurance policies in a contractual relationship. It insures the Contractor has broad liability coverage for contractual activities and for completed operations. Commercial General Liability to include Products - Completion/OP, Personal and Advertising Injury, Contractual Liability, Fire Damage (any one fire), and Medical Expenses (any one person).

Automobile Liability Requirements: \$1M occurrence is needed.

Workers Compensation and Employer Liability Requirements: Statutory. If the vendor is an independent contractor with no employees and are exempt from providing Workers' Compensation coverage, they must sign a waiver (obtained from COL Purchasing) and include a copy of their driver's license. Employer Liability (\$1M) is required with Workers Compensation.

Pollution Liability Requirements: \$1M occurrence/\$1M aggregate.

- * The City of Lubbock (including its officials, employees and volunteers) shall be afforded additional insured status on a primary and non-contributory basis on all liability policies except professional liabilities and workers' comp.
- * Waivers of Subrogation are required for CGL, AL, and WC.
- * To Include Products of Completed Operations endorsement.
- * Carrier will provide a 30-day written notice of cancellation, 10-day written notice for non-payment.
- * Carriers must meet an A.M. Best rating of A- or better.
- * Subcontractors must carry same limits as listed above.

IMPORTANT: POLICY ENDORSEMENTS

The Contractor will provide copies of the policies without expense, to the City and <u>all endorsements</u> thereto and may make any reasonable request for deletion, revision, or modification of particular policy terms, conditions, limitations, or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any of such policies). Upon such request by the City, the Contractor shall exercise reasonable efforts to accomplish such changes in policy coverages, and shall pay the cost thereof. Any costs will be paid by the Contractor.

REQUIRED PROVISIONS

The Contractor agrees that with respect to the above required insurance, all insurance contracts and certificate(s) of insurance will contain and state, in writing, on the certificate or its attachment, the following required provisions:

- a. Name the City of Lubbock and its officers, employees, and elected representatives as additional insureds, (as the interest of each insured may appear) as to all applicable coverage;
- b. Provide for 30 days notice to the City for cancellation, nonrenewal, or material change;
- c. Provide for notice to the City at the address shown below by registered mail;
- d. The Contractor agrees to waive subrogation against the City of Lubbock, its officers, employees, and elected representatives for injuries, including death, property damage, or any other loss to the extent same may be covered by the proceeds of insurance;
- e. Provide that all provisions of this contract concerning liability, duty, and standard of care together with the indemnification provision, shall be underwritten by contractual liability coverage sufficient to include such obligations within applicable policies.

NOTICES

The Contractor shall notify the City in the event of any change in coverage and shall give such notices not less than 30 days prior the change, which notice must be accompanied by a replacement CERTIFICATE OF INSURANCE.

All notices shall be given to the City at the following address:

Marta Alvarez, Director of Purchasing & Contract Management City of Lubbock 1314 Avenue K, 9th Floor Lubbock, Texas 79401

SECTION D. Approval, disapproval, or failure to act by the City regarding any insurance supplied by the Contractor shall not relieve the Contractor of full responsibility or liability for damages and accidents

as set forth in the contract documents. Neither shall the bankruptcy, insolvency, or denial of liability by the insurance company exonerate the Contractor from liability.

- 10. Neither the City nor the Contractor shall assign, transfer or encumber any rights, duties or interests accruing from this Contract without the written consent of the other.
- 11. 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.
- 12. 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.
- 13. All funds for payment by the City under this contract are subject to the availability of an annual appropriation for this purpose by the City. In the event of non-appropriation of funds by the City Council of the City of Lubbock for the goods or services provided under the contract, the City will terminate the contract, without termination charge or other liability, on the last day of the then-current fiscal year or when the appropriation made for the then-current year for the goods or services covered by this contract is spent, whichever event occurs first. If at any time funds are not appropriated for the continuance of this contract, cancellation shall be accepted by the Seller on 30 days prior written notice, but failure to give such notice shall be of no effect and the City shall not be obligated under this contract beyond the date of termination.
- 14. The Contractor shall not assign or sublet the contract, or any portion of the contract, without written consent from the Director of Purchasing and Contract Management. Should consent be given, the Contractor shall insure the Subcontractor or shall provide proof on insurance from the Subcontractor that complies with all contract Insurance requirements.
- 15. 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.
- 16. The Contractor (i) does not engage in business with Iran, Sudan or any foreign terrorist organization and (ii) it is not listed by the Texas Comptroller under Section 2252.153, Texas Government Code, as a company known to have contracts with or provide supplies or services to a foreign terrorist organization. As used in the immediately preceding sentence, "foreign terrorist

organization" shall have the meaning given such term in Section 2252.151, Texas Government Code.

17. 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 contact 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.

- 18. 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.
- 19. 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.

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.

20. 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.

- 21. 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.
- 22. This Contract consists of the following documents set forth herein; Invitation to Bid No. 23-17132-YB, Specifications, and the Bid Form.

-----INTENTIONALLY LEFT BLANK-----

IN WITNESS WHEREOF, the parties hereto have caused this Contract to be executed the day and year first above written. Executed in triplicate.

CITY OF LUBBOCK	CONTRACTOR
	BY My Att
Tray Payne, Mayor	Authorized Representative
ATTEST:	Print Name
	9614 Chicago Ave
Courtney Paz, City Secretary	Address
APPROVED AS TO CONTENT:	Lubboch, Tx, 79424 City, State, Zip Code
/l.h	
Colby VanGundy, Director of Parks and Recreation	ı
APPROVED AS TO FORM:	
Rachael Foster, Assistant City Attorney	•
reading resident city recomes	

3. CONTRACTOR

The individual, firm, partnership, joint venture, or corporation contracting with the City to perform Work.

4. 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, Owner's Representative so designated who will inspect turf maintenance; or to such other representatives, supervisors, or inspectors as may be authorized by said Owner to act in any particular under this agreement. Agent(s), 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. All questions, notices, or documentation arising under this agreement shall be addressed to the Owner's Representative.

5. CONTRACT DOCUMENTS

The contract's documents shall consist of Notice to bidders; General Instructions to Bidders; Bid Submittal; Certificate of Insurance; Contract; General Conditions of the Agreement; Specifications; Turf Maintenance Groups; Proposed Equipment for Contract Turf Maintenance; Payment Request for Turf Maintenance; Written Hazardous Communication Program., 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". These form the agreement whereby the Contractor shall furnish all labor, equipment, tools, materials, and perform all Work necessary to satisfactorily accomplish the proposed plan.

6. 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.

7. 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 Contractor shall not assign or sublet the contract, or any portion of the contract, without written consent from the Owner's Representative or Agent(s). The Owner's permission to sublet any contract shall not be construed as making the Owner a party of such subcontract. No subcontractor shall release the Contractor of its surety or its liability and obligation to fulfill all transactions made under the contract.

8. 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.

City of Lubbock ITB 23-17132-YB Parks Turf Maintenance Specifications

1. DEFINITIONS

- 1.1 Agent An employee of the Division of Community Services, City of Lubbock, who is appointed by the City to monitor the Work and actions of the Contractor.
- 1.2 Call Back Contact with the Contractor by Agent notifying Contractor of Unfinished Work.
- 1.3 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
- 1.4 City The City of Lubbock, Texas, municipal corporation in Lubbock County, Texas.
- 1.5 Classification (Class) The organization of sites according to service frequencies.
- 1.6 Contract Time The number of allowable days to complete the contract
- 1.7 Cycle The complete service of all sites in a Class at one time.
- 1.8 Designated Superintendent The superintendent shall represent the Contractor in its absence and all directions given to superintendent shall be binding as if given to the Contractor.
- 1.9 Drought Contingency Plan –Any enactment by the City of Lubbock requiring that the irrigation of any property owned or subject to control by the City of Lubbock that is also subject to the work contemplated under this Contract be reduced or otherwise restricted.
- 1.10 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.
- 1.11 Extra Work work over and above that is called for in the contract.
- 1.12 Mayor The duly appointed official of the City of Lubbock, Texas, who is empowered by the City Charter to enter into a contract in behalf of the City.
- 1.13 Notice to Proceed Written notice to the Contractor issued and signed by the authorized Agent stating the date on which the Contractor should proceed with Work as stated in the contract.
- 1.14 Review Committee A committee chosen by the City staff, to analyze and recommend to City Council the best Contractor(s) to perform the tasks governed by the contract.
- 1.15 Specifications The directions, provisions, and requirements pertaining to the method and manner of performing the Work or to the quality of the materials and equipment to be furnished under the contract.
- 1.16 Unfinished Work Any initial Work pertaining to the mowing contract not satisfactorily completed. Twenty-four (24) hours will be given to complete any Call Backs.
- 1.17 Unit A single maintenance site.
- 1.19 Unit Price Payment to the Contractor based on a Unit or portion of the Work performed.
- 1.19 Vendor Performance Form- The vendor performance from provides the Purchasing and Contract department with a comprehensive tool for evaluating vendor performance to reduce risk in the contract award process. The VP tracks exceptional, satisfactory and unsatisfactory vendor performance.
- 1.20 Work All Work, including the furnishing of staff, equipment, materials, and other incidentals necessary for the performance of the contract.

2. 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.

9. CONTRACTOR'S RESPONSIBILITIES

Unless otherwise stipulated, the Contractor shall provide and pay for all materials, supplies, machinery, equipment, tools, superintendence, labor, insurance, 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 and both workmanship and materials shall be of a good quality. All equipment shall meet all applicable Federal, State and Local laws and regulations. The Contractors equipment is at all times during the term of this Contract subject to inspection and approval of the Owner's Representative or Agent(s). At a minimum, the types of equipment for each mowing Group one through Group ten shall be two 60 inch zero turn finishing trim mowers and one 12 foot pull-behind rotary flex finishing type mower or commercial rotary shredding mower. The equipment shall conform to the type(s) of approved for each maintenance class. Rotary mowers shall be full flotation and trim mowers shall have anti-scalping features. All manufacturers' safety features must be operational, in good repair and in proper positions during operation. All equipment shall be professional grounds maintenance quality and in good condition throughout the course of the contract. If the Owner's Representative or Agent(s) deems the equipment faulty or if the equipment is damaging the turf in anyway, the Contractor shall immediately cease the use of said equipment and remove the equipment from the premises. The Contractor shall be responsible for grounds maintenance progress to continue as per the mowing schedules outlined in the attached Specifications.

Respective bidders shall submit attached Contractor's Equipment Schedule, Index #10 for their proposed equipment. All Work shall be done and all materials furnished in strict conformity with the contract documents.

10. CITIZEN CONTACT

While the Contractor is authorized to perform Work on the Owner's property, Contractor does not have exclusive use of the property, and must respect the activities of park patrons present during the Work on the Owner's property. The Contractor shall take all precautions necessary to ensure that adjacent property owners are not disturbed by any Work performed by the Contractor. Should a Contractor's worker be contacted by a citizen visiting the property the worker is maintaining, assistance shall be given to the citizen to the extent the assistance is related to the Work being performed. The Owner shall provide a list of the Owner's representatives and phone numbers for various City functions. The Contractor shall provide employees with this information and ensure that this information is available at each job site. Employees of the Contractor shall at all times be dressed in attire that clearly identifies that employee's name and the employee's affiliation with the Contractor. Employees of the Contractor should refer any citizen inquiries to the Owner representative(s).

11. SUBSTANTIALLY COMPLETED

The term "Substantially Completed" is meant that the Work contemplated by the contract documents has been performed in sufficient portion so that use or occupancy or the area is in a condition to serve its intended purpose, but to such an extent that minor miscellaneous Work may be still required.

12. CLEAN-UP

As specified in the Maintenance Standards Specifications, all Work shall be cleaned up and waste materials removed from the site. No equipment shall be left at neighborhood parks or any of the Owner's owned property site and all material removed from the job shall be at the Contractor's expense. If equipment, materials, or waste are not removed from the site, written notification from the Agent shall be delivered to the Contractor. The Contractor shall have twenty four (24) hours to remove the equipment, materials, or waste in question. If the equipment, materials, or waste in question is not removed in the twenty four (24) hour period, the Owner shall remove said equipment, material, or waste, and the Contractor shall be charged for the expense. Payment to the City for said

expenses shall be deducted from the Contractor's payment. If such conditions continue, the contract may be terminated due to breach of contract.

13. MOWING SCHEDULES

Except as specifically provided herein, the Contractor shall be responsible for scheduling all Work and shall accomplish this Work in a manner acceptable to the Owner's Representative or Agent(s). The Owner's Representative or Agent(s) will check the Contractor's schedule(s) of all mowing Work done by the Contractor but this check does not relieve the Contractor of the responsibility of correctly scheduling all Work in accordance with the Specifications. The Contractor shall notify Owner no later than 2:00 pm on the day before any revised mowing schedules.

14. LITTER

The Owner will be responsible for litter control for Group 1-11 during regular business hours. The Contractor will be responsible for litter and debris if Work is required after regular business hours, on holidays, or on weekends. The Contractor understands and acknowledges that litter or debris may accumulate prior to mowing with no fault to either party. The Contractor shall not mow over trash or debris. The Contractor shall instruct mower operators to inspect sites carefully for and to avoid creating, dangerous or unsightly conditions and dispose of debris in park dumpsters.

15. RIGHT OF ENTRY

The Owner's Representative or Agent(s) shall 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. The Owner's Representative or Agent(s) shall make onsite inspections to check the quality or quantity of the Work. The Owner's Representative or Agent(s) will not be responsible for the working 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.

16. IDENTIFICATION AND CHARACTER

Contractor's vehicles shall be marked with the Contractor's company name, on both sides and in lettering that is a minimum of two inches tall and of an easily read typeface. In lieu of lettering, Contractors may submit easily recognizable Company Logos for approval by the Parks Department. All employees of the Contractor shall have a name badge and company logo for identification; either clip-on or incorporated with a uniform. This identification shall be worn at all times that the employee is at the job site. The Contractor shall provide uniforms of a different color than the Owner's employee uniforms. Uniforms may not be torn or ragged and shall present a professional appearance. Additionally, the Contractor will at all times require employees to remain fully dressed and will not allow employees to wear unbuttoned clothing while on the Owner's property. Contractor's employees shall not display any print or logo on their vehicles or clothing that purports them as employees of Owner, nor shall Contractor's employees in any way hold themselves out to be employees of the Owner.

17. OWNER'S REPRESENTATIVE'S AND AGENT(S) AUTHORITY AND DUTY

Unless otherwise specified, it is mutually agreed between the parties to this Agreement that the Owner's Representative or Agent(s) has the authority to review all Work included herein. The Owner's Representative or Agent(s) 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 or Agent(s) shall, determine the amounts and quantities of the mowing Units which are to be paid for under the contract documents, and shall determine all questions in relation to said Work and the completion of Work thereof, and shall, 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 ten (10) 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.

18. SUPERINTENDENCE AND INSPECTION

It is agreed by the Contractor that the Owner's Representative shall be and is hereby authorized to appoint Agent(s) as the said Owner's Representative may deem proper to inspect the Work done under this Agreement, and to see that said Work is done in accordance with the Specifications therefore. The Contractor shall furnish all reasonable aid and assistance required by the Agent(s) for the proper inspection and examination of the work. The Contractor shall regard and obey the directions and instructions of any Agent(s) 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 Agent(s), the Contractor may within ten (10) 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.

19. 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 Designated Superintendent/Foreman and any necessary assistants, all satisfactory to Owner's Representative or Agent(s). The Designated Superintendent/Foreman shall represent the Contractor in its absence and all directions given to the Designated Superintendent/Foreman 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.

Neither the Owner, nor its Representatives or Agent(s) shall 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.

20. 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 Item #26-Changes and Alterations 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.

21. LABOR, EQUIPMENT, MATERIALS

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 man or men on the Work, are, in Owner's Representative's or agent(s) sole opinion, incompetent, unfaithful, disorderly, or otherwise unacceptable to Owner, Owner's Representative, or agent(s) such man or men shall be discharged from the Work and shall not again be employed on the Work. Should the Contractor continue to employ such individual(s) to continue Work under this contract, the Owner reserves the right to withhold payment and/or nullify the contract.

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.

22. PROPERTY AND BOUNDARY

Parks & Owner Facilities; When the property to be maintained is bound by a street, the scope of maintenance will extend into roadway a minimum of six (6) inches from lip of street gutter, if the boundary is an alley, maintenance will consist of a minimum of ½ (one-half) of alley, each maintained on schedule with the remainder of the site. When the area is bound by anything other than a street or alley, the physical property line will serve as the project boundary.

Right-of-way sites; curbed areas with adjacent sidewalks shall be maintained through the sidewalk street-ward to back of curb and ending six (6) inches beyond the lip of gutter. In areas where the linear sidewalk or right-of-way landmarks are interrupted or divided up, the maintenance areas shall remain consistent and uniform from these boundaries street-ward to the curb. Median and traffic islands shall be maintained in their entirety including maintenance street-ward to either side

from a point six (6) inches beyond the lip of gutter or to the edge of roadway on non-curbed medians or traffic islands. Non-curbed streets shall be maintained from the roadway to the centerline of the drainage channel. Maintenance at intersections shall include a visibility triangle ten feet wide by thirty feet from either side of the mid-point of the curb's radius.

Aerial maps of the parks and parks properties are available for viewing highlighting the boundaries. Copies can be obtained by request at the pre-bid meeting or by contacting the Parks Department at 775-2687. Contractor should allow a +/- 10% variance in determining overall size. Contractors are encouraged view these maps as well as conduct personal "DISCLAIMER"-CITY OF LUBBOCK: These maps were created using data obtained from various sources, and created exclusively for the internal use of the City of Lubbock. Portions of the information may be incorrect or not current. Any person or entity who relies on any information obtained from these maps does so at their own risk. Neither the City of Lubbock, TX, nor any agency, officer, nor employee of the City of Lubbock, Texas, warrants the accuracy, Reliability, or timeliness of such information.

THIS PUBLICATION IS PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESSFOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT. THE CITY OF LUBBOCK SHALL NOT BE LIABLE FOR ANY DIRECT, INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES RELATED TO THE USE OF THIS PUBLICATION, EVEN IF THE CITY OF LUBBOCK IS ADVISED OF SUCH DAMAGE."

23. TERMINATION OF CONTRACT

This contract shall remain in effect until the expiration date, performance of services ordered, or termination of either party with a thirty (30) day written notice by either party prior to any cancellation. Such written notice must state the reason for cancellation. 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.

24. 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.

25. CHANGES AND ALTERATIONS

The Contractor further agrees that the Owner may make such changes and alterations as the Owner may see fit for the Work herein contemplated, or any part thereof, either before, during, or after the beginning of the mowing Cycles, without affecting the validity of this contract.

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 Work 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.

26. 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 bid, except as provided under Changes and Alterations herein.

It is agreed that the Contractor shall perform all Extra Work under the direction 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; 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.

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.

27. UNAUTHORIZED WORK

All Work and/or materials which do not conform to the contract and Specifications, and Work done contrary to written instructions of the Owner's Representative or Agent(s) shall be done at the expense of the Contractor. The Contractor may be ordered to remove or remedy such Work at its own expense. If Contractor damages adjacent property, the Contractor shall remedy such property at its own expense.

28. DISCREPANCIES AND OMISSIONS

It is further agreed that it is the intent of the contract documents that all Work described in the bid, 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 bids are received, and if no such notice is received by the Owner's

Representative prior to the opening of bids, then it shall be deemed that the Contractor fully understands the Work to be included and has provided sufficient sums in its bid to complete the Work in accordance with these plans and Specifications. If Contractor does not notify

subcontractors, laborers, workers, 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.

33. 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 Item #31 Protection Against Accident to Employee and Public and General *Indemnity* hereof, the Contractor shall defend all suits or claims for infringement of any patent or copyrights and shall indemnify and save the Owner, and all of its officers, elected officials, agents, representatives 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, elected officials, agents, representatives 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 bidding.

34. 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 Item #31 Protection Against Accident to Employee and Public and General Indemnity hereof, Contractor shall indemnify and save harmless the Owner, and all of its officers, elected officials, agents, representatives 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 bidding 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.

Prior to any application of chemicals, the Contractor shall request, in writing, for approval from the Owner's Representative or Agent(s). If permission is granted, all applications shall be performed through a Licensed Applicator, licensed by the Texas Structural Pest Control Board or Texas Department of Agriculture. Before applications commence, the Contractor shall furnish the Owner's Representative or Agent(s) a list of proposed areas to be treated and chemicals to be used.

Owner's Representative before bidding 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 bids.

29. 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, Owner's Representative, or Agent(s) may order the Contractor verbally or 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 verbally or 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.

30. <u>PROTECTION AGAINST ACCIDENT TO EMPLOYEES AND THE PUBLIC AND GENERAL INDEMNITY</u>

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 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 un-liquidated, 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.

31. 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.

32. <u>PROTECTION AGAINST CLAIMS OF SUBCONTRACTORS, LABORERS, MATERIALMEN, AND FURNISHERS OF MACHINERY, EQUIPMENT AND SUPPLIES</u>

Without limiting, in any way, manner or form, the indemnity provided by Contractor in Item #31 - Protection Against Accident to Employee and Public and General Indemnity, the Contractor agrees that it will indemnify and save the Owner and all of its officers, elected officials, agents, representatives 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

35. ADVERTISING

Contractor shall not advertise or publish, without City's prior consent, the fact that the City has entered into this contract, except to the extent necessary to comply with proper request for information from an authorized representative or the Federal, State or Local Government.

36. 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.

37. TIME FOR SUBSTANTIAL COMPLETION

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 contract documents, 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. 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 time will be negotiable and agreed upon by and between the Contractor and the Owner.

IT IS FURTHER AGREED AND UNDERSTOOD BETWEEN THE CONTRACTOR AND OWNER THAT TIME IS OF THE ESSENCE OF THIS CONTRACT.

38. 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 at such time and sessions, in such order of precedence, and in such manner as shall be most conductive to economy of scheduling; provided, however, that the order and time of prosecution shall be such that the Work shall be substantially completed as a whole and in part, in accordance with this contract, the plans and Specifications, and within the time of completion designated in the bid; provided, also, that when the Owner is having other Work done, either by contract or by its own force, the Owner's Representative may direct the time and manner of scheduling Work done under this contract so that conflicts will be avoided and the mowing of the various Works being done for the Owner shall be harmonized. All required unit work which includes mowing, edging, trim mowing, string trimming, and sweeping shall be 100% complete before commencing to another mowing site.

The Contractor shall submit mowing schedules as requested by the Owner's Representative or Agent(s) five (5) working days prior to the start of every month. A copy shall be mailed, faxed or emailed to the Owner's Representative, Agent(s), and any Park Maintenance department dependent upon the mowing schedules. Mowing properties shall be mowed in the order they are listed on the monthly schedule with dates at which the Contractor will start the Units of Work and estimated dates of completion of the Units of Work unless prior notice is given before the start of the working day (6:00 AM).

39. TIME OF PERFORMANCE

The Contractor agrees that it has submitted its bid 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 Item #39 – *Time for Substantial Completion* 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. Work on weekends and holidays and shall be at the discretion of the Contractor. Should the Contractor find it necessary to Work during this time, written notice of his intention to do so shall be given to the Owner's Representative and Agent(s) at least twenty-four (24) hours prior to doing so. The City reserves the right to deny such Work that interferes with heavy park usage or special events. All Work is schedule driven; therefore, the Contractor's Work force and equipment needs shall vary throughout the contract's time period. The normal Work schedule shall fall within the time frame of Monday through Friday 6:00 a.m. to 5:00 p.m.

A failure by Owner's Representative to affirmatively grant the extension no later than twenty-four (24) hours 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.

40. 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, Owner's Representative or Agent(s) 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.

41. 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 bids 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.

42. 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 Item #31 – *Protection Against Accidents to Employees and the Public and General Indemnity* hereof, the Contractor agrees to indemnify, save and hold harmless the Owner, 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. The Contractor shall use every precaution necessary to prevent damage

to trees, shrubs, above and below ground structures, utilities and any other form of property. Should damage occur, it is the Contractor's responsibility to report the damage to the Owner's Representative or Agent(s) as soon as possible but not exceeding twenty-four (24) hours from the time damage occurred. If damage occurs as a result of Contractor's actions, the Contractor shall be held responsible to repair or replace the damaged property at its own expense. Time required to repair damaged property shall be expedient and to the approval of the Owner's Representative or Agent(s). If the damage is not repaired in the agreed upon time period, the City may after forty-eight (48) hours' notice from the Owner's Representative, proceed to repair the damage. The Contractor shall be held financially responsible for the repair Work and the cost shall be deducted from the Contractor's payment.

43. 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 bid 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, appendicies, contract documents and requirements of Owner's Representative.

44. 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, who have not theretofore been timely filed as provided in this contract. The Contractor shall receive compensation provided for in the contract on a per Cycle basis for each Unit site. In the case of the Grounds Maintenance Contract, payment shall be determined by services rendered. Payment shall be made at the end of each month for services rendered for each completed Unit within a maintenance group. Payment shall be determined by the form included in this package as Index #10 and approved by the Owner's Representative or Agent(s).

45. PAYMENT WITHHELD

In addition to express provisions elsewhere contained in the contract, the Owner or Owner's Representative may withhold from any payment otherwise due the Contractor such amount as determined necessary to protect the Owner's interest, or, if it so elects, may withhold or retain all or a portion of any progress payment or refund payment on account of

- 45.1 Unsatisfactory progress of the Work not caused by condition beyond the Contractor's control;
- 45.2 Defective Work not corrected;
- 45.3 Contractor's failures to carry out instructions or orders of the City or his (its) representatives;
- 45.4 A reasonable doubt that the contract can be completed for the balance then unpaid;
- 45.5 Execution of Work not in accordance with the contract documents;

- 45.6 Claim filed by or against the Contractor or reasonable evidence indicating probable filing of claims;
- 45.7 Failure of the Contractor to make payments to subcontractor for material or labor;
- 45.8 Damage to another Contractor;
- 45.9 Unsafe working conditions allowed persisting by the Contractor;
- 45.10 Failure of the Contractor to provide work schedules as required by the City;
- 45.11 Use of subcontractors without City's approval.

When the above grounds are removed, payment shall be made for amounts withheld because of them, and City shall never be liable for interest on any delayed or late payment.

46. <u>CONTRACTOR DEFAULT OWNER'S RIGHT TO SUSPEND WORK AND ANNUAL CONTRACT</u>

The Work or any portion of the Work under contract shall be suspended immediately on written order of the Owner declaring the Contractor to be in default. The contract may be annulled by the Owner for any good cause or causes, among others of which special reference is made to the following:

- 46.1 Failure of the Contractor to start Work within ten (10) days from date specified in the written work order issued by the City to begin the work;
- 46.2 Substantial evidences that the progress of the Work being made by the Contractor is insufficient to complete the Work within the specified working time;
- 46.3 Failure of the Contractor to provide sufficient and proper equipment, materials or construction forces or properly executing the Work;
- 46.4 Substantial evidence that the Contractor has abandoned the Work or discontinuance of the performance of the Work or any part thereof and failure to resume performance within a reasonable time after notice to do so;
- 46.5 Substantial evidences that the Contractor has become insolvent or bankrupt, or otherwise financially unable to carry on the Work;
- 46.6 Deliberate failure on the part of the Contractor to observe any requirements of these Specifications or to comply with any orders given by the City as provided for in these Specifications;
- 46.7 Failure of the Contractor to promptly make good any defects in the Work, the correction of which has been directed in writing by the City;
- 46.8 Substantial evidence of collusion for the purpose of illegally procuring a contract or perpetrating fraud on the City in the construction of Work under contract;
- 46.9 Repeated violations of safe working procedures;

When the Work is suspended for any of the causes itemized above, or for any other cause or causes, the Contractor shall discontinue the Work or such part thereof as the City designates.

47. FINAL INSPECTION

Final Inspection of the site shall take place by the Owner's Representative or Agent(s) as soon as possible after the completion of the Unit(s). If the project (s) is completed in Cycles, the project (s) shall be inspected after each Unit(s) by the Agent(s). The Contractor shall be allowed to be present at the examination. If the inspection reveals any defective Work, the Owner's Representative or Agent(s) may require the Call Back Work to be remedied before final acceptance is granted. All said remedies shall be at the expense of the Contractor.

48. SPECIAL EVENTS

The Contractor shall schedule Work to enhance public use and restrict conflict with scheduled events. Special event schedules will be submitted to the Contractor by the Owner's Representative or his

Agent(s) to arrange for mowing schedule adjustments as may be required. The Owner's Representative or his Agent(s) will attempt to notify the Contractor forty-eight hours prior to an event that requires mowing schedule adjustments.

49. CLAIM OR DISPUTED WORK

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 seven (7) 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 seven (7) 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.

If the Contractor is of the opinion that (a) the Work necessary or required to accomplish the result intended by this contract; or (b) any Work ordered to be done as contract Work by the City is Extra Work or additional Work and not contract Work; or (c) any determination or order of the Owner violates the terms and provisions of this contract, the Contractor shall promptly, either before proceeding with such Work or complying with such order or determination, notify the Owner in writing of his (its) contentions with respect thereto and request a final determination thereof. If the Owner determines that the Work in question is Extra Work and not contract Work, or the determination or order complained of required performance by the Contractor beyond that required by the contract or violates the terms and provisions for the contract, thereupon the Owner shall cause either (a) the issuance of a written order covering the Extra Work as provided for in paragraph 1 of Item #27-Extra Work hereof, or (b) the determination or order complained of be rescinded or so modified so as to not require performance beyond that required by the terms and provisions of the contract. Such determination of the Owner shall be given in writing to the Contractor.

If the Owner determines that the Work in question is contract Work and not, Extra Work, or that the determination or order complained of does not require performance by the Contractor beyond that required by the contract or violate the terms and provisions of the contract, he shall direct the Contractor to proceed, and the Contractor must promptly comply. In order to reserve his (its) right to claim compensation for such Work resulting from such compliance, the Contractor must, within seven (7) calendar days after receiving the Owner's determination and direction, notify the Owner in writing that the Work is being performed, or that the determination and direction is being complied with, under protest.

If the Contractor fails to so appeal to the Owner for a determination or, having so appealed, should the Contractor thus fail to notify the Owner in writing of his (its) protest, the Contractor shall be deemed to have waived any claim for extra compensation or damages therefore. No oral appeals or oral protests, no matter to whom made shall be deemed even substantial compliance with the provisions of this item.

In addition to the foregoing requirement, the Contractor shall, upon notice from the Owner, produce for examination and audit at the Contractor' office, by the representatives of the Owner, all his (its) books and records showing all of his (its) acts and transactions in connection with contractual performance as well as relating to or arising by reason of the matter in dispute. At such examination a duly authorized representative of the Contractor may be present.

Unless the aforesaid requirements and conditions shall have been complied with the Contract, the Owner shall be released from all claims arising under, relating to or by reason of this contract, except for the sums to be due under the payment provision or this contract. It is further stipulated and agreed that no conduct on the part of the Owner or any agent or employee of the Owner shall even be

construed as a waiver of the requirements of this section, which such requirements constitute an absolute condition precedent to any approval or any claim for extra compensation, notwithstanding any other provisions of the contract documents; and in any action against the Owner to recover any sum in excess of the contract amount the Contractor must allege and prove strict compliance with the provisions of this section.

In connection with the examination provided for herein, the Owner, upon demand therefore, shall also produce for inspection by the Contractor such records as the Owner may have with respect to such disputed Work or Work performed under protest pursuant to order of the Owner, except those records and reports which may have been prepared for the purpose of determining the accuracy and validity of the Contractor's claim.

50. NON-COMPLIANCE AND/OR ABANDONMENT BY CONTRACTOR

In case the Contractor should (1) abandon and fail or refuse to resume Work within two 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.

In the event the Contractor should fail to commence compliance with the notice hereinbefore provided within two 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 men 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 shall pay the amount of such excess to the Owner; or
- (b) The Owner, under sealed bids, 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. 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 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 shall be so notified and certification of completion as provided in Item #46-*Payments* 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, if applicable, where on the Contractor, 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, 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, if applicable. Should the cost to complete the Work exceed the contract price, and the Contractor, 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, 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, if applicable, subject only to the duty of the Owner to exercise ordinary care to protect such property.

51. 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.

52. MAINTAINING WORK SCHEDULES

It will be the Contractor's responsibility to perform litter control when the mowing schedule is deviated due to problems not weather related or when Work is requested after regular business hours, holidays, or on weekends.

53. 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.

54. 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.

55. 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, Owner's Representative or Agent(s) 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, Owner's Representative or Agent(s) 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, Owner's Representative or Agent(s) or to the Contractor's own employees or to any other person, firm, or corporation.

56. NO WAIVER OF RIGHTS OR ESTOPPEL

The City, or any officer or Agent thereof, shall not be precluded at any time, either before or after final completion and acceptance of the Work and final payment therefore from:

- 56.1 Showing the true and correct amount, Classifications, quality and character of the Work done and materials furnished by the Contractor or any other person under this contract, or from showing at any time that any determination, return, decision, approval, order, letter, payment or certification is untrue and incorrect, or improperly made in any particular, or that the Work or the materials or any parts thereof, do not in fact conform to the contact requirements; and
- Demanding the recovery from the Contractor of any overpayments made to him, or such damages as the City may sustain by reason of the Contractor's failure to perform each and every part of this contract in strict accordance with its terms or both.

57. 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 there under, 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 there from, 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.

58. 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.

59. SUSPENSION BY COURT ORDER AGAINST CITY

The Contractor shall suspend such part or parts of the Work pursuant to a court order issued against the City and shall not be entitled to additional compensation by virtue of such court order; neither shall the Contractor be liable to the City in the event the Work is suspended by such court order, unless such suspension is due to the fault or negligence of the Contractor.

60. NOTICE TO PROCEED

Notice to Proceed date will be issued at the start of every mowing season. The Contractor shall actively proceed with the Work as agreed and stated on the notice to proceed. Work shall not start until the notice to proceed is issued by the Purchasing and Contract Management department.

61. WEATHER

Weather will affect the progress of ground maintenance at times and Contractor shall recognize this and have a plan of action and/or resources available to proceed in an expedient manner. Should weather conditions alter schedules, the Contractor shall notify the Owner's Representative, Agent(s) and other appropriate Park Maintenance departments such as Environmental Services, before 6:00 AM at the beginning of the next Work day. It is the Contractor's responsibility to provide quality workmanship. If weather conditions prevent such quality, the Contractor shall suspend Work and resume Work as soon as weather allows. If the Owner's Representative or Agent(s) finds that weather conditions are inappropriate for maintaining high quality Work, they may notify the Contractor and suspend Work. The suspension of Work by the Owner's Representative or Agent (s) shall not in any way allow the Contractor to find grounds for adjustments in Contract Time or provide for extra compensation.

62. SPECIFICATION CHANGE

During the term of the Contract, the Owner may change Site Classifications, thereby increasing or decreasing mowing frequencies. Unit pricing will be used to determine cost adjustments. All changes shall be in writing.

Contractor understands and agrees that a Drought Contingency Plan, if enacted by the City of Lubbock, could result in significantly reduced or eliminated irrigation schedules for the properties that are the subject of this agreement, which could, in turn, significantly reduce or eliminate the need for services contemplated under this agreement. In the event said Drought Contingency Plan is enacted, Owner shall promptly notify Contractor of said event, and Contractor hereby agrees thereafter to accept and abide by any revised maintenance schedules and compensation adjustments promulgated by the Owner. This agreement shall constitute the Contractor's consent, granted prospectively, for a change order to the original contract price as required by Texas Local Government Code, Section 252.048(d).

63. CHANGED CONDITION

If the Contractor finds latent conditions which differ from those outlined in the contract or Specifications which differ from customary Work, and which the Contractor could not have discovered during the investigation of the site prior to the bid, and in which such condition increased the expense to the Contractor, immediate written notice shall be promptly mailed to the Owner's Representative. The Contractor shall afford the Owner the opportunity to inspect the same. After inspection by the Owner, the Contractor shall not delay Work pending a decision to be made by the Owner regarding the claim. Failure of the Contractor to give prompt written notice and afford the Owner the opportunity to inspect the condition, before it is disturbed, shall be deemed a waiver by the Contractor of all claims and extra compensation arising out of the alleged condition.

64. FORCE MAJEURE

In the event either Owner or Contractor is rendered unable in whole or in part by force majeure to carry out any covenant, agreement, obligation or undertaking to be kept or performed by such party under this agreement, other than to make payment of amounts due for Work completed, such covenant, agreement, obligation or undertaking, insofar as the same is affected by such force majeure, will be suspended. The term "force majeure" as employed in this section includes acts of God, strikes,

lockouts, or other industrial disturbances, acts of a public enemy, war, blockades, riots, epidemics, earthquakes, explosions, accidents, or repairs to machinery or pipes, the delays of carriers, or inability by reason of governmental regulation to obtain materials, acts of public authorities including but not limited to the effectuation of a Drought Contingency Plan by the City of Lubbock, or other causes, whether or not of the same kind as specifically enumerated, not within the control of the party claiming suspension and which by the exercise of due diligence or the payment of money such party is unable to overcome.

65. SEVERABILITY

If for any reason any provision hereof shall be inoperative, the validity and effect of all other provisions shall not be affected thereby.

66. PRESUMPTION AGAINST SCRIVENER

In case of a dispute as to interpretation of this agreement, each party waives the presumption that this agreement is presumed to be read in favor of the party that did not prepare it.

67. 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.

68. 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.

MAINTENANCE STANDARDS

1. Class A Maintenance Standards

General: Successful Contractor shall actively proceed with the work as agreed and stated on the notice to proceed. Work shall not start until the notice to proceed is issued by the Purchasing and Contract Management department. The decision to end or suspend temporarily the maintenance season shall be made by the Owner's Representative Agent. The Contractor shall be notified of the Owner's decision by letter.

- 1.1. The areas to be serviced for each site include all right of ways adjoining the site and to the centerline of all alleys adjoining the site, and extending street-ward including the curb and ending six (6) inches beyond lip of gutter. Contractor is responsible for safe and careful operation of mowing equipment around plant material and structures to prevent damage and to prevent clippings from contaminating shrub or color beds, hard surfaces, streets, playgrounds and handicap ramps. If conditions are not conducive to blowing, sweeping and picking up of maintenance debris shall be required for these areas. Blowing of grass clippings or debris out to the street is prohibited.
- 1.2. Contractor shall provide a maintenance schedule to the Parks Department within two days from Notice to Proceed and will notify Owner no later than 2:00 pm on the day before any revised mowing schedule changes presentative or Agent(s) of any changes in the schedule prior to the schedule change.
- 2. Mowing: Mowing commencement and conclusion shall be at the discretion of the Owner's Representative or Agent(s). Mowing frequency and height shall be determined by turf growth and occur up to once per calendar week, or every seven (7) calendar days, evenly spaced between Cycles. All hard surfaces shall be cleaned after each service. All equipment must be of appropriate size for each site and approved by the Owner's Representative or Agent(s). All clippings windrows or clumps will be bagged and removed. All required unit work which includes mowing, edging, trim mowing, string trimming, sweeping, and clippings removal shall be 100% complete before commencing to another mowing site. Alternate mowing patterns are required every cycle to avoid turf damage.

2.1. TENTATIVE MOWING FREQUENCIES:

March	1	July	4
April	2	August	5
May	4	September	4
June	4	October	1

3. Edging: All sidewalks and curbs shall be edged to a depth of one inch and shall be performed concurrently with mowing operations. String trimmers or curb dressers may not be used for edging. Six (6) to eight inch wide optional chemical edging only on chain link fence lines with Turf on either side of the fence is permitted on Class A Parks. Optional spraying of one (1) foot away from the tree(s) main trunk is also permitted to eliminate tree bark damage.

- 3.1. Street curb and drainage channel edging shall be accomplished concurrently with mowing operations and all debris from this activity shall be removed the same day that the task is performed. Curb dressers may be used for this task.
- 4. Trimming: All string trimming must be done to achieve a height uniform with the mowing height. Maintenance of drains and exposed playa lake shorelines due to evaporation or receding of the lake and mowable areas that retain water shall be the Contractor's responsibility. Trimming must be performed around trees, plant beds, buildings, playground equipment, signs, fences, and any other plants or structures. All play surfaces, hard surfaces, sidewalks, streets, street medians, parking areas, parking lots and drainage channels must be kept free of grass, weeds and debris. This task must be completed the same day the mowing is performed.

5. Class B Maintenance Standards

- 5.1. General: Successful Contractor shall actively proceed with the work as agreed and stated on the notice to proceed. Work shall not start until the notice to proceed is issued by the Purchasing and Contract Management department. The decision to end or suspend temporarily the maintenance season shall be made by the Owner's Representative Agent. The Contractor shall be notified of the Owner's decision by letter.
- 5.2. The areas to be serviced for each site include all right of ways adjoining the site and to the centerline of all alleys adjoining the site, and extending street-ward including the curb and ending six (6) inches beyond lip of gutter. Contractor is responsible for safe and careful operation of mowing equipment around plant material and structures to prevent damage and to prevent clippings from contaminating shrub or color beds, hard surfaces, streets, playgrounds and handicap ramps. If conditions are not conducive to blowing, sweeping and picking up of maintenance debris shall be required for these areas. Blowing of grass clippings or debris out to the street is prohibited.
- 5.3. Contractor shall provide a maintenance schedule to the Parks Department within two days from Notice to Proceed and will notify the Owner's Representative or Agent(s) of any changes in the schedule prior to the schedule change.
- 6. Mowing: Mowing commencement and conclusion shall be at the discretion of the Owner's Representative or Agent(s). Mowing frequency and height shall be determined by turf growth and occur up to once per calendar week or every seven (7) calendar days, evenly spaced between Cycles. Clippings shall not be bagged, and all hard surfaces shall be cleaned after each service. Clippings at swimming pools inside the fence must be bagged. The mowers shall leave no clumps or windrows of grass. Mowing equipment shall be reel mowers or turf type full flotation rotary mowers equipped with all turf tires and shall be approved by the Owner's Representative or Agent(s). Some specialty sites such as athletic fields, athletic facilities, and municipal facilities shall be mowed on specific times and days and of the week as determined by the Owner's Representative or Agent(s). All clippings windrows or clumps will be bagged and removed. All required unit work which includes mowing, edging, trim

mowing, string trimming, sweeping, and clippings removal shall be 100% complete before commencing to another mowing site. Alternate mowing patterns are required every cycle to avoid turf damage.

6.1. TENTATIVE MOWING FREQUENCIES:

March	1	July	4
April	2	August	5
May	4	September	4
June	4	October	1

- 7. Edging: All sidewalks, curbed plant material beds, and game courts shall be edged to a depth of one inch and all non-curbed plant beds shall be edged to a depth necessary to achieve appropriate results. All edging shall be performed concurrently with mowing at each site. String trimmers or curb dressers may not be used for edging. Six (6) to eight (8) inch wide optional chemical edging only on chain link fence lines with turf on either side of the fence is permitted on Class B Parks. All jogging tracks shall be edged concurrently with mowing operations. Optional spraying of one (1) foot away from the tree(s) main trunk is also permitted to eliminate tree bark damage.
 - 7.1. Street curb and drainage channel edging shall be accomplished weekly and all debris from this activity shall be removed the same day that the task is performed. Curb dressers may be used for this task.
- 8. Trimming: All string trimming must be done to achieve a height uniform with the mowing height. Maintenance of drains and exposed playa lake shorelines due to evaporation or receding of the lake and mowable areas that retain water shall be the Contractor's responsibility. Trimming must be performed around trees, plant beds, buildings, playground equipment, signs, fences, and any other plants or structures. All play surfaces, sidewalks, hard surfaces, streets, street medians, playground sidewalks, parking areas, parking lots and drainage channels must be kept free of grass, weeds and debris. This task must be completed the same day the mowing is performed.

9. Class C Maintenance Standards

- 9.1. General: Successful Contractor shall actively proceed with the work as agreed and stated on the notice to proceed. Work shall not start until the notice to proceed is issued by the Purchasing and Contract Management department. The decision to end or suspend temporarily the maintenance season shall be made by the Owner's Representative Agent. The Contractor shall be notified of the Owner's decision by letter.
- 10. The areas to be serviced for each site include all right of ways adjoining the site and to the centerline of all alleys adjoining the site, and extending street-ward including the curb and ending six (6) inches beyond lip of gutter. Contractor is responsible for safe and careful operation of mowing equipment around plant material and structures to prevent damage and to prevent clippings from contaminating shrub or color beds, hard surfaces, streets, playgrounds

and handicap ramps. If conditions are not conducive to blowing, sweeping and picking up of maintenance debris shall be required for these areas. Blowing of grass clippings or debris out to the street is prohibited.

- 10.1. Contractor shall provide a maintenance schedule to the Parks Department within two days from Notice to Proceed and will notify the Owner's Representative or Agent(s) of any changes in the schedule prior to the schedule change.
- 11. Mowing: Mowing commencement and conclusion shall be at the discretion of the Owner's Representative or Agent(s). Mowing frequency and height shall be determined by turf growth and occur up to once every ten (10) calendar days evenly spaced between Cycles. Clippings shall not be bagged and all hard surfaces shall be cleaned after each service. The mowers shall leave no clumps or windrows of grass. Mowing equipment shall be determined by site conditions and equipped with all turf tires and shall be approved by the Owner's Representative or Agent(s). Some specialty sites such as athletic fields, athletic facilities, and municipal facilities shall be mowed on specific times and days and of the week as determined by the Owner's Representative or Agent(s). All clippings windrows or clumps will be bagged and removed. All required unit work which includes mowing, edging, trim mowing, string trimming, sweeping, and clippings removal shall be 100% complete before commencing to another mowing site. Alternate mowing patterns are required every cycle to avoid turf damage.

11.1. TENTATIVE MOWING FREQUENCIES:

March	1	July	4
April	2	August	5
May	4	September	4
June	4	October	1

- 12. Edging only on chain link fence lines with turf on either side of the fence is permitted on Class Edging: All sidewalks, curbed plant material beds, and game courts shall be edged to a depth of one inch and all non-curbed plant beds shall be edged to a depth necessary to achieve appropriate results. All edging shall be performed concurrently with mowing at each site. String trimmers or curb dressers may not be used for edging. Six (6) to eight (8) inch wide optional chemical C Parks. All jogging tracks shall be edged concurrently with mowing operations. Optional spraying of one (1) foot away from the tree(s) main trunk is also permitted to eliminate tree bark damage.
 - 12.1. Street curb and drainage channel edging shall be accomplished concurrently with mowing operations and all debris from this activity shall be removed the same day that the task is performed. Curb dressers may be used for this task.
- 13. Trimming: All string trimming must be done to achieve a height uniform with the mowing

height. Maintenance of drains and exposed playa lake shorelines due to evaporation or receding of the lake and mowable areas that retain water shall be the Contractor's responsibility. Trimming must be performed around trees, plant beds, buildings, playground equipment, signs, fences, and any other plants or structures. All play surfaces, sidewalks, hard surfaces, streets, street medians, playground sidewalks, parking areas, parking lots and drainage channels must be kept free of grass, weeds and debris. This task must be completed the same day the mowing is performed.

14. Class D Maintenance Standards

- 14.1. General: Successful Contractor shall actively proceed with the work as agreed and stated on the notice to proceed. Work shall not start until the notice to proceed is issued by the Purchasing and Contract Management department. The decision to end or suspend temporarily the maintenance season shall be made by the Owner's Representative Agent.
- 14.2. The areas to be serviced for each site include all right of ways adjoining the site and to the centerline of all alleys adjoining the site, and extending street-ward including the curb and ending six (6) inches beyond lip of gutter. Contractor is responsible for safe and careful operation of mowing equipment around plant material and structures to prevent damage and to prevent clippings from contaminating shrub or color beds, hard surfaces, streets, playgrounds and handicap ramps. If conditions are not conducive to blowing, sweeping and picking up of maintenance debris shall be required for these areas. Blowing of grass clippings or debris out to the street is prohibited.
- 14.3. Contractor shall provide a maintenance schedule to the Parks Department within two days from Notice to Proceed and will notify the Owner's Representative or Agent(s) of any changes in the schedule prior to the schedule change. Mowing commencement and conclusion shall be at the discretion of the Owner's Representative or Agent(s). Mowing frequency and height shall be determined by turf growth and occur up to once every twenty (20) calendar days evenly spaced between Cycles. Clippings shall not be bagged and all hard surfaces shall be cleaned after each service. The mowers shall leave no clumps or windrows of grass. Mowing equipment shall be determined by site conditions and equipped with all turf tires and shall be approved by the Owner's Representative or Agent(s). All clippings windrows or clumps will be removed. All required unit work which includes mowing, edging, trim mowing, string trimming, sweeping, and clippings removal shall be 100% complete before commencing to another mowing site. Alternate mowing patterns are required every cycle to avoid turf damage.

14.3.1. TENTATIVE MOWING FREQUENCIES:

March	1	July	4
April	2	August	5
May	4	September	4
June	4	October	1

16.1. TENTATIVE MOWING FREQUENCIES:

January	0	July	1
February	0	August	1
March		September	1
April	1	October	1
May	1	November	1
June	1	December	0

- 16.2. Edging: All sidewalks and curbs shall be edged to a depth of one inch and shall be performed concurrently with mowing operations. String trimmers or curb dressers may not be used for edging. Six (6) to eight inch wide optional chemical edging only on chain link fence lines with Turf on either side of the fence is permitted on Class E properties. Optional spraying of one (1) foot away from the tree(s) main trunk is also permitted to eliminate tree bark damage.
 - 16.2.1 Street curb and drainage channel edging shall be accomplished concurrently with mowing operations and all debris from this activity shall be removed the same day that the task is performed. Curb dressers may be used for this task
- 17. Trimming: All string trimming must be done to achieve a height uniform with the concrete height. Mantenance of drains and exposed playa lake shorelines due to evaporation or receding of the lake and mowable areas that retain water shall be the Contractor's responsibility. Trimming must be performed around trees, plant beds, buildings, playground equipment, signs, fences, and any other plants or structures. All medians, sidewalks and hard surfaces area must be swept, blown and cleaned of debris after work is 100% completed.

- 14.4. Edging: All sidewalks, curbed plant material beds, and game courts shall be edged to a depth of one inch and all non-curbed plant beds shall be edged to a depth necessary to achieve appropriate results. All edging shall be performed concurrently with mowing at each site. String trimmers or curb dressers may not be used for edging. Six (6) to eight (8) inch wide optional chemical edging only on chain link fence lines with turf on either side of the fence is permitted on Class D Parks.
- 14.5. Trimming: All string trimming must be done to achieve a height uniform with the mowing height. Maintenance of drains and exposed playa lake shorelines due to evaporation or receding of the lake and mowable areas that retain water shall be the Contractor's responsibility. Trimming must be performed around trees, plant beds, buildings, playground equipment, signs, fences, and any other plants or structures. All sidewalks, hard surfaces, streets, street medians, playground sidewalks, parking areas, parking lots and drainage channels must be kept free of grass, weeds and debris. This task must be completed the same day the mowing is performed.

15. Class E Maintenance Standards

- 15.1. General: Successful Contractor shall actively proceed with the work as agreed and stated on the notice to proceed. Work shall not start until the notice to proceed is issued by the Purchasing and Contract Management department. The decision to end or suspend temporarily the maintenance season shall be made by the Owner's Representative Agent. The Contractor shall be notified of the Owner's decision by letter.
 - 1.1. The areas to be serviced for each site include all right of ways adjoining the site and to the centerline of all alleys adjoining the site, and extending street-ward including the curb and ending six (6) inches beyond lip of gutter. Contractor is responsible for safe and careful operation of mowing equipment around plant material and structures to prevent damage and to prevent clippings from contaminating shrub or color beds, hard surfaces, streets, playgrounds and handicap ramps. If conditions are not conducive to blowing, sweeping and picking up of maintenance debris shall be required for these areas. Blowing of grass clippings or debris out to the street is prohibited.
 - 1.2. Contractor shall provide a maintenance schedule to the Parks Department within two days from Notice to Proceed and will notify Owner no later than 2:00 pm on the day before any revised mowing schedule changes representative or Agent(s) of any changes in the schedule prior to the schedule change.
- **16.** Mowing: Mowing commencement and conclusion shall be at the discretion of the Owner's Representative or Agent(s). Mowing frequency and height shall be determined by turf growth and occur up to once per calendar week, or every seven (20) calendar days, evenly spaced between Cycles. All hard surfaces shall be cleaned after each service. All equipment must be of appropriate size for each site and approved by the Owner's Representative or Agent(s). All clippings windrows or clumps will be bagged and removed. All required unit work which includes mowing, edging, trim mowing, string trimming, sweeping, and clippings removal shall be 100% complete before commencing to another mowing site. Alternate mowing patterns are required every cycle to avoid turf damage.

City of Lubbock, TX Purchasing and Contract Management Vendor Acknowledgement Form

In compliance with the **Invitation to Bid**, the undersigned Bidder having examined the Invitation to Bid, instructions to bidders, General Conditions of the Agreement, Specifications, and being familiar with the conditions to be met, hereby submits the following bid for furnishing the material, equipment, labor and everything necessary for providing the items listed and agrees to deliver said items at the locations and for the prices set forth on the bid form and/or the bid table associated with this bid.

A bid will be subject to being considered irregular and may be rejected if it shows omissions, **alterations of form**, conditional alternate bids, additions or alternates in lieu of the items specified, if the unit prices are obviously unbalanced (either in excess of or below reasonably expected values), or irregularities of any kind. The Invitation to Bid is by reference incorporated in this contract.

Where applicable, prices are quoted as: **F.O.B. Destination, Freight Pre-Paid and Allowed** Where applicable, delivery days are: **Days After Receipt of Order (ARO)**

Unless otherwise specified herein, the City may award the bid either item-by-item or on an all-ornone basis for any item or group of items shown on the bid.

The City of Lubbock is seeking a contract for with one or more contractors. In order to assure adequate coverage, the City may make multiple awards, selecting multiple vendors to provide the products desired, if multiple awards are in the best interest of the City. A decision to make a multiple award of this Bid, however, is an option reserved by the City, based on the needs of the City.

MOST FAVORED PRICING: The Bidder certifies that the price quoted is not in excess of the lowest price charged anyone else, including its most favored customer, for like quality and quantity of the products/services; does not include an element of profit on the sale in excess of that normally obtained by the Bidder on the sale of products/services of like quality and quantity; and does not include any provision for discounts to selling agents. If at any time during the contract period, the supplier should sell or offer for sale to any other customer, an equal or less quantity of similar contract products of like or better quality, at a lower net price(s) than provided herein, supplier agrees to notify the City and sell same product(s) at the lower price(s) on all deliveries made during the period in which such lower price(s) is effective.

INTERLOCAL PURCHASING (optional): The City desires to make available to other local governmental entities of the State of Texas, by mutual agreement with the successful bidder, and properly authorized interlocal purchasing agreements as provided for by the Interlocal Cooperation Act (Chapter 791, Government Code), the right to purchase the same services, at the prices quoted, for the period of this contract. Each bidder shall indicate on the Bid Form in the space provided below if he/she will honor Political Subdivision orders in addition to orders from the City of Lubbock. Should these other governmental entities decide to participate in this contract, would you (the bidder) agree that all terms, conditions, specifications, and pricing would apply?

City of Lubbock ITB 23-17132-YB Parks Turf Maintenance Bid Form

					1	Turf Raider Lawn &	Landscape
					Location	Lubbock,	ГХ
					Total Cost	\$117,464.7	73
			Approx. Maintenance/	Approx. Annual		Maintenance Cycle	
			Mowable	Maintenance		Unit	Extended
#	Items	Address	Acreage	Cycles (+/-)	UOM	Cost	Cost
3	Group 10 - Class C Parks an	nd Properties			_		
#3-1	Jennings - Per Specs	73RD & Wayne	29.07	17	EA	\$1,579.37	\$26,849.29
#3-2	Mahon - Per Specs	29TH & Chicago	14.16	17	EA	\$769.31	\$13,078.27
#3-3	Dupree - Per Specs	58TH & Toledo	25.58	17	EA	\$1,389.76	\$23,625.92
#3-4	Higinbotham - Per Specs	19TH & Vicksburg	17.3	17	EA	\$939.91	\$15,978.47
#3-5	Long - Per Specs	56TH & Aberdeen	12.57	17	EA	\$682.93	\$11,609.81
#3-6	Guy - Per Specs	87TH & Memphis	14.42	17	EA	\$783.44	\$13,318.48
#3-7	Stevens - Per Specs	75TH & Slide	14.08	17	EA	\$764.97	\$13,004.49

Other governmental entities that might have interests in this contract are Frenship Independent School District, Lubbock Housing Authority, Lubbock County, Lubbock County Hospital District, Lubbock Independent School District, South Plains Association of Governments, City of Texarkana, Texas Tech University, West Texas Municipal Power Agency, Lynn County, and City of Wolfforth.

|--|

- If you (the bidder) checked YES, the following will apply:
- Governmental entities utilizing Interlocal Agreements for Cooperative Purchasing with the City of Lubbock will be eligible, but not obligated, to purchase materials/services under the contract(s) awarded as a result of this solicitation. All purchases by governmental entities other than the City of Lubbock will be billed directly to that governmental entity and paid by that governmental entity. City of Lubbock will not be responsible for another governmental entity's debts. Each governmental entity will order their own materials/service as needed.

ADDENDA

Bidder acknowledges receipt of addenda issued in regard to this solicitation:

Addenda No.	Date
Addenda No.	Date
Addenda No.	Date
Addenda No.	Date

INSURANCE REQUIREMENTS

I, the undersigned Bidder certify that the insurance requirements contained in this bid document have been reviewed by me and my Insurance Agent/Broker. If I am awarded this contract by the City of Lubbock, I will be able to, within ten (10) business days after being notified of such award by the City of Lubbock, furnish a valid insurance certificate to the City meeting all of the requirements defined in this bid.

If the time requirement specified above is not met, the City has the right to reject this proposal and award the contract to another contractor. If you have any questions concerning these requirements, please contact the Director of Purchasing & Contract Management for the City of Lubbock at (806) 775-2572.

SUSPENSION AND DEBARMENT CERTIFICATION

Federal Law (A-102 Common Rule and OMB Circular A-110) prohibits non-Federal entities from contracting with or making sub-awards under covered transactions to parties that are suspended or debarred or whose principals are suspended or debarred. Covered transactions include procurement contracts for goods or services equal to or in excess of \$25,000 and all non-procurement transactions (e.g., sub-awards to sub-recipients).

Contractors receiving individual awards of \$25,000 or more and all sub-recipients must certify that their organization and its principals are not suspended or debarred by a Federal agency.

Before an award of \$25,000 or more can be made to your firm, you must certify that your organization and its principals are not suspended or debarred by a Federal agency.

I, the undersigned agent for the firm named below, certify that neither this firm nor its principals are suspended or debarred by a Federal agency.

TEXAS GOVERNMENT CODE SECTION 2252.152

The undersigned representative of the undersigned company or business, being an adult over the age of eighteen (18) years of age, pursuant to Texas Government Code, Chapter 2252, Section 2252.152, certify that the company named above is not listed on the website of the Comptroller of the State of Texas concerning the listing of companies that are identified under Section 806.051, Section 807.051 or Section 2253.153. I further certify that should the above-named company enter into a contract that is on said listing of companies on the website of the Comptroller of the State of Texas, which do business with Iran, Sudan or any Foreign Terrorist Organization, I will immediately notify the City of Lubbock Purchasing and Contract Department.

TEXAS GOVERNMENT CODE SECTION 2271.002

Company hereby certifies the following:

- 1. Company does not boycott Israel; and
- 2. Company will not boycott Israel during the term of the contract.

The following definitions apply to this state statute:

- (1) "Boycott Israel" means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes; and
- (2) "Company" means an organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations that exists to make a profit.

This Certification is required from a Company if the Company has 10 or more full-time employees and the contract for goods or services (which includes contracts formed through purchase orders) has a value of \$100,000 or more that is to be paid wholly or partly from public funds of the governmental entity.

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.

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.

CONTRACTOR ACKNOWLEDGEMENT

In compliance with this solicitation, the undersigned bidder, having examined the bid documents, instructions to bidders, documents associated with the invitation to bid, and being familiar with the conditions to be met has reviewed the above information regarding:

- Insurance Requirements
- Suspension and Debarment Certification
- Texas Government Code Section 2252.152
- Texas Government Code Section 2271.002
- Texas Government Code 2274
- Federal and State Regulations
- Master Agreement

SUBMISSION INFORMATION

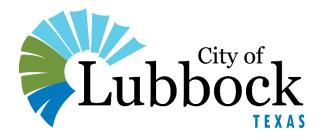
An individual authorized to bind the company must sign the following section. Failure to execute this portion may result in bid rejection.

THIS BID IS SUBMITTED BY Turk	f Rader Lum & had	Seepe a
corporation organized under the laws of t	the State of Tenas	, or a partnership consisting of
	or individual trading as	of
the City of Lughack		
Tax ID No.: 83-36710 34		
Address: 9614 Chrage Ac		
City: Larbbach	State: Zi	p: 79424
M/WBE Firm: Woman	Black American	Native American
Hispanic American	Asian Pacific American	Other (Specify)
By Authorized Representative - must sign	Date:	3/2/23
Officer Name and Title: Cok Hard	in Owner	
Business Telephone Number 325-7	2フラー 8 A リ FAX:	
E-mail Address: Jubbuch Jawa 17	@ amail. com	

City of Lubbock ITB 23-17132-YB Parks Turf Maintenance Draft Tab

Item	QTY (+/-)	Description/Vendor	Location	Extended Cost
1	(+/-)	Group 5 - Class C - Parks and Properties	Location	Extended Cost
1		Raider Power Lawncare	Lubbock, TX	\$ 102,510.00
		Incircle Management, Inc.	Colleyville, TX	132,621.05
		Turf Raider Lawn & Landscape	Lubbock, TX	147,124.80
		M3 Landscape and Irrigation, LLC.	Midland, TX	147,174.95
		The Emiliatory's and Hilganien, EEE.	Transmin, 111	,,
2		Group 9 Class C Parks and Properties		
		Raider Power Lawncare	Lubbock, TX	113,900.00
		Turf Raider Lawn & Landscape	Lubbock, TX	124,446.12
		Incircle Management, Inc.	Colleyville, TX	141,944.56
		M3 Landscape and Irrigation, LLC.	Midland, TX	159,075.80
(3)		Group 10 - Class C Parks and Properties		
_		Raider Power Lawncare	Lubbock, TX	110,500.00
		Turf Raider Lawn & Landscape	Lubbock, TX	117,464.73
		Incircle Management, Inc.	Colleyville, TX	121,075.36
		M3 Landscape and Irrigation, LLC.	Midland, TX	(140,530.50)
4		Group 7 - Class B - Broadway Streets Caps		
	:	* Erlys Janitorial Services	Lubbock, TX	2,125.00
		Raider Power Lawncare	Lubbock, TX	10,000.00
		Turf Raider Lawn & Landscape	Lubbock, TX	11,250.00
		Green Plains Design	White Deer, TX	12,500.00
		Incircle Management, Inc.	Colleyville, TX	15,187.50
		MDM Mowing	Lubbock, TX	20,000.00
		Cactus Co. Landscape	Lubbock, TX	55,000.00
5		Group 7 - Class C - S.W. Loop Turnarounds		
	:	* Erlys Janitorial Services	Lubbock, TX	15,997.00
		MDM Mowing	Lubbock, TX	16,830.00
		Incircle Management, Inc.	Colleyville, TX	22,381.52
		Raider Power Lawncare	Lubbock, TX	45,220.00
6		Group 7 - Class E Right of Way Property		
		Incircle Management, Inc.	Colleyville, TX	32,876.80
		MDM Mowing	Lubbock, TX	43,800.00
		Raider Power Lawncare	Lubbock, TX	61,672.00
7		Group 6 Class D Park and Properties		
		Gormans Outdoor, Inc.	Shallowater, TX	305,190.00
		M3 Landscape and Irrigation, LLC.	Midland, TX	457,926.30
		Incircle Management, Inc.	Colleyville, TX	576,268.92
		Raider Power Lawncare	Lubbock, TX	609,601.50
		Award by Group		
		Raider Power Lawncare - Group 5 Class C		
		Raider Power Lawncare - Group 9 Class C		
		Raider Power Lawncare - Group 10 Class C		
		Raider Power Lawncare - Group 7 Class B		
		MDM Mowing - Group 7 Class C Incircle Management, Inc Group 7 Class E		
		Gormans Outdoor, Inc Group 6 Class D		
		Gormans Outdoor, Inc Group o Class D		

^{*}Not recommended for award



Purchasing and Contract Management

Project Summary

ITB 17132 Parks Turf Maintenance

Notice was published in the Lubbock Avalanche Journal on February 12 & February 19, 2023.

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

Notice was published on the State of Texas Electronic State Business Daily.

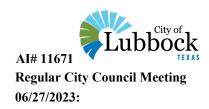
Notice was published on Bonfire.com from February 10 to March 02, 2023.

3 individuals attended the Pre-Bid meeting.

37 vendors downloaded the documents using Bonfire.com.

6 vendors were notified separately.

9 vendors submitted bids.



Information

Agenda Item

Resolutions - Fleet Services: Consider five resolutions authorizing the Mayor to execute contracts with Lubbock Truck Sales, Inc., McWhorter's Ltd., Roberts Truck Center, Texas Truck & Equipment Sales and Salvage, Inc., and Bruckner Truck Sales, Inc., as secondary vendors who will provide preventative maintenance and repairs on the City's heavy-duty vehicles and equipment.

Item Summary

An Invitation to Bid (ITB) 23-17316-SB was issued for secondary vendors to provide preventative maintenance and repair of the City's heavy-duty vehicles and equipment. In response to this bid, 6 vendors submitted bids: Lubbock Truck Sales, Inc., McWhorter's Ltd., Roberts Truck Center, Texas Truck & Equipment Sales and Salvage, Inc., Bruckner's Truck Sales, Inc., and Stewart & Stevenson.

The bids were as follows:

Category #1: Trucks over 19,500lbs GVWR (Class 6-7-8-9) Including Sweepers and Trash Trucks

Vendor	Labor Rate Per Hour	% Markup on Parts
Lubbock Truck Sales, Inc., Lubbock, Texas	\$170	30%
McWhorter's Ltd., Lubbock, Texas	\$140	30%
Roberts Truck Center, Lubbock, Texas	\$170	10%
Texas Truck & Equipment Sales and Salvage, Inc., Lubbock, Texas	\$160	35%
Bruckner Truck Sales, Inc., Lubbock, Texas	\$153	25%
**Stewart & Stevenson, Lubbock, Texas	\$165	No Bid

<u>Category #2: Off-Road Equipment (Tractors, Backhoes, Loaders, Excavators, Dozers, Graders, Scrapers, and Cranes)</u>

None of the 6 vendors submitted a bid on this item.

Category #3: Trailers (Utility Pipe, Hay, Equipment, Crew, and Cargo)

Vendor	Labor Rate Per Hour	% Markup on Parts
Lubbock Truck Sales, Inc., Lubbock, Texas	No Bid	No Bid
McWhorter's Ltd., Lubbock, Texas	\$140	30%
Roberts Truck Center, Lubbock, Texas	No Bid	No Bid
Texas Truck & Equipment Sales and Salvage, Inc., Lubbock, Texas	No Bid	No Bid
Bruckner Truck Sales, Inc., Lubbock, Texas	\$110	25%
**Stewart & Stevenson, Lubbock, Texas	\$165	No Bid

Category #4: Forklifts (Clark, Hyster, Cat, Daewoo, Case, Hill Lift, Princeton)

Vendor	Labor Rate Per Hour	% Markup on Parts
Lubbock Truck Sales, Inc., Lubbock, Texas	No Bid	No Bid
McWhorter's Ltd., Lubbock, Texas	No Bid	No Bid
Roberts Truck Center, Lubbock, Texas	No Bid	No Bid
Texas Truck & Equipment Sales and Salvage, Inc., Lubbock, Texas	No Bid	No Bid
Bruckner Truck Sales, Inc., Lubbock, Texas	No Bid	No Bid
**Stewart & Stevenson, Lubbock, Texas	\$165	No Bid

^{**}Stewart & Stevenson, of Lubbock, Texas did not comply with the City's insurance requirements.

The Fleet Operations Staff recommended award of Category 1, Category 3, and Category 4, to the following 5 vendors who submitted bids and complied with proper insurance coverage.

Lubbock Truck Sales, Inc. of Lubbock, Texas - Contract 17316 McWhorter's Ltd., of Lubbock, Texas - Contract 17413 Roberts Truck Center of Lubbock, Texas - Contract 17411 Texas Truck & Equipment Sales and Salvage, Inc. of Lubbock, Texas - Contract 17412 Bruckner Truck Sales, Inc. of Lubbock, Texas - Contract 17414

The contract will be for a term of one year with 2, one-year extensions, with the date of term beginning upon formal approval. All stated annual quantities are approximations of usage during the time period to be covered by pricing established by this bid. Actual usage may be more or less, and order quantities will be determined by actual need. The City does not guarantee any specific amount of compensation, volume, minimum, or maximum amount of services under this bid and resulting contracts.

Fiscal Impact

A total of \$6.1 million was appropriated in the FY22-23 Fleet Vehicle Maintenance Account. Fleet will use it to charge out the repair costs in various City department maintenance accounts.

Staff/Board Recommending

Brooke Witcher, Assistant City Manager Dominic Esperat, Director of Fleet Operations

Attachments

LTS Resolution
LTS Contract
McWhorter's Resolution
McWhorter's Contract
Robert's Resolution
Robert's Contract
Texas Truck Resolution
Texas Truck Contract

Bruckner's Resolution Bruckner's Contract Final Bid Tab Project Summary

RESOLUTION

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

THAT the Mayor of the City of Lubbock is hereby authorized and directed to execute for and on behalf of the City of Lubbock, Contract No. 17316 for Preventative Maintenance and Repairs for Heavy Duty Vehicles (Class 6 or higher) and Equipment as per ITB 23-17316-SB, by and between the City of Lubbock and Lubbock Truck Sales, Inc., 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.

documents. Said Contract is attached here forth herein and shall be included in the min	to and incorporated in this resolution as if function the City Council.
Passed by the City Council on	·
	TRAY PAYNE, MAYOR
ATTEST:	
Courtney Paz, City Secretary	
APPROVED AS TO CONTENT:	
Prooke Witcher, Assistant City Manager	
APPROVED AS TO FORM:	
Rachael Foster, Assistant City Attorney	

ccdocs/RES.ServiceContract 17316- Lubbock Truck Sales, Inc. 6.13.23

City of Lubbock Contract for ITB 23-17316-SB Preventative Maintenance and Repairs: Heavy Duty Vehicles (Class 6 or Higher) and Equipment

THIS CONTRACT made and entered into this	day of	, 2023, by and between the
City of Lubbock ("City"), and Lubbock Truck S	Sales, Inc.	, ("Contractor").

WITNESSETH:

WHEREAS, the City of Lubbock duly advertised for bids for Preventative Maintenance and Repairs: Heavy Duty Vehicles (Class 6 or Higher) and Equipment and bids were received and duly opened as required by law; and

WHEREAS, after careful consideration of the bid submitted by Contractor, the City authorized the execution, in the name of the City of Lubbock a contract with said Contractor covering the purchase and delivery of the said Preventative Maintenance and Repairs: Heavy Duty Vehicles (Class 6 or Higher) and Equipment.

NOW, THEREFORE, in consideration of the mutual agreement contained herein, as well as the financial consideration hereinafter referred to, the parties hereby covenant and agree as follows:

- 1. In accordance with City's specifications and Contractor's bid, copies of which are attached hereto and made part hereof, Contractor will deliver to the City, Preventative Maintenance and Repairs: Heavy Duty Vehicles (Class 6 or Higher) and Equipment, and more specifically referred to as Category 1, Line Items 1-1 through 1-6 on the bid submitted by the Contractor or in the specifications attached hereto.
- 2. The City promises and agrees to employ, and does employ, the Contractor to cause to be done the work provided for in this Contract and to complete and finish the same according to the attached specifications, offer, and terms and conditions contained herein.
- 3. The contract shall be for a term of one (1) year, with the option of two (2), one year extensions, said date of term beginning upon formal approval. This Contract will renew automatically for the additional terms, unless either Party gives 90-day written notice to terminate the Contract.
- 4. All stated annual quantities are approximations of usage during the time period to be covered by pricing established by this bid. Actual usage may be more or less. Order quantities will be determined by actual need. The City of Lubbock does not guarantee any specific amount of compensation, volume, minimum, or maximum amount of services under this bid and resulting contract.
- 5. The Contractor must maintain the insurance coverage required during the term of this contract including any extensions. It is the responsibility of the Contractor to ensure that valid insurance is on file with the Purchasing and Contract Management Department as required by contract or contract may be terminated for non-compliance.
- 6. A) Prices quoted shall be guaranteed for a period for six (6) months upon City approval. The rate may be adjusted at the City's discretion for the effective change in Consumer Price Index (CPI) or Product Price Index (PPI) as appropriate.

- B) Further, if the Contractor can provide documentation for actual charges for material, labor, etc. that demonstrates that the change in CPI or PPI is not sufficient, the Contractor shall provide such documentation to the City, and at the City's sole discretion, the contractual rate may be further adjusted. If agreement regarding a new rate cannot be reached, the City shall terminate at the end of the current contract period.
- C) If an adjustment to pricing is granted under this section, the Contractor must provide the Director of Purchasing and Contract Management written, quarterly documentation to justify the ongoing adjustment. If no such documentation is timely received, the rate will automatically revert to the initial, awarded rate.
- 7. This contract shall remain in effect until the first of the following occurs: (1) the expiration date, (2) performance of services ordered, or (3) termination of by either party with a 30 day written notice. The City of Lubbock reserves the right to award the canceled contract to the next lowest and best bidder as it deems to be in the best interest of the city.
- 8. Contractor shall at all times be an independent contractor and not an agent or representative of City with regard to performance of the Services. Contractor shall not represent that it is, or hold itself out as, an agent or representative of City. In no event shall Contractor be authorized to enter into any agreement or undertaking for or on behalf of City.
- 9. Insurance Requirements

SECTION A. Prior to the approval of this contract by the City, the Contractor shall furnish a completed Insurance Certificate to the City, which shall be completed by an agent authorized to bind the named underwriter(s) to the coverages, limits, and termination provisions shown thereon, and which shall furnish and contain all required information referenced or indicated thereon. THE CITY SHALL HAVE NO DUTY TO PAY OR PERFORM UNDER THIS CONTRACT UNTIL SUCH CERTIFICATE SHALL HAVE BEEN DELIVERED TO THE CITY.

SECTION B. The City reserves the right to review the insurance requirements of this section during the effective period of the contract and to require adjustment of insurance coverages and their limits when deemed necessary and prudent by the City based upon changes in statutory law, court decisions, or the claims history of the industry as well as the Contractor.

SECTION C. Subject to the Contractor's right to maintain reasonable deductibles in such amounts as are approved by the City, the Contractor shall obtain and maintain in full force and effect for the duration of this contract, and any extension hereof, at Contractor's sole expense, insurance coverage written by companies approved by the State of Texas and acceptable to the City, in the following type(s) and amount(s):

<u>Commercial General Liability Requirements</u>: \$1M occurrence / \$2M aggregate (can be combined with an Excess Liability to meet requirement). CGL is required in ALL contracts. It is perhaps the most important of all insurance policies in a contractual relationship. It insures the Contractor has broad liability coverage for contractual activities and for completed operations.

Commercial General Liability to include Products – Completion/OP, Personal and Advertising Injury, Contractual Liability, Fire Damage (any one fire), and Medical Expenses (any one person).

Automobile Liability Requirements: \$1M/occurrence is needed

Workers Compensation and Employer Liability Requirements: Statutory. If the vendor is an

independent contractor with no employees and are exempt from providing Workers' Compensation coverage, they must sign a waiver (obtained from COL Purchasing) and include a copy of their driver's license.. Employer Liability (\$1M) is required with Workers Compensation.

Garage Liability Requirements: No less than \$2,000,000 combined single limit.

Garagekeepers Legal Liability Requirements: No less than \$1,000,000 per location.

- * The City of Lubbock (including its officials, employees and volunteers) shall be afforded additional insured status on a primary and non-contributory basis on all liability policies except professional liabilities and workers' comp.
- * Waivers of Subrogation are required for CGL, AL, and WC.
- * To Include Products of Completed Operations endorsement.
- * Carrier will provide a 30-day written notice of cancellation, 10-day written notice for non-payment.
- * Carriers must meet an A.M. Best rating of A- or better.
- * Subcontractors must carry same limits as listed above.

IMPORTANT: POLICY ENDORSEMENTS

The Contractor will provide copies of the policies without expense, to the City and <u>all endorsements</u> 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.

REOUIRED PROVISIONS

The Contractor agrees that with respect to the above required insurance, all insurance contracts and certificate(s) of insurance will contain and state, in writing, on the certificate or its attachment, the following required provisions:

- a. Name the City of Lubbock and its officers, employees, and elected representatives as additional insureds, (as the interest of each insured may appear) as to all applicable coverage;
- b. Provide for 30 days notice to the City for cancellation, nonrenewal, or material change;
- c. Provide for notice to the City at the address shown below by registered mail;
- d. The Contractor agrees to waive subrogation against the City of Lubbock, its officers, employees, and elected representatives for injuries, including death, property damage, or any other loss to the extent same may be covered by the proceeds of insurance;
- e. Provide that all provisions of this contract concerning liability, duty, and standard of care together with the indemnification provision, shall be underwritten by contractual liability coverage sufficient to include such obligations within applicable policies.

NOTICES

The Contractor shall notify the City in the event of any change in coverage and shall give such notices not less than 30 days prior the change, which notice must be accompanied by a replacement CERTIFICATE OF INSURANCE.

All notices shall be given to the City at the following address:

Marta Alvarez, Director of Purchasing & Contract Management City of Lubbock 1314 Avenue K, 9th Floor Lubbock, Texas 79401

SECTION D. Approval, disapproval, or failure to act by the City regarding any insurance supplied by the Contractor shall not relieve the Contractor of full responsibility or liability for damages and accidents as set forth in the contract documents. Neither shall the bankruptcy, insolvency, or denial of liability by the insurance company exonerate the Contractor from liability.

- 10. Neither the City nor the Contractor shall assign, transfer or encumber any rights, duties or interests accruing from this Contract without the written consent of the other.
- 11. 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.
- 12. 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.
- 13. All funds for payment by the City under this contract are subject to the availability of an annual appropriation for this purpose by the City. In the event of non-appropriation of funds by the City Council of the City of Lubbock for the goods or services provided under the contract, the City will terminate the contract, without termination charge or other liability, on the last day of the then-current fiscal year or when the appropriation made for the then-current year for the goods or services covered by this contract is spent, whichever event occurs first. If at any time funds are not appropriated for the continuance of this contract, cancellation shall be accepted by the Seller on 30 days prior written notice, but failure to give such notice shall be of no effect and the City shall not be obligated under this contract beyond the date of termination.
- 14. The Contractor shall not assign or sublet the contract, or any portion of the contract, without written consent from the Director of Purchasing and Contract Management. Should consent be given, the Contractor shall insure the Subcontractor or shall provide proof on insurance from the Subcontractor that complies with all contract Insurance requirements.
- 15. 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.

- 16. The Contractor (i) does not engage in business with Iran, Sudan or any foreign terrorist organization and (ii) it is not listed by the Texas Comptroller under Section 2252.153, Texas Government Code, as a company known to have contracts with or provide supplies or services to a foreign terrorist organization. As used in the immediately preceding sentence, "foreign terrorist organization" shall have the meaning given such term in Section 2252.151, Texas Government Code.
- 17. 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 contact 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.

- 18. 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.
- 19. 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.

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.

- 20. 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.
- 21. 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.
- 22. This Contract consists of the following documents set forth herein; Invitation to Bid No. 23-17316-SB, Specifications, and the Bid Form.

----INTENTIONALLY LEFT BLANK-----

IN WITNESS WHEREOF, the parties hereto have caused this Contract to be executed the day and year first above written. Executed in triplicate.

CITY OF LUBBOCK	CONTRACTOR
	BY Was Marcill
Tray Payne, Mayor	Authorized Representative
ATTEST:	Print Name
	1801 E Slaton Rd
Courtney Paz, City Secretary	Address
APPROVED AS TO CONTENT:	Lubback, TX 79404 City, State, Zip Code
Dominur R. Sit	
Dominic Esperat, Director of Fleet Operations	
APPROVED AS TO FORM:	
Rachael Foster, Assistant City Attorney	

City of Lubbock, TX 1TB 23-17316-SB

Preventative Maintenance and Repairs Heavy Duty Vehicles (Class 6 or Higher) and Equipment

Scope of Work/ Specifications

I. Introduction, Purpose and Intent

The intent of this Invitation for Bid (hereinafter referred to as ITB) is to solicit qualified vendors to enter a contract with the City of Lubbock (hereinafter referred to as The City) to provide preventative maintenance and repairs to heavy duty vehicles and equipment. The City is seeking to contract with one or more Vendors, if it is in the best interest of the City.

II. Scope of Services

The awarded vendor shall furnish and supply all insurance, labor, personnel, service, supervision, administration, documentation, reports, management, equipment, tools and materials necessary to provided preventative maintenance and repairs services. All services shall be provided on an "as needed/ requested basis" to the City. The City does not guarantee any quantities and services to be purchased under this contract.

Vendor shall have been in the preventative maintenance and repairs business for a minimum of three (3) consecutive years and familiar with the specified requirements and methods needed for proper performance of this contract.

<u>Service Hours:</u> All services performed under this contract will be conducted during normal business hours (Monday through Friday, 7:00 a.m. - 4:30 p.m.), excluding City Holidays.

<u>References</u>: Vendor shall include with the bid a minimum of five (5) commercial customer references to substantiate the qualifications and experience requirements for services completed within the past 24 months.

III. General Requirements

In addition to the General Requirements, the Scope of Services shall include, but not be limited to the following the following:

Air Conditioning, Heating & Ventilation

System

Axles

Brakes, Hubs & Bearings

Steering

Suspension

Drive Shafts

Automatic Transmissions

Charging Systems

Cranking Systems

Ignition Systems

Lighting Systems, Electrical Accessories

Engines

Exhaust Systems

Fuel Systems Power Take-Off (PTO) Buckets /Booms Def Systems

Equipment & Truck Categories

The following is a current list of Descriptions of City of Lubbock vehicles and equipment by Category which are included in this maintenance and repair contract.

Category	Description
I) Trucks	Class 6-7-8-9
2) Off-Road Equipment	Tractors, Backhoes, Loaders, Excavators , Dozers, Graders, Scrapers, Cranes
3)Trailers	Utility, Pipe, Hay, Equipment, Crew, Cargo
4)Forklifts	Clark, Hyster, Cat, Daewoo, Case, Hilift, Princeton

Labor Guide

Vendor is required to provide the name of the current Labor Guide software and version used to provide repair costs with the Bid Form. The City of Lubbock reserves the right to audit the labor hours charged to each job and all overcharges will be brought to the attention of the vendor. The Vendor shall issue a credit for the overcharge amount within 5 business days and the credit shall reference the City of Lubbock's vehicle identification number and work order number. If the program is proprietary, Vendor shall grant access to the City of Lubbock's Fleet Services Department for audit purposes.

Work Authorization

Vehicle shop repairs will be estimated on a per job basis with a fixed labor rate per hour as stated on the Bid Form. Prior to the start of any vehicle repair, the Vendor must provide a written repair estimate by a trained service advisor or technician. Estimates must include parts at the quoted cost rate. All estimates shall be at no charge to the City. The Vendor must obtain a work order number and authorization to perform the work from the City of Lubbock authorized Fleet Services designee before making any repairs. The Vendor must also obtain City approval for the type of repairs and the cost of repairs before proceeding with the work.

Vendor must submit a copy of the Work Order along with the Vendor's invoice itemizing the labor hours, hourly labor rate, supplies, cost of supplies, parts list, and price for each part.

The Work Order must contain the VIN number, the current license plate number, and the current vehicle mileage or hours. If any of the information is missing or incorrect, the Vendor will not be reimbursed for any services, repairs, maintenance, parts, or supplies.

Approval Procedures

Approval for maintenance and repairs on all vehicles shall be as follows: Repairs up to \$1,000 shall be verbally approved by an authorized Fleet Services designee. Repairs from \$1,000 to \$2,500 must have written approval from an authorized Fleet Services designee.

Repairs over \$2,500 must have written approval from an authorized Fleet Services designee and Director of Fleet Services. If any repairs are completed without proper authorization, the Vendor will not be reimbursed for any services, repairs, maintenance, parts, or supplies.

Repair Time Notifications

The Vendor must make a determination of the repairs, costs and times and notify the City within 24-hours after receiving the vehicle or equipment.

Repeat Repairs

The Vendor will be responsible for correcting all previous repairs performed by the Vendor that were incorrectly repaired or the repair failed to correct the reported deficiency. The Vendor will be responsible for the total cost of the repair including any replacement parts.

In the event of a Repeat Repair, Vendor shall open a new work order. The new vendor work order must indicate on the work order "repeat" or "return" work. Copies of the original City and Vendor work orders and any applicable invoices shall be attached to the new work order.

Pick-Up and Delivery

The bidder's bid may include a separate price for pick-up and delivery of heavy vehicles or equipment. The bidder must indicate on the Bid Form the additional charge, if any, for this pick -up and delivery service. The City reserves the right to use this service as needed. Vehicles must be picked up by City personnel or delivered to a City location within 24-hours after the vehicle has been repaired.

City Fleet Services Garage: 206 Municipal Drive, Lubbock, TX 79403

Parts, Supplies and Services

The Vendor must use their own parts and/or supplies in completing all repairs. No City parts or supplies will be issued by the City Garage to the Vendor. The Vendor's invoice must include charges for all parts, supplies, and services used in making repairs. The Vendor must return all parts that were removed and replaced during the repair of the vehicle or equipment upon completion of the repair(s) and the parts must accompany the vehicle or equipment. The Vendor is responsible for all core returns and credits.

Bid submissions

Bids will be awarded by category of vehicles and equipment.

Invoices

Invoices will show only the cost rates indicated on the Bid Form. Any additional charges or fees not listed will be disallowed from any invoice. Vehicle shop repairs will be billed per the approved estimate. An individual Work Order shall be issued for vehicle shop repairs. No delivery or repair shall be performed without proper authorization. Invoices for parts purchased by the Vendor for all repairs to City vehicles and equipment will be made available for inspection by a City representative upon request. Invoices must display the Vendor name imprinted on the face, the parts purchased and the date of the purchase. Repair invoices should match the parts invoice when there were replacement parts required for the repair. If a request is submitted by the City to review a particular invoice, that request will be met within 24 hours from the time of the request.

Damages

The Vendor is responsible for any damage to the vehicle or equipment while in the Vendor's control. The City shall be responsible for damages after the vehicle or equipment has been delivered to a City representative and said representative has inspected the vehicle or equipment and has verified that no damage occurred during the repair process.

In the event that a vehicle is scheduled to be picked up from the City for repairs, the vehicles will be:

- 1. Picked up by tow vehicle/wrecker, or
- 2. Driven to the repair destination by a licensed and insured individual representing the Vendor.

Special Requirements:

- 1. Vendor to provide secure shelter (locked fence) for City vehicles.
- 2. Estimate must be submitted to Fleet Services within 24-hour period of request.
- 3. All furnished parts must be OEM, OEM equivalent, or OEM re-cycled parts.
- 4. All suspension or steering components must be OEM or OEM equivalent only.
- 5. All repairs shall be warranted for a period of 12 months or 12,000 miles.

City of Lubbock, TX Purchasing and Contract Management Vendor Acknowledgement Form

In compliance with the **Invitation to Bid**, the undersigned Bidder having examined the Invitation to Bid, instructions to bidders, General Conditions of the Agreement, Specifications, and being familiar with the conditions to be met, hereby submits the following bid for furnishing the material, equipment, labor and everything necessary for providing the items listed and agrees to deliver said items at the locations and for the prices set forth on the bid form and/or the bid table associated with this bid.

A bid will be subject to being considered irregular and may be rejected if it shows omissions, **alterations of form**, conditional alternate bids, additions or alternates in lieu of the items specified, if the unit prices are obviously unbalanced (either in excess of or below reasonably expected values), or irregularities of any kind. The Invitation to Bid is by reference incorporated in this contract.

Where applicable, prices are quoted as: **F.O.B. Destination, Freight Pre-Paid and Allowed** Where applicable, delivery days are: **Days After Receipt of Order (ARO)**

Unless otherwise specified herein, the City may award the bid either item-by-item or on an all-ornone basis for any item or group of items shown on the bid.

The City of Lubbock is seeking a contract for with one or more contractors. In order to assure adequate coverage, the City may make multiple awards, selecting multiple vendors to provide the products desired, if multiple awards are in the best interest of the City. A decision to make a multiple award of this Bid, however, is an option reserved by the City, based on the needs of the City.

PAYMENT TERMS AND DISCOUNTS - Bidder offers a prompt payment discount of <u>0.00</u> %, net <u>calendar days</u>. Discounts will not be considered in determining low bid. Unless otherwise indicated on the Bid Form, payment terms will be NET THIRTY DAYS. The City will pay the successful bidder within thirty days after the receipt of a correct invoice or after the date of acceptance, whichever event occurs later. Discounts for prompt payment requiring payment by the City within a stipulated number of days will be interpreted as applying within the stipulated number of calendar days after the date of receipt by the City of a correct invoice or after the date of acceptance that meets contract requirements, whichever event occurs later. Discounts for payment in less than ten days will not be considered.

MOST FAVORED PRICING: The Bidder certifies that the price quoted is not in excess of the lowest price charged anyone else, including its most favored customer, for like quality and quantity of the products/services; does not include an element of profit on the sale in excess of that normally obtained by the Bidder on the sale of products/services of like quality and quantity; and does not include any provision for discounts to selling agents. If at any time during the contract period, the supplier should sell or offer for sale to any other customer, an equal or less quantity of similar contract products of like or better quality, at a lower net price(s) than provided herein, supplier agrees to notify the City and sell same product(s) at the lower price(s) on all deliveries made during the period in which such lower price(s) is effective.

INTERLOCAL PURCHASING (optional): The City desires to make available to other local governmental entities of the State of Texas, by mutual agreement with the successful bidder, and properly authorized interlocal purchasing agreements as provided for by the Interlocal Cooperation Act (Chapter 791, Government Code), the right to purchase the same services, at the prices quoted, for the period of this contract. Each bidder shall indicate on the Bid Form in the space provided below if he/she will honor Political Subdivision orders in addition to orders from the City of Lubbock. Should these other governmental entities decide to participate in this contract, would you (the bidder) agree that all terms, conditions, specifications, and pricing would apply?

The City of Lubbock ITB 23-17316-SB

Preventative Maintenance and Repairs City Heavy Duty Vehicles (Class 6 or Higher) and Equipment

Bid Form

				Lubbock Truck	Salos Inc
			Total Cost	Lubbock Truck \$1,112.0	
			Location	Lubbock,	
		Qty	Location	Unit	Total
#	Items	(+/-)	UOM	Price	Cost
1	Category 1: Trucks over 19,500 lbs				
#1-1	Labor rate per hour (Billed in	1	Hourly Rate	\$170	\$170
	increments of full, half, and 1/4 hours)		,	,	,
#1-2	% Markup above/ below parts	0	Percentage	30%	30%
#1-3	Pickup and Delivery Round Trip Charge	1	Roundtrip Charge	\$300	\$300
#1-4	Roundtrip Tow Service Charge	1	Roundtrip Charge	\$300	\$300
#1-5	Service Call Fee	1	Service Call Fee	\$340	\$340
#1-6	Mileage Fee	1	Charge per Mile	\$2	\$2
2	Category 2: Off-Road Equipment (Tractors, Ba	ickhoes, Loaders, Excav	ators, Dozers, Grade	rs, Scrapers, ar
#2-1	— L abo r rat e-p er hour (Bil led -in — -		- Hourly Rate -	No Bi d	- No Bid
	increments of full, half, and 1/4 hours)				
	% Ma rku p-a bove /-b elow -pa rts- -				– —Ne Bid
	Picku p and Delivery Round Trip – C Charge		, -		– —Ne Bid
#2-4	Roundtrip-Tow-Service-Charge -	 1	· – Round tr ip C har ge - ·	No B id	– No Bid
	—Service Call Fee – — – — –				– —Ne Bid-
#2-6	M ilea ge F ee—— – —— – —			- — - No B id —	- — Ne Bid
3	Category 3: Trailers (Utility Pipe, H				
#3-1	Labor rate per hour (Billed in increments of full, half, and 1/4 hours)	— 1—	- – — Hourly Rate—— •	– —— – No B id——	– — Ne Bid
#3-2		-0-	· – Per c enta ge — ·	No Bid	– —Ne Bid
#3 -3 - -	Picku p an d Delivery Round Trip – Charge		- – Roun dtr ip C har ge –		- — Ne Bid
#3-4	Roundtrip Tow Service Charge -	— 1—	- Roundtrip Charge -	No B id	– —Ne Bid
#3-5			– Servi ce Cal l F ee	No Bid	– Ne Bid
#3-6			- Cha rge per Mi le	No Bid -	– —Ne Bid
	Category 4: Forklifts (Clark, Hyster				
#4-1	Labor rate per hour (Billed in –) increments of full, half, and 1/4 hours)		– Hourly Rate——	No-Bid	– —No Bid
#4-2		-0-	- Percentage	No Bid	– No Bid
#4-3	Picku p an d Delivery Round Trip – Charge	—-1—	- – Roun dtr ip C har ge -	— – No B id —	- — Ne Bid
#4-4	Roundtrip-Tow-Service-Charge	—-1—	- Roundtrip Charge -	—— – No B id——	– —Ne Bid
#4-5-	Service Call Fee	4	Service Call Fee-		– Ne Bid
#4-6	— Mi leage Fee — - — - — - —		– Cha r ge per Mi le –	— – No Bi d—	– Ne Bid

Other governmental entities that might have interests in this contract are Frenship Independent School District, Lubbock Housing Authority, Lubbock County, Lubbock County Hospital District, Lubbock Independent School District, South Plains Association of Governments, City of Texarkana, Texas Tech University, West Texas Municipal Power Agency, Lynn County, and City of Wolfforth.

YES	Χ	NO

- If you (the bidder) checked YES, the following will apply:
- Governmental entities utilizing Interlocal Agreements for Cooperative Purchasing with the City of Lubbock will be eligible, but not obligated, to purchase materials/services under the contract(s) awarded as a result of this solicitation. All purchases by governmental entities other than the City of Lubbock will be billed directly to that governmental entity and paid by that governmental entity. City of Lubbock will not be responsible for another governmental entity's debts. Each governmental entity will order their own materials/service as needed.

ADDENDA

Bidder acknowledges receipt of addenda issued in regard to this solicitation:

Addenda No.	Date
Addenda No.	Date
Addenda No.	Date
Addenda No.	Date

INSURANCE REQUIREMENTS

I, the undersigned Bidder certify that the insurance requirements contained in this bid document have been reviewed by me and my Insurance Agent/Broker. If I am awarded this contract by the City of Lubbock, I will be able to, within ten (10) business days after being notified of such award by the City of Lubbock, furnish a valid insurance certificate to the City meeting all of the requirements defined in this bid.

If the time requirement specified above is not met, the City has the right to reject this proposal and award the contract to another contractor. If you have any questions concerning these requirements, please contact the Director of Purchasing & Contract Management for the City of Lubbock at (806) 775-2572.

SUSPENSION AND DEBARMENT CERTIFICATION

Federal Law (A-102 Common Rule and OMB Circular A-110) prohibits non-Federal entities from contracting with or making sub-awards under covered transactions to parties that are suspended or debarred or whose principals are suspended or debarred. Covered transactions include procurement contracts for goods or services equal to or in excess of \$25,000 and all non-procurement transactions (e.g., sub-awards to sub-recipients).

Contractors receiving individual awards of \$25,000 or more and all sub-recipients must certify that their organization and its principals are not suspended or debarred by a Federal agency.

Before an award of \$25,000 or more can be made to your firm, you must certify that your organization and its principals are not suspended or debarred by a Federal agency.

I, the undersigned agent for the firm named below, certify that neither this firm nor its principals are suspended or debarred by a Federal agency.

TEXAS GOVERNMENT CODE SECTION 2252.152

The undersigned representative of the undersigned company or business, being an adult over the age of eighteen (18) years of age, pursuant to Texas Government Code, Chapter 2252, Section 2252.152, certify that the company named above is not listed on the website of the Comptroller of the State of Texas concerning the listing of companies that are identified under Section 806.051, Section 807.051 or Section 2253.153. I further certify that should the above-named company enter into a contract that is on said listing of companies on the website of the Comptroller of the State of Texas, which do business with Iran, Sudan or any Foreign Terrorist Organization, I will immediately notify the City of Lubbock Purchasing and Contract Department.

TEXAS GOVERNMENT CODE SECTION 2271.002

Company hereby certifies the following:

- 1. Company does not boycott Israel; and
- 2. Company will not boycott Israel during the term of the contract.

The following definitions apply to this state statute:

- (1) "Boycott Israel" means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes; and
- (2) "Company" means an organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations that exists to make a profit.

This Certification is required from a Company if the Company has 10 or more full-time employees and the contract for goods or services (which includes contracts formed through purchase orders) has a value of \$100,000 or more that is to be paid wholly or partly from public funds of the governmental entity.

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.

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.

FEDERAL AND STATE SAFETY REGULATIONS

Contractor shall comply with all federal and state safety regulation including but not limited to Occupational, Safety and Health Administration (OSHA) and the Department of Workforce Development (DWD) regulations. This agreement includes incorporation of Federal Transit Administration (FTA) Terms. The preceding provisions include, in part, certain Standard Terms and Conditions required by the Department of Transportation (DOT), whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any requests which would cause Bus to be in violation of the FTA terms and conditions.

All Environmental Protection Agency (EPA) rules and regulations must be followed by the Contractor.

MASTER AGREEMENT

For Federal Transit Administration Agreements authorized by 49 U.S.C. chapter 53, Title 23, United States Code (Highways), the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, as amended by the SAFETEA-LU Technical Corrections Act of 2008, the Transportation Equity Act for the 21st Century, as amended, the National Capital Transportation Act of 1969, as amended, the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, February 17, 2009, or other Federal laws that FTA administers.

https://www.transit.dot.gov/funding/grantee-resources/sample-fta-agreements/fta-grant-agreements

The Master Agreement can be found in its entirety on the City of Lubbock website www.ci.lubbock.tx.us

INCOMPLETE INFORMATION

Failure to complete or provide any of the information requested in this Request for Proposal, including references, and/or additional information as information as indicated, may results in disqualification by reason of "non-responsiveness".

CONTRACTOR ACKNOWLEDGEMENT

In compliance with this solicitation, the undersigned bidder, having examined the bid documents, instructions to bidders, documents associated with the invitation to bid, and being familiar with the conditions to be met has reviewed the above information regarding:

- Insurance Requirements
- Suspension and Debarment Certification
- Texas Government Code Section 2252.152
- Texas Government Code Section 2271.002
- Texas Government Code 2274
- Federal and State Regulations
- Master Agreement

SUBMISSION INFORMATION

An individual authorized to bind the company must sign the following section. Failure to execute this portion may result in bid rejection.

THIS BID IS SUBMITTED BY		Lubbock Truck Sales, Inc		a
corporation or	ganized under the laws	of the State of Texas	, or a partnership consistin	g of
		or individual trading as		_of
the City of	Lubbock			
Tax ID No.: _	75-2352899			
Address:	1801 E Slaton Rd			_
City:	Lubbock	State: TX	_Zip:79404	
M/WBE Firm:	Woman	Black American	Native American	
	Hispanic American	Asian Pacific American	Other (Specify)	
Ву			· .	
Authoriz	ed Representative - mus	t sign by hand		
Officer Name	and Title:	Paul McGill / Service Direct	or	
Business Telephone Number 8		806-416-8033 FAX:	806-748-1223	
E-mail Addres	ss: paul@lubb	ocktrucksales.com		

RESOLUTION

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

THAT the Mayor of the City of Lubbock is hereby authorized and directed to execute for and on behalf of the City of Lubbock, Contract No. 17413 for Preventative Maintenance and Repairs for Heavy Duty Vehicles (Class 6 or higher) and Equipment as per ITB 23-17316-SB, by and between the City of Lubbock and McWhorter's Ltd., 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.

assed by the City Council on					
	TRAY PAYNE, MAYOR				
ATTEST:					
Courtney Paz, City Secretary					
APPROVED AS TO CONTENT:					
Psycolo Witcher, Assistant City Manager					
Brooke whener, Assistant City Manager					
APPROVED AS TO FORM:					
Rachael Foster, Assistant City Attorney					

ccdocs/RES.ServiceContract 17413- McWhorter's Ltd. 6.13.23

City of Lubbock Contract for ITB 23-17316-SB Preventative Maintenance and Repairs: Heavy Duty Vehicles (Class 6 or Higher) and Equipment

THIS CONTRACT made and entered into this _	day of	, 2023, by and between the
City of Lubbock ("City"), and McWhorter's Ltd	, ("Contractor").	

WITNESSETH:

WHEREAS, the City of Lubbock duly advertised for bids for Preventative Maintenance and Repairs: Heavy Duty Vehicles (Class 6 or Higher) and Equipment and bids were received and duly opened as required by law; and

WHEREAS, after careful consideration of the bid submitted by Contractor, the City authorized the execution, in the name of the City of Lubbock a contract with said Contractor covering the purchase and delivery of the said Preventative Maintenance and Repairs: Heavy Duty Vehicles (Class 6 or Higher) and Equipment.

NOW, THEREFORE, in consideration of the mutual agreement contained herein, as well as the financial consideration hereinafter referred to, the parties hereby covenant and agree as follows:

- 1. In accordance with City's specifications and Contractor's bid, copies of which are attached hereto and made part hereof, Contractor will deliver to the City, Preventative Maintenance and Repairs: Heavy Duty Vehicles (Class 6 or Higher) and Equipment, and more specifically referred to as Category 1, Line Items 1-1 through 1-2 and Category 3, Line Items 3-1 through 3-2 on the bid submitted by the Contractor or in the specifications attached hereto.
- 2. The City promises and agrees to employ, and does employ, the Contractor to cause to be done the work provided for in this Contract and to complete and finish the same according to the attached specifications, offer, and terms and conditions contained herein.
- 3. The contract shall be for a term of one (1) year, with the option of two (2), one year extensions, said date of term beginning upon formal approval. This Contract will renew automatically for the additional terms, unless either Party gives 90-day written notice to terminate the Contract.
- 4. All stated annual quantities are approximations of usage during the time period to be covered by pricing established by this bid. Actual usage may be more or less. Order quantities will be determined by actual need. The City of Lubbock does not guarantee any specific amount of compensation, volume, minimum, or maximum amount of services under this bid and resulting contract.
- 5. The Contractor must maintain the insurance coverage required during the term of this contract including any extensions. It is the responsibility of the Contractor to ensure that valid insurance is on file with the Purchasing and Contract Management Department as required by contract or contract may be terminated for non-compliance.
- 6. A) Prices quoted shall be guaranteed for a period for six (6) months upon City approval. The rate may be adjusted at the City's discretion for the effective change in Consumer Price Index (CPI) or Product Price Index (PPI) as appropriate.

- B) Further, if the Contractor can provide documentation for actual charges for material, labor, etc. that demonstrates that the change in CPI or PPI is not sufficient, the Contractor shall provide such documentation to the City, and at the City's sole discretion, the contractual rate may be further adjusted. If agreement regarding a new rate cannot be reached, the City shall terminate at the end of the current contract period.
- C) If an adjustment to pricing is granted under this section, the Contractor must provide the Director of Purchasing and Contract Management written, quarterly documentation to justify the ongoing adjustment. If no such documentation is timely received, the rate will automatically revert to the initial, awarded rate.
- 7. This contract shall remain in effect until the first of the following occurs: (1) the expiration date, (2) performance of services ordered, or (3) termination of by either party with a 30 day written notice. The City of Lubbock reserves the right to award the canceled contract to the next lowest and best bidder as it deems to be in the best interest of the city.
- 8. Contractor shall at all times be an independent contractor and not an agent or representative of City with regard to performance of the Services. Contractor shall not represent that it is, or hold itself out as, an agent or representative of City. In no event shall Contractor be authorized to enter into any agreement or undertaking for or on behalf of City.
- 9. Insurance Requirements

SECTION A. Prior to the approval of this contract by the City, the Contractor shall furnish a completed Insurance Certificate to the City, which shall be completed by an agent authorized to bind the named underwriter(s) to the coverages, limits, and termination provisions shown thereon, and which shall furnish and contain all required information referenced or indicated thereon. THE CITY SHALL HAVE NO DUTY TO PAY OR PERFORM UNDER THIS CONTRACT UNTIL SUCH CERTIFICATE SHALL HAVE BEEN DELIVERED TO THE CITY.

SECTION B. The City reserves the right to review the insurance requirements of this section during the effective period of the contract and to require adjustment of insurance coverages and their limits when deemed necessary and prudent by the City based upon changes in statutory law, court decisions, or the claims history of the industry as well as the Contractor.

SECTION C. Subject to the Contractor's right to maintain reasonable deductibles in such amounts as are approved by the City, the Contractor shall obtain and maintain in full force and effect for the duration of this contract, and any extension hereof, at Contractor's sole expense, insurance coverage written by companies approved by the State of Texas and acceptable to the City, in the following type(s) and amount(s):

<u>Commercial General Liability Requirements</u>: \$1M occurrence / \$2M aggregate (can be combined with an Excess Liability to meet requirement). CGL is required in ALL contracts. It is perhaps the most important of all insurance policies in a contractual relationship. It insures the Contractor has broad liability coverage for contractual activities and for completed operations.

Commercial General Liability to include Products – Completion/OP, Personal and Advertising Injury, Contractual Liability, Fire Damage (any one fire), and Medical Expenses (any one person).

Automobile Liability Requirements: \$1M/occurrence is needed

Workers Compensation and Employer Liability Requirements: Statutory. If the vendor is an

independent contractor with no employees and are exempt from providing Workers' Compensation coverage, they must sign a waiver (obtained from COL Purchasing) and include a copy of their driver's license.. Employer Liability (\$1M) is required with Workers Compensation.

Garage Liability Requirements: No less than \$2,000,000 combined single limit.

Garagekeepers Legal Liability Requirements: No less than \$1,000,000 per location.

- * The City of Lubbock (including its officials, employees and volunteers) shall be afforded additional insured status on a primary and non-contributory basis on all liability policies except professional liabilities and workers' comp.
- * Waivers of Subrogation are required for CGL, AL, and WC.
- * To Include Products of Completed Operations endorsement.
- * Carrier will provide a 30-day written notice of cancellation, 10-day written notice for non-payment.
- * Carriers must meet an A.M. Best rating of A- or better.
- * Subcontractors must carry same limits as listed above.

IMPORTANT: POLICY ENDORSEMENTS

The Contractor will provide copies of the policies without expense, to the City and <u>all endorsements</u> 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.

REOUIRED PROVISIONS

The Contractor agrees that with respect to the above required insurance, all insurance contracts and certificate(s) of insurance will contain and state, in writing, on the certificate or its attachment, the following required provisions:

- a. Name the City of Lubbock and its officers, employees, and elected representatives as additional insureds, (as the interest of each insured may appear) as to all applicable coverage;
- b. Provide for 30 days notice to the City for cancellation, nonrenewal, or material change;
- c. Provide for notice to the City at the address shown below by registered mail;
- d. The Contractor agrees to waive subrogation against the City of Lubbock, its officers, employees, and elected representatives for injuries, including death, property damage, or any other loss to the extent same may be covered by the proceeds of insurance;
- e. Provide that all provisions of this contract concerning liability, duty, and standard of care together with the indemnification provision, shall be underwritten by contractual liability coverage sufficient to include such obligations within applicable policies.

NOTICES

The Contractor shall notify the City in the event of any change in coverage and shall give such notices not less than 30 days prior the change, which notice must be accompanied by a replacement CERTIFICATE OF INSURANCE.

All notices shall be given to the City at the following address:

Marta Alvarez, Director of Purchasing & Contract Management City of Lubbock 1314 Avenue K, 9th Floor Lubbock, Texas 79401

SECTION D. Approval, disapproval, or failure to act by the City regarding any insurance supplied by the Contractor shall not relieve the Contractor of full responsibility or liability for damages and accidents as set forth in the contract documents. Neither shall the bankruptcy, insolvency, or denial of liability by the insurance company exonerate the Contractor from liability.

- 10. Neither the City nor the Contractor shall assign, transfer or encumber any rights, duties or interests accruing from this Contract without the written consent of the other.
- 11. 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.
- 12. 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.
- 13. All funds for payment by the City under this contract are subject to the availability of an annual appropriation for this purpose by the City. In the event of non-appropriation of funds by the City Council of the City of Lubbock for the goods or services provided under the contract, the City will terminate the contract, without termination charge or other liability, on the last day of the then-current fiscal year or when the appropriation made for the then-current year for the goods or services covered by this contract is spent, whichever event occurs first. If at any time funds are not appropriated for the continuance of this contract, cancellation shall be accepted by the Seller on 30 days prior written notice, but failure to give such notice shall be of no effect and the City shall not be obligated under this contract beyond the date of termination.
- 14. The Contractor shall not assign or sublet the contract, or any portion of the contract, without written consent from the Director of Purchasing and Contract Management. Should consent be given, the Contractor shall insure the Subcontractor or shall provide proof on insurance from the Subcontractor that complies with all contract Insurance requirements.
- 15. 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.

- 16. The Contractor (i) does not engage in business with Iran, Sudan or any foreign terrorist organization and (ii) it is not listed by the Texas Comptroller under Section 2252.153, Texas Government Code, as a company known to have contracts with or provide supplies or services to a foreign terrorist organization. As used in the immediately preceding sentence, "foreign terrorist organization" shall have the meaning given such term in Section 2252.151, Texas Government Code.
- 17. 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 contact 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.

- 18. 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.
- 19. 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.

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.

- 20. 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.
- 21. 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.
- 22. This Contract consists of the following documents set forth herein; Invitation to Bid No. 23-17316-SB, Specifications, and the Bid Form.

----INTENTIONALLY LEFT BLANK-----

IN WITNESS WHEREOF, the parties hereto have caused this Contract to be executed the day and year first above written. Executed in triplicate.

CITY OF LUBBOCK	CONTRACTOR
Tray Payne, Mayor	Authorized Representative
ATTEST:	Print Name
	213 N. ANEU
Courtney Paz, City Secretary	Address
APPROVED AS TO CONTENT: Dominic Esperat, Director of Fleet Operations	Logget Tr 79415 City, State, Zip Code
APPROVED AS TO FORM: Rachael Foster, Assistant City Attorney	

City of Lubbock, TX 1TB 23-17316-SB

Preventative Maintenance and Repairs Heavy Duty Vehicles (Class 6 or Higher) and Equipment

Scope of Work/ Specifications

I. Introduction, Purpose and Intent

The intent of this Invitation for Bid (hereinafter referred to as ITB) is to solicit qualified vendors to enter a contract with the City of Lubbock (hereinafter referred to as The City) to provide preventative maintenance and repairs to heavy duty vehicles and equipment. The City is seeking to contract with one or more Vendors, if it is in the best interest of the City.

II. Scope of Services

The awarded vendor shall furnish and supply all insurance, labor, personnel, service, supervision, administration, documentation, reports, management, equipment, tools and materials necessary to provided preventative maintenance and repairs services. All services shall be provided on an "as needed/ requested basis" to the City. The City does not guarantee any quantities and services to be purchased under this contract.

Vendor shall have been in the preventative maintenance and repairs business for a minimum of three (3) consecutive years and familiar with the specified requirements and methods needed for proper performance of this contract.

<u>Service Hours:</u> All services performed under this contract will be conducted during normal business hours (Monday through Friday, 7:00 a.m. - 4:30 p.m.), excluding City Holidays.

<u>References</u>: Vendor shall include with the bid a minimum of five (5) commercial customer references to substantiate the qualifications and experience requirements for services completed within the past 24 months.

III. General Requirements

In addition to the General Requirements, the Scope of Services shall include, but not be limited to the following the following:

Air Conditioning, Heating & Ventilation

System

Axles

Brakes, Hubs & Bearings

Steering

Suspension

Drive Shafts

Automatic Transmissions

Charging Systems

Cranking Systems

Ignition Systems

Lighting Systems, Electrical Accessories

Engines

Exhaust Systems

Fuel Systems Power Take-Off (PTO) Buckets /Booms Def Systems

Equipment & Truck Categories

The following is a current list of Descriptions of City of Lubbock vehicles and equipment by Category which are included in this maintenance and repair contract.

Category	Description	
I) Trucks	Class 6-7-8-9	
2) Off-Road Equipment	Tractors, Backhoes, Loaders, Excavators , Dozers, Graders, Scrapers, Cranes	
3)Trailers	3)Trailers Utility, Pipe, Hay, Equipment, Crew, Cargo	
4)Forklifts	4)Forklifts Clark, Hyster, Cat, Daewoo, Case, Hilift, Princeton	

Labor Guide

Vendor is required to provide the name of the current Labor Guide software and version used to provide repair costs with the Bid Form. The City of Lubbock reserves the right to audit the labor hours charged to each job and all overcharges will be brought to the attention of the vendor. The Vendor shall issue a credit for the overcharge amount within 5 business days and the credit shall reference the City of Lubbock's vehicle identification number and work order number. If the program is proprietary, Vendor shall grant access to the City of Lubbock's Fleet Services Department for audit purposes.

Work Authorization

Vehicle shop repairs will be estimated on a per job basis with a fixed labor rate per hour as stated on the Bid Form. Prior to the start of any vehicle repair, the Vendor must provide a written repair estimate by a trained service advisor or technician. Estimates must include parts at the quoted cost rate. All estimates shall be at no charge to the City. The Vendor must obtain a work order number and authorization to perform the work from the City of Lubbock authorized Fleet Services designee before making any repairs. The Vendor must also obtain City approval for the type of repairs and the cost of repairs before proceeding with the work.

Vendor must submit a copy of the Work Order along with the Vendor's invoice itemizing the labor hours, hourly labor rate, supplies, cost of supplies, parts list, and price for each part.

The Work Order must contain the VIN number, the current license plate number, and the current vehicle mileage or hours. If any of the information is missing or incorrect, the Vendor will not be reimbursed for any services, repairs, maintenance, parts, or supplies.

Approval Procedures

Approval for maintenance and repairs on all vehicles shall be as follows: Repairs up to \$1,000 shall be verbally approved by an authorized Fleet Services designee. Repairs from \$1,000 to \$2,500 must have written approval from an authorized Fleet Services designee.

Repairs over \$2,500 must have written approval from an authorized Fleet Services designee and Director of Fleet Services. If any repairs are completed without proper authorization, the Vendor will not be reimbursed for any services, repairs, maintenance, parts, or supplies.

Repair Time Notifications

The Vendor must make a determination of the repairs, costs and times and notify the City within 24-hours after receiving the vehicle or equipment.

Repeat Repairs

The Vendor will be responsible for correcting all previous repairs performed by the Vendor that were incorrectly repaired or the repair failed to correct the reported deficiency. The Vendor will be responsible for the total cost of the repair including any replacement parts.

In the event of a Repeat Repair, Vendor shall open a new work order. The new vendor work order must indicate on the work order "repeat" or "return" work. Copies of the original City and Vendor work orders and any applicable invoices shall be attached to the new work order.

Pick-Up and Delivery

The bidder's bid may include a separate price for pick-up and delivery of heavy vehicles or equipment. The bidder must indicate on the Bid Form the additional charge, if any, for this pick -up and delivery service. The City reserves the right to use this service as needed. Vehicles must be picked up by City personnel or delivered to a City location within 24-hours after the vehicle has been repaired.

City Fleet Services Garage: 206 Municipal Drive, Lubbock, TX 79403

Parts, Supplies and Services

The Vendor must use their own parts and/or supplies in completing all repairs. No City parts or supplies will be issued by the City Garage to the Vendor. The Vendor's invoice must include charges for all parts, supplies, and services used in making repairs. The Vendor must return all parts that were removed and replaced during the repair of the vehicle or equipment upon completion of the repair(s) and the parts must accompany the vehicle or equipment. The Vendor is responsible for all core returns and credits.

Bid submissions

Bids will be awarded by category of vehicles and equipment.

Invoices

Invoices will show only the cost rates indicated on the Bid Form. Any additional charges or fees not listed will be disallowed from any invoice. Vehicle shop repairs will be billed per the approved estimate. An individual Work Order shall be issued for vehicle shop repairs. No delivery or repair shall be performed without proper authorization. Invoices for parts purchased by the Vendor for all repairs to City vehicles and equipment will be made available for inspection by a City representative upon request. Invoices must display the Vendor name imprinted on the face, the parts purchased and the date of the purchase. Repair invoices should match the parts invoice when there were replacement parts required for the repair. If a request is submitted by the City to review a particular invoice, that request will be met within 24 hours from the time of the request.

Damages

The Vendor is responsible for any damage to the vehicle or equipment while in the Vendor's control. The City shall be responsible for damages after the vehicle or equipment has been delivered to a City representative and said representative has inspected the vehicle or equipment and has verified that no damage occurred during the repair process.

In the event that a vehicle is scheduled to be picked up from the City for repairs, the vehicles will be:

- 1. Picked up by tow vehicle/wrecker, or
- 2. Driven to the repair destination by a licensed and insured individual representing the Vendor.

Special Requirements:

- 1. Vendor to provide secure shelter (locked fence) for City vehicles.
- 2. Estimate must be submitted to Fleet Services within 24-hour period of request.
- 3. All furnished parts must be OEM, OEM equivalent, or OEM re-cycled parts.
- 4. All suspension or steering components must be OEM or OEM equivalent only.
- 5. All repairs shall be warranted for a period of 12 months or 12,000 miles.

City of Lubbock, TX Purchasing and Contract Management Vendor Acknowledgement Form

In compliance with the **Invitation to Bid**, the undersigned Bidder having examined the Invitation to Bid, instructions to bidders, General Conditions of the Agreement, Specifications, and being familiar with the conditions to be met, hereby submits the following bid for furnishing the material, equipment, labor and everything necessary for providing the items listed and agrees to deliver said items at the locations and for the prices set forth on the bid form and/or the bid table associated with this bid.

A bid will be subject to being considered irregular and may be rejected if it shows omissions, alterations of form, conditional alternate bids, additions or alternates in lieu of the items specified, if the unit prices are obviously unbalanced (either in excess of or below reasonably expected values), or irregularities of any kind. The Invitation to Bid is by reference incorporated in this contract.

Where applicable, prices are quoted as: F.O.B. Destination, Freight Pre-Paid and Allowed Where applicable, delivery days are: Days After Receipt of Order (ARO)

Unless otherwise specified herein, the City may award the bid either item-by-item or on an all-ornone basis for any item or group of items shown on the bid.

The City of Lubbock is seeking a contract for with one or more contractors. In order to assure adequate coverage, the City may make multiple awards, selecting multiple vendors to provide the products desired, if multiple awards are in the best interest of the City. A decision to make a multiple award of this Bid, however, is an option reserved by the City, based on the needs of the City.

MOST FAVORED PRICING: The Bidder certifies that the price quoted is not in excess of the lowest price charged anyone else, including its most favored customer, for like quality and quantity of the products/services; does not include an element of profit on the sale in excess of that normally obtained by the Bidder on the sale of products/services of like quality and quantity; and does not include any provision for discounts to selling agents. If at any time during the contract period, the supplier should sell or offer for sale to any other customer, an equal or less quantity of similar contract products of like or better quality, at a lower net price(s) than provided herein, supplier agrees to notify the City and sell same product(s) at the lower price(s) on all deliveries made during the period in which such lower price(s) is effective.

INTERLOCAL PURCHASING (optional): The City desires to make available to other local governmental entities of the State of Texas, by mutual agreement with the successful bidder, and properly authorized interlocal purchasing agreements as provided for by the Interlocal Cooperation Act (Chapter 791, Government Code), the right to purchase the same services, at the prices quoted, for the period of this contract. Each bidder shall indicate on the Bid Form in the space provided below if he/she will honor Political Subdivision orders in addition to orders from the City of Lubbock. Should these other governmental entities decide to participate in this contract, would you (the bidder) agree that all terms, conditions, specifications, and pricing would apply?

The City of Lubbock ITB 23-17316-SB

Preventative Maintenance and Repairs City Heavy Duty Vehicles (Class 6 of Higher) and Equipment

Bid Form

			Total Cost Location	Nebraska T McWhorter's To \$280.0 Lubbock	ruck Center
		Qty		Unit	Total
#	Items Catagory 1, Trucks aver 10 500 lbs	(+/-)	UOM	Price	Cost
#1-1	Category 1: Trucks over 19,500 lbs Labor rate per hour (Billed in increments of full, half, and 1/4 hours)	1	Hourly Rate	\$140.00	\$140.00
#1-2	% Markup above/ below parts	0	Percentage	30%	30%
#1-3	Pi cku p and Deliv er y Round Trip – - Charge	 -1	- – Rou ndt rip C har ge – -	No B id	– – N o B id
#1 -4	Roundtrip-Tow Service Charge	 1	- – Round tr ip C har ge -	- — – No B id —	— — No-B id
	Service Call Fee				
2	Category 2: Off-Road Equipment (<u> </u>		
	Labor rate per hour (Billed in — — increments of full, half, and 1/4 hours)				
#2 -2		-0-	- - Per c enta ge	- - No B id -	– – No B id
#2 -3 -	- Pi cku p an d D elivery Rou nd Trip – · Charge	— 1—	- – Roun dtr ip C har ge –	- — - No B id —	— – N o-B id
	- R oun dtri p-T ow-S erv ice- Cha rge- – -		, -		– – N o-B id
#2-5	Service Call Fee-	1	- Ser vice Cal l Fee		— — No-Bid-
	– Milea ge F ee – – – – – – –			- — - No B id —	– – No Bid
3	Category 3: Trailers (Utility Pipe, H			4110.00	4440.00
#3-1	Labor rate per hour (Billed in increments of full, half, and 1/4 hours)	1	Hourly Rate	\$140.00	\$140.00
#3-2	% Markup above/ below parts	0	Percentage	30%	30%
#3-3	Pi cku p a nd Delivery Round Trip – - Charge	— -1	– Rou ndt rip C ha rge –	—— – No B i d —	– – No B id
#3-4	- R oun dtri p-T ow S erv ice Charge -	— 1—	- – Rou ndtr ip C har ge -	—— – No B id —	– – No Bid
#3-5	- Service Call F ee	—-1—	Ser vic e Cal l Fee -	—— – No B id —	– – No Bid
	- M ilea ge F ee		<u> </u>		– – N o-B id
4 #4 -1 – -	Category 4: Forklifts (Clark, Hyster Labor rate-per hour (Billed in increments of full, half, and 1/4				— – N o Bid
#4-2	hours) 		- – Per c enta ge	No B id	– – No Bid
#4 -3 -	Picku p an d D elivery Rou nd Trip – - Charge	 1	- – Roun dtr ip C har ge –	—— – No B id —	— – — N o-B id
#4-4	Roundtrip Tow Service Charge		- – Roun dtr ip C har ge –		— – —No-B id
#4-5	Service Call Fee	4	- – Ser vice Call Fee	– No B id —	— – —No-Bid-
#4 -6		<u> </u>	– – Cha rge per Mile		— – —No-Bid-

Other governmental entities that might have interests in this contract are Frenship Independent School District, Lubbock Housing Authority, Lubbock County, Lubbock County Hospital District, Lubbock Independent School District, South Plains Association of Governments, City of Texarkana, Texas Tech University, West Texas Municipal Power Agency, Lynn County, and City of Wolfforth.



- If you (the bidder) checked YES, the following will apply:
- Governmental entities utilizing Interlocal Agreements for Cooperative Purchasing with the City of Lubbock will be eligible, but not obligated, to purchase materials/services under the contract(s) awarded as a result of this solicitation. All purchases by governmental entities other than the City of Lubbock will be billed directly to that governmental entity and paid by that governmental entity. City of Lubbock will not be responsible for another governmental entity's debts. Each governmental entity will order their own materials/service as needed.

ADDENDA

Bidder acknowledges receipt of addenda issued in regard to this solicitation:

Addenda No.	Date
Addenda No.	Date
Addenda No.	Date
Addenda No.	Date

INSURANCE REQUIREMENTS

I, the undersigned Bidder certify that the insurance requirements contained in this bid document have been reviewed by me and my Insurance Agent/Broker. If I am awarded this contract by the City of Lubbock, I will be able to, within ten (10) business days after being notified of such award by the City of Lubbock, furnish a valid insurance certificate to the City meeting all of the requirements defined in this bid.

If the time requirement specified above is not met, the City has the right to reject this proposal and award the contract to another contractor. If you have any questions concerning these requirements, please contact the Director of Purchasing & Contract Management for the City of Lubbock at (806) 775-2572.

SUSPENSION AND DEBARMENT CERTIFICATION

Federal Law (A-102 Common Rule and OMB Circular A-110) prohibits non-Federal entities from contracting with or making sub-awards under covered transactions to parties that are suspended or debarred or whose principals are suspended or debarred. Covered transactions include procurement contracts for goods or services equal to or in excess of \$25,000 and all non-procurement transactions (e.g., sub-awards to sub-recipients).

Contractors receiving individual awards of \$25,000 or more and all sub-recipients must certify that their organization and its principals are not suspended or debarred by a Federal agency.

Before an award of \$25,000 or more can be made to your firm, you must certify that your organization and its principals are not suspended or debarred by a Federal agency.

I, the undersigned agent for the firm named below, certify that neither this firm nor its principals are suspended or debarred by a Federal agency.

TEXAS GOVERNMENT CODE SECTION 2252.152

The undersigned representative of the undersigned company or business, being an adult over the age of eighteen (18) years of age, pursuant to Texas Government Code, Chapter 2252, Section 2252.152, certify that the company named above is not listed on the website of the Comptroller of the State of Texas concerning the listing of companies that are identified under Section 806.051, Section 807.051 or Section 2253.153. I further certify that should the above-named company enter into a contract that is on said listing of companies on the website of the Comptroller of the State of Texas, which do business with Iran, Sudan or any Foreign Terrorist Organization, I will immediately notify the City of Lubbock Purchasing and Contract Department.

TEXAS GOVERNMENT CODE SECTION 2271.002

Company hereby certifies the following:

- 1. Company does not boycott Israel; and
- 2. Company will not boycott Israel during the term of the contract.

The following definitions apply to this state statute:

- (1) "Boycott Israel" means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes; and
- (2) "Company" means an organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations that exists to make a profit.

This Certification is required from a Company if the Company has 10 or more full-time employees and the contract for goods or services (which includes contracts formed through purchase orders) has a value of \$100,000 or more that is to be paid wholly or partly from public funds of the governmental entity.

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.

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.

FEDERAL AND STATE SAFETY REGULATIONS

Contractor shall comply with all federal and state safety regulation including but not limited to Occupational, Safety and Health Administration (OSHA) and the Department of Workforce Development (DWD) regulations. This agreement includes incorporation of Federal Transit Administration (FTA) Terms. The preceding provisions include, in part, certain Standard Terms and Conditions required by the Department of Transportation (DOT), whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any requests which would cause Bus to be in violation of the FTA terms and conditions.

All Environmental Protection Agency (EPA) rules and regulations must be followed by the Contractor.

MASTER AGREEMENT

For Federal Transit Administration Agreements authorized by 49 U.S.C. chapter 53, Title 23, United States Code (Highways), the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, as amended by the SAFETEA-LU Technical Corrections Act of 2008, the Transportation Equity Act for the 21st Century, as amended, the National Capital Transportation Act of 1969, as amended, the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, February 17, 2009, or other Federal laws that FTA administers.

https://www.transit.dot.gov/funding/grantee-resources/sample-fta-agreements/fta-grant-agreements

The Master Agreement can be found in its entirety on the City of Lubbock website www.ci.lubbock.tx.us

INCOMPLETE INFORMATION

Failure to complete or provide any of the information requested in this Request for Proposal, including references, and/or additional information as information as indicated, may results in disqualification by reason of "non-responsiveness".

CONTRACTOR ACKNOWLEDGEMENT

In compliance with this solicitation, the undersigned bidder, having examined the bid documents, instructions to bidders, documents associated with the invitation to bid, and being familiar with the conditions to be met has reviewed the above information regarding:

- Insurance Requirements
- Suspension and Debarment Certification
- Texas Government Code Section 2252.152
- Texas Government Code Section 2271.002
- Texas Government Code 2274
- Federal and State Regulations
- Master Agreement

SUBMISSION INFORMATION

An individual authorized to bind the company must sign the following section. Failure to execute this portion may result in bid rejection.

THIS BID IS SUBMITTED BY MF1	Whatter S 170				
THIS BID IS SUBMITTED BY ! (*	office to the second	a			
corporation organized under the laws of	the State of 17x4	, or a partnership consisting of			
	or individual trading as _NK	· Tike Group of			
the City of Lubbock, Tx					
Tax ID No.: 3-20652-5540-	-/				
Address: 213 N Ave U					
City: Lubbock	State: 1x Zi	p: 794/5			
M/WBE Firm: Woman	M/WBE Firm: Woman Black American Native American				
Hispanic American	Asian Pacific American	Other (Specify)			
By Bel Ply	complete the information below. Date:	1/15/23			
Authorized Representative - must s					
Officer Name and Title: Region	Monager TrxA-				
Business Telephone Number 2017	48-5606 FAX: 8	06.748-5667			
E-mail Address: badams e n	newhorters Ad. com				

RESOLUTION

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

THAT the Mayor of the City of Lubbock is hereby authorized and directed to execute for and on behalf of the City of Lubbock, Contract No. 17411 for Preventative Maintenance and Repairs for Heavy Duty Vehicles (Class 6 or higher) and Equipment as per ITB 23-17316-SB, by and between the City of Lubbock and Roberts Truck Center, 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
ATTEST: Courtney Paz, City Secretary APPROVED AS TO CONTENT: MOOLO Witches
ATTEST: Courtney Paz, City Secretary APPROVED AS TO CONTENT: MOOLO Witches
Courtney Paz, City Secretary APPROVED AS TO CONTENT: MOOLO Witchel
APPROVED AS TO CONTENT:
APPROVED AS TO CONTENT:
Mode Witcher
APPROVED AS TO FORM:
Rachael Foster, Assistant City Attorney

ccdocs/RES.ServiceContract 17411- Roberts Truck Center

6.13.23

City of Lubbock Contract for ITB 23-17316-SB Preventative Maintenance and Repairs: Heavy Duty Vehicles (Class 6 or Higher) and Equipment

THIS CONTRACT made and entered into this _	day of	, 2023 , by and between the
City of Lubbock ("City"), and Roberts Truck C	enter_ , ("Contra	actor").

WITNESSETH:

WHEREAS, the City of Lubbock duly advertised for bids for Preventative Maintenance and Repairs: Heavy Duty Vehicles (Class 6 or Higher) and Equipment and bids were received and duly opened as required by law; and

WHEREAS, after careful consideration of the bid submitted by Contractor, the City authorized the execution, in the name of the City of Lubbock a contract with said Contractor covering the purchase and delivery of the said Preventative Maintenance and Repairs: Heavy Duty Vehicles (Class 6 or Higher) and Equipment.

NOW, THEREFORE, in consideration of the mutual agreement contained herein, as well as the financial consideration hereinafter referred to, the parties hereby covenant and agree as follows:

- 1. In accordance with City's specifications and Contractor's bid, copies of which are attached hereto and made part hereof, Contractor will deliver to the City, Preventative Maintenance and Repairs: Heavy Duty Vehicles (Class 6 or Higher) and Equipment, and more specifically referred to as Category 1, Line Items 1-1 through 1-2 on the bid submitted by the Contractor or in the specifications attached hereto.
- 2. The City promises and agrees to employ, and does employ, the Contractor to cause to be done the work provided for in this Contract and to complete and finish the same according to the attached specifications, offer, and terms and conditions contained herein.
- 3. The contract shall be for a term of one (1) year, with the option of two (2), one year extensions, said date of term beginning upon formal approval. This Contract will renew automatically for the additional terms, unless either Party gives 90-day written notice to terminate the Contract.
- 4. All stated annual quantities are approximations of usage during the time period to be covered by pricing established by this bid. Actual usage may be more or less. Order quantities will be determined by actual need. The City of Lubbock does not guarantee any specific amount of compensation, volume, minimum, or maximum amount of services under this bid and resulting contract.
- 5. The Contractor must maintain the insurance coverage required during the term of this contract including any extensions. It is the responsibility of the Contractor to ensure that valid insurance is on file with the Purchasing and Contract Management Department as required by contract or contract may be terminated for non-compliance.
- 6. A) Prices quoted shall be guaranteed for a period for six (6) months upon City approval. The rate may be adjusted at the City's discretion for the effective change in Consumer Price Index (CPI) or Product Price Index (PPI) as appropriate.

- B) Further, if the Contractor can provide documentation for actual charges for material, labor, etc. that demonstrates that the change in CPI or PPI is not sufficient, the Contractor shall provide such documentation to the City, and at the City's sole discretion, the contractual rate may be further adjusted. If agreement regarding a new rate cannot be reached, the City shall terminate at the end of the current contract period.
- C) If an adjustment to pricing is granted under this section, the Contractor must provide the Director of Purchasing and Contract Management written, quarterly documentation to justify the ongoing adjustment. If no such documentation is timely received, the rate will automatically revert to the initial, awarded rate.
- 7. This contract shall remain in effect until the first of the following occurs: (1) the expiration date, (2) performance of services ordered, or (3) termination of by either party with a 30 day written notice. The City of Lubbock reserves the right to award the canceled contract to the next lowest and best bidder as it deems to be in the best interest of the city.
- 8. Contractor shall at all times be an independent contractor and not an agent or representative of City with regard to performance of the Services. Contractor shall not represent that it is, or hold itself out as, an agent or representative of City. In no event shall Contractor be authorized to enter into any agreement or undertaking for or on behalf of City.
- 9. Insurance Requirements

SECTION A. Prior to the approval of this contract by the City, the Contractor shall furnish a completed Insurance Certificate to the City, which shall be completed by an agent authorized to bind the named underwriter(s) to the coverages, limits, and termination provisions shown thereon, and which shall furnish and contain all required information referenced or indicated thereon. THE CITY SHALL HAVE NO DUTY TO PAY OR PERFORM UNDER THIS CONTRACT UNTIL SUCH CERTIFICATE SHALL HAVE BEEN DELIVERED TO THE CITY.

SECTION B. The City reserves the right to review the insurance requirements of this section during the effective period of the contract and to require adjustment of insurance coverages and their limits when deemed necessary and prudent by the City based upon changes in statutory law, court decisions, or the claims history of the industry as well as the Contractor.

SECTION C. Subject to the Contractor's right to maintain reasonable deductibles in such amounts as are approved by the City, the Contractor shall obtain and maintain in full force and effect for the duration of this contract, and any extension hereof, at Contractor's sole expense, insurance coverage written by companies approved by the State of Texas and acceptable to the City, in the following type(s) and amount(s):

<u>Commercial General Liability Requirements</u>: \$1M occurrence / \$2M aggregate (can be combined with an Excess Liability to meet requirement). CGL is required in ALL contracts. It is perhaps the most important of all insurance policies in a contractual relationship. It insures the Contractor has broad liability coverage for contractual activities and for completed operations.

Commercial General Liability to include Products – Completion/OP, Personal and Advertising Injury, Contractual Liability, Fire Damage (any one fire), and Medical Expenses (any one person).

Automobile Liability Requirements: \$1M/occurrence is needed

Workers Compensation and Employer Liability Requirements: Statutory. If the vendor is an

independent contractor with no employees and are exempt from providing Workers' Compensation coverage, they must sign a waiver (obtained from COL Purchasing) and include a copy of their driver's license.. Employer Liability (\$1M) is required with Workers Compensation.

Garage Liability Requirements: No less than \$2,000,000 combined single limit.

Garagekeepers Legal Liability Requirements: No less than \$1,000,000 per location.

- * The City of Lubbock (including its officials, employees and volunteers) shall be afforded additional insured status on a primary and non-contributory basis on all liability policies except professional liabilities and workers' comp.
- * Waivers of Subrogation are required for CGL, AL, and WC.
- * To Include Products of Completed Operations endorsement.
- * Carrier will provide a 30-day written notice of cancellation, 10-day written notice for non-payment.
- * Carriers must meet an A.M. Best rating of A- or better.
- * Subcontractors must carry same limits as listed above.

IMPORTANT: POLICY ENDORSEMENTS

The Contractor will provide copies of the policies without expense, to the City and <u>all endorsements</u> 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.

REOUIRED PROVISIONS

The Contractor agrees that with respect to the above required insurance, all insurance contracts and certificate(s) of insurance will contain and state, in writing, on the certificate or its attachment, the following required provisions:

- a. Name the City of Lubbock and its officers, employees, and elected representatives as additional insureds, (as the interest of each insured may appear) as to all applicable coverage;
- b. Provide for 30 days notice to the City for cancellation, nonrenewal, or material change;
- c. Provide for notice to the City at the address shown below by registered mail;
- d. The Contractor agrees to waive subrogation against the City of Lubbock, its officers, employees, and elected representatives for injuries, including death, property damage, or any other loss to the extent same may be covered by the proceeds of insurance;
- e. Provide that all provisions of this contract concerning liability, duty, and standard of care together with the indemnification provision, shall be underwritten by contractual liability coverage sufficient to include such obligations within applicable policies.

NOTICES

The Contractor shall notify the City in the event of any change in coverage and shall give such notices not less than 30 days prior the change, which notice must be accompanied by a replacement CERTIFICATE OF INSURANCE.

All notices shall be given to the City at the following address:

Marta Alvarez, Director of Purchasing & Contract Management City of Lubbock 1314 Avenue K, 9th Floor Lubbock, Texas 79401

SECTION D. Approval, disapproval, or failure to act by the City regarding any insurance supplied by the Contractor shall not relieve the Contractor of full responsibility or liability for damages and accidents as set forth in the contract documents. Neither shall the bankruptcy, insolvency, or denial of liability by the insurance company exonerate the Contractor from liability.

- 10. Neither the City nor the Contractor shall assign, transfer or encumber any rights, duties or interests accruing from this Contract without the written consent of the other.
- 11. 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.
- 12. 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.
- 13. All funds for payment by the City under this contract are subject to the availability of an annual appropriation for this purpose by the City. In the event of non-appropriation of funds by the City Council of the City of Lubbock for the goods or services provided under the contract, the City will terminate the contract, without termination charge or other liability, on the last day of the then-current fiscal year or when the appropriation made for the then-current year for the goods or services covered by this contract is spent, whichever event occurs first. If at any time funds are not appropriated for the continuance of this contract, cancellation shall be accepted by the Seller on 30 days prior written notice, but failure to give such notice shall be of no effect and the City shall not be obligated under this contract beyond the date of termination.
- 14. The Contractor shall not assign or sublet the contract, or any portion of the contract, without written consent from the Director of Purchasing and Contract Management. Should consent be given, the Contractor shall insure the Subcontractor or shall provide proof on insurance from the Subcontractor that complies with all contract Insurance requirements.
- 15. 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.

- 16. The Contractor (i) does not engage in business with Iran, Sudan or any foreign terrorist organization and (ii) it is not listed by the Texas Comptroller under Section 2252.153, Texas Government Code, as a company known to have contracts with or provide supplies or services to a foreign terrorist organization. As used in the immediately preceding sentence, "foreign terrorist organization" shall have the meaning given such term in Section 2252.151, Texas Government Code.
- 17. 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 contact 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.

- 18. 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.
- 19. 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.

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.

- 20. 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.
- 21. 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.
- 22. This Contract consists of the following documents set forth herein; Invitation to Bid No. 23-17316-SB, Specifications, and the Bid Form.

----INTENTIONALLY LEFT BLANK-----

IN WITNESS WHEREOF, the parties hereto have caused this Contract to be executed the day and year first above written. Executed in triplicate.

CITY OF LUBBOCK	CONTRACTOR
Tray Payne, Mayor	BY Authorized Representative
	Chad Gaymond
ATTEST:	Print Name
	4510 Ave A
Courtney Paz, City Secretary	Address Lubback TX 794
APPROVED AS TO CONTENT:	City, State, Zip Code
Dominic Esperat, Director of Fleet Operations	
APPROVED AS TO FORM: Rachael Foster, Assistant City Attorney	

City of Lubbock, TX 1TB 23-17316-SB

Preventative Maintenance and Repairs Heavy Duty Vehicles (Class 6 or Higher) and Equipment

Scope of Work/ Specifications

I. Introduction, Purpose and Intent

The intent of this Invitation for Bid (hereinafter referred to as ITB) is to solicit qualified vendors to enter a contract with the City of Lubbock (hereinafter referred to as The City) to provide preventative maintenance and repairs to heavy duty vehicles and equipment. The City is seeking to contract with one or more Vendors, if it is in the best interest of the City.

II. Scope of Services

The awarded vendor shall furnish and supply all insurance, labor, personnel, service, supervision, administration, documentation, reports, management, equipment, tools and materials necessary to provided preventative maintenance and repairs services. All services shall be provided on an "as needed/ requested basis" to the City. The City does not guarantee any quantities and services to be purchased under this contract.

Vendor shall have been in the preventative maintenance and repairs business for a minimum of three (3) consecutive years and familiar with the specified requirements and methods needed for proper performance of this contract.

<u>Service Hours:</u> All services performed under this contract will be conducted during normal business hours (Monday through Friday, 7:00 a.m. - 4:30 p.m.), excluding City Holidays.

<u>References</u>: Vendor shall include with the bid a minimum of five (5) commercial customer references to substantiate the qualifications and experience requirements for services completed within the past 24 months.

III. General Requirements

In addition to the General Requirements, the Scope of Services shall include, but not be limited to the following the following:

Air Conditioning, Heating & Ventilation

System

Axles

Brakes, Hubs & Bearings

Steering

Suspension

Drive Shafts

Automatic Transmissions

Charging Systems

Cranking Systems

Ignition Systems

Lighting Systems, Electrical Accessories

Engines

Exhaust Systems

Fuel Systems Power Take-Off (PTO) Buckets /Booms Def Systems

Equipment & Truck Categories

The following is a current list of Descriptions of City of Lubbock vehicles and equipment by Category which are included in this maintenance and repair contract.

Category	Description
I) Trucks	Class 6-7-8-9
2) Off-Road Equipment	Tractors, Backhoes, Loaders, Excavators , Dozers, Graders, Scrapers, Cranes
3)Trailers	Utility, Pipe, Hay, Equipment, Crew, Cargo
4)Forklifts	Clark, Hyster, Cat, Daewoo, Case, Hilift, Princeton

Labor Guide

Vendor is required to provide the name of the current Labor Guide software and version used to provide repair costs with the Bid Form. The City of Lubbock reserves the right to audit the labor hours charged to each job and all overcharges will be brought to the attention of the vendor. The Vendor shall issue a credit for the overcharge amount within 5 business days and the credit shall reference the City of Lubbock's vehicle identification number and work order number. If the program is proprietary, Vendor shall grant access to the City of Lubbock's Fleet Services Department for audit purposes.

Work Authorization

Vehicle shop repairs will be estimated on a per job basis with a fixed labor rate per hour as stated on the Bid Form. Prior to the start of any vehicle repair, the Vendor must provide a written repair estimate by a trained service advisor or technician. Estimates must include parts at the quoted cost rate. All estimates shall be at no charge to the City. The Vendor must obtain a work order number and authorization to perform the work from the City of Lubbock authorized Fleet Services designee before making any repairs. The Vendor must also obtain City approval for the type of repairs and the cost of repairs before proceeding with the work.

Vendor must submit a copy of the Work Order along with the Vendor's invoice itemizing the labor hours, hourly labor rate, supplies, cost of supplies, parts list, and price for each part.

The Work Order must contain the VIN number, the current license plate number, and the current vehicle mileage or hours. If any of the information is missing or incorrect, the Vendor will not be reimbursed for any services, repairs, maintenance, parts, or supplies.

Approval Procedures

Approval for maintenance and repairs on all vehicles shall be as follows: Repairs up to \$1,000 shall be verbally approved by an authorized Fleet Services designee. Repairs from \$1,000 to \$2,500 must have written approval from an authorized Fleet Services designee.

Repairs over \$2,500 must have written approval from an authorized Fleet Services designee and Director of Fleet Services. If any repairs are completed without proper authorization, the Vendor will not be reimbursed for any services, repairs, maintenance, parts, or supplies.

Repair Time Notifications

The Vendor must make a determination of the repairs, costs and times and notify the City within 24-hours after receiving the vehicle or equipment.

Repeat Repairs

The Vendor will be responsible for correcting all previous repairs performed by the Vendor that were incorrectly repaired or the repair failed to correct the reported deficiency. The Vendor will be responsible for the total cost of the repair including any replacement parts.

In the event of a Repeat Repair, Vendor shall open a new work order. The new vendor work order must indicate on the work order "repeat" or "return" work. Copies of the original City and Vendor work orders and any applicable invoices shall be attached to the new work order.

Pick-Up and Delivery

The bidder's bid may include a separate price for pick-up and delivery of heavy vehicles or equipment. The bidder must indicate on the Bid Form the additional charge, if any, for this pick -up and delivery service. The City reserves the right to use this service as needed. Vehicles must be picked up by City personnel or delivered to a City location within 24-hours after the vehicle has been repaired.

City Fleet Services Garage: 206 Municipal Drive, Lubbock, TX 79403

Parts, Supplies and Services

The Vendor must use their own parts and/or supplies in completing all repairs. No City parts or supplies will be issued by the City Garage to the Vendor. The Vendor's invoice must include charges for all parts, supplies, and services used in making repairs. The Vendor must return all parts that were removed and replaced during the repair of the vehicle or equipment upon completion of the repair(s) and the parts must accompany the vehicle or equipment. The Vendor is responsible for all core returns and credits.

Bid submissions

Bids will be awarded by category of vehicles and equipment.

Invoices

Invoices will show only the cost rates indicated on the Bid Form. Any additional charges or fees not listed will be disallowed from any invoice. Vehicle shop repairs will be billed per the approved estimate. An individual Work Order shall be issued for vehicle shop repairs. No delivery or repair shall be performed without proper authorization. Invoices for parts purchased by the Vendor for all repairs to City vehicles and equipment will be made available for inspection by a City representative upon request. Invoices must display the Vendor name imprinted on the face, the parts purchased and the date of the purchase. Repair invoices should match the parts invoice when there were replacement parts required for the repair. If a request is submitted by the City to review a particular invoice, that request will be met within 24 hours from the time of the request.

Damages

The Vendor is responsible for any damage to the vehicle or equipment while in the Vendor's control. The City shall be responsible for damages after the vehicle or equipment has been delivered to a City representative and said representative has inspected the vehicle or equipment and has verified that no damage occurred during the repair process.

In the event that a vehicle is scheduled to be picked up from the City for repairs, the vehicles will be:

- 1. Picked up by tow vehicle/wrecker, or
- 2. Driven to the repair destination by a licensed and insured individual representing the Vendor.

Special Requirements:

- 1. Vendor to provide secure shelter (locked fence) for City vehicles.
- 2. Estimate must be submitted to Fleet Services within 24-hour period of request.
- 3. All furnished parts must be OEM, OEM equivalent, or OEM re-cycled parts.
- 4. All suspension or steering components must be OEM or OEM equivalent only.
- 5. All repairs shall be warranted for a period of 12 months or 12,000 miles.

City of Lubbock, TX Purchasing and Contract Management Vendor Acknowledgement Form

In compliance with the **Invitation to Bid**, the undersigned Bidder having examined the Invitation to Bid, instructions to bidders, General Conditions of the Agreement, Specifications, and being familiar with the conditions to be met, hereby submits the following bid for furnishing the material, equipment, labor and everything necessary for providing the items listed and agrees to deliver said items at the locations and for the prices set forth on the bid form and/or the bid table associated with this bid.

A bid will be subject to being considered irregular and may be rejected if it shows omissions, **alterations of form**, conditional alternate bids, additions or alternates in lieu of the items specified, if the unit prices are obviously unbalanced (either in excess of or below reasonably expected values), or irregularities of any kind. The Invitation to Bid is by reference incorporated in this contract.

Where applicable, prices are quoted as: F.O.B. Destination, Freight Pre-Paid and Allowed Where applicable, delivery days are: Days After Receipt of Order (ARO)

Unless otherwise specified herein, the City may award the bid either item-by-item or on an all-ornone basis for any item or group of items shown on the bid.

The City of Lubbock is seeking a contract for with one or more contractors. In order to assure adequate coverage, the City may make multiple awards, selecting multiple vendors to provide the products desired, if multiple awards are in the best interest of the City. A decision to make a multiple award of this Bid, however, is an option reserved by the City, based on the needs of the City.

MOST FAVORED PRICING: The Bidder certifies that the price quoted is not in excess of the lowest price charged anyone else, including its most favored customer, for like quality and quantity of the products/services; does not include an element of profit on the sale in excess of that normally obtained by the Bidder on the sale of products/services of like quality and quantity; and does not include any provision for discounts to selling agents. If at any time during the contract period, the supplier should sell or offer for sale to any other customer, an equal or less quantity of similar contract products of like or better quality, at a lower net price(s) than provided herein, supplier agrees to notify the City and sell same product(s) at the lower price(s) on all deliveries made during the period in which such lower price(s) is effective.

INTERLOCAL PURCHASING (optional): The City desires to make available to other local governmental entities of the State of Texas, by mutual agreement with the successful bidder, and properly authorized interlocal purchasing agreements as provided for by the Interlocal Cooperation Act (Chapter 791, Government Code), the right to purchase the same services, at the prices quoted, for the period of this contract. Each bidder shall indicate on the Bid Form in the space provided below if he/she will honor Political Subdivision orders in addition to orders from the City of Lubbock. Should these other governmental entities decide to participate in this contract, would you (the bidder) agree that all terms, conditions, specifications, and pricing would apply?

The City of Lubbock ITB 23-17316-SB

Preventative Maintenance and Repairs City Heavy Duty Vehicles (Class 6 of Higher) and Equipment

Bid Form

			Total Cost Location	Roberts True \$170.0 Lubbock	0
.,		Qty		Unit	Total
1	Items Category 1: Trucks over 19,500 lbs	(+/-)	UOM	Price	Cost
#1-1	Labor rate per hour (Billed in increments of full, half, and 1/4 hours)	1	Hourly Rate	\$170	\$170
#1-2	% Markup above/ below parts	0	Percentage	10%	10%
#13	Picku p an d Delivery Round Trip – Charge	 1- 	— Ro und t rip Cha rge	No- Bid	— - No B id
#1-4	Roundtrip Tow Service Charge -	— <u>1</u> —	— Ro und t rip Charge	No- Bid	— – No B id
	Service Call Fee				— – No B id
	 Mi lea ge Fee -				— – No B id
2	Category 2: Off-Road Equipment (7				
#2-1	Labor rate per hour (Billed in – increments of full, half, and 1/4 hours)		·		— - No B id
	— Pickup and-Delivery Round Trip —				
	Charge Roundtrip Fow Service Charge		, -		— – No B id
	Service Call Fee				
	— Service C ai+ ree — — — — — — — — — — — — — — — — — —				— – No Bid — – No Bid
3	Category 3: Trailers (Utility Pipe, H				- NO BIO
	Labor rate per hour (Billed in			No Pid	No Rid
	increments of full, half, and 1/4 hours)				
			-		— - No B id
	— Pi cku p and-Delivery Rou nd Trip- – Charge		, ,		— – No B id
	- Roundtrip Tow S erv ice Charge -				— – No Bid
	- Se r v ic e Ca ll-F ee -				
	Mileage Fee — - — - — -				— – No B id
	Category 4: Forklifts (Clark, Hyster,				Na Dist
	Labor rate per hour (Billed in – increments of full, half, and 1/4 hours)		·	– – – No Bid- – -	
			-		
	Pickup and Delivery Round Trip – Charge				
	Roundtrip To w Service C har ge –		, -		
	— Service Ca ll-F ee — — — — — — — — — — — — — — — — — —				

Other governmental entities that might have interests in this contract are Frenship Independent School District, Lubbock Housing Authority, Lubbock County, Lubbock County Hospital District, Lubbock Independent School District, South Plains Association of Governments, City of Texarkana, Texas Tech University, West Texas Municipal Power Agency, Lynn County, and City of Wolfforth.

YES_	V	NO

- If you (the bidder) checked YES, the following will apply:
- Governmental entities utilizing Interlocal Agreements for Cooperative Purchasing with the City of Lubbock will be eligible, but not obligated, to purchase materials/services under the contract(s) awarded as a result of this solicitation. All purchases by governmental entities other than the City of Lubbock will be billed directly to that governmental entity and paid by that governmental entity. City of Lubbock will not be responsible for another governmental entity's debts. Each governmental entity will order their own materials/service as needed.

ADDENDA

Bidder acknowledges receipt of addenda issued in regard to this solicitation:

Addenda No.	Date	
Addenda No.	Date	
Addenda No.	Date	
Addenda No.	Date	

INSURANCE REQUIREMENTS

I, the undersigned Bidder certify that the insurance requirements contained in this bid document have been reviewed by me and my Insurance Agent/Broker. If I am awarded this contract by the City of Lubbock, I will be able to, within ten (10) business days after being notified of such award by the City of Lubbock, furnish a valid insurance certificate to the City meeting all of the requirements defined in this bid.

If the time requirement specified above is not met, the City has the right to reject this proposal and award the contract to another contractor. If you have any questions concerning these requirements, please contact the Director of Purchasing & Contract Management for the City of Lubbock at (806) 775-2572.

SUSPENSION AND DEBARMENT CERTIFICATION

Federal Law (A-102 Common Rule and OMB Circular A-110) prohibits non-Federal entities from contracting with or making sub-awards under covered transactions to parties that are suspended or debarred or whose principals are suspended or debarred. Covered transactions include procurement contracts for goods or services equal to or in excess of \$25,000 and all non-procurement transactions (e.g., sub-awards to sub-recipients).

Contractors receiving individual awards of \$25,000 or more and all sub-recipients must certify that their organization and its principals are not suspended or debarred by a Federal agency.

Before an award of \$25,000 or more can be made to your firm, you must certify that your organization and its principals are not suspended or debarred by a Federal agency.

I, the undersigned agent for the firm named below, certify that neither this firm nor its principals are suspended or debarred by a Federal agency.

TEXAS GOVERNMENT CODE SECTION 2252.152

The undersigned representative of the undersigned company or business, being an adult over the age of eighteen (18) years of age, pursuant to Texas Government Code, Chapter 2252, Section 2252.152, certify that the company named above is not listed on the website of the Comptroller of the State of Texas concerning the listing of companies that are identified under Section 806.051, Section 807.051 or Section 2253.153. I further certify that should the above-named company enter into a contract that is on said listing of companies on the website of the Comptroller of the State of Texas, which do business with Iran, Sudan or any Foreign Terrorist Organization, I will immediately notify the City of Lubbock Purchasing and Contract Department.

TEXAS GOVERNMENT CODE SECTION 2271.002

Company hereby certifies the following:

- 1. Company does not boycott Israel; and
- 2. Company will not boycott Israel during the term of the contract.

The following definitions apply to this state statute:

- (1) "Boycott Israel" means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes; and
- (2) "Company" means an organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations that exists to make a profit.

This Certification is required from a Company if the Company has 10 or more full-time employees and the contract for goods or services (which includes contracts formed through purchase orders) has a value of \$100,000 or more that is to be paid wholly or partly from public funds of the governmental entity.

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.

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.

FEDERAL AND STATE SAFETY REGULATIONS

Contractor shall comply with all federal and state safety regulation including but not limited to Occupational, Safety and Health Administration (OSHA) and the Department of Workforce Development (DWD) regulations. This agreement includes incorporation of Federal Transit Administration (FTA) Terms. The preceding provisions include, in part, certain Standard Terms and Conditions required by the Department of Transportation (DOT), whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any requests which would cause Bus to be in violation of the FTA terms and conditions.

All Environmental Protection Agency (EPA) rules and regulations must be followed by the Contractor.

MASTER AGREEMENT

For Federal Transit Administration Agreements authorized by 49 U.S.C. chapter 53, Title 23, United States Code (Highways), the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, as amended by the SAFETEA-LU Technical Corrections Act of 2008, the Transportation Equity Act for the 21st Century, as amended, the National Capital Transportation Act of 1969, as amended, the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, February 17, 2009, or other Federal laws that FTA administers.

https://www.transit.dot.gov/funding/grantee-resources/sample-fta-agreements/fta-grant-agreements

The Master Agreement can be found in its entirety on the City of Lubbock website www.ci.lubbock.tx.us

INCOMPLETE INFORMATION

Failure to complete or provide any of the information requested in this Request for Proposal, including references, and/or additional information as information as indicated, may results in disqualification by reason of "non-responsiveness".

CONTRACTOR ACKNOWLEDGEMENT

In compliance with this solicitation, the undersigned bidder, having examined the bid documents, instructions to bidders, documents associated with the invitation to bid, and being familiar with the conditions to be met has reviewed the above information regarding:

- Insurance Requirements
- Suspension and Debarment Certification
- Texas Government Code Section 2252.152
- Texas Government Code Section 2271.002
- Texas Government Code 2274
- Federal and State Regulations
- Master Agreement

SUBMISSION INFORMATION

An individual authorized to bind the company must sign the following section. Failure to execute this portion may result in bid rejection.

THIS BID IS SUBMITTED BY $\overline{\mathcal{L}}$	oberts Truck Co	enter a
corporation organized under the laws of	the State of Texas	, or a partnership consisting of
	or individual trading as	of
the City of		
Tax ID No.: 83- 222 1907		
Address: 4510 Ave A	F	
City: Labbock TX	State:	Zip: 79404
M/WBE Firm: Woman	Black American	Native American
Hispanic American	Asian Pacific American	Other (Specify)
Please	complete the information below.	
By <u>had</u> <u>c</u> <u>Mor</u> Authorized Representative - must su	ign by hand	5.17.2023
Officer Name and Title: Chad	Saumond- Genera	al Manager
Business Telephone Number 806	763-8213 FAX:_	806-747-5844
E-mail Address: Chad gan	mond Drobents truc	LK-com

RESOLUTION

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

THAT the Mayor of the City of Lubbock is hereby authorized and directed to execute for and on behalf of the City of Lubbock, Contract No. 17412 for Preventative Maintenance and Repairs for Heavy Duty Vehicles (Class 6 or higher) and Equipment as per ITB 23-17316-SB, by and between the City of Lubbock and Texas Truck & Equipment Sales and Salvage, Inc., 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.

resolution as if fully set forth herein and sha	all be included in the minutes of the City Cour
Passed by the City Council on	·
	TRAY PAYNE, MAYOR
ATTEST:	
Courtney Paz, City Secretary	
APPROVED AS TO CONTENT:	
Buodle Witchen.	
Brooke Witcher, Assistant City Manager	
APPROVED AS TO FORM:	
Parlin Caba	
Rachael Foster, Assistant City Attorney	
ccdocs/RES.ServiceContract 17412- Texas Truck & 6.13.23	Equipment Sales and Salvage, Inc.

City of Lubbock Contract for ITB 23-17316-SB Preventative Maintenance and Repairs: Heavy Duty Vehicles (Class 6 or Higher) and Equipment

THIS CONTRACT made and entered into this _	day of	, 2023 , by	and between the
City of Lubbock ("City"), and Texas Truck & Ed	quipment Sales	and Salvage, Inc.,	("Contractor").

WITNESSETH:

WHEREAS, the City of Lubbock duly advertised for bids for Preventative Maintenance and Repairs: Heavy Duty Vehicles (Class 6 or Higher) and Equipment and bids were received and duly opened as required by law; and

WHEREAS, after careful consideration of the bid submitted by Contractor, the City authorized the execution, in the name of the City of Lubbock a contract with said Contractor covering the purchase and delivery of the said Preventative Maintenance and Repairs: Heavy Duty Vehicles (Class 6 or Higher) and Equipment.

NOW, THEREFORE, in consideration of the mutual agreement contained herein, as well as the financial consideration hereinafter referred to, the parties hereby covenant and agree as follows:

- In accordance with City's specifications and Contractor's bid, copies of which are attached hereto and made part hereof, Contractor will deliver to the City, Preventative Maintenance and Repairs: Heavy Duty Vehicles (Class 6 or Higher) and Equipment, and more specifically referred to as Category 1, Line Items 1-1 through 1-3 on the bid submitted by the Contractor or in the specifications attached hereto.
- 2. The City promises and agrees to employ, and does employ, the Contractor to cause to be done the work provided for in this Contract and to complete and finish the same according to the attached specifications, offer, and terms and conditions contained herein.
- 3. The contract shall be for a term of one (1) year, with the option of two (2), one year extensions, said date of term beginning upon formal approval. This Contract will renew automatically for the additional terms, unless either Party gives 90-day written notice to terminate the Contract.
- 4. All stated annual quantities are approximations of usage during the time period to be covered by pricing established by this bid. Actual usage may be more or less. Order quantities will be determined by actual need. The City of Lubbock does not guarantee any specific amount of compensation, volume, minimum, or maximum amount of services under this bid and resulting contract.
- 5. The Contractor must maintain the insurance coverage required during the term of this contract including any extensions. It is the responsibility of the Contractor to ensure that valid insurance is on file with the Purchasing and Contract Management Department as required by contract or contract may be terminated for non-compliance.
- 6. A) Prices quoted shall be guaranteed for a period for six (6) months upon City approval. The rate may be adjusted at the City's discretion for the effective change in Consumer Price Index (CPI) or Product Price Index (PPI) as appropriate.

- B) Further, if the Contractor can provide documentation for actual charges for material, labor, etc. that demonstrates that the change in CPI or PPI is not sufficient, the Contractor shall provide such documentation to the City, and at the City's sole discretion, the contractual rate may be further adjusted. If agreement regarding a new rate cannot be reached, the City shall terminate at the end of the current contract period.
- C) If an adjustment to pricing is granted under this section, the Contractor must provide the Director of Purchasing and Contract Management written, quarterly documentation to justify the ongoing adjustment. If no such documentation is timely received, the rate will automatically revert to the initial, awarded rate.
- 7. This contract shall remain in effect until the first of the following occurs: (1) the expiration date, (2) performance of services ordered, or (3) termination of by either party with a 30 day written notice. The City of Lubbock reserves the right to award the canceled contract to the next lowest and best bidder as it deems to be in the best interest of the city.
- 8. Contractor shall at all times be an independent contractor and not an agent or representative of City with regard to performance of the Services. Contractor shall not represent that it is, or hold itself out as, an agent or representative of City. In no event shall Contractor be authorized to enter into any agreement or undertaking for or on behalf of City.
- 9. Insurance Requirements

SECTION A. Prior to the approval of this contract by the City, the Contractor shall furnish a completed Insurance Certificate to the City, which shall be completed by an agent authorized to bind the named underwriter(s) to the coverages, limits, and termination provisions shown thereon, and which shall furnish and contain all required information referenced or indicated thereon. THE CITY SHALL HAVE NO DUTY TO PAY OR PERFORM UNDER THIS CONTRACT UNTIL SUCH CERTIFICATE SHALL HAVE BEEN DELIVERED TO THE CITY.

SECTION B. The City reserves the right to review the insurance requirements of this section during the effective period of the contract and to require adjustment of insurance coverages and their limits when deemed necessary and prudent by the City based upon changes in statutory law, court decisions, or the claims history of the industry as well as the Contractor.

SECTION C. Subject to the Contractor's right to maintain reasonable deductibles in such amounts as are approved by the City, the Contractor shall obtain and maintain in full force and effect for the duration of this contract, and any extension hereof, at Contractor's sole expense, insurance coverage written by companies approved by the State of Texas and acceptable to the City, in the following type(s) and amount(s):

<u>Commercial General Liability Requirements</u>: \$1M occurrence / \$2M aggregate (can be combined with an Excess Liability to meet requirement). CGL is required in ALL contracts. It is perhaps the most important of all insurance policies in a contractual relationship. It insures the Contractor has broad liability coverage for contractual activities and for completed operations.

Commercial General Liability to include Products – Completion/OP, Personal and Advertising Injury, Contractual Liability, Fire Damage (any one fire), and Medical Expenses (any one person).

Automobile Liability Requirements: \$1M/occurrence is needed

Workers Compensation and Employer Liability Requirements: Statutory. If the vendor is an

independent contractor with no employees and are exempt from providing Workers' Compensation coverage, they must sign a waiver (obtained from COL Purchasing) and include a copy of their driver's license.. Employer Liability (\$1M) is required with Workers Compensation.

Garage Liability Requirements: No less than \$2,000,000 combined single limit.

Garagekeepers Legal Liability Requirements: No less than \$1,000,000 per location.

- * The City of Lubbock (including its officials, employees and volunteers) shall be afforded additional insured status on a primary and non-contributory basis on all liability policies except professional liabilities and workers' comp.
- * Waivers of Subrogation are required for CGL, AL, and WC.
- * To Include Products of Completed Operations endorsement.
- * Carrier will provide a 30-day written notice of cancellation, 10-day written notice for non-payment.
- * Carriers must meet an A.M. Best rating of A- or better.
- * Subcontractors must carry same limits as listed above.

IMPORTANT: POLICY ENDORSEMENTS

The Contractor will provide copies of the policies without expense, to the City and <u>all endorsements</u> 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.

REOUIRED PROVISIONS

The Contractor agrees that with respect to the above required insurance, all insurance contracts and certificate(s) of insurance will contain and state, in writing, on the certificate or its attachment, the following required provisions:

- a. Name the City of Lubbock and its officers, employees, and elected representatives as additional insureds, (as the interest of each insured may appear) as to all applicable coverage;
- b. Provide for 30 days notice to the City for cancellation, nonrenewal, or material change;
- c. Provide for notice to the City at the address shown below by registered mail;
- d. The Contractor agrees to waive subrogation against the City of Lubbock, its officers, employees, and elected representatives for injuries, including death, property damage, or any other loss to the extent same may be covered by the proceeds of insurance;
- e. Provide that all provisions of this contract concerning liability, duty, and standard of care together with the indemnification provision, shall be underwritten by contractual liability coverage sufficient to include such obligations within applicable policies.

NOTICES

The Contractor shall notify the City in the event of any change in coverage and shall give such notices not less than 30 days prior the change, which notice must be accompanied by a replacement CERTIFICATE OF INSURANCE.

All notices shall be given to the City at the following address:

Marta Alvarez, Director of Purchasing & Contract Management City of Lubbock 1314 Avenue K, 9th Floor Lubbock, Texas 79401

SECTION D. Approval, disapproval, or failure to act by the City regarding any insurance supplied by the Contractor shall not relieve the Contractor of full responsibility or liability for damages and accidents as set forth in the contract documents. Neither shall the bankruptcy, insolvency, or denial of liability by the insurance company exonerate the Contractor from liability.

- 10. Neither the City nor the Contractor shall assign, transfer or encumber any rights, duties or interests accruing from this Contract without the written consent of the other.
- 11. 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.
- 12. 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.
- 13. All funds for payment by the City under this contract are subject to the availability of an annual appropriation for this purpose by the City. In the event of non-appropriation of funds by the City Council of the City of Lubbock for the goods or services provided under the contract, the City will terminate the contract, without termination charge or other liability, on the last day of the then-current fiscal year or when the appropriation made for the then-current year for the goods or services covered by this contract is spent, whichever event occurs first. If at any time funds are not appropriated for the continuance of this contract, cancellation shall be accepted by the Seller on 30 days prior written notice, but failure to give such notice shall be of no effect and the City shall not be obligated under this contract beyond the date of termination.
- 14. The Contractor shall not assign or sublet the contract, or any portion of the contract, without written consent from the Director of Purchasing and Contract Management. Should consent be given, the Contractor shall insure the Subcontractor or shall provide proof on insurance from the Subcontractor that complies with all contract Insurance requirements.
- 15. 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.

- 16. The Contractor (i) does not engage in business with Iran, Sudan or any foreign terrorist organization and (ii) it is not listed by the Texas Comptroller under Section 2252.153, Texas Government Code, as a company known to have contracts with or provide supplies or services to a foreign terrorist organization. As used in the immediately preceding sentence, "foreign terrorist organization" shall have the meaning given such term in Section 2252.151, Texas Government Code.
- 17. 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 contact 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.

- 18. 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.
- 19. 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.

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.

- 20. 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.
- 21. 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.
- 22. This Contract consists of the following documents set forth herein; Invitation to Bid No. 23-17316-SB, Specifications, and the Bid Form.

----INTENTIONALLY LEFT BLANK-----

IN WITNESS WHEREOF, the parties hereto have caused this Contract to be executed the day and year first above written. Executed in triplicate.

CITY OF LUBBOCK	CONTRACTOR
	BY ACILITY
Tray Payne, Mayor	Authorized Representative
ATTEST:	Kaitlan Farmer Print Name
	11/5 E SLATON TO
Courtney Paz, City Secretary	Address
APPROVED AS TO CONTENT: Agranic R. Eye Dominic Esperat, Director of Fleet Operations	City, State, Zip Code
APPROVED AS TO FORM: Rachael Foster, Assistant City Attorney	

City of Lubbock, TX 1TB 23-17316-SB

Preventative Maintenance and Repairs Heavy Duty Vehicles (Class 6 or Higher) and Equipment

Scope of Work/ Specifications

I. Introduction, Purpose and Intent

The intent of this Invitation for Bid (hereinafter referred to as ITB) is to solicit qualified vendors to enter a contract with the City of Lubbock (hereinafter referred to as The City) to provide preventative maintenance and repairs to heavy duty vehicles and equipment. The City is seeking to contract with one or more Vendors, if it is in the best interest of the City.

II. Scope of Services

The awarded vendor shall furnish and supply all insurance, labor, personnel, service, supervision, administration, documentation, reports, management, equipment, tools and materials necessary to provided preventative maintenance and repairs services. All services shall be provided on an "as needed/ requested basis" to the City. The City does not guarantee any quantities and services to be purchased under this contract.

Vendor shall have been in the preventative maintenance and repairs business for a minimum of three (3) consecutive years and familiar with the specified requirements and methods needed for proper performance of this contract.

<u>Service Hours:</u> All services performed under this contract will be conducted during normal business hours (Monday through Friday, 7:00 a.m. - 4:30 p.m.), excluding City Holidays.

<u>References</u>: Vendor shall include with the bid a minimum of five (5) commercial customer references to substantiate the qualifications and experience requirements for services completed within the past 24 months.

III. General Requirements

In addition to the General Requirements, the Scope of Services shall include, but not be limited to the following the following:

Air Conditioning, Heating & Ventilation

System

Axles

Brakes, Hubs & Bearings

Steering

Suspension

Drive Shafts

Automatic Transmissions

Charging Systems

Cranking Systems

Ignition Systems

Lighting Systems, Electrical Accessories

Engines

Exhaust Systems

Fuel Systems Power Take-Off (PTO) Buckets /Booms Def Systems

Equipment & Truck Categories

The following is a current list of Descriptions of City of Lubbock vehicles and equipment by Category which are included in this maintenance and repair contract.

Category	Description
I) Trucks	Class 6-7-8-9
2) Off-Road Equipment	Tractors, Backhoes, Loaders, Excavators , Dozers, Graders, Scrapers, Cranes
3)Trailers	Utility, Pipe, Hay, Equipment, Crew, Cargo
4)Forklifts	Clark, Hyster, Cat, Daewoo, Case, Hilift, Princeton

Labor Guide

Vendor is required to provide the name of the current Labor Guide software and version used to provide repair costs with the Bid Form. The City of Lubbock reserves the right to audit the labor hours charged to each job and all overcharges will be brought to the attention of the vendor. The Vendor shall issue a credit for the overcharge amount within 5 business days and the credit shall reference the City of Lubbock's vehicle identification number and work order number. If the program is proprietary, Vendor shall grant access to the City of Lubbock's Fleet Services Department for audit purposes.

Work Authorization

Vehicle shop repairs will be estimated on a per job basis with a fixed labor rate per hour as stated on the Bid Form. Prior to the start of any vehicle repair, the Vendor must provide a written repair estimate by a trained service advisor or technician. Estimates must include parts at the quoted cost rate. All estimates shall be at no charge to the City. The Vendor must obtain a work order number and authorization to perform the work from the City of Lubbock authorized Fleet Services designee before making any repairs. The Vendor must also obtain City approval for the type of repairs and the cost of repairs before proceeding with the work.

Vendor must submit a copy of the Work Order along with the Vendor's invoice itemizing the labor hours, hourly labor rate, supplies, cost of supplies, parts list, and price for each part.

The Work Order must contain the VIN number, the current license plate number, and the current vehicle mileage or hours. If any of the information is missing or incorrect, the Vendor will not be reimbursed for any services, repairs, maintenance, parts, or supplies.

Approval Procedures

Approval for maintenance and repairs on all vehicles shall be as follows: Repairs up to \$1,000 shall be verbally approved by an authorized Fleet Services designee. Repairs from \$1,000 to \$2,500 must have written approval from an authorized Fleet Services designee.

Repairs over \$2,500 must have written approval from an authorized Fleet Services designee and Director of Fleet Services. If any repairs are completed without proper authorization, the Vendor will not be reimbursed for any services, repairs, maintenance, parts, or supplies.

Repair Time Notifications

The Vendor must make a determination of the repairs, costs and times and notify the City within 24-hours after receiving the vehicle or equipment.

Repeat Repairs

The Vendor will be responsible for correcting all previous repairs performed by the Vendor that were incorrectly repaired or the repair failed to correct the reported deficiency. The Vendor will be responsible for the total cost of the repair including any replacement parts.

In the event of a Repeat Repair, Vendor shall open a new work order. The new vendor work order must indicate on the work order "repeat" or "return" work. Copies of the original City and Vendor work orders and any applicable invoices shall be attached to the new work order.

Pick-Up and Delivery

The bidder's bid may include a separate price for pick-up and delivery of heavy vehicles or equipment. The bidder must indicate on the Bid Form the additional charge, if any, for this pick -up and delivery service. The City reserves the right to use this service as needed. Vehicles must be picked up by City personnel or delivered to a City location within 24-hours after the vehicle has been repaired.

City Fleet Services Garage: 206 Municipal Drive, Lubbock, TX 79403

Parts, Supplies and Services

The Vendor must use their own parts and/or supplies in completing all repairs. No City parts or supplies will be issued by the City Garage to the Vendor. The Vendor's invoice must include charges for all parts, supplies, and services used in making repairs. The Vendor must return all parts that were removed and replaced during the repair of the vehicle or equipment upon completion of the repair(s) and the parts must accompany the vehicle or equipment. The Vendor is responsible for all core returns and credits.

Bid submissions

Bids will be awarded by category of vehicles and equipment.

Invoices

Invoices will show only the cost rates indicated on the Bid Form. Any additional charges or fees not listed will be disallowed from any invoice. Vehicle shop repairs will be billed per the approved estimate. An individual Work Order shall be issued for vehicle shop repairs. No delivery or repair shall be performed without proper authorization. Invoices for parts purchased by the Vendor for all repairs to City vehicles and equipment will be made available for inspection by a City representative upon request. Invoices must display the Vendor name imprinted on the face, the parts purchased and the date of the purchase. Repair invoices should match the parts invoice when there were replacement parts required for the repair. If a request is submitted by the City to review a particular invoice, that request will be met within 24 hours from the time of the request.

Damages

The Vendor is responsible for any damage to the vehicle or equipment while in the Vendor's control. The City shall be responsible for damages after the vehicle or equipment has been delivered to a City representative and said representative has inspected the vehicle or equipment and has verified that no damage occurred during the repair process.

In the event that a vehicle is scheduled to be picked up from the City for repairs, the vehicles will be:

- 1. Picked up by tow vehicle/wrecker, or
- 2. Driven to the repair destination by a licensed and insured individual representing the Vendor.

Special Requirements:

- 1. Vendor to provide secure shelter (locked fence) for City vehicles.
- 2. Estimate must be submitted to Fleet Services within 24-hour period of request.
- 3. All furnished parts must be OEM, OEM equivalent, or OEM re-cycled parts.
- 4. All suspension or steering components must be OEM or OEM equivalent only.
- 5. All repairs shall be warranted for a period of 12 months or 12,000 miles.

City of Lubbock, TX Purchasing and Contract Management Vendor Acknowledgement Form

In compliance with the **Invitation to Bid**, the undersigned Bidder having examined the Invitation to Bid, instructions to bidders, General Conditions of the Agreement, Specifications, and being familiar with the conditions to be met, hereby submits the following bid for furnishing the material, equipment, labor and everything necessary for providing the items listed and agrees to deliver said items at the locations and for the prices set forth on the bid form and/or the bid table associated with this bid.

A bid will be subject to being considered irregular and may be rejected if it shows omissions, **alterations of form**, conditional alternate bids, additions or alternates in lieu of the items specified, if the unit prices are obviously unbalanced (either in excess of or below reasonably expected values), or irregularities of any kind. The Invitation to Bid is by reference incorporated in this contract.

Where applicable, prices are quoted as: F.O.B. Destination, Freight Pre-Paid and Allowed Where applicable, delivery days are: Days After Receipt of Order (ARO)

Unless otherwise specified herein, the City may award the bid either item-by-item or on an all-ornone basis for any item or group of items shown on the bid.

The City of Lubbock is seeking a contract for with one or more contractors. In order to assure adequate coverage, the City may make multiple awards, selecting multiple vendors to provide the products desired, if multiple awards are in the best interest of the City. A decision to make a multiple award of this Bid, however, is an option reserved by the City, based on the needs of the City.

MOST FAVORED PRICING: The Bidder certifies that the price quoted is not in excess of the lowest price charged anyone else, including its most favored customer, for like quality and quantity of the products/services; does not include an element of profit on the sale in excess of that normally obtained by the Bidder on the sale of products/services of like quality and quantity; and does not include any provision for discounts to selling agents. If at any time during the contract period, the supplier should sell or offer for sale to any other customer, an equal or less quantity of similar contract products of like or better quality, at a lower net price(s) than provided herein, supplier agrees to notify the City and sell same product(s) at the lower price(s) on all deliveries made during the period in which such lower price(s) is effective.

INTERLOCAL PURCHASING (optional): The City desires to make available to other local governmental entities of the State of Texas, by mutual agreement with the successful bidder, and properly authorized interlocal purchasing agreements as provided for by the Interlocal Cooperation Act (Chapter 791, Government Code), the right to purchase the same services, at the prices quoted, for the period of this contract. Each bidder shall indicate on the Bid Form in the space provided below if he/she will honor Political Subdivision orders in addition to orders from the City of Lubbock. Should these other governmental entities decide to participate in this contract, would you (the bidder) agree that all terms, conditions, specifications, and pricing would apply?

The City of Lubbock ITB 23-17316-SB

Preventative Maintenance and Repairs City Heavy Duty Vehicles (Class 6 of Higher) and Equipment

Bid Form

			Total Cost	Texas Truck & Sales and Sal \$210.	vage, Inc.
			Location	Lubboc	
#	Items	Qty (+/-)	UOM	Unit Price	Total Cost
1	Category 1: Trucks over 19,500 lbs	GVWR (CI			
#1-1	Labor rate per hour (Billed in increments of full, half, and 1/4 hours)	1	Hourly Rate	\$160.00	\$170.00
#1-2	% Markup above/ below parts	0	Percentage	30%	10%
#1-3	Pickup and Delivery Round Trip Charge	1	Roundtrip Charge	\$50.00	\$50.00
#1 4 -	— Roundtrip-Tow-Service-Charge –	—-1- —	— Ro und t r ip Charge	– – — No Bid –	—— – No B id
	—Service Call Fee				
#1-6	—Milea ge F ee — − — − — −				
2					
#2-1	 Labor rate per hour (Billed in increments of full, half, and 1/4 hours) 	-1	— – Hourly Rate – —	— – —Ne B id — -	- —— -N o Bi d-
#2-2	- - % Markup ab ove/ be low par ts	0	— – Perc ent age – —	— – No Bid -	- - No Bi d
	— Picku p an d-Delivery Round Trip – Charge		, ,	– – Ne Bid –	- No Bi d-
#2-4	- Ro un dtrip Fo w S ervi ce C har ge - -	1	—Ro undt rip Cha rge	– – N o B id -	- - No Bi d-
	- - Service Ca ll-F ee 				
3	Mileage Fee	lay, Equipn	nent, Crew, and Cargo)		
#3-1	 Labor rate per hour (Billed-in - increments of full, half, and 1/4 hours) 	1	— – Hou rly Rate – —	— – — N e B id— -	- - No Bi d-
#3-2	- - % Markup ab ove/ be low par ts - -	0	— – Perc ent age – —	— – — N o-B id— -	- —— -N o Bi d-
#3-3	- Pi cku p an d-D eliv ery Round Trip - Charge	1	—Rou ndt rip Cha rge	— – — N o B id -	- No Bi d·
#3-4 -	· - Ro un dtrip Fo w Service C har ge - -	1	—Ro undt r i p Cha rge—	— – — No B id -	- - No Bi d-
	- - Service Ca ll-F ee -				
	- - Mi lea ge F ee				- No Bid
	Category 4: Forklifts (Clark, Hyster				
#4 -1 -	 Labor rate per hour (Billed-in increments of full, half, and 1/4 hours) 	1	— – Hou rly Rate – —	— – — No B id — -	- —— -N o Bi d-
#4-2	- - % Markup ab ove/ below -par ts - -	0	— – Perc ent age – —	— — No-B id — -	- —— -N o Bi d-
	- Pickup an d-D elive r y R ound Trip - Charge				
#4-4	- - Ro un dtrip Fo w S er v i ce C har ge - -	1	—Ro undt rip Cha rge	– – No Bid	- - No Bi d-
#4-5	- Service Call Fee	1	— Service Call Fee	— – —No-B id — -	N o Bi d
#4-6	- - Mi lea ge F ee	1	— Ch arg e pe r Mi le —	— – —No-Bid— -	No-Bid

Other governmental entities that might have interests in this contract are Frenship Independent School District, Lubbock Housing Authority, Lubbock County, Lubbock County Hospital District, Lubbock Independent School District, South Plains Association of Governments, City of Texarkana, Texas Tech University, West Texas Municipal Power Agency, Lynn County, and City of Wolfforth.

YES_	X	NO
------	---	----

- If you (the bidder) checked YES, the following will apply:
- Governmental entities utilizing Interlocal Agreements for Cooperative Purchasing with the City of Lubbock will be eligible, but not obligated, to purchase materials/services under the contract(s) awarded as a result of this solicitation. All purchases by governmental entities other than the City of Lubbock will be billed directly to that governmental entity and paid by that governmental entity. City of Lubbock will not be responsible for another governmental entity's debts. Each governmental entity will order their own materials/service as needed.

ADDENDA

Bidder acknowledges receipt of addenda issued in regard to this solicitation:

Addenda No.	Date	
Addenda No.	Date	
Addenda No.	Date	
Addenda No.	Date	

INSURANCE REQUIREMENTS

I, the undersigned Bidder certify that the insurance requirements contained in this bid document have been reviewed by me and my Insurance Agent/Broker. If I am awarded this contract by the City of Lubbock, I will be able to, within ten (10) business days after being notified of such award by the City of Lubbock, furnish a valid insurance certificate to the City meeting all of the requirements defined in this bid.

If the time requirement specified above is not met, the City has the right to reject this proposal and award the contract to another contractor. If you have any questions concerning these requirements, please contact the Director of Purchasing & Contract Management for the City of Lubbock at (806) 775-2572.

SUSPENSION AND DEBARMENT CERTIFICATION

Federal Law (A-102 Common Rule and OMB Circular A-110) prohibits non-Federal entities from contracting with or making sub-awards under covered transactions to parties that are suspended or debarred or whose principals are suspended or debarred. Covered transactions include procurement contracts for goods or services equal to or in excess of \$25,000 and all non-procurement transactions (e.g., sub-awards to sub-recipients).

Contractors receiving individual awards of \$25,000 or more and all sub-recipients must certify that their organization and its principals are not suspended or debarred by a Federal agency.

Before an award of \$25,000 or more can be made to your firm, you must certify that your organization and its principals are not suspended or debarred by a Federal agency.

I, the undersigned agent for the firm named below, certify that neither this firm nor its principals are suspended or debarred by a Federal agency.

TEXAS GOVERNMENT CODE SECTION 2252.152

The undersigned representative of the undersigned company or business, being an adult over the age of eighteen (18) years of age, pursuant to Texas Government Code, Chapter 2252, Section 2252.152, certify that the company named above is not listed on the website of the Comptroller of the State of Texas concerning the listing of companies that are identified under Section 806.051, Section 807.051 or Section 2253.153. I further certify that should the above-named company enter into a contract that is on said listing of companies on the website of the Comptroller of the State of Texas, which do business with Iran, Sudan or any Foreign Terrorist Organization, I will immediately notify the City of Lubbock Purchasing and Contract Department.

TEXAS GOVERNMENT CODE SECTION 2271.002

Company hereby certifies the following:

- 1. Company does not boycott Israel; and
- 2. Company will not boycott Israel during the term of the contract.

The following definitions apply to this state statute:

- (1) "Boycott Israel" means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes; and
- (2) "Company" means an organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations that exists to make a profit.

This Certification is required from a Company if the Company has 10 or more full-time employees and the contract for goods or services (which includes contracts formed through purchase orders) has a value of \$100,000 or more that is to be paid wholly or partly from public funds of the governmental entity.

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.

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.

FEDERAL AND STATE SAFETY REGULATIONS

Contractor shall comply with all federal and state safety regulation including but not limited to Occupational, Safety and Health Administration (OSHA) and the Department of Workforce Development (DWD) regulations. This agreement includes incorporation of Federal Transit Administration (FTA) Terms. The preceding provisions include, in part, certain Standard Terms and Conditions required by the Department of Transportation (DOT), whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any requests which would cause Bus to be in violation of the FTA terms and conditions.

All Environmental Protection Agency (EPA) rules and regulations must be followed by the Contractor.

MASTER AGREEMENT

For Federal Transit Administration Agreements authorized by 49 U.S.C. chapter 53, Title 23, United States Code (Highways), the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, as amended by the SAFETEA-LU Technical Corrections Act of 2008, the Transportation Equity Act for the 21st Century, as amended, the National Capital Transportation Act of 1969, as amended, the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, February 17, 2009, or other Federal laws that FTA administers.

https://www.transit.dot.gov/funding/grantee-resources/sample-fta-agreements/fta-grant-agreements

The Master Agreement can be found in its entirety on the City of Lubbock website www.ci.lubbock.tx.us

INCOMPLETE INFORMATION

Failure to complete or provide any of the information requested in this Request for Proposal, including references, and/or additional information as information as indicated, may results in disqualification by reason of "non-responsiveness".

CONTRACTOR ACKNOWLEDGEMENT

In compliance with this solicitation, the undersigned bidder, having examined the bid documents, instructions to bidders, documents associated with the invitation to bid, and being familiar with the conditions to be met has reviewed the above information regarding:

- Insurance Requirements
- Suspension and Debarment Certification
- Texas Government Code Section 2252.152
- Texas Government Code Section 2271.002
- Texas Government Code 2274
- Federal and State Regulations
- Master Agreement

SUBMISSION INFORMATION

An individual authorized to bind the company must sign the following section. Failure to execute this portion may result in bid rejection.

THIS BID IS SUBMITTED BY TEXAS	TRUCK AND EQUIPMENT	SALES A	ND SALVAGE	a
corporation organized under the laws of the	e State of <u>TEXAS</u>	, or a p	partnership consisti	ng of
	_or individual trading as			of
the City of	_			
Tax ID No.:75-2522004				
Address: 1115 E. SLATON ROAD				_
City: <u>LUBBOCK</u>	State:TX	Zip:	79404	
M/WBE Firm: Woman	Black American		Native American	
Hispanic American	Asian Pacific American		Other (Specify)	
By Authorized Representative - must sign	mplete the information below Date:		023	
Officer Name and Title: KAITLAN FA	ARMER, CONTROLLER			
Business Telephone Number (806) 745	-1977 FAX:			
E-mail Address: TTESALES@OUTL	OOK.COM			

RESOLUTION

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

THAT the Mayor of the City of Lubbock is hereby authorized and directed to execute for and on behalf of the City of Lubbock, Contract No. 17414 for Preventative Maintenance and Repairs for Heavy Duty Vehicles (Class 6 or higher) and Equipment as per ITB 23-17316-SB, by and between the City of Lubbock and Bruckner Truck Sales, Inc., 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	·
	TRAY PAYNE, MAYOR
ATTEST:	
Courtney Paz, City Secretary	
APPROVED AS TO CONTENT:	
Brooke Witcher, Assistant City Manager	
APPROVED AS TO FORM:	
Rachael Foster, Assistant City Attorney	-

ccdocs/RES.ServiceContract 17414- Bruckner Truck Sales, Inc.

6.15.23

City of Lubbock Contract for ITB 23-17316-SB Preventative Maintenance and Repairs: Heavy Duty Vehicles (Class 6 or Higher) and Equipment

THIS CONTRACT made and entered into this _	day of	, 2023, by and between the
City of Lubbock ("City"), and Bruckner Truck	Sales, Inc., ("C	Contractor").

WITNESSETH:

WHEREAS, the City of Lubbock duly advertised for bids for Preventative Maintenance and Repairs: Heavy Duty Vehicles (Class 6 or Higher) and Equipment and bids were received and duly opened as required by law; and

WHEREAS, after careful consideration of the bid submitted by Contractor, the City authorized the execution, in the name of the City of Lubbock a contract with said Contractor covering the purchase and delivery of the said Preventative Maintenance and Repairs: Heavy Duty Vehicles (Class 6 or Higher) and Equipment.

NOW, THEREFORE, in consideration of the mutual agreement contained herein, as well as the financial consideration hereinafter referred to, the parties hereby covenant and agree as follows:

- In accordance with City's specifications and Contractor's bid, copies of which are attached hereto and made part hereof, Contractor will deliver to the City, Preventative Maintenance and Repairs: Heavy Duty Vehicles (Class 6 or Higher) and Equipment, and more specifically referred to as Category 1, Line Items 1-1 through 1-3 and 1-5, and Category 3, Line Items 3-1 through 3-3 and 3-5 on the bid submitted by the Contractor or in the specifications attached hereto.
- 2. The City promises and agrees to employ, and does employ, the Contractor to cause to be done the work provided for in this Contract and to complete and finish the same according to the attached specifications, offer, and terms and conditions contained herein.
- 3. The contract shall be for a term of one (1) year, with the option of two (2), one year extensions, said date of term beginning upon formal approval. This Contract will renew automatically for the additional terms, unless either Party gives 90-day written notice to terminate the Contract.
- 4. All stated annual quantities are approximations of usage during the time period to be covered by pricing established by this bid. Actual usage may be more or less. Order quantities will be determined by actual need. The City of Lubbock does not guarantee any specific amount of compensation, volume, minimum, or maximum amount of services under this bid and resulting contract.
- 5. The Contractor must maintain the insurance coverage required during the term of this contract including any extensions. It is the responsibility of the Contractor to ensure that valid insurance is on file with the Purchasing and Contract Management Department as required by contract or contract may be terminated for non-compliance.

- 6. A) Prices quoted shall be guaranteed for a period for six (6) months upon City approval. The rate may be adjusted at the City's discretion for the effective change in Consumer Price Index (CPI) or Product Price Index (PPI) as appropriate.
 - B) Further, if the Contractor can provide documentation for actual charges for material, labor, etc. that demonstrates that the change in CPI or PPI is not sufficient, the Contractor shall provide such documentation to the City, and at the City's sole discretion, the contractual rate may be further adjusted. If agreement regarding a new rate cannot be reached, the City shall terminate at the end of the current contract period.
 - C) If an adjustment to pricing is granted under this section, the Contractor must provide the Director of Purchasing and Contract Management written, quarterly documentation to justify the ongoing adjustment. If no such documentation is timely received, the rate will automatically revert to the initial, awarded rate.
- 7. This contract shall remain in effect until the first of the following occurs: (1) the expiration date, (2) performance of services ordered, or (3) termination of by either party with a 30 day written notice. The City of Lubbock reserves the right to award the canceled contract to the next lowest and best bidder as it deems to be in the best interest of the city.
- 8. Contractor shall at all times be an independent contractor and not an agent or representative of City with regard to performance of the Services. Contractor shall not represent that it is, or hold itself out as, an agent or representative of City. In no event shall Contractor be authorized to enter into any agreement or undertaking for or on behalf of City.
- 9. Insurance Requirements

SECTION A. Prior to the approval of this contract by the City, the Contractor shall furnish a completed Insurance Certificate to the City, which shall be completed by an agent authorized to bind the named underwriter(s) to the coverages, limits, and termination provisions shown thereon, and which shall furnish and contain all required information referenced or indicated thereon. THE CITY SHALL HAVE NO DUTY TO PAY OR PERFORM UNDER THIS CONTRACT UNTIL SUCH CERTIFICATE SHALL HAVE BEEN DELIVERED TO THE CITY.

SECTION B. The City reserves the right to review the insurance requirements of this section during the effective period of the contract and to require adjustment of insurance coverages and their limits when deemed necessary and prudent by the City based upon changes in statutory law, court decisions, or the claims history of the industry as well as the Contractor.

SECTION C. Subject to the Contractor's right to maintain reasonable deductibles in such amounts as are approved by the City, the Contractor shall obtain and maintain in full force and effect for the duration of this contract, and any extension hereof, at Contractor's sole expense, insurance coverage written by companies approved by the State of Texas and acceptable to the City, in the following type(s) and amount(s):

<u>Commercial General Liability Requirements</u>: \$1M occurrence / \$2M aggregate (can be combined with an Excess Liability to meet requirement). CGL is required in ALL contracts. It is perhaps the most important of all insurance policies in a contractual relationship. It insures the Contractor has broad liability coverage for contractual activities and for completed operations.

Commercial General Liability to include Products – Completion/OP, Personal and Advertising Injury, Contractual Liability, Fire Damage (any one fire), and Medical Expenses (any one person).

Automobile Liability Requirements: \$1M/occurrence is needed

<u>Workers Compensation and Employer Liability Requirements:</u> Statutory. If the vendor is an independent contractor with no employees and are exempt from providing Workers' Compensation coverage, they must sign a waiver (obtained from COL Purchasing) and include a copy of their driver's license.. Employer Liability (\$1M) is required with Workers Compensation.

Garage Liability Requirements: No less than \$2,000,000 combined single limit.

Garagekeepers Legal Liability Requirements: No less than \$1,000,000 per location.

- * The City of Lubbock (including its officials, employees and volunteers) shall be afforded additional insured status on a primary and non-contributory basis on all liability policies except professional liabilities and workers' comp.
- * Waivers of Subrogation are required for CGL, AL, and WC.
- * To Include Products of Completed Operations endorsement.
- * Carrier will provide a 30-day written notice of cancellation, 10-day written notice for non-payment.
- * Carriers must meet an A.M. Best rating of A- or better.
- * Subcontractors must carry same limits as listed above.

IMPORTANT: POLICY ENDORSEMENTS

The Contractor will provide copies of the policies without expense, to the City and <u>all endorsements</u> 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.

REOUIRED PROVISIONS

The Contractor agrees that with respect to the above required insurance, all insurance contracts and certificate(s) of insurance will contain and state, in writing, on the certificate or its attachment, the following required provisions:

- a. Name the City of Lubbock and its officers, employees, and elected representatives as additional insureds, (as the interest of each insured may appear) as to all applicable coverage;
- b. Provide for 30 days notice to the City for cancellation, nonrenewal, or material change;
- c. Provide for notice to the City at the address shown below by registered mail;
- d. The Contractor agrees to waive subrogation against the City of Lubbock, its officers, employees, and elected representatives for injuries, including death, property damage, or any other loss to the extent same may be covered by the proceeds of insurance;
- e. Provide that all provisions of this contract concerning liability, duty, and standard of care together with the indemnification provision, shall be underwritten by contractual liability coverage sufficient to include such obligations within applicable policies.

NOTICES

The Contractor shall notify the City in the event of any change in coverage and shall give such notices not less than 30 days prior the change, which notice must be accompanied by a replacement CERTIFICATE OF INSURANCE.

All notices shall be given to the City at the following address:

Marta Alvarez, Director of Purchasing & Contract Management City of Lubbock 1314 Avenue K, 9th Floor Lubbock, Texas 79401

SECTION D. Approval, disapproval, or failure to act by the City regarding any insurance supplied by the Contractor shall not relieve the Contractor of full responsibility or liability for damages and accidents as set forth in the contract documents. Neither shall the bankruptcy, insolvency, or denial of liability by the insurance company exonerate the Contractor from liability.

- 10. Neither the City nor the Contractor shall assign, transfer or encumber any rights, duties or interests accruing from this Contract without the written consent of the other.
- 11. 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.
- 12. 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.
- 13. All funds for payment by the City under this contract are subject to the availability of an annual appropriation for this purpose by the City. In the event of non-appropriation of funds by the City Council of the City of Lubbock for the goods or services provided under the contract, the City will terminate the contract, without termination charge or other liability, on the last day of the then-current fiscal year or when the appropriation made for the then-current year for the goods or services covered by this contract is spent, whichever event occurs first. If at any time funds are not appropriated for the continuance of this contract, cancellation shall be accepted by the Seller on 30 days prior written notice, but failure to give such notice shall be of no effect and the City shall not be obligated under this contract beyond the date of termination.
- 14. The Contractor shall not assign or sublet the contract, or any portion of the contract, without written consent from the Director of Purchasing and Contract Management. Should consent be given, the Contractor shall insure the Subcontractor or shall provide proof on insurance from the Subcontractor that complies with all contract Insurance requirements.
- 15. 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.

- 16. The Contractor (i) does not engage in business with Iran, Sudan or any foreign terrorist organization and (ii) it is not listed by the Texas Comptroller under Section 2252.153, Texas Government Code, as a company known to have contracts with or provide supplies or services to a foreign terrorist organization. As used in the immediately preceding sentence, "foreign terrorist organization" shall have the meaning given such term in Section 2252.151, Texas Government Code.
- 17. 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 contact 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.

- 18. 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.
- 19. 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.

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.

- 20. 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.
- 21. 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.
- 22. This Contract consists of the following documents set forth herein; Invitation to Bid No. 23-17316-SB, Specifications, and the Bid Form.

----INTENTIONALLY LEFT BLANK-----

IN WITNESS WHEREOF, the parties hereto have caused this Contract to be executed the day and year first above written. Executed in triplicate.

CITY OF LUBBOCK	CONTRACTOR
	BY
Tray Payne, Mayor	Authorized Representative
ATTEST:	Wesley BARTON Print Name
	1125 E Sladon Hyry
Courtney Paz, City Secretary	Address
	Lubbock Tx 79404
APPROVED AS TO CONTENT:	City, State, Zip Code
Dominic R. Ent	
Dominic Esperat, Director of Fleet Operations	
APPROVED AS TO FORM:	

City of Lubbock, TX 1TB 23-17316-SB

Preventative Maintenance and Repairs Heavy Duty Vehicles (Class 6 or Higher) and Equipment

Scope of Work/ Specifications

I. Introduction, Purpose and Intent

The intent of this Invitation for Bid (hereinafter referred to as ITB) is to solicit qualified vendors to enter a contract with the City of Lubbock (hereinafter referred to as The City) to provide preventative maintenance and repairs to heavy duty vehicles and equipment. The City is seeking to contract with one or more Vendors, if it is in the best interest of the City.

II. Scope of Services

The awarded vendor shall furnish and supply all insurance, labor, personnel, service, supervision, administration, documentation, reports, management, equipment, tools and materials necessary to provided preventative maintenance and repairs services. All services shall be provided on an "as needed/ requested basis" to the City. The City does not guarantee any quantities and services to be purchased under this contract.

Vendor shall have been in the preventative maintenance and repairs business for a minimum of three (3) consecutive years and familiar with the specified requirements and methods needed for proper performance of this contract.

<u>Service Hours:</u> All services performed under this contract will be conducted during normal business hours (Monday through Friday, 7:00 a.m. - 4:30 p.m.), excluding City Holidays.

<u>References</u>: Vendor shall include with the bid a minimum of five (5) commercial customer references to substantiate the qualifications and experience requirements for services completed within the past 24 months.

III. General Requirements

In addition to the General Requirements, the Scope of Services shall include, but not be limited to the following the following:

Air Conditioning, Heating & Ventilation

System

Axles

Brakes, Hubs & Bearings

Steering

Suspension

Drive Shafts

Automatic Transmissions

Charging Systems

Cranking Systems

Ignition Systems

Lighting Systems, Electrical Accessories

Engines

Exhaust Systems

Fuel Systems Power Take-Off (PTO) Buckets /Booms Def Systems

Equipment & Truck Categories

The following is a current list of Descriptions of City of Lubbock vehicles and equipment by Category which are included in this maintenance and repair contract.

Category	Description
I) Trucks	Class 6-7-8-9
2) Off-Road Equipment	Tractors, Backhoes, Loaders, Excavators , Dozers, Graders, Scrapers, Cranes
3)Trailers	Utility, Pipe, Hay, Equipment, Crew, Cargo
4)Forklifts	Clark, Hyster, Cat, Daewoo, Case, Hilift, Princeton

Labor Guide

Vendor is required to provide the name of the current Labor Guide software and version used to provide repair costs with the Bid Form. The City of Lubbock reserves the right to audit the labor hours charged to each job and all overcharges will be brought to the attention of the vendor. The Vendor shall issue a credit for the overcharge amount within 5 business days and the credit shall reference the City of Lubbock's vehicle identification number and work order number. If the program is proprietary, Vendor shall grant access to the City of Lubbock's Fleet Services Department for audit purposes.

Work Authorization

Vehicle shop repairs will be estimated on a per job basis with a fixed labor rate per hour as stated on the Bid Form. Prior to the start of any vehicle repair, the Vendor must provide a written repair estimate by a trained service advisor or technician. Estimates must include parts at the quoted cost rate. All estimates shall be at no charge to the City. The Vendor must obtain a work order number and authorization to perform the work from the City of Lubbock authorized Fleet Services designee before making any repairs. The Vendor must also obtain City approval for the type of repairs and the cost of repairs before proceeding with the work.

Vendor must submit a copy of the Work Order along with the Vendor's invoice itemizing the labor hours, hourly labor rate, supplies, cost of supplies, parts list, and price for each part.

The Work Order must contain the VIN number, the current license plate number, and the current vehicle mileage or hours. If any of the information is missing or incorrect, the Vendor will not be reimbursed for any services, repairs, maintenance, parts, or supplies.

Approval Procedures

Approval for maintenance and repairs on all vehicles shall be as follows: Repairs up to \$1,000 shall be verbally approved by an authorized Fleet Services designee. Repairs from \$1,000 to \$2,500 must have written approval from an authorized Fleet Services designee.

Repairs over \$2,500 must have written approval from an authorized Fleet Services designee and Director of Fleet Services. If any repairs are completed without proper authorization, the Vendor will not be reimbursed for any services, repairs, maintenance, parts, or supplies.

Repair Time Notifications

The Vendor must make a determination of the repairs, costs and times and notify the City within 24-hours after receiving the vehicle or equipment.

Repeat Repairs

The Vendor will be responsible for correcting all previous repairs performed by the Vendor that were incorrectly repaired or the repair failed to correct the reported deficiency. The Vendor will be responsible for the total cost of the repair including any replacement parts.

In the event of a Repeat Repair, Vendor shall open a new work order. The new vendor work order must indicate on the work order "repeat" or "return" work. Copies of the original City and Vendor work orders and any applicable invoices shall be attached to the new work order.

Pick-Up and Delivery

The bidder's bid may include a separate price for pick-up and delivery of heavy vehicles or equipment. The bidder must indicate on the Bid Form the additional charge, if any, for this pick -up and delivery service. The City reserves the right to use this service as needed. Vehicles must be picked up by City personnel or delivered to a City location within 24-hours after the vehicle has been repaired.

City Fleet Services Garage: 206 Municipal Drive, Lubbock, TX 79403

Parts, Supplies and Services

The Vendor must use their own parts and/or supplies in completing all repairs. No City parts or supplies will be issued by the City Garage to the Vendor. The Vendor's invoice must include charges for all parts, supplies, and services used in making repairs. The Vendor must return all parts that were removed and replaced during the repair of the vehicle or equipment upon completion of the repair(s) and the parts must accompany the vehicle or equipment. The Vendor is responsible for all core returns and credits.

Bid submissions

Bids will be awarded by category of vehicles and equipment.

Invoices

Invoices will show only the cost rates indicated on the Bid Form. Any additional charges or fees not listed will be disallowed from any invoice. Vehicle shop repairs will be billed per the approved estimate. An individual Work Order shall be issued for vehicle shop repairs. No delivery or repair shall be performed without proper authorization. Invoices for parts purchased by the Vendor for all repairs to City vehicles and equipment will be made available for inspection by a City representative upon request. Invoices must display the Vendor name imprinted on the face, the parts purchased and the date of the purchase. Repair invoices should match the parts invoice when there were replacement parts required for the repair. If a request is submitted by the City to review a particular invoice, that request will be met within 24 hours from the time of the request.

Damages

The Vendor is responsible for any damage to the vehicle or equipment while in the Vendor's control. The City shall be responsible for damages after the vehicle or equipment has been delivered to a City representative and said representative has inspected the vehicle or equipment and has verified that no damage occurred during the repair process.

In the event that a vehicle is scheduled to be picked up from the City for repairs, the vehicles will be:

- 1. Picked up by tow vehicle/wrecker, or
- 2. Driven to the repair destination by a licensed and insured individual representing the Vendor.

Special Requirements:

- 1. Vendor to provide secure shelter (locked fence) for City vehicles.
- 2. Estimate must be submitted to Fleet Services within 24-hour period of request.
- 3. All furnished parts must be OEM, OEM equivalent, or OEM re-cycled parts.
- 4. All suspension or steering components must be OEM or OEM equivalent only.
- 5. All repairs shall be warranted for a period of 12 months or 12,000 miles.

City of Lubbock, TX Purchasing and Contract Management Vendor Acknowledgement Form

In compliance with the **Invitation to Bid**, the undersigned Bidder having examined the Invitation to Bid, instructions to bidders, General Conditions of the Agreement, Specifications, and being familiar with the conditions to be met, hereby submits the following bid for furnishing the material, equipment, labor and everything necessary for providing the items listed and agrees to deliver said items at the locations and for the prices set forth on the bid form and/or the bid table associated with this bid.

A bid will be subject to being considered irregular and may be rejected if it shows omissions, **alterations of form**, conditional alternate bids, additions or alternates in lieu of the items specified, if the unit prices are obviously unbalanced (either in excess of or below reasonably expected values), or irregularities of any kind. The Invitation to Bid is by reference incorporated in this contract.

Where applicable, prices are quoted as: F.O.B. Destination, Freight Pre-Paid and Allowed Where applicable, delivery days are: Days After Receipt of Order (ARO)

Unless otherwise specified herein, the City may award the bid either item-by-item or on an all-ornone basis for any item or group of items shown on the bid.

The City of Lubbock is seeking a contract for with one or more contractors. In order to assure adequate coverage, the City may make multiple awards, selecting multiple vendors to provide the products desired, if multiple awards are in the best interest of the City. A decision to make a multiple award of this Bid, however, is an option reserved by the City, based on the needs of the City.

MOST FAVORED PRICING: The Bidder certifies that the price quoted is not in excess of the lowest price charged anyone else, including its most favored customer, for like quality and quantity of the products/services; does not include an element of profit on the sale in excess of that normally obtained by the Bidder on the sale of products/services of like quality and quantity; and does not include any provision for discounts to selling agents. If at any time during the contract period, the supplier should sell or offer for sale to any other customer, an equal or less quantity of similar contract products of like or better quality, at a lower net price(s) than provided herein, supplier agrees to notify the City and sell same product(s) at the lower price(s) on all deliveries made during the period in which such lower price(s) is effective.

INTERLOCAL PURCHASING (optional): The City desires to make available to other local governmental entities of the State of Texas, by mutual agreement with the successful bidder, and properly authorized interlocal purchasing agreements as provided for by the Interlocal Cooperation Act (Chapter 791, Government Code), the right to purchase the same services, at the prices quoted, for the period of this contract. Each bidder shall indicate on the Bid Form in the space provided below if he/she will honor Political Subdivision orders in addition to orders from the City of Lubbock. Should these other governmental entities decide to participate in this contract, would you (the bidder) agree that all terms, conditions, specifications, and pricing would apply?

The City of Lubbock ITB 23-17316-SB

Preventative Maintenance and Repairs City Heavy Duty Vehicles (Class 6 of Higher) and Equipment

Bid Form

Bruckner Truck Sales, Inc. S809.00							
Total Cost Location Lubbock, TX					Bruckner Truck	Salos Inc	
# Items Qty Unit Total				Total Cost			
# Items (4/-) UOM Price Cost Category 1: Trucks over 19,500 lbs GWR (class 6-7-8-9) Including Sweepers and Trash Trucks #1-1 Labor rate per hour (Billed in 1 Hourly Rate increments of full, half, and 1/4 hours) #1-2 % Markup above/ below parts 0 Percentage 25% 25% #1-3 Pickup and Delivery Round Trip 1 Roundtrip Charge \$153.00 \$153.00 Charge #1-4 Roundtrip-Tow-Service Charge 1 Service Call Fee \$163.00 \$					· ·		
# Items			Otv	Location			
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#2-4 Roundtrip Tow Service Charge 1 Roundtrip Charge No-Bid No-Bid No-Bid No-Bid #2-5 Service Call Fee 1 Charge per-Mile No-Bid	#2 -3 – -			– Rou nd trip Charge –	—— – Ne Bi d——	– —No-Bid	
#2-6 - Mileage-Fee	#2 -4 -	· ·	— -1—	- Roundtrip Charge -	— – No Bid —	– —No Bid	
3 Category 3: Trailers (Utility Pipe, Hay, Equipment, Crew, and Cargo) #3-1 Labor rate per hour (Billed in 1 Hourly Rate \$110.00 \$110.00 increments of full, half, and 1/4 hours) #3-2 % Markup above/ below parts 0 Percentage 25% 25% #3-3 Pickup and Delivery Round Trip 1 Roundtrip Charge \$110.00 \$110.00 Charge #3-4 Roundtrip Tow-Service Charge 1 Service Call Fee \$120.00 \$120.00 #3-5 Service Call Fee 1 Service Call Fee \$120.00 \$120.00 #3-6 Mileage Fee 1 Charge per-Mile No Bid No Bid Category 4: Forklifts (Clark, Hyster, Cat, Daewoo, Case, Hillift, Princeton) #4-1 Labor rate per hour (Billed in 1 Hourly Rate 1 Hourly Rate 1 No Bid No Bid Increments of full, half, and 1/4 hours) #4-2 % Markup above/below-parts 0 Percentage No Bid No Bid Charge #4-3 Pickup and Delivery Round Trip 1 Roundtrip Charge No Bid No Bid No Bid Charge	#2-5				—— – No Bi d—	– —No Bid	
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#4-5	#4 -5	—Servi ce Call Fee		– Service Call-Fee –	No Bid	– —No Bid	
#4-6—							

Other governmental entities that might have interests in this contract are Frenship Independent School District, Lubbock Housing Authority, Lubbock County, Lubbock County Hospital District, Lubbock Independent School District, South Plains Association of Governments, City of Texarkana, Texas Tech University, West Texas Municipal Power Agency, Lynn County, and City of Wolfforth.

YES_X	NO	

- If you (the bidder) checked YES, the following will apply:
- Governmental entities utilizing Interlocal Agreements for Cooperative Purchasing with the City of Lubbock will be eligible, but not obligated, to purchase materials/services under the contract(s) awarded as a result of this solicitation. All purchases by governmental entities other than the City of Lubbock will be billed directly to that governmental entity and paid by that governmental entity. City of Lubbock will not be responsible for another governmental entity's debts. Each governmental entity will order their own materials/service as needed.

ADDENDA

Bidder acknowledges receipt of addenda issued in regard to this solicitation:

Addenda No.	Date
Addenda No.	Date
Addenda No.	Date
Addenda No.	Date

INSURANCE REQUIREMENTS

I, the undersigned Bidder certify that the insurance requirements contained in this bid document have been reviewed by me and my Insurance Agent/Broker. If I am awarded this contract by the City of Lubbock, I will be able to, within ten (10) business days after being notified of such award by the City of Lubbock, furnish a valid insurance certificate to the City meeting all of the requirements defined in this bid.

If the time requirement specified above is not met, the City has the right to reject this proposal and award the contract to another contractor. If you have any questions concerning these requirements, please contact the Director of Purchasing & Contract Management for the City of Lubbock at (806) 775-2572.

SUSPENSION AND DEBARMENT CERTIFICATION

Federal Law (A-102 Common Rule and OMB Circular A-110) prohibits non-Federal entities from contracting with or making sub-awards under covered transactions to parties that are suspended or debarred or whose principals are suspended or debarred. Covered transactions include procurement contracts for goods or services equal to or in excess of \$25,000 and all non-procurement transactions (e.g., sub-awards to sub-recipients).

Contractors receiving individual awards of \$25,000 or more and all sub-recipients must certify that their organization and its principals are not suspended or debarred by a Federal agency.

Before an award of \$25,000 or more can be made to your firm, you must certify that your organization and its principals are not suspended or debarred by a Federal agency.

I, the undersigned agent for the firm named below, certify that neither this firm nor its principals are suspended or debarred by a Federal agency.

TEXAS GOVERNMENT CODE SECTION 2252.152

The undersigned representative of the undersigned company or business, being an adult over the age of eighteen (18) years of age, pursuant to Texas Government Code, Chapter 2252, Section 2252.152, certify that the company named above is not listed on the website of the Comptroller of the State of Texas concerning the listing of companies that are identified under Section 806.051, Section 807.051 or Section 2253.153. I further certify that should the above-named company enter into a contract that is on said listing of companies on the website of the Comptroller of the State of Texas, which do business with Iran, Sudan or any Foreign Terrorist Organization, I will immediately notify the City of Lubbock Purchasing and Contract Department.

TEXAS GOVERNMENT CODE SECTION 2271.002

Company hereby certifies the following:

- 1. Company does not boycott Israel; and
- 2. Company will not boycott Israel during the term of the contract.

The following definitions apply to this state statute:

- (1) "Boycott Israel" means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes; and
- (2) "Company" means an organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations that exists to make a profit.

This Certification is required from a Company if the Company has 10 or more full-time employees and the contract for goods or services (which includes contracts formed through purchase orders) has a value of \$100,000 or more that is to be paid wholly or partly from public funds of the governmental entity.

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.

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.

FEDERAL AND STATE SAFETY REGULATIONS

Contractor shall comply with all federal and state safety regulation including but not limited to Occupational, Safety and Health Administration (OSHA) and the Department of Workforce Development (DWD) regulations. This agreement includes incorporation of Federal Transit Administration (FTA) Terms. The preceding provisions include, in part, certain Standard Terms and Conditions required by the Department of Transportation (DOT), whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any requests which would cause Bus to be in violation of the FTA terms and conditions.

All Environmental Protection Agency (EPA) rules and regulations must be followed by the Contractor.

MASTER AGREEMENT

For Federal Transit Administration Agreements authorized by 49 U.S.C. chapter 53, Title 23, United States Code (Highways), the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, as amended by the SAFETEA-LU Technical Corrections Act of 2008, the Transportation Equity Act for the 21st Century, as amended, the National Capital Transportation Act of 1969, as amended, the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, February 17, 2009, or other Federal laws that FTA administers.

 $\underline{https://www.transit.dot.gov/funding/grantee-resources/sample-fta-agreements/fta-grant-agreements}$

The Master Agreement can be found in its entirety on the City of Lubbock website www.ci.lubbock.tx.us

INCOMPLETE INFORMATION

Failure to complete or provide any of the information requested in this Request for Proposal, including references, and/or additional information as information as indicated, may results in disqualification by reason of "non-responsiveness".

CONTRACTOR ACKNOWLEDGEMENT

In compliance with this solicitation, the undersigned bidder, having examined the bid documents, instructions to bidders, documents associated with the invitation to bid, and being familiar with the conditions to be met has reviewed the above information regarding:

- Insurance Requirements
- Suspension and Debarment Certification
- Texas Government Code Section 2252.152
- Texas Government Code Section 2271.002
- Texas Government Code 2274
- · Federal and State Regulations
- Master Agreement

SUBMISSION INFORMATION

As we select and we will a build the company naist sign the following section. Faitness to exceed this to be received in the conjugation.

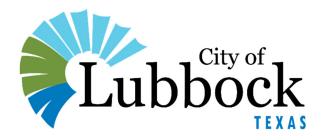
THIS BID I	IS SUBM	IITTED BY Bruck	mer Truck Sales, I	nc.			_a
corporation	organize	d under the laws of t	the State ofTX		, or a p	eartnership consistin	g of
Water the Control of	N/A					Truck & Equipment	
the City of	Lubboo	ck	NASSE-Many-colifie				
Tax ID No.:	75-09	72825					
		Interstate 40					
City:	Amarill	0	State:	TX	Zip: 7911	8	
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Author	rized Rep	kesentative - must sig	gn by hand		And the second s		
Officer Nam	ne and Tit	tle: James J. Mood	ly, Chief Financia	Officer			
Business Te	lephone l	Number806-349-5	158	FA	X:		
E-mail Addr	ess:	wbarton@bruckn	ertruck.com				

The City of Lubbock ITB 23-17316-SB Preventative Maintenance and Repairs City Heavy Duty Vehicles (Class 6 or Higher) and Equipment

Final Bid Tab

							Fin:	al Bid Tab							
								Roberts Tru	alı Camban	Texas Truck & Equip					
				Lubbock Truck		McWhort				Salvage,		Stewart & S		Bruckner's Tru	
			Total Cost	\$1,112.		\$280.		\$170.		\$210.00		\$506		\$809	
			Location	Lubbock		Lubboo		Lubboo		Lubbock,		Lubboo		Lubboo	
		Qty		Unit	Total	Unit	Total	Unit	Total	Unit	Total	Unit	Total	Unit	Total
#	Items	(+/-)	UOM	Price	Cost	Price	Cost	Price	Cost	Price	Cost	Price	Cost	Price	Cost
1	Category 1: Trucks over 19,500 lbs (•	, ,			44.40	4440	44.00	4470	4460	44.60	4465.00		4450.00	4150.00
#1-1	Labor rate per hour (Billed in increments of full, half, and 1/4 hours)	1	Hourly Rate	\$170	\$170	\$140	\$140	\$170	\$170	\$160	\$160	\$165.00	NR	\$153.00	\$153.00
#1-2	% Markup above/ below parts	0	Percentage	30%	30%	30%	30%	10%	10%	30%	30%	No Bid	No Bid	25%	25%
#1-3	Pickup and Delivery Round Trip Charge	1	Roundtrip Charge	\$300	\$300	No Bid	No Bid	No Bid	No Bid	\$50	\$50	No Bid	No Bid	\$153.00	\$153.00
#1-4	Roundtrip Tow Service Charge	1	Roundtrip Charge	\$300	\$300	No Bid	No Bid	No Bid	No Bid	No Bid	No Bid				
#1-5 #1-6	Service Call Fee Mileage Fee	1 1	Service Call Fee Charge per Mile	\$340 \$2	\$340 \$2	No Bid No Bid	No Bid No Bid	No Bid \$3.75	No Bid NR	\$163.00 No Bid	\$163.00 No Bid				
2	Category 2: Off-Road Equipment (Ti						ito bio	110 510	110 510	110 510	110 510	43.73		110 510	110 510
#2-1	Labor rate per hour (Billed in	1	Hourly Rate	No Bid	No Bid	No Bid	No Bid	No Bid	No Bid	No Bid	No Bid	No Bid	No Bid	No Bid	No Bid
	increments of full, half, and 1/4 hours)		·												
#2-2	% Markup above/ below parts	0	Percentage	No Bid	No Bid	No Bid	No Bid	No Bid	No Bid	No Bid	No Bid	No Bid	No Bid	No Bid	No Bid
#2-3	Pickup and Delivery Round Trip Charge	1	Roundtrip Charge	No Bid	No Bid	No Bid	No Bid	No Bid	No Bid	No Bid	No Bid	No Bid	No Bid	No Bid	No Bid
#2-4	Roundtrip Tow Service Charge	1	Roundtrip Charge	No Bid	No Bid	No Bid	No Bid	No Bid	No Bid	No Bid	No Bid	No Bid	No Bid	No Bid	No Bid
#2-5	Service Call Fee	1	Service Call Fee	No Bid	No Bid	No Bid	No Bid	No Bid	No Bid	No Bid	No Bid	No Bid	No Bid	No Bid	No Bid
#2-6	Mileage Fee	1	Charge per Mile	No Bid	No Bid	No Bid	No Bid	No Bid	No Bid	No Bid	No Bid	No Bid	No Bid	No Bid	No Bid
3 4	Category 3: Trailers (Utility Pipe, Ha			No Bid	No Bid	64.40	64.40	No Bid	No Bid	No Dist	No Bid	\$165.00	NR	Ć110.00	6440.00
#3-1	Labor rate per hour (Billed in increments of full, half, and 1/4 hours)	1	Hourly Rate	No Bid	NO BIG	\$140	\$140	NO RIG	NO BIO	No Bid	NO BIO	\$165.00	NK	\$110.00	\$110.00
#3-2	% Markup above/ below parts	0	Percentage	No Bid	No Bid	30%	30%	No Bid	No Bid	No Bid	No Bid	No Bid	No Bid	25%	25%
#3-3	Pickup and Delivery Round Trip Charge	1	Roundtrip Charge	No Bid	No Bid	No Bid	No Bid	No Bid	No Bid	No Bid	No Bid	No Bid	No Bid	\$110.00	\$110.00
#3-4	Roundtrip Tow Service Charge	1	Roundtrip Charge	No Bid	No Bid	No Bid	No Bid	No Bid	No Bid	No Bid	No Bid	No Bid	No Bid	No Bid	No Bid
#3-5	Service Call Fee	1	Service Call Fee	No Bid	No Bid	No Bid	No Bid	No Bid	No Bid	No Bid	No Bid	No Bid	No Bid	\$120.00	\$120.00
#3-6	Mileage Fee	1	Charge per Mile	No Bid	No Bid	No Bid	No Bid	No Bid	No Bid	No Bid	No Bid	\$3.75	NR	No Bid	No Bid
4 #4-1	Category 4: Forklifts (Clark, Hyster, Labor rate per hour (Billed in increments of full, half, and 1/4	Cat, Daev 1	voo, Case, Hilift, Prince Hourly Rate	No Bid	No Bid	No Bid	No Bid	No Bid	No Bid	No Bid	No Bid	\$165.00	NR	No Bid	No Bid
#4-2	hours) % Markup above/ below parts	0	Percentage	No Bid	No Bid	No Bid	No Bid	No Bid	No Bid	No Bid	No Bid	No Bid	No Bid	No Bid	No Bid
#4-3	Pickup and Delivery Round Trip Charge	1	Roundtrip Charge	No Bid	No Bid	No Bid	No Bid	No Bid	No Bid	No Bid	No Bid	No Bid	No Bid	No Bid	No Bid
#4-4	Roundtrip Tow Service Charge	1	Roundtrip Charge	No Bid	No Bid	No Bid	No Bid	No Bid	No Bid	No Bid	No Bid	No Bid	No Bid	No Bid	No Bid
#4-5	Service Call Fee	1	Service Call Fee	No Bid	No Bid	No Bid	No Bid	No Bid	No Bid	No Bid	No Bid	No Bid	No Bid	No Bid	No Bid
#4-6	Mileage Fee	1	Charge per Mile	No Bid	No Bid	No Bid	No Bid	No Bid	No Bid	No Bid	No Bid	\$3.75	NR	No Bid	No Bid

*NR - Non Responsive



Purchasing and Contract Management

Project Summary

ITB 23-17316-SB Preventative Maintenance and Repairs on City Heavy Duty Vehicles (Class 6 or Higher) and Equipment

Notice was published in the Lubbock Avalanche Journal on April 23 & April 30, 2023.

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

Notice was published on the State of Texas Electronic State Business Daily.

Notice was published on Bonfire.com from April 21 to May 17, 2023.

7 individuals attended the pre-bid meeting.

25 vendors downloaded the documents using Bonfire.com.

15 vendors were notified separately.

6 vendors submitted bids.



Information

Agenda Item

Resolution - Municipal Court: Consider a resolution authorizing the Mayor to execute a Joint Interlocal Agreement between the City of Lubbock and Lubbock County, to provide joint magistration services for individuals being held at the Lubbock County Detention Center.

Item Summary

Joint magistrates will provide magistration services and perform other judicial duties at the Lubbock County Detention Center. Joint Magistrates may accept pleas from defendants and assess fines and costs in appropriate cases for offenses, within the jurisdiction of the Municipal Court of the City of Lubbock.

Fiscal Impact

Since its inception in November 2019, the annual cost of joint magistration is \$64,000, and it is funded in Municipal Court's Operating Budget.

Staff/Board Recommending

Bill Howerton, Deputy City Manager The Honorable Jorge Hernandez, Municipal Court Judge

Attachments

Resolution - Interlocal Agmt for Joint Magistration Services Interlocal Agreement - Joint Magistration Services

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 between Lubbock County and the City of Lubbock for Joint Magistration Services, 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	·
	TRAY PAYNE, MAYOR
ATTEST:	
Courtney Paz, City Secretary	
APPROVED AS TO CONTENT:	
Hon. Jorge Hernandez, Municipal Judge	
APPROVED AS TO FORM:	
Rachael Foster, Assistant City Attorney	

ccdocs/RES.City-County Joint Magistration Agreement.2023

6.16.23

Interlocal Agreement between Lubbock County and the City of Lubbock for Joint Magistration Services

STATE OF TEXAS § COUNTY OF LUBBOCK §

Under the authority of Texas Government Code Chapter 791, this Interlocal Agreement (hereinafter referred to as the "Agreement") is made and entered into by and between the County of Lubbock, Texas, a body corporate and politic under the laws of the State of Texas (hereinafter referred to as the "County"), and the City of Lubbock, a political subdivision of the State of Texas (hereinafter referred to as the "City"), collectively referred to as the "Parties."

WHEREAS, City and County have each determined that it would be mutually beneficial for County to provide booking and detention services for City's arrestees; and

WHEREAS, City and County have each determined that it would be mutually advantageous for City and County to provide joint magistration services for arrestees in the Lubbock County Detention Center; and

Now, therefore, City and County agree as follows:

- 1. Definitions. As used in this Agreement:
 - 1.1 "Lubbock County Detention Center" means the facility located at 3502 North Holly, Lubbock, Texas 79403, which is under the direct control of the Lubbock County Sheriff and designed primarily for the purpose of intake processing and confining arrestees.
 - 1.2 "Magistration" means the performance of that duty of a Texas magistrate or associate judge to inform an arrestee of accusations and rights, allow access to counsel and admit to bail as provided by law, issue commitment orders, review probable cause affidavits for arrest and search warrants, issue protective orders, and perform other judicial duties authorized by law. An arrestee has been "magistrated" on a charge when, following arrest on the charge, the arrestee has been taken before a magistrate who has performed the duties prescribed by Article 15.17 of the Code of Criminal Procedure with regard to said charge.
 - 1.3 "Joint Magistrate(s)" means a magistrate(s) appointed by both the Lubbock County Board of Judges and City Council to perform services pursuant to this Agreement.
- 2. Effective Date, Term and Termination.
 - 2.1 This Agreement will have an effective date of June ______, 2023.
 - 2.2 The Term of this Agreement will commence on June ______, 2023, and will continue through September 30, 2024, unless earlier terminated by either Party in

accordance with this Agreement or applicable law. The Parties may agree to extend the initial term of this Agreement.

- 3. Magistration Services.
 - 3.1 It is agreed that City and County will jointly provide magistration services and perform other judicial duties as required at the Lubbock County Detention Center to both City and County arrestees. City and County will require Joint Magistrates to record the exact time at which magistration for each arrestee is completed. It is also agreed that County will provide all support services for City's and/or County's magistration and/or other judicial duties, including, but not limited to, interpreter services. Notwithstanding the foregoing, both Parties to this Agreement acknowledge that the Justices of the Peace and other judges and certain other officials retain the powers of their respective offices to provide magistration services in the event these services are needed in lieu of magistration by City's Municipal Court judges. Joint Magistrates may accept pleas from defendants and assess fines and costs in appropriate cases for offenses within the jurisdiction of the City of Lubbock's Municipal Court.
 - 3.2 Joint Magistrates will provide magistration services and/or perform other judicial duties at the Lubbock County Detention Center at times established by the County. Courtroom activities will be given priority by magistrates and/or associate judges.
 - 3.3 County will be responsible for providing such access to magistration proceedings and/or other judicial services by attorneys and members of the public as may be required by law.
 - 3.4 Parties expressly acknowledge and agree that the Lubbock County Sheriff retains the right to manage the inmate population.
 - 3.5 City agrees to reimburse County for the joint magistration services described herein. City will pay County a monthly installment in the amount of \$4,500.00 no later than three business days following the first City Council meeting of each month in which this Agreement is in effect. The first payment shall be made no later than three days after this Agreement is approved by the City Council. In the event this Agreement is terminated for any reason, City agrees to reimburse County for any outstanding costs for magistration and/or other judicial services rendered as of the date of termination.

Joint Magistrates will be compensated in accordance with the rates established by the Lubbock County Board of Judges. County agrees to compensate Joint Magistrates at this amount in accordance with County's normal payroll cycle. Payment will be directed to the address or direct deposit information of the City judge on file with the Lubbock County Auditor's Office.

3.6 City will be responsible for reimbursing reasonable costs, not to exceed \$10,000.00 per fiscal year, of continuing legal education classes for Joint Magistrates, including any books and materials required by City upon written invoice and as approved by the City of Lubbock Municipal Court presiding judge.

- 3.7 The number of Joint Magistrates required to meet the magistration needs pursuant to this Agreement will be determined by County. Magistrates will seek initial appointment by County's Board of Judges. Upon approval of County's Board of Judges, County will inform City of the proposed Joint Magistrate(s) and request City Council approval. Except as provided below, any magistrate who performs magistration services pursuant to this Agreement must be approved by both the City Council and the County's Board of Judges, and must reside within the then current city limits of Lubbock, Texas.
 - 3.7(a) Either Party may, in their discretion and at their cost, appoint a magistrate or associate judge for duties other than for services found herein; however, any magistrate or associate judge appointed by one Party for duties other than for services found herein shall not perform or be compensated for services for or from the other Party.
 - 3.7(b) A magistrate appointed by the County's Board of Judges who does not reside in the then current city limits of Lubbock, Texas shall not perform magistration services for individuals arrested as City arrestees. County will schedule qualified magistrates to perform magistration services described herein.
- 3.8 Subject to any applicable laws, such as the Texas Open Meetings Act, the City Council and/or the County's Board of Judges may deem a Joint Magistrate ineligible or unqualified to perform the magistration duties required by law and/or this Agreement, and Parties shall notify the other of any Joint Magistrate's ineligibility or disqualification.

If a Joint Magistrate, after being approved by the City Council and the County's Board of Judges, no longer resides within the then current city limits of Lubbock, Texas, the magistrate will be unable to perform joint magistration services pursuant to this Agreement. If a magistrate is no longer approved by both the City Council and the County's Board of Judges, the magistrate will also be unable to perform magistration services pursuant to this Agreement.

- 3.9 Notwithstanding Section 3.8 of this Agreement, the City Council and the County's Board of Judges will formally review the list of magistrates in October of even-numbered years, and will inform the other Party of any requested changes to the list of then approved magistrates. The City Council and the County's Board of Judges agree to appoint approved Joint Magistrates in December of even numbered years.
- 3.10 County will perform magistration services for City arrestees with, pursuant to Section 3.7, qualified magistrates at least two times per day (morning and evening); however, if resources provide, the County may schedule a third session during the afternoon.

- 4. City Use of County Space.
 - 4.1 County will allow City to use designated space within the Lubbock County Detention Center to provide magistration services and/or perform other judicial duties. County will allow City to use associated office space for arrest review, report writing, and other judicial duties, as needed. The access to and type of access to the Lubbock County Detention Center is subject to the approval of the Lubbock County Sheriff.
 - 4.2 City and County agree that any future additional space needs by either Party will be jointly planned and will be subject to funding by both City and County.
 - 4.3 Joint Magistrates may provide magistration services and/or perform other judicial duties via electronic mediums, such as video magistration. Unless otherwise agreed upon by the Parties, any Party who desires to perform magistration services via an electronic medium will bear the costs of providing magistration services in that medium.
- 5. Maintenance, Utilities, and Renovations.
 - 5.1 County will provide maintenance, housekeeping, utility service, and garbage pickup for the space used for magistration, arrest review, and other judicial duties, as needed. The County will provide all furnishings within the designated courtroom space at the Lubbock County Detention Center and will be responsible for maintenance and replacement of the same. Furnishings means all office furniture, office equipment and supplies, and includes but is not limited to, word/data processing equipment, desks, chairs, filing cabinets, bookcases, and tables.
 - 5.2 City shall make no renovation, alteration or repair to County buildings, fixtures, or furnishings without prior authorization from the Lubbock County Sheriff's Office and the Lubbock County Commissioners Court.

6. Liability.

The purpose of this Agreement is only to set forth the rights and duties of the Parties with regard to the governmental function or services described. This Agreement does not create any right, benefit, expectation, warranty, promise, or cause of action for any other person or entity who is not a party to this Agreement. By executing this Agreement, no Party waives, or will be deemed to have waived, any immunity or defense that would otherwise be available to it against claims arising in the exercise of governmental powers and functions. Each Party will be solely responsible for any attorney fees, costs, loss, damages, injury, or death to others or their property arising out of or related to the acts or omissions only of the Party's employees or agents and not those of any other Party.

7. Records.

City and County agree to allow access to and mutual inspection of any and all records relevant to providing magistration services and/or performing other related judicial duties,

excluding City and County internal memoranda and files otherwise exempted by law from public disclosure.

8. Current Revenue.

Both the Party performing a service and the Parties paying for the performance of governmental functions or services will, respectively, render performance and make payments from current revenues legally available to the Party.

If City or County does not appropriate or otherwise receive funds sufficient to maintain the services set forth in this Agreement, then either Party may unilaterally terminate this Agreement effective on the final day of the fiscal year through which the Party received funding.

9. 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, will not be affected thereby, and will be valid and enforceable to the fullest extent permitted by law.

10. No Partnership.

This Agreement is not intended to create and does not create a partnership or joint venture between the parties.

11. Venue and Governing Law.

The construction, interpretation, and performance of this Agreement and all transactions under it shall be governed by the domestic laws of the State of Texas, and any suit regarding this Agreement must be filed in the District Courts of Lubbock County, Texas.

12. Termination.

Either Party may terminate the Agreement by giving the other Party thirty days written notice of its intent to terminate. The thirty day notice will be calculated from the date the notice is sent.

13. Manner of Notices.

Any notice, termination, demand, request, approval, or other communication (a "Notice") which, under the terms of this Agreement or by law, must or may be given by either Party, must be in writing, and must be given by personally delivering, by electronic mail, or mailing the same by certified mail, return receipt requested, to the respective parties as follows:

City:

County:

Tray Payne (or his successor) Mayor of City of Lubbock P.O. Box 2000 Lubbock, Texas 79457 TrayPayne@mylubbock.us Curtis Parrish (or his successor) Lubbock County Judge 904 Broadway, Suite 101 Lubbock, Texas 79401 cparrish@lubbockcounty.gov

14. Interlocal Agreement Conditions.

The Parties hereto find that (a) the services performed by each of them are necessary and authorized for activities that are properly within their statutory functions and programs; (b) they have the authority to contract for the services; (c) they have all necessary power and have received all necessary approvals to execute and deliver this Agreement; and (d) the representatives signing this Agreement on their behalf have authority from their respective governing bodies to sign this Agreement.

15. Entire Agreement.

This Agreement embodies the entire agreement between the parties hereto relative to the subject matter hereof. No amendment, alteration, modification of, or addition to this Agreement will be valid or binding unless expressed in writing and signed by both Parties.

Executed this 12 day of June	, 2023.
LUBBOCK COUNTY, TEXAS:	CITY OF LUBBOCK:
Curtis Parrish, County Judge	Tray Payne, Mayor

ATTEST:	ATTEST:
Kelly Pinion, County Clerk	Courtney Paz, City Secretary
APPROVED AS TO CONTENT: Kelly Rowe Lubbock County Sheriff's Office	APPROVED AS TO CONTENT: City of Lubbock Municipal Court
	City of European Wallering
Lubbook County Board of Judges APPROVED AS TO FORM:	APPROVED AS TO FORM:
Jennifer Irlbeck Lubbock County Criminal District Attorney's Office, Civil Division	Assistant City Attorney



Information

Agenda Item

Ordinance 2nd Reading - City Secretary: Consider Ordinance No. 2023-O0071 amending Article 2.03, Division 3; Article 22.03, Division 2; Article 22.07; and Article 22.08, Division 3; and deleting Article 2.03, Divisions 11 and 17, of the City of Lubbock Code of Ordinances, regarding the duties and responsibilities of the Permit & License Appeal Board.

Item Summary

On June 13, 2023, the City Council approved the first reading of the ordinance.

This ordinance amending Sections 2.03.071-2.03.077; 22.03.096-22.07.007; and 22.08.084 of the Code of Ordinances of the City of Lubbock, will shift the duties and responsibilities of the Junked Vehicle Compliance Board and the Water Board of Appeals to the Permit and License Appeal Board; therefore, deleting Article 2.03, Divisions 11 and 17, of the Code of Ordinances. Additionally, this ordinance will change the composition of the Permit and License Appeal Board to include 3 citizens of the City of Lubbock and 4 members who have expertise in the following areas: 1 in Law Enforcement, 1 in Health, 1 in the Water Industry, and 1 Licensed Irrigator.

Regarding the amendments to Sections 22.03.096-22.07.007 and 22.08.084, the Permit and License Appeal Board would hear and consider appeals of decisions made by the Director of Water Utilities on matters concerning the following: temporary variances determining the average winter consumption (AWC) or the history based consumption (HBC), disputes regarding the accuracy of the City's billing for water or wastewater, requests for alternative landscaping irrigation systems, exceptions to the watering times and/or conditions related to irrigation activities, and temporary variances for existing water uses otherwise prohibited under the drought and emergency contingency plan. Additionally, the Permit and License Appeal Board would hear and consider appeals of decisions made by the City Engineer on matters concerning the Municipal Drainage Utility.

The process concerning junked vehicle determinations will remain unchanged, save and except for the Permit and License Appeal Board making the determinations, rather than the Junked Vehicle Compliance Board.

Fiscal Impact

None

Staff/Board Recommending

Courtney Paz, City Secretary Erik Rejino, Assistant City Manager Aubrey Spear, Director of Water Utilities Stuart Walker, Director of Code Enforcement

Attachments

Ordinance - PLAB Amendments

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AN ORDINANCE AMENDING ARTICLE 2.03, DIVISION 3 OF THE CODE OF ORDINANCES OF THE CITY OF LUBBOCK, TEXAS WITH REGARD TO THE PERMIT AND LICENSE APPEAL BOARD BY PROVIDING FOR AMENDED EXPERTISE FOR MEMBERS, AMENDING THE BOARDS' POWERS TO INCLUDE APPEALS RELATED TO PARTICULAR WATER, WASTE STORMWATER ISSUES AND DETERMINATIONS AS TO JUNKED VEHICLES, AND AMENDING THE BOARDS PROCEDURES; AMENDING ARTICLE 2.03, DIVISION 3 OF THE CODE OF ORDINANCES OF THE CITY OF LUBBOCK, TEXAS WITH REGARD TO DELETING DIVISION 11 RELATING TO THE WATER BOARD OF APPEALS AND DIVISION 17 RELATING TO THE JUNKED VEHICLE COMPLIANCE BOARD; AMENDING ARTICLE 22.03, DIVISION 2 OF THE CODE OF ORDINANCES OF THE CITY OF LUBBOCK WITH REGARD TO VARIANCES AND APPEALS OF VARIOUS WATER AND WASTEWATER MATTERS, APPEALS OF DECISIONS REGARDING LANDSCAPING IRRIGATION SYSTEMS, AND APPEALS RELATED TO OPERATIONS OF IRRIGATION ACTIVITIES; AMENDING ARTICLE 22.07 OF THE CODE OF ORDINANCES OF THE CITY OF LUBBOCK, TEXAS WITH REGARD TO DISPUTES AND APPEALS OF DECISIONS OF THE CITY ENGINEER RELATED TO THE MUNICIPAL DRAINAGE UTILITY; AMENDING ARTICLE 22.08, DIVISION 3 OF THE CODE OF ORDINANCES OF THE CITY OF LUBBOCK, TEXAS WITH REGARD TO APPEALING A DECISION RELATED TO REQUESTS FOR A VARIANCE TO THE DROUGHT AND EMERGENCY CONTINGENCY PLAN; PROVIDING FOR A PENALTY; 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 citizens of the City of Lubbock to protect their health, safety, and welfare to make the following amendments to Article 2.03 of the Code of Ordinances with regard to the Permit and License Appeal Board, the Water Board of Appeals, and the Junked Vehicle Compliance Board; Article 2.03 regarding variances and appeals of various water and wastewater matters, appeals of decisions regarding landscaping irrigation systems, and appeals related to operations of irrigation activities; Article 22.07 relating to disputes and appeals of decisions of the city engineer related to the municipal drainage utility; and Article 22.08 relating to requests for a variance to the drought and emergency contingency plan; and

WHEREAS, the City Council hereby exercises its authority under Article 11, Section 5, of the Texas Constitution as a home rule city to enact regulations not inconsistent with the general laws of the State of Texas in the interest of the health, safety and welfare of the citizens of the City of Lubbock; **NOW THEREFORE**:

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

SECTION 1. THAT Article 2.03, Division 3 of the Code of Ordinances of the City of Lubbock is hereby amended to read as follows:

Division 3. Permit and License Appeal Board

Sec. 2.03.071 Definition.

For the purposes of this division "the board" shall mean the permit and license appeal board.

Sec. 2.03.072 Created; composition, terms of members.

There is hereby created and established a board to be known and designated as the "permit and license appeal board" consisting of seven (7) members who shall be appointed by the city council. Of such membership, four (4) members shall have expertise in the following areas: one in law enforcement, one in the water industry, one licensed irrigator, and one in health. The members shall serve staggered terms, as has been heretofore established, which terms shall be for three (3) years. The board shall adopt its own rules of procedure, which shall not be inconsistent with the requirements of this division, and shall elect its chairman and vice-chairman, which officers shall serve one-year terms.

Sec. 2.03.073 Meetings; quorum.

- (a) A meeting of the board shall be specially called as required upon receipt of a written notice of appeal by the office of the city secretary or upon receipt of a request by the director of code enforcement for the need of a junked vehicle determination to the city secretary.
- (b) The meeting to consider the appeal or determination shall be held within such time period as may be required under applicable provisions of the Code of Ordinances, City of Lubbock, Texas, but not more than thirty (30) days after the timely filing of the notice of appeal or the request for a determination, unless a continuance of the meeting is granted by the board for good cause shown, or unless a later date is requested or agreed to by the appellant.
- (c) The city secretary or his representative shall notify the board members of the notice of appeal or need for a junked vehicle determination, and a time and place for meeting of the board shall be set. The city secretary shall notify the appellant by certified mail of the time and place of meeting of the permit and license appeal board to consider the appeal. In cases regarding the determination of a junked vehicle, the director of code enforcement shall send notice of such meeting for a determination in accordance with the provisions of the Code of Ordinances.
- (d) The presence of three (3) members, one of which has expertise in either the water or irrigation industry of the board at a meeting shall constitute a quorum. A motion

may be adopted only if it receives the votes of at least a majority of the members present at a properly called meeting where there is a quorum present.

(e) A decision of the board pursuant to the authority granted to it by this division shall be final and binding as to the matter heard in such hearing.

Sec. 2.03.074 Removal of members.

The city council may remove any member of the permit and license appeal board found by it to be incompetent, unfit or unsuitable to serve upon the board..

Sec. 2.03.075 Responsibilities.

The board shall be responsible for hearing appeals from administrative acts of city officials denying, revoking or suspending permits and licenses issued by the city in instances where there is no other board specifically appointed to hear such appeals and in cases as specifically set forth in this division. In addition, the board is responsible for making determinations regarding junked vehicles.

Sec. 2.03.076 Powers.

- (a) The board may sustain, overrule or modify the action of any city official in regard to the denial, revocation or suspension of a permit or license issued by the city.
- (b) The board may also sustain, overrule or modify the action of any other city board when the Code of Ordinances of the City of Lubbock authorizes an appeal of the other city board's decision to the permit and license appeal board.
- (c) The board further may sustain, overrule or modify the action of any city official with regard to any matter in which the ordinances of the City of Lubbock authorize an appeal to the board.
- (d) The permit and license appeal board may specifically hear certain appeals related to particular water matters within chapter 22 of the Code of Ordinances as follows:
 - (1) The permit and license appeal board shall have the authority and is vested with the jurisdiction to hear and determine:
 - (A) Appeals from administrative decisions regarding substitution of alternate systems from those provided in this division and division 3 of article 22.03;
 - (B) Appeals from administrative decisions regarding exceptions to the watering times and/or conditions than those set forth in section 22.03.133(a) and (b);

- (C) Appeals from administrative decisions regarding variances to the requirements of the water use management plan, drought and emergency contingency plan set forth in section 22.08.084;
- (D) Appeals from administrative decisions regarding variances to the computation of the average winter consumption as set forth in section 22.03.096(a); and
- (E) Appeals from the internal administrative appeal procedure as set forth in section 22.03.096(b) and (c).
- (F) Appeals from the internal administrative appeal procedure as set forth in section 22.07.007(a) and (b).
- (2) Each party appealing the administrative decision prescribed by sections 22.03.132, 22.03.133, 22.08.084, 22.03.085, 22.03.096, 22.07.007 shall, upon making such appeal, submit to the board sufficient technical and factual data and any other information to demonstrate that the final decision by the internal administrative appeal is incorrect or in error.
- (3) The board shall have no authority relative to interpretation of the administrative provisions or requirements as set forth in this division and sections 22.03.132, 22.03.133, and 22.07.007, either expressed or by reference, nor, except as set forth herein, be empowered to waive requirements set forth in the Code of Ordinances. Notwithstanding the above, the permit and license appeal board may grant exceptions to section 22.03.133(a) and/or (b) in the event appropriate findings as set forth in section 22.08.084(c) are made.
- (e) The board shall have the authority to consider and determine if a vehicle is a junked vehicle in accordance with the following:
 - (1) The board shall conduct the public hearing required prior to the removal of a junk vehicle or part thereof as a nuisance under article 34.09 when such a hearing is requested by the owner or occupant of the public or private premises on which said vehicle is located; by the owner or occupant of the premises adjacent to the public right-of-way where the vehicle is located; or by the director of code enforcement of the City of Lubbock.
 - (2) A request for a public hearing pursuant to this subsection shall be made in writing and filed with the City Secretary.
 - (3) The board shall in each case determine:
 - (A) Whether the vehicle is a junk vehicle as defined in section 34.06.001;
 - (B) Whether the vehicle is excepted under section 34.06.004; and

- (C) Whether the vehicle constitutes a public nuisance under section 34.06.006 and should be abated.
- (4) The board shall issue an appropriate order and may, if necessary, issue an order under section 34.06.009(f) authorizing and requiring the director of code enforcement of the city to remove the vehicle in question.

Sec. 2.03.077 Procedure for conduct of hearings.

In all cases where a public hearing is authorized or required to be held by this board the following procedures shall be followed:

- (1) A record of the entire proceedings shall be made by tape recording or by any other means of permanent recording determined to be appropriate by the board.
- (2) In addition to the record of the proceeding made by the board, any person appearing before the board may, at his expense, have the proceeding recorded by a duly certified court reporter. In every case where a court reporter is employed the person employing the reporter shall furnish a transcript of the hearing as produced by the reporter to the board at no cost to it.
- (3) The board may grant a continuance of a hearing for good cause shown.
- (4) The chairman of the board or the board's vice-chairman shall have the power to administer oaths or affirmations at any hearing conducted by the board.
- (5) Unless notice is otherwise proscribed by other provision in the code of ordinances, notice of any hearing held by the board shall be sent to any person affected by certified mail, return receipt requested, and be in substantially the following form:

NOTICE OF HEARING

To (Name):
Address:
You are hereby notified that a hearing will be held before the City of Lubbock Permit and License Appeal Board at on the day of, 20 at the hour of o'clockm.
The subject matter of the hearing is as follows:
You may be present at the hearing and may represent yourself or be represented by legal counsel of your choice.

You may present any relevant evidence on your behalf concerning the subject matter of the hearing and will be given the full opportunity to cross examine all witnesses offering evidence against you.

You may request the issuance of subpoenas to compel the attendance of witnesses and the production of books, documents, papers or other matters by filing a written request for such subpoena with the secretary of the board.

- (6) The chairman or vice-chairman of the board shall issue all subpoenas requested in writing by any party to a hearing before the board. It shall, however, be the obligation of the requesting party to furnish to the secretary of the board all necessary information for the proper issuance of any subpoena.
- (7) The board itself, in addition to any party to a hearing held by the board, may by motion request a subpoena to be issued to compel the attendance of any witness or the production of book, papers, documents or other things in the interest of fairness.
- (8) The chairman or vice-chairman of the board shall not issue any subpoena when the requesting party fails to provide the necessary information to the secretary for its issuance.
- (9) The right to cross examination shall be allowed to all parties to a hearing held before the board.
- (10) The right to be represented by legal counsel shall be extended to all parties to a hearing before the board.
- (11) The right to call a witness on his behalf shall be extended to all parties to a hearing before this board.
- (12) The burden of proof in every case, other than junked vehicle determinations, shall be upon the person or persons bringing the appeal to the board to show cause why the decision appealed from should be overruled or modified. In the case of determinations of junked vehicles, the burden of proof shall be on the person alleging that a vehicle is not a junked vehicle.
- Ouring a hearing held before the board any member of the board shall have the right to direct any question to either party to such hearing.
- (14) Oral evidence shall be taken only on oath or affirmation of the witness offering such evidence.
- (15) Any relevant evidence may be admitted if it is the type of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions in courts of competent jurisdiction in this state.

- (16) The board shall have in mind that it is conducting an administrative hearing and consistent with the provisions of this section may adopt any rules necessary to conduct such hearing held before it.
- (17) The board shall render its decision in writing within five (5) days of the conclusion of any hearing held before it.

Secs. 2.03.078-2.03.110. Reserved

SECTION 2. THAT Article 2.03, Division 11 of the Code of Ordinances of the City of Lubbock is hereby deleted in its entirety.

SECTION 3. THAT Article 2.03 Division 17 of the Code of Ordinances of the City of Lubbock is hereby deleted in its entirety.

SECTION 4. THAT Section 22.03.096 of the Code of Ordinances of the City of Lubbock is hereby amended to read as follows:

Sec. 22.03.096. Variance and appeal.

- (a) The Director of Water Utilities may grant in writing a temporary variance determining the average winter consumption (AWC) of a customer as prescribed in section 22.03.085 of this article, or the history based consumption (HBC) as prescribed in section 22.04.041 of this article, in the event that it is determined by the Director of Water Utilities that failure to grant such variance would cause an emergency condition adversely affecting the health or sanitation, or would work an unnecessary hardship due to fundamental unfairness of the application of the AWC or HBC to the customer requesting the variance.
- (b) Customers that have no billing history or only a partial billing history for the entire calculation period may request an AWC default value pursuant to section 22.03.085 of this article, or an HBC default value pursuant to section 22.04.041 of this article, as the case may be. Customers may appeal the AWC or HBC default value so determined by filing a petition for variance with the Director of Water Utilities. The Director of Water Utilities may consider water use during the months used to calculate the AWC or HBC in approving an adjustment thereof. The Director of Water Utilities may also consider water use by previous occupants or comparable customer use in approving an adjustment to the AWC or HBC. Adjustments will become effective prospectively upon approval, and no retroactive adjustments shall be approved.

- (c) Customers requesting a modification from the computation of the AWC as set forth in section 22.03.085 of this article, or from the computation of the HBC as set forth in section 22.04.041 of this article, shall file a petition for variance with the Director of Water Utilities. All petitions for variances shall be reviewed by the Director of Water Utilities and shall include, in addition to the information provided in article 2.03, division 11 of this code, the following:
 - (1) Detailed statement as to how the city's computation of the AWC, or HBC as the case may be, would cause an emergency condition adversely affecting the petitioner or fundamentally unfair to the petitioner.
 - (2) Description of the relief requested.
 - (3) Period of time for which the variance is sought.
 - (4) Other pertinent information.
- (d) Variances granted by the Director of Water Utilities shall be subject to the following conditions:
 - (1) The variance granted shall not be retroactive, but shall be effective for all utility account billings dated on or after the date the variance is granted until the variance shall expire.
 - (2) Variances granted shall expire on the later to occur of:
 - (A) The last day of the last month utilized to compute the AWC or HBC; or
 - (B) The implementation of the AWC or HBC, next following the granting of the variance by the permit and license appeal board.
 - (C) Once a variance has been granted, no additional variances will be considered or granted until after the next scheduled recalculation of the AWC or HBC, as the case may be.
- (e) In the event that a customer disputes the accuracy of the city's billing for water or wastewater, the customer may appeal such billing to the Director of Water Utilities. The disputes shall be limited to situations or occurrences wherein actual inaccuracies in the quantity of water consumed by the customer and/or inaccuracies or errors in rates or fees billed for water or wastewater are asserted. The appeal must be made in writing to the city by the customer within six months of the date on the bill that is being appealed. Examples of appeals include:
 - (1) Inaccurate meter readings;
 - (2) Inaccurate rates and/or fees applied to such customer; and
 - (3) Inaccurate volumes of water due to leaks.

(f) In the event that a customer desires to appeal a decision of the Director of Water Utilities made in accordance with this section, the customer may appeal to the permit and license appeal board, by making application within fifteen (15) business days of the denial of the internal administrative appeal. Such appeal shall be made in writing and filed with the City Secretary.

SECTION 5. THAT Subsection 22.03.132 (b) (5) of the Code of Ordinances of the City of Lubbock is hereby amended to read as follows:

Sec. 22.03.132. Landscaping irrigation systems.

(b) (5) Any request for an alternative system from those required in this subsection (b) shall be heard and determined by the Director of Water Utilities. In the event that a customer desires to appeal a decision of the Director of Water Utilities made in accordance with this section, the customer may appeal to the permit and license appeal board, by making application within fifteen (15) business days of the denial of the internal administrative appeal. Such appeal shall be made in writing and filed with the City Secretary.

SECTION 6. THAT Subsection 22.03.133 (c) of the Code of Ordinances of the City of Lubbock is hereby amended to read as follows:

Sec. 22.03.133. Operation.

(c) A person, prior to conducting the subject irrigation activities, may request an exception to the watering times and/or conditions than those set forth in subsections (a) and (b)(2) to Director of Water Utilities. In the event that a customer desires to appeal a decision of the Director of Water Utilities made in accordance with this section, the customer may appeal to the permit and license appeal board, by making application within fifteen (15) business days of the denial of the internal administrative appeal. Such appeal shall be made in writing and filed with the City Secretary.

SECTION 7. THAT Subsection 22.07.007(b) of the Code of Ordinances of the City of Lubbock is hereby amended to read as follows:

Sec. 22.07.007. Disputes; appeals.

(b) Any appeal of the city engineer's decision shall be brought within fifteen (15) days of the date of the city engineer's decision to the permit and license appeal board for an informal hearing and dispute resolution procedure used in other utility disputes by the city. Such appeal shall be made in writing and filed with the City Secretary. The permit

and license appeal board shall render a written decision on such appeal within thirty (30) days after having received a written notice of appeal from the landowner. A decision of the permit and license appeal board shall be final.

SECTION 8. THAT Section 22.08.084 of the Code of Ordinances of the City of Lubbock is hereby amended to read as follows:

Sec. 22.08.084. Variances.

- (a) The Director of Water Utilities may grant, in writing, a temporary variance for existing water uses otherwise prohibited under the drought and emergency contingency plan if it is determined that failure to grant such variance would cause an emergency condition adversely affecting the health, sanitation, or fire protection for the public or the person requesting such variance and if one or more of the following conditions are met:
 - (1) Compliance with this plan cannot be technically accomplished during the duration of this water supply shortage or other condition for which the plan is in effect.
 - (2) Alternative methods can be implemented which will achieve the same level of reduction in water use.
- (b) Persons requesting an exemption from the provisions of this plan shall file a petition for variance with the Director of Water Utilities. All petitions for variances shall be reviewed by the Director of Water Utilities and shall include the following:
 - (1) Name and address of the petitioner;
 - (2) Purpose of water use;
 - (3) Specific provision(s) of this plan from which the petitioner is requesting relief;
 - (4) Detailed statement with supporting data and information as to how the specific provision(s) of this plan adversely affects the petitioner or what damage or harm will occur to the petitioner or others if petitioner complies with this article;
 - (5) Description of the relief requested;
 - (6) Period of time for which the variance is sought;
 - (7) Alternative measures the petitioner is taking or proposes to take to meet the intent of this plan and the compliance date; and
 - (8) Other pertinent information.

- (c) Variances granted by the Director of Water Utilities shall be subject to the following conditions, unless waived or modified by the permit and license appeal board.
 - (1) Variances granted shall include a timetable for compliance.
 - (2) Variances granted shall expire on the earlier to occur of:
 - (A) The scheduled expiration;
 - (B) When the drought and emergency contingency plan is no longer in effect; and
 - (C) The date upon which the petitioner has failed to meet specified requirements.
- (d) No variance shall be retroactive or otherwise justify any violation of this plan occurring prior to the issuance of the variance.
- (e) In the event that a customer desires to appeal a decision of the Director of Water Utilities made in accordance with this section, the customer may appeal to the permit and license appeal board, by making application within fifteen (15) business days of the denial of the internal administrative appeal. Such appeal shall be made in writing and filed with the City Secretary.

SECTION 9. THAT violation of any provision of this Ordinance shall be deemed a misdemeanor punishable as provided by Section 1.01.004 of the Code of Ordinances of the City of Lubbock, Texas.

SECTION 10. THAT should any 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.

SECTION 11. THAT the City Secretary is hereby authorized 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	g on	
Passed by the City Council on second rea	ding on	
	MD AV DAVINE MANOR	
	TRAY PAYNE, MAYOR	
ATTEST:		
Courtney Paz, City Secretary		
APPROVED AS TO CONTENT:		
AFFROVED AS TO CONSENT:		
Musta		
Courtney Paz, City Secretary		
APPROVED AS TO FORM:		
ATTROVED AS TO FORM.		
Amy Sims, Deputy City Attorney		

Information

Agenda Item

Resolution - City Manager: Consider a resolution authorizing the Mayor to execute Amendment No. 1 to the Joyland Amusement Park Lease Agreement dated April 12, 2022, by and between the City of Lubbock and Mackenzie Park Playground Inc. d/b/a Joyland Amusement Park, abating the rent for the year 2023 while the park remains closed for business.

Item Summary

This resolution for consideration will execute Amendment No. 1 to the Joyland Amusement Park Lease Agreement dated April 12, 2022, between the City of Lubbock and Mackenzie Park Playground Inc., d/b/a Joyland Amusement Park. In late 2022, the City of Lubbock was made aware that Joyland Amusement Park would not be reopening in 2023. The owner has requested the City consider abating the rent in 2023. In an effort to assist the owner as they work to clear the rides and structures from the parkland, Amendment No. 1 will abate rental payments for calendar year 2023.

Fiscal Impact

Revenue abatement in the amount of \$36,000 for calendar year 2023

Staff/Board Recommending

Brooke Witcher, Assistant City Manager

Attachments

Resolution
Amendment 1 to Agreement - Joyland
Park Lease Agreement

RESOLUTION

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

THAT the Mayor of the City of Lubbock is hereby authorized and directed to execute for and on behalf of the City of Lubbock, Amendment No. 1 to the Joyland Amusement Park Lease Agreement dated April 12, 2022, abating the due rental payments for the year 2023, by and between the City of Lubbock and Mackenzie Park Playground, Inc. d/b/a Joyland Amusement Park, and related documents. Said Amendment is attached hereto and incorporated in this resolution as if fully set forth herein and shall be included in the minutes of the City Council.

Passed by the City Council or	n
	TRAY PAYNE, MAYOR
ATTEST:	
Courtney Paz, City Secretary	
APPROVED AS TO CONTENT:	
Buodle Witcher	
Brooke Witcher, Assistant City Manager	
APPROVED AS TO FORM:	
BARL	
Ryan Brooke, Senior Assistant City Attorne	у

RES.Amendment No. 1, Joyland Lease Agreement 5.30.23

AMENDMENT NO. 1 TO AGREEMENT BETWEEN THE CITY OF LUBBOCK AND MACKENZIE PARK PLAYGROUND, INC., D/B/A JOYLAND AMUSEMENT PARK

THIS FIRST AMENDMENT to the Joyland Amusement Park Lease Agreement dated April 12, 2022, is entered into by the City of Lubbock ("City"), a home rule municipal corporation in Lubbock County, Texas and Mackenzie Park Playground, Inc., d/b/a Joyland Amusement Park ("Joyland").

WHEREAS, on or about April 12, 2022, City and Joyland executed a Lease Agreement whereby the City leased to Joyland lands located in Mackenzie Park for an initial term of twenty-five (25) years with additional terms of five (5) years, not to exceed forty (40) years; and

WHEREAS, in response to the closure of business operations at Joyland and to allow necessary time for Joyland to reasonably close and vacate the leased premises while abating the due rental payments during that time; and

WHEREAS, both parties for good and valuable consideration desire to amend said Lease Agreement with regard to the rental payments;

NOW THEREFORE, for and in consideration of the mutual promises, covenants, terms and conditions, both general and specific, as hereinafter set forth, the Joyland Lease Agreement of April 12, 2022, is hereby amended by abating the annual rental payments due for the year 2023.

All other portions of the original Lease Agreement shall remain in place and are not altered by this Amendment.

IN WITNESS HEREOF, th	e parties have executed this Amendment as of this day of
CITY OF LUBBOCK:	MACKENZIE PARK PLAYGROUND, INC., D/B/A JOYLAND AMUSEMENT PARK
TRAY PAYNE, MAYOR	Briste Dean
	KRISTI DEAN, Secretary-

ATTEST:	
Courtney Pa	z, City Secretary

APPROVED AS TO CONTENT:

Brooke Witcher, Assistant City Manager

APPROVED AS TO FORM:

Ryan Brooke, Senior Assistant City Attorney

Parks & Rec.Joyland Amendment No. 1 5.30.23

Resolution No. 2022-R0179 Item No. 7.30 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, the Joyland Amusement Park 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 at Mackenzie Park in Lubbock, Texas, and related documents. Said Lease 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.

April 12, 2022

	DANIEL M. POPE, MAYOR
ATTEST: Rebegca Garza, City Secretary	
APPROVED AS TO CONTENT:	
Brooke Witcher, Assistant City Manager	
APPROVED AS TO FORM:	
Ryan Brooke, Assistant City Attorney	
RES.Lease-Joyland Amusement Park Lease Agreem	ent

3.30.22

Passed by the City Council on ____

Joyland Amusement Park Lease Agreement

The following Lease Agreement ("Agreement" herein) is made and entered into by and between the City of Lubbock, Texas, ("City" herein), and Mackenzie Park Playground Inc. d/b/a Joyland Amusement Park ("Joyland" herein) of Lubbock County, Texas.

For and in consideration of the rental terms set forth herein, City hereby agrees to lease to Joyland all of the area in Mackenzie Park known as Joyland Amusement Park located within Mackenzie Park in Lubbock, Texas and further described in the attached Exhibit "A" which is incorporated by reference as if set out verbatim ("Park" herein).

Section 1 DEFINITIONS

As used herein, the following terms shall have the following meanings:

- A) "Permanent Improvements" shall mean any building that is fixed in place and unable to be moved about the Park Area.
- B) "Temporary Improvements" shall mean all improvements to the Park Area that are not Permanent Improvements, including, without limitation, any ride.

Section 2 GENERAL TERMS

- A) Term and Automatic Renewal: The term of this Agreement shall be for twenty-five (25) years from date hereof, and shall be automatically extended for successive five (5) year terms not to exceed forty (40) years in any event unless either party shall give written notice of termination to the other party before the expiration of the first, second or third five (5) year term, as the case may be. The Parties retain the right at its election to cancel and revoke this Agreement, with or without cause, upon one hundred and eighty (180) days notice to the other Party.
 - B) Commencement Date: April 15, 2022.
- C) Termination Date: April 15, 2047, subject to the automatic renewal and notice of termination.
- D) Assignment: Joyland shall not assign, transfer, and sell any of its interest in this Agreement for any reason, without obtaining the approval of the City Council of the City of Lubbock prior to the assignment, transfer, or sale.

E) Annual rental rate and payment schedule:

- Joyland agrees to make an annual payment of \$36,000.00 per year to City beginning in 2022 as set forth below. This amount shall be adjusted based upon the All items Consumer Price Index for All Urban Consumers (CPI-U) indicator as determined by the United States Bureau of Labor Statistics regarding the Dallas-Fort Worth-Arlington region at the beginning of each calendar year provided however the annual CPI-U increase shall not exceed:
 - a) 4.00% annually for the period of April 15, 2022 through April 15, 2027;
 - b) 3.50% annually for the period April 15, 2027 through April 15, 2032:
 - c) 3.00% annually for the period April 15, 2032 through April 15, 2037;
 - d) 2.50% annually for the period April 15, 2037 through April, 2042; or
 - e) the lesser of 2.00% annually or \$ 65,000.00annually for the period April 15, 2042 through April 15, 2047.
- Subject to the adjustment for CPI as described herein, see above Section 2, E) 1), the annual payment is to be paid in four (4) equal payments of \$9,000.00 on or before the following days of each year as set forth below, unless such day falls on a weekend or holiday, then payment will be due on the following business day:
 - a) June 1st,
 - b) July 1st,
 - c) August 1st, and
 - d) September 1st.
- 3) The City shall notify Joyland in writing, on or before March 1st of each year, of any increase in the annual rental rate for the upcoming lease year.

Section 3 <u>Use, Maintenance & Improvements</u>

Joyland agrees, binds and obligates itself as an independent contractor, to:

A) operate all concessions in the Park in a manner that is acceptable to the City, or its duly authorized agents, and in accordance with all laws, rules, regulations, and ordinances of the City, and the Lubbock Parks and Recreation Board that are in effect or become effective

during the term of this Agreement;

- B) keep the Park in a clean and sanitary condition, including maintaining all plants, trees, grasses, Permanent Improvements and Temporary Improvements within the Park in such a state of repair as the same are in at the commencement of this Agreement, subject to reasonable use and wearing of said plants, trees, grasses, buildings, Permanent Improvements and Temporary Improvements;
- C) make capital improvements which, in Joyland's sole opinion, will enhance the value, patrons' use of the Park, and the revenue of the Park; provided however, that any Permanent Improvements, save and except metal buildings, made by Joyland to the Park, shall become the property of the City at the expiration of the lease, and all Temporary Improvements and metal buildings, whether affixed to the ground or not, will remain Joyland's property and subject to removal upon the expiration or termination of this Agreement;
- D) notify the Lubbock Police Department in the event of weekend and holiday traffic control issues at Mackenzie Park to allow for reasonable patron and emergency access to and from the Park; and
- E) submit requests for Capital Improvement Projects concerning Mackenzie Park to the Directors of the Parks and Recreation and Public Works departments of the City by March 1 of each year for the following City fiscal year.

City agrees, binds and obligates itself to:

- A) furnish, maintain, and improve parking lots or lots of sufficient size to meet the demands and needs of the public in its use of the Park, Joyland shall notify the City of Lubbock's Director of Public Works, or his designee, concerning any requests for repairs related to the parking lots, and the City shall make necessary repairs to the parking lots within fifteen (15) days of notification or provide correspondence setting the time for the repairs;
- B) install a water meter serving Joyland as close as reasonably possible adjacent to Joyland's west boundary line. As require by City rules, regulations and ordinances, Joyland shall be responsible for connecting Joyland's water service line to the new meter, within fourteen (14) calendar days of meter installation;
- C) maintain and repair the water main serving Joyland up to the water meter serving Joyland. The water service line between the water meter serving Joyland and Joyland and any required Reduced Pressure Zone equipment for the water line serving Joyland, only, shall be the responsibility of Joyland;
- D) maintain, repair, and improve all areas outside of the Park in keeping with the state of repair of the Park itself, including, without limitation, maintaining, clearing, improving, and ensuring the proper and adequate flow of the creek that navigates through Mackenzie Park:

- E) when necessary for maintaining public safety, provide weekend and holiday traffic control and security at Mackenzie Park to allow for reasonable patron and emergency access to and from the Park;
- F) provide Joyland ingress and egress access to the Park via the Interstate 27 access road north of the Park. Except for emergency situations, in the event that Interstate 27 access will not be available, the City shall provide Joyland thirty (30) days notice and coordinate with Joyland to minimize any impact of access closure;
- G) coordinate with Joyland regarding future Capital Improvement Projects that will impact or effect Joyland, the Park, or Mackenzie Park; and
- H) provide Joyland with the name, title and telephone number of the individual at the Lubbock Police Department who is responsible for scheduling weekend and holiday traffic control at Mackenzie Park.

The City retains the right to make improvements to the Park, in cooperation with Joyland and at the City's sole cost, which in the discretion of the City are necessary or desirable in order that the public might obtain full enjoyment of the Park.

Joyland agrees to request written approval from the City of Lubbock's City Manager, or his designee, for any and all changes, additions, or alterations in the design and placement of any Temporary Improvement or Permanent Improvement in the Park. The City shall have thirty (30) business days from the receipt of Joyland's request to deny the same in writing. If the City does not timely deny the request in writing, the request will be deemed approved. Should the City Manager, or his designee, deny a request, Joyland shall be entitled to request approval from the City Council.

Section 4 INSURANCE

Joyland agrees to incur the costs to obtain and maintain during the entire duration of the lease term, insurance with an insurance underwriter acceptable to the City and that is authorized to do business within the State of Texas, as follows:

- A) Comprehensive General Liability Insurance in the amount of **ONE MILLION AND NO/100 DOLLARS** (\$1,000,000.00) (combined single limit) for bodily injury and property damage claims resulting from Joyland's business operations of the Park.
- B) Fire and Extended Coverage Insurance on all improvements located in and on the Park in amounts sufficient to cover replacement costs of such improvements or the maximum for which the improvements are insurable, whichever is less.
 - C) Joyland shall maintain Worker's Compensation Insurance sufficient to meet the

State of Texas statutory guidelines.

In the event of loss, in whole or in part, of any Permanent Improvement insured pursuant to the provisions in this Section and the Agreement, Joyland shall apply all proceeds received from such insurance toward either:

- (A) rehabilitation or repair of such Permanent Improvement, at the option of the City;
- (B) the construction of new improvements within the Park that meets Joyland's approval; or
- (C) the complete removal of the subject Permanent Improvement.

If, during the term of this Agreement, Joyland's improvements are totally or partially destroyed from a risk required to be covered by the insurance described in this Section and Agreement, or otherwise covered by insurance, this Agreement shall not terminate. Joyland shall timely restore or cause to be restored the improvements to the extent of the insurance proceeds received.

Certificates of insurance or other satisfactory evidence of insurance shall be filed with the City Secretary by Joyland prior to the Commencement Date. Each policy shall name the City as an additional insured as its interest may appear. Each policy shall also provide that the insurer shall notify the City Secretary of any alteration, renewal, or cancellation of its terms and that such policy will remain in full force and effect until ten (10) days after such notice is received by the City Secretary.

Section 5 ACCESS

City and its duly authorized agents and representatives are hereby authorized by Joyland to enter the Park, all buildings, and view all equipment and improvements in the Park for the purpose of inspecting the entire area for all lawful purposes provided such entry and inspection is conducted during normal business hours and with at least a twenty-four (24) hour notice to Joyland prior to the entrance. This section is exclusive to the purpose of inspections of Joyland and is not applicable to the City's right to enter Joyland or the Park for emergency situations or to exercise police powers or other emergency services.

Section 6 DEFAULT

Should Joyland neglect or otherwise fail to perform or observe any of the conditions, agreements, or covenants contained within this Agreement that are or were to be performed by Joyland, or be declared bankrupt according to law, or if any assignment of the premises is made for the benefit of creditors, the City may lawfully and immediately at any time, without

notice or demand to Joyland, enter into and upon the Park, and any part thereof, and repossess the same, and expel Joyland along with Joyland's concessions without being deemed guilty of any manner of trespass, without prejudice to any remedies which might otherwise be used for obtaining possession of the Park or rent in arrears, and upon entry by the City, the lease shall terminate as to Joyland. Save and except Joyland shall be entitled to remove all Temporary Improvements from the Park.

Should City neglect or otherwise fail to perform or observe any of the conditions, agreements, or covenants contained within this Agreement that are or were to be performed by the City, and fail to cure or begin to repair, remedy or cure the same within fifteen (15) days after the City's receipt of written notice from Joyland, the City shall forfeit its rental rate from the date of notice until such time as the actions of neglect or failures are remedied to the approval of Joyland.

Section 7 GENERAL PROVISIONS

City and Joyland mutually agree and understand the following:

- A) Governing Law: The laws of the State of Texas govern this Agreement.
- B) Venue Provision: Any action or proceeding arising out of this Agreement must be brought in Lubbock County, Texas.
- C) Attorneys' Fees: Should legal action or litigation ever arise out of this Agreement or in connection to this Agreement, the losing party agrees to reimburse the winning party for costs and attorneys' fees.
- D) Severability: The terms of this Agreement are severable, so that if a court finds any term or section to be invalid or unenforceable, all remaining terms and sections shall continue to be valid and enforceable.
- E) Multiple Subparts: This Agreement may be executed in multiple originals and counterparts, each of which shall be an original and all of which shall constitute a single Agreement binding on the parties.
- F) Entire Agreement: This Agreement constitutes and represents the entire agreement between the City and Joyland, and supersedes and extinguishes all prior agreements, understandings, representations, warranties and arrangements of any nature, whether oral or written, between the City and Joyland relating to the lease of the Park. The Agreement shall be binding upon and inure to the benefit of the City and Joyland and their respective successors and permitted assigns.
- G) Agreement Amendments: Amendments to this Agreement are permitted as long as the amendment is in writing and signed by both the City and Joyland. No oral, unwritten, or

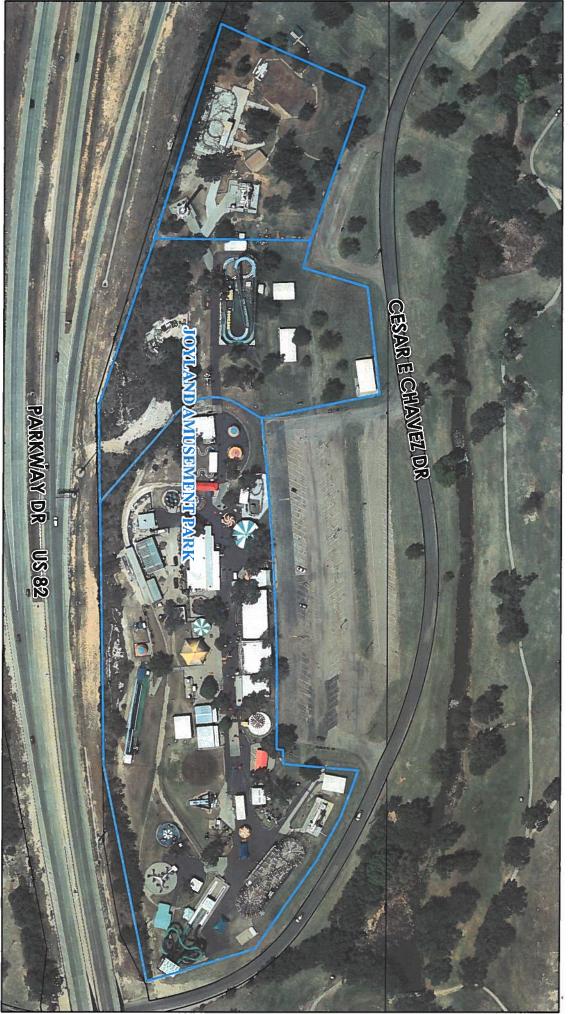
unsigned amendments shall have any effect or validity on this Agreement.

- H) No rule of construction against the drafter: Any rule of construction to the effect that any ambiguity is to be resolved against the drafting party shall not be applied to the interpretation of this Agreement.
- I) Authority to Sign: The person(s) signing below certifythat they possess the authority to fully bind the City and Joyland to the terms and conditions set forth in this Agreement.
- Rights and Remedies Reserved: The parties 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 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, the former shall control.
- K) Funding and Future Improvements: The Parties understand and acknowledge that any City funding of this Agreement or future Capital Improvement Project is contained in City's annual budget and is subject to the approval of the City in each fiscal year. The Parties further agree that should the governing body of the City fail to approve a budget which includes sufficient funds for the continuance of this Agreement or any Capital Improvement Project, or should the governing body of the City fail to certify funds for any reason, such an event shall not be considered a breach of any obligation created in this Agreement. When the funds budgeted or certified during any fiscal year by the City to discharge its obligations under this Agreement are expended, Joyland's sole and exclusive remedy shall be to terminate this Agreement.
- L) No Indemnification by City: The parties expressly acknowledge that the City'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 is invalid.
- M) Compliance with Chapter 2270, Subtitle F, Title 10, Texas Government Code: Joyland warrants that it is 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 contract.
- N) 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 OF LUBBOCK RETAINS ALL GOVERNMENTAL IMMUNITIES.

CITY OF LUBBOCK:	
By: Daniel M. Pope, Mayor of Lubbock	Date: April 12, 2022
By: Rebecca (Becky) Garza, City Secretary	Date: April 12, 2022
MACKENZIE PARK PLAYGROUND,	
INC. d/b/a JOYLAND AMUSEMENT PARK:	
By: David Dean, President of Joyland	Date: 04/01/2022
APPROVED AS TO CONTENT:	
Brooke Witcher, Assistant City Manager	Date: 4/4/2022
APPROVED AS TO FORM:	
By:	Date: 4/4/2022
Ryan Brooke, Assistant City Attorney	
Ву:	Date: 4/4/2022

William A. Franklin, Attorney for Joyland

Joyland Amusement Park Lease Agreement Exhibit A

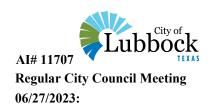




As required by Chapter 2051, Geospatial Data Products of the Government Code, this product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative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







Information

Agenda Item

Resolution - City Manager: Consider a resolution authorizing the Mayor to execute a Certificate of Approval for Issuance of Tax-Exempt Multifamily Housing Revenue Bonds, and all related documents, for the Lubbock Housing Finance Corporation.

Item Summary

In accordance with Section 147(f) of the Internal Revenue Code of 1986 (Code), as amended, the City Council is required to authorize the issuance of tax-exempt bonds by the Lubbock Housing Finance Corporation (LHFC). Approval by the City Council, given in accordance with Section 147(f) of the Code, is not to be construed as a financial undertaking of the City of Lubbock, and the associated bonds sold by LHFC shall not constitute a liability, indebtedness, or an obligation of the City. The City of Lubbock maintains no pledge for the payment of the bonds.

LHFC has proposed to issue one or more series of tax-exempt multifamily housing revenue bonds in an aggregate par amount of not more than \$35,000,000. Lubbock Housing Finance Corporation Multifamily Housing Revenue Bonds will be issued for the benefit of SPHS Lubbock Preservation, LP, or an affiliate thereof, in connection with the acquisition, rehabilitation, and equipping of approximately 144 multifamily rental housing units located at 5520 58th Street, Lubbock, Texas 79414, known as South Plains Apartments, and approximately 100 multifamily rental housing units located at 5401 56th Street, Lubbock, Texas 79414, known as Homestead Apartments. All of these units are located in the City of Lubbock.

Fiscal Impact

There is no fiscal impact because these bonds will stand alone and have no recourse to the City.

Staff/Board Recommending

D. Blu Kostelich, Chief Financial Officer

Attachments

Resolution - LHFC General and No Litigation Certificate TEFRA Approval Certificate Certificate of Hearing Officer

RESOLUTION

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

WHEREAS, the Lubbock Housing Finance Corporation (the "Corporation") is a nonprofit corporation established for the purpose of providing affordable housing within the City of Lubbock; and

WHEREAS, the Corporation has proposed to issue of one or more series of tax exempt multifamily housing revenue bonds in an aggregate face amount of not more than \$35,000,000 (the "Bonds"); and

WHEREAS, the Bonds will be issued for the benefit of SPHS Lubbock Preservation, LP, or an affiliate thereof (the "Borrower"), in connection with the acquisition, rehabilitation and equipping of approximately 144 multifamily rental housing units located at 5520 58th Street, Lubbock, Texas 79414 known as South Plains Apartments, and approximately 100 multifamily rental housing units located at 5401 56th Street, Lubbock, Texas 79414 known as Homestead Apartments, all of such units located in the City of Lubbock, Texas; and

WHEREAS, pursuant to the provisions of Section 147(f) of the Internal Revenue Code of 1986, as amended (the "Code"), the Issuer has caused to be published a notice of a public hearing with respect to the issuance of the Bonds and the financing and refinancing of the Project, and held such a hearing after a reasonable notice on June 5, 2023 (the "TEFRA Hearing"); and

WHEREAS, pursuant to the provisions of Section 147(f) of the Code and State law, the City Council of the City is the designated "applicable elected representative" authorized to approve, after the TEFRA Hearing, the issuance of the Bonds by the Issuer to enable the Bonds to qualify as tax-exempt obligations under the Code; and

THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF LUBBOCK, TEXAS:

Section 1. THAT the City Council, solely for the purposes of Section 147(f) of the Code, hereby approves the issuance of the Bonds by the Issuer to finance or refinance the Project for the benefit of the Borrower.

Section 2. THAT the foregoing approval is given in accordance with the provisions of Section 147(f) of the Code and for no other purposes and is not to be construed as a financial undertaking by the City. The Bonds shall not constitute a liability, indebtedness, or an obligation of the City, nor shall any of the assets of the City be pledged to the payment of the Bonds.

Section 3. 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 Certificate of Approval for Issuance of Tax-Exempt Multifamily Housing Revenue Bonds, and all related documents. Said Certificate of Approval is attached hereto and incorporated in this Resolution as if fully set forth herein and shall be included in the minutes of the City Council.

Passed by the City Council on the da	ay of	, 2023
	TRAY PAYNE, MAYOR	
ATTEST:		
Courtney Paz, City Secretary		
APPROVED AS TO CONTENT:		
A 1 L		
D. Blu Kostelich, Chief Financial Officer		
APPROVED AS TO FORM:		
Amy Sims, Deputy City Attorney		

GENERAL AND NO LITIGATION CERTIFICATE OF THE CITY OF LUBBOCK

We hereby certify that we are duly elected or appointed and acting officers of the City of Lubbock, Texas (the "City"). We do hereby further certify that:

- 1. This Certificate is for the benefit of the Attorney General of the State of Texas (the "Attorney General") and all persons interested in the validity of the proceedings of The Lubbock Housing Finance Corporation (the "Corporation") related to the issuance by the Corporation of its multifamily housing revenue bonds entitled "The Lubbock Housing Finance Corporation Multifamily Housing Revenue Bonds (South Plains Apartments & Homestead Apartments)" issued in one or more series (the "Bonds").
- 2. The City Council (the "Governing Body") of the City authorized the membership of the City in the Corporation, a housing finance corporation created pursuant to the Texas Housing Finance Corporations Act, Chapter 394, Local Government Code, as amended (the "Act"), and approved the Articles of Incorporation and Bylaws of the Corporation (and all amendments thereto).
- 3. The City has appointed Nicholas Bergfeld, Thomas Couture, Tyler Craft, Paul Dannevik, Vickie Noyola-Al Souki, Dwight Overton and Carl Russell to act as members of the board of directors of the Corporation. Each individual is a resident of a city or county which is a member of the Corporation.
- 4. The Governing Body has taken no action pursuant to the Act, including Section 394.016(c) thereof, or otherwise, to limit the effectiveness of the resolution authorizing the issuance of the Bonds or in any way affecting the proceedings relating to the issuance of the Bonds.
- 5. The Governing Body has not created any other Corporation that currently has the power to make home mortgages or loans to lending institutions, the proceeds of which are to be used to make home mortgage or loans on residential developments.
- 6. No litigation is pending, or to our knowledge threatened, in any court in any way affecting the existence of the Corporation or seeking to restrain or to enjoin the issuance, sale or delivery of the Bonds, or in any way contesting or affecting the validity or enforceability of the Bonds or the financing documents to which the Corporation is a party, or contesting in any way the completeness or accuracy of any disclosure document prepared in connection with the issuance of the Bonds, or contesting the powers of the Corporation or its authority with respect to the financing documents to which it is party.
- 7. Each of the undersigned officers of the City hereby certifies that he or she is the duly elected or appointed incumbent of the office appearing below his or her signature and that the signature of the other officer appearing below is the true and correct signature of such person.
- 8. The Attorney General of the State of Texas is hereby authorized and directed to date this certificate concurrently with the date of his approval of the Bonds and this Certificate shall be

deemed for all purposes to be accurate and correct on and as of that date and on and as of the date of the initial issuance and delivery of the Bonds to the initial purchasers thereof.

9. By his or her signature hereto, the undersigned representative of the Governing Body assumes no liability whatsoever with respect to the Bonds. The Bonds are not an indebtedness of the Governing Body or the City and the Governing Body and the City shall have no liability therefor.

[Remainder of Page Intentionally Left Blank]

EXECUTED AND DELIVERED AS OF THE DATE SET FORTH BELOW.

	CITY OF LUBBOCK, TEXAS	
	By Mayor Tray Payne	
Attest		
By [Deputy] City Secretary		

DATED: _______
[TO BE DATED BY ATTORNEY

GENERAL OF THE STATE OF TEXAS]

CERTIFICATE OF APPROVAL FOR ISSUANCE OF TAX-EXEMPT MULTIFAMILY HOUSING REVENUE BONDS

I, the chief elected executive officer of the City of Lubbock, Texas, elected at-large by the voters of the City of Lubbock, Texas, make this certificate solely to satisfy the requirements of Section 147(f) of the Internal Revenue Code of 1986, as amended, with respect to the proposed issuance of one or more series of tax-exempt multifamily housing revenue bonds by The Lubbock Housing Finance Corporation (the "Corporation") in an aggregate face amount of not more than \$35,000,000 (South Plains Apartments & Homestead Apartments) (the "Bonds"). The Bonds will be issued for the benefit of SPHS Lubbock Preservation, LP, or an affiliate thereof (the "Borrower"), in connection with the acquisition, rehabilitation and equipping of approximately 144 multifamily rental housing units located at 5520 58th Street, Lubbock, Texas 79414 known as South Plains Apartments (the "South Plains Development") and approximately 100 multifamily rental housing units located 5401 56th Street, Lubbock, Texas 79414 known as Homestead Apartments (the "Homestead Development" and, together with the South Plains Development, the "Developments"). It is anticipated that a wholly-owned affiliate of the Corporation will own the land on which the Developments are located and lease such land to the Borrower or an affiliate of the Borrower. Further, it is anticipated that a wholly-owned affiliate of the Corporation will be the general partner of the Borrower.

A public hearing was held on behalf of the City of Lubbock, Texas, by Shari Flynn, the designated hearing officer, as described in the attached Certificate of Hearing Officer. As the "applicable elected representative" of the City of Lubbock, Texas, I approve the issuance of the Bonds in the amount and for the purpose described above.

This approval is not: (1) a warranty by the City of Lubbock, Texas, the Mayor of the City of Lubbock, Texas, or of any agency, political subdivision, or instrumentality of the State of Texas that the Bonds will be paid or that any of the obligations assumed in connection with issuance of the Bonds will in fact be performed; (2) a pledge of the faith and credit of the State of Texas or of any agency, political subdivision, or instrumentality the State of Texas; or (3) a warranty of the validity of the corporate existence of the Corporation or of the Bonds themselves.

IN WITNESS WHEREOF, I have officially signed my name in the City of Lubbock, Texas, on the date set forth below.

		Tray Payne, Mayor	
		City of Lubbock, Texas	
Dated:	, 2023		

CERTIFICATE OF HEARING OFFICER

I, the undersigned, acting as hearing officer (the "Hearing Officer"), do hereby make and execute this certificate for the benefit of all persons interested in the proposed issuance of The Lubbock Housing Finance Corporation Multifamily Housing Revenue Bonds (South Plains Apartments & Homestead Apartments) to be issued in a principal amount not to exceed \$35,000,000 (the "Bonds") for the benefit of SPHS Lubbock Preservation, LP, or an affiliate thereof, in connection with the acquisition, rehabilitation and equipping of approximately 144 multifamily rental housing units located at 5520 58th Street, Lubbock, Texas 79414 known as the South Plains Apartments (the "South Plains Development") and approximately 100 multifamily rental housing units located 5401 56th Street, Lubbock, Texas 79414 known as Homestead Apartments (the "Homestead Development" and, together with the South Plains Development, the "Developments"). All of such units are located in the City of Lubbock, Texas.

I hereby certify as follows:

- 1. That I am the duly appointed Hearing Officer for the public hearing that was held on June 5, 2023, at 2:00 p.m. Central time telephonically whereby all interested persons could monitor and participate in the hearing by calling (877) 853-5247 (a toll-free telephone number) and entering 802-469-2463, followed by a pound key (#), in connection with the issuance of the Bonds.
- 2. That notice of the public hearing was published no less than 7 days before the date of the public hearing in a newspaper or newspapers of general circulation available to residents of the City of Lubbock, Texas, as described in *Exhibit A* attached hereto; the notice included the date, time and place of the public hearing, the location, a description of the Developments and the maximum aggregate principal amount of the Bonds.
- 3. That all interested persons appearing at the public hearing were given an opportunity to comment on the proposed issuance of the Bonds and the Developments. The names and comments of all interested persons appearing at the public hearing, if any, are set forth in *Exhibit A* attached hereto.
- 4. That after giving all interested persons an opportunity to attend the hearing telephonically by dialing into the toll-free telephone conference line number noted above and comment, the public hearing was declared closed.
- 5. That copy of the affidavit of publication of notice of public hearing is set forth in *Exhibit B* attached hereto.

[Remainder of Page Intentionally Left Blank]

WITNESS MY HAND this 5th day of June, 2023.

Shari Flynn, Hearing Officer

EXHIBIT A

MINUTES OF PUBLIC HEARING

A public hearing was held by The Lubbock Housing Finance Corporation (the "*Issuer*") telephonically whereby all interested persons could monitor and participate in the hearing by calling (877) 853-5247 (a toll-free telephone number) and entering 802-469-2463, followed by a pound key (#), on June 5, 2023, beginning at 2:00 p.m. Central time.

The hearing was held with respect to the proposed issuance by the Issuer of not to exceed \$35,000,000 of its Multifamily Housing Revenue Bonds (South Plains Apartments & Homestead Apartments) (the "Bonds") in satisfaction of the requirements of Section 147(f) of the Internal Revenue Code of 1986, as amended, regarding the public approval prerequisite to the excludability of the interest on the Bonds from gross income for federal income tax purposes.

The notice of public hearing published in the *Lubbock Avalanche-Journal* on May 22, 2023 indicated that the proceeds of the Bonds will be used to finance the acquisition, rehabilitation and equipping of South Plains Apartments and Homestead Apartments (the "*Developments*"), located within the geographic limits of the City of Lubbock, Texas, by SPHS Lubbock Preservation, LP, or an affiliate thereof (the "*Borrower*").

Present at the hearing on behalf of the Issuer were Shari Flynn, the hearing officer for the Issuer (the "Hearing Officer"), Ryan J. Bowen, Nora O'Brien and Michelle Krofel of Chapman and Cutler LLP, bond counsel to the Issuer, Cynthia Olsen of Wilson, Cribbs & Goren, counsel to the Borrower, and Jacob Levy and Dmitry Gourkine of LEDG Capital, LLC, an affiliate of the Borrower.

The Hearing Officer called the meeting to order and asked if there were any interested persons present who wished to express their views with respect to the issuance of the Bonds, or the Developments being financed.

No one expressed an interest to speak.

Whereupon the Hearing Officer closed the public hearing at 2:15 p.m.

Ехнівіт В

AFFIDAVIT OF PUBLICATION OF NOTICE OF PUBLIC HEARING



Lubbock Avalanche-Journal

PO Box 631667 Cincinnati, OH 45263-1667

PROOF OF PUBLICATION

Gus Egloff Miller Advertising - Legal 909 3Rd AVE # 15

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STATE OF WISCONSIN, COUNTY OF BROWN

The Avalanche-Journal, a daily newspaper of general circulation in the counties of: Cochran, Crosby, Dawson, Floyd, Gaines, Garza, Hale, Hockley, Lamb, Lubbock, Lynn, Motley, Terry and Yoakum, Texas; printed and published in Lubbock County, Texas; that the publication, a copy of which is attached hereto, was published in the said newspaper in the issues dated:

05/22/2023

Sworn to and subscribed before on 05/22/2023

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THE LUBBOCK HOUSING FINANCE CORPORATION NOTICE OF PUBLIC HEARING

In accordance with Section 147(f) of the Internal Revenue Code of 1986, as amended (the "Code") and Section 394.9025 of the Texas Housing Finance Corporations Act, Chapter 394, Texas Local Government Code, as amended, notice is hereby given that The Lubbock Housing Finance Corporation (the "Corporation") will hold a public hearing telephonically at 2:00 p.m. Central time on Monday, June

tithe "Corporation") will hold a public hearing telephonically at 2:00 p.m. Central time on Monday, June 5, 2023. All persons interested may monitor and participate in the hearing by calling (877) 853-5247 (a toll-free telephone number) and entering 802-469-2463, followed by a pound key (#) promptly at 2:00 p.m. Central time on June 5, 2023. The Corporation's designated hearing officer will conduct the hearing on behalf of the City of Lubbock, Texas (the "Sponsoring Political Subdivision").

The purpose of the hearing is to provide residents of the Sponsoring Political Subdivision an opportunity to comment on the proposed issuance by the Corporation of its Multifamily Housing Revenue Bonds to be issued in one or more series (the "Bonds") in an aggregate principal amount of not more than \$35,000,000. The Bonds will be issued for the benefit of SPHS Lubbock Preservation, LP, or an affiliate thereof (the "Bornower"), to finance a portion of the costs of the acquisition, rehabilitation and equipping of approximately 144 multifamily housing units located at 5520 58th Street, Lubbock, Texas 79414 (the "South Plains Development") and to finance a portion of the costs of the acquisition, rehabilitation and equipping of approximately 100 multifamily housing units located at 5401 56th Street, Lubbock, Texas 79414 (the "Homestead Development" and, together with the South Plains Development in "Developments". It is anticipated that a wholly-owned affiliate of the Corporation will own the Developments anticipated that a wholly-owned affiliate of the Corporation will be the general partner of the Borrower.

to the Borrower or an affiliate of the Borrower. Further, it is anticipated that a wholly-owned affiliate of the Corporation will be the general partner of the Borrower. The Bonds will be limited obligations of the Corporation, payable solely from the revenues, receipts and resources of the Corporation pledged to their payment. The Bonds will not constitute an indebtedness or obligation of the Sponsoring Political Subdivision (or any other city, county or other municipal or political corporation or subdivision of the State of Texas) or of the State of Texas, or a loan of credit of any of them, within the meaning of any constitutional or statutory provision.

All interested persons are invited to attend the hearing telephonically by dialing into the toll-free telephone conference line number noted above and will be given the opportunity to express their views on the proposed issuance of the Bonds at a designated point in the public hearing. Questions or written comments may be submitted to The Lubbock Housing Finance Corporation no later than 4:00 p. m. Central time on June 2, 2023 via e-mail at sflynn@lubbockhousing.com or at 3212 Avenue Q, Lubbock, Texas 79411, Attention: Shari Flynn or by phone at (806) 745-9559.

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Lease), well watered w/3
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for the latest... THE LUBBOCK HOUSING FINANCE CORPORATION **NOTICE OF PUBLIC HEARING**

In accordance with Section 147(f) of the Internal Revenue Code of 1986, as amended (the "Code") and Section 394.9025 of the Texas Housing Finance Corporations Act, Chapter 394, Texas Local Government Code, as amended, notice is hereby given that The Lubbock Housing Finance Corporation (the "Corporation") will hold a public hearing telephonically at 2:00 p.m. Central time on Monday, June 5, 2023. All persons interested may monitor and participate in the hearing by calling (877) 853-5247 (a toll-free telephone number) and entering 802-469-2463, followed by a pound key (#) promptly at 2:00 p.m. Central time on hearing 1802-1803 (a toll-free telephone number) and entering 802-469-2463, followed by a pound key (#) promptly at 2:00 p.m. Central time on hearing 1802-1803 (a toll-free telephone number) and entering 802-469-2463, followed by a pound key (#) promptly at 2:00 p.m. Central time on hearing 1802-1803 (a toll-free telephone number) and entering 1802-

(a toil-ree telephone number) and entering su2-4-95-2403, toilowed by a bound key (#) promptly at 2:00 p.m. Central time on June 5, 2023. The Corporation's designated hearing officer will conduct the hearing on behalf of the City of Lubbock, Texas (the "Sponsoring Political Subdivision"). The purpose of the hearing is to provide residents of the Sponsoring Political Subdivision an opportunity to comment on the proposed issuance by the Corporation of its Multifamily Housing Revenue Bonds to be issued in one or more series (the "Bonds") in an aggregate principal amount of not more than \$35,000,000. The Bonds will be issued for the benefit of SPHS Lubbock Preservation, LP, or an than \$35,000,000. The Bonds will be issued for the benefit of SPHS Lubbock Preservation, I.P. or an affiliate thereof (the "Borrower"), to finance a portion of the costs of the acquisition, rehabilitation and equipping of approximately 144 multifamily housing units located at 5520 SBH Street, Lubbock, Texas 79414 (the "Borrower"), to finance a portion of the costs of the acquisition, rehabilitation and equipping of approximately 100 multifamily housing units located at 5401 SBH Street, Lubbock, Texas 79414 (the "Homestead Development") and to finance a portion of the costs of the acquisition, rehabilitation and equipping of approximately 100 multifamily housing units located at 5401 SBH Street, Lubbock, Texas 79414 (the "Homestead Development" and, together with the South Plains Development, the "Developments"). The Borrower will own the Developments. It is anticipated that a wholly-owned affiliate of the Corporation will own the land on which the Developments are located and lease such land to the Borrower or an affiliate of the Borrower. Further, it is anticipated that a wholly-owned affiliate of the Corporation will be the general partner of the Borrower.

The Bonds will be limited obligations of the Corporation, payable solely from the revenues, receipts and resources of the Corporation political Subdivision (or any other city, county or other municipal or political corporation or subdivision or any other city, county or other municipal or political corporation or subdivision or any other city, county or other municipal or political corporation or subdivision or any other city, county or other municipal or political corporation or subdivision or any other city, county or other municipal or political corporation or subdivision or any other city, county or other municipal or political corporation or subdivision or any other city, county or other municipal or political corporation or subdivision or any other city, county or other municipal or political corporation or subdivision of the State of Texas, or a loa

All interested persons are invited to attend the hearing telephonically by dialing into the toll-fre

telephone conference line number noted above and will be given the opportunity to express their views on the proposed issuance of the Bonds at a designated point in the public hearing. Questions or written comments may be submitted to The Lubbock Housing Finance Corporation no later than 4:00 p.m. Centra ime on June 2, 2023 via e-mail at sflynn@lubbockhousing.com or at 3212 Avenue Q, Lubbock, Texas 79411, Attention: Shari Flynn or by phone at (806) 745-9559. Bids & Proposals



NOTICE OF REQUEST FOR QUALIFICATIONS
The Canadian River Municipal Water Authority (CRMWA) is issuing a Request for Qualifications (RFQ 002-2023, Well Systems Tanks Recoating Project(s)) for professional services to provide design, biding and construction inspection services related to the recoating of ground storage tanks. For a copy of the RFQ please go to CRMWA's website at crmwa.com/rfps to download the document. For project questions please call Chad Pernell at 806-676-7328 or email tions please call Chad Pernell at 806-676-7328 or email pernell@crmwa.com. RFQ responses are due by 5 p.m. Central time on June 1, 2023.

CSJ: 1502-01-03 8 PARCEL: 172 Parts 1, 2, & 3, 172E

THE STATE OF TEXAS COUNTY OF LUBBOCK

NOTICE BY PUBLICATION

TO: THE UNKNOWN OFFICERS, SHAREHOLDERS AND/OR SUCCESSOR(S) IN INTEREST OF BARTON GIN, INC., A TEXAS CORPORATION NOW VOLUNTARILY DISSOLVED BY THE THE SECRETARY OF STATE, AND WHOSE IDENTITIES AND WHEREABOUTS ARE UNKNOWN

You are each hereby notified that a hearing will be held at 10:00 o'clock a.m., on the first Monday after the expiration of forty-two (42) days from the date of issuance hereof, that is to say Monday, the 26th day of June 2023, and at CobbFendley Office: 7727 Quaker Ave. Suite A, Lubbock, TX 79424 to assess the damages of the owner of the property being condemned

Pursuant to Governor Abbott's Disaster Declaration due to COVID 19 and the Supreme Court's Emergency Orders Regarding the COVID-19 State of Disaster, the under-Regarding the COVID-19 State of Disaster, the Undersigned Commissioners have set the time and place of hearing the parties and said matters as 10 o'clock A.M. on the 26th day of June 2023, by telephone or video conference located in said County. Said telephone or video conference may be accessed by calling (877)853-5247 and entering access code 885 8513 8918, followed by the pound(#) symbol.

Said telephone or video conference may also be accessed on the internet using the information below:

Meeting specific URL: https://cobbfendley.zoom.us

Meeting number:88585138918

Filed 4/24/2023 3:28 PM

Kelly Pinion

Lubbock County - County Court at Law No. 3 Lubbock County, Texas Donna Chancellor

Meeting password:597598
This hearing may be recorded or transcribed.

This hearing may be recorded or transcribed.

The State of Texas filed a Petition for Condemnation with the Judge of the County Court at Law No. 3 of Lubbock County, Texas, on the 23rd day of June 2022, in Cause No. CC-2022-CD-0011 which is styled The State of Texas v. SWLLD, LLC, a Texas Limited Liability Company, et al. The Plaintiff is the State of Texas. The Defendants are:

The Unknown Officers, Shareholders and/or successor(s) in interest of Barton Gin, Inc., a Texas Corporation now voluntarily dissolved by the the Secretary of State, and whose identities and whereabouts are unknown, and, if any of them be deceased, their respective heirs and legal representatives, if any; SWLLD, LLC, a Texas Limited Liability Company; Gary Bell, as a Possible Succesor-in-interest to Barton Gin, Inc., a Texas Corporation now voluntarily dissolved by the Secretary of State; and First Bank & Trust, a Texas Financial Institution.

The name and address of the attorney for Plaintiff is Eric

The name and address of the attorney for Plaintiff is Eric Russell, Assistant Attorney General, P.O. Box 12548, Austin, Texas 78711-2548.

This suit is an eminent domain proceeding in which the State of Texas is condemning a tract of land located in Lubbock County, Texas, containing such property being fully described in Exhibit "A" of Plaintiffs Petition for Condemnation filed under the above-referenced cause number.
The interests of these Defendants are that they either own or

taxes.

You are further notified that you may appear at the hearing before the special commissioners and present evidence you desire on the issue of damages to be assessed against the State. If you do not appear at the hearing, the Special Commissioners may proceed to assess the damages of the owner of the property being condemned.

If this Notice is not served within ninety (90) days after its issuance, it shall be returned forthwith.

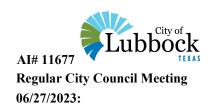
ISSUED this 24th day of April, 2023.

Ryan Hammit David Kerby Craig Brummett SPECIAL COMMISSIONERS



FIND A HOUSE

Check out the classified section everyday.



Information

Agenda Item

Public Hearing - Planning (District 1): Consider a request for Zone Case 3483, a request of Felix Sanchez Medina, for a zone change from General Retail District (C-3) to Commercial District (C-4), at 1921 Clovis Road, located south of Clovis Road and east of Avenue T, Easley Addition, Block 38, Lots 21, 22, 23 and the southwest part of Lot 24, and consider an ordinance.

Item Summary

For detailed information on this request, please refer to the Planning Department Staff Report attached hereto. As noted in the report, staff recommends approval of this request. The Planning and Zoning Commission heard this case on June 1, 2023, and recommended approval of the request by a unanimous vote of 6-0-0.

Fiscal Impact

None

Staff/Board Recommending

Erik Rejino, Assistant City Manager Kristen Sager, Director of Planning Planning and Zoning Commission

Attachments

Ordinance - 3483 Staff Report ZC 3483 Documentation - 3483

ORDIN.	ANCE	NO.	
VILLE		110.	

AN ORDINANCE AMENDING ZONING ORDINANCE NO. 7084 AND THE OFFICIAL MAP OF THE CITY OF LUBBOCK MAKING THE FOLLOWING CHANGES: ZONE CASE NO. 3483; A ZONING CHANGE FROM C-3 TO C-4 ZONING DISTRICT AT 1921 CLOVIS ROAD, LOCATED SOUTH OF CLOVIS ROAD AND EAST OF AVENUE T, EASLEY ADDITION, BLOCK 38, LOTS 21, 22, 23 AND THE SOUTHWEST PART OF LOT 24, LUBBOCK, TEXAS; PROVIDING A PENALTY; PROVIDING A SAVINGS CLAUSE; AND, PROVIDING FOR PUBLICATION.

WHEREAS, the proposed changes in zoning as hereinafter made have been duly presented to the Planning and Zoning Commission for its recommendation which was received by the City Council and, after due consideration, the City Council found that due to changed conditions, it would be expedient and in the interest of the public health, safety and general welfare to make those proposed changes in zoning; and

WHEREAS, all conditions precedent required by law for a valid amendment to the Zoning Ordinance and Map have been fully complied with, including giving notices in compliance with Section 40.01.005 of the Code of Ordinances, City of Lubbock, Texas, and the notices provided by the Texas Local Government Code §211.007 (Vernon, 1990), and notice was duly published in the Lubbock Avalanche-Journal more than fifteen (15) days prior to the date of the public hearing before the City Council on such proposed amendment, and the public hearing according to said notice, was held in the City Council Chamber of the Municipal Building, Lubbock, Texas, at which time persons appeared in support of the proposal; and after said hearing, it was by the City Council determined that it would be in the public interest, due to changed conditions, that the Zoning Ordinance and the Zoning Map be amended in the manner hereinafter set forth in the body of this Ordinance and this Ordinance having been introduced prior to first reading hereof; NOW THEREFORE:

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

ZONE CASE NO. 3483

SECTION 1. THAT Ordinance No. 7084 and the Official Zoning Map are amended as follows:

A change of zoning under the provisions of Section 40.01.005 of the Code of Ordinances of the City of Lubbock from C-3 to C-4 zoning district at 1921 Clovis Road, located south of Clovis Road and east of Avenue T, Easley Addition, Block 38, Lots 21, 22, 23 and the southwest part of Lot 24, City of Lubbock, Lubbock County, Texas.

SECTION 2. THAT violation of any provision of this Ordinance shall be deemed a misdemeanor punishable by fine not to exceed Two Thousand and No/100

Dollars (\$2,000.00) as provided in Section 40.01.006 of the Zoning Ordinance of the City of Lubbock.

SECTION 3. THAT should any 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.

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

AND IT IS SO ORDERED.

AND IT IS SO OF	RDERED.	
Passed by the City Council on first reading on		٠.
Passed by the City Council on second reading	on	_*
	TRAY PAYNE, MAYOR	-
ATTEST:		
Courtney Paz, City Secretary		
APPROVED AS TO CONTENT:		
Kristen Sager, Director of Planning APPROVED AS TO FORM:		
Vlle Lines		
Kelli Leisure, Senior Assistant City Attorney		

vw/cityatt/Kelli/ZoneCase/ZC3483 June 1, 2023



Staff Report	Zone Case 3483
City Council Meeting	June 27, 2023

<u>Applicant</u> Felix Sanchez Medina

<u>Property Owner</u> Felix Sanchez Medina

Council District 1

Recommendations

• Staff recommends approval of this request.

Prior Board or Council Action

- March 13, 1941, Original Zoning Ordinance No. 661: The subject property was annexed and zoned Multifamily District (C).
- September 3, 1950, Zone Case 0188, Ordinance No. 1022: The subject property was rezoned from C to General Retail District (G).
- April 6, 1955, 1955 Zoning Ordinance, Ordinance No. 1695: The zoning of the subject property was updated from District G to General Retail District (C-3) with the adoption of the new Zoning Code.
- June 1, 2023, Zone Case 3483: The Planning and Zoning Commission recommended approval for a zone change from C-3 to Commercial District (C-4) by a vote of 6-0-0.

Notification Summary

Notifications Sent: 25
Received In Favor: 0
Received In Opposition: 3

Site Conditions and History

The subject property was platted on April 4, 1909 as Easley Addition, Block 38, Lots 21, 22, 23 and the southwest part of Lot 24. The property was developed with a commercial building in 1950. The building has been vacant for several years.

Adjacent Property Development

The subject property is adjacent to vacant land zoned C-3 to the west. To the north is a roofing company, zoned Light Manufacturing District (M-1). To the east is a used car dealership, zoned Commercial District (C-4) and to the south is vacant land and residential homes, zoned Multi-Family District (R-3).

Zoning Request and Analysis

Item Summary

The subject property is generally located south of Clovis Road and east of Avenue T. The applicant requests a zone change from C-3 to C-4 for an auto repair garage.

Current zoning: General Retail District (C-3)

Requested zoning: Commercial District (C-4)

Intent Statements

The intent of the current C-3 zoning is, "...to provide for general commercial uses which are medium activity centers in terms of generated traffic. Such districts should be adjacent to local or regional thoroughfares such as state or federal highways."

The intent of the proposed C-4 zoning is, "...to provide for heavy retail and wholesale commercial uses which serve a city-wide or regional area. Such districts should have frontage on regional thoroughfares such as state or federal highways."

Traffic Network/Infrastructure Impacts

The proposed rezoning location will be along Clovis Road and Avenue T. The Master Thoroughfare Plan, 2018, designates Clovis Road as a Principal Arterial and Avenue T as a Local Street. Arterial streets provide connectivity across the transportation network and are continuous routes whose function is to serve high volume needs to local traffic and regional traffic. Local Streets provide access to smaller, destination-oriented areas, such as neighborhoods, subdivisions or local business districts.

Compatibility with Surrounding Property

The proposed zoning is compatible with the surrounding area and will not change the character of the existing development.

Conformance with Comprehensive Plan Principles and Future Land Use Map

The Future Land Use Map designates this area for "Commercial" land use. The proposed zone change to C-4 would be in conformance with this designation and would be in conformance with the principles of the 2040 Comprehensive Plan. This request would be appropriate next to the existing C-4 zoning to the east of the subject property.

Conformance with Zoning Ordinance

The proposed zoning request is in conformance with the zoning ordinance and is appropriate for this area.

Suitability of Property for Allowed Uses

The property is suitable for the proposed use and will not need additional public improvements to support the intensity of uses described in the C-4 zoning district.

Attachments

- A. Case Information
- B. Thoroughfare Plan Map
- C. Notification Map
- D. Aerial Map
- E. Zoning Map
- F. Future Land Use Map
- G. Photos
- H. Application and supporting documentation
- I. Notification Responses

Staff Contacts

Ashley Padilla Victor Escamilla

Planning and Zoning Manager

Planning Department Planning Department 806-775-2107 806-775-3029

ashleypadilla@mylubbock.us vescamilla@mylubbock.us

Case Information: Zone Case 3483



Allowable Uses: Commercial District (C-4)

Transportation: The proposed development has points of access from Clovis Road and Avenue T.

Thoroughfare	Existing	Per Thoroughfare Development Plan
Clovis Road, Principal Arterial, Completed	R.O.W. 90 feet, five-lane, undivided, paved	R.O.W. 90 feet, five- lane, undivided, paved
Avenue T, Local Street, Completed	R.O.W. 50 feet, two-lane, undivided, paved	R.O.W. 50 feet, two- lane, undivided, paved

Engineering Comments: No comments.

Public Works Comments: No comments.

Building Safety Comments: No comments.

Fire Marshal Comments: No comments.

Draft Planning and Zoning Commission Minutes

District 1

- **Zone Case 3483**: Felix Sanchez Medina, request for a zone change from General Retail District (C-3) to Commercial District (C-4), at:
 - 1921 Clovis Road, located south of Clovis Road and east of Avenue T, Easley Addition, Block 38, Lots 21, 22, 23 and the southwest part of Lot 24.

PLANNER ASHLEY PADILLA stated there were twenty-five (25) notifications sent out with three (3) returned in opposition. The reason provided by the opposition was that the zoning should stay the consistent with the other surrounding properties. Staff shared the location of the property including pictures and maps and discussed the surrounding property. Staff recommended approval of the request.

APPLICANT GABRIELLA SANCHEZ, 1921 Clovis Road, interpreted for her Spanish-speaking father, Felix Medina.

TANNER NOBLE asked for the intended use of the property.

APPLICANT GABRIELLA SANCHEZ replied that there will be a mechanic shop going in.

CHAIR SAWYER pointed out that the opposing view of keeping properties consistently C-3 would not apply to this case as all surrounding properties vary in commercially-zoned intensities.

No one spoke in favor or in opposition of this zone case.

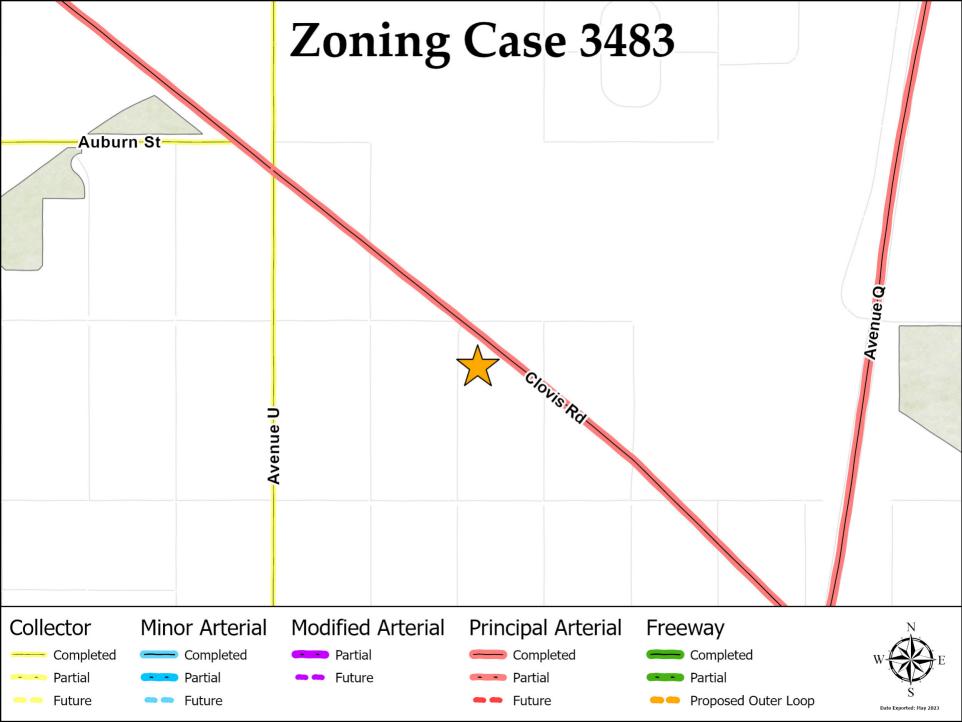
Attachment A Page 1 of 2

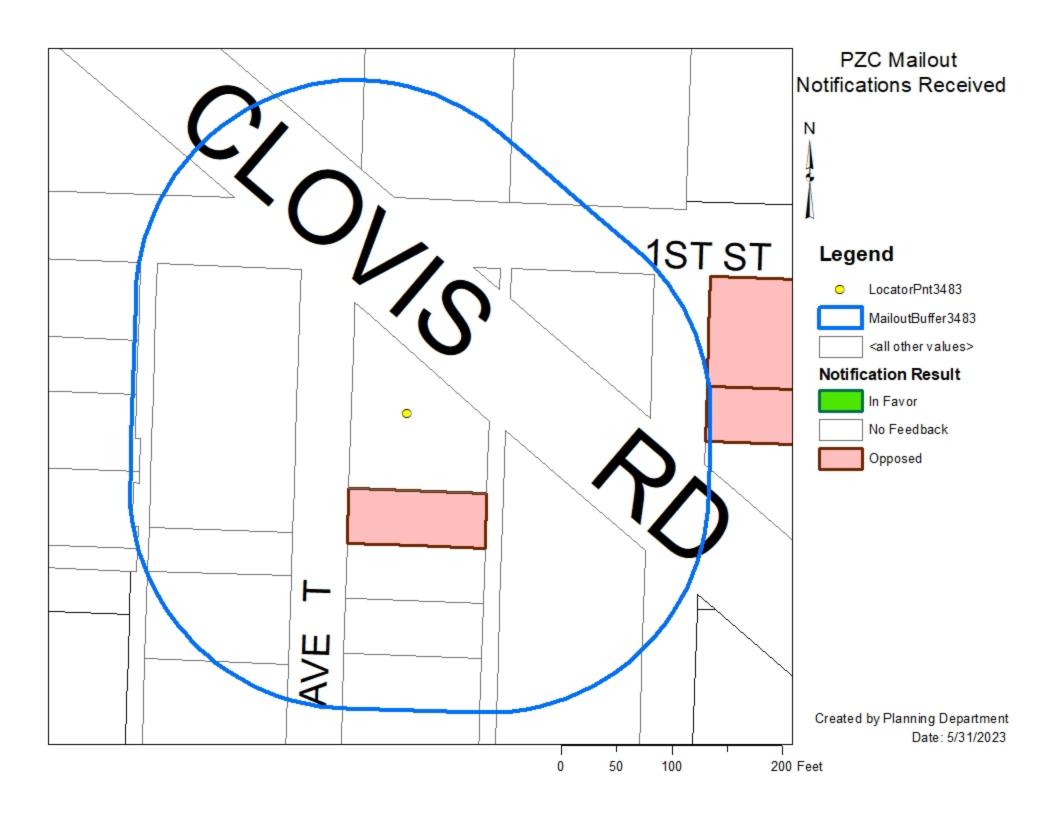
Zone Case 3483

Neighbor JUVENTINO CALVILLO, 116 North Uvalde, asked for clarification on the proposed use. He has properties nearby and was not sure what stance he was taking. The applicant reiterated that a mechanic shop was the intended use. **Mr. Calvillo** was happy with the response from the applicant.

In the matter of **Zone Case 3483**, a motion was made by **TANNER NOBLE** and seconded by **BRANDON HARDAWAY** to approve the request and the Commission members voted 6 (in favor) to 0 (in opposition) to approve the motion. The item will be forwarded to City Council for consideration.

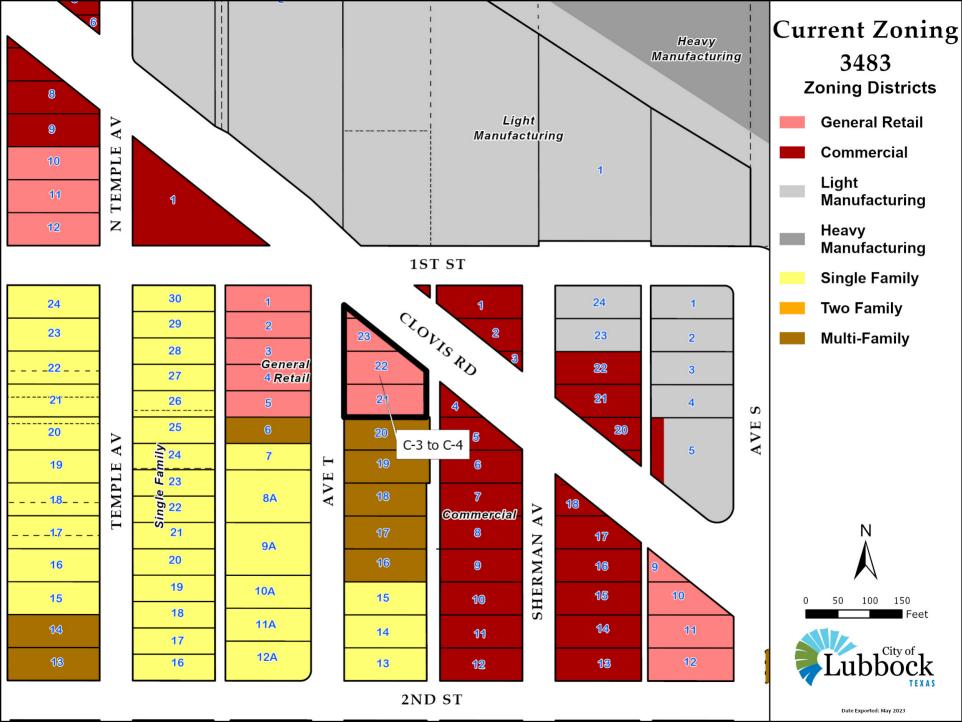
Attachment A Page 2 of 2

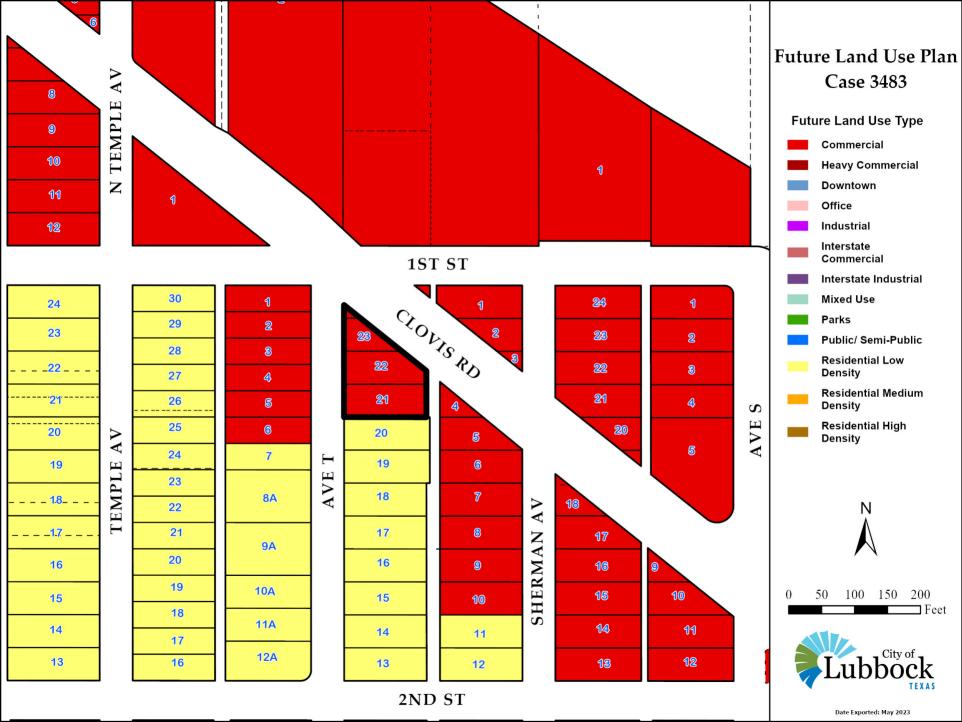




Zoning Case 3483









Subject property. View to the South.



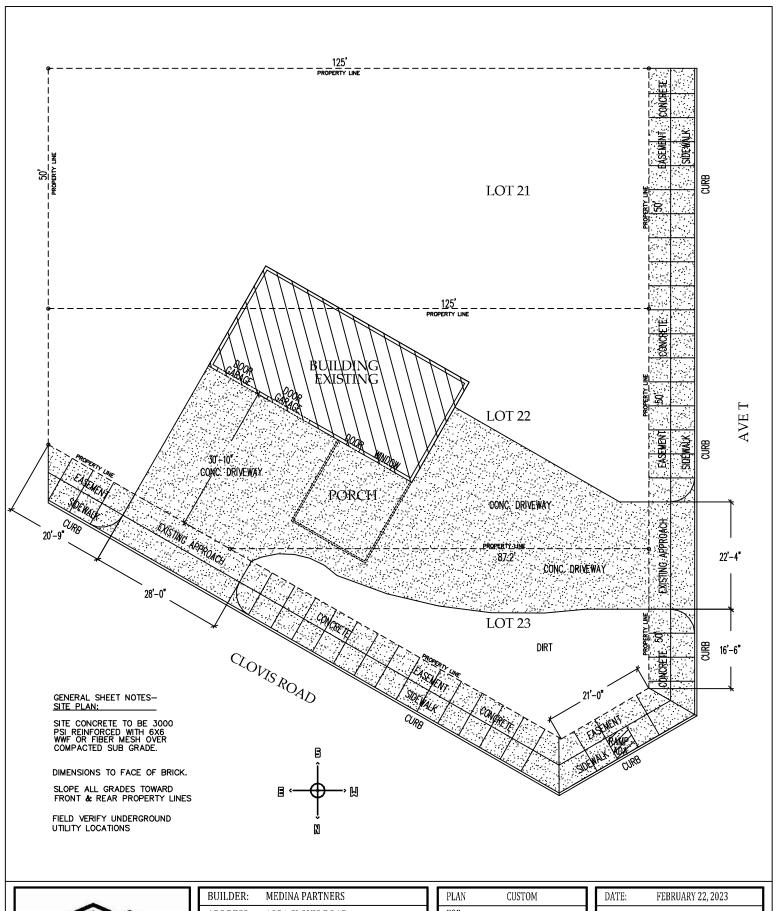
View to the North.



View to the West.



View to the East.





BUILDER:	MEDINA PARTNERS
ADDRESS:	1921 CLOVIS ROAD
LEGAL:	ASLEY BLK 38 L 21-23 & SW PT OF 24

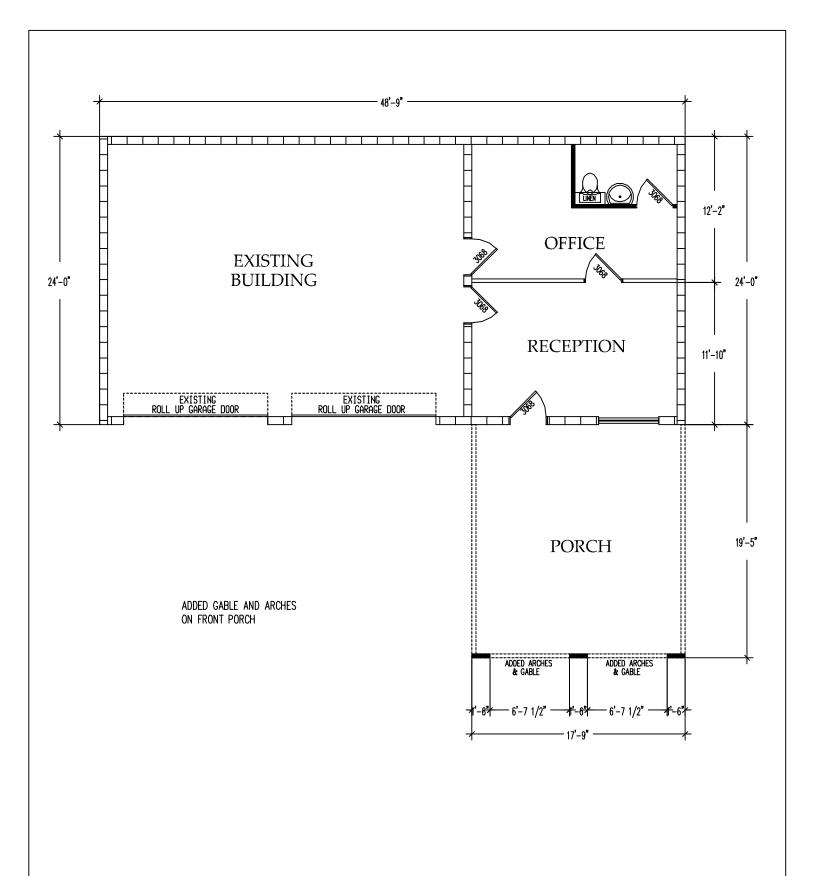
PLAN	CUSTOM
FOR:	
CHECKED:	A.L.

DATE:	FEBRUARY 22, 2023
-	

SCALE:	1:20=1'
SHEET:	SITE PLAN

SP-1 OF 1







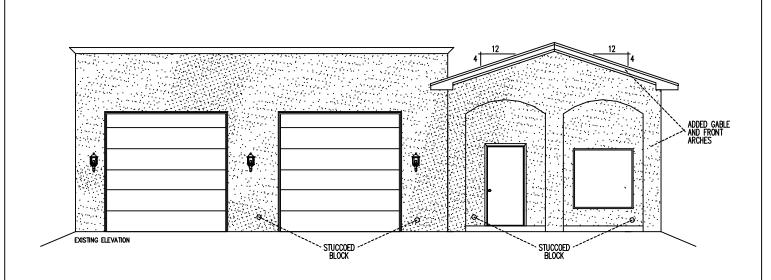
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ADDRESS:	1921 CLOVIS ROAD
LEGAL:	ASLEY BLK 38 L 21-23 & SW PT OF 24

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FOR:	
CHECKED:	A.L.

DATE:	FEBRUARY 21, 2023

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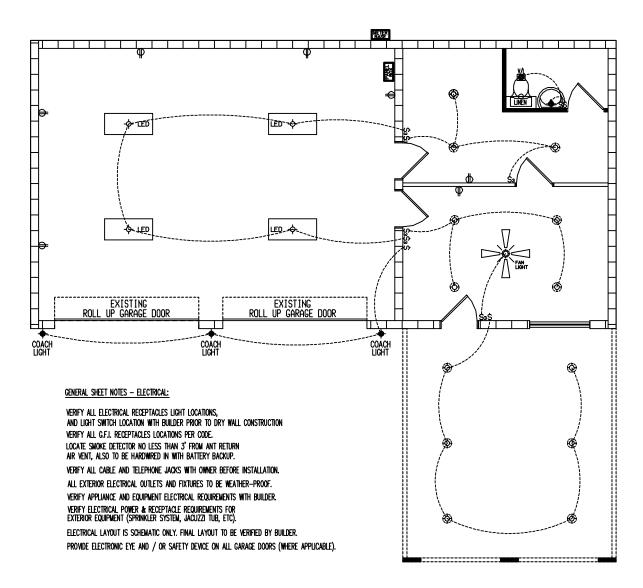
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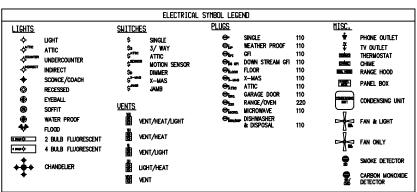
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DATE:	FEBRUARY 21, 2023

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7329-19TH LUBBOCK TX. 79407 806-785-8801	Designing Texas one Hoorplan at a time.	







BUILDER:	MEDINA PARTNERS
ADDRESS:	1921 CLOVIS ROAD
LEGAL:	ASLEY BLK 38 L 21-23 & SW PT OF 24

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DATE:	FEBRUARY 21, 2023	

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Lubbock Planning Department PO Box 2000 / 1314 Avenue K Lubbock, TX 79457

APPLICATION FOR ZONING CHANGE

Project Information
Location or Address: 1921 Clovis Rd
Lots/Tracts:
Survey & Abstract:
Metes and Bounds Attached: Yes □ No □ Total Acreage of Request:
Existing Land Use: Existing Zoning:
Requested Zoning: C4
If property is not subdivided, will a preliminary plat be submitted? Yes No
Representative/Agent Information (if different from owner)
Firm Name:
Name:
Address: City: State:
ZIP Code: Telephone: Email:
Applicant's Signature:
Date: Printed Name:
Owner Information /
Firm Name: Jux Slaz Mediny
Owner:
Address: 2621 2Nd City: Lubbo CX State: Tx
ZIP Code: 79415 Telephone: 806 401-66 of mail:
Property Owner's Signature: hay 51-2
Date: Printed Name: Felix Sanchez Medina
Preparer Information
Preparer's Signature:
Date: Printed Name:
For City Use Only
Zone Case No: Planning and Zoning Commission Date:
Request for zoning change from:To:To:
Lots:Blocks:
Addition:

By signing this application, Applicant agrees and warrants that any and all materials submitted to the City in support or reference to this application are not protected by copyrights or, in cases of potential copyrighted materials, the Applicant is the sole owner of any copyrighted interest and grants to the City permission and license to reproduce, publish, distribute and utilize such materials.

If you have any questions pertaining to the zoning process, please contact the City of Lubbock Planning Department by phone at (806) 775 - 2108 or by e-mail at cityplanning@mylubbock.us.

City of Lubbock, TX Planning Department Planning and Zoning Commission Reply Form

If for any reason you will be unable to attend the public hearing advertised by this notice, and wish to present your comments regarding the case, please complete this form and return it to the Secretary of the Planning and Zoning Commission, c/o Planning Department, P.O. Box 2000, Lubbock, TX 79457 or email to CityPlanning@mylubbock.us.

If you have any questions pertaining to the case, please call the City of Lubbock Planning Department at 806-775-2108.

Please check one of the following	ng to indicate if you are	e in favor of, or opp	osed to, the
zone change requested by:	P&Z Case No.:	3483	
In Favor			
Opposed X			
Reasons and/or Comments: Since all properties adjain changing one parcel to which could lead to	o Cut would resi	nlt in a patch	in this area, work of zoning

Print Name	ARTHUR	CLOIS	GREEN		
Signature:	att	Z.	* * *		
Address:	2500 L	nedla Dr.	Abilor T	X 7961	
Address of Prope	rty Owned:	105 3	SHERMAN AVE		
Phone Number: _	325 -	721 -4	630	10	,
Email:a_	lois graen	eyahoo.	COM	•	
Zone Case Numbe	er: 3483	R49237		Recipient 23 of 2	!5

GREEN, ARTHUR CLOIS 2500 LINCOLN DR

ABILENE

TX 79601

City of Lubbock, TX Planning Department Planning and Zoning Commission Reply Form

If for any reason you will be unable to attend the public hearing advertised by this notice, and wish to present your comments regarding the case, please complete this form and return it to the Secretary of the Planning and Zoning Commission, c/o Planning Department, P.O. Box 2000, Lubbock, TX 79457 or email to CityPlanning@mylubbock.us.

If you have any questions pertaining to the case, please call the City of Lubbock Planning Department at 806-775-2108.

Please check one of the following	to indicate if you are	e in favor of, or opposed to, the
zone change requested by:	P&Z Case No.:	3483
In Favor		
Opposed <u>X</u>		
Reasons and/or Comments:		
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Changing I'm go	in the last	properties on Clovix Roa
usages in the area si	her neighboring	11 ca archier it
zoned Co3, Varying	usage allowances	could cause a problem in
YEALS,		
Print Name <u>ARTHUR</u> C	LOZS GREEN	
Signature:	Le	
Address: 2500 LI	NOOLN DRIVE	, Abiler , TX >9601
Address of Property Owned:/		
Phone Number: 325 -721	-4030	
	1	

Recipient 19 of 25

Zone Case Number: **3483** GREEN, ARTHUR CLOIS 2500 LINCOLN DR

2300 LINCOLN DR

Email:

ABILENE TX 79601

a clois green & value. Lom

R49261

City of Lubbock, TX Planning Department Planning and Zoning Commission Reply Form

If for any reason you will be unable to attend the public hearing advertised by this notice, and wish to present your comments regarding the case, please complete this form and return it to the Secretary of the Planning and Zoning Commission, c/o Planning Department, P.O. Box 2000, Lubbock, TX 79457 or email to CityPlanning@mylubbock.us.

If you have any questions pertaining to the case, please call the City of Lubbock Planning Department at 806-775-2108.

Please check one of the following to indicate if you are in favor of, or opposed to, the zone change requested by:

P&Z Case No.:

3483

In Favor

Opposed

Reasons and/or Comments:

Print Name
Victoria Hiracheta

Signature:

Address:

Address of Property Owned:

Phone Number:

806-773-2608

Email: Sassymily 18@ yahoo-com

Recipient 8 of 25

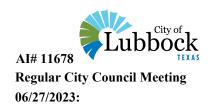
Zone Case Number: **3483** R77700

IDAGUETA MICTORIA

HIRACHETA, VICTORIA

2122 73RD ST

LUBBOCK TX 79423-1512



Information

Agenda Item

Public Hearing - Planning (District 2): Consider a request for Zone Case 3485, a request of the City of Lubbock, for a Specific Use for a Public Use (cemetery) on property zoned Transition District (T), at 4614 East 50th Street, located south of 50th Street and east of East Loop 289, on 100 acres of unplatted land out of Block S, Section 10 (proposed Veteran's Memorial Cemetery Addition, Tract A), and consider an ordinance.

Item Summary

For detailed information on this request, please refer to the Planning Department Staff Report attached hereto. As noted in the report, staff did not make a recommendation of this request as the property is owned by the City of Lubbock. The Planning and Zoning Commission heard this case on June 1, 2023, and recommended approval of the request by a unanimous vote of 6-0-0.

Fiscal Impact

None

Staff/Board Recommending

Erik Rejino, Assistant City Manager Kristen Sager, Director of Planning Planning and Zoning Commission

Attachments

Ordinance 3485 Staff Report 3485 Documentation 3485

ORDINANCE NO.

AN ORDINANCE AMENDING ZONING ORDINANCE NO. 7084 AND THE OFFICIAL MAP OF THE CITY OF LUBBOCK MAKING THE FOLLOWING CHANGES: ZONE CASE NO. 3485; A ZONING CHANGE FROM T TO T SPECIFIC USE FOR A CEMETERY, AT 4614 EAST 50TH STREET, LOCATED SOUTH OF 50TH STREET AND EAST OF EAST LOOP 289, ON 100 ACRES OF UNPLATTED LAND OUT OF BLOCK S, SECTION 10, (PROPOSED VETERAN'S MEMORIAL CEMETERY ADDITION, TRACT A), LUBBOCK, TEXAS; PROVIDING A PENALTY; PROVIDING A SAVINGS CLAUSE; AND, PROVIDING FOR PUBLICATION.

WHEREAS, the proposed changes in zoning as hereinafter made have been duly presented to the Planning and Zoning Commission for its recommendation which was received by the City Council and, after due consideration, the City Council found that due to changed conditions, it would be expedient and in the interest of the public health, safety and general welfare to make those proposed changes in zoning; and

WHEREAS, all conditions precedent required by law for a valid amendment to the Zoning Ordinance and Map have been fully complied with, including giving notices in compliance with Section 40.01.005 of the Code of Ordinances, City of Lubbock, Texas, and the notices provided by the Texas Local Government Code §211.007 (Vernon, 1990), and notice was duly published in the <u>Lubbock Avalanche-Journal</u> more than fifteen (15) days prior to the date of the public hearing before the City Council on such proposed amendment, and the public hearing according to said notice, was held in the City Council Chamber of the Municipal Building, Lubbock, Texas, at which time persons appeared in support of the proposal; and after said hearing, it was by the City Council determined that it would be in the public interest, due to changed conditions, that the Zoning Ordinance and the Zoning Map be amended in the manner hereinafter set forth in the body of this Ordinance and this Ordinance having been introduced prior to first reading hereof; NOW THEREFORE:

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

ZONE CASE NO. 3485

SECTION 1. THAT Ordinance No. 7084 and the Official Zoning Map are amended as follows:

A change of zoning under the provisions of Section 40.01.005 of the Code of Ordinances of the City of Lubbock from T to T Specific Use for a cemetery zoning district at 4614 East 50th Street, located south of 50th Street and east of East Loop 289, on 100 acres of unplatted land out of Block S, Section 10, (proposed Veteran's Memorial Cemetery Addition, Tract A), City of Lubbock, Lubbock County, Texas, and being further described as follows:

METES AND BOUNDS DESCRIPTION: Attached as Exhibit "A".

SECTION 2. THAT the granting of this specific use zoning is hereby made subject to compliance with all provisions of Zoning Ordinance No. 7084, as amended, including particularly, but not limited to, Section 40.03.3102 of the Codified Zoning Ordinance, which provides that a Building Permit shall be applied for and secured within thirty (30) months of the effective date of the zone change or all undeveloped property shall automatically revert back to the previous zoning classification, which in this case is the T zone district; and if such reversion occurs, the Director of Planning is directed to remove from the Zoning Map the legend indicating such specific use. The Specific Use authorized by this Ordinance is permitted under provision of Section 40.03.3101-40.03.3103 of Codified Zoning Ordinance No. 7084 on the property described as 4614 East 50th Street, located south of 50th Street and east of East Loop 289, on 100 acres of unplatted land out of Block S, Section 10, (proposed Veteran's Memorial Cemetery Addition, Tract A), City of Lubbock, Lubbock County, Texas.

SECTION 3. THAT violation of any provision of this Ordinance shall be deemed a misdemeanor punishable by fine not to exceed Two Thousand and No/100 Dollars (\$2,000.00) as provided in Section 40.01.006 of the Zoning Ordinance of the City of Lubbock.

SECTION 4. THAT should any 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.

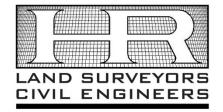
SECTION 5. THAT the City Secretary is hereby authorized to cause publication of the descriptive caption of this Ordinance as an alternative method provided by law.

AND IT IS SO ORDERED.

Passed by the City Council on first reading on	
Passed by the City Council on second reading on	
ATTEST:	TRAY PAYNE, MAYOR
ATTEST:	
Courtney Paz, City Secretary	

APPROVED AS TO CONTENT:
Kristen Svacr
Kristen Sager, Director of Planning
APPROVED AS TO FORM:
Welli Leisure, Senior Assistant City Attorney

vw/CityAtt/Kelli/Zones/ZC3485 June 1, 2023



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

EXHIBIT "A"

METES AND BOUNDS DESCRIPTION of a 100.00-acre tract located in Section 10, Block S, G.C. & S.F. RR Co. Survey, Lubbock County, Texas, being a portion of that 146.63-acre tract described as Tract 10 in that Warranty Deed recorded in Volume 2318, Page 73, Real Property Records of Lubbock County, Texas, said 100.00-acre tract being further described as follows:

BEGINNING at a 1/2" iron rod with cap marked "HUGO REED & ASSOC." found in the South right-of-way line of F.M. Road 835, which bears S. 88°11'39" E. a distance of 1118.2 feet and S. 01°12'51" W. a distance of 19.6 feet from the Northwest corner of said Section 10:

THENCE S. 88°07'40" E., along the South right-of-way line of said F.M. 835 and the North line of said 146.63-acre tract a distance of 2374.00 feet to a 1/2" iron rod with cap marked "HUGO REED & ASSOC." set for the Northeast corner of this tract;

THENCE S. 01°06'22" W. a distance of 2317.81 feet to a 1/2" iron rod with cap marked "HUGO REED & ASSOC." set in the South line of said 146.63-acre tract, same being the North line of that 150.00-acre tract described as Tract 6 in that Warranty Deed recorded in Volume 2318, Page 73, Real Property Records of Lubbock County, Texas, for the Southeast corner of this tract;

THENCE N. 88°50'09" W., along the South line of said 146.63-acre tract and the North line of said 150.00-acre tract a distance of 951.53 feet to a 1/2" iron rod with cap marked "HUGO REED & ASSOC." set;

THENCE N. 32°47'20" W. a distance of 352.11 feet to a 1/2" iron rod with cap marked "HUGO REED & ASSOC." set;

THENCE N. 09°21'15" W. a distance of 782.50 feet to a 1/2" iron rod with cap marked "HUGO REED & ASSOC." set;

THENCE S. 82°13'25" W. a distance of 1099.79 feet to a 1/2" iron rod with cap marked "HUGO REED & ASSOC." set in the West line of said 146.63-acre tract and the East line of that tract conveyed to Lubbock Riverwalk LLC described in Warranty Deed recorded in County Clerk File Number 2021061620, Official Property Records of Lubbock County, Texas;

THENCE N. 01°12'55" E., along the West line of said 146.63-acre tract and the East line of said Riverwalk tract a distance of 1456.64 feet to the Point of Beginning.

Bearings relative to the Texas Coordinate System of 1983, North-Central Zone. Distances are surface, U.S. Survey Feet.



Staff Report	Zone Case 3485
City Council Meeting	June 27, 2023

<u>Applicant</u> City of Lubbock

<u>Property Owner</u> City of Lubbock

Council District 2

Recommendations

• Staff is not making a recommendation, as the property is owned by the City of Lubbock.

Prior Board or Council Action

- April 25, 2023, Ordinance No. 2023-00039: The subject property was annexed into the city limits and zoned Transition District (T).
- June 1, 2023, Zone Case 3485: The Planning and Zoning Commission recommended approval of a request for a Specific use for a Public Use (Cemetery) by a vote of 6-0-0.

Notification Summary

Notifications Sent: 9Received In Favor: 0

Received In Opposition: 0

Site Conditions and History

The property consists of 100.00 acres of unplatted, vacant land out of Block S, Section 10 (proposed Veteran's Memorial Cemetery Addition, Tract A).

Adjacent Property Development

The subject property is surrounded by vacant land zoned Transition District (T), with the city limit lines nearby on all sides.

Item Summary

The subject property is generally located at 4614 East 50th Street, located south of East 50th Street and west of Wood Avenue. The Applicant is requesting a Specific Use for a Public Use for a Cemetery on property zoned Transition (T).

Current zoning: Transition (T)

Requested zoning: Specific use for a Public Use (Cemetery)

Intent Statements

The intent of the current Transition (T) zoning is "...to protect existing and future development in newly annexed territory until the proper zone classification can be determined and established by zone change."

The intent of the Specific Use District is"... to provide for design and land use flexibility in the various districts. This district provides for variations in the land use standards within the zoning ordinance, provided the intent, principles, and innovations of modern urban planning and design are used."

Traffic Network/Infrastructure Impacts

The location is along East 50th Street, which is designated as a Principal Arterial by the Master Thoroughfare

Plan, 2018. Arterials are continuous routes whose function is to serve high volume needs of local and regional traffic.

Compatibility with Surrounding Property

The proposed specific use is compatible with the surrounding area.

Conformance with Zoning Ordinance

The proposed specific use is in conformance with the zoning ordinance. The property is located on a primary arterial.

Suitability of Property for Allowed Uses

The property is suitable for the proposed specific use. Additional infrastructure improvements will be necessary, as the property has not been platted yet.

Attachments

- A. Case Information
- B. Thoroughfare Map
- C. Aerial Map
- D. Zoning Map
- E. Photos
- F. Application and supporting documentation

Staff Contacts

Gregory Hernandez Victor Escamilla

Planner Planning and Zoning Manager

Planning Department Planning Department

806-775-3147 806-775-3029

ghernandez@mylubbock.us vescamilla@mylubbock.us

Case Information: Zone Case 3485



Allowable Uses: <u>Transition District (T)</u>

Transportation: The proposed development has point of access from East 50th Street.

Thoroughfare	Existing	Per Thoroughfare Development Plan
East 50 th Street, Principal Arterial, Incomplete	R.O.W. 80 feet, two-lane, undivided, paved	R.O.W. 110 feet, seven- lane, undivided, paved

Engineering Comments: No comments.

Public Works Comments: No comments.

Building Safety Comments: No comments.

Fire Marshal Comments: No comments.

Draft Planning and Zoning Commission Minutes

District 2

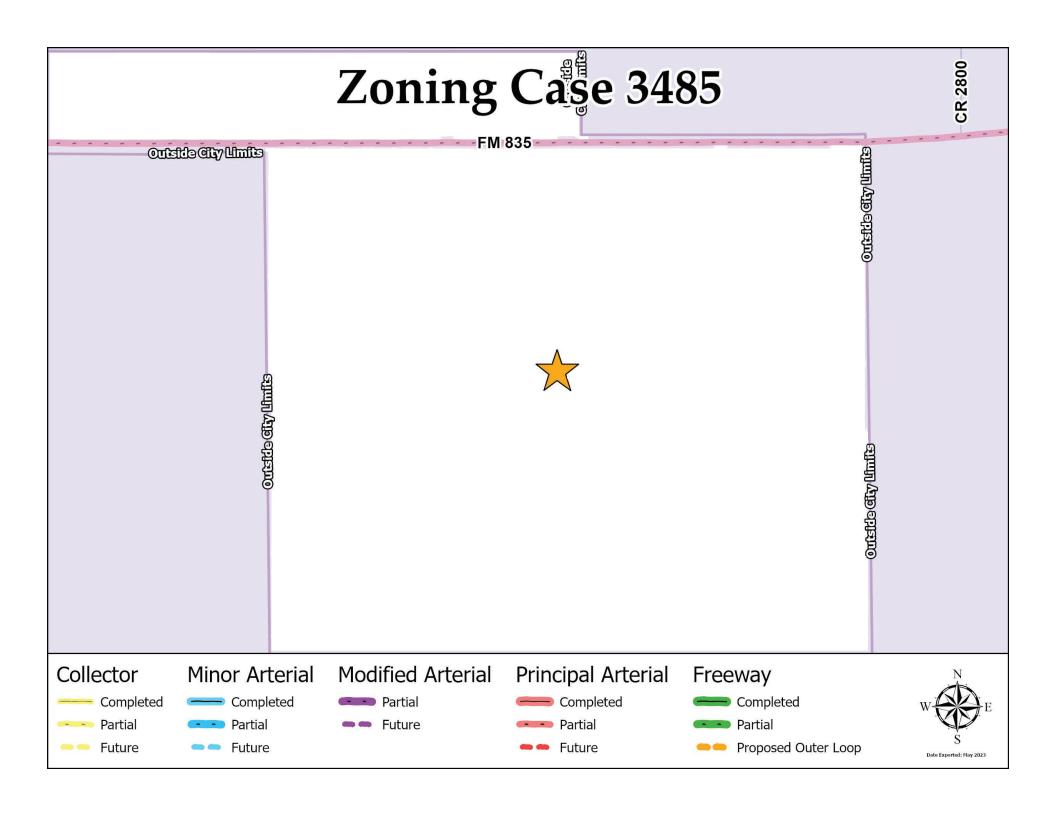
- **Zone Case 3485:** City of Lubbock, request for a Specific Use for a Public Use (cemetery) on property zoned Transition District (T), at:
 - 4614 East 50th Street, located south of 50th Street and east of East Loop 289, on 100 acres of unplatted land out of Block S, Section 10 (proposed Veteran's Memorial Cemetery Addition, Tract A).

PLANNER GREG HERNANDEZ stated there were nine (9) notifications sent out and zero (0) returned. Staff shared the location of the property including pictures and maps and discussed the surrounding property. Staff will not be making a recommendation of this request as the property is owned by the City of Lubbock.

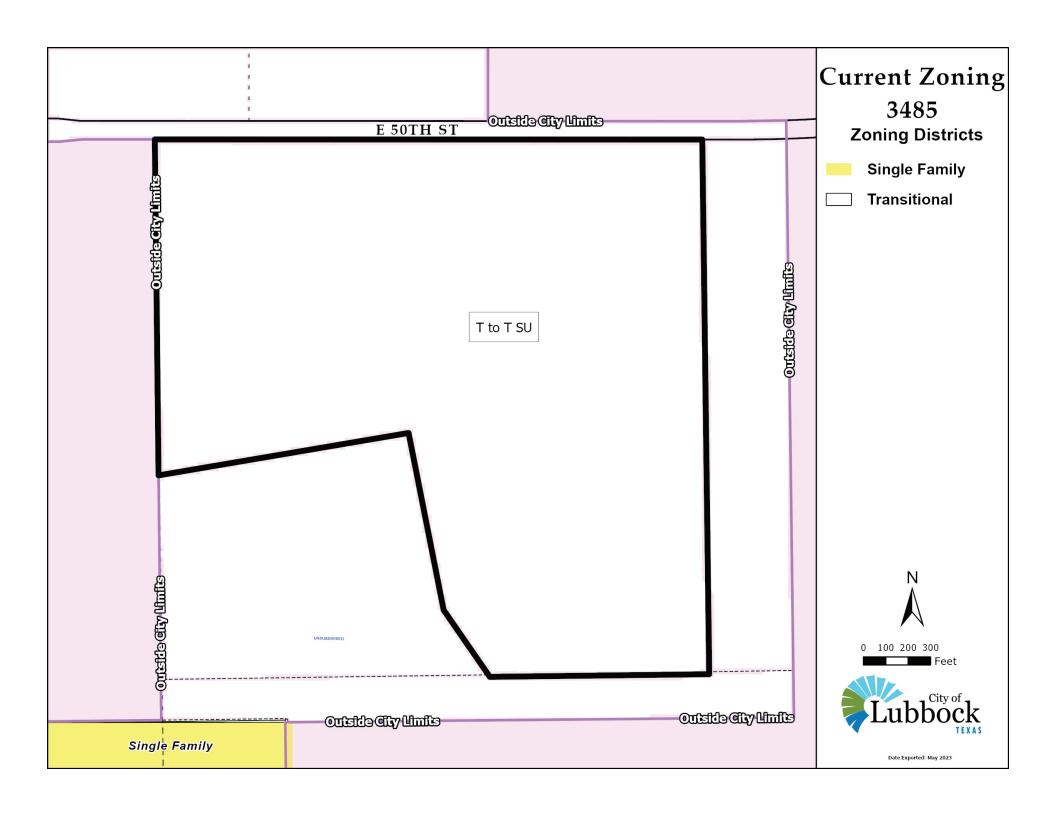
No one spoke in favor or in opposition of the request.

In the matter of **Zone Case 3485**, a motion was made by **TANNER NOBLE** and seconded by **JAMES BELL** to approve the request and the Commission members voted 6 (in favor) to 0 (in opposition) to approve the motion. The item will be forwarded to City Council for consideration.

Attachment A Page 1 of 1



Zoning Case 3485 Outside City Limits E 50TH ST





View of subject property to the south.



View to the east.



View to the north.



View to the west.



Lubbock Planning Department PO Box 2000 / 1314 Avenue K Lubbock, TX 79457

APPLICATION FOR ZONING CHANGE

Project Information			
Location or Address: 4614 East 50th Stre	et		
Lots/Tracts:			
Survey & Abstract: Block S, Section10			
Metes and Bounds Attached: Yes 🗹 No	☐ Total Acreage	of Request: 100 a	acres
Existing Land Use: Vacant	Existing Zonin	g: Transition Dis	strict (T)
Requested Zoning: Specific Use for a Pul	blic Use (Cemetery)	
If property is not subdivided, will a preliminary	plat be submitted?	Yes 🗹 📗	No 🗆
Representative/Agent Information (if different from	n owner)		
Firm Name:			
Name:			
Address:	City:		State:
ZIP Code: Telephone:		Email:	
Applicant's Signature:			
Date:	Printed Name:		
Owner Information			
Firm Name:			
Owner: City of Lubbock			
Address: 1314 Avenue K			
ZIP Code: 79401 Telephone: 80	6-775-2109	Email: ksager@	mylubbock.us
Property Owner's Signature: Kristen Sau	<i>jer</i>		
Date: 05-04-2023	Printed Name: Kristen	Sager	
Preparer Information			
Preparer's Signature:			
Date:	Printed Name:		
For City Use Only			
Zone Case No:	Planning and Zoning C	Commission Date: _	
Request for zoning change from:	To	:	
Lots:	Blocks:		
Addition:			

If you have any questions pertaining to the zoning process, please contact the City of Lubbock Planning Department by phone at (806) 775 - 2108 or by e-mail at cityplanning@mylubbock.us.



O:\Veterans Memorial Cemetery Addition\Tract A\Plat\FP_VETMC_TrA.dwg

NOT PLATTED ("TRACT II") LAND OWNER: OTY OF LUBBOOK (Not. 2518, Pg. 75) NOT PLATTED NOT PLATTED POINT OF BEGINNING
THIS POINT BEARS NB8"II 39"E 1118.20" AND
S01"12"51"W 19.60" FROM THE NORTHWEST
CORNER OF SECTION 10, BLOCK S. NOT PLATTED LAND OWNER: CITY OF LUBBOOK (Vol. 2414, Pg. 103) ("TRACT 5") LAND OWNER CITY OF LUBBOOK (W. 2518, Pg. 75) (Not 304, Pg. 48) (Not 377, Pg. 593) EAST 50TH ST. S88°07'40"E 2374.00'— (F.M. 835) (Vol. 377; Pg. 591) ERTH LINE EF SECTION 12, BLOCK 3 NOT 5' OPLE (HEREN GRANTED TO LPL) PLATTED
LAND OWNER LLEBOOK,
OTY OF
(No. 2508, Pg. 75) TRACT "A" SB2°13'25"W 1099.79' NAD83 COORDINAT N = XXXXXXX xx E = XXXXXXX xx NOT PLATTED N - XXXXXX XX E - XXXXXX XX N88°50'09"W 951.53' - PROSPECTIVE CITY LIMITS -OUTSIDE CITY LIMITS INSIDE CITY LIMITS NOT PLATTED ADJACENT ISO,O ACRE TRACT ("TRACT 6") LAND OMER: CITY OF LUBBOOK (Vol. 2518, Pg. 75)

TRACT "A",

VETERAN'S MEMORIAL CEMETERY ADDITION

TO THE CITY OF LUBBOCK, LUBBOCK COUNTY, TEXAS

GENERAL NOTES:

Scale: 1"=200"

Scale: 1**-2000

Scale: 1**-2000

All steeds, dilyes, and essements within plat litels are been't dedicated unless noted otherwise.

All steeds, dilyes, and essements within plat litels are been't dedicated unless noted otherwise.

All steeds, dilyes, and essements within plat litels are been't dedicated unless noted otherwise.

All assements been granted shall enright the City or the utility company using such essements to the right to remove, repair, or replaced any three plates are plates or plates

ADDITIONAL NOTES:

Contains 1000 de Contains Describe Essement
OPLE - Overhead Powelline Essement
UPLE - Overhead Powelline Essement
UPLE-Inderground URIJE Essement
SPEC-Sculp Plann Electric Co-op

- Found 12" from on with cap manded "HUGO REED & ASSOC."

- Found 12" from on with cap manded "HUGO REED & ASSOC."

SURVEY CONTROL:

NADS3: Coordinates shown hereon as "NADS3" are relative to the Texas Coordinate System of 1983, North Central Zone datum an described in Texas Natural Resources Color. Tile 2. Chapter 21, as amended. Distances shown are surface, U.S. Survey Section System of 1983, North-Central Zone, (2011, epoch 2010.0). Biselfugar excitation of soft of the Company of the System of 1983, North-Central Zone, (2011, epoch 2010.0). As the section of the Company of the System of 1983, North-Central Zone, (2011, epoch 2010.0). As a state of tile is the companiones are provided to this surveyor of this proposed plat. Any record escapacit does by this surveyor was made only for the purpose of determining the boundary of this proposed plat. Any record escapacit does by this surveyor was made only for the purpose of determining the boundary of this propose, given as an image value of the surveyor was made only for the purpose of determining the boundary of this proposy. This plat does not constitute or imply a complete title examination and any such title examinations are not the responsibility of this surveyor.

Know at men by these presents.
That I, Robert A, Christopher, do hereby certify that I prepared this plat from an actual and accurate survey of the land and that the corner monuments and/or other control shown thereon were properly placed under my personal supervision in accordance with the Subdishion Registations of the Ctyl Cubbook, Teaso.

PRELIMINARY, THIS DOCUMENT SHALL NOT BE RECORDED FOR ANY PURPOSE.

THIS DOCUMENT IS RELEASED FOR REVIEW PURPOSES ONLY.

March 30, 2023

	RELEASE DATE:	mararroo, EoEo		
HRA PROJECT ENGINEER:	Nathan Rigler	WATER ENGINEERING:	Delay requested	
HRA PLATTING CONTACT:	Sean Curran	SEWER ENGINEERING:	Delay requested	
OWNER:	City of Lubbock	PAVING ENGINEERING:	Delay requested	
OWNER CONTACT:	Wood Franklin	DRAINAGE ANALYSIS:	Waiver Requested	
OWNER PHONE:	806-775-2343	STREET LIGHTS:	None Anticipated	
OWNER ADDRESS:	1314 Avenue K	REVIEW TYPE:	Rule 15 Final Plat	
	Lubbock TX 79401	per destrone	City Project	





Information

Agenda Item

Public Hearing - Planning (District 3): Consider a request for Zone Case 501-A, a request of Steve Vernon for Dellas W. Lee, for a Specific Use for an Event Center on property zoned Local Retail District (C-2), at 4012 34th Street, located north of 34th Street, and east of Oxford Avenue, Zuni Park Addition, Block 7, Lot 14, the east 55 feet of Lot 13 and the west 15 feet of Lot 15, and consider an ordinance.

Item Summary

For detailed information on this request, please refer to the Planning Department Staff Report attached hereto. As noted in the report, staff recommends approval of this request. The Planning and Zoning Commission heard this case on June 1, 2023, and recommended approval of the request by a unanimous vote of 6-0-0.

Fiscal Impact

None

Staff/Board Recommending

Kristen Sager, Director of Planning Erik Rejino, Assistant City Manager Planning and Zoning Commission

Attachments

Ordinance - 501-A Staff Report 501-A Documentation 501-A

ORDINANCE I

AN ORDINANCE AMENDING ZONING ORDINANCE NO. 7084 AND THE OFFICIAL MAP OF THE CITY OF LUBBOCK MAKING THE FOLLOWING CHANGES: ZONE CASE NO. 501-A; A ZONING CHANGE FROM C-2 TO C-2 SPECIFIC USE FOR AN EVENT CENTER, AT 4012 34TH STREET, LOCATED NORTH OF 34TH STREET, AND EAST OF OXFORD AVENUE, ZUNI PARK ADDITION, BLOCK 7, LOT 14, THE EAST 55 FEET OF LOT 13 AND THE WEST 15 FEET OF LOT 15, LUBBOCK, TEXAS; PROVIDING A PENALTY; PROVIDING A SAVINGS CLAUSE; AND, PROVIDING FOR PUBLICATION.

WHEREAS, the proposed changes in zoning as hereinafter made have been duly presented to the Planning and Zoning Commission for its recommendation which was received by the City Council and, after due consideration, the City Council found that due to changed conditions, it would be expedient and in the interest of the public health, safety and general welfare to make those proposed changes in zoning; and

WHEREAS, all conditions precedent required by law for a valid amendment to the Zoning Ordinance and Map have been fully complied with, including giving notices in compliance with Section 40.01.005 of the Code of Ordinances, City of Lubbock, Texas, and the notices provided by the Texas Local Government Code §211.007 (Vernon, 1990), and notice was duly published in the <u>Lubbock Avalanche-Journal</u> more than fifteen (15) days prior to the date of the public hearing before the City Council on such proposed amendment, and the public hearing according to said notice, was held in the City Council Chamber of the Municipal Building, Lubbock, Texas, at which time persons appeared in support of the proposal; and after said hearing, it was by the City Council determined that it would be in the public interest, due to changed conditions, that the Zoning Ordinance and the Zoning Map be amended in the manner hereinafter set forth in the body of this Ordinance and this Ordinance having been introduced prior to first reading hereof; NOW THEREFORE:

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

ZONE CASE NO. 501-A

SECTION 1. THAT Ordinance No. 7084 and the Official Zoning Map are amended as follows:

A change of zoning under the provisions of Section 40.01.005 of the Code of Ordinances of the City of Lubbock from C-2 to C-2 Specific Use for an Event Center zoning district at 4012 34th Street, located north of 34th Street, and east of Oxford Avenue, Zuni Park Addition, Block 7, Lot 14, the east 55 feet of Lot 13 and the west 15 feet of Lot 15, City of Lubbock, Lubbock County, Texas, and being further described as follows:

METES AND BOUNDS DESCRIPTION: Attached as Exhibit "A".

SECTION 2. THAT the granting of this specific use zoning is hereby made subject to compliance with all provisions of Zoning Ordinance No. 7084, as amended, including particularly, but not limited to, Section 40.03.3102 of the Codified Zoning Ordinance, which provides that a Building Permit shall be applied for and secured within thirty (30) months of the effective date of the zone change or all undeveloped property shall automatically revert back to the previous zoning classification, which in this case is the C-2 zone district; and if such reversion occurs, the Director of Planning is directed to remove from the Zoning Map the legend indicating such specific use. The Specific Use authorized by this Ordinance is permitted under provision of Section 40.03.3101-40.03.3103 of Codified Zoning Ordinance No. 7084 on the property described as 4012 34th Street, located north of 34th Street, and east of Oxford Avenue, Zuni Park Addition, Block 7, Lot 14, the east 55 feet of Lot 13 and the west 15 feet of Lot 15, City of Lubbock, Lubbock County, Texas.

SECTION 3. THAT violation of any provision of this Ordinance shall be deemed a misdemeanor punishable by fine not to exceed Two Thousand and No/100 Dollars (\$2,000.00) as provided in Section 40.01.006 of the Zoning Ordinance of the City of Lubbock.

SECTION 4. THAT should any 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.

SECTION 5. THAT the City Secretary is hereby authorized 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 on	•
Passed by the City Council on second reading on	
ATTEST: Courtney Paz, City Secretary	TRAY PAYNE, MAYOR

APPROVED AS TO CONTENT:
Milen Source Kristen Sager, Director of Planning
Kristen Sager, Director of Flamming
APPROVED AS TO FORM:
Lelli Leisure, Senior Assistant City Attorney

vw/CityAtt/Kelli/Zones/ZC501-A June 1, 2023



Staff Report	Zone Case 501-A
City Council Meeting	June 27, 2023

Applicant Steve Vernon

<u>Property Owner</u> Dellas W. Lee

Council District 3

Recommendations

• Staff recommends approval of this request.

Prior Board or Council Action

- December 15, 1949, Ordinance No. 951: The subject property was annexed into the city limits and zoned Single-Family District (A).
- December 5, 1950, Zone Case 236, Ordinance No. 1040: The subject property was rezoned from Single-Family District (A) to Multi-Family District (B).
- February 24, 1955, Zone Case 501, Ordinance No. 1674: The subject property was rezoned from Multi-Family District (B), to Local Retail District (F-1).
- April 6, 1955, 1955 Zoning Ordinance, Ordinance No. 1695: The zoning of the subject property was updated from District F-1 to Local Retail District (C-2) with the adoption of the new Zoning Code.
- June 1, 2023, Zone Case 501-A: The Planning and Zoning Commission approved a request for a Specific Use for an Event Center by a vote of 6-0-0.

Notification Summary

Notifications Sent: 25
Received In Favor: 0
Received In Opposition: 0

Site Conditions and History

The property was platted as Zuni Park Addition, Block 7, Lot 14, the east 55 feet of Lot 13 and the west 15 feet of Lot 15 on March 14, 1950 and developed with a commercial building in 1966. The building is currently operating as a waiting area and the owner would like to turn the building into an event center that he can lease.

Adjacent Property Development

The surrounding properties are zoned Commercial District (C-4) to the west, Local Retail District (C-2) to the east, General Retail District (C-3) to the south and Single-Family District (R-1) to the north. There are commercial buildings and businesses to the east, west and south, and homes to the north.

Zoning Request and Analysis

Item Summary

The subject property is addressed as 4012 34th Street, located north of 34th Street, and east of Oxford Avenue. The applicant is requesting a Specific Use for an Event Center on property zoned Local Retail District (C-2).

Current zoning: Local Retail District (C-2)

Requested zoning: Specific Use for an Event Center

Intent Statements

The intent of the current C-2 zoning is "...to provide limited local retail and service commercial uses which serve one of several neighborhoods. Such districts may be located on existing thoroughfares or at the intersections of major thoroughfares."

The intent of the requested Specific Use is "...to provide for design and land use flexibility in the various districts. This district provides for variations in the land use standards within the [zoning] ordinance, provided the intent, principles, and innovations of modern urban planning and design are used."

Traffic Network/Infrastructure Impacts

The location is along 34th Street, which is designated as a Principal Arterial by the Master Thoroughfare Plan 2018. Arterial streets provide connectivity across the transportation network and are continuous routes whose function is to serve high volume needs to local traffic and regional traffic.

Compatibility with Surrounding Property

The proposed specific use is compatible with the surrounding area and will not change the character of the existing development.

Conformance with Zoning Ordinance

The proposed specific use is in conformance with the zoning ordinance. The property is located adjacent to compatible land uses and along a major thoroughfare.

Suitability of Property for Allowed Uses

The property is suitable for the proposed commercial use.

Attachments

- A. Case Information
- B. Thoroughfare Plan Map
- C. Aerial Map
- D. Zoning Map
- E. Photos
- F. Application and supporting documentation

Staff Contacts

Shane Spencer Victor Escamilla

Planning and Zoning Manager

Planning Department Planning Department

806-775-2103 806-775-3029

sspencer@mylubbock.us vescamilla@mylubbock.us

Case Information: Zone Case 501-A



Allowable Uses: Local Retail District (C-2) with a Specific Use for an Event Center

Transportation: The proposed development has a point of access from 34th Street.

Thoroughfare	Existing	Per Thoroughfare Development Plan
34 th Street, Principal	R.O.W. 70 feet, 5 lane,	R.O.W. 70 feet, 5 lane,
Arterial, Completed	undivided, paved.	undivided, paved.

Engineering Comments: No comments.

Public Works Comments: No comments.

Building Safety Comments: No comments.

Fire Marshal Comments: No comments.

Draft Planning and Zoning Commission Minutes

District 3

Zone Case 501-A: Steve Vernon for Dellas W. Lee, request for a Specific Use for an Event Center on property zoned Local Retail District (C-2), at:

• 4012 34th Street, located north of 34th Street, and east of Oxford Avenue, Zuni Park Addition, Block 7, Lot 14, the east 55 feet of Lot 13 and the west 15 feet of Lot 15.

PLANNER SHANE SPENCER stated there were twenty-five (25) notifications sent out with none returned. Staff shared the location of the property, including pictures and maps and discussed the surrounding property. Staff recommended approval of the request.

APPLICANT STEVEN VERNON, 3807 34th Street, stated that the request for an event center stems from the multiple customer requests to rent out his business for different parties. **Mr. Vernon** leases his business, Vernon Signature Audio, for his car audio shop. This location has a lot of parking. The back area is used for vinyl wrapping, audio installations, and custom signs. The front is used as a lobby area, complete with a pool table, shuffleboard table, foosball table, dart board, an air-hockey table, and assorted games for children. After many requests, **Mr. Vernon** met with the owner to see if he would be agreeable.

CHAIR SAWYER asked if food or alcohol would be served.

MR. VERNON responded in the negative. He added he would not be opposed to a bring your own beer (BYOB) situation, if he were to have sole control over the locked cabinet that would house the alcohol, dictate how many drinks per adult, and decide the frequency in which one could request a drink from their cache.

CHAIR SAWYER asked for clarification that this would not be a game room.

Attachment A Page 1 of 2

MR. VERNON stated that there are no electronic machines, adding he has posted signs banning smoking, firearms, drugs, and alcohol from the premises. He stated the business to be family-oriented with clear Christian-themed décor throughout.

JORDAN WHEATLEY asked staff to clarify that with the requested zoning, there would be no potential for this venue to become a game room.

PLANNING DIRECTOR KRISTEN SAGER replied that an arcade game room is a conditional use in C-2, but a true game room would require a specific use in the C-4 zoning district. **Ms. Sager** noted that what **Mr. Vernon** described is not a game room. This request is for an event center to be used as a rental for events.

No one spoke in opposition of the request.

IN FAVOR MR. DELLAS LEE, 4811 16th Street, owns the business in question. He spoke of his initial "in-favor" stance of his tenant's request. **Mr. Lee** admitted that when he expressed some concerns, the tenant, **Mr. Vernon**, drew up a contract detailing the parameters that would be followed if the request were to be approved. **Mr. Lee** read a portion of that contract to the commission. He also expressed his concerns over allowing a BYOB situation, as this business is primarily a commercial business, and has no place for smoking or alcohol.

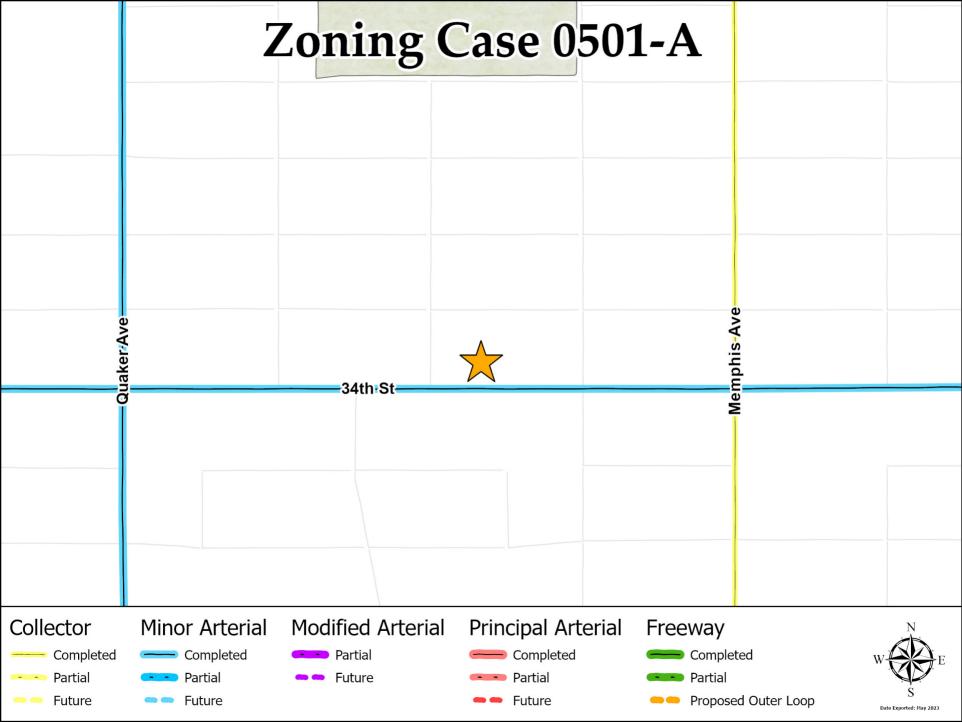
ASSISTANT CITY ATTORNEY KELLI LEISURE explained the Texas Alcoholic Beverage Commission (TABC) process to **Mr. Lee**. The BYOB is one option the Texas State code allows for alcohol to be served without obtaining an Alcoholic Beverage permit. Another way is if a caterer with a catering license were asked, they could legally serve alcohol at a venue.

JAMES BELL explained to **Mr. Lee** that the request for a specific use, if approved, stays with the property in perpetuity. It only changes if an owner were to request that change through the Planning & Zoning Commission.

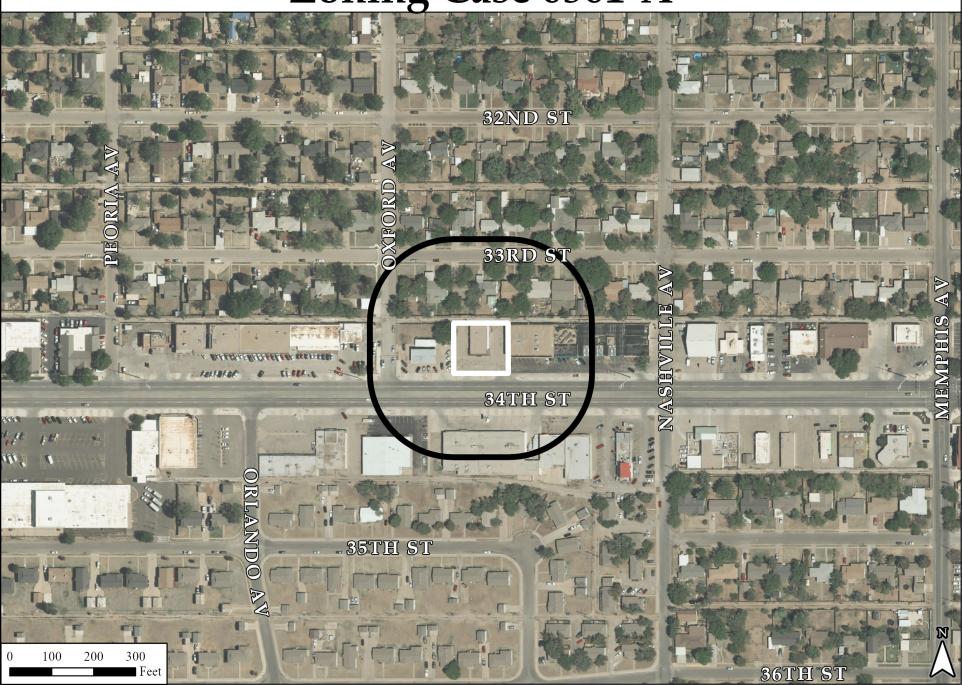
MR. DELLAS LEE indicated that Mr. Vernon is a man of honor and integrity. If Mr. Vernon says he will lock up the alcohol and maintain control, then Mr. Vernon will do so to the best of his ability. As long as alcohol is not sold there, Mr. Lee is willing to allow his tenant to make this request. The men have a contract that allows Mr. Lee to address changes he needs to see happen at any time. Mr. Vernon plans to buy the business from Mr. Lee one day, and therefore he is just as vested in its success.

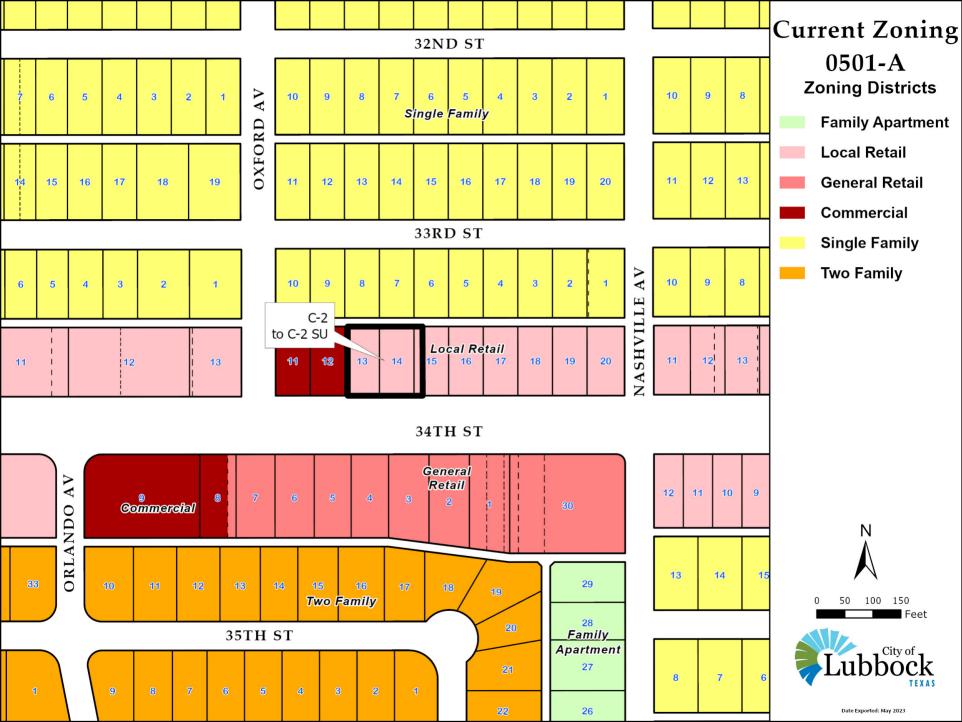
In the matter of **Zone Case 501-A**, a motion was made by **JAMES BELL** and seconded by **BRANDON HARDAWAY** to approve the request. The Commission members voted 6 (in favor) to 0 (in opposition) to approve the motion. The item will be forwarded to City Council for consideration.

Attachment A Page 2 of 2



Zoning Case 0501-A





501-A



View to the north. Subject Property.



View to the south.



View to the east.



View to the west.



PO Box 2000 / 1314 Avenue K Lubbock, TX 79457

APPLICATION FOR ZONING CHANGE

Project Information	
Location or Address: 40 12 3 44#	
Lots/Tracts:	
Survey & Abstract:	
Metes and Bounds Attached: Yes No	☐ Total Acreage of Request:
Existing Land Use: Commercial Re	STAIL Existing Zoning: 6-2
Requested Zoning: EVENT CENTER	
If property is not subdivided, will a preliminar	y plat be submitted? Yes No No
Representative/Agent Information (if different fro	m owner)
Firm Name:	
Name: Stete Vernon	
Address: <u>5807 341</u>	City: LISSOCIC TS. State: TX
ZIP Code: 794 10 Telephone: 8	06 83/4907 Email: VERMONS AVD : 1969 + I C/alcl
Applicant's Signature:	
Date: 5-2-2026	Printed Name:
Owner Information	
Firm Name: Dellas W. Lee	
Owner: Dellas W. Lee	
Address: 4811-16 th 56.	City: Lublovek. State: 49416
ZIP Code: 49416 Telephone: 8	306-789-8529 Email: dellas (v. 1ee ogmail a
Property Owner's Signature:	as When
Date: May 2, 2023	Printed Name: Dellas W. Lee
Preparer Information	
Preparer's Signature:	
Date:	Printed Name:
For City Use Only	
Zone Case No:	Planning and Zoning Commission Date:
Request for zoning change from:	To:
Lots:	Blocks:
Addition:	

By signing this application, Applicant agrees and warrants that any and all materials submitted to the City in support or reference to this application are not protected by copyrights or, in cases of potential copyrighted materials, the Applicant is the sole owner of any copyrighted interest and grants to the City permission and license to reproduce, publish, distribute and utilize such materials.

If you have any questions pertaining to the zoning process, please contact the City of Lubbock Planning Department by phone at (806) 775 - 2108 or by e-mail at cityplanning@mylubbock.us.



Information

Agenda Item

Public Hearing - Planning (District 3): Consider a request for Zone Case 1190-C, a request of Lubbock Party House for Totomazza Inc., for a Specific Use for an Event Center on property zoned Local Retail District (C-2), at 4322 50th Street located north of 50th Street, and east of Quaker Avenue, Commercial Addition, Lot 5, and the east 42.06 feet of Lot 6, and consider an ordinance.

Item Summary

For detailed information on this request, please refer to the Planning Department Staff Report attached hereto. As noted in the report, staff recommends approval of this request. The Planning and Zoning Commission heard this case on June 1, 2023, and recommended approval of the request by a unanimous vote of 6-0-0.

Fiscal Impact

None

Staff/Board Recommending

Erik Rejino, Assistant City Manager Kristen Sager, Director of Planning Planning and Zoning Commission

Attachments

Ordinance 1190-C Staff Report ZC 1190-C Documentation 1190-C

ORDINANCE	NO.
------------------	-----

AN ORDINANCE AMENDING ZONING ORDINANCE NO. 7084 AND THE OFFICIAL MAP OF THE CITY OF LUBBOCK MAKING THE FOLLOWING CHANGES: ZONE CASE NO. 1190-C; A ZONING CHANGE FROM C-2 TO C-2 SPECIFIC USE FOR AN EVENT CENTER, AT 4322 50TH STREET LOCATED NORTH OF 50TH STREET, AND EAST OF QUAKER AVENUE, COMMERCIAL ADDITION, LOT 5, AND THE EAST 42.06 FEET OF LOT 6, LUBBOCK, TEXAS; PROVIDING A PENALTY; PROVIDING A SAVINGS CLAUSE; AND, PROVIDING FOR PUBLICATION.

WHEREAS, the proposed changes in zoning as hereinafter made have been duly presented to the Planning and Zoning Commission for its recommendation which was received by the City Council and, after due consideration, the City Council found that due to changed conditions, it would be expedient and in the interest of the public health, safety and general welfare to make those proposed changes in zoning; and

WHEREAS, all conditions precedent required by law for a valid amendment to the Zoning Ordinance and Map have been fully complied with, including giving notices in compliance with Section 40.01.005 of the Code of Ordinances, City of Lubbock, Texas, and the notices provided by the Texas Local Government Code §211.007 (Vernon, 1990), and notice was duly published in the <u>Lubbock Avalanche-Journal</u> more than fifteen (15) days prior to the date of the public hearing before the City Council on such proposed amendment, and the public hearing according to said notice, was held in the City Council Chamber of the Municipal Building, Lubbock, Texas, at which time persons appeared in support of the proposal; and after said hearing, it was by the City Council determined that it would be in the public interest, due to changed conditions, that the Zoning Ordinance and the Zoning Map be amended in the manner hereinafter set forth in the body of this Ordinance and this Ordinance having been introduced prior to first reading hereof; NOW THEREFORE:

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

ZONE CASE NO. 1190-C

SECTION 1. THAT Ordinance No. 7084 and the Official Zoning Map are amended as follows:

A change of zoning under the provisions of Section 40.01.005 of the Code of Ordinances of the City of Lubbock from C-2 to C-2 Specific Use for an Event Center zoning district at 4322 50th Street located north of 50th Street, and east of Quaker Avenue, Commercial Addition, Lot 5, and the east 42.06 feet of Lot 6, City of Lubbock, Lubbock County, Texas.

SECTION 2. THAT the granting of this specific use zoning is hereby made subject to compliance with all provisions of Zoning Ordinance No. 7084, as amended,

ordinance, which provides that a Building Permit shall be applied for and secured within thirty (30) months of the effective date of the zone change or all undeveloped property shall automatically revert back to the previous zoning classification, which in this case is the C-2 zone district; and if such reversion occurs, the Director of Planning is directed to remove from the Zoning Map the legend indicating such specific use. The Specific Use authorized by this Ordinance is permitted under provision of Section 40.03.3101-40.03.3103 of Codified Zoning Ordinance No. 7084 on the property described as 4322 50th Street located north of 50th Street, and east of Quaker Avenue, Commercial Addition, Lot 5, and the east 42.06 feet of Lot 6, City of Lubbock, Lubbock County, Texas.

SECTION 3. THAT violation of any provision of this Ordinance shall be deemed a misdemeanor punishable by fine not to exceed Two Thousand and No/100 Dollars (\$2,000.00) as provided in Section 40.01.006 of the Zoning Ordinance of the City of Lubbock.

SECTION 4. THAT should any 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.

SECTION 5. THAT the City Secretary is hereby authorized to cause publication of the descriptive caption of this Ordinance as an alternative method provided by law.

AND IT IS SO ORDERED.

ssed by the City Council on second reading or	1
TEST:	TRAY PAYNE, MAYOR
urtney Paz, City Secretary	

APPROVED AS TO CONTENT:
Mister Soul (Kristen Sager, Director of Planning
Kristen Sager, Director of Planning
APPROVED AS TO FORM:
Welli Leisure, Senior Assistant City Attorne

vw/CityAtt/Kelli/Zones/ZC1190-C June 1, 2023



Staff Report	Zone Case 1190-C
City Council Meeting	June 27, 2023

Applicant Lubbock Party House

<u>Property Owner</u> Totomazza Inc.

Council District 3

Recommendations

• Staff recommends approval of this request.

Prior Board or Council Action

- February 26, 1953, Ordinance No. 1316: The subject property was annexed into the city limits.
- May 28, 1953, Zone Case 427, Ordinance No. 1392: The subject property was zoned Single-Family District (A).
- June 28, 1963, Zone Case 1112, Ordinance No. 4128: The subject property was rezoned from Single-Family District (R-1) to Restricted Local Retail District (C-2A).
- January 14, 2010, Zone Case 1190-B, Ordinance No. 2009-00122: The subject property was rezoned from Restricted Local Retail District (C-2A) to Local Retail District (C-2).
- June 1, 2023, Zone Case 1190-C: The Planning and Zoning Commission approved a request for a Specific Use for an Event Center by a vote of 6-0-0.

Notification Summary

Notifications Sent: 20
Received In Favor: 0
Received In Opposition: 1

Site Conditions and History

The property was platted as Commercial Addition, Lot 5, and the east 42.06 feet of Lot 6, on October 14, 1963. The property was developed with a commercial building in 1964. The applicant began operating the building as an event center in September 2022 and was shut down by Code Enforcement in April 2023.

Adjacent Property Development

The surrounding properties are zoned Restricted Local Retail District (C-2A) to the west, further Local Retail District (C-2) to the east and south, with Single-Family District (R-1) to the north. There are commercial buildings and businesses to the east, west and south, and homes to the north.

Zoning Request and Analysis

Item Summary

The subject property is addressed as 4322 50th Street located north of 50th Street and east of Quaker Avenue. The applicant is requesting a Specific Use for an Event Center on property zoned Local Retail District (C-2).

Current zoning: Local Retail District (C-2)

Requested zoning: Specific Use for an Event Center

Intent Statements

The intent of the current C-2 zoning is "...to provide limited local retail and service commercial uses which serve one of several neighborhoods. Such districts may be located on existing thoroughfares or at the intersections of major thoroughfares."

The intent of the requested Specific Use is "...to provide for design and land use flexibility in the various districts. This district provides for variations in the land use standards within the [zoning] ordinance, provided the intent, principles, and innovations of modern urban planning and design are used."

Traffic Network/Infrastructure Impacts

The location is along 50th Street, which is designated as a Principal Arterial by the Master Thoroughfare Plan 2018. Arterial streets provide connectivity across the transportation network and are continuous routes whose function is to serve high volume needs to local traffic and regional traffic.

Compatibility with Surrounding Property

The proposed specific use is compatible with the surrounding area and would not change the character of the existing development.

Conformance with Zoning Ordinance

The proposed specific use is in conformance with the zoning ordinance. The property is located adjacent to compatible land uses and along a major thoroughfare.

Suitability of Property for Allowed Uses

The property is suitable for the proposed commercial use.

Attachments

- A. Case Information
- B. Thoroughfare Plan Map
- C. Notification Map
- D. Aerial Map
- E. Zoning Map
- F. Photos
- G. Application and supporting documentation
- H. Notification Responses

Staff Contacts

Shane Spencer Victor Escamilla

Planner Planning and Zoning Manager

Planning Department Planning Department

806-775-2103 806-775-3029

sspencer@mylubbock.us vescamilla@mylubbock.us

Case Information: Zone Case 1190-C



Allowable Uses: Local Retail District (C-2) with a Specific Use for an Event Center

Transportation: The proposed development has a point of access from 50th Street.

Thoroughfare	Existing	Per Thoroughfare Development Plan
50 th Street, Principal	R.O.W. 100 feet, 7 lane,	R.O.W. 110 feet, 7 lane,
Arterial, Completed	undivided, paved.	undivided, paved.

Engineering Comments: No comments.

Public Works Comments: No comments.

Building Safety Comments: No comments.

Fire Marshal Comments: No comments.

Draft Planning and Zoning Commission Minutes

District 3

Zone Case 1190-C: Lubbock Party House for Totomazza Inc., request for a Specific Use for an Event Center on property zoned Local Retail District (C-2), at:

• 4322 50th Street located north of 50th Street, and east of Quaker Avenue, Commercial Addition, Lot 5, and the east 42.06 feet of Lot 6.

PLANNER SHANE SPENCER stated there were twenty (20) notifications sent out with zero (0) returned in favor and one (1) returned in opposition. The letter in opposition expresses concerns of the type of clientele the business would bring to the area. Staff shared the location of the property, including pictures and maps and discussed the surrounding property. Staff recommended approval of the request.

CHAIR SAWYER asked staff what business is currently on the property.

JAMES BELL responded that the structure was vacant prior to the Party House. He added that recently, the Code Enforcement Departent shut the business down due to not having appropriate zoning for the use. Mr. Bell further remarked that prior to this business moving in, the building had been a frame shop and a lawn mower shop, with the parking lot remaining relatively vacant throughout all of these businesses.

APPLICANT TODD COFFMAN, 3417 23rd Street, spoke to his request. He stated that he bought the building in September of last year. Lubbock Party House had over thirty parties at the venue, and they never had any issues or complaints. Most parties are for older clients, usually over the age of 60. He was not aware the current zoning was an issue until the Code Enforcement Department issued a citation. He has been shut down since Easer Sunday, and he is trying to correct the zoning so he can operation of the business.

No one spoke in favor or in opposition to the request.

Attachment A Page 1 of 2

Zone Case 1190-C

JORDAN WHEATLEY remarked that this case is very similar to the previous event center case on the agenda. It's the same setup, and also has no kitchen. He further noted that anytime he has driven by the property, it is vacant.

JAMES BELL agreed with **Mr. Wheatley**, stating that the structure and parking lot are usually vacant, even from the time the lawn mower shop was there.

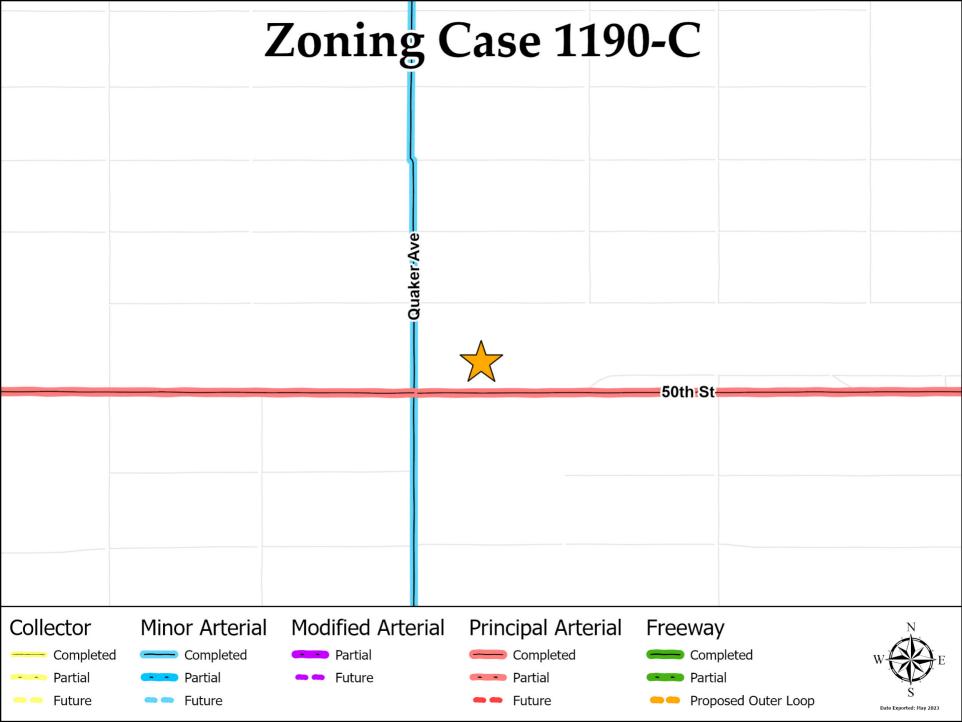
CHAIR SAWYER asked the commission if they had seen the opposition letter that mentioned drunk partiers and drug use.

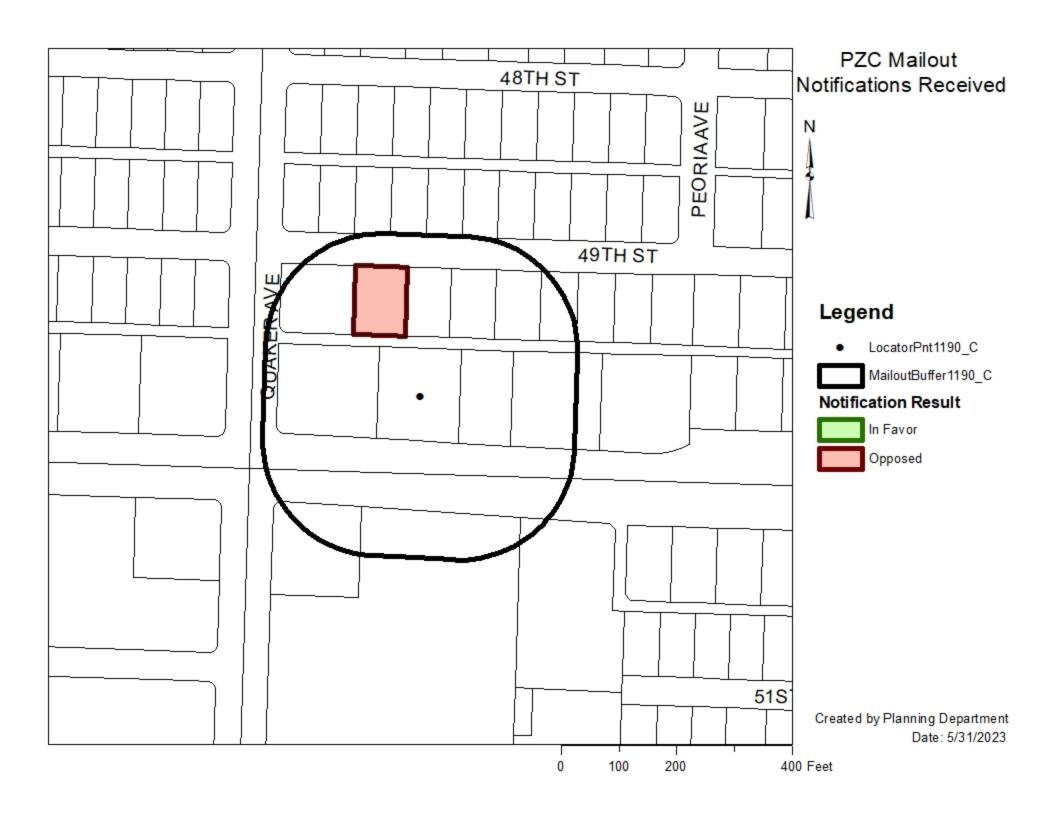
JAMES BELL noted that without the source of the returned notice being present, there is no way of knowing if the person's assumption is based on observation.

TANNER NOBLE asked **Mr. Coffman** if he had any conversations with the neighbor behind him, and **Mr. Coffman** responded in the negative.

In the matter of **Zone Case 1190-C**, a motion was made by **JORDAN WHEATLEY** and seconded by **JAMES BELL** to approve the request. The Commission members voted 6 (in favor) to 0 (in opposition) to approve the motion. The item will be forwarded to City Council for consideration.

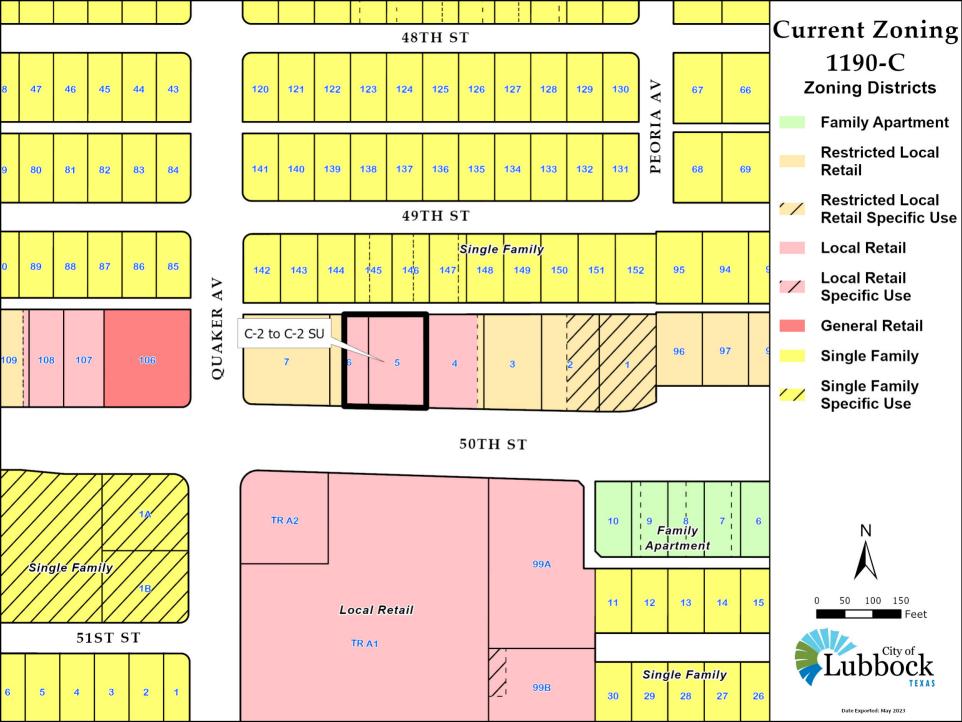
Attachment A Page 2 of 2





Zoning Case 1190-C





1190-C



View to the north. Subject Property.



View to the south.



View to the east.



View to the west.



Lubbock Planning Department PO Box 2000 / 1314 Avenue K Lubbock, TX 79457

APPLICATION FOR ZONING CHANGE

Project Information			
Location or Address: 4322 5071+ 5+			
Lots/Tracts: 55			
Survey & Abstract:			
Metes and Bounds Attached: Yes 🛘 No 🗹 Total Acreage of Request: *525			
Existing Land Use: RETAIL Existing Zoning: C-Z			
Requested Zoning: SMALL EVENT CENTER / PARRY HOUSE			
If property is not subdivided, will a preliminary plat be submitted? Yes No No No No No No No No No No			
Representative/Agent Information (if different from owner)			
Firm Name: LUBBOCIL PLRTY HOUSE			
Name: TOTOD COFFMAN			
Address: 3417 23RD St. City: LUBBOCK State: TX ZIP Code: 79410 Telephone: 8063921955 Email: LBKPARIY HOUSE Grad			
ZIP Code: 79410 Telephone: 8063921955 Email: LBKPARIT HOUSE & Gra			
Applicant's Signature:			
Date: Printed Name: TOPD COFFMIN			
Owner Information			
Firm Name: TO TO MAZZA INC			
owner: Salvatore Mazzamuto			
Address: 5907 93rd St City: LUBBOCK State: TX			
ZIP Code: 79424 Telephone: 806_ 252-0921 Email:			
Property Owner's Signature: Solvatore			
Date: Printed Name: Salvatore Mazzamuto			
Preparer Information			
Preparer's Signature:			
Date: Printed Name:			
For City Use Only			
Zone Case No: Planning and Zoning Commission Date:			
Request for zoning change from:To:			
Lots:Blocks:			
Addition:			

If you have any questions pertaining to the zoning process, please contact the City of Lubbock Planning Department by phone at (806) 775 - 2108 or by e-mail at cityplanning@mylubbock.us.

Lubbock Party House
4322 50th Street
Lubbock, TX 79413
(972)885-0201
www.LubbockPartyHouse.com
lbkpartyhouse@gmail.com

Hello, this is Todd Coffman from The Lubbock Party House. I am a 34 year resident of Lubbock County and 6 year resident of The City of Lubbock. My goal of having a small party house in the heart of Lubbock is to provide a place for families to have a place to celebrate the milestones in their lives. Birthdays, Graduations, Baby and Wedding Showers, Small wedding receptions and more.

We want to be a location that also supports our community. We have done fundraisers for local families in need of funds for medical expenses, and benefits to raise money and awareness for depression of returning veterans by our supporting Mission 22 which is an organization that helps veterans suffering from depression before it is too late. I have lost several friends to suicide caused by depression so Mission 22 is a big cause for me,

We opened last September not knowing that C-2 zoning was not what we needed to have for the Lubbock Party House and have hosted over 30 events with families all telling us that they loved having their events here because of our location, plenty of parking, and reasonable pricing compared with the larger places, We cater to local families that just want a place to celebrate the events of their lives,

We would humbly ask that the zoning change would be made so we can continue providing local families a place to celebrate.

Sincerely,

Todd Coffman









Lubbock Party House! The little Party House in the HEART of Lubbock, Texas USA!







3 Year Old's Birthday Party with Musical Chairs, A Pinata,

and even a magician!



A Christmas Family Reunion!





Texas Tech Graduation!







Advertis**e**

PROPERTY RECORD

This page contains information about the property located at 4322 50Th St, Lubbock, TX, 79413.

4322 50Th St, Lubbock, TX 79413





PARILING FOR 40 CARS

Primary Photo

4322 50Th St, Lubbock, TX Parcel Map

APN/Parcel ID	R55789	
Legal Description	COMMERCIAL L 5 & E42.06'OF 6	
Land Use	Storebuilding	
County	Lubbock	
Zoning	X	
State	Texas	
Flood Zone	48303C0295G	
Lot #	55	
Tax Year	2022	
Lot Size	0.525	
Assessed Year	2022	
Submarket	Southwest Inner Loop	
Census	001901	

City of Lubbock, TX Planning Department Planning and Zoning Commission Reply Form

If for any reason you will be unable to attend the public hearing advertised by this notice, and wish to present your comments regarding the case, please complete this form and return it to the Secretary of the Planning and Zoning Commission, c/o Planning Department, Box Lubbock, TX 79457 P.O. 2000, CityPlanning@mylubbock.us.

If you have any questions pertaining to the case, please call the City of Lubbock Planning Department at 806-775-2108.

Please check one of the following	to indicate if you are	in favor of, or opposed to, the
zone change requested by:	P&Z Case No.:	1190-C

In Favor

Opposed

Reasons and/or Comments:

I DRUNK PARTIERS SHOUTING NEAR THE ALLEY WITH NO REGARD TO VINE OF NIGHT.

2. DRUG USE BEHIND THE BUILDING FROM PARTY GOERS.

3, AGITATE THE DOGS AND IT IS DIFFICULT TO IMPOSSIBLE TO REASON W/A DRUNK ON HIGH INDIVIAUAL,

Print Name	Danois C. VEIRE JR	
Signature:	Walk ()	
Address:	4315 49th ST	
Address of Pr	roperty Owned: 4315 49th 57	
Phone Number	er: 806 777 1965	
	ntexent(e) GMAIL, COM	

Zone Case Number: 1190-C

R100498

Recipient 11 of 20

VENTLE, DONALD L, Jr.

4315 49TH ST

LUBBOCK

TX 79413





Information

Agenda Item

Public Hearing - Planning (District 4): Consider a request for Zone Case 1067-F, a request of McDougal Realtors for 3 Wiggle, LLC, for a zone change from Local Retail District (C-2) to General Retail District (C-3), at 6601 Indiana Avenue, located south of 66th Street and east of Indiana Avenue, Live Oak Addition, Lot 197-A, and consider an ordinance.

Item Summary

For detailed information on this request, please refer to the Planning Department Staff Report attached hereto. As noted in the report, staff recommends approval of this request. The Planning and Zoning Commission heard this case on June 1, 2023, and recommended approval of the request by a unanimous vote of 6-0-0.

Fiscal Impact

None

Staff/Board Recommending

Erik Rejino, Assistant City Manager Kristen Sager, Director of Planning Planning and Zoning Commission

Attachments

Ordinance - 1067-F Staff Report ZC 1067-F Documentation 1067-F

ORDINANCE NO.

AN ORDINANCE AMENDING ZONING ORDINANCE NO. 7084 AND THE OFFICIAL MAP OF THE CITY OF LUBBOCK MAKING THE FOLLOWING CHANGES: ZONE CASE NO. 1067-F; A ZONING CHANGE FROM C-2 TO C-3 ZONING DISTRICT AT 6601 INDIANA, LOCATED SOUTH OF 66TH STREET AND EAST OF INDIANA AVENUE, LIVE OAK ADDITION, LOT 197-A, LUBBOCK, TEXAS; PROVIDING A PENALTY; PROVIDING A SAVINGS CLAUSE; AND, PROVIDING FOR PUBLICATION.

WHEREAS, the proposed changes in zoning as hereinafter made have been duly presented to the Planning and Zoning Commission for its recommendation which was received by the City Council and, after due consideration, the City Council found that due to changed conditions, it would be expedient and in the interest of the public health, safety and general welfare to make those proposed changes in zoning; and

WHEREAS, all conditions precedent required by law for a valid amendment to the Zoning Ordinance and Map have been fully complied with, including giving notices in compliance with Section 40.01.005 of the Code of Ordinances, City of Lubbock, Texas, and the notices provided by the Texas Local Government Code §211.007 (Vernon, 1990), and notice was duly published in the <u>Lubbock Avalanche-Journal</u> more than fifteen (15) days prior to the date of the public hearing before the City Council on such proposed amendment, and the public hearing according to said notice, was held in the City Council Chamber of the Municipal Building, Lubbock, Texas, at which time persons appeared in support of the proposal; and after said hearing, it was by the City Council determined that it would be in the public interest, due to changed conditions, that the Zoning Ordinance and the Zoning Map be amended in the manner hereinafter set forth in the body of this Ordinance and this Ordinance having been introduced prior to first reading hereof; NOW THEREFORE:

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

ZONE CASE NO. 1067-F

SECTION 1. THAT Ordinance No. 7084 and the Official Zoning Map are amended as follows:

A change of zoning under the provisions of Section 40.01.005 of the Code of Ordinances of the City of Lubbock from C-2 to C-3 zoning district at 6601 Indiana, located south of 66th Street and east of Indiana Avenue, Live Oak Addition, Lot 197-A, City of Lubbock, Lubbock County, Texas.

SECTION 2. THAT violation of any provision of this Ordinance shall be deemed a misdemeanor punishable by fine not to exceed Two Thousand and No/100 Dollars (\$2,000.00) as provided in Section 40.01.006 of the Zoning Ordinance of the City of Lubbock.

SECTION 3. THAT should any 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.

SECTION 4. THAT the City Secretary is hereby authorized 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 on _	
Passed by the City Council on second reading or	1
	TRAY PAYNE, MAYOR
ATTEST:	
Courtney Paz, City Secretary	
APPROVED AS TO CONTENT:	
Kristen Sager, Director of Planning	
APPROVED AS TO FORM:	

vw/cityatt/Kelli/ZoneCase/ZC1067-F_ June 1, 2023

Kelli Leisure, Senior Assistant City Attorney



Staff Report	Zone Case 1067-F
City Council Meeting	June 27, 2023

<u>Applicant</u> McDougal Realtors

<u>Property Owner</u> 3 Wiggle, LLC

Council District 4

Recommendations

• Staff recommends approval of this request.

Prior Board or Council Action

- June 13, 1957 Ordinance No. 2198: The north portion of the subject property was annexed into the city limits and zoned Transition (T).
- October 25, 1957, Zone Case 654, Ordinance No. 2331: The north portion of the subject property was rezoned from (T) to Single Family District (R-1).
- September 11, 1958, Ordinance No. 2535: The south portion of the subject property was annexed into the city limits and zoned Transition (T).
- June 11, 1959, Zone Case 769, Ordinance No. 2813: The south portion of the subject property was rezoned from (T) to Single Family District (R-1).
- August 28, 1969, Zone Case 1067-A, Ordinance No. 5669: The subject property was rezoned from R-1 to Local Retail District (C-2) with conditions.
- April 8, 1971, Zone Case 1067-C, Ordinance No, 6052: The conditions on the prior zone change to C-2 were amended.
- June 1, 2023, Zone Case 1067-F: The Planning and Zoning Commission approved a request for a zone change from C-2 to General Retail District (C-3) by a vote of 6-0-0.

Notification Summary

Notifications Sent: 13
Received In Favor: 0
Received In Opposition: 0

Site Conditions and History

The property was platted on September 20, 1970 as Live Oak Subdivision, Lot 197-A. The property was developed with a commercial building in 1969. The building is currently vacant, but was previously used as a bank.

Adjacent Property Development

The subject property is surrounded by commercial property to the north, east, and south with a church to the west. The zoning to the west is Two Family District (R-2), and the properties to the north, east, and south are zoned Local Retail District (C-2) with Commercial District (C-4) to the north.

Item Summary

The subject property is located at 6601 Indiana Avenue, south of 66th Street and east of Indiana Avenue. The applicant is requesting a zone change from Local Retail District (C-2) to General Retail District (C-3).

Current zoning: Local Retail District (C-2)

Requested zoning: General Retail District (C-3)

Intent Statements

The intent of the current C-2 zoning is "...to provide limited local retail and service commercial uses which serve one of several neighborhoods. Such districts may be located on existing thoroughfares or at the intersections of major thoroughfares."

The intent of the requested C-3 zoning is"... to provide for general commercial uses which are medium activity centers in terms of generated traffic. Such districts should be adjacent to local or regional thoroughfares such as state or federal highways. Because of the commercial nature of the permitted uses, compatibility with adjacent residential areas should be considered."

Traffic Network/Infrastructure Impacts

The location is along 66th Street, which is designated as a Collector, and Indiana Avenue, which is designated as a Principal Arterial by the Master Thoroughfare Plan, 2018. Collectors provide access and movement within residential, commercial, and industrial areas. Arterials are continuous routes whose function is to serve high volume needs of local and regional traffic.

Compatibility with Surrounding Property

The proposed zone change is compatible with the surrounding area and will not change the character of the existing development.

Conformance with Comprehensive Plan Principles and Future Land Use Map

The Future Land Use Map designates this area for Commercial uses. The proposed zone change to C-3 would be in conformance with the Future Land Use Plan.

Conformance with Zoning Ordinance

The proposed zone change is in conformance with the zoning ordinance. The property is located in an appropriate location along a Principal Arterial and the requested C-3 zoning is compatible next to adjacent land uses.

Suitability of Property for Allowed Uses

The property is suitable for the uses allowed in the C-3 district and should not require additional infrastructure improvements.

Attachments

- A. Case Information
- B. Thoroughfare Map
- C. Aerial Map
- D. Zoning Map
- E. Future Land Use Map
- F. Photos
- G. Application and supporting documentation

Staff Contacts

Gregory Hernandez Victor Escamilla

Planner Planning and Zoning Manager

Planning Department Planning Department

806-775-3147 806-775-3029

ghernandez@mylubbock.us <u>vescamilla@mylubbock.us</u>

Case Information: Zone Case 1067-F



Allowable Uses: General Retail District (C-3)

Transportation: The proposed development has point of access from 66th Street and Indiana

Avenue.

Thoroughfare	Existing	Per Thoroughfare Development Plan
66 th Street, <i>Collector,</i> <i>Completed</i>	R.O.W. 92 feet, four-lane, undivided, paved	R.O.W. 64 feet, three- lane, undivided, paved
Indiana Avenue, Principal Arterial, Completed	R.O.W. 110 feet, seven- lane, undivided, paved	R.O.W. 110 feet, seven- lane, undivided, paved

Engineering Comments: No comments.

Public Works Comments: No comments.

Building Safety Comments: No comments.

Fire Marshal Comments: No comments.

Draft Planning and Zoning Commission Minutes

District 4

- 5.5 **Zone Case 1067-F**: McDougal Realtors for 3 Wiggle, LLC, request for a zone change from Local Retail District (C-2) to General Retail District (C-3), at:
 - 6601 Indiana, located south of 66th Street and east of Indiana Avenue, Live Oak Addition, Lot 197-A.

PLANNER GREG HERNANDEZ stated there were thirteen (13) notifications sent out with zero (0) notices returned. Staff shared the location of the property including pictures and maps and discussed the surrounding property. Staff recommended approval of the request.

APPLICANT JEREMY STEEN, 5507 70th Street, stated the intended use for the location would be for an oil change facility.

CHAIR SAWYER asked if the applicant would need to demolish the existing structure.

APPLICANT MR. STEEN responded that demolition is an option. The property was shown to several potential banks, but negotiations had remained unfulfilled.

No one spoke in favor or in opposition of the request.

Attachment A Page 1 of 2

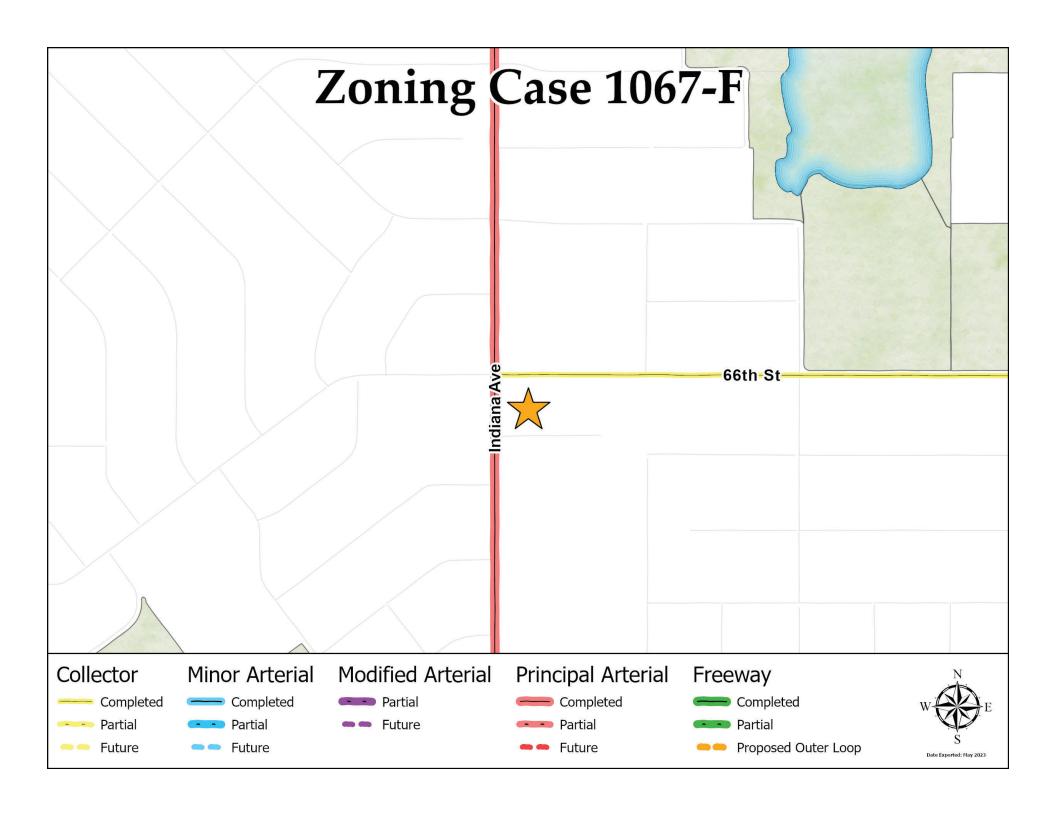
Zone Case 1067-F

CHAIR SAWYER remarked on the unique style of the existing structure, further stating he would hate to see it get torn down.

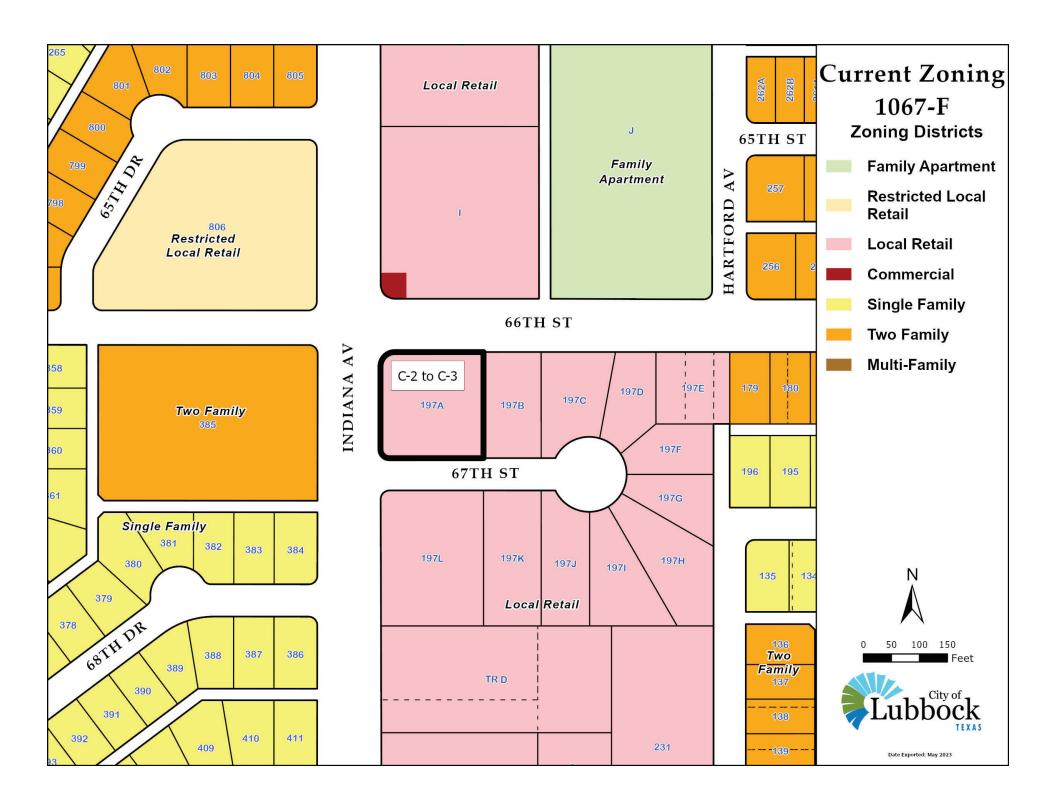
JAMES BELL noted the property has been vacant for some time, and there is another oil change business just down the street.

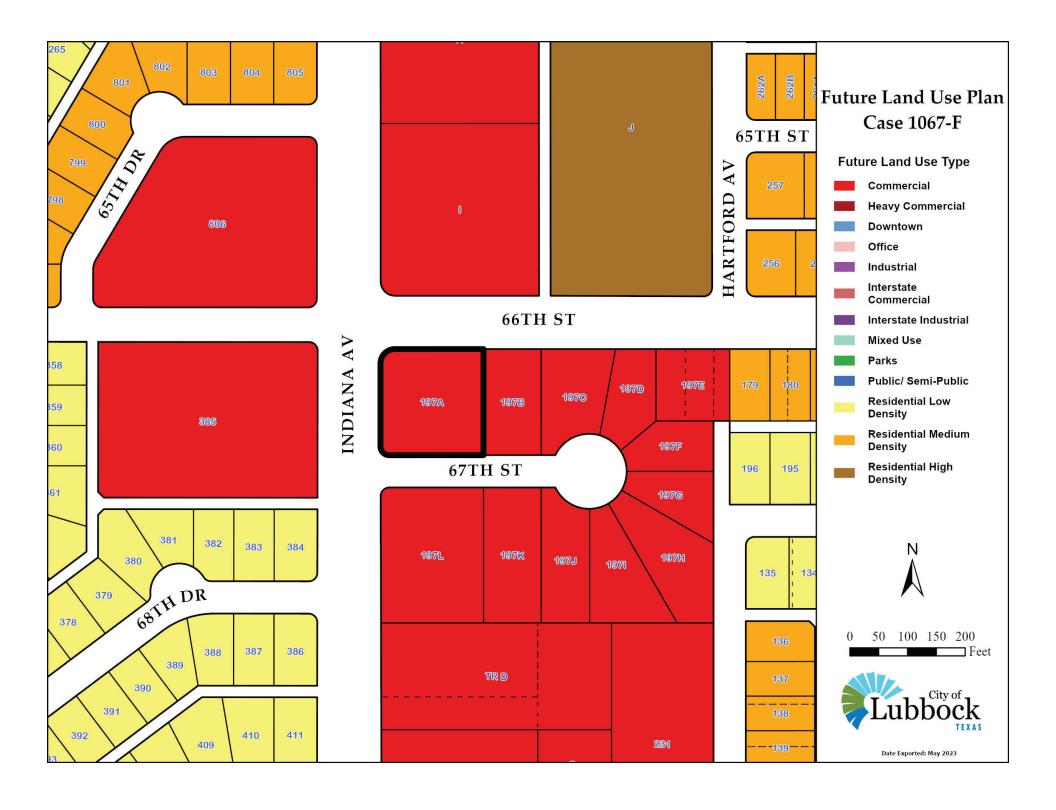
In the matter of **Zone Case 1067-F**, a motion was made by **BRANDON HARDAWAY** and seconded by **JORDAN WHEATLEY** to approve the request and the Commission members voted 6 (in favor) to 0 (in opposition) to approve the motion. The item will be forwarded to City Council for consideration.

Attachment A Page 2 of 2



Zoning Case 1067-F 65TH DR 65TH ST INDIANA AV 66TH ST JOLIETO 67TH ST 68TH ST 69TH DR 200 300 100







View of subject property to the east.



View to the south.



View to the north.



View to the west.



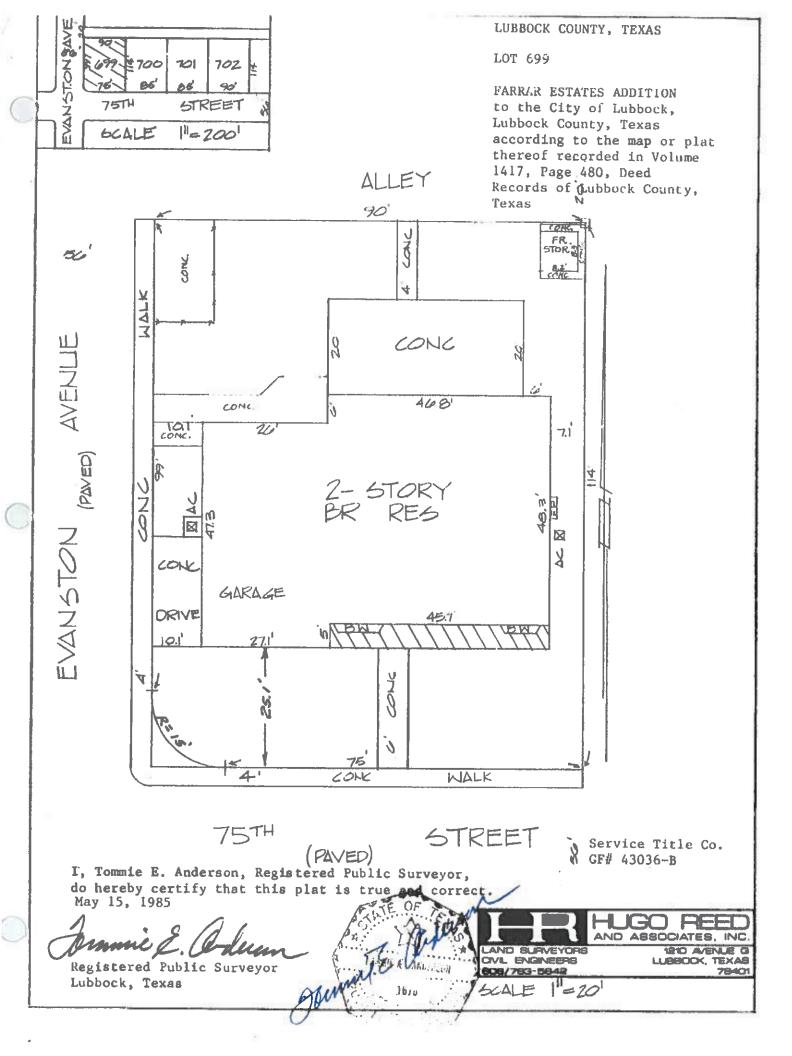
Lubbock Planning Department PO Box 2000 / 1314 Avenue K Lubbock, TX 79457

APPLICATION FOR ZONING CHANGE

Project Information		
Location or Address: 6601 Indiana		
Lots/Tracts: LIVE OAK L 197-A		
Survey & Abstract: Attached		
Metes and Bounds Attached: Yes □ No ☑ Total Acreage of Request: 0.747681		
Existing Land Use: Vacant Building w/ drive thru Existing Zoning: C-2		
Requested Zoning: C-3		
If property is not subdivided, will a preliminary plat be submitted? Yes \Box No \boxdot		
Representative/Agent Information (if different from owner)		
Firm Name: McDougal Realtors		
Name: Jeremy Steen		
Address: 1500 Broadway, Ste 1400 City: Lubbock State: TX		
ZIP Code: 79401 Telephone: 806-392-0578 Email: jeremy.steen@mcdougal.com	_	
Applicant's Signature:	_	
Date: 04/25/2023 Printed Name: Jeremy Steen	_	
Owner Information		
Firm Name: 3 Wiggle, LLC		
Owner: 3 Wiggle, LLC		
Address: 4103 103rd City: Lubbock State: TX		
ZIP Code: 79424 Telephone: 806-548-3392 Email: keith@lubbockfileroom.com		
Property Owner's Signature: Seith Mellon	_	
Date: 04/25/2023 Printed Name: Keith McNeese	10000	
Preparer Information		
Preparer's Signature:		
Date: 04/25/2023 Printed Name: Jeremy Steen	Printed Name: Jeremy Steen	
For City Use Only		
Zone Case No: Planning and Zoning Commission Date:		
Request for zoning change from:To:	for zoning change from:To:	
Lots:Blocks:		
Addition:		

By signing this application, Applicant agrees and warrants that any and all materials submitted to the City in support or reference to this application are not protected by copyrights or, in cases of potential copyrighted materials, the Applicant is the sole owner of any copyrighted interest and grants to the City permission and license to reproduce, publish, distribute and utilize such materials.

If you have any questions pertaining to the zoning process, please contact the City of Lubbock Planning Department by phone at (806) 775 - 2108 or by e-mail at cityplanning@mylubbock.us.





April 25, 2023 **Zoning Change** 6601 Indiana

Dear Planning and Zoning Board,

The property at 6601 Indiana is currently under contract to be sold. The current owner is requesting the zoning change from C-2 to C-3 use. The buyer of this property will join the zoning request upon closing of the property on May 25, 2023.

The reason for the request of a zoning change is the future use of the property. Currently, there is a vacant building on this tract that was most recently a bank with drive-thru service. The buyer intends to convert the use to a quick oil change facility, requiring a zoning of C-3 under current UDC guidelines.

The property is surrounded by commercial use to the south and east. To the west is a 7-lane road (Indiana Ave). To the north is C-2 and also C-4 zoning.







Information

Agenda Item

Public Hearing - Planning (District 5): Consider a request for Zone Case 3484, a request of R2M Engineering for M.N. Thompson Heirs, LLC and LSJ Thompson, LLC, for a zone change from Transition District (T) to Interstate Highway Commercial District (IHC), generally located east of Upland Avenue and north of 130th Street, on 26.26 acres of unplatted land out of Block AK, Section 19, and consider an ordinance.

Item Summary

For detailed information on this request, please refer to the Planning Department Staff Report attached hereto. As noted in the report, staff recommends approval of this request. The Planning and Zoning Commission heard this case on June 1, 2023, and recommended approval of the request by a unanimous vote of 6-0-0.

Fiscal Impact

None

Staff/Board Recommending

Erik Rejino, Assistant City Manager Kristen Sager, Director of Planning Planning and Zoning Commission

Attachments

Ordinance 3484 Staff Report ZC 3484 Documentation 3484

AN ORDINANCE AMENDING ZONING ORDINANCE NO. 7084 AND THE OFFICIAL MAP OF THE CITY OF LUBBOCK MAKING THE FOLLOWING CHANGES: ZONE CASE NO. 3484; A ZONING CHANGE FROM T TO IHC ZONING DISTRICT GENERALLY LOCATED EAST OF UPLAND AVENUE AND NORTH OF 130TH STREET, ON 26.26 ACRES OF UNPLATTED LAND OUT OF BLOCK AK, SECTION 19, LUBBOCK, TEXAS; PROVIDING A PENALTY; PROVIDING A SAVINGS CLAUSE; AND, PROVIDING FOR PUBLICATION.

WHEREAS, the proposed changes in zoning as hereinafter made have been duly presented to the Planning and Zoning Commission for its recommendation which was received by the City Council and, after due consideration, the City Council found that due to changed conditions, it would be expedient and in the interest of the public health, safety and general welfare to make those proposed changes in zoning; and

WHEREAS, the 2040 Future Land Use Plan is a guide to help the Lubbock Planning and Zoning Commission and the City Council determine the physical development of the community; however, planning is a continuous process and change is inevitable; and

WHEREAS, the Lubbock Planning and Zoning Commission and City Council recognize that the zone change is a minor deviation from the 2040 Future Land Use Plan, which protects the public and private commitments that have been previously based on the Plan; and

WHEREAS, all conditions precedent required by law for a valid amendment to the Zoning Ordinance and Map have been fully complied with, including giving notices in compliance with Section 40.01.005 of the Code of Ordinances, City of Lubbock, Texas, and the notices provided by the Texas Local Government Code §211.007 (Vernon, 1990), and notice was duly published in the <u>Lubbock Avalanche-Journal</u> more than fifteen (15) days prior to the date of the public hearing before the City Council on such proposed amendment, and the public hearing according to said notice, was held in the City Council Chamber of the Municipal Building, Lubbock, Texas, at which time persons appeared in support of the proposal; and after said hearing, it was by the City Council determined that it would be in the public interest, due to changed conditions, that the Zoning Ordinance and the Zoning Map be amended in the manner hereinafter set forth in the body of this Ordinance and this Ordinance having been introduced prior to first reading hereof; NOW THEREFORE:

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

ZONE CASE NO. 3484

SECTION 1. THAT Ordinance No. 7084 and the Official Zoning Map are amended as follows:

A change of zoning under the provisions of Section 40.01.005 of the Code of Ordinances of the City of Lubbock from T to IHC zoning district generally located east of Upland Avenue and north of 130th Street, on 26.26 acres of unplatted land out of Block AK, Section 19, City of Lubbock, Lubbock County, Texas, and being further described as follows:

METES AND BOUNDS DESCRIPTION: Attached as Exhibit "A".

SECTION 2. THAT violation of any provision of this Ordinance shall be deemed a misdemeanor punishable by fine not to exceed Two Thousand and No/100 Dollars (\$2,000.00) as provided in Section 40.01.006 of the Zoning Ordinance of the City of Lubbock.

SECTION 3. THAT should any 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.

SECTION 4. THAT the City Secretary is hereby authorized 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 on	·
Passed by the City Council on second reading on	
	TOD AND DANGED AND AND D
	TRAY PAYNE, MAYOR
ATTEST:	
Courtney Paz, City Secretary	

APPROVED AS TO CONTENT:
Kristen Sager, Director of Planning
APPROVED AS TO FORM:
Kelli Leisure, Senior Assistant City Attorney

vw/cityatt/Kelli/ZoneCase/ZC3484 June 1, 2023

FIELD NOTES FOR TWO (2) TRACTS BEING A TOTAL OF 26.26-ACRES OUT OF THE SOUTHWEST QUARTER (S/W4) OF SECTION 19, BLOCK A-K, ABSTRACT 265, LUBBOCK COUNTY, TEXAS

BEING 2.05-ACRES OUT OF A 7.83-ACRE TRACT LOCATED IN SAID SECTION 19 AND CONVEYED TO LUSI THOMPSON LLC. INSTRUMENT NUMBER 2016018073 OF THE OFFICIAL PUBLIC RECORDS OF LUBBOCK COUNTY (OPRLC), AND FURTHER DESCRIBED BY METES & BOUNDS AS FOLLOWS:

BEGINNING IN THE APPROXIMATE CENTERLINE OF UPLAND AVENUE, AND BEING IN THE WEST LINE OF SAID SECTION 19, AND BEING THE NORTWEST CORNER OF SAID 7.83-ACRE TRACT, AND THE WESTERNMOST SOUTHWEST CORNER OF A MN THOMPSON HEIRS LLC. TRACT INSTRUMENT 2011043758 OPRLC, FROM WHICH THE CALCULATED SOUTHWEST (S/W) CORNER OF SAID SECTION 19 BEARS S01°55'47"W A DISTANCE OF 1058.76;

THENCE $588^\circ11^\circ35^\circ$ E ALONG THE COMMON BOUNDARY OF SAID MN THOMPSON TRACT A DISTANCE OF 650.98° TO A POINT BEING THE NORTHEAST CORNER OF SAID 7.83-ACRE TRACT, THE NORTHEAST CORNER OF THIS TRACT, AND AN INTERIOR ELL OF SAID MN THOMPSON TRACT;

THENCE S01°55′20″W ALONG THE COMMON BOUNDARY OF SAID MN THOMPSON TRACT A DISTANCE OF 175.97′ TO A POINT IN THE EAST LINE OF SAID 7.83-ACRE TRACT;

THENCE THROUGH THE INTERIOR OF SAID 7.83-ACRE TRACT. AND ALONG THE PROPOSED RIGHT-OF-WAY LINE OF LOOP 88 FOR THE FOLLOWING EIGHT (8) CALLS;

- WITH A CURVE TURNING TO THE LEFT WITH AN ARC LENGTH OF 149.21', WITH A RADIUS OF 8042.00', WITH A CHORD BEARING OF N 85°45'02" W, WITH A CHORD LENGTH OF 149.20' TO A POINT;
 N83°59'20"W A DISTANCE OF 107.91' TO A POINT;
- N06°00'40"E A DISTANCE OF 14.00' TO A POINT;
- N83°59'20"W A DISTANCE OF 42.40' TO A POINT;
- N86°17'00"W A DISTANCE OF 265.96 TO A POINT:
- N42°12'28"W A DISTANCE OF 21.61' TO A POINT;
- N01°51'51"E A DISTANCE OF 111.00' TO A POINT;
- $8. \quad N88^{\circ}08^{\circ}09^{\circ}W$ a distance of 71.56 to a point in the West Line of Section 19, and also in the West Line of Said Section 19;

THENCE NO1°55'47"E ALONG THE WEST SECTION LINE OF SAID SECTION 19 A DISTANCE OF 9.03' TO THE POINT OF BEGINNING AND CONTAINING 2.05-ACRES MORE OR LESS

TRACT 2:

BEING 24.21-ACRES OUT OF THE REMAINDER TRACT CONVEYED TO MN THOMPSON HEIRS LLC. INSTRUMENT NUMBER 2011043758 OPRIC. AND BEING FURTHER DESCRIBED BY THE METES & BOUNDS AS FOLLOWS:

BEGINNING IN THE APPROXIMATE CENTERLINE OF UPLAND AVENUE, AND BEING IN THE WEST LINE OF SAID SECTION 19, AND BEING THE NORTWEST CORNER OF SAID 7.83-ACRE TRACT, AND THE WESTERNMOST SOUTHWEST CORNER OF A MN THOMPSON HEIRS LLC. TRACT INSTRUMENT 2011043758 OPRLC, FROM WHICH THE CALCULATED SOUTHWEST (S/W) CORNER OF SAID SECTION 19 BEARS S01°55'47"W A DISTANCE OF 1058.76';

THENCE NOI°55'47"E ALONG THE SAID SECTION 19 WEST LINE A DISTANCE OF 531.24' TO A FOUND "MAG" NAIL W/WASHER "HRA" IN THE APPROXIMATE CENTER OF UPLAND AVE, AND BEING THE NORTHERMOST NORTHWEST CORNER OF THIS TRACT, ALSO BEING THE SOUTHWEST CORNER OF A 13.056-ACRE TRACT CONVEYED TO RUNNING FIRE LLC INSTRUMENT NUMBER 2018/044972 OPRLC;

THENCE S88°15'88"E ALONG SAID 13.056-ACRE TRACT PASSING A FOUND IRON PIN W/"HRA" CAP AT A DISTANCE OF 305.00' FOR THE SOUTHEAST CORNER OF SAID 13.056-ACRE TRACT AND THE SOUTHWEST CORNER OF A 102.8-ACRE TRACT CONVEYED TO RUNNING FIRE LLC INSTRUMENT NUMBER 201845083 OPLRC, AND CONTINUING A TOTAL DISTANCE OF 655.00' TO A FOUND PIN W/"HRA" CAP FOR AN INTERIOR ELL OF SAID 102.8-ACRE TRACT AND THE NORTHERMOST NORTHEAST CORNER OF THIS TRACT:

THENCE ALONG THE SOUTHERN COMMON BOUNDARY OF SAID 102.8-ACRE TRACT FOR THE

- S01°55'47"W A DISTANCE OF 357.64' TO A FOUND PIN W/"HRA" CAP;
- EASTERLY WITH A CURVE TURNING TO THE RIGHT WITH AN ARC LENGTH OF 478.34', WITH 2. EASTERLY WITH A CURVE TURNING TO THE RIGHT WITH AN ARC LENGTH OF 478.34', WITH A RADIUS OF 839'0,0', WITH A CHORD BEARING OF \$83°40'08" E, WITH A CHORD LENGTH OF 478.28', TO A FOUND PIN W"HRA" CAP; 3. EASTERLY WITH A REVERSE CURVE TURNING TO THE LEFT WITH AN ARC LENGTH OF \$21.20', WITH A RADIUS OF 7608.00', WITH A CHORD BEARING OF \$85°0741" E, WITH A CHORD LENGTH OF \$20.80', TO A FOUND PIN W"HRA" CAP; 4. \$88°13'13" E A DISTANCE OF 713.70" TO A FOUND PIN W"HRA" CAP FOR THE SOUTH EAST CORNER OF SAID 102.8-ACRE TRACT, AND BEING IN THE EAST LINE OF THE SW'4 OF SAID SECTION 19, AND THE SOUTHERSMOST NORTHEAST CORNER OF THIS TRACT;

THENCE \$01°43'08"W ALONG THE EAST LINE OF THE \$W/4 OF SAID SECTION 19 A DISTANCE OF 350.05' TO A SET IRON PIN W/ORANGE "R2M RPLS 1871" FOR THE SOUTHEAST CORNER OF THIS

THENCE THOUGH THE INTERIOR OF SAID MN THOMPSON TRACT, AND ALONG THE PROPOSED NORTH ROW LINE OF LOOP 88 FOR THE FOLLOWING THREE (3) CALLS:

- N88°13'33"W A DISTANCE OF 713 70' TO A FOUND ALUMINUM "AC TXDOT" CAP-
- WESTERLY WITH A CURVE TURNING TO THE RIGHT WITH AN ARC LENGTH OF 858.99', WITH A RADIUS OF 7957.99', WITH A CHORD BEARING OF N 85°08'01" W, WITH A CHORD LENGTH OF 858.57', TO A FOUND ALUMINUM "AC TXDOT" CAP;
- WESTERLY WITH A REVERSE CURVE TURNING TO THE LEFT WITH AN ARC LENGTH OF P, WITH A RADIUS OF 8042.06', WITH A CHORD BEARING OF N 83°36'56" W, WITH A CHORD 441.90', WITH A RADIUS OF 8 LENGTH OF 441.85' TO A FOUND ALUMINUM "AC TXDOT" CAP IN THE EASTERN BOUNDARY OF SAID LSJ THOMPSON TRACT;

THENCE N01°55'20E ALONG SAID LSJ THOMPSON TRACT A DISTANCE OF 175.97' TO A POINT BEING THE NORTHEAST CORNER OF SAID LSJ TRACT AND AN INTERIOR ELL OF THIS TRACT;

THENCE N88°11'35W ALONG THE NORTHERN COMMON BOUNDARY OF SAID LSJ THOMPSON TRACT A DISTANCE OF 650.98 TO THE POINT OF BEGINNING AND CONTAINING 24.21-ACRES MORE OR LESS.



Staff Report	Zone Case 3484
City Council Meeting	June 27, 2023

Applicant R2M Engineering, LLC

<u>Property Owner</u> M.N Thompson Heirs, LLC and LSJ Thompson, LLC

Council District 5

Recommendations

• Staff recommends approval of this request.

Prior Board or Council Action

- December 4, 2008, Ordinance No. 2008-00104: The subject property was annexed into the city limits and zoned Transition District (T).
- June 1, 2023, Zone Case 3484: The Planning and Zoning Commission recommended approval for a zone change from T to Interstate Highway Commercial District (IHC) by a vote of 6-0-0.

Notification Summary

Notifications Sent: 7Received In Favor: 0Received In Opposition: 0

Site Conditions and History

The subject property is 26.26 acres of unplatted land out of Block AK, Section 19. The property has remained vacant since annexation.

Adjacent Property Development

The subject property is surrounded by vacant land zoned T to the north, east, and west. Property to the south, across 130th Street (future Loop 88) is vacant and zoned Interstate Highway Commercial District (IHC).

Zoning Request and Analysis

Item Summary

The subject property is generally located east of Upland Avenue and north of 130th Street. The applicant requests a zone change from T to Interstate Highway Commercial District (IHC).

Current zoning: Transition District (T)

Requested zoning: Interstate Highway Commercial District (IHC)

Intent Statements

The intent of the current T zoning is, "...to protect existing and future development in newly annexed territory until the proper zone classification can be determined and established by zone change."

The intent of the proposed IHC zoning is, "...to provide for quality commercial office, retail and wholesale uses which serve a city-wide or regional area. Such uses require careful consideration when adjacent to residential areas."

Traffic Network/Infrastructure Impacts

The proposed rezoning location will be along Upland Avenue and 130th Street. The Master Thoroughfare Plan, 2018, designates Upland Avenue as a Principal Arterial and 130th Street as a Freeway. Arterial streets provide connectivity across the transportation network and are continuous routes whose function is to serve high volume needs to local traffic and regional traffic. Freeways are intended to move high volumes of automobile traffic at relatively high speeds over long distances.

Compatibility with Surrounding Property

The proposed zoning is compatible with the surrounding area and appropriate adjacent to a freeway.

Conformance with Comprehensive Plan Principles and Future Land Use Map

The Future Land Use Map designates this area for "Residential Low Density" land use. Although, the proposed zone change to IHC would not be in conformance with this designation, it is in conformance with the principles of the 2040 Comprehensive Plan and it would be appropriate near the existing IHC zoning to the south of 130th Street.

Conformance with Zoning Ordinance

The proposed zoning request is in conformance with the zoning ordinance and is appropriate for this area.

Suitability of Property for Allowed Uses

The property is suitable for the proposed use and may need additional public improvements to support the intensity of uses described in the IHC zoning district, as the property is currently unplatted.

Attachments

- A. Case Information
- B. Thoroughfare Plan Map
- C. Aerial Map
- D. Zoning Map
- E. Future Land Use Map
- F. Photos
- G. Application and supporting documentation

Staff Contacts

Ashley Padilla Victor Escamilla

Planning and Zoning Manager

Planning Department Planning Department 806-775-2107 806-775-3029

ashleypadilla@mylubbock.us vescamilla@mylubbock.us

Case Information: Zone Case 3484



Allowable Uses: <u>Interstate Highway Commercial District (IHC)</u>

Transportation: The proposed development has a point of access from Upland Avenue.

Thoroughfare	Existing	Per Thoroughfare Development Plan
Upland Avenue,		
Principal Arterial	R.O.W. 80 feet, two-lane,	R.O.W. 110 feet, five-
Modified, Partially	undivided, paved	lane, undivided, paved
Completed		

Engineering Comments: No comments.

Public Works Comments: No comments.

Building Safety Comments: No comments.

Fire Marshal Comments: No comments.

Draft Planning and Zoning Commission Minutes

District 5

- **Zone Case 3484**: R2M Engineering for M.N. Thompson Heirs, LLC and LSJ Thompson, LLC, request for a zone change from Transition District (T) to Interstate Highway Commercial District (IHC), at:
 - Generally located east of Upland Avenue and north of 130th Street, on 26.26 acres of unplatted land out of Block AK, Section 19.

PLANNER ASHLEY PADILLA stated there were seven (7) notifications sent out with none returned. Staff shared the location of the property including pictures and maps and discussed the surrounding property. Staff recommended approval of the request.

CHAIR SAWYER asked if the property was entirely off Loop 88, and **Ms. Padilla** replied in the affirmative.

BRANDON HARDAWAY questioned the Residential Low-Density zoning to the IHC zoning designation.

PLANNING DIRECTOR KRISTEN SAGER replied that while the Comprehensive Plan and Future Land Use Map were being adopted in 2018, the subject property was likely outside of City Limits. The majority of the land in the outskirts of the city, or in the extraterritorial jurisdiction (ETJ), received a broad residential low-density designation with commercial designation at proposed thoroughfare intersections. Even though the map shows residential low-density, it isn't an appropriate designation for this location. The five-year review of the Comprehensive Plan will take place in December. Discrepancies such as the one at the proposed location shall be reviewed.

JAMES BELL noted that he initially had the same questions on the degree of zone change, but with Loop 88 so close, he can't see that many people are going to want to live in the area.

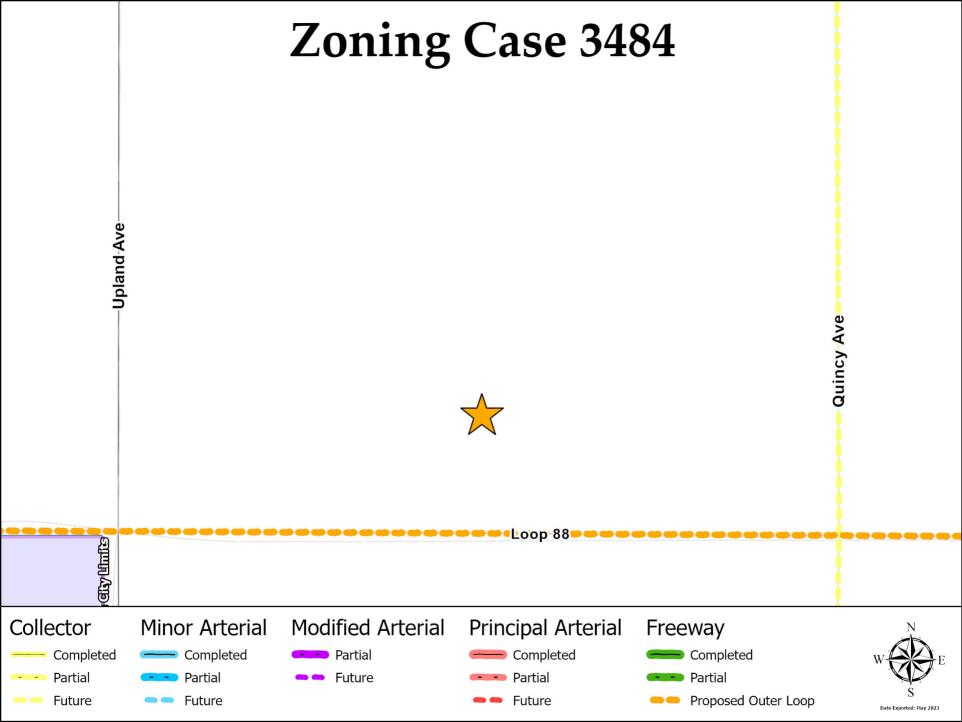
Attachment A Page 1 of 2

APPLICANT JERRY HART, 1203 Monticello Avenue, spoke as the engineer and surveyor for the applicant, and stated the intention is to have several individual tracts with a combination of commercial warehouses and industrial use on the property, with an office in the front. Basically, they expect the end result to be a mixed-use of retail and commercial, depending on the types of businesses that are going to be interested in this corner location. He pointed out that the property across the loop is zoned the same as he is requesting. Several properties to the east are also zoned IHC. It seemed to be appropriate for the area and for what the client is trying to accomplish.

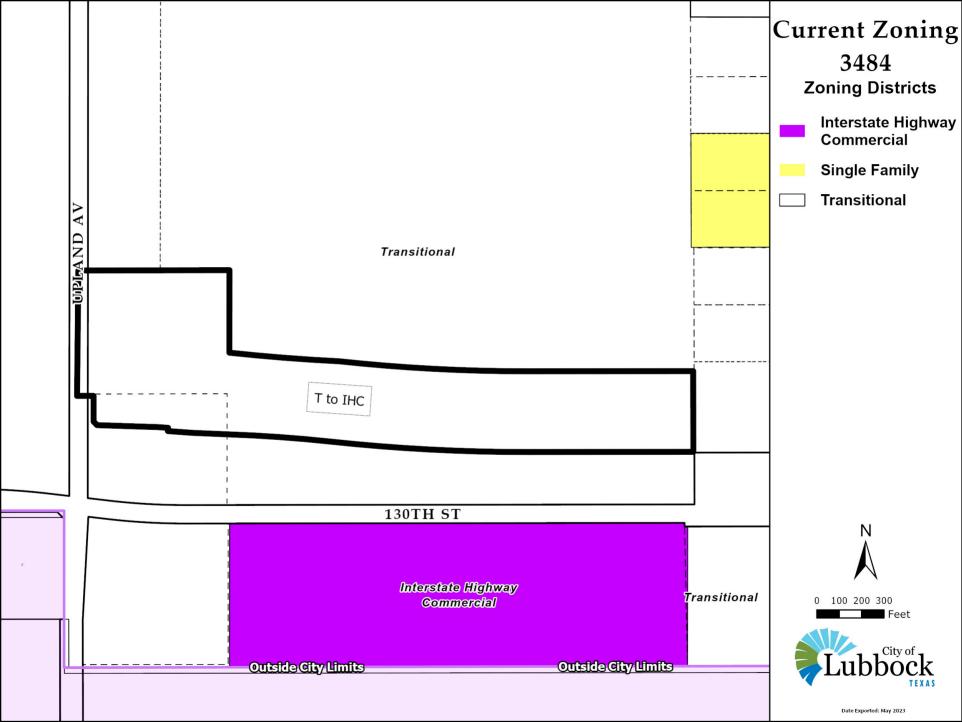
No one spoke in favor or in opposition of the request.

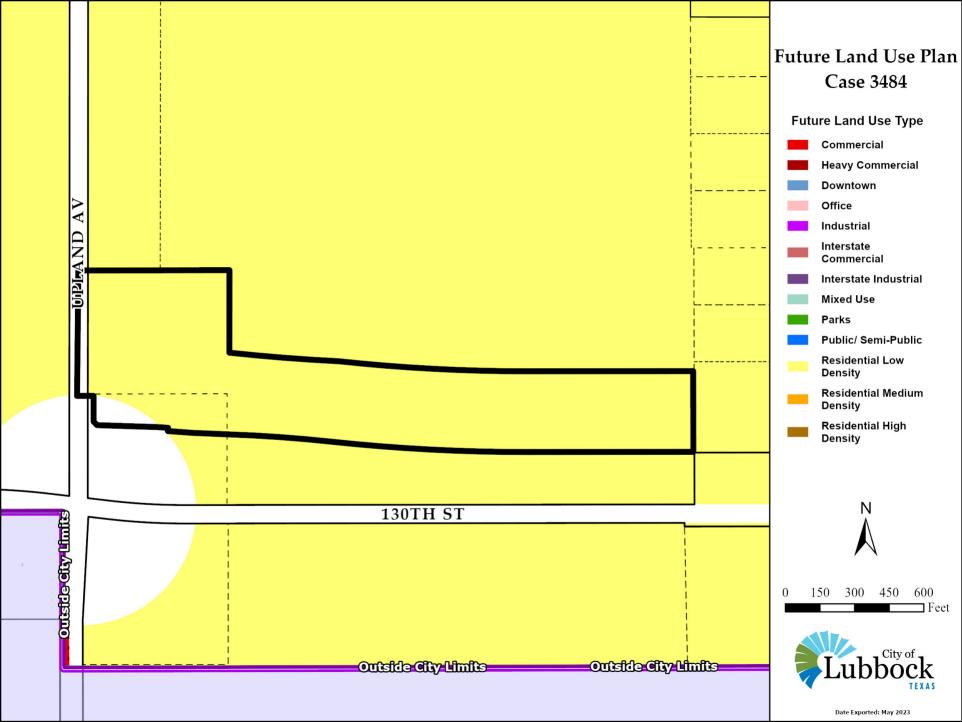
In the matter of **Zone Case 3484**, a motion was made by **TANNER NOBLE** and seconded by **JORDAN WHEATLEY** to approve the request and the Commission members voted 6 (in favor) to 0 (in opposition) to approve the motion. The item will be forwarded to City Council for consideration.

Attachment A Page 2 of 2



Zoning Case 3484 130TH ST 0 100 200 300







Subject property. View to the East.



View to the West.



View to the South.



View to the North.

ZONING EXHIBIT FOR MN THOMPSON ADDITION TRACTS A-H. TO THE CITY OF LUBBOCK. 26.26 ACRES OUT OF SECTION 19.

BLOCK AK, ABSTRACT 265 H.E. & W.T. RR CO. SURVEY, CITY OF LUBBOCK, TEXAS

IH-C ZONING REQUESTED

FIELD NOTES FOR TWO (2) TRACTS BEING A TOTAL OF 26.26-ACRES OUT OF THE SOUTHWEST QUARTER (S/W4) OF SECTION 19, BLOCK A-K, ABSTRACT 265, LUBBOCK COUNTY, TEXAS

TRACT 1:
BEING 2:05-ACRES OUT OF A 7.83-ACRE TRACT LOCATED IN SAID SECTION 19 AND CONVEYED TO LSJ THOMPSON LLC. INSTRUMENT NUMBER 2016018073 OF THE OFFICIAL PUBLIC RECORDS OF LUBBOCK COUNTY (OPRIC), AND FURTHER DESCRIBED BY METES & BOUNDS AS FOLLOWS:

BEGINNING IN THE APPROXIMATE CENTERLINE OF UPLAND AVENUE, AND BEING IN THE WEST LINE OF SAID SECTION 19, AND BEING THE NORTWEST CORNERS OF SAID TX-B-ACRE TRACT, AND THE WESTERNORTS SOUTHWEST CORNER OF A MY THOMSON HEIRS LIC. TRACT INSTRUMENT 20104758 OPRICE, FROM WHICH THE CALCULATED SOUTHWEST (S.W) CORNER OF SAID SECTION 19 BEARS SUBJECT*WA DISTANCE OF 105.5%;

THENCE S88°1135°E ALONG THE COMMON BOUNDARY OF SAID MN THOMPSON TRACT A DISTANCE OF 649.98° TO A POINT BEING THE NORTHEAST CORNER OF SAID 7.83-ACRE TRACT, THE NORTHEAST CORNER OF THIS TRACT, AND AN INTERIOR BLI OF SAID MN THOMPSON TRACT;

THENCE S01°55'20"W ALONG THE COMMON BOUNDARY OF SAID MN THOMPSON TRACT A DISTANCE OF 175.97 TO A POINT IN THE EAST LINE OF SAID 7.83-ACRE TRACT;

8. N88°08'09" W.A. DISTANCE OF 71.56 TO A POINT IN THE WEST LINE OF SECTION 19, AND ALSO IN THE WEST LINE OF SAID SECTION 19;

THENCE N01°55'47''E ALONG THE WEST SECTION LINE OF SAID SECTION 19 A DISTANCE OF 9.03' TO THE POINT OF BEGINNING AND CONTAINING 2.05-ACRES MORE OR LESS.

N83°59'20"W A DISTANCE OF 107.91' TO A POINT; N06'00'40"E A DISTANCE OF 14.00 TO A POINT; N83°59'20"W A DISTANCE OF 42.40' TO A POINT; N86'17'00"W A DISTANCE OF 265.96 TO A POINT;

N42°12'28"W A DISTANCE OF 21.61' TO A POINT; N01°51'51"E A DISTANCE OF 111.00' TO A POINT;

THENCE NOI "55"4" FEALONG THE SAID SECTION 19 WEST LINE A DISTANCE OF 331.24" TO A FOUND "MAGY NAIL WWASHER THAG" IN THE APPROXIMATE CENTER OF UPLAND AVE, AND BEING THE NORTHERMOST NORTHINEST CORNER OF THIS TRACT, ALSO BEING THE SOUTHINEST CORNER OF A 130%—ACRE TRACT CONVEYED TO RUNNING THE LLC INSTRUMENT NUMBER 201944972 OPRICE.

THENCE 588°15'88TE ALONG SAID 13.05'-ACRE TRACT PASSING A FOUND IRON PIN W'HRA" CAP AT A DISTANTE OF '80.00F FOR THE SOUTHEAST CORNER OF 'SAID 13.05'-ACRE TRACT AND THE SOUTHEAST CORNER OF 'SAID 13.05'-ACRE TRACT AND THE SOUTHEAST CORNER OF A 10.25'-ACRE TRACT CONVEYED TO RUNNING HELL IC INSTRUMENT NUMBER 2018-5808 OF HICK, AND CONTINUENCY A TOTAL DISTANCE OF 65.00 TO A FOUND FIN WIHAT CAP FOR AN INTERIOR BLO OF SAID ID-2-ACRE TRACT AND THE ORDITIONATION.

THENCE ALONG THE SOUTHERN COMMON BOUNDARY OF SAID 102.8-ACRE TRACT FOR THE FOLLOWING FOUR (4) CALLS;

S01°55'47"W A DISTANCE OF 357.64' TO A FOUND PIN W/"HRA" CAP.

- 1. N88°1333"W A DISTANCE OF 713.70 TO A FOLND ALLMINIM "AC TXDOT" CAP,
 2. WISTERLY WITH A CURVE TURNING TO THE BIGHT WITH AN ARC LENGTH OF 88.89, WITH
 A RADIUS OF "59.99, WITH A CURVE DIREARNO OF 88.990" W, WITH A CHORD LENGTH OF
 88.85, TO A FOLND" ALLMINIM "AC TXDOT" CAP,
 88.85, TO A FOLND ALLMINIM "AC TXDOT" CAP,
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 41.07, WITH A RADIUS OF "88.26,09, WITH A CHORD THE LEFT WITH AN ARC LENGTH OF
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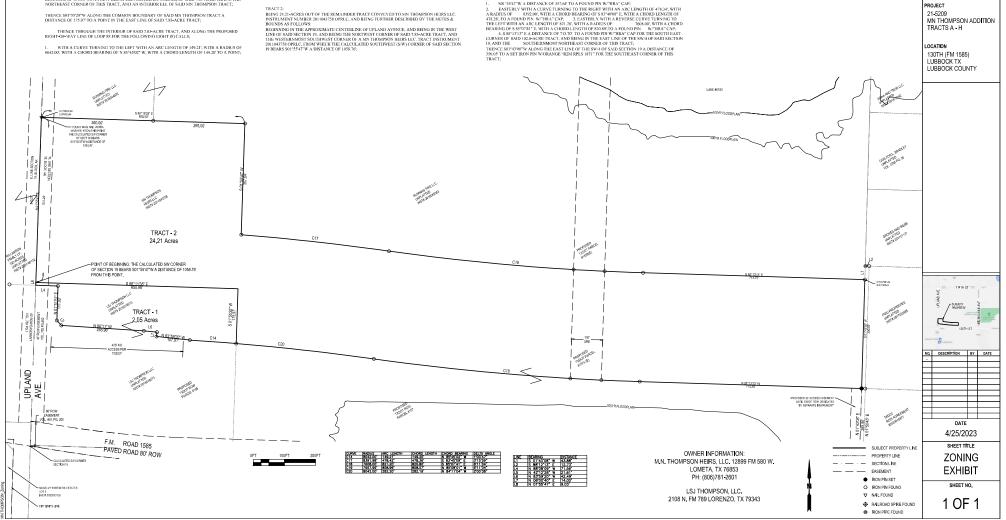
THENCE N88°11'35W ALONG THE NORTHERN COMMON BOUNDARY OF SAID LSJ THOMPSON TRACT A DISTANCE OF 650,98'TO THE POINT OF BEGINNING AND CONTAINING 24.21-ACRES MORE OR LESS

exas Registered Engineering Firm F-999 [exas Licensed Surveying Firm 1019386]

012 50th Ste. 204 P: 806-783-9944 .ubbock, TX 79414 F: 806-783-9966 www.R2Meng.com

OMPANY MN THOMPSON HEIRS, LLC 12899 FM 580 LOMETA, TX 76853

ROJECT 21-5209 MN THOMPSON ADDITION TRACTS A . H





Lubbock Planning Department PO Box 2000 / 1314 Avenue K Lubbock, TX 79457

APPLICATION FOR ZONING CHANGE

Project Information		
Location or Address: NE corner of Upland Ave. and F.M. 1585		
Lots/Tracts: Tracts "A-H"		
Survey & Abstract: Section 19, Block A-K, Abstact 265, HE & WT RR. Co.		
Metes and Bounds Attached: Yes \square No \square Total Acreage of Request: 26.26		
Existing Land Use: Farm Land Existing Zoning: Transitional		
Requested Zoning: IH-C		
If property is not subdivided, will a preliminary plat be submitted? Yes $\ oxdot$ No $\ \Box$		
Representative/Agent Information (if different from owner)		
Firm Name: R2M Engineering		
Name: Jeryl D. Hart Jr. P.E. & R.P.L.S.		
Address: 5012 50th Street, Suite 204 City: Lubbock State: TX		
ZIP Code: 79414 Telephone: 806-783-9944 Email: jhart@r2meng.com		
Applicant's Signature: 2 Lyl DHant J		
Date: 4/19/2023 Printed Name: Jeryl D. Hart Jr.		
Owner Information		
Firm Name: M.N. Thompson Heirs LLC. & LSJ Thompson LLC		
Owner:		
Address: 12899 FM 580 W. City: Lometa State: TX		
ZIP Code: 76853 Telephone: 806-781-2601 Email:		
Property Owner's Signature: Ronnie Schaffner dottoop verified 04/24/23 11:22 AM CDT CDT GEFO-XITH-LCLO-CX20 G94Z-JYZD G94Z-JYZD		
Date: Printed Name:_Ronnie Schaffner & Janet Mimms		
Preparer Information		
Preparer's Signature:		
Date: 4/19/2023 Printed Name: Jeryl D. Hart Jr.		
For City Use Only		
Zone Case No: Planning and Zoning Commission Date:		
Request for zoning change from:To:To:		
Lots:Blocks:		
Addition:		

By signing this application, Applicant agrees and warrants that any and all materials submitted to the City in support or reference to this application are not protected by copyrights or, in cases of potential copyrighted materials, the Applicant is the sole owner of any copyrighted interest and grants to the City permission and license to reproduce, publish, distribute and utilize such materials.

If you have any questions pertaining to the zoning process, please contact the City of Lubbock Planning Department by phone at (806) 775 - 2108 or by e-mail at cityplanning@mylubbock.us.



Information

Agenda Item

Public Hearing - Planning (District 6): Consider a request for Zone Case 2538-AA, a request of AMD Engineering, LLC for 806 Land Group, for a zone change from General Retail District (C-3) and Two-Family District (R-2) to Local Retail District (C-2) with a Specific Use for a Self-Storage Facility, generally located east of Upland Avenue and north of 19th Street, on 4.05 acres of unplatted land out of Block JS, Section 10, and consider an ordinance.

Item Summary

For detailed information on this request, please refer to the Planning Department Staff Report attached hereto. As noted in the report, staff recommends approval of this request. The Planning and Zoning Commission heard this case on June 1, 2023 and recommended approval of the request by a vote of 5-0-1.

Fiscal Impact

None

Staff/Board Recommending

Erik Rejino, Assistant City Manager Kristen Sager, Director of Planning Planning and Zoning Commission

Attachments

Ordinance 2538-AA Staff Report ZC 2538-AA Documentation 2538-AA

|--|

AN ORDINANCE AMENDING ZONING ORDINANCE NO. 7084 AND THE OFFICIAL MAP OF THE CITY OF LUBBOCK MAKING THE FOLLOWING CHANGES: ZONE CASE NO. 2538-AA; A ZONING CHANGE FROM C-3 AND R-2 TO C-2 SPECIFIC USE FOR A SELF-STORAGE FACILITY, GENERALLY LOCATED EAST OF UPLAND AVENUE AND NORTH OF 19TH STREET, ON 4.05 ACRES OF UNPLATTED LAND OUT OF BLOCK JS, SECTION 10, LUBBOCK, TEXAS; PROVIDING A PENALTY; PROVIDING A SAVINGS CLAUSE; AND, PROVIDING FOR PUBLICATION.

WHEREAS, the proposed changes in zoning as hereinafter made have been duly presented to the Planning and Zoning Commission for its recommendation which was received by the City Council and, after due consideration, the City Council found that due to changed conditions, it would be expedient and in the interest of the public health, safety and general welfare to make those proposed changes in zoning; and

WHEREAS, the 2040 Future Land Use Plan is a guide to help the Lubbock Planning and Zoning Commission and the City Council determine the physical development of the community; however, planning is a continuous process and change is inevitable; and

WHEREAS, the Lubbock Planning and Zoning Commission and City Council recognize that the zone change is a minor deviation from the 2040 Future Land Use Plan, which protects the public and private commitments that have been previously based on the Plan; and

WHEREAS, all conditions precedent required by law for a valid amendment to the Zoning Ordinance and Map have been fully complied with, including giving notices in compliance with Section 40.01.005 of the Code of Ordinances, City of Lubbock, Texas, and the notices provided by the Texas Local Government Code §211.007 (Vernon, 1990), and notice was duly published in the <u>Lubbock Avalanche-Journal</u> more than fifteen (15) days prior to the date of the public hearing before the City Council on such proposed amendment, and the public hearing according to said notice, was held in the City Council Chamber of the Municipal Building, Lubbock, Texas, at which time persons appeared in support of the proposal; and after said hearing, it was by the City Council determined that it would be in the public interest, due to changed conditions, that the Zoning Ordinance and the Zoning Map be amended in the manner hereinafter set forth in the body of this Ordinance and this Ordinance having been introduced prior to first reading hereof; NOW THEREFORE:

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

ZONE CASE NO. 2538-AA

SECTION 1. THAT Ordinance No. 7084 and the Official Zoning Map are amended as follows:

A change of zoning under the provisions of Section 40.01.005 of the Code of Ordinances of the City of Lubbock from C-3 and R-2 to C-2 Specific Use for a Self-Storage Facility zoning district generally located east of Upland Avenue and north of 19th Street, on 4.05 acres of unplatted land out of Block JS, Section 10, City of Lubbock, Lubbock County, Texas, and being further described as follows:

METES AND BOUNDS DESCRIPTION: Attached as Exhibit "A".

SECTION 2. THAT the granting of this specific use zoning is hereby made subject to compliance with all provisions of Zoning Ordinance No. 7084, as amended, including particularly, but not limited to, Section 40.03.3102 of the Codified Zoning Ordinance, which provides that a Building Permit shall be applied for and secured within thirty (30) months of the effective date of the zone change or all undeveloped property shall automatically revert back to the previous zoning classification, which in this case is the C-3 and R-2 zone district; and if such reversion occurs, the Director of Planning is directed to remove from the Zoning Map the legend indicating such specific use. The Specific Use authorized by this Ordinance is permitted under provision of Section 40.03.3101-40.03.3103 of Codified Zoning Ordinance No. 7084 on the property described as generally located east of Upland Avenue and north of 19th Street, on 4.05 acres of unplatted land out of Block JS, Section 10, City of Lubbock, Lubbock County, Texas.

SECTION 3. THAT violation of any provision of this Ordinance shall be deemed a misdemeanor punishable by fine not to exceed Two Thousand and No/100 Dollars (\$2,000.00) as provided in Section 40.01.006 of the Zoning Ordinance of the City of Lubbock.

SECTION 4. THAT should any 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.

SECTION 5. THAT the City Secretary is hereby authorized 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 of	on			
Passed by the City Council on second readin	g on		·	
ATTEST:	TRAY PA	AYNE, MAYOI	R	
Courtney Paz, City Secretary				
APPROVED AS TO CONTENT:				
Kristen Sager, Director of Planning				
APPROVED AS TO FORM:				
Kelli Leisure, Senior Assistant City Attorney				
vw/CityAtt/Kelli/Zones/ZC2538-AA June 1, 2023				



AMD ENGINEERING, LLC

DESCRIPTION FOR A ZONING CHANGE REQUEST IN SECTION 10, BLOCK JS, LUBBOCK COUNTY, TEXAS

(Sheet 1 of 2, Sketch of tract attached as Sheet 2)

METES AND BOUNDS DESCRIPTION of a 4.05-acre tract of land located in Section 10, Block JS, Lubbock County, Texas, prepared for Zone Change Purposes only and being further described as follows:

BEGINNING at a point that bears S 01° 52' 00" W an approximate distance of 65.00 feet and N 88° 08' 00" W an approximate distance of 987.22 feet to the southwest corner of Section 10, Block JS;

THENCE N 88° 12' 02" W an approximate distance of 240.00 feet;

THENCE N 01° 41' 25" E an approximate distance of 734.49 feet;

THENCE S 88° 18' 35" E an approximate distance of 230.00 feet;

THENCE S 43° 18' 35" E an approximate distance of 14.14 feet;

THENCE S 01° 41' 25" W an approximate distance of 724.96 feet to the Point of Beginning and containing approximately 4.05-acres.

This description was prepared for purposes of a zoning request and does not represent a survey made upon the ground.

Prepared for: 806 Land Group, LLC

April 26, 2023

NOT PLATTED BLK JS SEC 10 AB 1485 TR D5 OWNER: 806 LAND GROUP LLC N: 7275244.37_ E: 911277.49 S88°18'35"E 230.00' S43°18'35"E 14.14' NOT PLATTED BLK JS SEC 10 AB 1485 TR D2 OWNER: 806 LAND GROUP LLC ⋖ 147 OS 146 ď 151 145 BURGAMY PARK LOTS 130-177 (CCFN: 2022003894) 143 NOT PLATTED BLK JS SEC 10 AB 1485 TR D OWNER: 806 LAND GROUP LLC NOT PLATTED BLK JS SEC 10 AB 1458 TR C3 OWNER: CARL CLARY P.O.B.
FROM THIS POINT, THE SOUTHWEST
- CORNER OF SECTION 10, BLOCK JS
BEARS S.01°52'00"W. 65.00' AND N.88'08'00"W 987.22' N88°12'02"W 240.00' N: 7274502.65 E: 911495.71 - 19TH STREET (HWY 114) SOUTH LINE SECTION 10 BLOCK JS

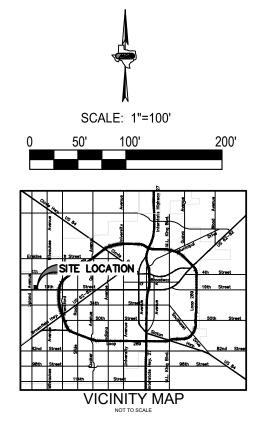
ZONE CHANGE APPLICATION EXHIBIT

(SHEET 2)

A 4.05 ACRE TRACT OF LAND LOCATED IN SECTION 10. BLOCK JS, LUBBOCK COUNTY, TEXAS

NOTES: SCALE: 1" = 100'

ZONING REQUEST TO C-2, SPECIFIC USE FOR SELF STORAGE FROM C-3, GENERAL RETAIL DISTRICT





CIVIL ENGINEERING LAND SURVEYING Phone: 806-771-5976 Fax: 806-771-7625 TBPE Reg. # F-9197

Accuracy - Efficiency - Integrity

Planning Department City of Lubbock



Staff Report	Zone Case 2538-AA
City Council Meeting	June 27, 2023

<u>Applicant</u> AMD Engineering, LLC

Property Owner 806 Land Group, LLC

Council District 6

Recommendations

Staff recommends approval of this request.

Prior Board or Council Action

- September 27, 1984, Ordinance No. 8660: The subject property was annexed into city limits and zoned Transition District (T).
- October 10, 1985, Zone Case 2538, Ordinance No. 8827: The subject property was rezoned from T to Single-Family District (R-1).
- November 16, 2021, Zone Case 2538-W, Ordinance No. 2021-00156: The northern portion of the subject property was rezoned from R-1 to Two-Family District (R-2).
- December 14, 2021, Zone Case 2538-Z, Ordinance No. 2021-00173: The southern portion of the subject property was rezoned from R-1 to General Retail District (C-3).
- June 1, 2023, Zone Case 2538-AA: A request to rezone from General Retail District (C-3) and Two-Family District (R-2) to Local Retail District (C-2) Specific use for self-storage was approved by the Planning and Zoning Commission by a vote of 5-0-1.

Notification Summary

Notifications Sent: 25
 Received In Favor: 0
 Received In Opposition: 0

Site Conditions and History

The subject property consists of 4.05 acres of vacant, unsubdivided land out of Block JS, Section 10.

Adjacent Property Development

The property is adjacent to vacant land zoned R-2 to the north, a church and residential uses zoned C-3 to the west, vacant land zoned R-1 to the east, and an apartment complex zoned High-Density Apartment District (A-2) to the south, along with additional vacant land zoned R-2 and C-3.

Zoning Request and Analysis

Item Summary

The subject property is generally located east of Upland Avenue and north of 19th Street. The applicant is requesting a zone change from General Retail District (C-3) and Two-Family District (R-2) to Local Retail District (C-2) with a Specific Use for a self-storage facility.

Current zoning: General Retail District (C-3) and Two-Family District (R-2)

Requested zoning: Local Retail District (C-2) with a Specific Use for a self-storage facility

Intent Statements

The intent of the current C-3 zoning is "to provide for general commercial uses which are medium activity centers in terms of generated traffic. Such districts should be adjacent to local or regional thoroughfares such as state or federal highways. Because of the commercial nature of the permitted uses, compatibility with adjacent residential areas should be considered."

The intent of the current R-2 zoning is "to promote stable, quality residential development of slightly increased densities and multiple occupancy..."

The intent of the proposed C-2 zoning is "to provide limited local retail and service commercial uses which serve one of several neighborhoods. Such districts may be located on existing thoroughfares or at the intersections of major thoroughfares."

The intent of the proposed Specific use is "to provide for design and land use flexibility in the various districts."

Traffic Network/Infrastructure Impacts

The property is generally located east of Upland Avenue and north of 19th Street, which are both designated as Principal Arterials by the Master Thoroughfare Plan, 2018. Arterials are continuous routes whose function is to serve high volume needs of local traffic and regional traffic.

Compatibility with Surrounding Property

The proposed zone change is compatible with the surrounding area and will not change the character of the existing development. It is appropriate adjacent to the existing commercial zoning.

Conformance with Comprehensive Plan Principles and Future Land Use Map

The Future Land Use Map designates the subject property for residential low-density uses. The requested zone change is not in conformance with this designation, but the requested zone change is a more restrictive district than the existing C-3 zoning and is appropriate in this location along a thoroughfare and adjacent to other existing commercial zoning to the west.

Conformance with Zoning Ordinance

The proposed zone change is in conformance with the zoning ordinance and the location is appropriate for the uses in the C-2 district and the specific use for a self-storage facility.

Suitability of Property for Allowed Uses

The property is suitable for the proposed uses and may require additional public improvements to support the intensity of the uses, as the property has not been platted yet.

Attachments

- A. Case Information
- B. Thoroughfare Plan Map
- C. Aerial Map
- D. Zoning Map
- E. Future Land Use Map
- F. Photos
- G. Application and Supporting Documentation

Staff Contacts

Cassie Bermea Victor Escamilla
Planner Planning and Zoning Manager
Planning Department Planning Department
806-775-2096 806-775-3029

cassiebermea@mylubbock.us vescamilla@mylubbock.us

Case Information: Zone Case 2538-AA



Allowable Uses: Local Retail District (C-2) Specific Use for self-storage

Transportation: The proposed development has a point of access from 19th Street.

Thoroughfare	Existing	Per Thoroughfare Development Plan
19 th Street Principal Arterial (Partially Completed)	R.O.W. 110 feet, five- lane, undivided, paved	R.O.W. 110 feet, five- lane, undivided, paved

Engineering Comments: No comments.

Public Works Comments: No comments.

Building Safety Comments: No comments.

Fire Marshal Comments: No comments.

Draft Planning and Zoning Commission Minutes

District 6

- **Zone Case 2538-AA:** AMD Engineering, LLC for 806 Land Group, request for a zone change from General Retail District (C-3) and Two-Family District (R-2) to Local Retail District (C-2) with a Specific Use for a Self-Storage Facility, at:
 - Generally located east of Upland Avenue and north of 19th Street, on 4.05 acres of unplatted land out of Block JS, Section 10.

PLANNER CASSIE BERMEA stated there were twenty-five (25) notifications sent out with none returned. Staff shared the location of the property including pictures and maps and discussed the surrounding property. The requested zoning is more restrictive than C-3 and is suitable for the proposed uses, as the property has not yet been platted. Staff recommended approval of the request.

APPLICANT WILL STEVENS, 6515 68th Street, with AMD engineering stated he was present and he would be happy to answer any questions.

TANNER NOBLE remarked on the numerous trees on the property and asked **Mr. Stevens** if the applicant going to be able to keep any of the trees. **Mr. Stevens** replied they would do what they could.

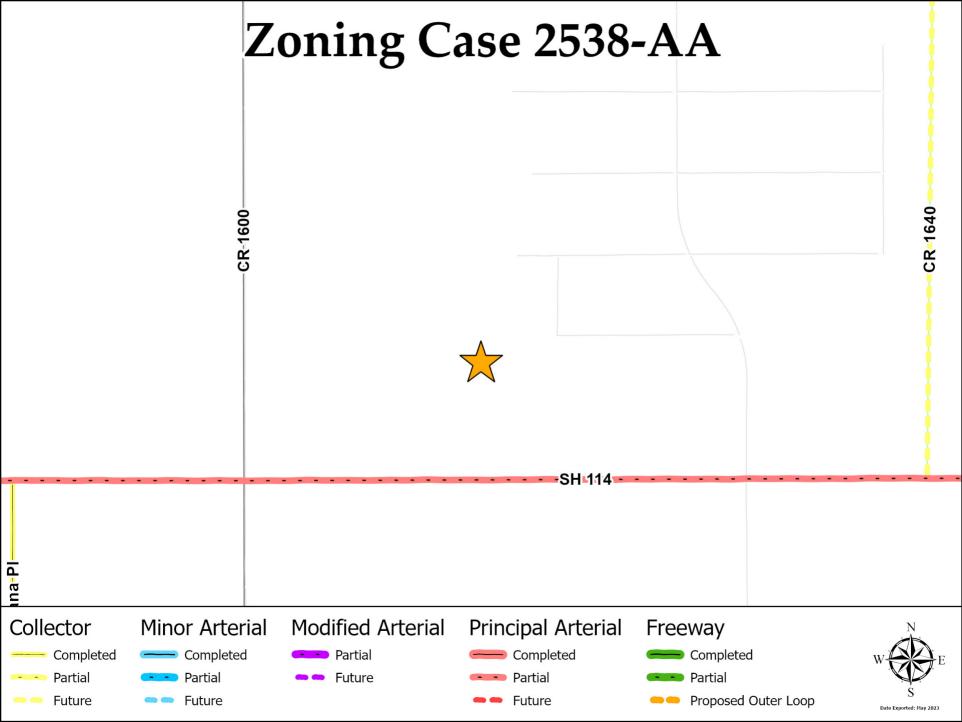
CHAIR SAWYER noted the trees would serve as good natural buffer.

No one spoke in favor or in opposition of this request.

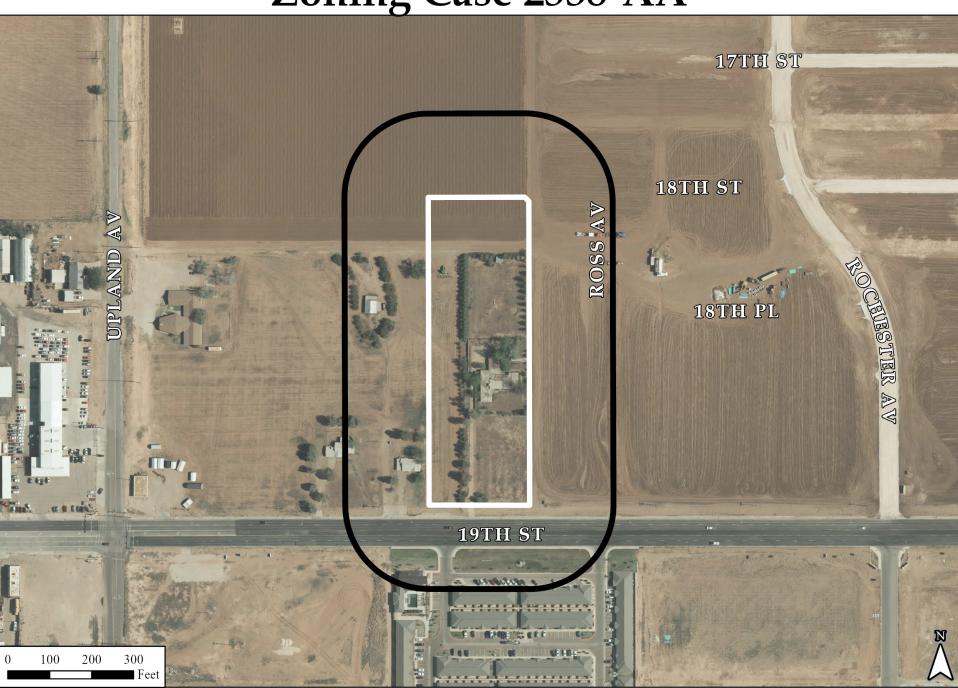
In the matter of **Zone Case 2538-AA**, a motion was made by **TANNER NOBLE** and seconded by **BRANDON HARDAWAY** to approve the request and the Commission members voted 5 (in favor) to 0 (in opposition) to approve the motion. The item will be forwarded to City Council for consideration.

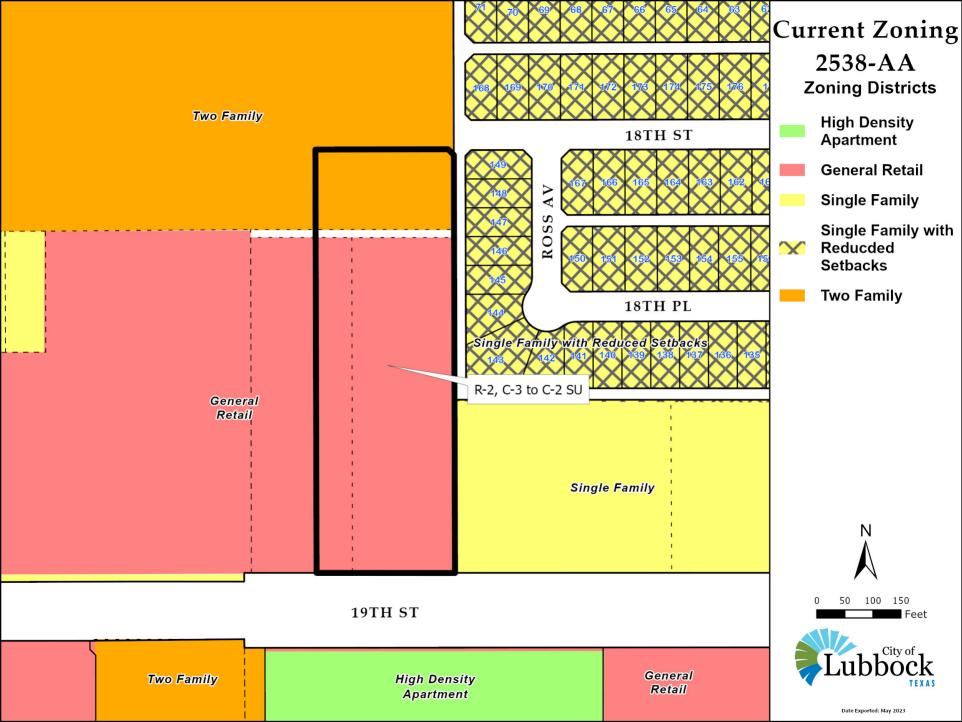
JORDAN WHEATLEY recused from Item 5.7, Zone Case 2538-AA.

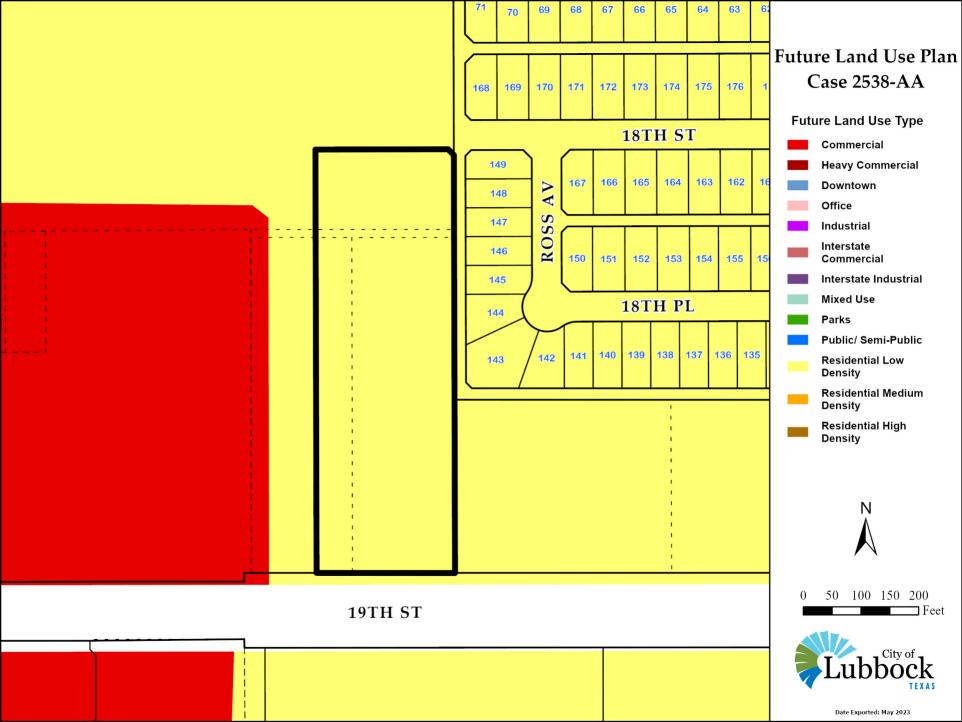
Attachment A Page 1 of 2

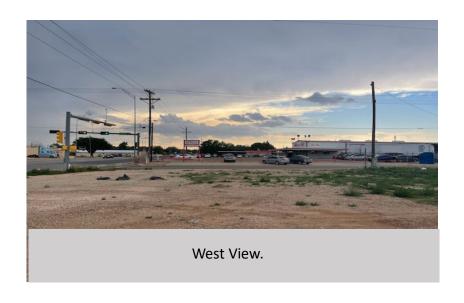


Zoning Case 2538-AA







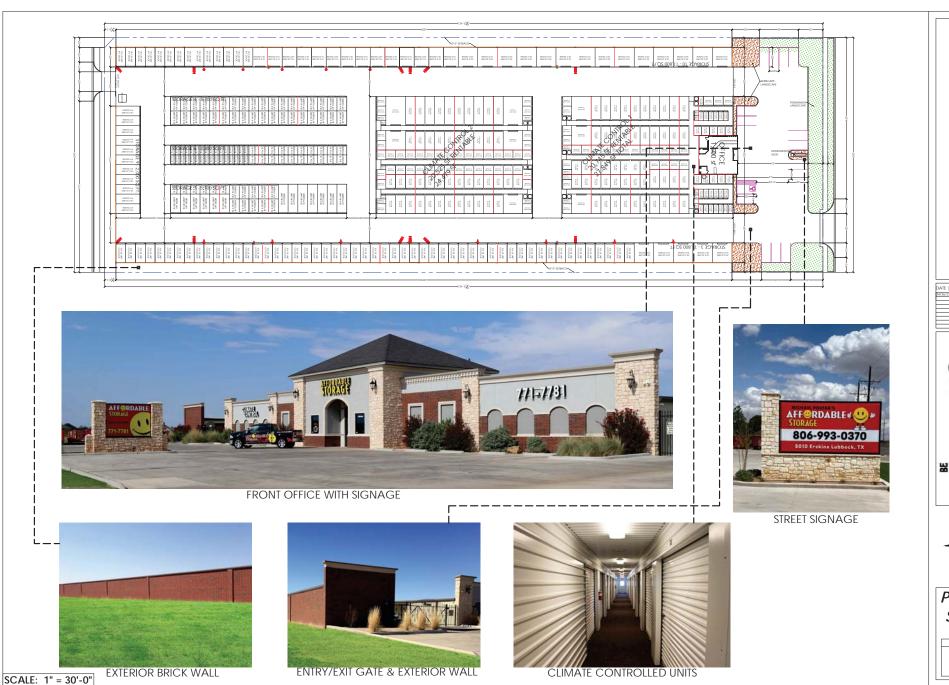












AFFORDABLE STORAGE 19TH & UPLAND

ATE | EDITED | BY

A MAZING CONSTRUCTION 3110 FRANKFORD AVENUE LUBBOCK TEXAS 79407



PROPOSED SITE PLAN

SHEET

PSP-1



Lubbock Planning Department PO Box 2000 / 1314 Avenue K Lubbock, TX 79457

APPLICATION FOR ZONING CHANGE

Project Information	
Location or Address: East of Upland Ave & North of 19th	St 7112 and a portion of 7118 19th Street.
Lots/Tracts: Not Currently Platted	
Survey & Abstract: Block JS, Section 10 - Abs. 1485 Tr.	D1 & a portion of Abs. 1485 Tr. D2
Metes and Bounds Attached: Yes ☑ No ☐ Tota	al Acreage of Request: 4.05
	sting Zoning: C-3
Requested Zoning: C-2, Specific Use for Self-Storage Fa	acility
If property is not subdivided, will a preliminary plat be subm	itted? Yes ☑ No □
Representative/Agent Information (if different from owner)	
Firm Name: AMD Engineering, LLC	
Name: Will Stephens	
Address: 6515 68th St., Suite 300 City: L	_ubbock State: TX
ZIP Code: 79424 Telephone: 806-771-5976	Email: wstephens@amdeng.com
Applicant's Signature:	
	Will Stephens
Owner Information	
Firm Name: 806 Land Group, LLC	
Owner: Jordan Wheatley	
	ubbock State: TX
	Email: jordan@jwlubbock.com
Property Owner's Signature: Walk Madley	
Date: Printed Name:	Jordan Wheatley
Preparer Information	
Date: 4/26/2023 Printed Name:	Will Stephens
For City Use Only	
Zone Case No: Planning an	d Zoning Commission Date:
Request for zoning change from:	To:
Lots:Blocks:	
Addition:	

By signing this application, Applicant agrees and warrants that any and all materials submitted to the City in support or reference to this application are not protected by copyrights or, in cases of potential copyrighted materials, the Applicant is the sole owner of any copyrighted interest and grants to the City permission and license to reproduce, publish, distribute and utilize such materials.

If you have any questions pertaining to the zoning process, please contact the City of Lubbock Planning Department by phone at (806) 775 - 2108 or by e-mail at cityplanning@mylubbock.us.



Agenda Item

Public Hearing - Business Development: Hold a public hearing for the consideration of a proposed 4% Non-Competitive Housing Tax Credit (HTC) application to be submitted to the Texas Department of Housing and Community Affairs (TDHCA) for the South Plains Apartments, located at 5520 58th Street in Lubbock, Texas.

Item Summary

Prior to considering a Resolution of No Objection for this application, the City Council must hold a Public Hearing.

The Non-Competitive Housing Tax Credit (HTC) Program is funded by the U.S. Treasury Department and is overseen by the Internal Revenue Service. Federal regulations guiding the program can be found in Internal Revenue Code Section 42. Texas Department of Housing and Community Affairs (TDHCA) administers the program for the State of Texas.

The HTC Program was designed to provide a source of equity financing for the development and preservation of affordable multifamily housing. The goal is to maximize the number of affordable units in the state's housing supply, and to ensure the supply is well maintained and operated. With the 4% HTC funding, the applicant plans to invest \$35,000 per unit to rehabilitate the property. Post-renovation, an adequate tenant service program will be provided and tailored specifically, to residents in the community.

Tenants earning up to 60% of the Area Median Family Income (AMFI) for the area for their household size, and who meet the screening and eligibility restrictions of the property, may qualify for a reduced rent unit. HTC units offer income-qualified tenants a unit at a reduced rate that is restricted by annually publishing rent guidelines, which may increase or decrease annually, based on published units.

Fiscal Impact

None

Staff/Board Recommending

D. Blu Kostelich, Chief Financial Officer

Attachments

No file(s) attached.



Agenda Item

Resolution - Business Development: Consider a resolution confirming that the City of Lubbock has no objection to the proposed 4% Non-Competitive Housing Tax Credit (HTC) application to be submitted to the Texas Department of Housing and Community Affairs (TDHCA) for the South Plains Apartments, located at 5520 58th Street in Lubbock, Texas.

Item Summary

The Non-Competitive Housing Tax Credit (HTC) Program is funded by the U.S. Treasury Department and is overseen by the Internal Revenue Service. Federal regulations guiding the program can be found in Internal Revenue Code Section 42. The Texas Department of Housing and Community Affairs (TDHCA) administers the program for the State of Texas.

The HTC Program was designed to provide a source of equity financing for the development and preservation of affordable multifamily housing. The goal is to maximize the number of affordable units in the state's housing supply, and to ensure the supply is well maintained and operated. With the 4% HTC funding, the applicant plans to invest \$35,000 per unit to rehabilitate the property. Post-renovation, an adequate tenant service program will be provided and tailored specifically to residents in the community.

Tenants earning up to 60% of the Area Median Family Income (AMFI) for the area for their household size, and who meet the screening and eligibility restrictions of the property, may qualify for a reduced rent unit. HTC units offer income-qualified tenants a unit at a reduced rate that is restricted by annually publishing rent guidelines, which may increase or decrease annually, based on published units.

Fiscal Impact

None

Staff/Board Recommending

D. Blu Kostelich, Chief Financial Officer

Attachments

Resolution

RESOLUTION

WHEREAS, the Texas Department of Housing and Community Affairs has established a Low Income Housing Tax Credit Program (the "Program") under the Texas Government Code Chapter 2306, Subchapter DD (the "Code"); and

WHEREAS, the purpose of the Code is to govern the administration of the Program in order to, among other things, encourage development of affordable rental housing; and

WHEREAS, SPHS Lubbock Preservation, LP (the "Applicant") has informed the City of Lubbock (the "City") of its intent to file an application for the Program in accordance with Section 2306.67071(a)(1) of the Code for its development to be named South Plains Apartments at 5520 58th Street, Lubbock, TX; and

WHEREAS, the City is required to hold a public hearing at which public comment may be made on the application, in accordance with Section 2306.67071(b); and NOW, THEREFORE

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

Section 1. THAT notice has been provided to the City Council of the City of Lubbock (the "Council") as required by 2306.67071(a)(1).

Section 2. THAT the Council has had sufficient opportunity to obtain a response from the Applicant regarding any questions or concerns about the proposed development.

Section 3. THAT the Council has held a hearing required under Section 2306.67071(b).

Section 4. THAT after due consideration of the information provided by the Applicant and public comment, the Council does not object to the proposed application.

	Passed by the City Council on		_•
		TRAY PAYNE, MAYOR	
ATTEST:	:		
Courtney 1	Paz, City Secretary		

APPROVED AS TO CONTENT:
D. Blu Kostelich, Chief Financial Officer
APPROVED AS TO FORM: White State Control of the Control of th

 ${\it ccdocs/RES.}\ No\ objection-Texas\ Dept\ Housing\ \&\ Comm\ Affairs-housing\ credit\ app\ SPHS\ Lubbock\ Preservation,\ LP\ 5.10.23$



Agenda Item

Public Hearing - Business Development: Hold a public hearing for the consideration of a proposed 4% Non-Competitive Housing Tax Credit (HTC) application to be submitted to the Texas Department of Housing and Community Affairs (TDHCA) for The Ella, located at 1102 58th Street in Lubbock, Texas.

Item Summary

Prior to considering a Resolution of No Objection for this application, the City Council must hold a Public Hearing.

The Non-Competitive Housing Tax Credit (HTC) Program is funded by the U.S. Treasury Department and is overseen by the Internal Revenue Service. Federal regulations guiding the program can be found in Internal Revenue Code Section 42. The Texas Department of Housing and Community Affairs (TDHCA) administers the program for the State of Texas.

The HTC Program was designed to provide a source of equity financing for the development and preservation of affordable multifamily housing. The goal is to maximize the number of affordable units in the state's housing supply, to and ensure the supply is well maintained and operated. With the 4% HTC funding, the applicant plans to renovate 152 multifamily rental housing units.

Tenants earning up to 60% of the Area Median Family Income (AMFI) for the area, for their household size, and who meet the screening and eligibility restrictions of the property, may qualify for a reduced rent unit. HTC units offer to income-qualified tenants, a unit at a reduced rate that is restricted by annually publishing rent guidelines, which may increase or decrease annually, based on published units.

Fiscal Impact

None

Staff/Board Recommending

D. Blu Kostelich, Chief Financial Officer

Attachments

No file(s) attached.



Agenda Item

Resolution - Business Development: Consider a resolution confirming that the City of Lubbock has no objection to the proposed 4% Non-Competitive Housing Tax Credit (HTC) application to be submitted to the Texas Department of Housing and Community Affairs (TDHCA) for The Ella, located at 1102 58th Street in Lubbock, Texas.

Item Summary

The Non-Competitive Housing Tax Credit (HTC) Program is funded by the U.S. Treasury Department and is overseen by the Internal Revenue Service. Federal regulations guiding the program can be found in Internal Revenue Code Section 42. The Texas Department of Housing and Community Affairs (TDHCA) administers the program for the State of Texas.

The HTC Program was designed to provide a source of equity financing for the development and preservation of affordable multifamily housing. The goal is to maximize the number of affordable units in the state's housing supply, and to ensure the supply is well maintained and operated. With the 4% HTC funding, the applicant plans to renovate 152 multifamily rental housing units.

Tenants earning up to 60% of the Area Median Family Income (AMFI) for the area, for their household size, and who meet the screening and eligibility restrictions of the property, may qualify for a reduced rent unit. HTC units offer to income-qualified tenants, a unit at a reduced rate that is restricted by annually publishing rent guidelines, which may increase or decrease annually, based on published units.

Fiscal Impact

None

Staff/Board Recommending

D. Blu Kostelich, Chief Financial Officer

Attachments

Resolution

- 2. The Governing Body of the City of Lubbock has had sufficient opportunity to obtain a response from The Ella TX TC, LP regarding any questions or concerns about the proposed rehabilitation of the Ella Apartments; and
- 3. The Governing Body of the City of Lubbock has held a hearing at which public comment may be made on the proposed rehabilitation of the Ella Apartments in accordance with Tex. Gov't Code, §2306.67071(b); and
- 4. After due consideration of the information provided by The Ella TX TC, LP and public comment, the Governing Body of the City of Lubbock does not object to the proposed Application.

THAT the Mayor of the City of Lubbock is hereby authorized, empowered, and directed to certify for and on behalf of the City of Lubbock, this resolution Texas Department of Housing and Community Affairs.

I assed by the City Council on	<u> </u>
	TRAY PAYNE, MAYOR
	I KAY PAYINE. WAYUUK

Decead by the City Council on

ATTEST:
Courtney Paz, City Secretary
APPROVED AS TO CONTENT: For Bill Howerton, Bill Howerton, Deputy City Manager
APPROVED AS TO FORM: Control of the control of t

Ccdocs://The Ella — Resolution of No Objection from City of Lubbock 6.21.23



Agenda Item

Public Hearing - Business Development: Hold a public hearing for the City Council to receive public input concerning the adoption of an Ordinance designating a Reinvestment Zone, at 904 Lubbock Business Park Boulevard, as authorized by Chapter 312 of the Tax Code.

Item Summary

The City of Lubbock received an application for an industrial tax abatement from Dura-Line, LLC, for the renovation of an existing facility and acquisition of new machinery and equipment. The property is not located in an Enterprise Zone, so the creation of a Reinvestment Zone at the location of the facility is required before a tax abatement can be considered.

The project meets the Industrial Tax Abatement Policy and Guidelines minimum investment for a new company of \$1,000,000 in real property improvements. Total investment in the project will be \$22 million for real property improvements and \$32.5 million for machinery and equipment.

At the June 13, 2023 City Council meeting, the City Council approved the Notice of Intent to hold the Public Hearing. On June 16, 2023, the notice was forwarded to the taxing jurisdictions who levy taxes on the real property included in the zone. This item is the second step in the process to designate a Reinvestment Zone.

Fiscal Impact

None

Staff/Board Recommending

D. Blu Kostelich, Chief Financial Officer

Attachments

Public Hearing Notice

PUBLIC HEARING NOTICE

The City of Lubbock, Texas, will conduct a public hearing Tuesday, June 27, 2023, at 2:00 p.m. in the City Council Chambers, 1314 Avenue K, to receive input concerning the adoption of an ordinance to designate a reinvestment zone as authorized by Chapter 312, Tax Code. The proposed proposed Dura-Line Reinvestment Zone is located at 904 Lubbock Business Park Boulevard, Texas 79403, and is further described as follows:

METES AND BOUNDS DESCRIPTION of Lot 15, Lubbock Business Park, an addition to the City of Lubbock, Lubbock County, Texas, and an unplatted 3.013 acre tract located in Section 7, Block A, Lubbock County, Texas, all 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 Lubbock Business Park Boulevard as dedicated by plat recorded under County Clerk File Number (CCFN) 2009039502 of the Official Public Records of Lubbock County, Texas (OPRLCT), at the most Westerly Northwest corner of Lot 15, Lubbock Business Park, an addition to the City of Lubbock, Lubbock County, Texas, according to the map, plat, and/or dedication deed thereof recorded under CCFN 2020047148, OPRLCT, and this tract which bears N. 88°31'36" W. a distance of 2407.58 feet and N. 01°28'24" E. a distance of 2375.46 feet from the Southeast corner of Section 7, Block A, Lubbock County, Texas;

THENCE N. 46°28'24" E., along the South right-of-way line of said Lubbock Business Park Boulevard, and the Northern boundary of said Lot 15, a distance of 73.66 feet to a "crow's foot" found at the most Northerly Northwest corner of said Lot 15 and this tract;

THENCE N. 87°39'33" E., continuing along said South right-of-way line, and the Northern boundary of said Lot 15, a distance of 59.85 feet to a 1/2" iron rod with red cap found at a corner of said Lot 15 and this tract;

THENCE S. 88°31'36" E., continuing along said South right-of-way line, and the Northern boundary of said Lot 15, a distance of 471.62 feet to a 1/2" iron rod with cap marked "HRA" found in the West right of way line of North King Avenue as dedicated by plat recorded under CCFN 2018038962, OPRLCT and street dedication deed recorded under CCFN 202047150, OPRLCT at a corner of said Lot 15 and this tract;

THENCE S. 83°07'13" E., continuing along said West right-of-way line, and the Northern boundary of said Lot 15, a distance of 55.48 feet to a 1/2" iron rod with cap marked "HRA" found at the most Northerly Northeast corner of said Lot 15 and this tract;

THENCE S. 38°28'59" E., along the West right-of-way line of said North King Avenue and the Northern boundary of said Lot 15, a distance of 71.67 feet to a 1/2" iron rod with cap marked "HRA" found at the most Easterly Northeast corner of said Lot 15 and this tract;

THENCE S. 06°09'15" W., continuing along said West right-of-way line and the Eastern boundary of said Lot 15, a distance of 97.39 feet to a 1/2" iron rod with cap marked "HRA" found at a point of curvature;

THENCE Southwesterly, continuing along said West right-of-way line and the Eastern boundary of said Lot 15, along a curve to the left, said curve having a radius of 330.00 feet, a central angle of 04°40′51", a chord distance of 26.95 feet and a chord bearing of S. 03°48′50" W. to a 1/2" iron rod with cap marked "HRA" found at a point of tangency;

THENCE S. 01°28'24" W., continuing along said West right-of-way line and the Eastern boundary of said Lot 15, at 714.84 feet pass a 1/2" iron rod with cap marked "HRA" found at the Southwest corner of said North King Avenue and the Southeast corner of said Lot 15, continuing for a total distance of 907.94 feet to

a 1/2" iron rod with cap marked "6453" found at the Southeast corner of this tract;

THENCE N. 88°31'36" W. a distance of 679.60 feet to a 1/2" iron rod with cap marked "6453" found in the East right-of-way line of North Ivory Avenue as dedicated by plat recorded under CCFN 2021011704, OPRLCT, at the Southwest corner of this tract;

THENCE N. 01°28'24" E., along the East right-of-way line of said North Ivory Avenue, at 193.10 feet pass a 1/2" iron rod with cap marked "HRA" found at the Southwest corner of said Lot 15, continuing along the East right-of-way line of said North Ivory Avenue and the Western boundary of said Lot 15, for a total distance of 976.03 feet to a 1/2" iron rod with cap marked "HRA" found at a corner of said Lot 15 and this tract;

THENCE N. 05°16'06" E., continuing along the East right-of-way line of said North Ivory Avenue and the Western boundary of said Lot 15, a distance of 60.13 feet to the Point of Beginning.

Contains 16.978 acres.

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

Agenda Item

Ordinance 1st Reading - Business Development: Consider an ordinance designating the Dura-Line, LLC Reinvestment Zone within the City of Lubbock, as authorized by Chapter 312 of the Tax Code; describing the boundaries of said Zone for commercial / industrial tax abatement; providing a saving clause and providing for publication.

Item Summary

The City of Lubbock received an application for an industrial tax abatement from Dura-Line, LLC for the renovation of an existing facility and acquisition of new machinery and equipment. The property is not located in an Enterprise Zone, and so the creation of a Reinvestment Zone at the location of the facility is required before a tax abatement can be considered.

As required by Chapter 312 of the Tax Code, Section 312.201(d), a public hearing is being held prior to the consideration of this ordinance. A governing body may not adopt an ordinance designating an area as a Reinvestment Zone until a public hearing is held, and has found that:

- 1. The improvements sought are feasible and practical;
- 2. It would be a benefit to the land and the municipality to be included in the Zone; and
- 3. The Zone meets one of the criteria for reinvestment zones.

At the June 13, 2023 City Council meeting, the City Council approved the Notice of Intent to hold the public hearing. On June 16, 2023, the notice was forwarded to the other taxing jurisdictions. The public hearing was held prior to consideration of this item. This is the third step in the process to designate a Reinvestment Zone.

Fiscal Impact

None

Staff/Board Recommending

D. Blu Kostelich, Chief Financial Officer

Attachments

Ordinance Metes and Bounds Map

ORDINANCE	NO.	 _

AN ORDINANCE DESIGNATING A REINVESTMENT ZONE WITHIN THE CITY OF LUBBOCK AS AUTHORIZED BY CHAPTER 312 OF THE TEXAS TAX CODE; DESCRIBING THE BOUNDARIES OF SAID ZONE; DESCRIBING THE ELIGIBILITY OF SAID ZONE FOR COMMERCIAL-INDUSTRIAL TAX ABATEMENT; PROVIDING A SAVINGS CLAUSE; AND PROVIDING FOR PUBLICATION.

WHEREAS, Chapter 312 of the Texas Tax Code authorizes the City Council of the City of Lubbock to designate a Reinvestment Zone for commercial-industrial tax abatement purposes; and

WHEREAS, the City of Lubbock has established its intent to participate in tax abatement by Resolution and has established guidelines and criteria for commercial-industrial tax abatement within the City of Lubbock; and

WHEREAS, the City Council of the City of Lubbock declared its intent to create a Reinvestment Zone by its adoption of Resolution No. 2023-R0315 on June 13, 2023, authorizing the City Secretary to send a Notice of Intent to all taxing units levying taxes on the real property located within the zone; and

WHEREAS, the boundaries of the Reinvestment Zone were described in the Notice of Intent attached to and made a part of Resolution No. 2023-R0315; and

WHEREAS, the City Council held a public hearing to consider the establishment of said Reinvestment Zone which was conducted on June 27, 2023, prior to the adoption of this Ordinance; and

WHEREAS, the City Council found, at the conclusion of said hearing, that the improvements sought for the property within the Reinvestment Zone are feasible, practical, and would benefit the land; and

WHEREAS, the City Council of the City of Lubbock has determined and finds that the real property to be included in the Reinvestment Zone will be reasonably likely as a result of the designation to contribute to the retention or expansion of primary employment and would contribute to the economic development of the City of Lubbock; and NOW THEREFORE;

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

SECTION 1: THAT by and under the authority of Chapter 312 of the Texas Tax Code, the described and depicted real property in Exhibit 1 is located within the City of Lubbock, County of Lubbock, Texas, and is hereby designated as a Reinvestment Zone. The name of the Reinvestment Zone is the Dura-Line, LLC Reinvestment Zone

A description and depiction of the area designated as the Reinvestment Zone is attached hereto and is incorporated in this Ordinance as Exhibit 1.

SECTION 2. THAT the area of the Reinvestment Zone will be reasonably likely as a result of the designation to contribute to the retention or expansion of primary employment and will contribute to the economic development of the City of Lubbock.

SECTION 3. 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 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.

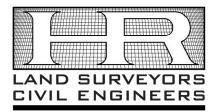
AND IT IS SO ORDERED.

Passed by the City Council on first read	ing on
Passed by the City Council on second re	ading on
	TRAY PAYNE, MAYOR
ATTEST:	
Courtney Paz, City Secretary	<u></u>
APPROVED AS TO CONTENT:	
D. Da Kostelich, Chief Financial Officer	

APPROVED AS TO FORM:

Kelli Leisure, Senior Assistant City Attorney

Ccdocs://Dura-Line RZ Ordinance 06.20.23



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 Lot 15, Lubbock Business Park, an addition to the City of Lubbock, Lubbock County, Texas, and an unplatted 3.013 acre tract located in Section 7, Block A, Lubbock County, Texas, all 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 Lubbock Business Park Boulevard as dedicated by plat recorded under County Clerk File Number (CCFN) 2009039502 of the Official Public Records of Lubbock County, Texas (OPRLCT), at the most Westerly Northwest corner of Lot 15, Lubbock Business Park, an addition to the City of Lubbock, Lubbock County, Texas, according to the map, plat, and/or dedication deed thereof recorded under CCFN 2020047148, OPRLCT, and this tract which bears N. 88°31'36" W. a distance of 2407.58 feet and N. 01°28'24" E. a distance of 2375.46 feet from the Southeast corner of Section 7, Block A, Lubbock County, Texas;

THENCE N. 46°28'24" E., along the South right-of-way line of said Lubbock Business Park Boulevard, and the Northern boundary of said Lot 15, a distance of 73.66 feet to a "crow's foot" found at the most Northerly Northwest corner of said Lot 15 and this tract;

THENCE N. 87°39'33" E., continuing along said South right-of-way line, and the Northern boundary of said Lot 15, a distance of 59.85 feet to a 1/2" iron rod with red cap found at a corner of said Lot 15 and this tract;

THENCE S. 88°31'36" E., continuing along said South right-of-way line, and the Northern boundary of said Lot 15, a distance of 471.62 feet to a 1/2" iron rod with cap marked "HRA" found in the West right of way line of North King Avenue as dedicated by plat recorded under CCFN 2018038962, OPRLCT and street dedication deed recorded under CCFN 202047150, OPRLCT at a corner of said Lot 15 and this tract;

THENCE S. 83°07'13" E., continuing along said West right-of-way line, and the Northern boundary of said Lot 15, a distance of 55.48 feet to a 1/2" iron rod with cap marked "HRA" found at the most Northerly Northeast corner of said Lot 15 and this tract;

THENCE S. 38°28'59" E., along the West right-of-way line of said North King Avenue and the Northern boundary of said Lot 15, a distance of 71.67 feet to a 1/2" iron rod with cap marked "HRA" found at the most Easterly Northeast corner of said Lot 15 and this tract;

THENCE S. 06°09'15" W., continuing along said West right-of-way line and the Eastern boundary of said Lot 15, a distance of 97.39 feet to a 1/2" iron rod with cap marked "HRA" found at a point of curvature;

THENCE Southwesterly, continuing along said West right-of-way line and the Eastern boundary of said Lot 15, along a curve to the left, said curve having a radius of 330.00 feet, a central angle of 04°40'51", a chord distance of 26.95 feet and a chord bearing of S. 03°48'50" W. to a 1/2" iron rod with cap marked "HRA" found at a point of tangency;

THENCE S. 01°28'24" W., continuing along said West right-of-way line and the Eastern boundary of said Lot 15, at 714.84 feet pass a 1/2" iron rod with cap marked "HRA" found at the Southwest corner of said North King Avenue and the Southeast corner of said Lot 15, continuing for a total distance of 907.94 feet to a 1/2" iron rod with cap marked "6453" found at the Southeast corner of this tract;

THENCE N. 88°31'36" W. a distance of 679.60 feet to a 1/2" iron rod with cap marked "6453" found in the East right-of-way line of North Ivory Avenue as dedicated by plat recorded under CCFN 2021011704, OPRLCT, at the

Southwest corner of this tract;

THENCE N. 01°28'24" E., along the East right-of-way line of said North Ivory Avenue, at 193.10 feet pass a 1/2" iron rod with cap marked "HRA" found at the Southwest corner of said Lot 15, continuing along the East right-of-way line of said North Ivory Avenue and the Western boundary of said Lot 15, for a total distance of 976.03 feet to a 1/2" iron rod with cap marked "HRA" found at a corner of said Lot 15 and this tract;

THENCE N. 05°16'06" E., continuing along the East right-of-way line of said North Ivory Avenue and the Western boundary of said Lot 15, a distance of 60.13 feet to the Point of Beginning.

Contains 16.978 acres.

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

Surveyed on the ground, March 21, 2023

Cyril H. Turner

Registered Professional Land Surveyor No. 6460

State of Texas

Dura-Line Reinvestment Zone



1,000

Feet

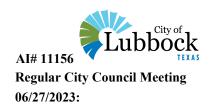




500

750

250



Agenda Item

Ordinance 2nd Reading - Planning: Consider Ordinance No. 2023-O0072 for a request for annexation, from Red Canyon Development, LLC, and 14 Texas Real Estate, LLC, to annex an area of approximately 2.986 acres, adjacent to the southern city limits of the City of Lubbock, north of Woodrow Road and west of Quaker Avenue, into Lubbock's corporate limits, along with the adjacent right-of-way.

Item Summary

On May 23, 2023, the City Council approved a resolution adopting the Municipal Service Plan, which was agreed upon by the City of Lubbock and the property owners.

At the previous City Council meeting held on June 13, 2023, the City Council held a public hearing. Following the public hearing, the City Council voted unanimously, on a first reading, to approve the ordinance annexing approximately 2.986 acres, adjacent to the southern city limits of the City of Lubbock, north of Woodrow Road and west of Quaker Avenue, into Lubbock's corporate limits, along with the adjacent right-of-way. The Council will now be considering the second reading of the ordinance.

Fiscal Impact

None

Staff/Board Recommending

Erik Rejino, Assistant City Manager Kristen Sager, Director of Planning

Attachments

Annexation Ordinance - Woodrow & Quaker Annexation Agreement Annexation Map Petition

ORDINA	NCE	NO.	

AN ORDINANCE: ANNEXING INTO THE CITY OF LUBBOCK, TEXAS OF AN AREA GENERALLY DESCRIBED AS APPROXIMATELY 2.986 ACRES IN THE CITY OF LUBBOCK'S EXTRATERRITORIAL JURISDICTION, LUBBOCK COUNTY, TEXAS, WITH SUCH AREA BEING CONTIGUOUS TO THE EXISTING CITY LIMITS; PROVIDING FOR THE CORRECTION OF THE CITY MAP TO INCLUDE THE AREA ANNEXED THROUGH THIS ORDINANCE; PROVIDING A SAVINGS CLAUSE; AND PROVIDING FOR PUBLICATION.

WHEREAS, the City Council of the City of Lubbock (the "City Council"), received from the property owners (the "Petitioners") of an area of land generally described as approximately 2.986 acres in the City of Lubbock's extraterritorial jurisdiction, Lubbock County, Texas contiguous to the city limits (the "Area"), a written petition requesting the annexation of the Area into the boundaries of the City of Lubbock; and

WHEREAS, in accordance with Sec. 43.0672 of the Texas Local Government Code, the City Council entered into an Annexation Agreement (the "Agreement") attached hereto and incorporated herein as "Exhibit A", by and between the City of Lubbock and the Petitioners at the City Council's regularly scheduled meeting on May 23, 2023; and

WHEREAS, the City Council 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 through this Ordinance; NOW THEREFORE,

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

SECTION 1. THAT the Area is hereby annexed into, and included within, the corporate limits of the City of Lubbock, Texas. Such Area is depicted and described in the attached "Exhibit B," and is incorporated herein for all intents and purposes. Such Area is contiguous to the existing corporate limits of the City of Lubbock, Texas.

SECTON 2. THAT the City Council hereby declares it to be its purpose to annex into the City of Lubbock every part of the Area. 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 3. THAT the City Engineer, or his designce, 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 4. THAT upon the effective date of this Ordinance, any current or future inhabitant of the Area shall be entitled to the rights and privileges of other citizens of the City

of Lubbock, Texas and shall be bound by the acts and ordinances adopted by the City of Lubbock, Texas.

SECTION 5. 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 6. 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 re	eading on		
	TRAY PAYNE, MAYOR		
ATTEST:			
Courtney Paz, City Secretary			
APPROVED AS TO CONTENT: White Sugar Kristen Sager, Director of Planning			
APPROVED AS TO FORM:			

Ord. Annexation Red Canyon & 14 TX RE

Kelli Leisure, Senior Assistant City Attorney

5.25.23

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 Annexation Agreement, by and between the City of Lubbock, Red Canyon Development, LLC, and 14 Texas Real Estate, LLC, 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	
	TRAY PAYNE, MAYOR
ATTEST:	
Courtney Paz, City Secretary	
APPROVED AS TO CONTENT: Signal Content: Erik Rejine, Assistant City Manager	- For
APPROVED AS TO FORM:	
Kelli Leisure, Senior Assistant City Attorne	y

ccdocs/RES.AnnexationAgreement_Red Canyon & 14 TX 5.8.23

MUNICIPAL SERVICES AGREEMENT

BETWEEN THE CITY OF LUBBOCK, TEXAS

AND RED CANYON DEVELOPMENT, LLC, A TEXAS LIMITED LIABILITY COMPANY

AND 14 TEXAS REAL ESTATE, LLC, A TEXAS LIMITED LIABILITY COMPANY

This Municipal Services Agreement ("Agreement") is entered into on _____ day of _____, 2023 by and between the City of Lubbock, Texas, a home-rule municipality of the State of Texas, ("City") and Red Canyon Development, LLC, a Texas limited liability company ("Owner"), and 14 Texas Real Estate, LLC, a Texas Limited Liability Company, ("Owner"), collectively referred to as ("Parties").

RECITALS

The Parties agree that the following recitals are true and correct and form the basis upon which the Parties have entered into this Agreement.

WHEREAS, Section 43.0671 of the Local Government Code ("LGC") permits the City to annex an area when each owner of land in an area requests the annexation;

WHEREAS, the Owner owns a certain parcel of land situated in Lubbock, Texas which consists of approximately 2.986 acres of land in the City's extraterritorial jurisdiction, such property being more particularly described and set forth in Exhibit "A" attached to and incorporated herein ("Property");

WHEREAS, where the City elects to annex such an area, the City is required to enter into a written agreement with the property owner that sets forth the City services to be provided for the Property;

WHEREAS, Owner has filed a written request with the City for full-purpose annexation of the Property, and said petition for annexation is set forth as Exhibit "B" attached to and incorporated herein ("Petition");

WHEREAS, the City and the Owner desire to set out the City services to be provided for the Property on or after the effective date of annexation;

WHEREAS, the annexation and execution of this Agreement are subject to approval by the Lubbock City Council; and

NOW THEREFORE, in exchange for the mutual covenants, conditions and promises contained herein, the City and the Owner agree as follows:

- 1. **PROPERTY**. This Agreement is only applicable to the Property, which is the subject of the annexation.
- 2. **INTENT**. It is the intent of the City that this Agreement provide for the delivery of full, available municipal services to the Property in accordance with the service plan below and state law, which may be accomplished through any means permitted by law.

3. MUNICIPAL SERVICES.

A. Commencing on the effective date of annexation, the City will provide the municipal services set forth below. As used in this Agreement, "providing services" includes having services provided by any method or means by which the City may extend municipal services to any other area of the City, including the City's infrastructure extension policies and developer or property owner participation in accordance with the applicable city ordinances, rules, regulations, and policies.

i. Fire Services

a. Existing Services: None

b. 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 No. 14, located at 2402 96th Street, and Station No. 19, located at 5826 98th Street. Station No. 16 is approximately 5.0 miles from the proposed annexation with an approximate response time of 6 to 7 minutes. Station 14 is approximately 6.0 miles from the proposed annexation with an approximate response time of 8 to 9 minutes. Station No. 19 is approximately 6.0 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. This annexation would not require additional Outdoor Warning System sirens.

ii. First Responder Emergency Medical Services

a. Existing Services: None

b. Services to be Provided: Lubbock Fire Rescue is a Basic Life Support (BLS) First Responder Organization. BLS First Responder emergency medical response will be provided by Fire Station No. 16, located at 4030 114th Street, Station No. 14, located at 2402 96th Street, and Station No. 19, located at 5826 98th Street. Station No. 16 is approximately 5.0 miles from the proposed annexation with an approximate response time of 6 to 7 minutes. Station 14 is approximately 6.0 miles from the proposed annexation with an approximate response time of 8 to 9 minutes. Station No. 19 is approximately 6.0 miles from the proposed annexation with an approximate response time of 8 to 9 minutes. Emergency medical transport is provided by the Lubbock County Hospital District.

iii. Police Services

a. Existing Services: None

b. Services to be Provided: The Police Department's responsibility for responding to emergency and non-emergency law enforcement calls for service and to provide law enforcement patrol coverage in an effort to prevent, reduce, mitigate and solve crimes will extend to this area on the effective date. These services can be provided within the department's current budget.

iv. Building Safety Services

a. Existing Services: None

b. Services to be Provided: The Building Safety 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 laws and codes that regulate building construction within the City of Lubbock. 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.

v. Planning and Zoning Services

a. Existing Services: Subdivisions of land within the five-mile extraterritorial jurisdiction (ETJ) of the city are required to have a plat of the subdivision prepared in accordance with the City of Lubbock subdivision regulations. Currently, plats and subdivisions in the ETJ are approved by the Planning and Zoning Commission, as well as the County Commissioner's Court, as may be dictated by applicable state statutes and City ordinances. Similarly, signs and billboards are regulated within the ETJ pursuant to the City's sign ordinance, as authorized by State law. No other Planning department

services are authorized or offered outside of the City limits, including zoning.

b. Services to be Provided: The Planning and Zoning 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 annexed areas will also continue to be regulated under the requirements of the City of Lubbock Subdivision Ordinance. These services can be provided within the department's current budget.

vi. GIS and Data Services

a. Existing Services: None

b. 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 elections requirements, to Building Inspection, Streets and Traffic Engineering for addresses, street names and street signs, and to Planning for transitional zoning. GIS will facilitate a meeting with Lubbock Emergency Communication District, Police and Fire for determination of updated information for 911 Dispatch. Updated GIS information that is public will also be reflected on the GIS mapping website for citizens.

vii. Publicly Owned Parks, Facilities, and Buildings

a. Existing Services: City of Lubbock Library's materials, services, and programs are currently available to anyone who lives in Lubbock County.

b. Services to be Provided: Residents of the Property will be permitted to utilize all existing publicly-owned and available parks, facilities (including community service facilities, libraries, swimming pools, etc.) and buildings throughout the City. Upon the effective date of annexation, staff will study areas to be included in future versions of the Parks Master Plan. Any addition of parkland will create additional expenses to the Parks and Recreation operating budget. The Library will continue to provide services to all of Lubbock County, including the area to be annexed. These services are provided within the department's current budget.

viii. Code Administration Services

a. Existing Services: None

b. Services to be Provided: The City of Lubbock's Code Administration department 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 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.

ix. Environmental Health Department Services

a. Existing Services: None

b. Services to be Provided: The City of Lubbock's Environmental Health Departments will implement the enforcement of local, state, and federal rules, regulations, and ordinances on the effective date of the annexation. Such services can be provided with current Environmental 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.

x. Animal Services

- a. Existing Services: None. Currently, the area is under the jurisdiction of the Lubbock County Sheriff's Office.
- b. 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.

xi. Street Services

- a. Existing Services: City of Lubbock Public Works currently maintains any roads that are within the City of Lubbock City Limits adjacent to these plats.
- b. Services to be Provided: Newly annexed areas adjacent to, or bordering, unpaved arterials will require a two-lane section of roadway to be built along with the development with interconnectivity to adjacent paved arterial streets. The pavement structure will require an appropriate pavement design meeting a minimum design standard for an arterial street. These roadways will be required to be built once any connection including streets or alleyways is made to the unpaved arterial road by the voluntary

annexation area. The developer will receive offsets from impact fees as the adjacent unpaved arterial roadway is built.

xii. Storm Water Management Services

- a. 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.
- b. Services to be Provided: As land is developed, developers will provide plans for addressing the conveyance of storm water drainage. The Development Engineering 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.

xiii. Street Lighting

a. Existing Services: None

b. 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.

xiv. Traffic Engineering Services

a. Existing Services: None

b. Services to be Provided: Upon 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.

xv. Water and Sanitary Sewer Services

a. Existing Services: None

b. Services to be Provided: Water and sewer infrastructure is not currently adjacent to this area within the existing City Limits. Availability of water and sewer is at the request and expense of the user, and shall be provided within current policies and ordinances of the City (note below for an explanation of pro-rata charges). Water and sewer for domestic and commercial use, when installed, will be available at approved City rates. Water for fire protection will be available through lines only after service lines are installed by the developer.

Pro-Rata Charges:

Chapter 22, 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. 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. Article 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 consideration, or
- g. when the City Council can declare a health hazard and install mains at public expense.

e. The annexation area may require a lift station in order to receive sewer services. The lift station shall be sized as to minimize the number of lift stations which will be turned over to the City of Lubbock. The Lift Station will service the entirety of the voluntary annexed area if feasibly possible.

xvi. Solid Waste Services

a. Existing Services: None

- b. 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 there is potential residential growth within this area of annexation, 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 area and exceeds route collection averages. The landfill will be able to handle this request. The only impact would be that the City could anticipate landfilling additional solid waste tonnage and ultimately developing the next landfill cell sooner than currently projected. However, the developer may be asked to assist with infrastructure for residential waste collection, i.e. carts or dumpsters.
- c. Service Route: Until such time as adjacent unpaved roadways are built all City Solid Waste services will be routed through and upon Paved Arterial Roadways only. Solid Waste will not route trucks down unpaved roadways to service alleyways in any case.
- B. It is understood and agreed that the City is not required to provide a service that is not included in this agreement.
- C. Owner understands and acknowledges that the City departments listed above may change name or be-reorganized by the City Manager. Any reference to a specific department also includes any subsequent department that will provide the same or similar services.
- 4. **AUTHORITY**. City and Owner represent that they have full power, authority and legal right to execute, deliver and perform their obligations pursuant to this Agreement. Owner acknowledge that approval of the annexation is within the sole jurisdiction of the City Council. Nothing in this Agreement guarantees favorable decisions by the City Council.

- 5. **SEVERABILITY**. If any part, term, or provision of this Agreement is held by the courts to be illegal, invalid, or otherwise unenforceable, such illegality, invalidity, or unenforceability will not affect the validity of any other part, term or provision, and the rights of the Parties will be construed as if the part, term, or provision was never part of the Agreement.
- 6. INTERPRETATION. The Parties to this Agreement covenant and agree that in any litigation relating to this Agreement, the terms and conditions of the Agreement will be interpreted according to the laws of the State of Texas. The Parties acknowledge that they are of equal bargaining power and that to each of them it was recommended to seek legal advice and each Party was given adequate opportunity to seek representation of legal counsel in the negotiation and drafting of this Agreement.
- 7. GOVERNING LAW AND VENUE. Venue shall be in the state courts located in Lubbock County, Texas and construed in conformity with the provisions of Texas Local Government Code Chapter 43.
- 8. NO WAIVER. The failure to either party to insist upon the performance of any term or provision of this Agreement or to exercise any right grated hereunder shall not constitute a waiver of that party's right to insist upon appropriate performance or to assert any such right on any future occasion.
- 9. **GOVERNMENTAL POWERS**. It is understood that by execution of this Agreement, the City does not waive or surrender any of its governmental powers or immunities.
- 10. **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.
- 11. CAPTIONS. The captions to the various clauses of this Agreement are for informational purposes only and shall not alter the substance of the term and conditions of this Agreement.
- 12. AGREEMENT BINDS SUCCESSORS AND RUNS WITH THE LAND. This Agreement is binding on and inures to the benefit of the Parties, their successors, and assigns. The term of this Agreement constitutes covenants running with the land comprising the Properties and is binding on the Owner.

13. CH. 43 DISCLOSURE IN COMPLIANCE WITH THE TEXAS LOCAL GOVERNMENT CODE SEC. 43.004

A. The City discloses that the Landowner is not required to enter into this agreement, however if the Landowner desires to have their property annexed, the Texas Local

Government Code Sec. 43.0672 requires a written agreement for the provision of municipal services;

- B. The City may, in compliance with and under the authority of the Texas Local Government Code Subchapter C-3, annex the Landowner's property upon the Landowner's request;
- C. The procedural mechanisms in order to annex the Landowners property shall be as follows:
 - 1. The Landowner of the property must petition the City requesting the annexation of Landowner's property;
 - 2. If the City desires to annex Landowner's property, a written agreement shall be made with each Landowner requesting property to be annexed and said agreement shall include:
 - a. All of the services the City will provide to the property once annexed;
 - b. A schedule of any services the City will provide at a later time, if not at the time of annexation.
- D. The above procedures shall require the consent and signature of the City and the Landowner; and
- E. The City waives immunity from suit for the purpose of adjudicating a claim for breach of the agreement.
- 14. ENTIRE AGREEMENT. This Agreement constitutes the entire agreement between the Parties and supersedes all prior oral and written agreements between said Parties. This Agreement shall not be amended unless executed in writing by all Parties.

EXECUTED as of the Effective Date hereof.

CITY OF LUBBOCK

RED CANYON DEVELOPMENT, LLC
Thomas Payne, Co-Manager

TRAY PAYNE, MAYOR

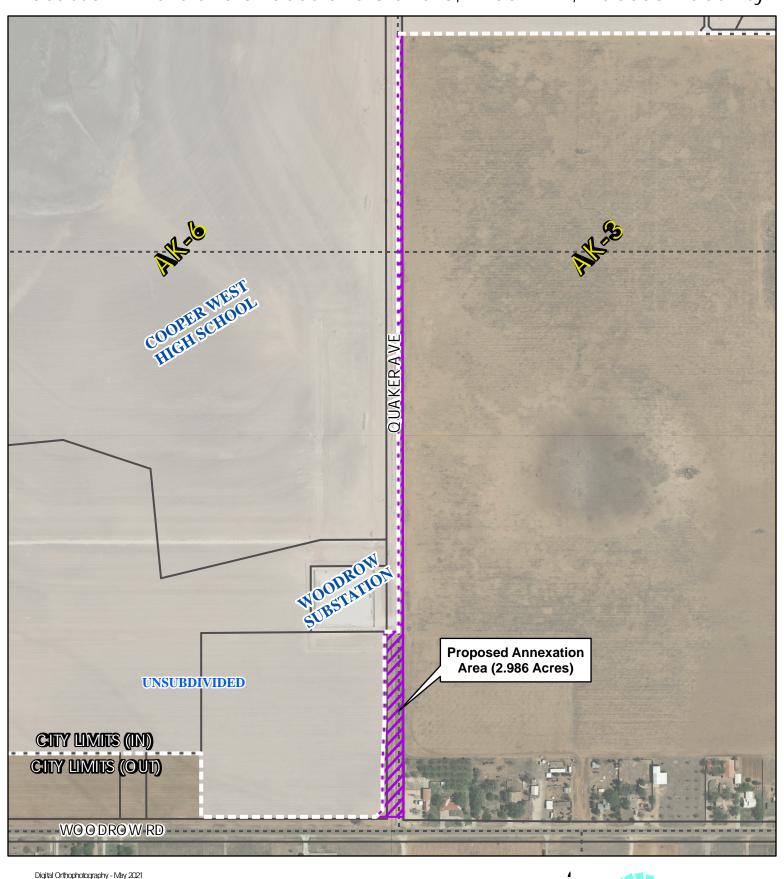
Signature

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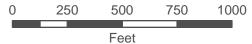
ATTEST:	
Courtney Paz, City Secretary	SUBSCRIBED AND SWORN TO BEFORE ME on the day of, 20, to certify which witness my hand and official seal. ESTHER JIMENEZ Notary Public, State of Texas Comm. Expires 12-09-2026 Notery ID 134098215
APPROVED AS TO CONTENT: With Jour Kristen Sager, Director of Planning	[Signature] [Printed name] ESther Jimenez Notary Public in and for the State of Texas
APPROVED AS TO FORM: Kelli Leisure, Assistant City Attorney	RED CANYON DEVELOPMENT, LLC Blake Womble, Co-Manager Signature
14 TEXAS REAL ESTATE, LLC	SUBSCRIBED AND SWORN TO BEFORE
Thomas Payne, Manager	ME on the day of 4th day of 10, 20, 23, to certify which witness my hand and official seal.
Signature	ESTHER JIMENEZ
SUBSCRIBED AND SWORN TO BEFORE ME on the day of, 20, to certify which witness my hand and official seal.	[Seal] Notary Public, State of Texas Comm. Expires 12-09-2026 Netary 1D 134098215
[Seal]	[Printed name] Esther Jimene2
[Signature]	Notary Public in and for
[Printed name]	the State of Texas
Notary Public in and for the State of Texas	

ATTEST:	
	SUBSCRIBED AND SWORN TO BEFORE ME on the day of, 20, to certify which witness my hand and official seal.
Courtney Paz, City Secretary	
	[Seal]
APPROVED AS TO CONTENT:	[Signature]
	[Printed name]
Kristen Sager, Director of Planning	Notary Public in and for the State of Texas
APPROVED AS TO FORM:	RED CANYON DEVELOPMENT, LLC Blake Womble, Co-Manager
Kelli Leisure, Assistant City Attorney	Signature
14 TEXAS REAL ESTATE, LLC Thomas Payne, Manager By Manager Signature Andrew Mitchells Manager	SUBSCRIBED AND SWORN TO BEFORE ME on the day of, day of, 20, to certify which witness my hand and official seal.
SUBSCRIBED AND SWORN TO BEFORE ME on the day of day	[Seal]
[Seal] [Signature] [Printed name]	Notary Public in and for the State of Texas
Notary Public in and for the State of Texas	
JENNIFER GUERRERO My Notary ID # 123920383 Expires July 11, 2025 Pa	ge 11 of 11

Annexation Petition of 2.986 Acres Located in Portions of Sections 3 and 6, Block AK, Lubbock County



biglai Ornoprolography - Naty 2.221
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.







VOLUNTARY ANNEXATION APPLICATION

APPLICATION IS NOT VALID WITHOUT COMPLETION OF ALL PAGES AND SIGNATURES

MINIMUM SUBMITTAL REQUIREM	ENTS:						
Application provided by City of Lubbock completed in full. This application must be used and may not be adjusted or altered. Please attach pages if additional information is provided.							
Annexation petition provided by City of Lubbock with notarized signature(s).							
☑ Map of the subject property.							
 A legal description of the property (including a survey, field notes or legal description with subdivision, lot and block) labeled as Exhibit A. Ownership Documents. A clean copy of recorded warranty deed or other document(s) verifying ownership of all property to be annexed. If the property is owned by a partnership, corporation, trust, or other entity, documents demonstrating signatory's authority to sign petition on behalf of entity must be included. One digital copy of all of the above. 							
						☑ If designating a representative, the	affidavit designating representative with notarized signature(s).
						Property Owner(s): 14 TEXAS REAL ESTATE	
Address: 1201 S. Taylor Str	eet						
Address: Amarillo, Texas 79							
Telephone: ()	Email:						
Telephone: ()	Email:						
Acreage of property: 2.986	Number of lots and proposed use: Vacant, proposed right-of-way						
Check one:							
	petition before city staff and the City Council. d in the attached affidavit to act as my representative in this application before city staff						
Owner of record signature							

Please note: The signature of owner authorizes the City of Lubbock staff to visit and inspect the property that is subject to this application. The representative is the official contact person for this project and the single point of contact. All correspondence and communication – and responsibility for responding to same – will be conducted with the representative.



PETITION REQUESTING ANNEXATION BY AREA LANDOWNERS

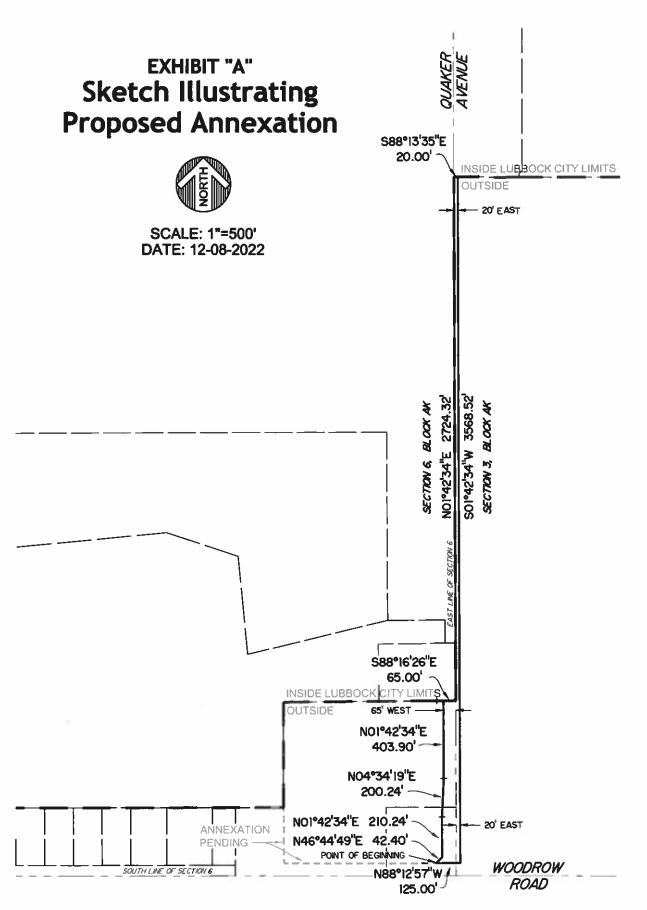
TO THE MAYOR OF THE GOVERNING BODY OF LUBBOCK, TEXAS:

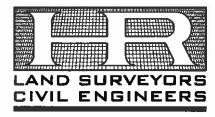
The undersigned owners of the hereinafter described tract of land, which is vacant and without residents, or on which fewer than three qualified voters reside, hereby waive any requirement to be offered a development agreement pursuant to the Texas Local Government Code Section 43.016, and petition your Honorable Body to extend the present city limits so as to include as part of the City of Lubbock, Texas, the territory described in the attached Exhibit A, including a survey, field notes or legal description with subdivision, lot and block.

We certify that the above described tract of land is contiguous and adjacent to the City of Lubbock, Texas, falls within

Lubbock County, and that this pe	etition is signed and duly acknowledged b	by each and every person having an interest in
said land.		
	Signed:	nutre
	Signed:	
	Signed:	
THE STATE OF TEXAS COUNTY OF	uthority, on this day personally appeared	Andrew Mitchell .
	, and	, known to me to
be the persons whose names are su	abscribed to the foregoing instrument and	each acknowledged to me that he or she executed
the same for the purposes and cor	asideration therein expressed.	
Given under my hand and seal of	office, this 10th day of Decemb	2022
	SABRINA MALOTA Notary ID #2952317 y Commission Expires April 26, 2023 Notary Public in	and for faster County,

Texas.





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

EXHIBIT "A"

METES AND BOUNDS DESCRIPTION of a 2.986 acre tract of land located in Sections 3 and 6, Block AK, Lubbock County, Texas, being further described as follows:

BEGINNING at a point which bears N. 88°12'57" W. a distance of 105.08 feet and N. 01°47'03" E. a distance of 65.00 feet from the Southeast corner of Section 6, Block AK, said point being the Southwest corner of this tract;

THENCE N. 46°44'49" E. a distance of 42.40 feet to a point 75.00 feet West of the East line of said Section 6;

THENCE N. 01°42'34" E., along a line 75 feet West of and parallel to the East line of said Section 6, a distance of 210.24 feet;

THENCE N. 04°34'19" E., at 49.82 feet pass the Northern boundary of that 2.975 acre tract described under County Clerk File Number (CCFN) 2022028055, Official Public Records of Lubbock County, Texas (OPRLCT), continuing for a total distance of 200.24 feet to a point, said point being 65.00 feet West of the East line of said Section 6;

THENCE N. 01°42'34" E., along a line 65 feet West of and parallel to the East line of said Section 6, a distance of 403.90 feet to a point in the Southern boundary of the plat limits of Tract "A", Woodrow Substation, an addition to the City of Lubbock, Lubbock County, Texas, according to the map, plat and/or dedication deed thereof recorded under CCFN 2021006622, OPRLCT, said point also being in the Southern boundary of the present city limits as established by City of Lubbock Ordinance No. 2018-00023;

THENCE S. 88°16'26" E., along the Southern boundary of said present city limits and the Southern boundary of said plat limits, a distance of 65.00 feet to a point in the East line of said Section 6, at the Southeast corner of said plat limits;

THENCE N. 01°42'34" E., along the East line of said Section 6 and the Eastern boundary of said plat limits, at 299.98 feet pass the Northeast corner of said plat limits, continuing along the East line of said Section 6, for a total distance of 2724.32 feet to a point in the Southern boundary of that portion of the present city limits as established by City of Lubbock Ordinance No. 2018-O0102, said point also being the Southwest corner of that 6.6532 acre tract described under CCFN 2021049568, OPRLCT, for the Northwest corner of this tract:

THENCE S. 88°13'35" E., along the Southern boundary of said present city limits and the Southern boundary of said 6.6532 acre tract, a distance of 20.00 feet to a point for the Northeast comer of this tract;

THENCE S. 01°42'34" W., along a line 20 feet East of and parallel to the East line of said Section 6 and the West line of said Section 3, a distance of 3568.52 feet to a point for the Southeast comer of this tract:

THENCE N. 88°12'57" W., at 20.00 feet pass the West line of said Section 3 and the East line of said Section 6, continuing for a total distance of 125.00 feet to the Point of Beginning.

Contains: 2.986 Acres

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

December 8, 2022

Robert A. Christopher

Registered Professional Land Surveyor No. 5167 Licensed State Land Surveyor, State of Texas ROBERT A. CHRISTOPHER D

This document was prepared under 22 TAC §138.95, does not reflect the results of an on the ground survey, and is not to be used to convey or establish interests in real property except those rights and interests implied or established by the creation or reconfiguration of the boundary of the political subdivision for which it was prepared.





SPECIAL WARRANTY DEED

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

THAT RED CANYON DEVELOPMENT, LLC, a Texas limited liability company (herein referred to as "Grantor"), for and in consideration of the sum of Ten Dollars (\$10.00) in hand paid to Grantor by 14 TEXAS REAL ESTATE, LLC, a Texas limited liability company (herein referred to as "Grantee"), whose mailing address is 1201 S. Taylor Street, Amarillo, Texas 79101, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, has GRANTED, BARGAINED, SOLD and CONVEYED and hereby grants. bargains, sells and conveys unto Grantee that certain tract of real property located in Lubbock County, Texas, more particularly described on Exhibit "A" attached hereto and made a part hereof for all purposes, together with (a) any and all appurtenances belonging or appertaining thereto; (b) any and all improvements located thereon; (c) any and all appurtenant easements or rights of way affecting said real property and any of Grantor's rights to use same; (d) any and all rights of ingress and egress to and from said real property and any of Grantor's rights to use same; (e) any and all rights to the present or future use of wastewater, wastewater capacity, drainage, water or other utility facilities to the extent same pertain to or benefit said real property or the improvements located thereon, including (without limitation) all reservations of or commitments or letters covering any such use in the future, whether now owned or hereafter acquired; and (f) all right. title and interest of Grantor, if any, in and to any and all roads, streets, alleys and ways (open or proposed) affecting, crossing, fronting or bounding said real property, including (without limitation) any awards or damages payable by reason of damages thereto or by reason of a widening of or changing of the grade with respect to same (said real property together with any and all of the related improvements, appurtenances, rights and interests referenced in clauses (a) through (f) above being herein collectively referred to as the "Property").

This Special Warranty Deed and the conveyance hereinabove set forth is executed by Grantor and accepted by Grantec subject to the matters described in Exhibit "B" attached hereto and made a part hereof for all purposes (hereinafter referred to collectively as the "Permitted Exceptions").

TO HAVE AND TO HOLD the Property, together with all and singular the rights and appurtenances thereto in anywise belonging, unto Grantee, its successors and assigns forever, subject to the matters herein stated; and Grantor does hereby bind itself and its successors to warrant and defend title to the Property against the acts of Grantor and none other, subject to the Permitted Exceptions.

Grantor warrants and represents that all ad valorem taxes and assessments on the Property for the year 2021 and all prior years have been fully paid. Ad valorem taxes for 2022 have been prorated between Grantor and Grantee as of the date of this Special Warranty Deed, and Grantor agrees to pay the 2022 ad valorem taxes. Grantee agrees to pay the ad valorem taxes for 2023 and subsequent years.

QUAKER AND WOODROW 1296581.1

EXECUTED to be effective as of the 7th day of June, 2022.

GRANTOR:

RED CANYON DEVELOPMENT, LLC,

a Texas limited hability company

Bv:

Thomas K. Payne, Manager

STATE OF TEXAS

8

COUNTY OF WOBOCK

§

This instrument was acknowledged before me on the day of June, 2022, by THOMAS K. PAYNE, Manager of RED CANYON DEVELOPMENT, LLC, a Texas limited liability company, on behalf of the limited liability company.

FRED H. TIMBERLAKE JR
Notary Public, State of Texas
Notary 1D# 728649-3
My Commission Expires 12-07-2025

Notary Public, State of TEXAS

2

EXHIBIT "A"

A 2.975 acre tract of land, out of a 407.9 acre tract described under County Clerk File No. 2017036785 of the Official Public Records of Lubbock County, Texas, located in the Southeast Quarter of Section 6, Block AK, E.L.&R.R. Railroad Company Survey, Lubbock County, Texas, said 2.975 acre tract being further described as follows:

BEGINNING at a point for the Southeast corner of Section 6, Block AK, E.L.&R.R. Railroad Company Survey, Lubbock County, Texas and the Southeast corner of said 407.9 acre tract, same being the Southeast corner of this tract;

THENCE N. 88°12'57" W., along the South line of said Section 6 and the Southern boundary of said 407.9 acre tract, a distance of 365.00 feet to a point for the Southwest corner of this tract;

THENCE N. 01°42'38" E., at 55.00 feet pass a 1/2" iron rod with cap marked "HRA" set in the North line of a 55 foot right-of-way easement described in Volume 2356, Page 290 of the Real Property Records of Lubbock County, Texas, continuing for a total distance of 355.00 feet to a 1/2" iron rod with cap marked "HRA" set for the Northwest corner of this tract;

THENCE S. 88°12'57" E., at 302.50 feet pass a 1/2" iron rod with cap marked "HRA" set in reference, continuing for a total distance of 365.00 feet to a point in the East line of said Section 6 and the Eastern boundary of said 407.9 acre tract for the Northeast corner of this tract;

THENCE S. 01°42'38." W., along the East line of said Section 6 and the Eastern boundary of said 407.9 acre tract, a distance of 355.00 feet to the Point of Beginning.

EXHIBIT "B"

- Interest in and to all coal, lignite, oil, gas and other minerals, and all rights incident thereto, contained in instrument in Volume 268, Page 456 of the Deed Records of Lubbock County, Texas, and Document No. 2008029898 of the Official Public Records of Lubbock County, Texas.
- 2. Coal, lignite, oil, gas or other mineral interest(s), together with rights incident thereto, contained in instrument dated October 9, 2017, recorded on October 11, 2017, in Document No. 2017036785 of the Official Public Records of Lubbock County, Texas, which document contains the following language "Grantor excepts from this conveyance and reserves to themselves, and their successors and assigns, all of their interest in the oil, gas and other minerals in, on and under and that may be produced from the Property."
- 3. Lease for coal, lignite, oil, gas or other minerals, together with rights incident thereto, recorded in Volume 45, Page 322; Volume 45, Page 325; and Volume 45, Page 328 of the Oil and Gas Lease Records of Lubbock County, Texas, and Document Nos. 2012026381, 2012029400, 2012029818, 2012030653, 2012030654, and 2012030655 of the Official Public Records of Lubbock County, Texas.
- 4. That certain Waiver of Surface Rights Agreement recorded in Document No. 2017036786 of the Official Public Records of Lubbock County, Texas.
- 5. Closing Agreement by and between Red Canyon Development, LLC and Lubbock Cooper Independent School District dated June 15, 2020 and recorded in Document No. 2020024322 of the Official Public Records of Lubbock County, Texas.
- 6. Those matters reflected on ALTA/NSPS Land Title Survey prepared by Brent Carroll, Registered Professional Land Surveyor No. 5410, State of Texas, dated May 3, 2022, including but not limited to pre-existing road rights-of-way along the South and East boundary; "Prospective R-O-W" in the South, East, and Southeast portion, possible location of transmission line right-of-way to South Plains Electric Cooperative along the East portion of the Property, overhead utility poles, lines and guy wires, and evidence of telecommunication easements by found, buried fiber optic cable route warning sign, and telephone.
- 7. Transmission line right-of-way easement granted to South Plains Electric Cooperative recorded in Volume 672, Page 92 of the Deed Records of Lubbock County, Texas, only to the extent same may be binding and enforceable due to erroneous and inaccurate legal description of same.

FILED AND RECORDED

OFFICIAL PUBLIC RECORDS

Kelly Pinion, County Clerk Lubbock County, TEXAS 05/08/2022 01:14 PM FEE: \$38.00 2022028055

COMPANY AGREEMENT

OF

14 TEXAS REAL ESTATE, LLC

a Texas limited liability company

This COMPANY AGREEMENT OF 14 TEXAS REAL ESTATE, LLC is made effective as of the 4th day of May, 2021, by the undersigned Member.

SECTION 1: ORGANIZATIONAL MATTERS

- 1.1 Capitalized Terms. All capitalized terms used in this Agreement have the meanings given to them in SECTION 12.
- 1.2 Existence. The Company's existence began on November 10, 2020, when a Certificate of Formation was filed with the Texas Secretary of State. On the same date, the Texas Secretary of State issued a Certificate of Filing in accordance with the Act. Subsequently, on May 4, 2021, a Certificate of Amendment was filed with the Texas Secretary of State to change the name of the Company to 14 Texas Real Estate, LLC. On the same date, the Texas Secretary of State issued a Certificate of Filing regarding said amendment.
- 1.3 Company Agreement Adopted. The Member adopts this Agreement to govern the Company's affairs and conduct of business. Except to the extent modified by this Agreement, the Act governs the Company and its Members.
- 1.4 **Books and Records.** The Managers must cause the Company to keep and maintain the books and records required by the Act at the Company's principal offices, whether those offices are within or without of the State of Texas, and at whatever other places the Act may require.
 - 1.5 Member. Exhibit "A" to this Agreement contains each Member's:
 - (a) name;
 - (b) address:
 - (c) Interest; and
 - (d) Initial Capital Contribution.

The Managers must amend Exhibit "A" whenever notified of any valid changes to the information in Exhibit "A" to reflect those changes.

SECTION 2: PURPOSES

- 2.1 Purposes. The Company is formed to own, lease and sell real estate in Texas.
- 2.2 Limits of Company Powers. The Company's purposes are limited to those specified in Section 2.1. Accordingly, the Company may not engage in any other activity or business, and no Member or Manager has any authority to hold himself or herself out as a general agent of the Company or another Member in any other business or activity.

SECTION 3: CAPITAL CONTRIBUTIONS

- 3.1 Initial Capital Contributions. The Member agrees to make initial capital contributions of the property or money described on Schedule "A" attached to this Agreement. The property so described has a Book Value to the Company equal to that indicated in the books and records.
- 3.2 Subsequent Capital Contributions. Except to the extent the Act or this Agreement provide otherwise, no Person may require any Member to make any additional Capital Contributions to the Company.
- 3.3 Voluntary Capital Contributions. Any Member may make additional voluntary capital contributions if agreed by the unanimous consent of the Members.

SECTION 4: CURRENT DISTRIBUTIONS

- 4.1 Distributions of Cash From Operations. The Company may distribute whatever Available Cash, and whatever amounts of Company Property, at whatever times the Managers may, in their sole discretion, determine, to the Members. When determining whether and how much Company Property to distribute to the Members, the Managers must consider the Company's purposes and rationale, the needs of the Company for working capital and additional investment, the preservation of the Company Property, reserves for contingencies, the advisability of reducing or eliminating debt, and the Managers' duties to both the Company and the Members.
- 4.2 Amounts Withheld. The Company and the Members must treat all amounts withheld according to the Code or any state or local tax law on any payment or Distribution to the Company or the Members as amounts distributed to the Members under this SECTION 4.
- 4.3 <u>Tax Distributions</u>. Notwithstanding Section 4.1, the Company must endeavor to make pro rata Distributions to the Members to enable the Members to pay taxes. The Distributions to Members should at least equal their estimated federal, state and local taxes attributable to their taxable income from the Company. The Company's accountant who regularly prepares the Company's tax returns must compute the estimated tax liability on the basis of the highest marginal rate applicable to individuals on capital gains and other income for the tax year in question.

SECTION 5: TAX MATTERS

5.1 Tax Status. The Company will be treated as a partnership for federal taxation purposes. The Members will execute and file, and delegate to the Managers the right to execute

and file on the Mcmbers' behalf, any election forms or other documents required to cause the Company to be treated as a partnership for federal income tax purposes.

- 5.2 Tax Elections. Except as otherwise specifically provided in this Agreement, the Managers have the discretion to make or fail to make any elections regarding taxes to which the Company may be entitled.
- 5.3 Tax Returns. The Company must prepare, at Company expense, all required tax forms for the Company and timely file them with the appropriate authorities.
- 5.4 Tax Matters Partner. To the extent permitted by the Code or similar state or local law, the Member authorizes Andrew Mitchell to act as the Company's "Tax Matters Partner" (as defined in the Code) under the Code and in any similar capacity under state or local law for audits of Company tax years during which Andrew Mitchell is a Manager. The authorization applies to all audits whether the audit occurs during the Company's existence or after the Company's termination. If the law does not permit Andrew Mitchell to act as the Company's Tax Matters Partner, the Managers may designate a Tax Matters Partner for the Company for any tax year.

SECTION 6: MANAGERS

- 6.1 **Powers.** The Board of Managers has the authority to exercise all the Company's powers. They control the business and affairs of the Company within any limitations imposed by the Act, the Certificate of Formation, or this Agreement. The Managers may not act individually; they may act only as a board. The Board of Managers may, by contract or otherwise, give general, limited, or special power and authority to the officers and employees of the Company to transact the general business, or any special business, of the Company. They may give powers of attorney to agents of the Company to transact any special business.
- 6.2 Number and Qualification of Managers. The Company shall have one (1) initial Manager. The initial manager will be Andrew Mitchell. The Managers need not be Members of the Company or residents of Texas. The number of Managers may be increased or decreased from time to time by amending this Agreement; and this Agreement is considered so amended to specify a number of Managers coinciding with the number of Managers selected by the Members at the Members' annual meeting called for that purpose.
- 6.3 Selection and Term of Office. The Members must elect Managers annually. Each Manager, once elected, holds office until his or her successor is elected, or he or she dies, resigns, or is removed.
- 6.4 Vacancies. Except as provided in Section 6.3, a majority of the remaining Managers, though less than a quorum, or a sole remaining Manager may fill any vacancies on the Board of Managers. The Members may at any time elect a Manager to fill any vacancy not filled by the Managers.
- 6.5 **Removal of Managers.** The Members may, at any regular or special Members meeting, remove the entire Board of Managers or any individual Manager from office with or without cause, by Majority Vote.

- 6.6 Place of Meetings. The Board of Managers must hold all of their meetings at one of the following places or by one of the following means as they may from time to time determine:
 - (a) at the principal office of the Company,
 - (b) at another place within or outside the State of Texas, or
 - (c) by means of electronic communication of any sort (including, without limitation, telephonic conference call, video conferencing, or chat room) so long as all Managers participating in the meeting may communicate in "real-time" with all other meeting participants.
- 6.7 **Regular Meetings.** The Board of Managers must hold regular meetings, without call or notice, immediately following each annual meeting of the Company's Members and at whatever other times they determine.
- 6.8 Special Meetings Call and Notice. Any Manager may call at any time special meetings of the Board of Managers for any purpose. The Person calling the special meeting must give notice of the special meeting, stating the time, place or means, and in general terms the purpose or purposes of the meeting. The Person may give the notice in writing, by mailing, faxing, telegraphing, e-mailing, or personally delivering the notice to each Manager not later than the day before the day selected for the meeting.
- 6.9 Quorum. A majority of the authorized number of Managers constitutes a quorum for transacting business, except that a lesser number may adjourn according to Section 6.11. They may then act by majority decision of the Managers present, unless a greater number is required by the Act, the Certificate of Formation, or this Agreement.
- 6.10 **Board Action Without Meeting.** To be effective, action by the Board by written consent without a meeting requires the individual or collective written consent of members of the Board equal in number to the number of members whose affirmative vote would be required to take the action if it were taken at a meeting where all the members of the Board were present. Any action taken in this manner will have the same force and effect as a vote of that number of Managers at a meeting of the entire Board of Managers where all the members of the Board were present.
- 6.11 Adjournment Notice. A quorum of the Managers may adjourn any Managers' meeting to meet again at a stated hour on a stated day. Notice of the time and place or means where an adjourned meeting will be held need not be given to absent Managers if the time and place is fixed at the adjourned meeting. If a quorum is not present at a duly called regular or special meeting of the Board of Managers, a majority of the Managers present may adjourn the meeting until the time fixed for the next regular meeting of the Board.
- 6.12 Conduct of Meetings. Any Manager selected by the Managers present, will preside at meetings of the Board of Managers. Any person appointed by the presiding officer, will act as secretary of that meeting of the Board of Managers.

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6.13 **Compensation.** The Board of Managers may determine whether and to what extent the Company will pay the Managers and members of committees any compensation for their services or reimburse them for their expenses.

SECTION 7: MEETINGS OF THE MEMBERS

- 7.1 Place of Meetings. The Company must hold all meetings of the Members at one of the following places or by one of the following means as the Board of Managers may from time to time determine:
 - (a) at the principal office of the Company,
 - (b) at another place within or outside the State of Texas, or
 - (c) by means of electronic communication of any sort (including, without limitation, telephonic conference call, video conferencing, or chat room) so long as all Members participating in the meeting may communicate in "real-time" with all other meeting participants.
- 7.2 Time of Annual Meeting. The annual meetings of the Members must be held on the third Tuesday of November of each year, or on such other annual date as agreed by a majority of the Members. If this date falls upon a legal holiday, the meeting must be held on the next succeeding business day.
- 7.3 Notice of Meeting. The Board must give notice of each meeting of the Members to the Members. The Board must give the notice at least ten but not more than sixty days before the date of the meeting. The Board must give the notice in one of the following ways:
 - (a) delivering it personally or by messenger to the Members;
 - (b) mailing it to the Members at the Members' most recent address appearing on the books of the Company or at the address each has most recently specified for receiving notices; or
 - (c) delivering it to the Members using any other reasonable means of delivering written communications.

The notice must be in writing. It must state the place or means, day, and hour of the meeting, and, for special meetings, the purpose or purposes of the meeting.

The Board need not give notice of adjourned meetings unless the meeting is adjourned for thirty days or more. In that case, the Board must give notice of the adjourned meeting in the same manner as any special Members' meeting.

- 7.4 Special Meetings. Any of the following Persons may call a special Members' meeting:
 - (a) the Board of Managers;
 - (b) any one or more Managers; or

(c) the Members.

They may call special Members' meetings at any time and for any purpose or purposes on which the Members may act.

- 7.5 Quorum of Members. Members holding among them a Majority Interest shall constitute a quorum at all meetings of the Members, except as otherwise provided by law or the Articles. Once a quorum is present at a meeting of the Members, the subsequent withdrawal from the meeting of any Member prior to adjournment or the refusal or any Member to vote shall not affect the presence of a quorum at the meeting. If, however, such quorum shall not be present at any meeting of the Members, the Members present and entitled to vote at such meeting shall have the power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until Members owning a Majority Interest shall be present or represented.
- 7.6 Voting. Only the Persons listed as the Members in the Company's records on the record date for the meeting has the right to take action at the meeting. The record date for a meeting will be the date on which the Board gives notice of the meeting, unless the Board of Managers establishes as the record date some other day. At each election for the Managers, each Member has the right to vote the number of Units owned by him or her which carry voting rights for as many Persons as there are Managers to be elected, but may not cumulate his votes. Except for matters specifically requiring a greater vote or consent, the Members shall act by Majority Vote.
- 7.7 **Proxies.** Each Member may appoint a proxy to vote or execute consents on the Member's behalf by means of a writing executed by the Member or the Member's duly authorized attorney in fact.
- 7.8 Action Without Meeting. To be effective, action by the Members by written consent without a meeting requires the individual or collective written consent of the Members equal in number to the number of Members whose affirmative vote would be required to take the action if it were taken at a meeting where all the Members were present. Any action taken in this manner will have the same force and effect as a vote of that number of Members at a meeting of the Members where all the Members were present.

SECTION 8: RIGHTS AND POWERS OF THE MEMBERS

- 8.1 General. Except as specifically modified by the Company's Certificate of Formation or this Agreement, the Act governs the Members' powers, rights, voting, and action.
- 8.2 Rights and Powers Reserved to Members. The Members have the exclusive authority to exercise all of the Company powers specified in this Section 8.2. Accordingly, only on a Super Majority Vote of the Members may the Company:
 - (a) Amend the Certificate of Formation or this Agreement.
 - (b) Change the status of the Company from one in which management is vested in one or more Managers to one in which management is reserved to the Members.
 - (c) Redeem or repurchase Interests on behalf of the Company.

- (d) Merge with, consolidate with, participate in a share or Interest exchange with, or engage in any other transaction authorized or subject to the provisions of Chapter 10 of the Texas Business Organizations Code with, another Person.
- (e) Voluntarily cause the Company's dissolution.
- (f) Take an action intended to make it impossible to carry on the Company's ordinary business.
- (g) Sell, lease, convey, exchange, Transfer, or otherwise dispose of all or substantially all of the Company's property.
- (h) Borrow money, execute notes, mortgages or deeds of trust, or guarantee the debts or obligations of any other Person.

Any of the actions so retained and authorized by the proper vote of the Members constitutes the act of the Company and binds the Company.

- 8.3 Management of Company. Except as otherwise set forth in this Agreement, the Members (except when acting in the capacity of an officer, employee, manager or agent of the Company) may not:
 - (a) transact any business in the name of or on behalf of the Company; or
 - (b) sign documents for or otherwise bind the Company.

SECTION 9: OFFICERS

- 9.1 **Title and Appointment.** The Managers may designate themselves or any other Persons as officers or agents of the Company. The officers or agents will hold office at the pleasure of the Managers. The Managers also have the exclusive right to fix the officers' and agents' compensation and tenure.
- 9.2 **Powers and Duties of Officers.** The officers and agents of the Company have the powers and duties the Managers may from time to time establish in accordance with the following guidelines:
- (a) Officers. The officers of the Company, in addition to the Managers, shall be a President, a Secretary, and such other officers as may from time to time be elected or appointed by the Board of Managers.
- (b) President. The President shall, when present, preside at all meetings of the Managers, and act as temporary chairman at, and call to order all meetings of the Members; and the President shall have power to call special meetings of the Members and Managers for any purpose or purposes, appoint and discharge, subject to the approval of the Managers, employees and agents of the Company and fix their compensation, make and sign contracts and agreements in the name and behalf of the Company, and while the Managers and/or committees are not in session the President shall have general management and control of the business and affairs of the

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Company; the President shall see that the books, reports, and statements required by the statute under which this Company is organized or any other laws applicable thereto, are properly kept, made and filed according to law; and the President shall generally do and perform all acts incident to the office of President, or which are authorized or required by law.

(c) Secretary. The Secretary shall give, or cause to be given, notice of all meetings of Members and Managers, and all other notices required by law or by this Agreement, and in case of the Secretary's absence or refusal or neglect so to do, any such notice may be given by any person thereunto directed by the President, or by the Managers, or Members, upon whose requisition the meeting is called as provided in this Agreement. The Secretary shall record all the proceedings of the meetings of the Company and of the Managers in a book to be kept for that purpose, and shall perform such other duties as may be assigned to the Secretary by the Managers. The Secretary shall be sworn to the faithful discharge of his or her duties.

SECTION 10: WITHDRAWAL AND TRANSFERRING INTERESTS

- 10.1 **No Withdrawal**. No Member has the right to withdraw from the Company or receive a Distribution of income or a return of any Capital Contributions from the Company before the Company terminates under SECTION 11.
- 10.2 Restrictions on Sale or Transfer of Interests. Excepting those Transfers authorized with the prior written consent of all the Members and Transfers authorized by Section 10.3, neither record title nor beneficial ownership of any interest in an Interest may be Transferred, whether voluntarily or by operation of law, except in accordance with this Agreement. Any purported Transfer in violation of this Agreement will be void and of no effect, will not operate to transfer any interest or title in the purported transferee, and will give the Company and the other Members an option to purchase such Interest in accordance with this Agreement.
- 10.3 Related Transfers. Notwithstanding anything contained in this Agreement to the contrary, the initial Member and Members that are successors or assigns of the initial Member and that acquired his/her/its Interest in accordance with this Section 10.3 may Transfer all or part of his/her/its Interest to (i) a lineal descendant (whether by blood or adoption) of Greg Mitchell (each a "Mitchell Descendant"), (ii) a trust, the trustees and beneficiaries of which are Mitchell Descendants (each a "Mitchell Descendant Trust"), or (iii) an entity wholly owned by Greg Mitchell, Julie Mitchell, Greg and Julie Mitchell, a Mitchell Descendant or a Mitchell Descendant Trust (each a "Mitchell Entity").

Any Mitchell Descendant, Mitchell Descendant Trust or Mitchell Entity receiving a Transfer of an Interest under this section will be admitted to the Company as a Member with the Interest thereby Transferred, provided that (a) such Mitchell Descendant, Mitchell Descendant Trust or Mitchell Entity executes a copy of this Agreement and a document including the person's, trust's or entity's notice address, and (b) if any Mitchell Descendant is married, such Mitchell Descendant's spouse executes a Spousal Consent and Power of Attorney in a form that is acceptable to the Company.

10.4 Options to Purchase Following Unauthorized Transfers. Except as provided in Section 10.3, upon any Transfer other than those Transfers to a Divorced Member resulting from termination of a Member's marriage, such transferring Member or the estate of a deceased transferring Member (the "Transferring Member") will be deemed to have offered to sell to the 1147524_3

Company and the other Members (the "Nontransferring Members"), all of the Interest Transferred by the Transferring Member at the Purchase Price (as defined in Section 10.6) and under the terms set forth in Section 10.7 (the "Purchase Terms").

The Transferring Member will promptly give written notice of the Transfer to the Secretary of the Company and to the Nontransferring Members (the "Transfer Notice").

The Company will have the option, exercisable within thirty (30) days after the receipt of the Transfer Notice, to elect to purchase all or any portion of the Transferred Interest at the Purchase Price and under the Purchase Terms.

If the Company does not elect to purchase all of the Transferred Interest held by the Transferring Member, the Company will advise the Nontransferring Members by written notice as to how much of the Interest the Company has elected to purchase, if any, and how much of the Interest remains available to be purchased by the Nontransferring Members. The Nontransferring Members will have the option, exercisable within thirty (30) days after receipt of this notice, to elect to purchase all or any portion of the remaining Transferred Interest held by the Transferring Member at the Purchase Price and under the Purchase Terms. In the event there is more than one Nontransferring Member, each will be entitled to purchase the Transferred Interest on a pro rata basis or in such proportions as the Nontransferring Members mutually agree.

If the Nontransferring Members or the Company, or any combination thereof, elect to purchase all or any portion of the Transferred Interest held by the Transferring Member, the Transferring Member will execute and deliver a bill of sale to the purchaser or purchasers.

If the Nontransferring Members and the Company do not elect to purchase all of the Transferred Interest held by the Transferring Member, the Transferring Member may Transfer the unpurchased portion of the Interest to another party, but the party acquiring any of the unpurchased Interest will hold the Interest as an assignee and not as a Member unless all of the Nontransferring Members agree to accept the party acquiring the unpurchased Interest as a Member.

10.5 **Termination of Marriage**. If the marriage of a Member is terminated by divorce or annulment and that Member (the "**Divorced Member**") does not acquire all of his or her Interest by mutual agreement or court order, then such divorced spouse of the Divorced Member (the "**Divorced Spouse**") will be deemed to have offered to sell all of the Transferred Interest held by the Divorced Spouse to the Divorced Member, at the Purchase Price and under the Purchase Terms. At closing, the Divorced Spouse will execute and deliver to the Divorced Member a bill of sale of the Transferred Interest purchased by the Divorced Member.

If the Divorced Member does not purchase all of the Transferred Interest of the Divorced Spouse, the Divorced Member will promptly give written notice of the termination of the marriage (the "Termination of Marriage Notice") to the Secretary of the Company and to the other Members (the "Remaining Members").

The Company will have the option, exercisable within thirty (30) days after the receipt of the Termination of Marriage Notice, to elect to purchase all or any portion of the remaining

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Transferred Interest held by the Divorced Spouse at the Purchase Price and under the Purchase Terms.

If the Company does not elect to purchase all of the remaining Transferred Interest held by the Divorced Spouse, the Company will advise the Remaining Members by written notice as to how much of the Interest the Company has elected to purchase, if any, and how much of the Interest remains available to be purchased by the Remaining Members.

The Remaining Members will have the option, exercisable within thirty (30) days after receipt of the notice, to elect to purchase all or any portion of the remaining Transferred Interest held by the Divorced Spouse at the Purchase Price and under the Purchase Terms. In the event there is more than one Remaining Member, each will be entitled to purchase the Transferred Interest on a pro rata basis or in such proportions as the Remaining Members mutually agree.

If the Remaining Members or the Company, or any combination thereof, elect to purchase all or any portion of the Transferred Interest held by the Divorced Spouse, the Divorced Spouse must execute and deliver a bill of sale of the Interest to the purchaser or purchasers at closing.

If the Remaining Members and the Company do not elect to purchase all of the Transferred Interest held by the Divorced Spouse, the Divorced Spouse will hold such Interest as an assignee and not as a Member unless all of the Members agree to accept the Divorced Spouse as a Member.

- 10.6 Purchase Price. The price (the "Purchase Price") for which an Interest will be purchased and sold will be determined by an appraisal. Within ten (10) days after receipt of the applicable notice, the Company, the Transferring Member, the Divorced Member, or the Divorced Spouse, as applicable, shall each select an appraiser (the "Appraisers"). Each Appraiser shall have at least ten (10) years' experience in valuing businesses and shall not have any other contractual or financial relationship (current or in the three (3) prior years) with the Company, the Transferring Member, the Divorced Member, or the Divorced Spouse, as applicable. The Appraisers shall determine the Purchase Price based upon the going concern value of the Company and shall apply any appropriate discounts, including (without limitation) a minority discount and a limited marketability discount. In the event the Appraisers cannot agree upon the Purchase Price, they shall then jointly select an additional appraiser, whose decision shall be final and binding. The appraisal costs, legal fees and other expenses incurred by the parties shall be borne by the party incurring the costs, fees, or other expenses.
- 10.7 Purchase Terms. At closing, the Purchase Price may be paid at the election of the purchasing Members or the Company (i) in cash or other readily available funds, or (ii) ten percent (10%) in cash and ninety percent (90%) by a promissory note or notes payable to the transferring party, which promissory note or notes will bear interest at the rate of the Wall Street Journal's Prime Rate as published on the closing date in the "Money Rates" column of The Wall Street Journal (but in no event higher that the highest lawful rate) and will be payable in one hundred twenty (120) monthly installments of principal and interest, with the first payment being due on the first day of the third month following the purchase of the Transferred Interest. The promissory note or notes may be prepaid without penalty, will be non-recourse to the maker or makers of such note or notes, and will be secured by a security interest in the Transferred Interest sold to such Member(s) or the Company. The purchasing Members or the Company, as applicable, will execute security agreements in favor of the transferring party to evidence the security interests in the

Transferred Interest (notwithstanding any other provision of this Agreement, the security interests created by such security agreements will not be considered a Transfer). If The Wall Street Journal's Prime Rate ceases to be published in The Wall Street Journal or otherwise becomes unavailable as an index, the Company will select a reasonably comparable interest rate index. Any promissory note issued by the Company shall contain a covenant that prohibits the Company from making distributions to its Members, raising salaries or making bonus payments if the Company is delinquent in making three (3) consecutive payments under such promissory note until such time as the Company is no longer delinquent under the promissory note or notes.

If any security interest created by the Company on any Interest purchased by the Company would cause it to be in violation of any lending or other third party agreement, the security agreement that secures the promissory note shall contain a provision whereby the Company will hold the Transferred Interest in escrow and immediately release all of the Transferred Interest to the Transferring Member if the Company becomes delinquent in making three (3) consecutive payments under such promissory note.

10.8 Additional Documentation. No transfer of all or any part of a Member's Interest to a party who will become a Member shall be binding on the Company, unless the transferee agrees in writing to be a party to and bound by the terms of this Operating Agreement and until a duplicate original of such instrument of transfer, duly executed and acknowledged by the transferor, and such other documentation required by the Company, have been delivered to the remaining Members and, if required by the remaining Members, upon receipt of an opinion, satisfactory in form and substance to the remaining Members to the effect that such transaction will not violate the Securities Act of 1933 or any other applicable securities laws.

SECTION 11: TERMINATION OF THE COMPANY

- 11.1 Liquidating Events. According to Sections 11.051 and 11.056 of the Act, the Company continues to exist until one of the following occurs when it must begin to wind up and terminate:
 - (a) the Members cause the Company to wind up and terminate; or
 - (b) the term for the Company's existence, if any, specified in its Certificate of Formation expires.
- 11.2 No Other Events of Liquidation. Except as otherwise provided, to the extent legally permitted, the Company may not begin to wind up and terminate before one of the liquidating events listed in Section 11.1 occurs.
 - 11.3 Cancellation of Winding Up and Liquidation. If an event requiring a winding up occurs by operation of law or a court of competent jurisdiction orders the Company to wind up before one the of the liquidating events listed in Section 11.1 occurs because of the termination of the continued membership of the last remaining Member (as described in Section 11.056 of the Act), the event requiring the Company to wind up and terminate is cancelled and the Company must continue its activities without a winding up or liquidation if the legal representative or successor the last remaining Member agrees:

- (a) to continue the Company, and
- (b) to become a Member of the Company effective as of the date of the termination or to designate another Person who agrees to become a Member of the Company effective as of the date of the termination.

If an event requiring a winding up occurs for any other reason, the Members here unanimously agree to continue the business of the Company without a winding up or liquidation.

- 11.4 Winding Up and Liquidation. If the Company dissolves and is to be wound up, liquidated and terminated and not reconstituted and continued, the Liquidator must commence to wind up the affairs of the Company and to liquidate and sell its assets as soon as reasonably practicable.
- (a) Company Continues. Until the Company's business terminates, the Company's Certificate of Formation, this Agreement, and the Act continue to govern the Members' relationship to the Company. And, the Company continues for federal income tax purposes until it has finally wound up its affairs and liquidated. No Member may take any action that is inconsistent with, or not necessary to or appropriate for, winding up the Company's business and affairs.
- (b) Sale of Company Property. As part of winding up, liquidating, and terminating the business and affairs of the Company, the Liquidator must sell the Company's Property (other than the Company Property to be distributed in kind). The Liquidator has full right and unlimited discretion to determine the time, manner, and terms of any sale or sales of Company Property during liquidation, having due regard to the activity and condition of the relevant market and general financial and economic conditions so that the Company may obtain the fair market value for the Company's Property.
- (c) Application of Liquidation Proceeds. The Liquidator must apply and distribute on any reasonable basis selected by it, to the extent sufficient, and in the following order, the cash proceeds of liquidation, any other funds, and any remaining assets of the Company:
 - (1) first, to satisfy (by payment, discharge, or establishing reserves) all Company debts and liabilities to the Company's creditors (including a Member who is a creditor for debts and liabilities other than Distributions); and
 - (2) the balance, if any, to the Members.
- (d) Offsetting Amounts Owed by Members. If any Member owes the Company, until the Member pays the amounts owed, the Liquidator must not pay any amounts to the Member under this Section 11.4. Instead, the Liquidator must retain those amounts and apply them to the amount the Member owes the Company. The Liquidator must pay the Member any balance of the amount payable under this Section 11.4 remaining after fully satisfying any amount the Member owes the Company.
- 11.5 Procedures Before Filing Articles of Dissolution. Before the Company files its Certificate of Termination:

- (a) the Company must have ceased to carry on its business; and
- (b) the Company must have mailed (by registered or certified mail) to each of its known creditors and claimants a notice indicating its intention to dissolve.
- 11.6 Certificate of Termination. After finally winding up the Company according to Section 11.4 and Section 11.5, the Company terminates and the Managers have the duty and authority to execute and file a certificate or other necessary document canceling the Company and any other documents required to effectuate the Company's termination.

SECTION 12: DEFINITIONS AND RULES OF CONSTRUCTION

- 12.1 **Definitions.** The following capitalized terms, as used in this Agreement, have the following meanings:
- (a) Act. The term "Act" means the Texas Limited Liability Company Law, part of the Texas Business Organizations Code, as amended and in effect from time to time, and any successor to that statute. Notwithstanding the preceding sentence, reference to the "Act" does not include amendments to the Act or succeeding or successor statutes to the Act, if:
 - (1) any amendment to the Act, or any succeeding or successor law, applies to the Company only if the Company or the Members elect to be governed by the Act as so amended or by such succeeding or successor law, and the Company or Members do not so adopt the provisions of the amendments or succeeding or successor statutes, or
 - (2) the new statutory provisions adopted by the amendment to the Act, or the succeeding or successor law, are provisions that may be altered by the agreement of the Members, and the Members do not amend this Agreement to adopt the default provisions contained in the amended Act or the succeeding or successor statutes.
- (b) Agreement. The term "Agreement" means this Company Agreement, as amended, modified, supplemented, or restated from time to time, as the context requires.
- (c) Available Cash. The term "Available Cash" means the excess for the relevant period of:
 - (1) all the Company's gross cash receipts from any source other than Capital Contributions, over
 - (2) all of the Company's cash expenditures (including expenditures for capital investments and capital reinvestments) and all reasonable reserves established according to this Agreement for projected expenses, capital investments and reinvestments, working capital, and contingencies.

- (d) Book Value. The term "Book Value" means, for any asset, the asset's adjusted basis for federal income tax purposes, except that the initial Book Value of any asset contributed to the Company by a Member is the gross fair market value of that asset, as determined by the contributing Members and the Managers, acting in good faith on behalf of the Company.
- (e) Capital Contribution. The term "Capital Contribution" means, for any Member, the amount of money and the initial Book Value of any property (other than money) contributed to the Company with respect to the Interest then held by that Member.
- (f) Code. The term "Code" means the Internal Revenue Code of 1986, as amended, or corresponding provisions of subsequent, superseding federal revenue laws.
 - (g) Company. The term "Company" means 14 Texas Real Estate, LLC.
- (h) Company Property. The term "Company Property" means all real and personal property acquired by the Company, and any improvements, including both tangible and intangible property.
- (i) **Distribution**. The term "Distribution" means any cash or other property distributed to any Member regarding an Interest in the Company.
- (j) Interest. The term "Interest" means the interest in the capital, income, gain, losses, deductions, expenses, or management of the Company granted to any Person by this Agreement or the Act.
- (k) Involuntary Transfer. The term "Involuntary Transfer" means any Transfer that occurs without a voluntary act of the Members owning an Interest. It includes Transfers occurring as a result of:
 - (1) death.
 - (2) any court-ordered sale, partition, or other disposition.
 - (3) any foreclosure, levy, execution, trustee's or other involuntary sale.
 - (4) filing any involuntary:
 - (A) bankruptcy, insolvency, or receivership petition,
 - (B) assignment for the benefit of creditors,
 - (C) attachment or other legal or equitable interest on an Interest, where the involuntary petition, assignment, or attachment is not discharged within 30 days after its effective date.
 - (5) a settlement agreement.
- (l) Liquidator. The term "Liquidator" means any Person or committee of Persons selected by the Members.

The Liquidator has full authority to wind up the affairs of the Company and make final Distribution according to this Agreement. The Liquidator must have sufficient business expertise and competence to wind up and terminate the Company and to cause the Company to perform any contracts the Company has or may enter into. No person who is a creditor of the Company, a creditor of the Members or a trustee in a bankruptcy or similar proceeding involving the Members or the Company may serve as Liquidator or on a committee making up the Liquidator.

- (m) Majority Interest. The term "Majority Interest" means the Member or Members whose membership interests aggregate more than fifty percent (50%) of the membership Interests of all Members.
- (n) Majority Vote. The term "Majority Vote" means the written consent of the Member or Members holding in the aggregate more than fifty percent (50%) of all of the then total issued and outstanding Units in the Company.
- (o) Managers or Board of Managers. The term "Managers" or "Board of Managers" means all of those Persons who are elected by the Members to serve as Managers, during their terms of office as Managers. Reference to a "Manager" is to any one of those Persons.
- (p) Members. The term "Members" means the Persons who are admitted as the members to the Company according to the Act. The name and address of the Members are, and must continue to be, set out on Exhibit "A" to this Agreement, as it may be amended from time to time.
- (q) Person. The term "Person" means any natural person or legal entity. It includes individuals, fiduciaries, receivers, trustees, trusts, corporations, partnerships, limited partnerships, limited liability company, professional associations, professional corporations, and all other forms of business organizations which may exist under the laws of Texas or any other state, or the United States.
- (r) Super Majority Interest. The term "Super Majority Interest" means the Member or Members whose membership interests aggregate more than seventy-five percent (75%) of the membership Interests of all Members.
- (s) Super Majority Vote. The term "Super Majority Vote" means the written consent of the Member or Members holding in the aggregate more than seventy-five percent (75%) of all of the then total issued and outstanding Units in the Company.
- (t) Transfer. The term "Transfer" means any transfer of any ownership interest in (i) an Interest or (ii) the owner of an Interest. It includes:
 - any sale, conveyance, assignment, or partition of an Interest.
 - (2) any gift of an Interest.
 - (3) any Involuntary Transfer.
 - (4) any

- (A) transfer of ownership of an Interest to a bankruptcy estate or receivership, or
- (B) the change in legal, beneficial, or equitable ownership of an Interest

caused by filing:

- (C) a voluntary petition under any bankruptcy or insolvency law, or
- (D) a petition to appoint a receiver.
- (5) any assignment for the benefit of creditors.
- (6) any encumbrance, pledge, mortgage, hypothecation.
- (7) any change in the legal or beneficial ownership of a partnership or corporation that is a Member.
- (8) any other disposition of any interest in:
 - (A) an Interest, or
 - (B) the owner of an Interest.

When used in this Section 12.1(t), "owner of an Interest" means any Person directly or indirectly owning an Interest. A Person indirectly owns an Interest if he owns any interest in another Person that directly or indirectly owns an Interest. Thus, indirect ownership occurs regardless of the number of intervening Persons owning direct or indirect interests in an Interest. It includes, for example, any ownership interest in any Person that in turn owns any ownership interest in another Person that owns an Interest.

When used in this Section 12.1(t), "interest" in an Interest includes the right to receive Distributions and the right to exercise any voting privileges.

- (u) Unanimous Vote. The term "Unanimous Vote" means the written consent of Members holding all the then total issued and outstanding Units in the Company.
- (v) Unit. The term "Unit" means the Interest in the Company issued to the Members, with each Unit representing 1/1000th of the issued and outstanding Interests.
- 12.2 **Titles, Captions, and Sections.** All section titles or captions in this Agreement have been inserted for convenience only. They must not be construed in interpreting this Agreement, as they do not in any way define, limit, extend, or describe the scope or intent of any provisions of this Agreement. Unless otherwise provided, references to "SECTIONS" and "Sections" are to sections of this Agreement.
- 12.3 **Derivative Word.** When the context requires, derivatives of terms defined elsewhere in this Agreement have been used. When a derivative of a defined term is used, the

derivative term's meaning must be determined by reference to the defined term from which it derives.

12.4 Gender and Plurals. Simply for ease in drafting, this Agreement use the masculine gender when referring to a Person other than the Company. The use of a gender must not be construed as precluding the other genders when interpreting this Agreement. Thus, whenever the context may require, any pronoun used in this Agreement includes the corresponding masculine, feminine, or neuter forms. Similarly, whenever the context may require, the singular form of nouns, pronouns and verbs includes the plural, and vice versa.

SECTION 13: MISCELLANEOUS PROVISIONS

- 13.1 **Binding Effect.** This Agreement binds and inures to the benefit of the Members and the Members' heirs, executors, administrators, successors, legal representatives, and permitted assigns.
- 13.2 **Creditors.** None of the creditors of the Members or the Company may benefit from or enforce any provisions of this Agreement.
- 13.3 Integration. This Agreement (and the Company's Certificate of Formation, along with the other documents prepared according to the terms of this Agreement and the Certificate of Formation) constitute the entire agreement among the Members, the Company, and its officers and agents, pertaining to its subject matter. This Agreement supersedes any pertinent prior agreements and understandings whether written or oral not contained in this Agreement.
- 13.4 Waiver. Neither the Members nor the Company waives any term, covenant, or condition of this Agreement by failing to insist on strict compliance with any of their terms, covenants, or conditions. Nor does a waiver or relinquishment of any right or power at any one time or times waive or relinquish the right or power for all or any other times.
- 13.5 Applicable Law. This Agreement must be interpreted and construed in accordance with and governed by the laws of the State of Texas, without regard to the principles of conflicts of law.
- 13.6 Severability. The invalidity or unenforceability of any term or provision or any clause of this Agreement in no way impairs or affects the validity or enforceability of any other provision of this Agreement, which remain in full force and effect.
- 13.7 Further Action. The Members and the Members' heirs, executors, administrators, successors, legal representatives, and permitted assigns must execute and deliver all documents, provide all information and take or refrain from taking action as may be necessary or appropriate to achieve the purposes of this Agreement.

[SIGNATURE PAGE TO FOLLOW]

MEMBER'S SIGNATURES

The undersigned Member has executed this Company Agreement to be effective as of the date first above written.

MEMBERS:

GREG MITCHELL

CERTIFICATE

The undersigned initial Manager of 14 Texas Real Estate, LLC has executed this Company Agreement to evidence his agreement to be bound by its terms, insofar that they apply to the Manager.

MANAGER:

Andrew Mitchell

EXHIBIT A

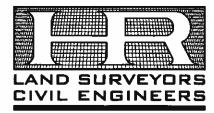
Mcmber Name and Address	Initial Capital Contribution	Interests	Units
Greg Mitchell	\$1,000.00	100%	1,000
1201 S. Taylor Street Amarillo, Texas 79101			
Total	\$1,000.00	100%	1,000



AFFIDAVIT DESIGNATING REPRESENTATIVE

AFFIDAVIT IS NOT VALID WITHOUT COMPLETION OF ALL PAGES AND SIGNATURES – FOR MULTIPLE PROPERTY OWNERS, SUBMIT ONE AFFIDAVIT PER OWNER

I,	, make this affidavit and h	nereby on oath state that:	
I, being the ☐ sole ☐ partial owner o	f the following property:		
4602 Woodrow Road	Lubbock	Texas	79424
Property Address	City	State	Zip
Phone		Email	
Legal description of property (can be	found on property tax statemen	at or at <u>www.lubbockcad.</u> e	org:
See legal description attached			
give my permission to below named	representative, to apply for app	roval of an application (at	ttach to application) to the
City of Lubbock on the above-descri	bed property.		
Thomas Payne			
Representative's organization or enti	ty (printed)		
Signed this day of	, 20		
and In			
Signature of Property Owner			<u> </u>
Notary Public Information:	0-11-6		
THE STATE OF TEXAS, COUNTY			/
BEFORE ME, the undersigned author	rity, this day personally appeare	ed Andrew M	litchell
and on oath stated that the facts herei		_	SWORN TO
AND SUBSCRIBED before me on the	nis the 10th day of 1	center, 20 <u>6</u>	22
Notary ID	A MALOTA #2952317 ssion Expires 26, 2023 Notary Public, State of Te	Ma Ufal	EL.



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

EXHIBIT "A"

METES AND BOUNDS DESCRIPTION of a 2.986 acre tract of land located in Sections 3 and 6, Block AK, Lubbock County, Texas, being further described as follows:

BEGINNING at a point which bears N. 88°12'57" W. a distance of 105.08 feet and N. 01°47'03" E. a distance of 65.00 feet from the Southeast corner of Section 6, Block AK, said point being the Southwest corner of this tract;

THENCE N. 46°44'49" E. a distance of 42.40 feet to a point 75.00 feet West of the East line of said Section 6;

THENCE N. 01°42'34" E., along a line 75 feet West of and parallel to the East line of said Section 6, a distance of 210.24 feet;

THENCE N. 04°34'19" E., at 49.82 feet pass the Northern boundary of that 2.975 acre tract described under County Clerk File Number (CCFN) 2022028055, Official Public Records of Lubbock County, Texas (OPRLCT), continuing for a total distance of 200.24 feet to a point, said point being 65.00 feet West of the East line of said Section 6;

THENCE N. 01°42'34" E., along a line 65 feet West of and parallel to the East line of said Section 6, a distance of 403.90 feet to a point in the Southern boundary of the plat limits of Tract "A", Woodrow Substation, an addition to the City of Lubbock, Lubbock County, Texas, according to the map, plat and/or dedication deed thereof recorded under CCFN 2021006622, OPRLCT, said point also being in the Southern boundary of the present city limits as established by City of Lubbock Ordinance No. 2018-00023;

THENCE S. 88°16'26" E., along the Southern boundary of said present city limits and the Southern boundary of said plat limits, a distance of 65.00 feet to a point in the East line of said Section 6, at the Southeast corner of said plat limits;

THENCE N. 01°42'34" E., along the East line of said Section 6 and the Eastern boundary of said plat limits, at 299.98 feet pass the Northeast corner of said plat limits, continuing along the East line of said Section 6, for a total distance of 2724.32 feet to a point in the Southern boundary of that portion of the present city limits as established by City of Lubbock Ordinance No. 2018-00102, said point also being the Southwest corner of that 6.6532 acre tract described under CCFN 2021049568, OPRLCT, for the Northwest corner of this tract;

THENCE S. 88°13'35" E., along the Southern boundary of said present city limits and the Southern boundary of said 6.6532 acre tract, a distance of 20.00 feet to a point for the Northeast comer of this tract;

THENCE S. 01°42'34" W., along a line 20 feet East of and parallel to the East line of said Section 6 and the West line of said Section 3, a distance of 3568.52 feet to a point for the Southeast comer of this tract;

THENCE N. 88°12'57" W., at 20.00 feet pass the West line of said Section 3 and the East line of said Section 6, continuing for a total distance of 125.00 feet to the Point of Beginning.

Contains: 2.986 Acres

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

December 8, 2022

Robert A. Christopher

Registered Professional Land Surveyor No. 5167

Licensed State Land Surveyor, State of Texas



This document was prepared under 22 TAC §138.95, does not reflect the results of an on the ground survey, and is not to be used to convey or establish interests in real property except those rights and interests implied or established by the creation or reconfiguration of the boundary of the political subdivision for which it was prepared.



VOLUNTARY ANNEXATION APPLICATION

APPLICATION IS NOT VALID WITHOUT COMPLETION OF ALL PAGES AND SIGNATURES

MINIMUM SUBMITTAL REQUIREMENTS: ☑ Application provided by City of Lubbock completed in full. This application must be used and may not be adjusted or altered. Please attach pages if additional information is provided.		
☑ Annexation petition provided by City of Lubbock with notarized signature(s).		
☑ Map of the subject property.		
A legal description of the property (including a survey, field notes or legal description with subdivision, lot and block) labeled as Exhibit A.		
Ownership Documents. A clean copy of recorded warranty deed or other document(s) verifying ownership of all property to be annexed. If the property is owned by a partnership, corporation, trust, or other entity, documents demonstrating signatory's authority to sign petition on behalf of entity must be included.		
☑ One digital copy of all of the above.		
☐ If designating a representative, the affidavit designating representative with notarized signature(s).		
Property Owner(s): RED CANYON DEVELOPMENT, LLC		
Address: PO Box 64664		
Address: Lubbock, TX, 79464		
Telephone: (806) 543-0667 Email: tpayn3@gmail.com		
Telephone: (Email:		
Acreage of property: 2.986 Number of lots and proposed use: Vacant, proposed right-of-way		
 Check one: I will represent my application and petition before city staff and the City Council. I hereby authorize the person named in the attached affidavit to act as my representative in this application before city staff and the City Council. 		
Owner of record signature		
Please note: The signature of owner authorizes the City of Lubbock staff to visit and inspect the property that is subject to this application. The representative is the official contact person for this project and the single point of contact. All correspondence and communication – and responsibility		

City of Lubbock · Planning Department · (806) 775-2108 · 1314 Avenue K · Lubbock, TX 79401 Page 1 of 1

for responding to same - will be conducted with the representative.



VOLUNTARY ANNEXATION APPLICATION

APPLICATION IS NOT VALID WITHOUT COMPLETION OF ALL PAGES AND SIGNATURES

MINIMUM SUBMITTAL REQUIREMENTS:			
Application provided by City of Lubbock completed in full. This application must be used and may not be adjusted or altered. Please attach pages if additional information is provided.			
Annexation petition provided by City of Lubbock with notarized signature(s).			
☑ Map of the subject property.			
A legal description of the property (including a survey, field notes or legal description with subdivision, lot and block) labeled as Exhibit A.			
Ownership Documents. A clean copy of recorded warranty deed or other document(s) verifying ownership of all property to be annexed. If the property is owned by a partnership, corporation, trust, or other entity, documents demonstrating signatory's authority to sign petition on behalf of entity must be included.			
☑ One digital copy of all of the above.			
☐ If designating a representative, the affidavit designating representative with notarized signature(s).			
Property Owner(s): RED CANYON DEVELOPMENT, LLC			
Address: PO Box 64664			
Address: Lubbock, TX, 79464			
Telephone: (Email:			
Telephone: (Email:			
Acreage of property: 2.986 Number of lots and proposed use: Vacant, proposed right-of-way			
Check one:			
 ☑ I will represent my application and petition before city staff and the City Council. ☐ I hereby authorize the person named in the attached affidavit to act as my representative in this application before city staff and the City Council. ☐ Owner of report signature 			

Please note: The signature of owner authorizes the City of Lubbock staff to visit and inspect the property that is subject to this application. The representative is the official contact person for this project and the single point of contact. All correspondence and communication – and responsibility for responding to same – will be conducted with the representative.

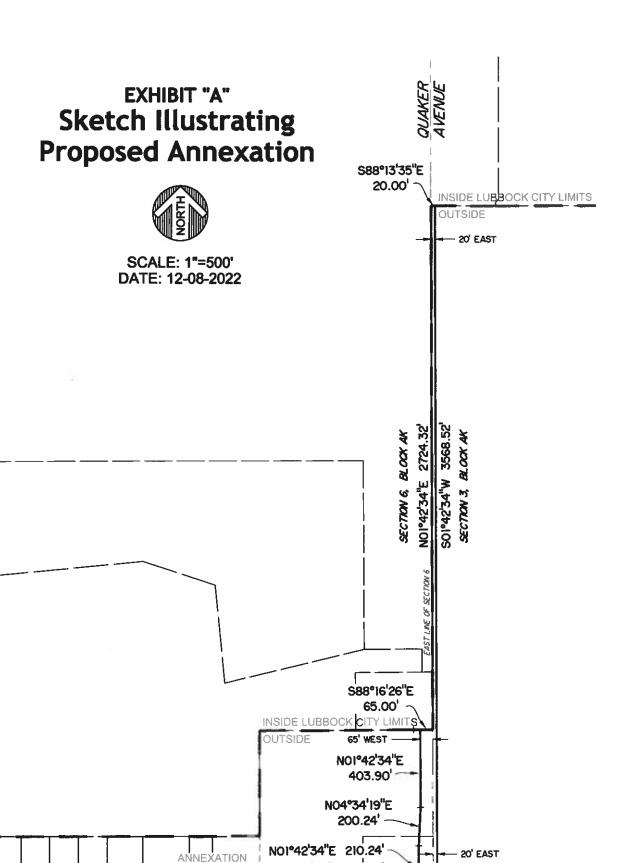


PETITION REQUESTING ANNEXATION BY AREA LANDOWNERS

TO THE MAYOR OF THE GOVERNING BODY OF LUBBOCK, TEXAS:

The undersigned owners of the hereinafter described tract of land, which is vacant and without residents, or on which fewer than three qualified voters reside, hereby waive any requirement to be offered a development agreement pursuant to the Texas Local Government Code Section 43.016, and petition your Honorable Body to extend the present city limits so as to include as part of the City of Lubbock, Texas, the territory described in the attached Exhibit A, including a survey, field notes or legal description with subdivision, lot and block.

We certify that the above described tract of land	d is contiguous and adjacent to the City of Lubbock, Texas, falls within
Lubbock County, and that this petition is signed	and duly acknowledged by each and every person having an interest in
•	Signed: Signed:
THE STATE OF TEXAS COUNTY OF	
BEFORE ME, the undersigned authority, on this	day personally appeared Tuomas Payne,
	and Busic Jombie , known to me to
be the persons whose names are subscribed to the the same for the purposes and consideration there	foregoing instrument and each acknowledged to me that he or she executed ein expressed.
Given under my hand and seal of office, this	2th day of December, 202?



N46°44'49"E 42.40"

POINT OF BEGINNING

N88°12'57"W4

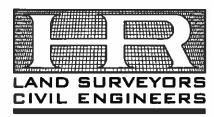
125.00' ⁾

WOODROW

ROAD



PENDING



HUGO REED AND ASSOCIATES, INC.

1601 AVENUE N / LUBBOCK, TEXAS 79401 / 806/763-5642 / FAX 806/763-3891 TEXAS REGISTERED ENGINEERING FIRM 5-760 TEXAS LICENSED SURVEYING FIRM 100676-00

EXHIBIT "A"

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THENCE N. 01°42'34" E., along a line 75 feet West of and parallel to the East line of said Section 6, a distance of 210.24 feet;

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THENCE S. 88°16'26" E., along the Southern boundary of said present city limits and the Southern boundary of said plat limits, a distance of 65.00 feet to a point in the East line of said Section 6, at the Southeast corner of said plat limits;

THENCE N. 01°42'34" E., along the East line of said Section 6 and the Eastern boundary of said plat limits, at 299.98 feet pass the Northeast corner of said plat limits, continuing along the East line of said Section 6, for a total distance of 2724.32 feet to a point in the Southern boundary of that portion of the present city limits as established by City of Lubbock Ordinance No. 2018-O0102, said point also being the Southwest corner of that 6.6532 acre tract described under CCFN 2021049568, OPRLCT, for the Northwest corner of this tract;

THENCE S. 88°13'35" E., along the Southern boundary of said present city limits and the Southern boundary of said 6.6532 acre tract, a distance of 20.00 feet to a point for the Northeast corner of this tract;

THENCE S. 01°42'34" W., along a line 20 feet East of and parallel to the East line of said Section 6 and the West line of said Section 3, a distance of 3568.52 feet to a point for the Southeast corner of this tract;

THENCE N. 88°12'57" W., at 20.00 feet pass the West line of said Section 3 and the East line of said Section 6, continuing for a total distance of 125.00 feet to the Point of Beginning.

Contains: 2.986 Acres

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

December 8, 2022

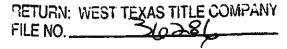
Robert A. Christopher

Registered Professional Land Surveyor No. 5167 Licensed State Land Surveyor, State of Texas ROBERT A. CHRISTOPHER

5167

SURVE

This document was prepared under 22 TAC §138.95, does not reflect the results of an on the ground survey, and is not to be used to convey or establish interests in real property except those rights and interests implied or established by the creation or reconfiguration of the boundary of the political subdivision for which it was prepared.



After Recording, Return To:

2017036785 7 PGS DEED

Brad Lowry, Esq. Jackson Walker LLP 2323 Ross Avenue Suite 600 Dallas, Texas 75201

NOTICE OF CONFIDENTIALITY RIGHTS. IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS. YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

GENERAL WARRANTY DEED WITH VENDOR'S LIEN

THE STATE OF TEXAS \$ \$ KNOW ALL PERSONS BY THESE PRESENTS. COUNTY OF LUBBOCK \$

That, effective as of October 2017, GUETERMALOUF, LLC, a Texas limited liability company, and MALOUF'S DEVELOPMENTS, LLC, a Texas limited liability company (collectively, "Grantor"), for and in consideration of the sum of Ten and No/100 Dollars (\$10.00) and other good and valuable consideration to it in hand paid by RED CANYON DEVELOPMENT, LLC, a Texas limited liability company ("Grantee") having an address at P.O. Box 64664, Lubbock, Texas 79464, the receipt and sufficiency of which are hereby acknowledged and confessed, and for the further consideration of the execution and delivery by Grantee to Peoples Bank ("Lender") of a real estate lien note in the original principal amount of \$3,120,000.00 secured by a vendor's lien herein retained and by the lien of a deed of trust to Larry Allen, Trustee on behalf of Lender, has GRANTED, BARGAINED, SOLD, and CONVEYED. and by these presents does hereby GRANT, BARGAIN, SELL, and CONVEY, unto Grantee, but subject to the Permitted Exceptions, all that certain lot, tract or parcel of real property situated in Lubbock County, Texas, described on Exhibit A attached hereto and made part hereof for all purposes (the "Land"), along with all buildings, improvements, fixtures and other items of real estate located thereon, together with all and singular Grantor's right, title and interest, if any, in any and all easements, licenses, rights of way, petroleum and mineral interests and royalties, air and subsurface rights, water rights, covenants, entitlements, development rights, declarant rights, benefits, privileges, tenements, hereditaments and appurtenances thereon or in anywise appertaining thereto, and all right, title and interest of Grantor in and to all roads, streets, avenues or alleys, open or closed, in front of or adjoining the real property (collectively, the "Property").

This General Warranty Deed is made and accepted expressly subject to liens described as part of the consideration and any other liens described in this instrument as being either assumed or subject to which title is taken; all presently recorded and validly existing easements, rights-of-way, restrictions, reservations, covenants, conditions, oil and gas leases, mineral interests and water interests outstanding in persons other than Grantor, and other recorded instruments, other than conveyances of the surface fee estate, that affect the Property; validly existing rights of adjoining owners in any walls and fences situated on a common boundary; any discrepancies, conflicts or shortages in area or boundary lines; any encroachments or overlapping of improvements and all restrictions, reservations, easements, covenants, conditions, and leases of record affecting the Property set forth on Exhibit B attached hereto and made a part hereof for all purposes Property (collectively the "Permitted Exceptions").



TO HAVE AND TO HOLD the Land, subject to the Permitted Exceptions, unto Grantee, its successors and assigns, forever; and Grantor does hereby bind itself and its successors, to WARRANT and FOREVER DEFEND all and singular the Land unto Grantee, its successors and assigns, against every person whomsoever lawfully claiming or to claim the same, or any part thereof, except as to the Permitted Exceptions to conveyance and warranty contained herein, by, through or under Grantor, but not otherwise.

But it is expressly agreed and stipulated that the vendor's lien, as well as superior title in and to the Property, is retained against the Property and assigned to Lender and its successors and assigns, without recourse, until the above-described note, all interest thereon and all other sums due and owing thereunder are fully paid according to the face, tenor, effect and reading thereof, when this deed shall become absolute.

REMAINDER OF PAGE INTENTIONALLY BLANK.
SIGNATURE PAGE FOLLOWS.



IN WITNESS WHEREOF, this General Warranty Deed has been executed by Grantor on the date set forth below to be effective as of the date first written above.

GRANTOR:

GUETERMALOUF, LLC,

a Texas limited liability company

Dain Guetersloh, Manager

By: //m/m/// / Dull Amanda Guetersloh, Manager

MALOUF'S DEVELOPMENTS, LLC,

a Texas limited liability company

By: Malouf, President

STATE OF TEXAS

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COUNTY OF LUBBOCK

This instrument was acknowledged before me on the day of October, 2017, by Tony Malouf, President of Malouf's Developments, LLC, a Texas limited liability company, in the capacity therein stated and on behalf of said limited liability company.



NOTARY PUBLIC, State of Texas

STATE OF TEXAS

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VANCY FLOYD

Moterny ID# 509841-3

COUNTY OF LUBBOCK

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This instrument was acknowledged before me on the _____ day of October, 2017, by Dain Guetersloh, manager and member of GueterMalouf, LLC, a Texas limited liability company, in the capacity therein stated and on behalf of said limited liability company.

NOTARY PUBLIC. State of Texas



STATE OF TEXAS

COUNTY OF LUBBOCK

day of October, 2017, by Amanda Guetersloh, manager and member of GueterMalouf, LLC, a Texas limited liability company, in the

capacity therein stated and on behalf of said limited liability company.

This instrument was acknowledged before me on the Z



Exhibit A - Property

Exhibit B - Permitted Exceptions

EXHIBIT A

DESCRIPTION OF THE PROPERTY

METES AND BOUNDS DESCRIPTION of a 407.91 acre tract of land, more or less, out of a 421.0 acre tract described under County Clerk File No. 2008029898 of the Official Public Records of Lubbock County, Texas, located in Section 6, Block AK, E.L. & R.R. Railroad Company Survey, Abstract No. 760, Lubbock County, Texas, being further described as follows:

BEGINNING at a 1" iron pipe found at the Northeast corner of Section 6, Block AK, E.L. & R.R. Railroad Company Survey, Abstract No. 760, Lubbock County, Texas, said 421.0 acre tract and this tract;

THENCE S. 01°42'34" W., along the East line of said Section 6 and the Eastern boundary of said 421.0 acre tract a distance of 5285.50 feet to a 1/2" iron rod with cap marked "HRA" set for the Southeast corner of said Section 6, said 421.0 acre tract and this tract;

THENCE N. 88°12'57" W., along the South line of said Section 6 and the Southern boundary of said 421.0 acre tract a distance of 2850.29 feet to a "MAG" nail found at the Southeast corner of a 1.5 acre tract, described under County Clerk File No. 2016040572 of the Official Public Records of Lubbock County, Texas and the most Southerly Southwest corner of this tract, from whence a 1/2" iron rod with cap marked "HRA" found at the Southwest corner of a 11.6 acre tract described under County Clerk File No. 2012010954 of the Official Public Records of Lubbock County, Texas and the Southwest corner of said 421.0 acre tract bears N. 88°12'57" W. a distance of 620.00 feet;

THENCE N. 01°43'00" E., along the Eastern boundary of said 1.5 acre tract at 40.00 feet pass a 1/2" iron rod with cap marked "STEVENS" found in the North line of a 40 foot right-of-way easement described in Volume 595, Page 29 of the Deed Records of Lubbock County, Texas, at 55.00 feet pass a point for the North line of a 55 foot right-of-way easement described in Volume 2356, Page 290 of the Real Property Records of Lubbock County, Texas, continuing for a total distance of 918.30 feet to a 1/2" iron rod with cap marked "STEVENS" found at the Northeast corner of said 1.5 acre tract and an "ell" corner of this tract:

THENCE N. 88°12'57" W., along the Northern boundary of said 1.5 acre tract a distance of 620.00 feet to a 1/2" iron rod found in the Eastern boundary of a 10.0 acre tract described in Volume 5475, Page 160 of the Real Property Records of Lubbock County, Texas and Volume 8961, Page 113 (Tract 1) of the Official Public Records of Lubbock County, Texas, at the Northwest corner of said 1.5 acre tract and the most Westerly Southwest corner of this tract, from whence a 1/2" iron rod with cap marked "HRA" found at the Southwest corner of said 11.6 acre tract and the Southwest corner of said 421.0 acre tract bears S. 01°43'00" W. a distance of 918.30 feet;

THENCE N. 01°43'00" E., along the Eastern boundary of said 10.0 acre tract, a 10.0 acre tract described in Volume 5475, Page 160 of the Real Property Records of Lubbock County, Texas and Volume 8961, Page 113 (Tract 2) of the Official Public Records of Lubbock County, Texas, a 8.5 acre tract described under County Clerk File No. 2012012167 of the Official Public Records of Lubbock County, Texas, a 3.1 acre tract, and a 0.62 acre tract described under County Clerk File No. 2007011235 of the Official Public Records of Lubbock County, Texas, a 0.62 acre tract described under County Clerk File No. 2010006136 of the Official Public Records of Lubbock County, Texas, a 9.9 acre tract described under County Clerk File No. 2017024987 of the Official Public Records of Lubbock County, Texas, a 9.9 acre tract described under County Clerk File No. 2017024313 of the Official Public Records of Lubbock County, Texas, a 5.0 acre tract described in Volume 1768, Page 541 of the Deed Records of Lubbock County, Texas, a 14.9 acre tract described in Volume 4938, Page 95 of the Real Property Records of Lubbock County, Texas, a



9.9 acre tract described under County Clerk File No. 2013049808 of the Official Public Records of Lubbock County, Texas, Lot 9, Tumbleweed Pass Estates, an Addition to the City of Lubbock, Lubbock County, Texas, according to the map, plat and/or dedication deed thereof recorded in Volume 4845, Page 206 of the Real Property Records of Lubbock County, Texas, Lot 8, Tumbleweed Pass Estates, an Addition to the City of Lubbock, Lubbock County, Texas, according to the map, plat and/or dedication deed thereof recorded in Volume 4564, Page 280 of the Real Property Records of Lubbock County, Texas, a 3.3 acre tract described under County Clerk File No. 2008022288 of the Official Public Records of Lubbock County, Texas and the Western boundary of said 421.0 acre tract for a total distance of 4365.73 feet to a 3/8" iron rod found in the North line of said Section 6 at the Northeast corner of said 3.3 acre tract, the Northwest corner of said 421.0 acre tract and this tract;

THENCE S. 88°14'24" E., along the North line of said Section 6 and the Northern boundary of said 421.0 acre tract a distance of 3469.63 feet to the Point of Beginning. Bearings are relative to Grid North, Texas Coordinate System of 1983, North-Central Zone, 2011 (epoch 2010.0). Distances are Surface, U.S. Survey Feet.



EXHIBIT B

PERMITTED ENCUMBRANCES

- 1. Lien for taxes and assessments for the year 2017 and subsequent years, not yet due and payable, and subsequent taxes and assessments by any taxing authority for prior years due to this sale or Grantee's use of the Property after the date hereof.
- 2. All leases, grants, exceptions or reservations of coal, lignite, oil, gas or other minerals, together with all rights, privileges and immunities relating thereto, appearing in the Official Real Property Records of Lubbock County, Texas, whether listed in this Exhibit "B" or not.
- 3. Right of way easement granted in favor of Lubbock County in instrument recorded in Volume 595, Page 29, of the Deed Records, Lubbock County, Texas.
- 4. Transmission right of way easement granted in favor of South Plains Electric Cooperative in instrument recorded in Volume 672, Page 92, of the Deed Records, Lubbock County, Texas.
- 5. Pipeline easement granted in favor of Adobe Gas Company in instrument recorded in Volume 1925, Page 966, of the Deed Records, Lubbock County, Texas.
- 6. Right of way easement granted in favor of Lubbock County in instrument recorded in Volume 2356, Page 290, of the Deed Records, Lubbock County, Texas.
- 7. Right of way easement granted in favor of Lubbock County in instrument recorded in Volume 3275, Page 91, of the Deed Records, Lubbock County, Texas.
- 8. Rights of any third parties relating to approximately 20 feet along the North portion of the Land lying within public road (146th Street) as set forth in Commissioners Court Minutes dated October 21, 1922, as shown on survey dated August 1, 2017, revised October 4, 2017, and October 6, 2017, prepared by Brent Carroll, Registered Professional Land Surveyor #5410.
- Grantor excepts from this conveyance and reserves to themselves, and their successors and
 assigns, all of their interest in the oil, gas and other minerals in, on and under and that may be
 produced from the Property.

FILED AND RECORDED

OFFICIAL PUBLIC RECORDS

Kelly Pinion, County Clerk Lubbock County, TEXAS 10/11/2017 03:48 PM

FEE: \$50.00 2017036785



COMPANY AGREEMENT OF

RED CANYON DEVELOPMENT, LLC, A TEXAS LIMITED LIABILITY COMPANY

This Company Agreement of **RED CANYON DEVELOPMENT, LLC**, a Texas Limited Liability Company is executed as of the Effective Date, by each of the persons who signs this Agreement under the caption "Members" on the signature page of this Agreement.

ARTICLE 1. DEFINITIONS

1.1 Certain Definitions. As used in this Agreement, each of the following terms has the meaning given to it below:

"Affiliate" shall mean (i) any person directly or indirectly controlling, controlled by or under common control with another person; (ii) any person that, directly or indirectly, owns or controls 10% or more of the outstanding voting securities or beneficial interests of such other person; (iii) any officer, director, trustee member, manager or general partner of such person; (iv) if such other person is an officer, director, member or manager, trustee or partner of another entity, then the entity for which that person acts in any such capacity; (v) any spouse or issue of the person or any person who is of a relationship described in Section 267 (b) of the IRS Code substituting 10% in place of 50%, where applicable, and (vi) an entity formed which is to be owned directly or indirectly for the benefit of any of the persons described in subparagraph (v) above. For purposes of this paragraph and for determining when a person is directly or indirectly controlling, controlled by or under, or controlled with any other person, the term "control" shall refer to an interest of 10% or more of the outstanding voting securities or beneficial interest of such person.

"Agreement" means this Company Agreement, as amended from time to time.

"Assignee" means a Person who receives a Transfer of all or a portion of the Membership Interest of a Member, but who has not been admitted to the Company as a Member in connection with such Transfer.

"Base Rate" means a rate per annum that from day to day is equal to the lesser of (a) the prime rate of interest as cited by The Wall Street Journal and (b) the maximum rate permitted by applicable laws, with each change in the rate to be made on the same date as any change in (a) or (b), as appropriate.

"Business Day" means any day other than a Saturday, a Sunday, or a holiday on which national banks in the State of Texas are permitted to be closed.

"Capital Account" means, with respect to any Member, the capital account maintained for a Member in accordance with the rules of Section 1.704-1(b)(2)(iv) of the Regulations.

"Capital Contribution" means, with respect to any Member, the amount of money and the initial Gross Asset Value of property (other than money) contributed to the Company by such Member (or its predecessors in interest) with respect to their Membership Interest in the Company reduced by any indebtedness either assumed by the Company in connection with such contribution or to which such property is subject when contributed.

"Certificate" means, at any time, the certificate of formation of the Company filed with the Secretary of State of the State of Texas pursuant to the TBOC, as amended or restated at such time.

"Charity" or "Charities" means an organization or organizations described in each of Sections 170(c), 2055(a) and 2522(a) of the Internal Revenue Code of 1986, as amended.

"Claims" means all losses, costs, liabilities, damages, and expenses (including court costs and fees and disbursements of counsel) incurred in connection with a Proceeding.

"Company" means the limited liability company formed pursuant to this Agreement.

"Distributable Cash" means all cash funds of the Company on hand at any time after payment of all expenses of the Company due as of such time, as reduced by the amount of the Working Capital Reserve and Liquidation Reserve, if any, at such time.

"Effective Date" means the later of (i) date all of the parties required to sign this Agreement have signed and delivered the Agreement, or (ii) the date the Company is formed, as set out herein.

"Fair Value" means, the fair value of the item being valued, as determined by an appraiser selected in accordance with the terms of this Agreement.

"Fiscal Year" means the fiscal year of the Company's operations as selected by the Managers of the Company for accounting purposes.

"Family Member" or "Family Members" means the individual Member or Members, all of their descendants and any person who is married to any of such individuals (or was married to any of such individuals at the time of such individual's death.

"Gross Asset Value" means, the value of any asset contributed to the Company as determined by the contributing Member and the Managers, and if no such agreement is reached, the assets adjusted basis for Federal income tax purposes.

"Gross Income" means, an amount equal to the Company's gross income as determined for Federal income tax purposes but computed with the adjustments in paragraphs (a) and (b) of the definition of "Profits" and "Losses."

"IRS Code" means, at any time, the Internal Revenue Code of 1986, as amended, or, from and after the date any successor statute becomes, by its terms, applicable to the Company, such successor statute, in each case as amended at such time by amendments that are,

at that time, applicable to the Company. All references to sections of the IRS Code include any corresponding provision or provisions of any such successor statute.

"Liquidation Reserve" means that reserve of Company funds held by the Company in connection with its process of winding up for the purpose of addressing obligations of the Company which may become due during the winding up process or after the termination of the Company.

"Majority" means, with respect to any group entitled to vote on a matter, more than Fifty Percent (50%) of the votes of that group.

"Management Fee" means, with respect to any calendar year, an amount determined for that year by the Members, if any (See, Section 6.4).

"Manager" means any Person named in the Articles as an initial manager of the Company and any Person hereafter elected as a manager of the Company as provided in this Agreement, but does not include any Person who has ceased to be a manager of the Company.

"Member" means each of the persons who execute this Agreement as a Member and becomes a Member under the terms of this Agreement as well as each person who is otherwise admitted to the Company as a Member under the terms of this Agreement.

"Membership Interest" means, at any time, the interest of a Member in the Company, including the right to receive distributions of Company assets and the right to receive allocations of income, gain, loss, deduction, or credit of the Company, but does <u>not</u> include the voting rights or management rights reserved to the Members under the terms of this Agreement (or the right to vote the Units relating thereto) until such holder of the Membership Interest has been admitted to the Company as a Member as to that Membership Interest.

"Notice" means any notice delivered in the manner set out in the "Miscellaneous" Section of this Agreement.

"Person" means any business entity, trust, estate, executor, administrator, or individual.

"Proceeding" means any threatened, pending, or completed action, suit, or proceedings, whether civil, criminal, administrative, arbitrative, or investigative, any appeal in such an action, suit, or proceeding, and any inquiry or investigation that could lead to such an action, suit, or proceeding.

"Profits and "Losses" means, the Company's taxable income or taxable loss as determined under the IRS Code but with the following adjustments:

(a) Any income of the Company that is exempt from Federal income tax and not otherwise taken into account in computing Profits and Losses pursuant to the definition of "Profits" and "Losses" will be added to such taxable income or loss;

(b) Any expenditures of the Company described in IRS Code Section 705(a)(2)(B) or treated as IRS Code Section 705(a)(2)(B) expenditures pursuant to Section 1.704-1 (b)(2)(iv)(i) of the Regulations that are not otherwise taken into account in computing Profits and Losses will be subtracted from such taxable income or loss.

"Section" means a section of this Agreement, unless the text indicates otherwise.

"Sharing Ratio" means the ratio in which the Members share Profits and Losses, from time to time, as set out under the terms of this Agreement.

"Super Majority" means, with respect to the Members or any group of Members entitled to vote on a matter, one or more members of that group who hold more than sixty six and 2/3rds of the votes held by that group.

"TBOC" means, at any time, the Business Organizations Code of the State of Texas, as amended, or, from and after the date any successor statute becomes, by its terms, applicable to the Company, such successor statute, in each case as amended at such time by amendments that are, at that time, applicable to the Company. All references to sections of the Business Organizations Code include any corresponding provision or provisions of any such successor statute.

"Transfer" means (a) any sale, transfer, encumbrance, gift, donation, assignment, pledge, hypothecation, or other transfer of any Membership Interest or any interest therein, whether voluntary or involuntary, and whether during the transferor's lifetime or upon or after the transferor's death, including any transfer by operation of law, by court order, by judicial process, or by foreclosure, levy, or attachment; or (b) the act of making any of the foregoing.

"Treasury Regulations" or "Regulations" means, at any time, the Federal income tax regulations promulgated under the IRS Code that are in effect at such time and that, by their terms, are applicable to the Company at such time. All references to sections of the regulations include any corresponding provision or provisions of any such successor regulations.

"Unit" means an increment of interest in the Company assigned to each Member in connection with a Membership Interest that represents an original Capital Contribution of \$100.00 and which, in each case where the Members, or a group of Members are entitled to vote or make a decision under the terms of this Agreement, will carry one vote

"Working Capital Reserve" means those reserves which the Managers determine to be necessary or useful in their reasonable discretion for future cost, expenses, capital investment, or contingencies which may be incurred by the Company.

1.2 Other Definitions; References to Definitions. Other terms defined herein have the meanings so given them. Each reference in this Agreement to a definition is a reference to a definition contained in this Agreement, unless the context expressly provides otherwise.

ARTICLE 2. ORGANIZATIONAL MATTERS

- 2.1 Formation. The Members hereby form the Company pursuant to the TBOC, as of the Effective Date.
- 2.2 Name. The name of the Company is "RED CANYON DEVELOPMENT, LLC." The business of the Company will at all times be conducted under such name and such other name or names as the Managers may select, from time to time.
- 2.3 Name and Address of Initial Members. The name and address of each Member is set forth on **Exhibit A**. Each such person shown on **Exhibit A** on the effective date of this Agreement is admitted to the Company as a Member upon its formation. Any change in the name or address of a Member of which the Company is given notice will be as set forth in the records of the Company and **Exhibit A** will be deemed amended appropriately. The Managers may substitute a new **Exhibit A** (indicating its effective date) to reflect such additional and/or different information. The records of the Company will be *prima facie* evidence of the status of any person as a Member.
- 2.4 Registered Office and Registered Agent. The address of the registered office of the Company in the State of Texas will be at 12402 Slide Road, Ste. 201, Lubbock, Texas 79424 and the name of the registered agent of the Company at such address will be Thomas K. Payne. The Managers may at any time, and from time to time, designate a new or successor registered office or registered agent, or both.
- 2.5 Principal Office and Other Offices. The principal address and place of business of the Company will be 12402 Slide Road, Ste. 201, Lubbock, Texas 79424 or such other place that is consistent with the purpose of the Company as the Managers may designate from time to time by notice to the Members. The Company may have such other office or offices as the Managers may designate from time to time by notice to the Members.
- 2.6 *Purpose*. The purpose of the Company is for the transaction of any and all lawful purposes for which a limited liability company may be organized under the TBOC.
- 2.7 Certificate; Foreign Qualification. A certificate of formation that meets the requirements of the TBOC will be filed with the Secretary of State of the State of Texas and will be amended from time to time as required by the TBOC. Upon the request of the Managers, each Member will immediately execute all certificates and other documents consistent with the terms of this Agreement that the Managers believe are necessary or desirable for the Managers to accomplish all filing, recording, publishing, and other acts as may be appropriate to comply with all requirements to form, operate, qualify, and continue the Company as a (a) limited liability company under the TBOC and the laws of the State of Texas and (b) limited liability company, or a company in which each Member has limited liability in all other jurisdictions where the Company proposes to operate.
- 2.8 Term. The Company's existence will commence on the effective date of the initial filing of the Certificate with the Secretary of State of the State of Texas and will continue until the Company terminates pursuant to the terms of this Agreement. The Company may not

conduct business until the Certificate has been filed with the Secretary of State of the State of Texas.

2.9 Merger, Conversion, Interest Exchange. The Company may effect or participate in a merger, conversion, or interest exchange (as such terms are defined in the TBOC) or enter into an agreement to do so with the consent of the Managers and of a Super Majority of the Members.

ARTICLE 3. MEMBERSHIP

- 3.1 *Initial Members*. The initial Members of the Company are the Persons executing this Agreement as Members as of the Effective Date of this Agreement, each of which is admitted to the Company as a Member effective contemporaneously with the execution by such Person of this Agreement and the formation of the Company.
 - 3.2 Sharing Ratio. The Sharing Ratio for each of the Members is set out below.

<u>Member</u>	Sharing Ratio
3 Wiggle, LLC Blake Womble Thomas K. Payne	60.00% 20.00% 20.00%
Total	100.00%

- 3.3 Limitations on Members' Rights. Except as otherwise specifically provided in these Regulations to the contrary, no Member shall have the right:
 - (a) To participate in the control of the business affairs of the Company except as expressly provided herein; transact any business on behalf of or in the name of the Company; or have any power or authority to bind or obligate the Company; such powers being vested in the Managers.
 - (b) To have his/her capital contribution repaid except to the extent provided in this Agreement.
 - (c) To require partition of the Company's property or to compel any sale or appraisal of the Company's assets.
 - (d) To sell, transfer, or assign his/her interest in the Company, except as provided in this Agreement.
- 3.4 New Members. The Managers may admit additional Members and issue additional Membership Interest with additional Units in the Company on the terms and conditions which are approved by a Super Majority of the Members. At the time any new Members are admitted to the Company the Sharing Ratios shall be adjusted to reflect the terms and conditions upon which the new Members have been admitted.

ARTICLE 4. CAPITAL CONTRIBUTIONS AND LOANS

- 4.1 Contribution. Simultaneously with the execution of this Agreement, the Members will contribute to the Company that property set out opposite their respective name on Exhibit B attached hereto. In consideration for such contribution, the Company shall cause to be issued to each of the Members (i) the Membership Interest and (ii) the number of Units in the Company set out on Exhibit A attached hereto.
- 4.2 (a) No later than September 15, 2017 each Member shall contribute to the company the following amounts in order to provide for equity required to purchase that certain land described as approximately 400 acres purchased from Guetermalouf, LLC. The Purchase Price of the land is \$4,750,000.00. The Managers will secure Debt equal to 65% of the Purchase Price. The Members will contribute the following percentages of the 35% Equity required:

<u>Member</u>	Sharing Ratio of Equity	
3 Wiggle, LLC	75.00%	
Blake Womble	25.00%	
Thomas K. Payne	0.00%	
Total	100.00%	

The Members will contribute the following percentages into the Company each month for the Member's portion of the monthly payment due on the 65% Debt:

<u>Member</u>	Sharing Ratio of Debt Payment
3 Wiggle, LLC	60.00%
Blake Womble	20.00%
Thomas K. Payne	<u>20.00%</u>
Total	100.00%

(b) Subsequent Additional Contributions. If Members by a Super Majority vote at a duly called regular or special meeting of the Members or pursuant to a consent without meeting determine that additional capital for the Company is required (above and beyond that set forth in paragraph 4.2(a) above), each Member shall make contribution to the additional capital in the same proportion as each Member's Sharing Ratio, within thirty (30) days after the Super Majority vote approving the additional capital. A Member's obligation to make any such additional capital contribution is binding upon the Member and any permitted successor to the Member, notwithstanding the Member's or successor's death, disability, or other change in circumstance. A failure by a Member to timely make a capital contribution (a "Failing Member") shall allow the Members who did timely make their capital contributions to elect, by a Majority vote of the Members who did make such capital contribution, one of the following options:

- (a) Make the Failing Member's capital contribution, but in that event, the non-failing Members who make such capital contribution shall be entitled to receive all distributions from the Company to which the Failing Member is entitled until such time as the non-failing Members have received an amount equal to the amount they so contributed on behalf of the Failing Member plus an amount the equivalent of interest at the rate of ten percent (10%) per annum. In the event the provisions of this subparagraph (a) are elected, each non-failing Member shall contribute the proportion of the Failing Member's required capital contribution as represents each such non-failing Member's Sharing Ratio as compared to the total Sharing Ratios of all non-failing Members; or
- (b) Allow the Failing Member to continue as a Member, but with the Company retaining an amount of cash distributions to which the Failing Member is entitled until such time as the amount so retained is equal to the amount of the capital contribution required of the Failing Member plus an amount the equivalent of interest at the rate of ten percent (10%) per annum.
- 4.3 No Additional Contributions. No Member will be required to make any Capital Contributions to the Company beyond those described in this Agreement, otherwise agreed to in writing by the Members from whom such additional Capital Contribution is sought or as may be required by a non-waivable provision of the TBOC.
- 4.4 Return of Contributions. No Member is entitled to the return of any part of its Capital Contributions or to be paid interest in respect of either its Capital Account or its Capital Contributions. An unreturned Capital Contribution is not a liability of the Company or of any Member.
- 4.5 Loans by Members. Any Member, with the Managers consent, may loan funds to or on behalf of the Company. Unless otherwise agreed by the Company and the lending Member, a loan described in this Section is payable on demand, bears interest at the Base Rate from the date of the advance until the date of payment, and is not a Capital Contribution.
- 4.6 Capital Accounts. There will be established for each Member a Capital Account on the books of the Company to be maintained and adjusted pursuant to this Agreement, including adjustments for contributions, distributions, and allocations of Profits and Losses.
- 4.7 Other Provisions With Respect to Capital Contributions. Except as otherwise provided in this Agreement, no Member will be entitled to priority over any other Member with respect to a return of its Capital Contributions.

ARTICLE 5. DISTRIBUTIONS AND ALLOCATIONS OF PROFITS AND LOSSES

5.1 Distributions of Distributable Cash. Except as set out in Section 5.2, Distributable Cash will be distributed to the Members at such times as the Managers determine,

in their sole reasonable discretion. Distributions of cash or property in respect of a Company Interest will be made only to the Person who, according to the books and records of the Company, is the holder of a Membership Interest in the Company on the date of such distribution. The date for any distribution of Distributable Cash will be determined by the Managers, in their sole discretion. The Distributable Cash of the Company (if any) will be distributed to the record owners of the Membership Interest in accordance with their Sharing Ratios. In the event of disagreement between the as to distributing or not distributing available cash will be resolved via a vote of the Members.

- 5.2 Prohibited Distributions. Distributions may not be made to the Members of the Company if, immediately after the making of the distribution, the liabilities of the Company will exceed the Fair Value of the Company's assets in the manner determined in Section 101.206 of the TBOC.
- 5.3 Working Capital Reserve. From time to time, the Managers, in their sole discretion, may establish and maintain a Working Capital Reserve. If and to the extent the Managers determine, in their sole discretion, that funds in the Working Capital Reserve that have not been utilized by the Company are no longer required to be so maintained, such funds will be released from the Working Capital Reserve and distributed in the manner in which they would have been distributed had they not been set aside to fund such Working Capital Reserve. The Managers will determine, in their sole discretion, the periods to which any funds released from the Working Capital Reserve are attributable.
- 5.4 Distribution in Kind. No assets will be distributed in kind, regardless of any potential unrealized depreciation or appreciation in respect thereof. Any in-kind distributions will be made proportionately among the Members in accordance with the percentage of the distributions the Members are entitled to receive, as set out in this Agreement.
- 5.5 Allocation of Profits and Losses. Profits and Losses for each Adjustment Period will be allocated among the Members in accordance with their Sharing Ratio as set out in this Agreement.
- 5.6 Special Allocations. The following special allocations will be made in the following order before allocations of Profits and Losses are made: None.
- 5.7 Qualified Income Offset Notwithstanding any other provision of this Article, in the event any Member unexpectedly receives any adjustments, allocations, on distributions described in Regulations Sections 1.704(b)(2)(ii)(d)(4), 1.704-1(b)(2)(ii)(d)(5), or 1.704-1(b)(2)(ii)(d)(6) of the IRS Code, items of Company income and gain shall be specifically allocated to each such Member in an amount and manner sufficient to eliminate, to the extent required by the Regulations, the Adjusted Capital Account Deficit of such Member as quickly as possible, provided that an allocation pursuant to this Section shall be made if and only to the extent that such Member would have an Adjusted Capital Account Deficit after all other allocations provided for in this Article have been tentatively made as if this Section were not in the Agreement. For the purpose of this Agreement, the term Adjusted Capital Account shall mean that Member's Capital Account after (i) crediting to the Capital Account any amount which the Member is deemed to be obligated to restore pursuant to 1.704-1(b)(2)(g)(1) and 1.704-1(b)(2)(5), crediting to the Capital Account any sums the Member is unconditionally obligated to

contribute to the Company, and (ii) debiting the items set out in 1.704(1)(b)(ii)(d)(4),(5) and (6). An Adjusted Capital Account Deficit means the deficit balance in such Adjusted Capital Account.

- 5.8 Minimum Gain Chargeback. Except as otherwise provided in Section 1 .704-2(f) of the Treasury Regulations relating to the IRS Code, notwithstanding any other provision to this Article, if there is a net decrease in the Member's Minimum Gain during any Company fiscal year and it is required for the allocations under this Article to have substantial economic effect, each Member shall be specially allocated items of Company income and gain for such year (and, if necessary, subsequent years) in an amount equal to such Member's share of the net decrease in Members Minimum Gain, determined in accordance with Treasury Regulation Section 1.704-2(g). Allocations pursuant to the previous sentence shall be made in proportion to the respective amounts required to be allocated to each Member pursuant thereto. The items to be so allocated shall be determined in accordance with applicable Treasury Regulations. This Section is intended to comply with the minimum gain chargeback requirements of Section 1.704-2(f) of the Treasury Regulations and shall be interpreted consistently therewith.
- 5.9 Basis Adjustments. To the extent an adjustment to the adjusted tax basis of any Company asset is required pursuant to IRS Code Section 732(d), Code Section 734(b), or Code Section 743(b), the Capital Accounts of the Member will be adjusted pursuant to Section 1.704-1 (b)(2)(iv)(m) of the Regulations.
- 5.10 Allocations Under Section 704(c) of the Code. In accordance with IRS Section 704(c) and the Treasury Regulations promulgated thereunder, income, gain, loss, and deduction with respect to any asset contributed to the capital of the Company will, solely for tax purposes, be allocated among the Members so as to take account of any variation between the adjusted basis of such asset to the Company for federal income tax purposes and the Gross Asset Value of the property. Allocations under this Section 5.9 are solely for purposes of federal, state, and local taxes and will not affect, on in any way be taken into account in computing, any Member's Capital Account on share of Profits and Losses or other items or distributions under any provision of this Agreement.
- 5.11 Curative Allocations. The allocations set forth in this Article 5 (the "Regulatory Allocations") are intended to comply with certain requirements of Regulations Sections 1.704-1(b). Notwithstanding any other provisions of this Article 5, the Regulatory Allocations shall be taken into account in allocating other Profits and Losses and items of income, gain, loss, and deduction among the Members so that, to the extent possible, the net amount of such allocations of other Profits and Losses, and other items and the Regulatory Allocations to each Member shall be equal to the net amount that would have been allocated to each such Member if the Regulatory Allocations had not occurred. The Managers shall have the discretion to make any modification to this Agreement deemed reasonably necessary to cause the allocations described in this Article 5 to more properly reflect the allocations intended hereunder, and each Member does hereby appoint each Manager, acting pursuant to a proper determination of the Managers, to act as attorney-in-fact through a power of attorney coupled with an interest to do so.

- (a) Withholding. Notwithstanding anything to the contrary contained in this Agreement, the Managers, in their sole discretion, may withhold from any distribution of Distributable Cash or other cash or other property to any Member contemplated by this Agreement any amounts due from such Member to the Company, or any other Member in connection with the business of the Company to the extent not otherwise paid. If any provision of the IRS Code, the Regulations, or state on local law or regulations requires the Company to withhold any tax with respect to a Member's distributive share of Company income, gain, loss, deduction, or credit, the Company will withhold the required amount and pay the same over to the taxing authorities as required by such provision. The amount withheld will be deducted from the amount that would otherwise be distributed to that Member, but will be treated as though it had been distributed to the Member with respect to which the Company is required to withhold. If at any time the amount required to be withheld by the Company exceeds the amount of money that would otherwise be distributed to the Member with respect to which the withholding requirement applies, then that Member will make a Capital Contribution to the Company equal to the excess of the amount required to be withheld over the amount, if any, of money that would otherwise be distributed to that Member and that is available to be applied against the withholding requirement. Each of the Members represent that each such Member is not aware of any provision of the IRS Code, the Regulations, on state or local law or regulations that currently require withholding of any tax by the Company with respect to such Member.
- Allocations Upon Transfers of Company Interests. If the Sharing Ratios (b) are increased or decreased by reason of the admission of a new Member or otherwise, then Profits and Losses for a fiscal year will be assigned pro rata to each day in the particular period of such fiscal year to which such item is attributable (i.e., the day on or during which it is accrued or otherwise incurred) and the amount of each such item so assigned to any such day will be allocated among the Members based upon their respective interests in the Company at the close of such day. For the purpose of accounting convenience and simplicity, the Company will treat a Transfer of, or an increase or decrease in Membership Interest that occurs at any time during a semimonthly period as having been consummated on the first day of such semi-monthly period, regardless of when during such semi-monthly period such Transfer, increase or decrease actually occurs (i.e., Transfers or increases or decreases made during the first 15 days of any month will be deemed to have been made on the first day of the month and Transfers or increases or decreases thereafter will be deemed to have been made on the 16th day of the month).
- (c) Other Items. Except as otherwise provided in this Agreement, all items of Company income, gain, loss, deduction, and other allocations not

otherwise provided for will be divided among the Members in proportions to their Sharing Ratios for the period during which such items were allocated.

ARTICLE 6. MANAGEMENT; RIGHTS AND DUTIES OF MANAGERS

- Management of Company Affairs. The Company will have one or more Managers who will have the full, complete, and exclusive authority to manage and control the business, affairs, and properties of the Company, to make all decisions regarding those matters, and to perform any and all other acts or activities customary or incident to the management of the Company's business, all subject to any restrictions imposed by applicable law or expressly imposed by this Agreement. In addition to the powers now or hereafter granted to the Managers of a limited liability company under applicable law or that are granted to the Managers under any provision of this Agreement (but subject to the limitations described in Section 6.1 and elsewhere in this Agreement), the Managers will have the power, for and on behalf and in the name of the Company, to carry out and implement the purpose of the Company set forth in Section 2.6 and to do all things necessary or desirable or expedient in connection therewith on incidental thereto and to manage, conduct, and supervise the day-to-day business affairs of the Company and, without limiting the generality of the foregoing, to cause the Company to do the following:
 - (a) to acquire, purchase, own, hold, maintain, develop, operate, sell, exchange, lease, sublet, assign, transfer, or otherwise dispose of tangible and intangible properties of any kind and character, including but not limited to real estate, whether improved or unimproved; and, to utilize the real estate and personal property of the Company as collateral for loans to the Company;
 - (b) to enter into, become bound by, and perform obligations under contracts and instruments and to make all decisions and waivers thereunder:
 - (c) to open, maintain, and close bank accounts, make withdrawals therefrom, and designate and change signatories on such accounts;
 - (d) to procure and maintain with responsible companies insurance, including general liability, bodily injury, and property damage insurance, in amounts that are available and that are generally carried by similar entities;
 - (e) to incur all legal, accounting, investment banking, independent financial consulting, litigation, brokerage, registration, and other fees and expenses as it may deem necessary or appropriate for carrying on and performing the powers and authorities herein conferred;
 - (f) to collect amounts due the Company, settle claims, prosecute and defend lawsuits, and handle matters with governmental agencies;
 - (g) to exercise the voting rights of the Company on account of its ownership in any other Person; provided however, that if the action to be voted on is

one that, if taken by the Company itself, would require the approval of the Members, such approval will be required before the Managers exercise such voting rights to approve such action;

- (h) to borrow funds or otherwise commit the credit of the Company; and
- (i) to make, constitute, and appoint, by written document duly executed and acknowledged, any Person who does not suffer any legal disability, contractual or otherwise, that would prohibit such Person from so acting, as the Company's true and lawful attorney and agent for it and in its name, place, and stead and for its use and benefit to perform any act or exercise any power or authority, all as specified in such document, that the Managers might perform or exercise in accordance with this Agreement; provided, however, that no such appointment will relieve the Managers of the duties and obligations imposed on them under this Agreement or the TBOC.
- 6.2 Limitations on Powers and Authority of the Managers. Notwithstanding the provisions of Section 6.1, the Managers may not cause the Company to do any of the following without the consent of a Majority of the Members:
 - (a) do any act in violation of this Agreement;
 - (b) do any act that would make it impossible to carry on the ordinary business of the Company (except in connection with the winding up of the Company's business);
 - (c) admit a Person as a Member except as otherwise expressly permitted by this Agreement;
 - (d) possess Company property or assign its rights in Company property, other than for a Company purpose;
 - (e) amend this Agreement except as otherwise expressly permitted by this Agreement;
 - (f) any acts which require the prior approval of the Members; or
 - (g) sell substantially all of the assets of the Company.
- 6.3 Reliance on Authority. In its dealings with the Company, a third party may rely on the authority of the Managers to bind the Company without reviewing the provisions of this Agreement or confirming compliance with the provisions of this Agreement.
- 6.4 Compensation. Beginning as of the date of this Agreement, the Managers will be entitled to receive a Management Fee for their services provided in managing the Company and its operations, in an amount to be determined by the Members. The Management Fee and any other compensation will be paid from time to time as determined by the Members.

- 6.5 Reimbursement. The Managers are not required to advance any funds to pay costs and expenses of the Company. If the Managers do incur out-of-pocket costs and expenses in performing their duties under this Agreement, including the portion of its overhead costs and expenses that the Managers determine are allocable to the Company, the Managers are entitled to be reimbursed by the Company for such costs and expenses.
- 6.6 Standards of Performance. Except as otherwise provided in this Agreement, the Managers will perform their duties with respect to the Company in good faith and will devote such time and effort to the Company business and operations as the Managers believe is reasonably necessary to manage the affairs of the Company prudently and only to the extent that the Company has the funds available to permit the Managers to perform such duties. The Managers and their respective affiliates, and all officers, directors, employees and agents acting in that capacity, shall not be liable to the Company or its Members for any losses sustained or liabilities incurred as a result of any act or omission of such Person, if they acted in good faith and in a manner it believed to be in, or not opposed to, the interests of the Company. In the event a question should arise as to a Manager regarding their liability in connection with their duties hereunder to the Company or another Member of the Company they shall have no more duty or liability in connection therewith than if they were acting as a member of the board of directors of a Texas company which was carrying out the duties and responsibilities of the corporation

ARTICLE 7. MEETINGS OF THE MANAGERS

- 7.1 Management. The powers of the Company shall be exercised by and under the authority of, and business and affairs of the Company shall be managed under the direction of, the Managers of the Company.
- 7.2 Number; Qualification; Election; Term. The Managers shall consist of at least one (1), but not more than three (3) Managers, none of whom need to be Members or residents of any particular state. The initial and sole Manager, as set out in the Certificate, is:

Thomas K. Payne

The Members hereby vote unanimously that subsequent to the initial formation of the Company Blake Womble and Thomas K. Payne will be the Co-Managers of the Company.

There shall remain two Managers unless the Members vote (as provided in Section 7.3 of this Agreement by Super Majority) to increase the number to not more than three Managers. Future or additional Managers shall be elected by a Majority of the Members, except as provided in Sections 7.3 and 7.5 of this Agreement. Each Manager elected shall hold office until his or her successor shall be elected and shall qualify.

7.3 Change in Number. The number of Managers may be increased or decreased from time to time by amendment to this Agreement only with the vote of a Super Majority of all the Members, but no decrease shall have the effect of shortening the term of any incumbent Manager. Any Manager's position to be filled by reason of an increase in the number of Managers shall be filled by election of a Majority of the Members.

- 7.4 Removal. Any Manager may be removed either for or without cause at any meeting of Members, by the affirmative vote of a Super Majority of the Members if notice of intention to act upon such matter shall have been given in the notice calling such meeting.
- 7.5 Vacancies. Any vacancy occurring in the Managers by reason of the increase in the number of Managers, may be filled by vote of a Super Majority of the remaining Managers though less than a quorum of the Managers. A Manager elected to fill a vacancy shall be elected for the unexpired term of his predecessor in office.
- 7.6 Election. Each Manager shall be elected by the vote of a Majority of the Members at a meeting of Members at which a quorum is present.
- 7.7 Meetings. Regular meetings of the Managers shall be held on such date or dates as may be determined by the Managers, from time to time. At least one regular meeting of the Managers will be conducted each year. Meetings of the Managers may be called by the President or any Manager on three (3) days notice to each Manager, either personally or by mail or by facsimile. Except as otherwise expressly provided by this Agreement, neither the business to be transacted at, nor the purpose of, any meeting need be specified in a notice or waiver of notice.
- 7.8 Place of Meetings. Meetings of the Managers may be held within or outside of the State of Texas.
- 7.9 Quorum; Unanimous Vote of Managers; Number of Votes Allocated to Each Manager. At meetings of the Managers, a majority of the Managers fixed by this Agreement must be present to constitute a quorum for the transaction of business. The majority act of the Managers present at a meeting at which a quorum is present shall be required for the act of the Managers, except as otherwise specifically provided by statute, the Certificate, or this Agreement. If a quorum is not present at a meeting of the Managers, the Managers present may adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum is present. With respect to all matters voted upon by the Managers, each Manager shall have one vote for each Unit owned by the Manager in the Company. Managers who are not Members shall be entitled to one vote.
- 7.10 Notice of Meetings. Notice stating the place, day and hour of the meeting shall be delivered to each Manager not less than three (3), nor more than sixty (60) days before the date of the meeting, by or at the direction of the Member or Members who called the meeting, the President, or other person calling the meeting. The actions or activities to be addressed at a meeting of the Managers (general or special) is not required to be set out in the notice.
- 7.11 Waiver of Notice. Attendance of a Manager at a meeting shall constitute a waiver of notification of the meeting, except where such Manager attends for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened. Notification of a meeting may also be waived in writing. Attendance at a meeting is not a waiver of any right to object to the consideration of matters required to be included in the notification of the meeting but not so included, if the objection is expressly made at the meeting,

- 7.12 *Minutes of Meeting*. The Managers shall keep regular Minutes of its proceedings. The Minutes shall be placed in the records of the Company.
- 7.13 Action Without Meeting. Any action that may be taken, or that is required by law or this Agreement to be taken by the Managers, or any group thereof, may be taken without a meeting, without prior notice, and without a vote, if a consent or consents in writing, setting forth the action so taken, will have been signed by the Managers whose consent is necessary to take the action. The consent may be in one or more counterparts. For purposes of this Section, a telegram, telex, cablegram, or similar transmission by a Person or a photographic, photostatic, facsimile, or similar reproduction of a writing signed by a Person will be regarded as signed by that Person. In any request for consent or approval from another Manager, the requesting Manager(s) may specify a response period, ending no earlier than the fifth day following the date on which the Manager whose consent or approval is sought receives the request. If the receiving Manager does not respond by the end of this period, it will be deemed to have not consented to or approved the action set forth in the request. The signed consent, or a signed copy, shall be placed in the Records of the Company.
- 7.14 Action by Telephone Conference. Members may participate in and hold a meeting by means of a conference telephone or similar communications equipment or other suitable electronic communications equipment, including video conferencing technology, or the internet, or a combination thereof, by means of which all Persons participating in the meeting can hear each other and participate in the meeting. Participation in such meeting will constitute attendance and presence in person at such meeting, except where a Person participates in the meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened.
- 7.15 Proxies. Managers are entitled to vote by and through a person holding a valid written proxy. A telegram, telex, cablegram, on similar transmission by the Manager, or a photographic, photostatic, facsimile, or similar reproduction of a writing executed by the Manager, shall be treated as an execution in writing for the purposes of this Agreement. No proxy shall be valid after eleven (11) months from the date of its execution, unless otherwise provided in the proxy. Each proxy shall be revocable unless expressly provided therein to be irrevocable and unless otherwise made irrevocable by law. Each proxy shall be filed with the Secretary of the Company prior to or at the time of the meeting

ARTICLE 8. COMMITTEES; DELEGATION OF AUTHORITY TO INDIVIDUAL MANAGERS

8.1 Designation. The Managers may, by the affirmative vote of a Super Majority of the Managers (or by the act of the sole Manager, if there be only one Manager), designate one or more committees, each of which shall be comprised of one or more Manager, and may designate one on more of its Managers as alternate participant of any committee, who may, subject to the limitations imposed by the Managers, replace absent or disqualified Managers at any meeting of that committee. In addition, the Managers may, by the affirmative vote of a Super Majority of the Managers, delegate to one or more Managers such authority and duties, and assign to them such titles, as the Managers may deem advisable; any such delegation may be revoked at any time by the Managers.

- 8.2 Authority. All committees and designated Managers, to the extent provided in such resolution, shall have and may exercise all of the authority of the Managers in the management of the business and affairs of the Company.
 - 8.3 Term. All committees shall serve for the term appointed by the Managers.
- 8.4 Change in Number. The number of committee members of a particular committee may be increased or decreased from time to time by resolution adopted by the Managers.
 - 8.5 Removal. Any member of a committee may be removed by the Managers.
- 8.6 Vacancies. A vacancy occurring on a committee (by death, resignation, removal or otherwise) may be filled by the Managers.
- 8.7 Meetings. Time, place and notice (if any) of a committee meeting shall be determined by the committee.
- 8.8 Quorum; Vote of a Majority. At meetings of a committee, a Majority of the number of committee members designated by the Managers shall constitute a quorum for the transaction of business. The act of a Majority of the committee members present at any meeting at which a quorum is present shall be the act of the committee, except as otherwise specifically provided by statute, the Certificate or this Agreement. If a quorum is not present at a meeting of a committee, the committee members present may adjourn the meeting from time to time, without notice other than an announcement at the meeting, until a quorum is present. Each committee member shall have one vote. Committee members are entitled to vote by and through a person holding a valid written proxy. A telegram, telex, cablegram, or similar transmission by the Committee member, or a photographic, photostatic, facsimile, or similar reproduction of a writing executed by the Committee member, shall be treated as an execution in writing for the purposes of this Agreement. No proxy shall be valid after eleven (11) months from the date of its execution, unless otherwise provided in the proxy. Each proxy shall be revocable unless expressly provided therein to be irrevocable and unless otherwise made irrevocable by law. Each proxy shall be filed with the Secretary of the Company prior to or at the time of the meeting.
- 8.9 Compensation. By resolution of the Managers, the members of a committee may be paid their expenses, if any, of attendance at each meeting of the committee and may be paid a fixed sum for attendance at each meeting of the committee or a stated salary as a member of the committee. No such payment shall preclude any committee member from serving the Company in any other capacity and receiving compensation therefore.
- 8.10 *Procedure*. Each committee shall keep regular minutes of its proceedings and report the same to the Managers when required. The minutes of the proceedings of a committee shall be placed in the records of the Company.
- 8.11 Action Without Meeting. Any action that may be taken, or that is required by law or this Agreement to be taken by the committee may be taken without a meeting, without prior notice, and without a vote, if a consent or consents in writing, setting forth the action so taken, will have been signed by the committee members whose consent is necessary to take the action.

The consent may be in one or more counterparts. For purposes of this Section, a telegram, telex, cablegram, or similar transmission by a Person or a photographic, photostatic, facsimile, or similar reproduction of a writing signed by a Person will be regarded as signed by that Person. The signed consent, or a signed copy, shall be placed in the Records of the Company.

- 8.12 Telephone and Similar Meetings. Committee members may participate in and hold a meeting by means of conference telephone, similar communications equipment on other suitable electronic communications equipment, including video conferencing technology, or the internet, or a combination thereof, by means of which all Persons participating in the meeting can hear each other and participate in the meeting. Participation in such meeting will constitute attendance and presence in person at such meeting, except where a Person participates in the meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened.
- 8.13 Responsibility. The designation of a committee and the delegation of authority to it shall not operate to relieve the Managers, or any member thereof, of any responsibility imposed upon it or him by law.

ARTICLE 9. OFFICERS AND AGENTS

- 9.1 Number; Qualification; Election; Term. The Company may have a President, Secretary; and such other officers (including any Vice Presidents and a Treasurer) and assistant officers and agents as the Managers may deem necessary.
 - (a) No officer or agent need be a Member, a Manager or a resident of Texas.
 - (b) Officers shall be elected by the Managers.
 - (c) Unless otherwise specified by the Managers at the time of election or appointment, or in an employment contract approved by the Managers, each officer's and agent's term shall end one year from the date of appointment or, if earlier, his death, resignation, or removal.
 - (d) Any two or more offices may be held by the same person.
- 9.2 Removal. Any officer or agent elected or appointed by the Managers may be removed by the Managers. Election or appointment of an officer or agent shall not of itself, nor shall anything in this Agreement, create contract rights.
- 9.3 *Vacancies*. Any vacancy occurring in any office of the Company (by death, resignation, removal or otherwise) may be filled by the Managers.
- 9.4 Authority. Officers and agents shall have such authority and perform such duties in the management of the Company as are provided in this Agreement or as may be determined by resolution of the Managers not inconsistent with this Agreement.
- 9.5 *President*. If the Company should elect to have one, the President shall be the Chief Executive Officer of the Company; he shall preside at all meetings of the Members and Managers, shall have general and active management of the business and affairs of the Company, and shall see that all orders and resolutions of the Members and Managers are carried into effect.

He shall perform such other duties and have such other authority and powers as the Managers may from time to time prescribe.

- 9.6 Vice Presidents. If the Company should elect to have one, the Vice Presidents, if any, in the order of their seniority, unless otherwise determined by the Managers, shall, in the absence or disability of the President, perform the duties and have the authority and exercise the powers of the President. They shall perform such other duties and have such other authority and powers as the Managers may from time to time prescribe or as the President may from time to time delegate.
- 9.7 Secretary. If the Company should elect to have one, the Secretary shall attend all meetings of the Managers and all meetings of the Members and record all votes, actions and minutes of all proceedings in the Records of the Company to be kept for that purpose and shall perform like duties for any committees when required. The Secretary shall perform such other duties and have such other authority and powers as the Managers may from time to time prescribe or as the President may from time to time delegate.
- 9.8 Treasurer. If the Company should elect to have one, the Treasurer, if any, shall have the custody of the Company funds and securities, shall keep full and accurate accounts of receipts and disbursements of the Company, and shall deposit all funds and other valuables in the name and to the credit of the Company in depositories designated by the Managers. The Treasurer shall perform such other duties and have such other authority and powers as the Managers may from time to time prescribe or as the President may from time to time delegate.
- 9.9 Compensation. The compensation of officers and agents shall be fixed from time to time by the Managers.

ARTICLE 10. MEETINGS AND CONSENTS OF MEMBERS

10.1 Voting Rights. Where Members are to make a determination under the terms of this Agreement, each Member is entitled to one vote for each Unit they hold in the Company. Only a Person who has been admitted to the Company as a Member shall be entitled to vote. A Person who receives a Transfer of all or a portion of the Membership Interest, or any other rights of a Member, shall not be entitled to vote as a Member until he has been admitted to the Company as a Member. The initial votes to which each initial Member is entitled is as follows:

<u>Member</u>	Number of Votes	Percentage
3 Wiggle, LLC	6.0	60.00%
Blake Womble	2.0	20.00%
Thomas K. Payne	2.0	20.00%
Total Votes	10.0	100.0%

10.2 Voting List. At least ten (10) days before each meeting of the Members, a complete list of the Members entitled to vote at the meeting, with the address of each and the number of Units held by each, shall be prepared by the Secretary. The list, for a period of ten

- (10) days prior to the meeting, shall be kept on file at the registered office of the Company and shall be subject to inspection by any Member at any time during usual business hours.
- 10.3 Record Date. The date upon which the notice of a meeting of the Members is mailed shall be the record date for the purpose of determining the Members entitled to vote at the Meeting. The record date for determining Members entitled to consent to action in writing without a meeting shall be the first date on which a written consent setting forth the action taken or proposed to be taken, is first delivered to the registered office, its principal place of business, or an officer or agent of the Company.
- 10.4 Method of Voting. At any meeting of the Members, every Member having the right to vote may vote either in person, or by proxy executed in writing by the Member. A telegram, telex, cablegram, or similar transmission by the Member, or a photographic, photostatic, facsimile, on similar reproduction of a writing executed by the Member, shall be treated as an execution in writing for the purposes of this Agreement. No proxy shall be valid after eleven (11) months from the date of its execution, unless otherwise provided in the proxy. Each proxy shall be revocable unless expressly provided therein to be irrevocable and unless otherwise made irrevocable by law. Each proxy shall be filed with the Secretary of the Company prior to or at the time of the meeting.
- 10.5 Meetings. At any time, either the Managers or Members owning Units entitling them to at least 10% of the Units of all Members may call a meeting of the Members to transact business that the Members or any group of Members may conduct as provided in this Agreement. A meeting may be called by notice to all Members entitled to vote at such meeting on or before the tenth (10th) day prior to the date of the meeting specifying the location and the time and stating the business to be transacted at the meeting. The chairperson of the meeting will be a Member selected by a Majority of the Members. At the meeting, the Members may take any action whether or not included in the notice of the meeting. Unless otherwise provided in this Agreement, all decisions of the Members shall be determined by a Super Majority of the Members.
- 10.6 Notice. Written or printed Notice stating the place, day and hour of the meeting shall be delivered not less than ten (10) nor more than sixty (60) days before the date of the meeting, either personally or by mail, by or at the direction of the President, the Secretary, or the officer or person calling the meeting, to each Member of record entitled to vote at the meeting.
- 10.7 Waiver of Notice. Attendance of a Member at a meeting shall constitute a waiver of Notification of the meeting, except where such Member attends for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened. Notification of a meeting may also be waived in writing. Attendance at a meeting is not a waiver of any right to object to the consideration of matters required to be included in the Notification of the meeting but not so included, if the objection is expressly made at the meeting.
- 10.8 Place of Meetings. Meetings of the Members may be held in or out of the State of Texas.
- 10.9 Action Without Meeting. Any action that may be taken, or that is required by law or this Agreement to be taken, by the Members or any group thereof, may be taken without a

meeting, without prior notice, and without a vote, if a consent or consents in writing, setting forth the action so taken, will have been signed by the Member(s) whose consent is necessary to take the action. The consent may be in one or more counterparts. In any request for consent or approval from another Member, the requesting Member(s) may specify a response period, ending no earlier than the fifth day following the date on which the Member whose consent or approval is sought receives the request. If the receiving Member does not respond by the end of this period, it will be deemed to have not consented to or approved the action set forth in the request.

10.10 Action by Telephone Conference. Members may participate in and hold a meeting by means of a conference telephone, similar communications equipment or other suitable electronic communications equipment, including video conferencing technology, or the internet, or a combination thereof, by means of which all Persons participating in the meeting can hear each other and participate in the meeting. Participation in such meeting will constitute attendance and presence in person at such meeting, except where a Person participates in the meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called on convened.

ARTICLE 11. CONTRACTS WITH RELATED PARTNERS AND INDEMNIFICATION OF MEMBERS, MANAGERS AND OFFICERS

- 11.1 Interested Managers, Officers and Members. If Section 11.2 is satisfied, no contract or other transaction between the Company and any of its Members, Managers, or officers or any company or firm in which any of them are directly or indirectly interested, shall be invalid solely because of their relationship with the Company or because of the presence of the Member, Manager, or officer at the meeting authorizing the contract or transaction, or his participation or vote in the meeting or authorization.
 - 11.2 Disclosure, Approval; Fairness. Section 11.1 shall apply only if:
- (A) the material facts of the relationship or interest of each such Member, Manager, or officer are known or disclosed:
 - (1) to the Managers, and they nevertheless authorize or ratify the contract or transaction, provided however, while any such interested Manager shall be counted in determining whether a quorum is present, their vote shall not be calculated in determining the Majority necessary to carry the vote; or
 - (2) to the Members, and the Members nevertheless authorize or ratify the contract or transaction by a Super Majority, with each such interested person to be counted for quorum and voting purposes; or
- (B) if the contract or transaction is fair to the Company as of the time it is authorized or ratified by the Managers or the Members, as the case may be.
- (C) the parties hereto acknowledge that Shaw Services, LLC is a construction company owned by Thomas K. Payne. Shaw Services, LLC will perform services such as water line and

sewer line installation and street construction, subject to the provisions contained in paragraphs 11.2(A) and 11.2(B) above.

- 11.3 *Indemnifications*. The Company agrees to indemnify, defend, and hold harmless each of the following:
 - (a) The Members, Managers and officers of the Company as well as their officers, managers, members, partners, owners, employees, and agents, (the "Indemnified Person") if any, from and against all Claims they may incur as a result of having been, being, on threatened to be made a named defendant or respondent in a Proceeding because it is or was a Member, Manager or officer in the Company or is performing or had performed the obligations of the Member, Manager or officer with respect to the Company, SPECIFICALLY INCLUDING CLAIMS BASED ON OR ARISING FROM THEIR SOLE, PARTIAL, OR CONCURRENT NEGLIGENCE, but excluding any such items incurred as a result of acts of gross negligence, willful or intentional acts against the Company.
 - (b) Each Indemnified Person from and against all Claims such Person may incur as a result of appearing as a witness or other participation in a Proceeding that involves or affects the Company;
 - (c) Each Indemnified Person from and against all Claims such Person may incur as a result of having performed or performing services for the Company, SPECIFICALLY INCLUDING CLAIMS BASED ON OR ARISING FROM THE INDEMNIFIED PERSONS SOLE, PARTIAL, OR CONCURRENT NEGLIGENCE.
 - (d) The rights of an Indemnified Person under this Section include the right to be paid on reimbursed by the Company for reasonable expenses incurred in defending any Proceeding in advance of its final disposition.
 - (e) If a claim for indemnification on advancement of expenses hereunder is not paid in full by the Company within 90 days after a written claim has been received by the Company, the Person seeking a remedy under this Section may at any time thereafter bring suit against the Company to recover the unpaid amount of the claim, and if successful in whole or in part, the Person seeking a remedy under this Section will also be entitled to be paid the expenses of prosecuting such claim.
 - (f) The right of any Indemnified Person under this Section will survive the termination of that Person's status as an Indemnified Person and the termination of this Agreement and the dissolution of the Company.
 - (g) In the event of the death of a Person seeking a remedy under this Section, the right under this Section will inure to the benefit of such Person's heirs, executors, administrators, and personal representatives.

(h) The rights conferred in this Section will not be exclusive of any other right that a Person seeking a remedy under this Section may have or hereafter acquire under any statute, resolution of Members, Managers agreement, or otherwise.

ARTICLE 12. RIGHTS, OBLIGATIONS, AND REPRESENTATIONS OF MEMBERS

- 12.1 Representations of Members. Each Member hereby severally represents and warrants to, and agrees with, the Company and each other Member as follows:
 - Authorization and Validity of Agreement. Such Member has full power (a) and authority to execute and deliver this Agreement, to perform the obligations of such Member hereunder, and to consummate the transactions contemplated hereby. The execution, delivery, performance of this Agreement by such Member, and the consummation by such Member of the transactions contemplated hereby, have been duly authorized and approved by such Member. This Agreement has been duly executed and delivered by such Member and is a valid and binding obligation of such Member, enforceable against such Member in accordance with its terms, except to the extent that its enforceability may be subject to applicable Bankruptcy Laws and to general equitable principles. The execution and delivery of this Agreement does not, and the consummation of the transactions contemplated hereby will not, violate any provision of any agreement, instrument, order, regulation, judgment, or decree to which such Member is subject or by which such Member or any asset of such Member is bound. Such Member is under no legal disability, contractual or otherwise, that prohibits such Member from entering into this Agreement and performing the obligations of such Member hereunder. Such Member is the sole party in interest in the Units of such Member under this Agreement and, as such, is vested with all legal and equitable rights in such Units.
 - (b) Such Member is acquiring the Units of the Company for the account of such Member and not with a view to distribution thereof within the meaning of the Securities Act of 1933, as amended, or any state securities laws. The Member will not Transfer the Units in contravention of that act or any applicable state or Federal securities laws.
 - (c) Such Member acknowledges and understands that the Managers are granted broad discretion and authority under this Agreement and that the Managers' exercise of such broad discretion and authority may impair the value of such Member's Membership Interest. Such Member further acknowledges and understands that the Managers would not cause the Company to issue Membership Interest to the Member if the Managers did not have such broad discretion and authority and such Member agrees not to challenge the Manager's exercise of such discretion and authority.

(d) Pursuant to the Texas Securities Act, Art. 581-1 et seq. (the "Texas Securities Act"), the liability under the Texas Securities Act of a lawyer, accountant, consultant, the firm of any of the foregoing, and any other Person engaged to provide services relating to an offering of securities of the Company (such Persons, "Service Providers") is limited to a maximum of three times the fee paid by the Company or seller of the Company's securities to the Service Provider for the services related to the offering of the Company's securities, unless the trier of fact finds that such Service Provider engaged in intentional wrongdoing in providing the services. By signing below, each Member hereby acknowledges the disclosure provided in this paragraph.

ARTICLE 13. BANK ACCOUNTS, INVESTMENTS, GENERAL ACCOUNTING PROVISIONS, AND REPORTS

- 13.1 Books of Account; Access; Fiscal Year. The Managers, at the expense of the Company, shall maintain for the Company those books and records required by Sections 3.151 and 101.501 of TBOC and such other books and records of account as the Managers, in their reasonable discretion, deem appropriate. Books and records of the accounts of the Company shall be maintained on a basis consistent with appropriate provisions of the IRS Code, containing, among other entries, a Capital Account for each Member.
- 13.2 Access to Books and Records. Books of account are to be kept at the principal office of the Company. Except as set out herein, the Managers may restrict the access of one or more Members to certain books, records, and accounts to the extent the Managers believes it to be in the best interest of the Company to do so. The Managers may require any Person to whom confidential information of the Company is provided pursuant to this Section to maintain the confidentiality of such information on such terms as the Managers may prescribe. The above notwithstanding:
 - (a) The Company shall make available to a Member, or Assignee, at its registered office, the address of the principal office of the Company;
 - (b) The Company shall make available to a Member or Assignee, within five (5) days following their delivery of written request, each of those items required to be maintained under Sections 3.152 and 101.502 of the TBOC and such other information regarding the business of the Company that is reasonable for the person to examine and copy;
 - (c) The Company shall make available to a Member or Assignee free of cost, the Certificate, this Agreement with all amendments, and the last 6 years Federal tax returns; and
 - (d) The Company shall make available to a Manager or Committee Member and records pursuant to Sections 3.151, 3.152 and 3.153 of the TBOC and

- such other information regarding the business of the Company that is reasonably related to the person's services.
- (e) The Company will provide Balance Sheet and P & L statements to each Member no less often than quarterly.
- Year, the Managers will use commercially reasonable efforts to cause the Members to be furnished with a balance sheet, an income statement, and a statement of changes in Members' capital of the Company for, and as of the end of, such year. These financial statements shall be certified by certified public accountants chosen by the Managers pursuant to a compilation review of the financial records of the Company conducted by the certified public accountants. The Managers also may cause to be prepared or delivered such other reports as it may deem appropriate. The Company will bear the costs of such reports.
- 13.4 Periodic Reports. As soon as reasonably practicable within ten (10) days following the end of each month, the Managers will use commercially reasonable efforts to cause the Members to be furnished with a balance sheet, and an income statement, as of the end of such period reflecting the information for that period of the Fiscal Year, as well as a year to date presentation of that information. These financial statements may be created internally by the Company, or, at the sole discretion of the Managers, prepared by certified public accountants chosen by the Managers. The Managers also may cause to be prepared or delivered such other reports as it may deem appropriate. The Company will bear the costs of all such reports.
- 13.5 Reliance on Third Party Reports. In connection with the discharge of their duties under the terms of this Agreement, or the exercise of their powers, Managers, Committee Members and Officers of the Company shall have the right to rely upon information, opinions, reports and statements, including financial statements and other financial data concerning the Company or another Person presented by an officer, employee, legal counsel, certified public accountant, investment banker, committee of which they are not a member, or other person they reasonably believe possess professional expertise in the matter, unless they have knowledge of matters that would make this reliance unwarranted.
- 13.6 Bank Accounts. The Managers will establish and maintain, in the name of the Company, one or more accounts at one or more banks. All Company funds will be deposited into such account(s). No other funds will be deposited into any such account. Funds deposited in any such account may be withdrawn only to pay Company debts or obligations, to make distributions to the Members pursuant to this Agreement, or to make Permitted Investments.
- 13.7 Permitted Investments. Company funds may be invested in such investments as the Managers determine.
- 13.8 Audits at Request of Member. Any Member shall have the right to have a compilation, review or audit conducted of the Company books (the "Audit"), which may be requested with respect to the annual financial statements of the Company. The cost of the Audit shall be borne by the Member or Members requesting the performance of the Audit. The Audit shall be performed by an accounting firm that provides accounting services for the Company. Not more than one (1) Audit shall be required by any or all of the Members for any fiscal year.

ARTICLE 14. TAXES

- 14.1 Tax Returns. The Managers will use commercially reasonable efforts to cause to be prepared and filed all necessary federal and state income tax returns for the Company. Each Member will furnish to the Managers all pertinent information in its possession relating to Company operations that is necessary to enable the Company's income tax returns to be prepared and filed.
- 14.2 Tax Elections. The Company will make those tax elections the Managers may deem appropriate and in the best interests of the Members. The above notwithstanding, neither the Company nor any Member may make an election for the Company to be excluded from the application of the provisions of subchapter K of chapter 1 of subtitle A of the IRS Code or any similar provisions of applicable state law.
- 14.3 Tax Matters Partner. The Managers will appoint one of the Managers to be the "tax matters partner" of the Company pursuant to section 6231(a)(7) of the IRS Code and may change the tax matters partner from time to time as they may determine necessary. In the event the Person appointed as the tax matters partner shall be removed, resign this position or no longer qualify, a Majority of the Members shall designate another Manager to be the "tax matters partner" of the Company pursuant to section 6231 (a)(7) of the IRS Code. Any Manager who is designated tax matters partner" shall take such action as may be necessary to cause each Member to become a "notice partner" within the meaning of section 6223 of the IRS Code. Any Manager who is designated "tax matters partner" shall inform each Member of all significant matters that may come to its attention in its capacity as "tax matters partner" by giving notice thereof as soon as reasonably possible.

ARTICLE 15. ASSIGNMENT OF MEMBERSHIP INTERESTS

- 15.1 Assignment by Member. Except as hereinafter expressly permitted in this Article and except for a sale to another Member which satisfies the provisions of Section 15.3, a Member's interest in the Company shall not be sold, transferred, pledged, assigned or otherwise disposed of, in whole or in part, without (i) the written consent of all Members, which consent may be granted or denied in the sole and absolute discretion of the Members and (ii) complying with the applicable terms of this Article. Unless a transferee becomes a substituted Member in accordance with the provisions set forth below, such transferee shall not be entitled to any of the rights or powers granted to a Member hereunder, other than the right to receive allocations of income, gain, loss, deduction, credit, and similar items and distributions to which the assignor would otherwise be entitled to the extent such items are assigned.
- 15.2 Permitted Transfers. During his or her lifetime, or upon death, an individual who is a Member (or a trust that is a Member) may, without the prior written consent of the other Members, sell, transfer, convey, assign or bequeath any part or all of the Member's interest in the Company to:

any Family Member;

any Charity; and

any trust for the exclusive benefit of one or more Family Members, Charities or spouses of Family Members, provided that such trust may not distribute an interest in the Company to the spouse of a Family Member. A remote contingent beneficiary shall not be considered a trust beneficiary.

15.3 Right of First Refusal on Sale.

(a) In the event a Member, representative of a Member or any Person to whom a Member's interest has been validly assigned under the terms of this Agreement (collectively, a "Selling Party") desires to sell all or any portion of its Membership Interest, the Selling Party shall first offer to sell such portion of its Membership Interest to the Members in accordance with the terms of this Section. The offer to sell (herein so called) to the Members (i) shall be in writing and shall grant to the Members the right to purchase such interest for the consideration (which shall be expressed in monetary terms, in U.S. Dollars) and on the terms as set forth in such offer, and (ii) shall not expire until the date 30 days from the date the Members receive the offer (the "Expiration Date"). The Members shall have the prior right and option to accept the offer to purchase the portion of the Selling Party's interest in the Company so offered during the 30-day period ending on the Expiration Date. The Members that accept the offer to sell prior to the Expiration Date (the "Purchasing Members") shall purchase the offered interest in the Company in accordance with their respective Membership Interests or such other ratio as the Purchasing Members so agree.

The date the offer to sell is accepted by any Purchasing Member shall be the date the notice of acceptance is postmarked (or, if not mailed, the date the Selling Party acknowledges in writing receipt of the notice of acceptance). Acceptance of the offer shall be effective only if the Purchasing Members accept, in the aggregate, the offer to purchase the entire portion of the Selling Party's interest in the Company so offered. If the offer to sell is not accepted by the Purchasing Members, the Selling Party may transfer that portion of its interest in the Company to which the offer to sell pertains to any transferee (subject to the provisions of Section 15.4) on terms and conditions no less favorable to the Selling Party than those contained in the offer to sell at any time during a period that shall end 180 days after the Expiration Date, provided that the transferee thereof shall execute and deliver to the Managers a valid and binding agreement to the effect that the interest in the Company so transferred shall continue to be subject to the provisions of this Section and that the right of first offer of the Members shall extend to any proposed disposition of such interest by the transferee. If, however, no sale to a transferee is consummated during the period that ends 180 days after the Expiration Date, the Members' right of first refusal as to the portion of the Selling Party's interest in the Company to which the offer to sell pertains shall continue in full force and effect and any proposed transfer thereof shall first be subject to the Members' right of first offer as set forth in this Section. Additionally, the sale to a transferee of the portion of the Selling Party's interest in the Company to which the offer to sell pertains in accordance with the provisions of this Section shall not affect the Members' right of first offer pursuant to this Section with respect to the remainder of the Selling Party's interest in the Company.

In the event that Purchasing Members elect to purchase that portion of the Selling Party's interest in the Company to which the offer to sell pertains, the Purchasing Members and the Selling Party shall be bound to proceed with the sale for the consideration and upon the terms applicable thereto, which shall be consummated at such location as shall be agreed upon by the Purchasing Members and the Selling Party on or before the first business day after the expiration of 90 days from the date of the Expiration Date. At the time of closing, the Purchasing Members shall deliver such consideration as required pursuant to the offer to sell and the Selling Party shall deliver or cause to be delivered to the Purchasing Members, against receipt of such consideration, such assignments and other instruments of conveyance, warranty of title, transfer and assignment of the portion of the Selling Party's interest in the Company to be conveyed hereunder as shall be effective to vest in the Purchasing Members good title and interest in and to such interest in the Company, free and clear of any and all liens, encumbrances, conditions, assessments, and restrictions (to the extent consistent with the offer to sell). From the time of such closing, the Selling Party, from time to time at the request of a Purchasing Member and without further consideration, shall do, execute, acknowledge and deliver, or shall cause to be done, executed, acknowledged and delivered, all such further acts, deeds, assignments, transfers, conveyances, powers of attorney and assurances as a Purchasing Members interest in the Company so conveyed to such Purchasing Member, his or her successors and assigns.

- 15.4 Substitution of Members. In addition to compliance with the provisions of Section 15.1 to the extent applicable, a transferee of the interest of a Member may become a substituted Member subject to the following terms, conditions and limitations:
 - (b) The transferor has given the transferee the right to become a substituted Member;

All Members have given their written consent to the substitution of the transferee as a Member;

The transferee has paid to the Company all costs and expenses incurred in connection with such transferee's substitution as a Member, which costs and expenses will include, without limitation, all legal and accounting fees and expenses incurred by the Company or its counsel and all costs incurred in amending this Agreement and in preparing, filing, recording and publishing any certificates and instruments necessary or appropriate in connection therewith; and

The transferee shall have executed and delivered such instruments and documents, in form and content satisfactory to the Managers, as the Managers may deem necessary, advisable or appropriate to effect the substitution of such transferee as a Member.

The Company and the Managers will be entitled to consider the owner of any Membership Interest in the Company as set forth in the records of the Company as the absolute owner thereof for all purposes. Neither the Company nor the Managers will incur any liability for distributions of cash or other property made in good faith to the owner of an interest in the Company as reflected on the Company's records until such time as a written assignment of such interest has been received and accepted by the Managers and recorded on the books of the Company. No

Member shall under any circumstances sell, pledge, transfer, assign or otherwise dispose of its interest in the Company other than as provided in this Article, and in the event any such action should be attempted, such will be null, void and ineffectual and will not bind the Company or the Managers. In no event will any purported transfer of a Membership Interest in the Company, by operation of law or otherwise, require the Managers to account to more than one person with respect to such transferred interest. In the event of a transfer by a Member, for purposes of allocations between the transferor and the transferee of deductions, credits and income of the Company for federal, state and local income tax purposes, the transfer shall be recognized by the Company effective as of the first day of the month following the date of the transfer.

ARTICLE 16 COMPETITION

Neither this Agreement nor the relationship created hereby will preclude or limit, in any respect, the right of any Member or Manager on any Affiliate of any Member or Manager to engage, directly or indirectly, through participation, investment, or otherwise, in any opportunity or business of any type, including those that may be the same as or similar to the Company or its business, those that compete with the Company, and those in which the Company has invested. No Member, Manager, or any Affiliate of a Member or Manager will have any obligation to offer to the Company or any other Member the right to participate in any such activity. Neither the Company nor any other Member or Manager or any Affiliate of a Member or Manager will have any right, by virtue of this Agreement or the relationship created by this Agreement, with respect to any such activity.

ARTICLE 17. DEFAULT BY MEMBER

- 17.1 Default of a Member. Any one of the following events shall be deemed to be an Event of Default (the "Default") by a Member:
 - (a) Failure to make a Capital Contribution in the manner or time periods set out herein.
 - (b) A material violation of any other provisions of this Agreement.
 - (c) The gross negligence, fraud, theft or willful misconduct committed by the Member against the Company or one or more of the Members in connection with the operation of the Company.
- 17.2 Terminations of Defaulting Member. In the event of a default by a Member, the Member shall be provided written notification to cure such Default from the Company or any one or more Members who are not in default (the "Non-Defaulting Members"). The defaulting Member (the "Defaulting Member") shall have thirty (30) days following receipt of such notice to cure said Default (the "Cure Period"). If the Defaulting Member fails to cure the Default within the Cure Period, the Company shall provide Notice to the Non-Defaulting Members (the "Default Notice") and the Non-Defaulting Members may pursue any and all remedies that may be available, at law and in equity, to cure such Default, including the remedy of specific performance if it is available.

- Right to Purchase Upon Default. In addition to each of the remedies for a Default by a Member, as set out above, should a Default occur, each of the Non-Defaulting Members shall have the right to purchase all or a portion of the Defaulting Member's Membership Interest (the "Defaulting Interest") for Eighty-Five Percent (85%) of its Fair Value determined as of the date of such Default Notice. Such right may be exercised by any one or more of the Non-Defaulting Members giving, within forty five (45) days after such Default Notice, to the Defaulting Member notice of its desire to purchase all or a portion of such Defaulting Interest (for the purpose of this Section the "Notification Date"). If a Member provides a timely notice to purchase all on any portion of the Defaulting Interest, as soon as possible thereafter, the Company shall cause the Fair Value of the Defaulting Interest to be determined as of the date of such Default Notice. If there is more than one Non-Defaulting Members who desires to exercise such right (each, a "Purchasing Member"), the Defaulting Interest will be allocated among all Purchasing Members as follows: First, a portion of the Defaulting Interest will be allocated to each Non-Defaulting Member to the extent of the lesser of (i) the Non-Defaulting Member's pro rata portion (based on the number of Units owned by such Non-Defaulting relative to the number of Units of all Non-Defaulting Members) of the Defaulting Interest and (ii) the portion of the Defaulting Interest that such Non-Defaulting Member expressed a desire to purchase in such notice. If, after such allocation, any portion of the Defaulting Interest has not been allocated to the Non-Defaulting Members (the "Residual Defaulting Interest"), a similar allocation will be made of the Residual Defaulting Interest among the Non-Defaulting Members who have not been allocated the full portion of the Defaulting Interest that such Non-Defaulting Members expressed a desire to purchase in their respective notices. Such procedure will be continued until all of the Defaulting Interest has been fully allocated, if possible.
- 17.4 Closing. If one or more Members elect to purchase the Defaulting Interest under the terms of this Article, the Closing shall be on or before that date which is the later of thirty (30) days after (i) the Notification Date or (ii) the determination of the Fair Value under the terms of this Agreement. At the Closing, the Defaulting Member will transfer the Membership Interest to be sold to the Non-Defaulting Members, free and clear of any liens or encumbrances (other than those which may have been created to secure any indebtedness or obligations of the Company). At the Closing, the purchase price to be paid for the Defaulting Interest shall be paid to the Defaulting Member in cash.
- 17.5 Cumulative Remedies. Except as otherwise expressly set forth in this Agreement, the rights and remedies provided by this Agreement are cumulative and the use of any one right or remedy by any party will not preclude or constitute a waiver of its right to use any or all other remedies. Such rights and remedies are given in addition to any other rights the Members may have by law, statute, ordinance, or otherwise.
- 17.6 Cure of Default. The Default of any Member may be remedied by any one or more Non-Defaulting Members; provided however, to the extent such Default has occurred a remedy shall not terminate the rights of the Company or Non-Defaulting Members under this Article. In such event, any amount paid out to cure such Default, together with all reasonable expense and interest at the highest lawful rate not to exceed the Base Rate, shall be repaid to the Non-Defaulting Members by the Defaulting Member. Such advance with interest shall be repaid out of either (i) the distributions to the Defaulting Member pursuant to this Agreement, until the Non-Defaulting Member is fully reimbursed, or (ii) shall be paid out of the proceeds from the

sale of the Defaulting Member's Membership Interest pursuant to this Article. Any cure of a Default under this Article shall have no effect on the other Member's rights to acquire a Defaulting Member's Membership Interest under the terms of this Agreement.

ARTICLE 18. WINDING UP

- 18.1 Event Requiring a Winding Up. Except as set out below, upon the happening of the first to occur of the following events, the Company will begin to wind up its affairs;
 - (a) the execution of an instrument approving the winding up of the Company by a Super Majority of the Members;
 - (b) the entry of a decree of judicial dissolution under Section 11.051(5) of the TBOC.
 - (c) the last remaining Member discontinues being a Member of the Company.
 - (d) the occurrence of a non-waivable event under the terms of the TBOC which requires the winding up of the Company.

No other event will require the winding up of the Company.

18.2 Revocation. If an event of the type described in Section 19.1(a) occurs or any other voluntary act of the Members which require a winding up of the Company, the event may be revoked at any time prior to the termination of the Company by a determination of a Super Majority of the Members.

18.3 Cancellation.

- (a) If an event of the type described in Section 19.1(c) occurs, the event may be cancelled, in writing, at any time within 1 year after the occurrence of such event if (a) the personal representative of the last Member agrees in writing to (i) a continuation of the Company and (ii) the admission of the personal representative of the Member or its nominee or designee as a Member, or (b) a new Member is admitted to the Company by either the personal representative of the last Member, the Mangers, or a Majority of the Assignees (in this case only, allowing the assignees of such Membership Interest to vote the Units of the Membership Interest they have been assigned).
- (b) If an event of the type described in Section 19.1(d) occurs, the event may be cancelled, in writing, at any time within 1 year after the occurrence of such event by a determination of a Super Majority of the Members.
- 18.4 Interim Manager. If an event requiring winding up occurs and there is no remaining Managers, a Majority of the Members may appoint an interim manager of the

Company, who will have and may exercise only the rights, powers, and duties of the Managers necessary to preserve the Company assets, until new Managers, if any, are elected.

18.5 Effect of Event Requiring a Winding Up. If an event requiring a winding up occurs and is not canceled or revoked, the Company will begin winding up its affairs and will continue until the assets have been distributed as set out below.

ARTICLE 19. WINDING UP AND TERMINATION

- 19.1 Winding Up and Termination.
 - (a) General. As expeditiously as possible following the occurrence of an event requiring a winding up, the Managers will proceed to wind up the affairs of the Company, liquidate assets, pay liabilities, and make liquidating distributions to the Members, in the following order of priority:
 - (i) the Managers shall cause an accounting to be made by a recognized firm of certified public accountants of the Company's assets, liabilities, and operations through the last day of the calendar month in which the event requiring winding up occurs;
 - (ii) the Managers will use commercially reasonable efforts to maximize the value of the Company assets and then to sell Company assets. Any resulting Profits or Losses from each sale will be computed and allocated to the Capital Accounts of the Members in the manner described in Article 5;
 - (iii) the Managers shall cause the notice described in article 11.052 of TBOC to be mailed to each known creditor of and claimant against the Company in the manner described in that Section);
 - (iv) the Managers will pay, to the extent there are funds available therefor, all of the Company's obligations and establish such reserves as the Managers deems prudent (the "Liquidation Reserve");
 - (v) all remaining assets of the Company shall be distributed to the Members as follows:
 - (A) with respect to all Company property that has not been sold, the Fair Value of that property shall be determined and the Capital Accounts of the Members shall be adjusted to reflect the manner in which the unrealized income, gain, loss, and deduction inherent in property that has not been

reflected in the Capital Accounts previously would be allocated among the Members if there were a taxable disposition of that property for the Fair Value of that property on the date of distribution; and

- (B) Company property shall be distributed among the Members in accordance with the positive capital account balances of the Members, as determined after taking into account all capital account adjustments for the taxable year of the Company during which the liquidation of the partnership occurs; and those distributions shall be made by the end of the taxable year of the Company during which the liquidation of the Company occurs (or, if later, 90 days after the date of the liquidation).
- (C) All distributions in kind to the Members shall be made subject to the liability of each distributee for costs, expenses, and liabilities theretofore incurred or for which the Company has committed prior to the date of termination and those costs, expenses, and liabilities shall be allocated to the distributee pursuant to this Article.
- (D) all remaining cash and other Company property (other than the Liquidation Reserve) will be distributed among the Members as set out in Article 5.
- (E) The distribution of cash and/or property to a Member in accordance with this Article constitutes a complete return to the Member of its Capital Contributions and a complete distribution to the Member of its Membership Interest.
- (b) **Powers**. Until final distribution, the Managers will continue to operate the Company properties with all of the power and authority of the Managers.
- (c) Cost of Liquidation. The costs of liquidation will be borne as a Company expense.
- (d) Termination; Release of Liquidation Reserve. At the time such distributions are made and the Liquidation Reserve established in accordance with subsection (a), the Company will terminate, but if at any time thereafter any of the funds in the Liquidation Reserve are released because, in the opinion of the Managers, the need for such reserve has ended, such funds will be distributed in accordance with subsection (a).

- (e) No Recourse. No Member will have any recourse against the Company or any other Member for the return of its Capital Contributions or any distributions not required by this Agreement.
- 19.2 Cancellation of Certificate. On completion of the distribution of Company assets as provided herein, the Company is terminated, and the Managers (or such other Person or Persons as the TBOC may require or permit) will cause the cancellation of the Certificate and any other filings made by the Company and will take such other actions as may be necessary to terminate or reflect the termination of the Company.

ARTICLE 20. MISCELLANEOUS

- 20.1 Amendment or Modification. Except to the extent this Agreement otherwise provides for a change to be effected without the approval required in this Section, this Agreement may be amended on modified at any time and from time to time only by a written instrument approved by the Managers and a Super Majority of the Members; provided, however, that (a) an amendment or modification (i) reducing a Member's share of profits, losses, distributions or Units (other than as a result of the issuance of additional Company Interests or adjustments to Sharing Ratios authorized without violation of this Agreement) on (ii) increasing the obligation of a Member to make Capital Contributions, requires the additional approval of the Member affected, (b) an amendment that disproportionately and adversely affects a Member requires the additional approval of the Member affected, (c) an amendment on modification reducing the required measure for any consent or vote in this Agreement requires the additional consent or vote of Members having their rights reduced, and (d) an amendment on modification made solely to reflect the admission or withdrawal of a Member need not be approved by any Member if the requirements set forth in this Agreement with respect to such admission or withdrawal are otherwise satisfied. In the event an amendment is properly adopted under the terms of this Agreement which require an amendment to the Certificate, the parties authorized to amend the Agreement are also authorized to amend the Certificate, as well.
- Notices. All notices required on permitted to be given pursuant to this Agreement will be in writing and will be (i) personally delivered, (ii) mailed, first class postage prepaid, or delivered by a nationally recognized express courier service, charges prepaid, (iii) delivered by fax, or (iv) electronic message, if to the Company to the address of the Company's registered office (as reflected on the records of the Secretary of State of the State of Texas) or its email address of , or fax number (806) , and if to a Member, to the appropriate address set forth on Exhibit A to this Agreement, and if to a Manager, to the address shown on the records of the Company. Any such notice, when sent in accordance with the provisions of the preceding sentence, will be deemed to have been given and received (a) on the day personally delivered, (b) on the third day following the date mailed, (c) the date of actual delivery by a courier, and (d) the date of delivery and confirmation of delivery by the recipient if delivered by fax or electronic message. The Company or a Member may change its address, as set out above, by giving notice in writing to all other Members in the manner set forth in this Section, stating the new address.

- 20.3 Failure to Pursue Remedies. The failure of any party to seek redress for violation, or to insist upon the strict performance of any provision of this Agreement will not prevent a subsequent act, which would have originally constituted a violation, from having the effect of an original violation.
- 20.4 Section Headings. The headings in this Agreement are inserted for convenience and identification only and are in no way intended to describe, interpret, define, or limit the scope, extent, or intent of this Agreement or any provision hereof.
- 20.5 Severability of Provisions. Every provision of this Agreement is intended to be severable. If any term or provision hereof is illegal or invalid for any reason whatsoever, such illegality or invalidity will not affect the validity of the remainder of this Agreement and the illegal or invalid provision will be enforced to the maximum extent possible to still be legal and valid.
- 20.6 Governing Law; Venue. This Agreement, and the application or interpretation thereof, will be governed exclusively by its terms and by the laws of the State of Texas. Except for those actions, proceedings, or claims that this Agreement provides will be settled by arbitration, any action, proceeding, or claim arising out of on relating to this Agreement commenced by any Member in its individual capacity must be prosecuted in Lubbock County, Texas. Each Member waives any plea of privilege that might exist in the absence of such Member's agreement to prosecute such claim in Lubbock County, Texas, and each Member irrevocably submits to the non-exclusive jurisdiction of the state and federal courts of the State of Texas and consents to service of process upon such Member in any legal proceeding arising out of or in connection with this Agreement.
- 20.7 Counterparts. This Agreement may be executed in any number of counterparts with the same effect as if the Members had all signed the same document. All counterparts will be construed together and will constitute one instrument. In making proof of this Agreement, it will not be necessary to account for more than one counterpart executed by the Person against whom enforcement is sought.
- 20.8 Successors and Assigns. Each and every covenant, term, provision, and agreement herein contained will be binding upon each of the Members and their respective heirs, legal representatives, successors, and assigns and will inure to the benefit of each of the Members. Unless and until properly admitted as a Member, no assignee will have any rights of a Member beyond those provided by the TBOC to assignees or otherwise expressly provided herein to assignees.
- 20.9 Construction, Sections, Exhibits, Etc. Whenever the context requires, the gender of all words used in this Agreement includes the masculine, feminine, and neuter. Each reference to an "Exhibit" herein is, unless specifically indicated otherwise, a reference to an exhibit attached hereto, all of which are made a part hereof for all purposes, it being understood that if any Exhibit that is to be executed and delivered pursuant to the terms hereof contains blanks, it will be completed correctly and completely in accordance with the terms and provisions hereof and as contemplated herein prior to or at the time of its execution and delivery.

- 20.10 Further Assurances. In connection with this Agreement and the transactions contemplated by it, each Member will execute and deliver any additional documents and instruments and perform any additional acts that may be necessary or appropriate to effectuate and perform the provisions of this Agreement and those transactions.
- 20.11 Waiver of Certain Rights. Each Member irrevocably waives any right it may have to maintain any action for dissolution of the Company (other than pursuant to Section 19.1) or for partition of the property of the Company.
- 20.12 Attorneys' Fees. If the Company or any Member brings any legal action to enforce or interpret the provisions of this Agreement, the prevailing party will be entitled to reasonable attorneys' fees, costs, and expenses, in addition to any other relief to which such party may be entitled.
- 20.13 Entire Agreement. This Agreement sets forth the entire Agreement among the parties hereto with respect to the subject matter hereof and supersedes all prior agreements and understandings, if any, related thereto.
- 20.14 *Third Party Beneficiaries*. Except for the Indemnified Persons, there are no third party beneficiaries of this Agreement.
- 20.15. Subscription Agreements Control. On or prior to the date of this Agreement, each of the undersigned Members has executed a subscription agreement related to its respective purchase of its Membership Interest in the Company. In the event of any conflict between the terms, conditions and agreements contained in said subscription agreement, and the terms, conditions and agreements set forth in this Agreement, the subscription agreement shall control. Each subscription agreement shall be filed with the records of the Company, and shall govern to the extent of any conflicts with this Agreement.

Executed on the date or dates indicated below, to be effective as of the date first set forth above.

MANAGERS:

Name: THOMAS K. PAYNE

ate: August ____, 2017

Name: BLAKE WOMBLE

Date: August \mathcal{E} , 2017

MEMBERS:

3 WIGGLE, LLC

By: KEITH MCNEESE, Manager

Name: BLAKE WOMBLE

Date: August ______, 2017

THOMAS K. PAYNE

Date: August ______, 2017

EXHIBIT "A"

NAME, ADDRESS, AND UNITS OF MEMBERS

	<u>Name</u>	Address	<u>Units</u>
Members:	3 Wiggle, LLC	8207 Ithaca Avenue Suite C Lubbock, Tx 79423	60.00
	Blake Womble	4513 8th St Lubbock, TX 79413	20.00
	Thomas K. Payne	12402 Slide Rd., Suite 201 Lubbock, Tx 79424	20.00

EXHIBIT "B"

INITIAL CAPITAL CONTRIBUTIONS

 3 Wiggle, LLC
 \$ 12,000.00

 Blake Womble
 4,000.00

 Thomas K. Payne
 \$ 4,000.00

 TOTAL INITIAL CAPITAL CONTRIBUTIONS:
 \$ 20,000.00

EXHIBIT "C"

ADDITIONAL CAPITAL CONTRIBUTIONS

Form 205—General Information (Certificate of Formation—Limited Liability Company)

The attached form is designed to meet minimal statutory filing requirements pursuant to the relevant code provisions. This form and the information provided are not substitutes for the advice and services of an attorney and tax specialist.

Commentary

The limited liability company (hereinafter LLC) is neither a corporation nor a partnership; rather, it is a distinct type of entity. An LLC is governed by title 3, chapter 101 of the Texas Business Organizations Code (BOC). Title 1, chapter 3, subchapter A of the BOC governs the formation of an LLC and sets forth the provisions required or permitted to be contained in the certificate of formation.

The owners of an LLC are called "members." An LLC may have one or more members. Members may be individuals, partnerships, corporations, and any other type of legal entity.

Taxes: LLCs are subject to a state franchise tax. Contact the Texas Comptroller of Public Accounts, Tax Assistance Section, Austin, Texas, 78774-0100, (512) 463-4600 or (800) 252-1381 for franchise tax information. For information relating to federal employer identification numbers, federal income tax filing requirements, tax publications, and forms call (800) 829-3676 or visit the Internal Revenue Service web site at www.irs.gov.

Instructions for Form

- Article 1—Entity Name and Type: Provide a company name and organizational designation. Under section 5.053 of the BOC, if the name chosen is the same as, deceptively similar to, or similar to the name of any existing domestic or foreign filing entity, or any name reservation or registration filed with the secretary of state, the document cannot be filed. The administrative rules adopted for determining entity name availability (Texas Administrative Code, title 1, part 4, chapter 79, subchapter C) may be viewed at www.sos.state.tx.us/tac/index.shtml. If you wish the secretary of state to provide a preliminary determination on name availability, you may call (512) 463-5555, dial 7-1-1 for relay services, or e-mail your name inquiry to corpinfo@sos.state.tx.us. A final determination cannot be made until the document is received and processed by the secretary of state. Do not make financial expenditures or execute documents based on a preliminary clearance. Also note that the preclearance of a name or the issuance of a certificate of formation under a name does not authorize the use of a name in violation of another person's rights to the name.
- Article 2—Registered Agent and Registered Office: The registered agent can be either (option A) a domestic entity or a foreign entity that is registered to do business in Texas or (option B) an individual resident of the state. The limited liability company cannot act as its own registered agent; do not enter the limited liability company name as the name of the registered agent.

Consent: Effective January 1, 2010, a person designated as the registered agent of an entity must have consented, either in a written or electronic form, to serve as the registered agent of the entity. Although consent is required, a copy of the person's written or electronic consent need not be submitted with the certificate of formation. The liabilities and penalties imposed by sections 4.007 and 4.008 of the BOC apply with respect to a false statement in a filing instrument that names a person as the registered agent of an entity without that person's consent. (BOC § 5.207)

Office Address Requirements: The registered office address must be located at a street address where service of process may be personally served on the entity's registered agent during normal business hours. Although the registered office is not required to be the entity's principal place of business, the registered office may not be solely a mailbox service or telephone answering service (BOC § 5.201).

• Article 3—Governing Authority: The certificate of formation must state whether the LLC will or will not have managers. If the LLC will have managers, select option A and provide the name and address of each initial manager in the space provided. If the LLC will not have managers, select option B and provide the name and address of each initial member of the LLC in the space provided. A minimum of one person is required.

If the governing person is an individual, set forth the name of the individual in the format specified. Do not use prefixes (e.g., Mr., Mrs., Ms.). Use the suffix box only for titles of lineage (e.g., Jr., Sr., III) and not for other suffixes or titles (e.g., M.D., Ph.D.). If the governing person is an organization, set forth the legal name of the organization. For each governing person, only one name should be entered. Do not include both the name of an individual and the name of an organization. An address is always required for each governing person.

Please note that a document on file with the secretary of state is a public record that is subject to public access and disclosure. When providing address information for a manager or member, use a business or post office box address rather than a residence address if privacy concerns are an issue.

• Article 4—Purpose: An LLC may be formed for any lawful purpose or purposes not expressly prohibited under chapter 2 of title 1 or title 3 of the BOC. This form provides for the creation of an LLC with a general purpose. Please note that while the BOC allows a general purpose, other laws, including the Internal Revenue Code, may require that the certificate of formation include more specific purposes or language as a basis for granting a license or tax-exempt or tax-deductible status. The additional space provided in the "Supplemental Provisions/Information" section may be used to set forth a more specific purpose or purposes.

This form cannot be used to engage in a licensed activity when such license cannot be issued to the LLC. To form a professional limited liability to provide a professional service use Form 206.

• Supplemental Provisions/Information: Additional space has been provided for additional text to an article within this form or to provide for additional articles to contain optional provisions.

Duration: Pursuant to section 3.003 of the BOC, a Texas LLC exists perpetually unless provided otherwise in the certificate of formation. If formation of an LLC with a stated period of duration is desired, use the "Supplemental Provisions/Information" section of this form to provide for a limited duration.

- Organizer: Only one organizer is required for the formation of an LLC. An organizer may be any person having the capacity to contract for the person or for another; that is, a natural person 18 years of age or older, or a corporation or other legal entity. There are no residency requirements for an organizer.
- Effectiveness of Filing: A certificate of formation becomes effective when filed by the secretary of state (option A). However, pursuant to sections 4.052 and 4.053 of the BOC the effectiveness of the instrument may be delayed to a date not more than ninety (90) days from the date the instrument is

signed (option B). The effectiveness of the instrument also may be delayed on the occurrence of a future event or fact, other than the passage of time (option C). If option C is selected, you must state the manner in which the event or fact will cause the instrument to take effect and the date of the 90th day after the date the instrument is signed. In order for the certificate to take effect under option C, the entity must, within ninety (90) days of the filing of the certificate, file a statement with the secretary of state regarding the event or fact pursuant to section 4.055 of the BOC.

On the filing of a document with a delayed effective date or condition, the computer records of the secretary of state will be changed to show the filing of the document, the date of the filing, and the future date on which the document will be effective or evidence that the effectiveness was conditioned on the occurrence of a future event or fact. In addition, at the time of such filing, the status of the entity will be shown as "in existence" on the records of the secretary of state.

Execution: The organizer must sign the certificate of formation, but it does not need to be notarized. However, before signing, please read the statements on this form carefully. The designation or appointment of a person as registered agent by an organizer is an affirmation that the person named in the certificate of formation has consented to serve in that capacity. (BOC § 5.2011, effective January 1, 2010)

A person commits an offense under section 4.008 of the BOC if the person signs or directs the filing of a filing instrument the person knows is materially false with the intent that the instrument be delivered to the secretary of state for filing. The offense is a Class A misdemeanor unless the person's intent is to harm or defraud another, in which case the offense is a state jail felony.

• Payment and Delivery Instructions: The filing fee for a certificate of formation for an LLC is \$300. Fees may be paid by personal checks, money orders, LegalEase debit cards, or American Express, Discover, MasterCard, and Visa credit cards. Checks or money orders must be payable through a U.S. bank or financial institution and made payable to the secretary of state. Fees paid by credit card are subject to a statutorily authorized convenience fee of 2.7 percent of the total fees.

Submit the completed form in duplicate along with the filing fee. The form may be mailed to P.O. Box 13697, Austin, Texas 78711-3697; faxed to (512) 463-5709; or delivered to the James Earl Rudder Office Building, 1019 Brazos, Austin, Texas 78701. If a document is transmitted by fax, credit card information must accompany the transmission (Form 807). On filing the document, the secretary of state will return the appropriate evidence of filing to the submitter together with a file-stamped copy of the document, if a duplicate copy was provided as instructed.

• FYI: An LLC is required to maintain a registered agent and a registered office address in Texas. If the registered agent or registered office address changes, it is important to file a statement with the secretary of state to effect a change to the certificate of formation. Failure to maintain a registered agent and registered office may result in the involuntary termination of the LLC.

Revised 05/11

This space reserved for office use.

Form 205 (Revised 05/11)

Submit in duplicate to: Secretary of State P.O. Box 13697 Austin, TX 78711-3697 512 463-5555

FAX: 512 463-5709 Filing Fee: \$300



Certificate of Formation Limited Liability Company

Article 1 - Entity Name and Type

The filing entity being formed is a limited liability company. The name of the entity is:					
	RED CANYON DEVELOPMENT, LLC				
The name must contain the words "limited liab	ility company," "lim	ited company,"	or an abbreviation of on	e of th	ese phrases.
Article 2 – Registered Agent and Registered Office (See instructions. Select and complete either A or B and complete C.) A. The initial registered agent is an organization (cannot be entity named above) by the name of:					
OR B. The initial registered agent			the state whose na	me i	s set forth below:
Thomas	K.	Payne			
First Name	<i>M.I.</i>	Last Name			Suffix
C. The business address of the reg	istered agent an	d the registe	ered office address	is:	
12402 Slide Road, Suite 201	Lubbock		TX		79424
Street Address	City		State		Zip Code
Article 3—Governing Authority (Select and complete either A or B and provide the name and address of each governing person.) A. The limited liability company will have managers. The name and address of each initial manager are set forth below.					
B. The limited liability company will not have managers. The company will be governed by its members, and the name and address of each initial member are set forth below.					
GOVERNING PERSON 1					

Г	GOVERNING PERSON 1						-
-	NAME (Enter the name of either an individual or IF INDIVIDUAL	an organization, bu	t not both.)				
l	Thomas	K.	Payne				
ı	First Name	<i>M.I.</i>	Last Name	-		Suffix	
ı	OR						
ı	IF ORGANIZATION						
l	Organization Name		· -				
ı	ADDRESS						
1	12402 Slide Road, Suite 201	L	ubbock	TX	USA	79424	
ľ	Street or Mailing Address	С	itv	State	Country	Zip Code	

GOVERNING PERSON 2					
NAME (Enter the name of either an individu	al or an organization, but	not both.)			
First Name OR IF ORGANIZATION	M.I.	Last Name			Suffix
Organization Name ADDRESS					
Street or Mailing Address	Ci	ty	State	Country	Zip Code
GOVERNING PERSON 3					······································
NAME (Enter the name of either an individu IF INDIVIDUAL	al or an organization, but	not both.)			
First Name	M.I.	Last Name			Suffix
OR IF ORGANIZATION					
Organization Name ADDRESS					
Street or Mailing Address	Ci	ty	State	Country	Zip Code
Article 4 – Purpose The purpose for which the company is formed is for the transaction of any and all lawful purposes for which a limited liability company may be organized under the Texas Business Organizations Code.					
		rovisions/Informs	ttion		
Text Area: [The attached addendum, if a	ny, is incorporated here	an by reference.			<u>.</u>

Organizer

The name and address of the organizer:					
John Waesch					
Name					
2323 Ross Avenue, Suite 600	Dallas	TX	75201		
Street or Mailing Address	City	State	Zip Code		
Effectiveness of	Filing (Select either A, B, or C.)				
A. This document becomes effective when	the document is filed by the sec	retary of	state.		
B. This document becomes effective at a l	•	•			
the date of signing. The delayed effective dat			·,, ·		
C. This document takes effect upon the oc		ct, other	than the		
passage of time. The 90th day after the date of	f signing is:				
The following event or fact will cause the doc	ument to take effect in the manne	er descrit	ed below:		
Execution					
The undersigned affirms that the person designated as registered agent has consented to the appointment. The undersigned signs this document subject to the penalties imposed by law for the submission of a materially false or fraudulent instrument and certifies under penalty of perjury that the undersigned is authorized to execute the filing instrument.					
Date: 7/20/2017					
	Signature of organizer				
	John Waesch				
	Printed or typed name of organizer				

MINUTES OF THE ORGANIZATIONAL MEETING OF MEMBERS OF RED CANYON DEVELOPMENT, LLC

The organizational meeting of the members of the above captioned Limited Liability Company was held at 12402 Slide Road, Ste. 201 Lubbock, Texas 79424, on July 21, 2017.

There was present the following members: 3 Wiggle, LLC (60.0% Membership Interest), Blake Womble (20.0% Membership Interest) and Thomas K. Payne (20.0% Membership Interest),

The meeting was called to order by Thomas K. Payne. It was moved, and unanimously carried that Thomas K. Payne act as Chairman and Secretary of the meeting.

1. Formation.

The Chairman presented and read to the meeting a copy of the Certificate of Formation, and reported that on July 21, 2017, the original of said Certificate was filed in the Office of the Secretary of State of the State of Texas, and that the Secretary of State issued a "Certificate of Filing" certifying that the Certificate of Formation had been received and had been found to conform to the applicable provisions of Texas law.

Upon motion duly made, seconded and carried, it was:

RESOLVED, that the Certificate of Formation of the Limited Liability Company be accepted and approved in all respects.

2. Organization; Managers.

The Chairman then stated that all of the outstanding membership interest of the Limited Liability Company was represented. The Chairman also noted that the initial capital contribution of each member was as follows:

3 Wiggle, LLC Blake Womble Thomas K. Payne	\$ 12,000.00 \$ 4,000.00 \$ 4,000.00
Total:	\$ 20,000.00

The Chairman noted that it was in order to consider electing Managers for the ensuing year. Upon nominations duly made, and unanimously carried, the following persons were elected as the Managers of the Limited Liability Company, to serve for a period of one year and until such time as his successor is elected and qualified: **Thomas K. Payne and Blake Womble.**

3. Company Agreement.

The Chairman then presented a proposed form of Company Agreement for the regulation and management of the affairs of the Limited Liability Company. The proposed Company Agreement was read at the meeting, considered and upon motion duly made, seconded and unanimously adopted, it was:

RESOLVED, that the form of the Company Agreement submitted and reviewed at this meeting is adopted as the Company Agreement of this Limited Liability Company.

4. Officers.

The Chairman of the meeting then discussed the option of electing officers of the Limited Liability Company. It was determined that at this time, no officers of the Limited Liability Company are needed. Instead, the Managers of the Limited Liability Company will manage the Limited Liability Company in accordance with the Company Agreement.

5. Membership Interest Certificate.

The Chairman submitted to the meeting a specimen membership interest certificate proposed for use as the Limited Liability Company certificate for membership interest. Upon motion duly made, seconded and carried, it was:

RESOLVED, that the specimen membership interest certificate presented to this meeting be and hereby is adopted as the form of certificate for membership interest to be issued to represent membership interest in the Limited Liability Company. It was ordered that the specimen membership interest certificate be appended to the Minutes of the Meeting.

6. Company Record Book.

The Chairman presented a record book of the Limited Liability Company, containing a copy of the Certificate of Formation, the Company Agreement previously approved at the meeting, the membership interest certificate stubs, and the membership interest transfer ledger. On motion duly made, seconded and unanimously adopted, it was:

RESOLVED, that (1) the Limited Liability Company record book presented to this meeting by the Chairman is approved and adopted, and the action of the Secretary in inserting in it the Certificate of Formation, the Certificate of Filing, and the Company Agreement, is ratified and approved, and (2) the Secretary is instructed to authenticate the Limited Liability Company record book and to retain custody of it, and to insert in it the minutes of this meeting and of other proceedings of the Members, Managers and any committee established by the Managers; a current list of the name and mailing address of each Member and the amount of the cash contribution and a description and statement of the agreed value of any other contribution and a description and statement of the agreed value of any other contributions that the Member has agreed to make in the future as an

additional contribution; any records pertaining to the issuance and transfer of membership interest in the membership interest certificate stubs and membership interest transfer book respectively; and copies of federal, state, and local information or income tax returns for each of the Limited Liability Company's most recent tax years.

7. Membership Interest Issued.

The Chairman of the meeting noted that the Members of the Limited Liability Company are 3 Wiggle, LLC, Blake Womble and Thomas K. Payne. Upon motion duly made, seconded and carried, it was:

RESOLVED, that the Managers of the Limited Liability Company be, and they are hereby authorized to issue from time to time the authorized membership interest of the Limited Liability Company for money paid, labor done, promissory note, or personal property or real estate or leases thereof actually acquired by the Limited Liability Company, upon such terms as the Managers, in their discretion may determine.

The Chairman stated that an offer to purchase 100% of the membership interest of the Limited Liability Company had been received. On motion duly made, and unanimously adopted, it was:

RESOLVED, that 100% of the membership interest of **RED CANYON DEVELOPMENT**, **LLC** be issued to the following persons, and for the capital contribution stated next to his name:

Name of Member:	<u>Percentage</u>	Capital Contribution
3 Wiggle, LLC	60.0%	\$ 12,000.00
Blake Womble	20.0%	\$ 4,000.00
Thomas K. Payne	20.0%	\$ 4,000.00

The Managers of the Limited Liability Company are authorized to issue additional membership interest to appropriately qualified purchasers.

8. Organizational Expenses.

Upon motion duly made, seconded and carried, it was:

RESOLVED, that the Manager of the Limited Liability Company be and hereby is authorized to pay all charges and expenses incident to or arising out of the organization of the Limited Liability Company and to reimburse any person who had made any disbursement therefore.

9. Bank Account.

The Chairman then stated that it was desirable to maintain a depository for the funds of the Limited Liability Company. Upon motion duly made, seconded and unanimously adopted, it was:

RESOLVED, that the Managers be and hereby are authorized to open a bank account on behalf of the Limited Liability Company with the banks the Managers deem appropriate.

10. Office.

Upon motion duly made, seconded and carried, it was:

RESOLVED, that an office of the Limited Liability Company be established and maintained at 12402 Slide Road, Ste. 201, Lubbock, Texas 79424, and that meetings of the Managers from time to time be held either at the principal office or at such other place as the Manager shall from time to time order.

11. Licenses, Permits.

Additionally, the Manager of the Limited Liability Company was directed to obtain in the name of the Limited Liability Company such other licenses and tax permits as may be required for the conduct of the business of the Limited Liability Company by any federal, state, county, or municipal governmental statute, ordinance, or regulations, and to do all things necessary or convenient to qualify the Limited Liability Company to transact its business in compliance with the laws and regulations of any appropriate federal, state, or municipal governmental authority.

12. Other States.

Upon motion duly made, seconded and carried, it was:

RESOLVED, that for the purpose of authorizing the Limited Liability Company to do business in any state, territory or dependence of the United States or any foreign country in which it is necessary or expedient for this Limited Liability Company to transact business, the Manager of this Limited Liability Company is hereby authorized to appoint and substitute all necessary agents or attorneys for service of process, to designate and change the location of all necessary statutory offices and to make and file all necessary certificates, reports, powers of attorney and other instruments, as may be required by the laws of such state, territory, dependence or country to authorize the Limited Liability Company to transact business therein.

13. Fiscal Year.

Upon motion duly made, seconded and unanimously adopted, it was:

RESOLVED, that the fiscal year of the Limited Liability Company shall be the year ending December 31st.

14. Carry On Business.

Upon motion duly made, seconded and carried, it was:

RESOLVED, that the Limited Liability Company proceed to carry on the business for which it was organized.

By the signing of these minutes, the members hereby consent, confirm, adopt, ratify and approve of the holding of the above meeting, the actions taken in such meeting and waive receipt of notice of such meeting.

There being no further business to come before the meeting, upon motion duly made, seconded and unanimously carried, it was adjourned.

Dated the day of August, 2017.

MEMBERS:

3 WIGGLE, LLC

Ву: _	Keith McNeese Manager
Ву: _	Brad Ralston
	Blake Womble
	Thomas K. Payne

RESOLVED, that the Limited Liability Company proceed to carry on the business for which it was organized.

By the signing of these minutes, the members hereby consent, confirm, adopt, ratify and approve of the holding of the above meeting, the actions taken in such meeting and waive receipt of notice of such meeting.

There being no further business to come before the meeting, upon motion duly made, seconded and unanimously carried, it was adjourned.

Dated the _

___ day of August, 2017.

MEMBERS:

3 WIGGLE, LL

By:

Keith McNeese, Manager

Blake Womble

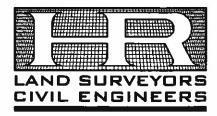
Thomas K. Payne



AFFIDAVIT DESIGNATING REPRESENTATIVE

AFFIDAVIT IS NOT VALID WITHOUT COMPLETION OF ALL PAGES AND SIGNATURES - FOR MULTIPLE PROPERTY OWNERS, SUBMIT ONE AFFIDAVIT PER OWNER

I,	, make this affidavit and he	ereby on oath state that:	
I, being the □ sole ☑ partial owner of t			
4602 Woodrow Road	Lubbock	Texas	79424
Property Address	City	State	Zip
Phone		Email	
Legal description of property (can be for	ound on property tax statement	or at www.lubbockcad.o	org:
See legal description attached			
give my permission to below named re	presentative, to apply for appr	oval of an application (at	tach to application) to the
City of Lubbock on the above-describe		•	**
Thomas Payne			
Representative's organization or entity	(printed)		
_	-		
Signed this 12 day of Dece	uga, 20 22.		
Signature of Property Owner			
Notary Public Information:			
THE STATE OF TEXAS, COUNTY O	OF LUBBOOK		
BEFORE ME, the undersigned authoric	ty, this day personally appeared	BLAKE Wom	BLE
and on oath stated that the facts hereina	above are true to the best of the	ir knowledge or belief. S	WORN TO
AND SUBSCRIBED before me on this	s the 12th day of Dr	ECEMBEK, 20	<u> </u>
TANNER VICKERS Notary ID #131816196 My Commission Expires December 5, 2026	Notary Public, State of Tex	Tas	



HUGO REED AND ASSOCIATES, INC.

1601 AVENUE N / LUBBOCK, TEXAS 79401 / 806/763-3642 / FAX 806/763-3891 TEXAS REGISTERED ENGINEERING FIRM F-760 TEXAS LICENSED SURVEYING FIRM 100676-00

EXHIBIT "A"

METES AND BOUNDS DESCRIPTION of a 2.986 acre tract of land located in Sections 3 and 6, Block AK, Lubbock County, Texas, being further described as follows:

BEGINNING at a point which bears N. 88°12'57" W. a distance of 105.08 feet and N. 01°47'03" E. a distance of 65.00 feet from the Southeast corner of Section 6, Block AK, said point being the Southwest corner of this tract:

THENCE N. 46°44'49" E. a distance of 42.40 feet to a point 75.00 feet West of the East line of said Section 6;

THENCE N. 01°42'34" E., along a line 75 feet West of and parallel to the East line of said Section 6, a distance of 210.24 feet;

THENCE N. 04°34'19" E., at 49.82 feet pass the Northern boundary of that 2.975 acre tract described under County Clerk File Number (CCFN) 2022028055, Official Public Records of Lubbock County, Texas (OPRLCT), continuing for a total distance of 200.24 feet to a point, said point being 65.00 feet West of the East line of said Section 6;

THENCE N. 01°42'34" E., along a line 65 feet West of and parallel to the East line of said Section 6, a distance of 403.90 feet to a point in the Southern boundary of the plat limits of Tract "A", Woodrow Substation, an addition to the City of Lubbock, Lubbock County, Texas, according to the map, plat and/or dedication deed thereof recorded under CCFN 2021006622, OPRLCT, said point also being in the Southern boundary of the present city limits as established by City of Lubbock Ordinance No. 2018-00023;

THENCE S. 88°16'26" E., along the Southern boundary of said present city limits and the Southern boundary of said plat limits, a distance of 65.00 feet to a point in the East line of said Section 6, at the Southeast corner of said plat limits;

THENCE N. 01°42'34" E., along the East line of said Section 6 and the Eastern boundary of said plat limits, at 299.98 feet pass the Northeast corner of said plat limits, continuing along the East line of said Section 6, for a total distance of 2724.32 feet to a point in the Southern boundary of that portion of the present city limits as established by City of Lubbock Ordinance No. 2018-00102, said point also being the Southwest corner of that 6.6532 acre tract described under CCFN 2021049568, OPRLCT, for the Northwest corner of this tract;

THENCE S. 88°13'35" E., along the Southern boundary of said present city limits and the Southern boundary of said 6.6532 acre tract, a distance of 20.00 feet to a point for the Northeast corner of this tract;

THENCE S. 01°42'34" W., along a line 20 feet East of and parallel to the East line of said Section 6 and the West line of said Section 3, a distance of 3568.52 feet to a point for the Southeast comer of this tract;

THENCE N. 88°12'57" W., at 20.00 feet pass the West line of said Section 3 and the East line of said Section 6, continuing for a total distance of 125.00 feet to the Point of Beginning.

Contains: 2.986 Acres

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

December 8, 2022

Robert A. Christopher

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



This document was prepared under 22 TAC §138.95, does not reflect the results of an on the ground survey, and is not to be used to convey or establish interests in real property except those rights and interests implied or established by the creation or reconfiguration of the boundary of the political subdivision for which it was prepared.



Information

Agenda Item

Resolution - Right of Way: Consider a resolution authorizing Condemnation of Property by Eminent Domain; Determining the Public Necessity for the Project; Authorizing the Acquisition of Real Property Interests by Easement or in Fee Simple; and Authorizing All Other Acts to Complete Condemnation Proceedings, said properties being a 0.2227 acre parcel, a 0.3333 acre parcel, both located in Section 8, Block JS, Lubbock County, Texas, being portions of a 7.6 acre tract described by CCFN 2021052641 North Milwaukee & Erskine Affordable Storage, LLC. Also, a 0.0753 parcel, a 0.2919 acre parcel, and a 2.803 acre parcel, located in Section 3, Block JS, Lubbock County, Texas, being portions of a 133.7-acre tract described in volume 6638, page 9, in the Official Public Records, Lubbock County, Texas.

Item Summary

The City of Lubbock has initiated the Milwaukee Avenue and Erskine Street thoroughfare widening and drainage projects, which expand Milwaukee Avenue to a 5-lane roadway section from the North City Limits to 4th Street, and Erskine Street to a 5-lane roadway section from the West City Limits to Frankford Avenue. The project includes drainage improvements along the Milwaukee Avenue and Erskine Street corridors. The City's consultant team has been working diligently to acquire all the needed rights-of-way and easements along the corridors, in accordance with the required processes.

However, a portion of the needed rights-of-way and drainage easements at the intersection of Milwaukee Avenue and Erskine Street, have not been able to be acquired with all the other available mechanisms. These mechanisms included numerous conversations and attempts at negotiations that included formal initial and final offer letters. All offers by the City of Lubbock have been rejected, and both landowners have obtained legal counsel. None of these efforts have resulted in the needed right-of-way dedication.

The property described as Parcel 4 will encumber a total of 0.5560 acres of real property, owned by North Milwaukee & Erskine Affordable Storage, LLC, and located in Section 8, Block JS, Lubbock, County, Texas, otherwise known as the northwest corner of Milwaukee Avenue and Erskine Street. This parcel includes 0.2227 acres to be acquired as right-of-way and 0.3333 acres to be acquired as a drainage and waterline easement. The property described as Parcels 5, 5A, and 5B will encumber a total of 3.1702 acres of real property, owned by Roberta Hunter, and located in Section 3, Block JS, Lubbock, County, Texas, otherwise known as the southwest corner of Milwaukee Avenue and Erskine Street. Parcel 5 includes 2.803 acres to be acquired as a drainage easement, Parcel 5A includes 0.0753 acres to be acquired as right-of-way, and Parcel 5B includes 0.2919 acres to be acquired as right-of-way. The rights-of-way and easements requested are necessary for the improvements along Milwaukee Avenue and Erskine Street.

The only remaining process, in order to finalize the design and continue with the construction of Milwaukee Avenue and Erskine Street, would involve the initiation of eminent domain proceedings in order to acquire the necessary rights-of-way and easements to build the roadway.

The fiscal impact of eminent domain proceedings is unknown. The appraised value of the Property Interest for Parcel 4 that will be subject to right-of-way, an easement, and damages, if any, is \$67,852. The appraised value of the Property Interest for Parcels 5, 5A, and 5B that will be subject to right-of-way, an easement, and damages, if any, is \$57,188. Notwithstanding the appraised value, the compensation due to the owners of the Property Interest, will be determined in accordance with Chapter 21 of the Texas Property Code.

Staff/Board Recommending

Erik Rejino, Assistant City Manager Michael G. Keenum, P.E., Division Director of Engineering/City Engineer

Attachments

Resolution (r) - Eminent Domain

Exhibit A - Eminent Domain

Exhibit B - Eminent Domain

Exhibit C - Eminent Domain

Exhibit D - Eminent Domain

Parcel 4 DRE Survey

Parcel 4 Map

Parcel 5 ROW Survey

Parcel 5 DRE Survey

Parcel 5 ROW Map

Parcel 5 DRE Map

Parcel 4 ROW Survey

RESOLUTION NO.	
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A RESOLUTION AUTHORIZING CONDEMNATION OF PROPERTY BY EMINENT DOMAIN; DETERMINING THE PUBLIC NECESSITY FOR THE PROJECT; AUTHORIZING THE ACQUISITION OF REAL PROPERTY RIGHTS NECESSARY FOR THE PROJECT; AUTHORIZING ALL OTHER ACTS TO COMPLETE CONDEMNATION PROCEEDINGS; AND ESTABLISHING AN EFFECTIVE DATE

WHEREAS, in order to facilitate the safe and efficient movement of people and goods within Lubbock, Texas, to control the flow of stormwater within its jurisdiction, to preserve the financial investment of the public in its roadway infrastructure, and to protect the safety of the public, the City of Lubbock, Texas (the "City") hereby finds that public convenience and necessity requires the acquisition of fee simple interest to, or any lesser real property interest in, all or a portion of the following properties (collectively, the "Property") for the purposes of laying out, opening, constructing, reconstructing, maintaining, widening, extending, and operating Erskine Street in Lubbock County, Texas, including any public utilities or drainage improvements necessary therefore:

- 1. North Milwaukee & Erskine Affordable Storage, LLC- Northwest corner of Erskine Street and N. Milwaukee Avenue, Lubbock, TX 79416
 - 0.2227-acre Fee Simple (Exhibit A, attached hereto)
 - 0.333-acre Perpetual Drainage Easement (Exhibit B, attached hereto)
- 2. <u>Danny O. Hunter and wife, Roberta Leigh Hunter- SWC of Erskine Street and</u> N. Milwaukee Avenue, Lubbock, TX 79416
 - 0.7344-acre Fee Simple (Exhibit C, attached hereto)
 - 2.803-acres Perpetual Drainage Easement (Exhibit D, attached hereto)

WHEREAS, as provided for in Sections 251.001 and 273.001 of the Texas Local Government Code, the City finds and determines that the Property is necessary or convenient for the purposes of laying out, opening, constructing, reconstructing, maintaining, widening, extending, and operating the hereinabove described Project in Lubbock County, Texas, including roadway improvements, drainage improvements, utility improvements, public utility infrastructure improvements, and/or other public uses and purposes related thereto as permitted by law (hereinafter the "Project"), and it is necessary to acquire fee simple rights in the Property or a portion thereof. The City finds and determines that condemnation of the Property, or a portion thereof, may be required.

WHEREAS, in order to effectuate the Project, it will be necessary and convenient that the employees, agents, and/or representatives of the City to lay out the Project and acquire the

necessary right of way upon, over, under and across the Property for the purpose of construction, reconstruction, operation, and maintenance of roadway and drainage infrastructure improvements, and appurtenances thereto, and for the use of any excavated materials from the Property for use in construction of such infrastructure improvements;

WHEREAS, it may be necessary to hire engineers, surveyors, appraisers, attorneys, title companies, architects, or other persons or companies to effect the acquisition of the Property for the Project;

WHEREAS, in order to acquire the Property, it will be or has been necessary for the City's employees, agents, and/or representatives, to enter upon the Property for the purposes of surveying and establishing said land titles and to determine adequate compensation for the Property, to conduct tests, and to negotiate with the owners thereof for the purchase of the land titles;

WHEREAS, the notice for the public meeting of the City Council of the City in which this Resolution is considered, in addition to other information as required by Subchapter C, Chapter 551, of the Texas Government Code, expressly included notice that the City of Lubbock would consider the use of eminent domain to condemn the Property; and,

WHEREAS, it is necessary to set out procedures for the establishment and approval of just compensation for Property to be acquired for the Project. NOW THEREFORE:

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

- 1. THAT in order to promote the public health, safety, and welfare, public convenience and necessity requires the acquisition of fee simple title to the real property or such lesser estates or property interests as determined necessary described hereinabove for the purposes of laying out, opening, constructing, reconstructing, maintaining, widening, extending, and operating the Project in Lubbock County, Texas, including roadway and drainage improvements, and/or other public uses and purposes as permitted by law.
- 2. THAT the City's employees, agents, and/or representatives, are hereby authorized to:
 - a. Lay out the exact location of the land area needed from the Property;
 - b. Hire such engineers, surveyors, appraisers, title companies, architects, and other persons or companies needed to effect the laying out of the facilities for the Project, the establishment and acquisition of the required right-of-way, and the construction of permanent infrastructure improvements, and appurtenances thereto;
 - c. Enter upon any property necessary for the purpose of surveying and establishing the title, in order to determine adequate compensation for the rights being acquired, and to conduct tests;

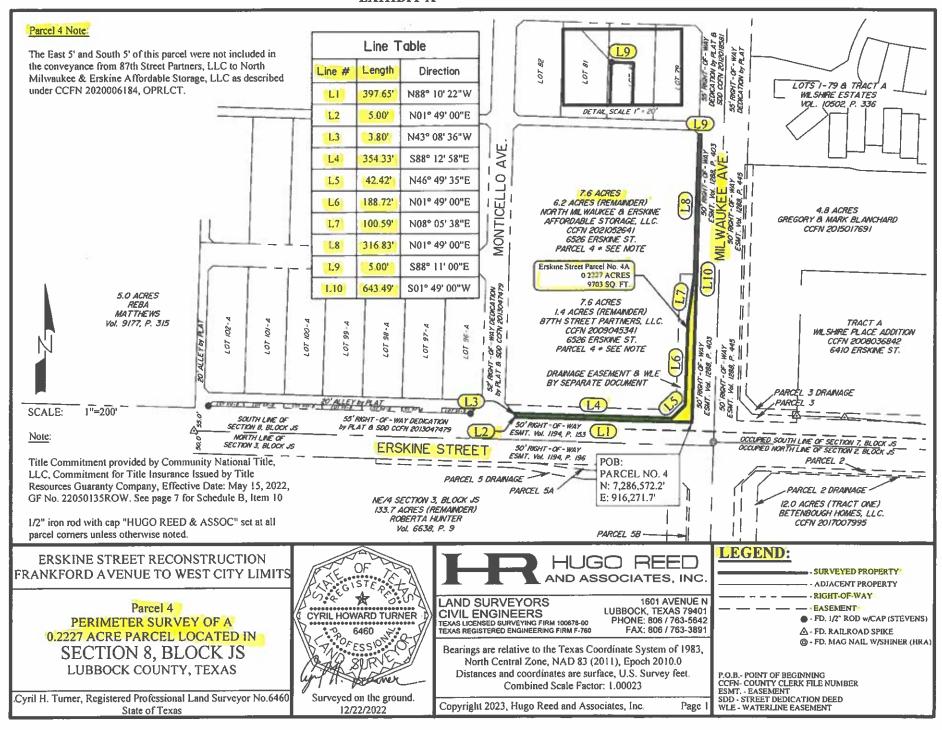
- d. Negotiate with the owner(s) of any such properties for the purchase thereof;
- e. To purchase any necessary easement rights on, over, under and across the Property, and execute all documents necessary to acquire such Property, all subject to the City Council's express approval of the specific, negotiated terms of the acquisition;
- f. Initiate and pursue eminent domain proceedings against the owner(s), lienholders, and any owners of any other interests in the Property to obtain the necessary title(s) for the Property in the event the owner(s) fail(s) to accept a bona fide offer to purchase the Property using legal counsel, including special legal counsel, to pursue such condemnation; and
- g. Take whatever further actions are deemed appropriate to economically effect the establishment of the Project and appurtenances thereto.
- 3. THAT all previous acts and proceedings done or initiated by the City's employees, agents, and/or representatives for the establishment of the Project, including the negotiation for and/or acquisition of any necessary property rights in the Property are hereby authorized, ratified, approved, confirmed, and validated.

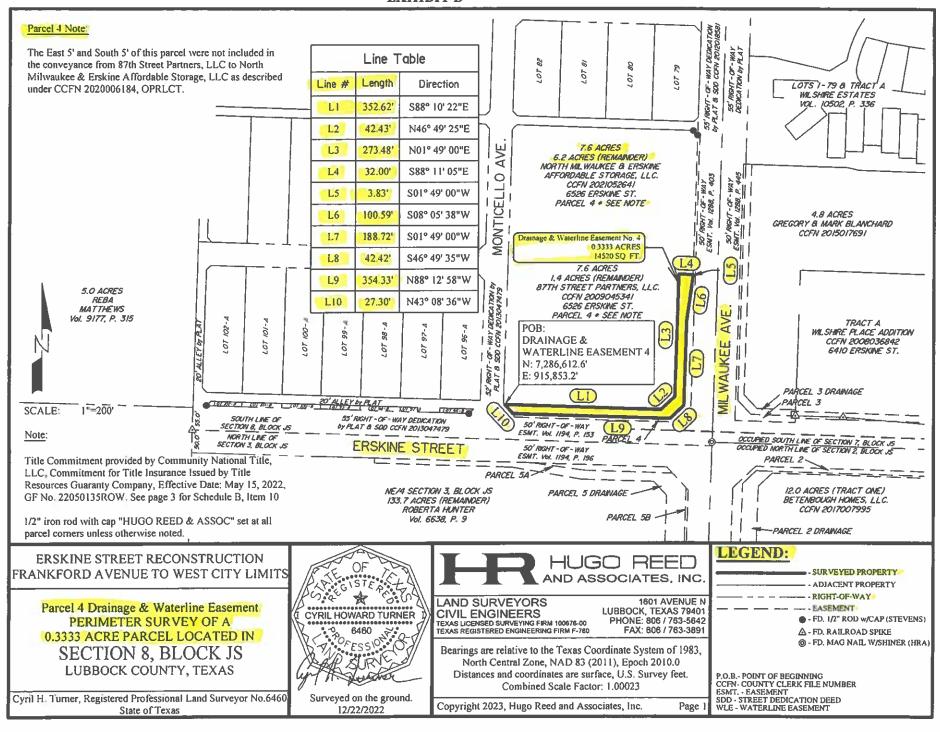
IT IS THEREFORE ORDERED that the initiation of condemnation proceedings for the Property is adopted and authorized by a single order for the Property, and this first vote by the City applies to all of the Property identified.

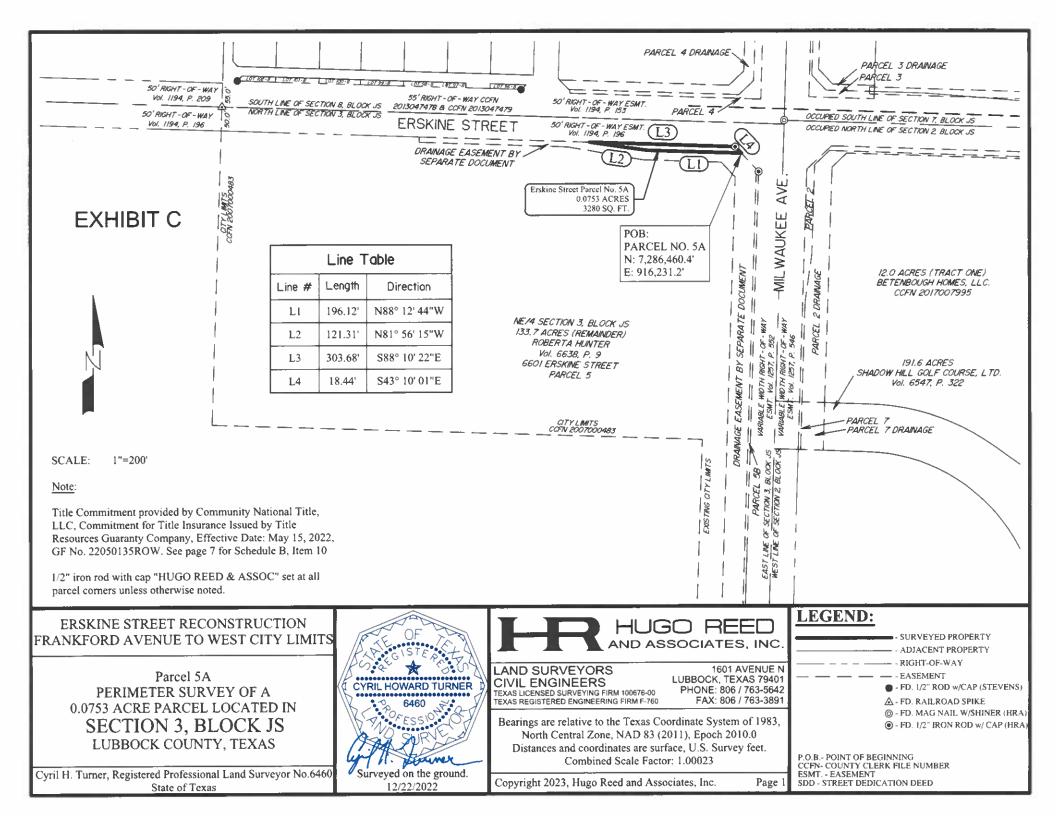
IT IS FURTHER ORDERED that City staff is hereby authorized to proceed to condemnation on the Property and to use special legal counsel to, if necessary, and directed to transmit or cause to be transmitted this request of the City to legal counsel to file or cause to be filed against all owners, lienholders, and any owners of any other interests in the Property, proceedings in condemnation to acquire in the name of and on behalf of the City, fee simple title to the Property or such lesser estates or property interests as determined necessary, save and except oil, gas, and sulfur, as provided by law.

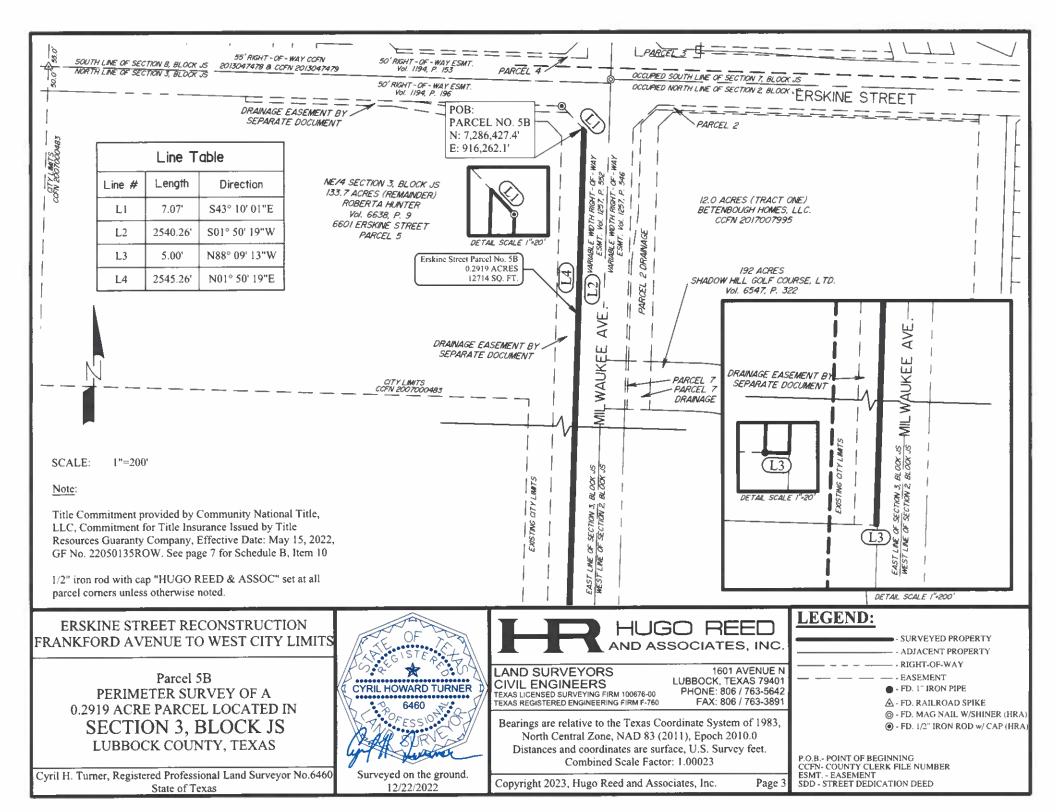
4. THAT this resolution shall be effective immediately upon adoption.

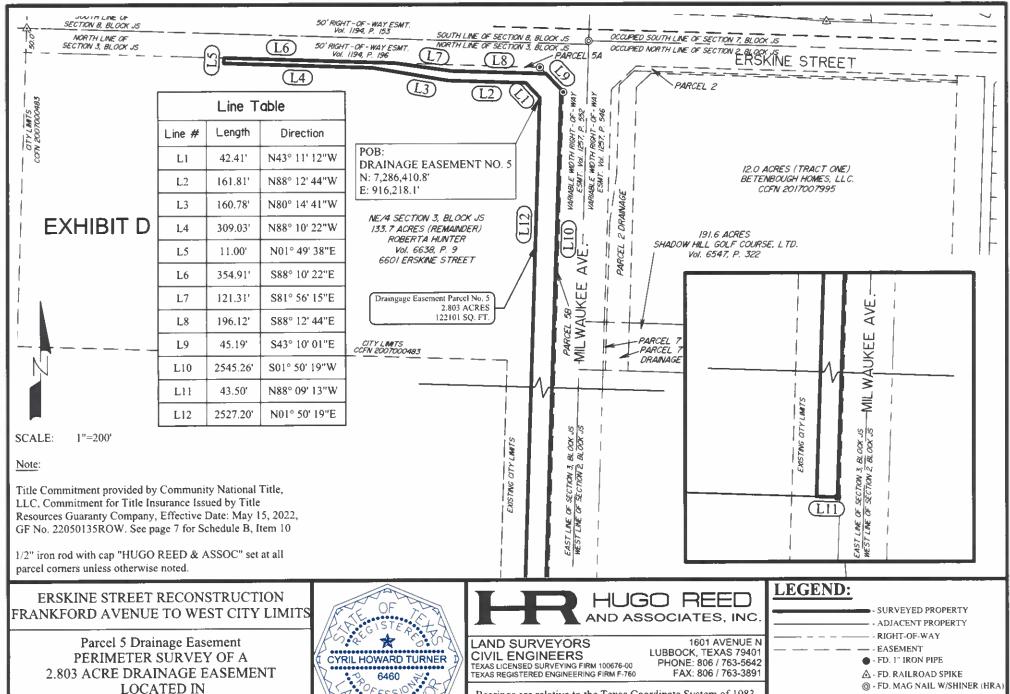
Passed by the City Council on	
	TRAY PAYNE, MAYOR
ATTEST:	
Courtney Paz, City Secretary	
APPROVED AS TO CONTENT:	
Michael Keenum, P.E., Division Director	or of Engineering/City Engineer
APPROVED AS TO FORM:	
123	
Kmy L. Sims, Deputy City Attorney	











Cyril H. Turner, Registered Professional Land Surveyor No.6460 State of Texas

SECTION 3, BLOCK JS

LUBBOCK COUNTY, TEXAS

Surveyed on the ground. 12/22/2022

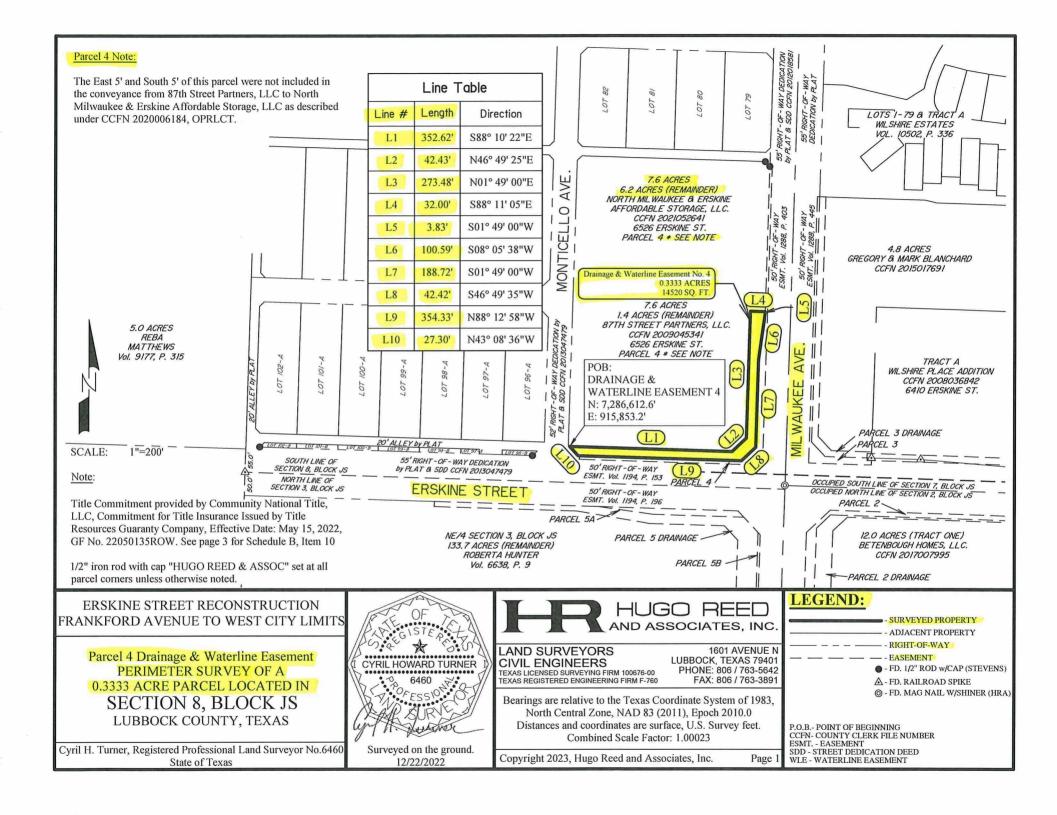
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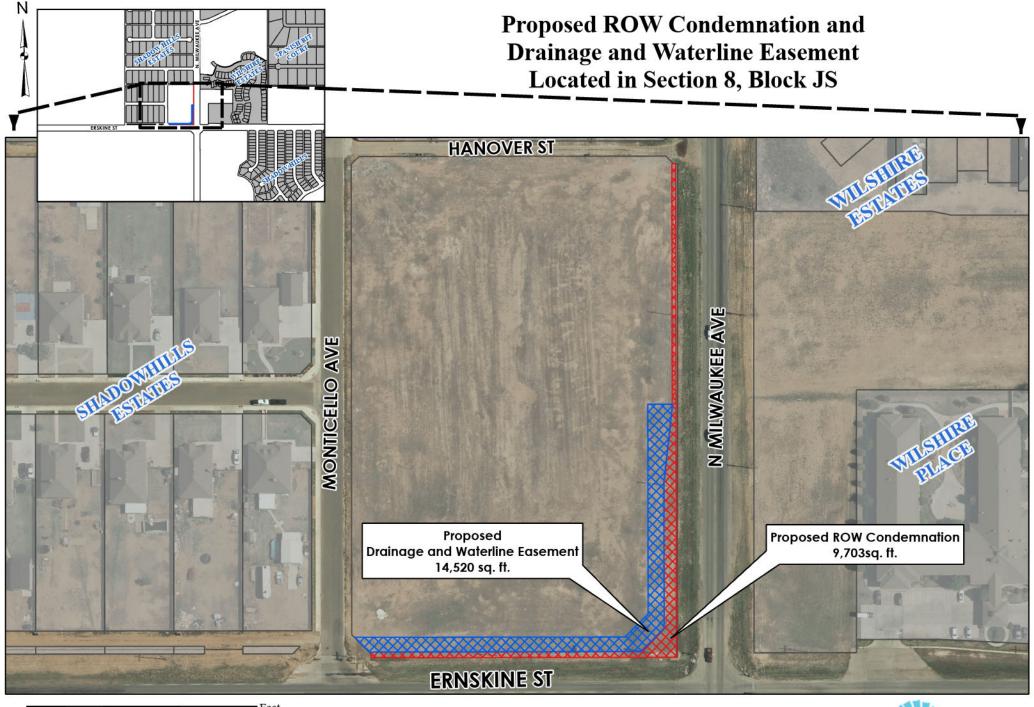
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Page

@ - FD. 1/2" IRON ROD w/ CAP (HRA)

P.O.B.- POINT OF BEGINNING CCFN- COUNTY CLERK FILE NUMBER ESMT. - EASEMENT SDD - STREET DEDICATION DEED

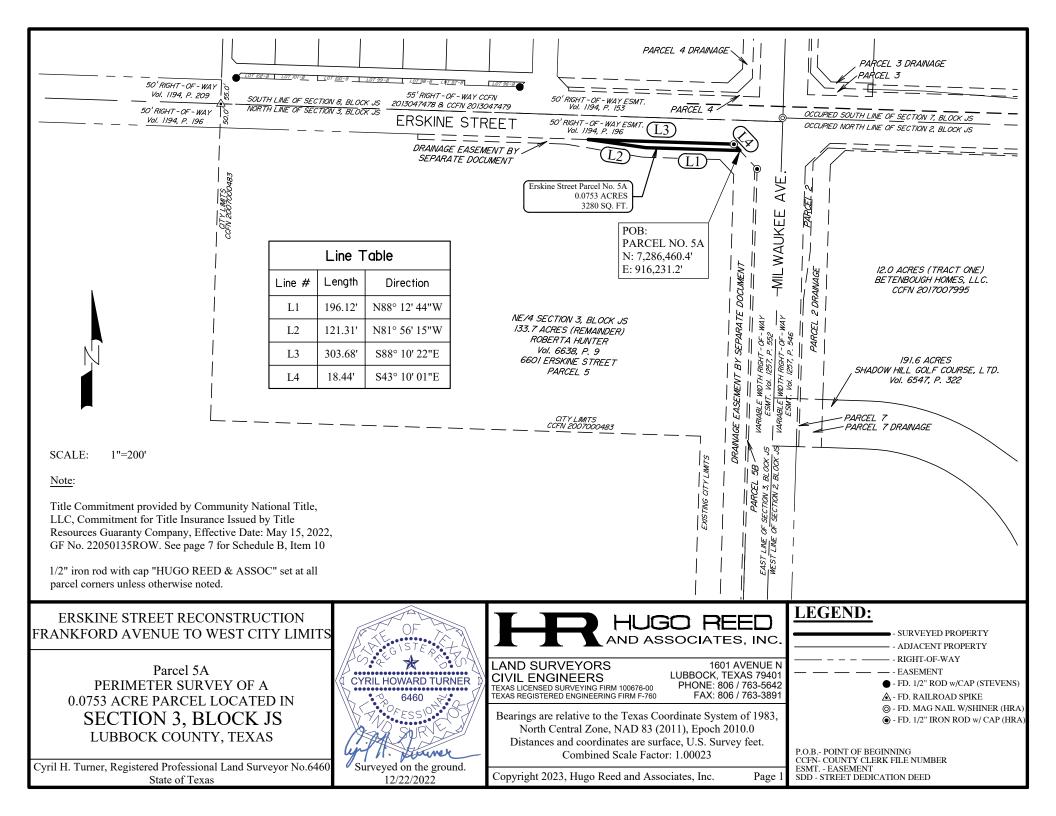


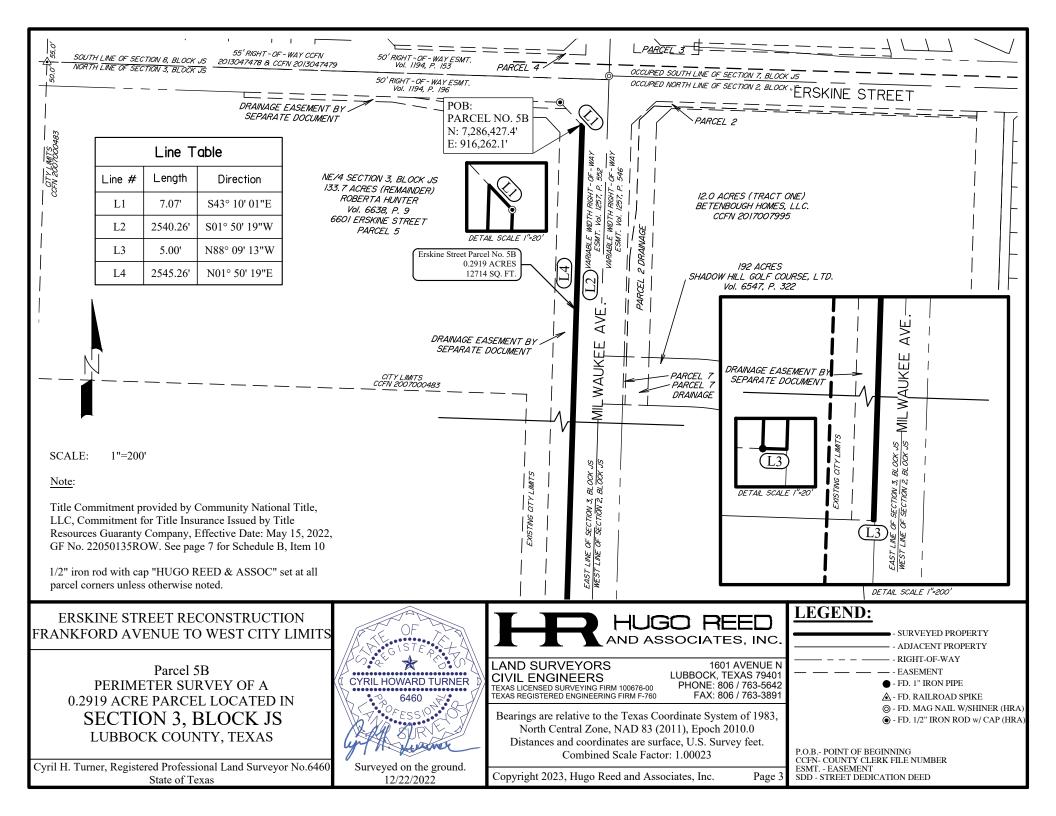


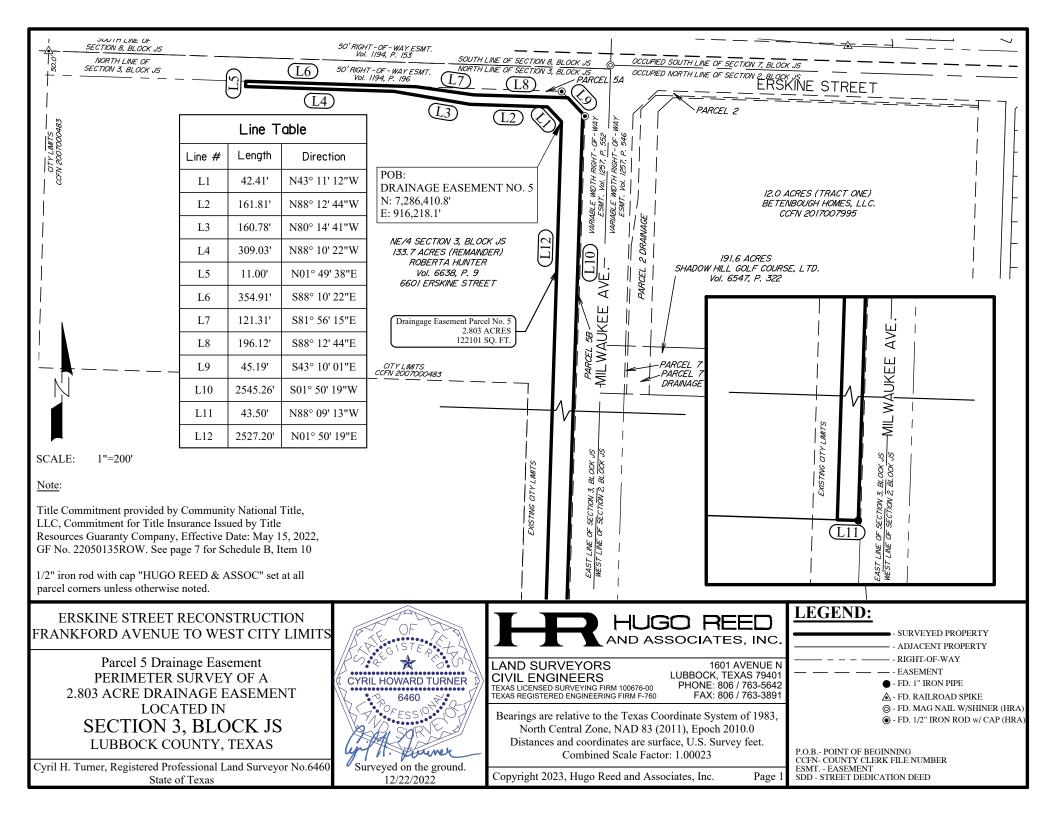


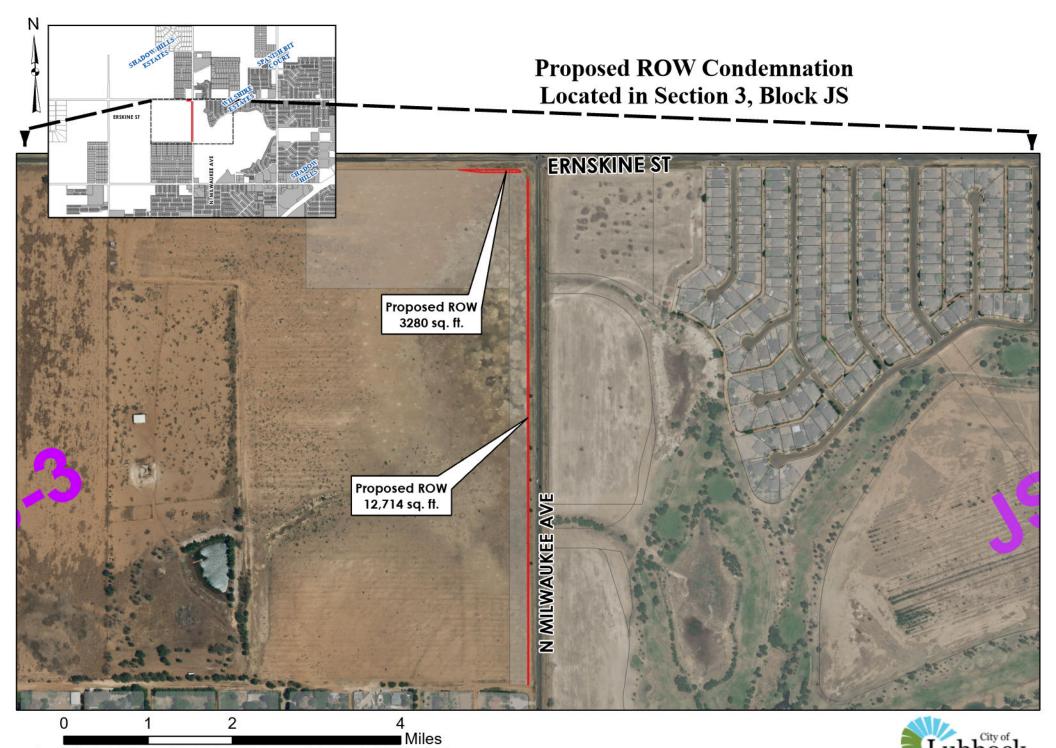
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Digital Orthophotography - May 2022

