

City of Lubbock, Texas
Regular City Council Meeting
December 3, 2024

Mark W. McBrayer, Mayor
Christy Martinez-Garcia, Mayor Pro Tem, District 1
Gordon Harris, Councilman, District 2
David Glasheen, Councilman, District 3
Brayden Rose, Councilman, District 4
Dr. Jennifer Wilson, Councilwoman, District 5
Tim Collins, Councilman, District 6



W. Jarrett Atkinson, City Manager
Matt Wade, 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.

Executive Session Disclosure Statement: The City Council reserves the right to adjourn into executive session at any time during the course of the meeting to discuss any item listed on this agenda as authorized by Chapter 551 of the Texas Government Code, including but not necessarily limited to §551.071 (Consultation with Attorney), §551.072 (Deliberations regarding Real Property), §551.073 (Deliberations regarding Gifts and Donations), §551.074 (Personnel Matters), §551.076 (Deliberations regarding Security Devices), §551.086 (Public Power Utilities: Competitive Matters), §551.087 (Deliberations regarding Economic Development Negotiations).

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.

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

12:00 p.m. - City Council convenes in City Council Chambers and immediately recesses into Executive Session.

1. Executive Session

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. 1. *City of Lubbock, Texas v. Elk City Wind II, LLC*, Cause No. CIV-23-232-G, proceeding in the United States District Court for the Western District of Oklahoma.
1. 1. 2. Community Development & Services Board

1. 1. 3. Lake 7
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. Lake 7
1. 2. 2. Central Business District
1. 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 Central Business District Tax Increment Financing Reinvestment Zone Board of Directors, Lubbock Business Park Tax Increment Financing Reinvestment Zone Board of Directors, North Overton Tax Increment Financing Reinvestment Zone Board of Directors, and the Urban Renewal Agency/Neighborhood Redevelopment Commission.
1. 4. Hold an executive session in accordance with Texas Government Code, Section 551.086, to discuss and take action on the following competitive matters of Lubbock Power & Light.
1. 4. 1. Bidding and pricing information for purchased power, generation and fuel; effective fuel and purchased power agreements; and risk management information, contracts, and strategies related to a proposed settlement in *City of Lubbock, Texas v. Elk City Wind II, LLC*, Cause No. CIV-23-232-G.
1. 5. Hold an executive session in accordance with Texas Government Code, Section 551.087, to discuss or deliberate regarding commercial or financial information that the governmental body has received from a business prospect that the governmental body seeks to have locate, stay, or expand in or near the territory of the governmental body and with which the governmental body is conducting economic development negotiations or to deliberate an offer of a financial or other incentive to such business prospect.
1. 5. 1. Central Business District

Adjourn from Executive Session

1:00 p.m. or immediately following Executive Session, the City Council reconvenes in Work Session in City Council Chambers.

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

2. 1. 2024 Road Bond - Implementation Plan
2. 2. Lubbock Animal Services - Update, Metrics, and Goals

At the completion of the Work Session, the City Council continues 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 2:00 p.m. on December 3, 2024. Citizen Comments provide an opportunity for citizens to make comments and express a position on agenda items.**

5. **Minutes**

5. 1. **Minutes:** November 5, 2024 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. 2024-00147, Amendment 3, amending the FY 2024-25 Budget for municipal purposes respecting the Grant Fund related to Public Health Services; providing for filing; and providing for a savings clause.

6. 1. 1. **Resolution - Public Health Services:** Consider a resolution authorizing the Mayor to execute Amendment No. 4 to the Department of State Health Services (DSHS) Contract No. HHS001057600030, and all related documents, by and between the City of Lubbock and the State of Texas, acting by and through DSHS, to provide funding for the Health Disparities Grant Program.

6. 1. 2. **Resolution - Public Health Services:** Consider a resolution authorizing the Mayor to execute Amendment No. 5 to the Department of State Health Services (DSHS) Contract No. HHS001120300005, and all related documents, under the STD/HIV-DIS Prevention Services Grant Program, by and between the City of Lubbock and the State of Texas, acting by and through DSHS.
6. 2. **Budget Ordinance Amendment 1st Reading - Finance:** Consider Budget Ordinance Amendment 4, amending the FY 2024-25 Budget for municipal purposes respecting the Gateway Capital Project Fund to establish Capital Improvement Project 92895, East 19th Street from Keel Avenue to East Loop 289; providing for filing; and providing for a savings clause.
6. 3. **Resolution - Right-of-Way:** Consider a resolution authorizing the Mayor to accept, for and on behalf of the City of Lubbock, one (1) Street, Public Use, and Right-of-Way Deed, and all related documents, in connection with certain real property located in Section 5, Block E, of the GC & SF R.R. Co. Survey, Lubbock County, Texas (Parcel 1), at the northeast corner of 82nd Street and the I-27 frontage road, to be utilized for the 82nd Street and Martin Luther King, Jr. Boulevard Project, which is a portion of the 2022 Street Bond Project.
6. 4. **Resolution - Right-of-Way:** Consider a resolution authorizing the Mayor to accept, for and on behalf of the City of Lubbock, one (1) Street, Public Use, and Right-of-Way Deed, and all related documents, in connection with certain real property located in Section 23, Block E, of the SI Johnson Survey, Lubbock County, Texas (Parcel 33), on the east side of Martin Luther King, Jr. Boulevard between 77th Street and 79th Street, to be utilized for the 82nd Street and Martin Luther King, Jr. Boulevard Project, which is a portion of the 2022 Street Bond Project.
6. 5. **Resolution - Right-of-Way:** Consider a resolution authorizing the Mayor to accept, for and on behalf of the City of Lubbock, one (1) Street, Public Use, and Right-of-Way Deed, and all related documents, in connection with certain real property located in Section 23, Block E, of the SI Johnson Survey, Lubbock County, Texas (Parcel 35), on the east side of Martin Luther King, Jr. Boulevard, at 74th Street, to be utilized for the 82nd Street and Martin Luther King, Jr. Boulevard Project, which is a portion of the 2022 Street Bond Project.
6. 6. **Resolution - Right-of-Way:** Consider a resolution authorizing the Mayor to accept, for and on behalf of the City of Lubbock, one (1) Street, Public Use, and Right-of-Way Deed, and all related documents, in connection with certain real property (Parcel 5) located in Section 39, Block AK, of the GC R.R. Co. Survey, Lubbock County, Texas, on the west side of Upland Avenue and north of 37th Street, to be utilized for the Upland Avenue: 34th Street to 50th Street Project, which is a portion of the 2022 Street Bond Project.

6. 7. **Resolution - Right-of-Way:** Consider a resolution authorizing the Mayor to execute an Amendment to a Street Use License Agreement, and related documents, by and between the City of Lubbock and Giehler Properties, LLC, for awnings on the west side of Texas Avenue, between Broadway and 13th Street.
6. 8. **Resolution - Engineering:** Consider a resolution authorizing the Mayor to execute Amendment No. 2 to Contract 16588, with Freese and Nichols, Inc., for engineering services for a flood protection plan for watersheds.
6. 9. **Resolution - Public Works Traffic Management:** Consider a resolution authorizing the Mayor to execute an Interlocal Agreement with the Texas Department of Transportation, for continued operation of the Traffic Management Center, utilizing the TxDOT Intelligent Transportation System.
6. 10. **Resolution - Public Works Traffic Management:** Consider a resolution authorizing the Mayor to execute Agreement No. BF-20496631, with the BNSF Railway Company, for the City of Lubbock to furnish equipment, and for Rio Grande Pacific Technology, Inc. to install a Wayside Horn System at the 2nd Street and Avenue P (DOT No. 014932M) at-grade crossing located at Mile Post 673.535.
6. 11. **Resolution - Public Works Traffic Management:** Consider a resolution authorizing the Mayor to execute an Agreement with Rio Grande Pacific Technology, Inc., for Professional Services to design and install a Wayside Horn System at the 2nd Street and Avenue P (DOT No. 014932M) at-grade crossing located at Mile Post 673.535.
6. 12. **Resolution - Public Health Services:** Consider a resolution authorizing the Mayor to execute a Memorandum of Understanding, by and between the City of Lubbock and the Plainview Serenity Center, Inc., regarding coordination of referrals with the City of Lubbock Health Department, and providing substance abuse services and co-occurring mental health services.
6. 13. **Resolution - Human Resources:** Consider a resolution authorizing the Mayor to execute Contract 18167, with Concentra Medical Centers, for employment physical examinations and drug/alcohol screening.
6. 14. **Ordinance 2nd Reading - Business Development:** Consider Ordinance No. 2024-00148, designating the North Park Development area as Tax Increment Reinvestment Zone No. 4; establishing a Board of Directors; establishing an effective date; establishing a Tax Increment Fund for the North Park Tax Increment Financing District; providing a severability clause; and enacting other matters related thereto.

6. 15. **Resolution - Business Development:** Consider a resolution authorizing the Mayor to execute Amendment No. 2 to Professional Services Agreement Contract 17764, with West Texas Services, Inc. dba Tom's Tree Place, for services related to right-of-way improvements in the North Overton Tax Increment Financing District boundary at 9th Street and 10th Street.
6. 16. **Resolution - Parks and Recreation:** Consider a resolution authorizing the Mayor to execute Lease Number 99006906-1 with PNC Bank, National Association, for the lease of a fleet of golf cars and utility vehicles for Meadowbrook Golf Course, from E-Z-GO Golf Carts, in accordance with Omnia Contract #R210201, and all related documents.
6. 17. **Resolution - Parks and Recreation:** Consider a resolution authorizing the Mayor to execute Lease Number 99006906-2, and all related documents, with PNC Bank, National Association, for the lease of a maintenance equipment package for Meadowbrook Golf Course, from United Ag & Turf, in accordance with Sourcewell Grounds Maintenance Contract 031121-DAC (PG BT CG 76), Sourcewell Ag Contract 082923-DAC (PG BA CG 76) and BuyBoard Contract.
6. 18. **Resolution - Information Technology:** Consider a resolution authorizing the Mayor to execute Amendment No. 4 to Contract 12643, with Environmental Systems Research Institute, Inc., for Geographic Information Systems Software and Services.
6. 19. **Resolution - Information Technology:** Consider a resolution authorizing the Mayor to execute Purchase Order 33001926, with CDW Government, Inc., for a two-year renewal of Mimecast Email Management System Services with Threat Protection from cybersecurity threats.
6. 20. **Resolution - Lubbock Fire Rescue:** Consider a resolution authorizing the Mayor to execute Purchase Order 10028002, with Heat Safety Equipment Inc., for Self Contained Breathing Apparatus.
6. 21. **Resolution - City Manager:** Consider a resolution authorizing the Mayor to execute the Cemetery Management and Operation Interlocal Cooperation Agreement, between the Texas General Land Office and Veterans Land Board, for the City of Lubbock to be the named provider of management and operations of the West Texas State Veterans Cemetery located at 4614 East 50th Street in Lubbock, Texas.

7. **Regular Agenda**

7. 1. **Report - Finance:** Presentation of the Final Pricing results of the General Obligation Refunding Bonds and the Water and Wastewater System Revenue Refunding Bonds.

7. 2. **Ordinance (Single Reading) - Finance:** Consider approval of an ordinance providing for the issuance of City of Lubbock, Texas, Water and Wastewater System Revenue Bonds, in one or more series, in a principal amount not to exceed \$66,000,000, for the following projects: Lake 7 Design and Land Acquisition, West Lubbock Water System Expansion, Pump Station 11B, East 50th Street Water Line Extension, Southwest Lubbock Sanitary Sewer Expansion, and Southeast Water Reclamation Plant #4 Primary Clarifier Rehabilitation; providing for the award of the sale thereof in accordance with specified parameters; approving an official statement; approving execution of a purchase contract; and enacting other provisions relating thereto.
7. 3. **Budget Ordinance Amendment 1st Reading - Finance:** Consider Budget Ordinance Amendment 6, amending the FY 2024-25 Capital Program to create and appropriate the 2024 Street Bond Capital Projects approved by the voters.
7. 4. **Budget Ordinance Amendment 1st Reading - Finance:** Consider Budget Ordinance Amendment 8, amending the FY 2024-25 Budget for municipal purposes respecting the General Fund Capital, Water/Wastewater Fund Capital, and ARPA; providing for filing; and providing for a savings clause.
7. 5. **Resolution - City Secretary:** Consider a resolution acting in response to a petition for recognition, received on November 7, 2024, on behalf of the Lubbock Professional Police Association, to be the sole bargaining agent for the Lubbock Police Department police officers, in accordance with the provisions of the meet and confer statute, as set forth in Texas Local Government Code, Chapter 142.
7. 6. **Resolution - City Secretary:** Consider a resolution acting in response to a petition for recognition, received on November 25, 2024, on behalf of the Lubbock Professional Firefighters Association, to be the sole bargaining agent for Lubbock Fire Rescue firefighters, in accordance with the provisions of the meet and confer statute as set forth in Texas Local Government Code, Chapter 142.
7. 7. **Board Appointment - City Secretary:** Consider the appointment of the Chairperson of the Central Business District Tax Increment Financing Reinvestment Zone Board of Directors, for the 2025 calendar year, with the term ending on December 31, 2025.
7. 8. **Board Appointment - City Secretary:** Consider the appointment of the Chairperson of the Lubbock Business Park Tax Increment Financing Reinvestment Zone Board of Directors, for the 2025 Calendar Year, with the term ending on December 31, 2025.
7. 9. **Board Appointment - City Secretary:** Consider the appointment of the Chairperson of the North Overton Tax Increment Financing Reinvestment Zone Board of Directors, for the 2025 Calendar Year, with the term ending on December 31, 2025.

7. 10. **Public Hearing - Planning:** Hold a public hearing in accordance with Section 43.0697(c)(2) of the Texas Local Government Code, regarding the City of Lubbock's intent to annex an area of land consisting of approximately 374.74 acres of real property commonly known as the Highland Oaks Subdivision, located within an area located south of 146th Street (F.M. 7500), east of Frankford Avenue, north of Woodrow Road (F.M. 7600), and west of Slide Road (F.M. Road 1730), into Lubbock's corporate limits.
7. 11. **Public Hearing - Planning (District 4):** Consider a request for Zone Case 3257-Q, a request of AMD Engineering, LLC for 1585 Development, LLC, for a zone change from Low Density Single-Family District (SF-2) to Medium Density Residential District (MDR), generally located west of Elgin Avenue and north of 137th Street on approximately 34.61 acres of unplatted land out of Block AK, Section 1, and consider an ordinance.
7. 12. **Public Hearing - Planning (District 4):** Consider a request for Zone Case 3511, a request of AMD Engineering, LLC for BARCCC Ventures, LLC – Series C, and Crowtracks, LLC, for a zone change from Low Density Single-Family District (SF-2) to Heavy Commercial District (HC), at 3201 116th Street, located south of 116th Street and east of Indiana Avenue, on 29.61 acres of unplatted land out of Block E-2, Section 21, and consider an ordinance.
7. 13. **Public Hearing - Planning (District 5):** Consider a request for Zone Case 3510, a request of Danny J. Everson, for a zone change from Low Density Single-Family District (SF-2) to Neighborhood Commercial District (NC), at 7508 66th Street, located north of 66th Street and west of Wausau Avenue, on approximately 3.593 acres of unplatted land out of Block AK, Section 34, and consider an ordinance.
7. 14. **Public Hearing - Planning (District 6):** Consider a request for Zone Case 3207-A, a request of Hugo Reed and Associates, Inc. for West End Hotels, LLC, for a zone change from Low Density Single-Family District (SF-2) and Heavy Commercial District (HC) to Heavy Commercial District (HC), at 2909 Iola Avenue, located at the intersection of 29th Street and Iola Avenue, West End Addition, Tract K, and consider an ordinance.
7. 15. **Resolution - City Manager:** Consider a resolution authorizing the Mayor to execute Contract 18128, for lobbying consultant services.

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 Central Business District Tax Increment Financing Reinvestment Zone Board of Directors, Lubbock Business Park Tax Increment Financing Reinvestment Zone Board of Directors, North Overton Tax Increment Financing Reinvestment Zone Board of Directors, and the Urban Renewal Agency/Neighborhood Redevelopment Commission.

Item Summary

Discuss personnel matters, regarding the duties, responsibilities, and/or appointments to the Central Business District Tax Increment Financing Reinvestment Zone Board of Directors, Lubbock Business Park Tax Increment Financing Reinvestment Zone Board of Directors, North Overton Tax Increment Financing Reinvestment Zone Board of Directors, and the Urban Renewal Agency/Neighborhood Redevelopment Commission.

Fiscal Impact

None

Staff/Board Recommending

Courtney Paz, City Secretary

Attachments

No file(s) attached.



Information

Agenda Item

Minutes: November 5, 2024 Regular City Council Meeting

Item Summary

November 5, 2024 Regular City Council Meeting

Fiscal Impact

None

Staff/Board Recommending

Courtney Paz, City Secretary

Attachments

11.5.2024

CITY OF LUBBOCK
REGULAR CITY COUNCIL MEETING
November 5, 2024
12:30 P. M.

The City Council of the City of Lubbock, Texas met in regular session on the 5th of November, 2024, in City Council Chambers, Citizens Tower, 1314 Avenue K, Lubbock, Texas at 12:30 p.m.

12:34 P.M. CITY COUNCIL CONVENED

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

Present: Mayor Mark W. McBrayer; Mayor Pro Tem Christy Martinez-Garcia; Council Member Tim Collins; Council Member David Glasheen; Council Member Brayden Rose; Council Member Dr. Jennifer Wilson; City Manager W. Jarrett Atkinson; City Secretary Courtney Paz; City Attorney Matt Wade

Absent: Council Member Gordon Harris

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

• Executive Session; 2.1; 4.1-4.2; Citizen Comments 3; 5.1; 6.1-6.12; 6.14-6.22; 6.13; and 7.1-7.4.

1. Executive Session

The meeting recessed at 12:35 p.m. and reconvened in Executive Session under the provisions of Section 551, Texas Government Code. City Council reconvened in open session at 2:10 p.m., and the meeting was called to order at 2:48 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. 1.** Loop 88 Land Acquisition
- 1. 1. 2.** Lake 7
- 1. 1. 3.** Texas Government Code Chapter 551 application
- 1. 1. 4.** *MVP Raider Park Garage, LLC v. Zoning Board of Adjustment of the City of Lubbock and the City of Lubbock*, Cause No. 2019-537527; 237 District Court, Lubbock, Texas and related administrative matters

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. Loop 88 Land Acquisition
1. 2. 2. Lake 7
1. 3. Hold an executive session in accordance with Texas Government Code Section 551.074, to discuss personnel matters, regarding the duties, responsibilities, and/or appointments to the Lubbock Central Appraisal District Board of Directors.

Immediately following Executive Session, City Council reconvenes in City Council Chambers in Work Session.

City Council reconvened at 2:10 p.m.

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

2. 1. Citibus - Route Study Presentation

Chris Mandrell, general manager of Citibus, introduced Jason Miller, with Fehr & Peers, gave comments, and answered questions from City Council. Mr. Miller gave a presentation on the Citibus Route Study and answered questions from City Council. Topics discussed included: Citibus Final Five-Year Service Plan, project approach, final fixed route plan, final microtransit zones, final paratransit zone, implementation scenarios and phasing, supporting recommendations, and pre-launch activities.

2:34 p.m. - City Council continues in Open Session in City Council Chambers.

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, shall complete the sign-up form provided at the meeting, no later than 2:00 p.m. on November 5, 2024. Citizen Comments provide an opportunity for citizens to make comments and express a position on agenda items.**

Sign ups:

- Amanda McAfee, president and CEO of Lubbock Area United Way; Jason Potter, chair of the Public Transit Advisory Board; Jessie Mendoza, vice chair of the Public Transit Advisory Board; and Robin Raney, president and CEO of Goodwill Industries of Northwest Texas, appeared before City Council to speak in favor of item 6.13 (a resolution approving the Citibus Route and Network Redesign Five-Year Plan).

4. Ceremonial Items

4. 1. Invocation

Pastor Lloyd Zuniga, Across The Way Baptist Church, led the invocation.

4. 2. Pledges of Allegiance

Pledges of Allegiance, to the United States and Texas Flags, were led by Mayor Pro Tem Christy Martinez-Garcia.

Call to Order

The meeting was called to order at 2:48 p.m.

5. Minutes

5. 1. Minutes - October 8, 2024 Regular City Council Meeting

Motion by Mayor Pro Tem Christy Martinez-Garcia, seconded by Council Member Tim Collins, to approve the October 8, 2024 Regular City Council Meeting minutes.

Vote: 6 - 0 Motion carried

Other: Council Member Gordon Harris (ABSENT)

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.

Motion by Mayor Pro Tem Christy Martinez-Garcia, seconded by Council Member Dr. Jennifer Wilson, to approve items 6.1-6.12 and 6.14-6.22.

Vote: 6 - 0 Motion carried

Other: Council Member Gordon Harris (ABSENT)

6. 1. Budget Ordinance Amendment 2nd Reading - Finance: Ordinance No. 2024-O0139, Amendment 1, amending the FY 2024-25 Budget for municipal purposes respecting the Grant Fund, regarding Public Health Services, providing for filing; and providing for a savings clause.

6. 1. 1. Resolution - Public Health Services: Resolution No. 2024-R0502 authorizing the Mayor to execute the Department of State Health Services Grant Agreement Contract No. HHS001348300008 under the HIV Clinical HIV/STI Prevention in Community Health Centers Program, and all related documents, by and between the City of Lubbock, and the State of Texas Department of State Health Services.

6. 2. **Budget Ordinance Amendment 1st Reading - Finance:** Ordinance No. 2024-O0145, Amendment 2, amending the FY 2024-25 Budget for municipal purposes respecting the Civil Service Pay Scale; providing for filing; and providing for a savings clause.
6. 3. **Resolution - Engineering:** Resolution No. 2024-R0503 authorizing the Mayor to execute Change Order No. 2 to Public Works Contract 16274, with ACME Electric Company, for the Southeast Water Reclamation Plant Effluent Pump Station No. 2 Improvements.
6. 4. **Resolution - Public Works Wastewater:** Resolution No. 2024-R0504 authorizing the Mayor to execute Purchase Order 23105890, with James, Cook, Hobson, to purchase one Flygt Submersible Pump for use at the Plant 4 Intermediate Lift Station at the Southeast Water Reclamation Plant.
6. 5. **Resolution - Facilities Management:** Resolution No.'s 2024-R0505 and 2024-R0506 authorizing the Mayor to execute Contract 18211 with Matthews Backhoe, Inc., and Contract 18327 with Intercon Demolition, Inc., for demolition services as needed, for City-owned buildings and structures.
6. 6. **Resolution - Facilities Management:** Resolution No. 2024-R0507 authorizing the Mayor to execute Contract 18275, with Alto Vista Roofing, Inc., for the complete roof replacement of the Central Warehouse Facility located at 306 Municipal Drive.
6. 7. **Resolution - Facilities Management:** Resolution No. 2024-R0508 authorizing the Mayor to execute Contract 18282, with Eskola, LLC, for the complete roof replacement of the City-owned building located at 1214 14th Street.
6. 8. **Resolution - Facilities Management:** Resolution No. 2024-R0509 authorizing the Mayor to execute Contract 18302, with ABF Commercial Roofing & Foam, for the complete roof replacement of the Hodges Community Center located at 4011 University Avenue.
6. 9. **Resolution - Community Development:** Resolution No.'s 2024-R0510, 2024-R0511, 2024-R0512, and 2024-R0513 authorizing the Mayor to execute Community Development Block Grant funding agreements, and all related documents, between the City of Lubbock and Community Development Block Grant subrecipients, which are CASA of the South Plains, Inc., Catholic Charities - Diocese of Lubbock, Love the Hub, and the YWCA, for public service programs.
6. 10. **Resolution - Community Development:** Resolution No. 2024-R0514 authorizing the Mayor to execute Contract 18452, and all related documents, with the Lubbock Housing Authority, for a lease of office space at 1708 Crickets Avenue, Lubbock, Texas, for the Community Development Department.

6. 11. **Resolutions - Public Transit Services:** Resolution No.'s 2024-R0515, 2024-R0516, 2024-R0517, and 2024-R0518 authorizing the Mayor to execute Contract 18183 with AEG Petroleum, Contract 18293 with United Oil & Grease, Contract 18291 with RelaDyne, and Contract 18290 with Arnold Oil Company of Austin, L.P., for motor oil and lubricants for Citibus.
6. 12. **Resolution - Public Transit Services:** Resolution No. 2024-R0519 authorizing the Mayor, or his designee, to execute a FY 2024 Federal Transit Administration Section 5310 Grant (TX-2024-118-00), to enhance the mobility of elderly individuals and individuals with disabilities.
6. 13. **Resolution - Public Transit Services:** Resolution No. 2024-R0524 authorizing the Mayor to approve the Citibus Route and Network Redesign Five-Year Plan that includes a fixed route restructure reaching into new areas of the city, incorporates express routes, and establishes micro-transit zones.

Chris Mandrell, general manager of Citibus; and Jason Miller, with Fehr & Peers, gave comments and answered questions from City Council.

Motion by Mayor Pro Tem Christy Martinez-Garcia, seconded by Council Member Tim Collins, to approve Resolution No. 2024-R0524.

Vote: 5 - 1 Motion carried

NAY: Council Member David Glasheen

Other: Council Member Gordon Harris (ABSENT)

6. 14. **Resolution - Business Development:** Resolution No. 2024-R0520 accepting a Special Warranty Deed on behalf of the Upland Crossing Public Improvement District (PID) by Betenbough Homes, LLC, granted to the City of Lubbock, for real property located at tracts within the Upland Crossing PID, as described on the Special Warranty Deed exhibits.
6. 15. **Resolution - Parks and Recreation:** Resolution No. 2024-R0521 authorizing the Mayor to execute Purchase Order 90500061, with Kraftsman Commercial Playgrounds & Waterparks, for playground replacement at Mackenzie Park, located at 301 Interstate 27.
6. 16. **Resolution - Information Technology:** Resolution No. 2024-R0522 authorizing the Mayor to execute Contract 18420, with Denovo Ventures, LLC, for a Professional Services Agreement for JD Edwards Application Lifecycle Management Services and Support.
6. 17. **Resolution - Lubbock Fire Rescue:** Resolution No. 2024-R0523 authorizing the Mayor to execute Purchase Order 10027880, with Stallion Air, Incorporated, for a breathing air compressor for Fire Station 20.

6. 18. **Ordinance 2nd Reading - Planning (District 1):** Ordinance No. 2024-O0141, for Zone Case 3487, a request of DLC Designs, LLC for Children's Home of Lubbock, for a zone change from Low Density Single-Family District (SF-2) to Residential Estates District (RE), at 4602 Idalou Road, located north of East Erskine Street and east of Idalou Road, on 170.98 acres of unplatted land out of Block A, Section 25.
6. 19. **Ordinance 2nd Reading - Planning (District 2):** Ordinance No. 2024-O0142, for Zone Case 2565-H, a request of Indira and Vipul Patel, for a zone change from Heavy Commercial District (HC) to Medium Density Residential District (MDR), at 5930 Avenue Q South Drive and 5903 Avenue L, located east of Avenue L and south of 58th Street, Carlton Heights Addition, Block A and approximately 8.16 acres of unplatted land out of Block E, Section 2.
6. 20. **Ordinance 2nd Reading - Planning (District 4):** Ordinance No. 2024-O0143, for Zone Case 1542-V, a request of Lubbock Smoke Shop, LLC for Lubbock Commercial Buildings, Inc., for a zone change from Neighborhood Commercial District (NC) to Neighborhood Commercial District (NC) Specific Use for a smoke shop, at 7310 Quaker Avenue located west of Quaker Avenue and north of 74th Street, Furr Wolf Addition, Block 2, Lot 2-A-1-B.
6. 21. **Ordinance 2nd Reading - Planning (District 5):** Ordinance No. 2024-O0144, for Zone Case 2651-B, a request of Westar Commercial Realty for SPSM, LTD, for a zone change from Industrial Park District (IP) to Heavy Commercial District (HC), at 5044 Frankford Avenue, located west of Frankford Avenue and north of 57th Street, Frankford Business Park Addition, Lot 6-B.
6. 22. **Ordinance 2nd Reading - Planning (District 5):** Ordinance No. 2024-O0140, for Zone Case 3508, a request of 1585 & Frankford/Discount RV, for a zone change from Low Density Single-Family District (SF-2) to Light Industrial District (LI), at 12109 Frankford Avenue, located north of 122nd Street and east of Frankford Avenue, Abbe Addition, Lot 1.
7. **Regular Agenda**
7. 1. **Resolution - City Secretary:** Resolution No. 2024-R0525 casting the City Council's votes for candidates to the Lubbock Central Appraisal District Board of Directors.

Courtney Paz, city secretary, gave comments and answered questions from City Council.

Motion by Mayor Pro Tem Christy Martinez-Garcia, seconded by Council Member David Glasheen, to approve Resolution No. 2024-R0525, casting the City of Lubbock's 1,178 votes for the five candidates as follows; thereby distributing votes as evenly as possible, with 236 votes for Sonny Garza; 236 votes for Brady Goen; 236 votes for Greg Jones; 235 votes for Bobby McQueen; and 235 votes for Noe Reynolds.

Vote: 6 - 0 Motion carried

Other: Council Member Gordon Harris (ABSENT)

7. 2. **Public Hearing - Business Development:** Hold a Public Hearing for the City Council to receive input concerning the participation by the City of Lubbock in the Texas Enterprise Zone program, pursuant to the Texas Enterprise Zone Act, possible incentives to be offered to projects, and nominating United Supermarkets, L.L.C., located at 5801 Martin Luther King Jr. Boulevard, Lubbock, Texas, to be considered for a state designated Enterprise Project.

Public Hearing Only.

Bill Howerton, deputy city manager, gave a presentation and answered questions from City Council.

Mayor McBrayer opened the public hearing at 3:10 p.m.

No one appeared to speak in favor or opposition.

Mayor McBrayer closed the public hearing at 3:15 p.m.

7. 3. **Ordinance 1st Reading - Business Development:** Ordinance No. 2024-O0146 of the City Council of the City of Lubbock, Texas, ordaining the participation by the City of Lubbock in the Texas Enterprise Zone Program, pursuant to the Texas Enterprise Zone Act, Chapter 2303, Texas Government Code; nominating United Supermarkets, L.L.C., located at 5801 Martin Luther King Jr. Boulevard, to the Office of the Governor, Economic Development and Tourism through the Economic Development Bank as an Enterprise Project; providing tax incentives; designating a liaison for communication with interested parties; directing staff to submit an application in conjunction with nomination; designating the effective period for the Enterprise Project; providing a savings clause; and providing for publication.

Motion by Council Member Brayden Rose, seconded by Mayor Pro Tem Christy Martinez-Garcia, to approve Ordinance No. 2024-O0146.

Vote: 6 - 0 Motion carried

Other: Council Member Gordon Harris (ABSENT)

7. 4. **Resolution - City Manager:** Resolution No. 2024-R0526 authorizing the Mayor to execute a Real Estate Sales Contract, for the purchase of real property located in Sections 4, 9, 11, 14, 18, 20, 21, and 24, Block S. Lubbock County, Texas, by and between the City of Lubbock and the Arnett Family Partnership, LP, Mary Jane Holmes, Karen Dreyer, Abby Quinn, and Abby Quinn, as Guardian of the Estate of William Flygare, and related documents, for the purpose of developing a future water supply for the City of Lubbock.

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

Motion by Council Member Dr. Jennifer Wilson, seconded by Mayor Pro Tem Christy Martinez-Garcia, to approve Resolution No. 2024-R0526.

Vote: 6 - 0 Motion carried

Other: Council Member Gordon Harris (ABSENT)

3:23 P.M. CITY COUNCIL ADJOURNED

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

The November 5, 2024 Regular City Council Meeting minutes were approved by the City Council on the 3rd day of December, 2024.

MARK W. McBRAYER, MAYOR

ATTEST:

Courtney Paz, City Secretary

Information

Agenda Item

Budget Ordinance Amendment 2nd Reading - Finance: Consider Budget Ordinance No. 2024-O0147, Amendment 3, amending the FY 2024-25 Budget for municipal purposes respecting the Grant Fund related to Public Health Services; providing for filing; and providing for a savings clause.

Item Summary

On November 12, 2024, the City Council approved the first reading of the ordinance.

- I. Accept and appropriate an additional \$110,000 for the Health Disparities Grant, making it a total of \$685,000 from the Texas Department of State Health Services (DSHS).
- II. Accept and appropriate an additional \$229,232 for the Sexually Transmitted Disease/Human Immunodeficiency Virus Disease Intervention Specialists Grant, making it a total of \$1,408,139 from the Texas Department of State Health Services (DSHS)

This additional \$110,000 is for a DSHS Health Disparities Grant, Contract No. HHS001057600030, Grant number 81160. The Health Disparities Grant was initially awarded to the Public Health Department in September 2021, to fund projects to improve community health. The grant will fund contracted Community Health Workers (Premier Staffing or similar) who will support the LBK community network by helping users access the system and supporting individuals in need with accessing services in the community.

This additional \$229,232 is for a DSHS Sexually Transmitted Disease/Human Immunodeficiency Virus Disease Intervention Specialists Grant (STD/HIV-DIS), Contract No. HHS001120300005. This grant was initially awarded to the Public Health Department in September 2022, to provide financial assistance to strengthen public health follow-up activities for those recently diagnosed with a sexually transmitted disease, including treatment, linkage to care, partner notification, and focused screening to at-risk populations. The grant will enable staff to reach individuals outside the traditional clinical setting.

Fiscal Impact

Item I - An increase of \$110,000 to the Health Disparities Grant, making it a total of \$685,000 from Texas DSHS

Item II - An increase of \$229,232 to the STD/HIV-DIS Grant, making it a total of \$1,408,139 for Texas DSHS

Staff/Board Recommending

Cheryl Brock - Interim Chief Financial Officer

Attachments

Ordinance - Budget Amendment 3

Budget Amendment 3 - Item I

Budget Amendment 3 - Item II

ORDINANCE NO. _____

AN ORDINANCE AMENDING THE FY 2024-25 BUDGET FOR MUNICIPAL PURPOSES RESPECTING THE GRANT FUND TO ACCEPT AND APPROPRIATE FUNDING FROM THE TEXAS DEPARTMENT OF STATE HEALTH SERVICES (DSHS); 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 2024-25 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 2024-25 (Budget Amendment #3) for municipal purposes, as follows:

- I. Accept and appropriate an additional \$110,000 for the Health Disparities Grant, making it a total of \$685,000 from the Texas Department of State Health Services (DSHS).
- II. Accept and appropriate an additional \$229,232 for the Sexually Transmitted Disease/Human Immunodeficiency Virus Disease Intervention Specialists Grant, making it a total of \$1,408,139 from the Texas Department of State Health Services (DSHS).

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 _____.

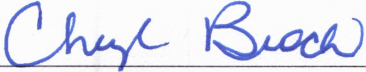
Passed by the City Council on second reading on _____.

MARK W. MCBRAYER, MAYOR

ATTEST:


Courtney Paz
City Secretary

APPROVED AS TO CONTENT:



Cheryl Brock
Interim Chief Financial Officer

APPROVED AS TO FORM:



Amy Sims
Deputy City Attorney

**DEPARTMENT OF STATE HEALTH SERVICES
CONTRACT NO. HHS001057600030
AMENDMENT NO. 4**

The **DEPARTMENT OF STATE HEALTH SERVICES** (“**SYSTEM AGENCY**” or “**DSHS**”), a pass-through entity, and **CITY OF LUBBOCK** (“**GRANTEE**”), collectively referred to as the "Parties" to that certain grant contract to provide funding for the Health Disparities Grant Program, effective Upon Execution, and denominated DSHS Contract No. HHS001057600030 (“the Contract”), as amended, now desire to further amend the Contract.

WHEREAS, DSHS desires to add funds and redistribute funds among the budget categories; and

WHEREAS, DSHS desires to update terms and conditions of the Contract.

NOW, THEREFORE, the Parties amend and modify the Contract as follows:

1. **ARTICLE IV, BUDGET**, of the Contract is amended to add \$110,000.00 to the Contract, resulting in a total amount of this Contract will not exceed \$685,000.000. All expenditures under the Contract shall be in accordance with **ATTACHMENT B-4, REVISED BUDGET (OCTOBER 2024)**.
2. **ATTACHMENT B-3, REVISED BUDGET**, of the Contract is deleted in its entirety and replaced with **ATTACHMENT B-4, REVISED BUDGET (OCTOBER 2024)**, which is attached to this Amendment and incorporated and made part of the Contract for all purposes.
3. **ATTACHMENT C-2, HHS UNIFORM TERMS AND CONDITIONS – GRANT, v. 3.3**, of the Contract is deleted in its entirety and replaced with **ATTACHMENT C-3, HHS UNIFORM TERMS AND CONDITIONS – GRANT, v. 3.5**, which is attached to this Amendment and incorporated and made part of the Contract for all purposes.
4. **ATTACHMENT F-2, FFATA CERTIFICATION FORM**, of the Contract is attached to this Amendment and incorporated and made part of the Contract for all purposes.
5. This Amendment shall be effective as of the date last signed below.
6. Except as amended and modified by this Amendment, all terms and conditions of the Contract, as previously amended, shall remain in full force and effect.
7. Any further revisions to the Contract shall be by written agreement of the Parties.
8. Each Party represents and warrants that the person executing this Amendment on its behalf has full power and authority to enter into this Amendment.

SIGNATURE PAGE FOLLOWS

SIGNATURE PAGE FOR AMENDMENT NO. 4
DSHS CONTRACT NO. HHS001057600030

DEPARTMENT OF STATE HEALTH SERVICES CITY OF LUBBOCK

Signature

Printed Name: _____

Title: _____

Date of Signature: _____

Signature

Printed Name: _____

Title: _____

Date of Signature: _____

ATTACHMENT B-4
REVISED BUDGET (OCTOBER 2024)

A. Total Budget for Grant Agreement Term:

Budget Categories	Amount
PERSONNEL	\$94,000.00
FRINGE BENEFITS	\$39,480.00
TRAVEL	\$6,060.00
EQUIPMENT	\$0.00
SUPPLIES	\$1,312.00
CONTRACTUAL	\$535,000.00
OTHER	\$9,148.00
TOTAL DIRECT CHARGES	\$685,000.00
INDIRECT CHARGES	\$0.00
TOTAL	\$685,000.00

- B. Amounts in table in Section A are cumulative amounts. All funding under the Grant Agreement is reimbursable for allowable costs under the Grant Agreement until May 31, 2026, or until the termination or expiration of the Grant Agreement, whichever is earlier. Funding availability under the Grant Agreement is as follows:

1. Total amount available as of Contract Effective Date: \$500,000.00
2. Total amount available as of June 1, 2023: \$575,000.00
3. Total amount available as of May 30, 2024: \$575,000.00
4. Total amount available as of Amendment No. 4 Effective Date: \$685,000.00



TEXAS

Health and Human Services

Health and Human Services (HHS)

Uniform Terms and Conditions - Grant

Version 3.5

Published and Effective – September 2024

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; 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.

“[Deliverables](#)” 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.

“[Solicitation Response](#)” or “[Application](#)” 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’ website relative to travel reimbursements under this Contract, if any.

“[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 *Texttravel* guidelines, which can currently be accessed at: <https://fmxcpa.texas.gov/fmx/travel/texttravel/>

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

- i. 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 may be subject to sanctions and remedies for non-compliance.
- iii. If Grantee, within Grantee's fiscal year, expends federal funds awarded of at least \$750,000 for audit periods beginning before October 1, 2024 (beginning on or after October 1, 2024, at least \$1,000,000), 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 \$750,000 in state funds awarded or other amount specified in the TxGMS, 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 program-specific 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 Pre-existing 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 e-mail 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

All equipment and property acquired by Grantee, with funds awarded under this Grant Agreement, are subject to all applicable laws and governing authority including, but not limited to, applicable provisions of 2 CFR 200 and TxGMS. 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 all information required to determine compliance with the terms and conditions of this Grant Agreement and all state and federal rules, regulations, and statutes. Grantee shall ensure these same requirements are included in all subcontracts.
- 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. Grantee shall ensure these same requirements are included in all subcontracts.

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. Grantee shall ensure these same requirements are included in all subcontracts.
- 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. Grantee shall permit the System Agency or any of its duly authorized federal, state, or local authorities unrestricted access to and the right to examine all external contracts and or pricing models or methodologies related to the Grant Agreement. Grantee shall ensure these same requirements are included in all subcontracts. 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 oversight, including, but not limited to, reviews, inspections, audits and investigations, 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 and payments related to the Grant Agreement, including those related to a Subcontractor.
- E. Grantee shall include the System Agency's and any of its duly authorized representatives', as well as duly authorized federal, state, or local authorities, unrestricted 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, inspection or investigation 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.
- C. Grantee shall include the requirement to provide to System Agency (and any of its duly authorized federal, state, or local authorities) internal audit reports related to this Grant Agreement in any Subcontract it awards. Upon request by System Agency, Grantee shall enforce this requirement against its Subcontractor. Further, Grantee shall include in any Subcontract it awards a requirement that all Subcontractor Subcontracts must also include these provisions.

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. Grantee shall ensure the authority to audit funds received indirectly by subcontractors through the contract and the requirement to cooperate is included in any subcontract it awards.

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 Article VIII will survive termination or expiration of this Grant Agreement. Further, the obligations of Grantee under this Article VIII 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 grant-funded 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 Code W206
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.



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 "Yes" to this question, where can this information be accessed?

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: 8627248BF34B4F77AA81E0575B16D035

Status: Sent

Subject: Please DocuSign: HHS001057600030, Lubbock (City of) Health Department A-4 ; OHDP/COVID-LHD

Source Envelope:

Document Pages: 32

Signatures: 0

Envelope Originator:

Certificate Pages: 2

Initials: 0

CMS Internal Routing Mailbox

AutoNav: Enabled

11493 Sunset Hills Road

Enveloped Stamping: Enabled

#100

Time Zone: (UTC-06:00) Central Time (US & Canada)

Reston, VA 20190

CMS.InternalRouting@dshs.texas.gov

IP Address: 167.137.1.12

Record Tracking

Status: Original

Holder: CMS Internal Routing Mailbox

Location: DocuSign

10/24/2024 9:08:59 AM

CMS.InternalRouting@dshs.texas.gov

Signer Events**Signature****Timestamp**

Mark McBrayer

Sent: 10/24/2024 9:21:02 AM

mmcbrayer@mylubbock.us

Security Level: Email, Account Authentication
(None)**Electronic Record and Signature Disclosure:**

Not Offered via DocuSign

Susana Garcia

Susana.Garcia@dshs.texas.gov

Security Level: Email, Account Authentication
(None)**Electronic Record and Signature Disclosure:**

Not Offered via DocuSign

Patty Melchior

Patty.Melchior@dshs.texas.gov

Security Level: Email, Account Authentication
(None)**Electronic Record and Signature Disclosure:**

Not Offered via DocuSign

Stephen Pont

Stephen.Pont@dshs.texas.gov

Security Level: Email, Account Authentication
(None)**Electronic Record and Signature Disclosure:**

Not Offered via DocuSign

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****Timestamp**

Carbon Copy Events	Status	Timestamp
<div>Gloria Diaz gdiaz@mylubbock.us Financial Analyst Security Level: Email, Account Authentication (None) Electronic Record and Signature Disclosure: Not Offered via DocuSign</div> <div>CMS Internal Routing Mailbox CMS.InternalRouting@dshs.texas.gov Security Level: Email, Account Authentication (None) Electronic Record and Signature Disclosure: Not Offered via DocuSign</div> <div>Giselle Statham giselle.statham@dshs.texas.gov Security Level: Email, Account Authentication (None) Electronic Record and Signature Disclosure: Not Offered via DocuSign</div>	<div>COPIED</div>	<div>Sent: 10/24/2024 9:21:01 AM Viewed: 10/24/2024 9:30:41 AM</div>

Witness Events	Signature	Timestamp
Notary Events	Signature	Timestamp
Envelope Summary Events	Status	Timestamps
Envelope Sent	Hashed/Encrypted	10/24/2024 9:21:01 AM
Payment Events	Status	Timestamps



TEXAS
Health and Human
Services

Texas Department of State Health Services

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

The Honorable Mark McBrayer, Mayor
City of Lubbock
PO Box 2000
Lubbock, Texas 79457

Subject: Sexually Transmitted Disease/Human Immunodeficiency Virus
Disease Intervention Specialists (STD/HIV-DIS) Contract
Contract Number: HHS001120300005, Amendment No. 5
Contract Amount: \$1,408,139.00
Contract Term: March 1, 2022, through July 31, 2025

Dear Mayor McBrayer:

Enclosed is the STD/HIV-DIS amendment No. 5 between the Department of State Health Services and City of Lubbock.

The purpose of this contract is to control and prevent the spread of Sexually Transmitted Diseases (STDs), including Human Immunodeficiency Virus/Acquired Immunodeficiency Syndrome (HIV/AIDS) and viral hepatitis.

This amendment increases the contract by \$229,232.00, updates the Statement of Work with new reporting requirements, revises certain attachments, and extends the contract term through July 31, 2025.

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

Sincerely,

Martha Jasse, CTCD, CTCM
Contract Manager
(512) 776-6551
martha.jasse@dshs.texas.gov

**DEPARTMENT OF STATE HEALTH SERVICES
CONTRACT NO. HHS001120300005
AMENDMENT NO. 5**

The **DEPARTMENT OF STATE HEALTH SERVICES** ("System Agency" or "DSHS"), a pass-through entity, and **CITY OF LUBBOCK** ("Grantee"), each a "Party" and collectively the "Parties" to that certain grant contract to control and prevent the spread of Sexually Transmitted Diseases (STDs), including Human Immunodeficiency Virus/Acquired Immunodeficiency Syndrome (HIV/AIDS) and viral hepatitis under the STD/HIV-DIS Prevention Services Program, effective March 1, 2022, and denominated DSHS Contract No. HHS001120300005 ("Contract"), as amended, now desire to further amend the Contract.

WHEREAS, the Parties desire to extend the Contract term;

WHEREAS, DSHS desires to add funds to the Contract for services provided in Calendar Year 2025; and

WHEREAS, DSHS desires to update the reporting requirements in the Statement of Work.

NOW, THEREFORE, the Parties hereby amend and modify the Contract as follows:

1. **ARTICLE III, DURATION**, of the Contract is amended to reflect a revised termination date of July 31, 2025.
2. **ARTICLE IV, BUDGET**, of the Contract is revised to increase the Contract amount by \$229,232.00 for the 2025 Calendar Year, resulting in a revised total not-to-exceed Contract amount of \$1,408,139.00. All expenditures for the 2025 Calendar Year will be in accordance with **ATTACHMENT B-5, BUDGET FOR 2025 CALENDAR YEAR**.
3. **ATTACHMENT A-2, REVISED STATEMENT OF WORK (SEPTEMBER 2023)**, is deleted in its entirety and replaced with **ATTACHMENT A-3, REVISED STATEMENT OF WORK (JANUARY 2025)**, which is attached to this Amendment and incorporated into and made part of the Contract for all purposes.
4. **ATTACHMENT B-5, BUDGET FOR 2025 CALENDAR YEAR**, is attached to this Amendment and incorporated into and made part of the Contract for all purposes.
5. **ATTACHMENT D-1, HHS CONTRACT AFFIRMATIONS VERSION 2.2**, is hereby deleted in its entirety and replaced with **ATTACHMENT D-2, HHS CONTRACT AFFIRMATIONS V. 2.3**, which is attached to this Amendment and incorporated into and made part of the Contract for all purposes.
6. **ATTACHMENT H-2, FFATA CERTIFICATION FORM**, is attached to this Amendment and incorporated into and made part of the Contract for all purposes. Grantee is required to complete the certification to meet the federal requirement.
7. This Amendment No. 5 shall be effective on January 1, 2025.

8. Except as amended and modified by this Amendment No. 5, all terms and conditions of the Contract, as amended, shall remain in full force and effect.
9. Any further revisions to the Contract shall be by written agreement of the Parties.
10. Each Party represents and warrants that the person executing this Amendment No. 5 on its behalf has the full power and authority to enter into the Amendment.

SIGNATURE PAGE FOLLOWS

**SIGNATURE PAGE FOR AMENDMENT NO. 5
DSHS CONTRACT NO. HHS001120300005**

DEPARTMENT OF STATE HEALTH SERVICES

CITY OF LUBBOCK

By: _____

By: _____

Printed Name: _____

Printed Name: _____

Title: _____

Title: _____

Date of Signature: _____

Date of Signature: _____

**THE FOLLOWING ATTACHMENTS ARE ATTACHED AND INCORPORATED AS PART OF THE
CONTRACT:**

ATTACHMENT A-3: REVISED STATEMENT OF WORK (JANUARY 2025)

ATTACHMENT B-5: BUDGET FOR 2025 CALENDAR YEAR

ATTACHMENT D-2: HHS CONTRACT AFFIRMATIONS V. 2.3

ATTACHMENT H-2: FFATA CERTIFICATION FORM

ATTACHMENTS FOLLOW

ATTACHMENT A-3

REVISED STATEMENT OF WORK (JANUARY 2025)

I. GRANTEE RESPONSIBILITIES

- A. Grantee shall conduct programs, as described herein, to control and prevent the spread of Sexually Transmitted Infections (STIs), including human immunodeficiency virus/acquired immunodeficiency syndrome (HIV/AIDS) and viral hepatitis, in accordance with the Centers for Disease Control and Prevention (CDC) STD Program Operations Guidelines, located at: <http://www.cdc.gov/std/program/gl-2001.htm>.
- B. Grantee shall perform the following seven (7) core activities:
 1. Community and Individual Behavior Change Interventions;
 2. Medical and Laboratory Services;
 3. Partner Services;
 4. Leadership and Program Management;
 5. Surveillance and Data Management;
 6. Training and Professional Development; and
 7. Program Evaluation.
- C. Grantee shall maintain written program procedures covering the seven (7) core activities. All procedures must be consistent with the requirements of this Contract.
- D. Grantee shall perform the activities required under this Contract in the service area designated in this Contract. Service area includes the following county: Lubbock.
- E. Grantee shall designate one staff member to be a Local Responsible Party (LRP), who will be responsible overall for ensuring the security of the confidential HIV/STI information the Grantee maintains pursuant to this Contract.
- F. Grantee shall comply with all applicable federal and state policies, standards, and guidelines. The following documents are incorporated into this Contract by reference:
 1. DSHS HIV and STD Program Operating Procedures and Standards (POPS), located at: <http://www.dshs.texas.gov/hivstd/pops/default.shtm>;
 2. DSHS TB/HIV/STD and Viral Hepatitis Unit Security Policies and Procedures, located at: <http://www.dshs.texas.gov/hivstd/policy/security.shtm>;
 3. CDC STD Program Operations Guidelines, located at: <http://www.cdc.gov/std/program/gl-2001.htm>;
 4. CDC STD Treatment Guidelines, located at: <http://www.cdc.gov/std/treatment/>; and
 5. DSHS HIV and STD Program Policy Reporting Suspected Abuse and Neglect of Children, located at: <https://www.dshs.texas.gov/childabuserreporting/default.shtm>.
- G. Grantee shall comply with all applicable federal and state regulations and statutes, as amended, which are incorporated by reference, including, but not limited to:
 1. Chapters 81 and 85 of the Texas Health and Safety Code, especially Section 85.085 of the Texas Health and Safety Code (Physician Supervision of

- Medical Care), which requires that a licensed physician supervise any medical care or procedure provided under a testing program as required by law;
 2. Chapter 94 of the Texas Health and Safety Code (relating to Education and Prevention Programs for Hepatitis C);
 3. Chapter 98 of the Texas Health and Safety Code (relating to the reporting of Sexually Transmitted Diseases including Human Immunodeficiency Virus);
 4. Title 25 Texas Administrative Code (TAC) Chapter 97; and
 5. Section 531.02161 of the Texas Government Code, as an update to provision of services, where there is delivery of an in-person service, there must also be an option of that service by telecommunications or through the use of information technology.
- H. Grantee shall perform all activities in accordance with the terms of this Contract and any subsequent instructions from DSHS. Grantee shall request DSHS written approval before diverting from applicable policies, procedures, and protocols and must update its implementation documentation within forty-eight (48) hours of making approved change(s). Changes must not be implemented unless DSHS written approval is provided to Grantee.
- I. Performance measures will be used to assess, in part, Grantee's effectiveness in providing the services described in this Contract, without waiving the enforceability of any of the other terms of the Contract.
- J. Grantee shall provide clinical services in accordance with Chapter 12 of DSHS HIV/STD Program POPS for examining, testing, and treating individuals served in public STD clinics. If data indicates that less than 90% of individuals served were examined, tested and/or treated for STD(s) as medically appropriate, within twenty-four (24) hours of seeking services, DSHS may (at its sole discretion) require additional measures be taken by the Grantee to improve that percentage. In that scenario, Grantee must follow those additional measures, and do so according to the timetable mandated by DSHS.
- K. Grantee shall ensure that individuals seeking STD diagnostic and/or treatment services in public STD clinics are medically managed according to Grantee written protocols and in compliance with DSHS HIV/STD Program POPS, and with CDC STD Treatment Guidelines 2021, as revised.
- L. Grantee shall ensure that individuals seeking STD diagnostic and/or treatment services in public STD clinics will be referred for Pre-Exposure Prophylaxis/Non-Occupational Post-Exposure Prophylaxis (PrEP/nPEP) services if at increased risk for HIV but currently HIV negative. Individuals to be prioritized for PrEP referrals include: Men who have Sex with Men (MSM) with rectal GC and/or syphilis; individuals who have an HIV+ partner; individuals in the social-sexual network of an identified HIV genotype cluster; and others at increased risk for HIV who could benefit from PrEP.
- M. Grantee shall ensure that individuals seeking STD diagnostic and/or treatment services in public STD clinics, who have been previously diagnosed with HIV and have no evidence of care for more than 12 months, be referred to a DIS or other linkage worker to ensure they are re-engaged into HIV medical care.

- N. Grantee shall explore mechanisms to expand testing and awareness of STDs via home testing and home self-collection kits and self-collection.
- O. Grantee shall explore mechanisms to use telemedicine or telehealth for individuals seeking STD diagnostic and treatment services and/or PrEP/nPEP services.
- P. Grantee shall ensure that a complaint process is maintained and posted in the areas where services are provided, in accordance with Chapter 12 (STI Clinical Standards) of the DSHS HIV/STD Program POPS.
- Q. Grantee shall maintain a staff retention policy.
- R. Grantee shall provide routine staffing updates for vacant positions, in accordance with DSHS required format and schedule for reporting.
- S. Grantee shall participate in targeted evaluation activities and other projects as required by DSHS or CDC.
- T. Grantee shall ensure that the client survey is conducted at a minimum of two (2) times per year for a total of thirty (30) days. The summary of the feedback must be available for review and identified concerns must be addressed within thirty (30) days of the feedback period.
- U. Grantee shall establish and maintain mutually agreed-upon written procedures with local providers to ensure the provision of partner services in accordance with DSHS HIV/STD Program POPS. The procedures must specify processes (e.g., communication) to facilitate timely partner elicitation by the local health department following the delivery of HIV-positive test results to clients by Grantee.
- V. Grantee shall establish and maintain mutually agreed-upon written procedures with local agencies who provide services frequently needed by clients seeking HIV/STD services from Grantee in accordance with DSHS HIV/STD Program POPS. The procedures must specify processes (e.g., communication) to facilitate timely partner elicitation by the local health department following the delivery of HIV-positive test results to clients by Grantee including, but not limited to, the following services:
 - 1. HIV testing and counseling;
 - 2. STD clinical services;
 - 3. Partner services;
 - 4. HIV medical and support services;
 - 5. Substance use treatment services;
 - 6. Harm reduction services; and
 - 7. Mental health services.

At a minimum, such procedures must address conditions associated with making and accepting client referrals. If Grantee provides all of the services in Subsections I(V)(1-7) herein in a specific geographic area, no such agreement is necessary for that area. Grantee shall maintain complete records of all referrals made. These procedures must be finalized and in place within thirty (30) days from the effective date of this Contract.

- W. Grantee shall ensure that performance of activities under this Contract is of a high quality and consistent with all the requirements of this Contract.

- X. Grantee shall conduct regular assessments of Grantee's performance, including compliance with DSHS Program procedures, policies and guidance, contractual conditions, attainment of performance measures, maintenance of adequate staff, and submission of required data and narrative reports. Failure to comply with stated requirements and contractual conditions may result in the immediate loss of Contract funds at the discretion of DSHS.
- Y. Grantee shall ensure that all staff designated to provide HIV and/or syphilis screening(s) by collecting blood-based specimens, in both field and clinical settings, complete DSHS-approved training prior to providing such services. Supplemental testing must be collected by venipuncture immediately, on site, after a point-of-care preliminary positive test result. Grantee staff shall offer and perform these tests unless the client refuses. HIV and syphilis specimens may be submitted through the DSHS public health laboratory, or another laboratory designated by the Grantee and approved in advance by DSHS.
- Z. Grantee shall ensure that all staff designated to deliver all HIV and/or STD results including positive results, in both field and clinical settings, complete DSHS-approved training prior to providing such services.
- AA. Grantee shall ensure that all staff conducting field work and designated to disclose the reason s/he is contacting persons (e.g., exposure to someone who tested positive for HIV and wanted to ensure s/he had the ability to be tested, positive test results were received from a provider, laboratory, life insurance company, etc.) complete DSHS-approved training prior to providing such services.
- BB. Grantee shall ensure that staff performing under this Contract deliver all reactive test results within the designated timeframes referenced in the DSHS HIV/STD Program POPS. Grantee staff shall ensure the client understands the infection(s) s/he has tested reactive for, is offered appropriate treatment for his/her infection(s) and is linked to other medical and social resources as appropriate (e.g., HIV testing and counseling; Pre-Exposure Prophylaxis (PrEP); Harm Reduction Services; STD clinical services; partner services; HIV medical and support services; substance use treatment services; and mental health services).
- CC. Grantee staff operating under this Contract may be reassigned by DSHS or Grantee to respond to Grantee's rapid response efforts or another public health follow-up (PHFU) program's response to address and intervene in the transmission of reportable STDs, HIV and/or other infections.
- DD. Grantee shall ensure that staff attend training identified by DSHS to respond to activities. The training will include planning, implementation and evaluation of rapid response activities.
- EE. Grantee shall maintain training records and ensure that staff complete and continue training as required by DSHS.

II. PERFORMANCE MEASURES

- A. **Overview.** Grantee shall follow the requirements for each of the STD Program Objectives in DSHS HIV and STD POPS, with special emphasis on outcomes excerpted below. If the data submitted by Grantee (or otherwise obtained by DSHS) indicates the Grantee's performance does not meet the standards stated in one (1)

or more of the objectives, DSHS may (at its sole discretion) require additional measures be taken by the Grantee to improve performance and Grantee must implement these measures according to a timetable directed by DSHS.

B. Public Health Follow-Up (PHFU) Program Objectives

1. For Syphilis Objectives:

- a. Grantee shall ensure that all individuals newly diagnosed with early syphilis are interviewed within three (3) days of assignment. If data indicates less than 80% of individuals newly diagnosed with early syphilis covered by the scope of this Contract are interviewed as described, DSHS may, at its sole discretion, require additional measures be taken by the Grantee to improve that percentage. In that scenario, Grantee must follow those additional measures, and do so according to the timetable mandated by DSHS. "Early syphilis" means all syphilis cases that are determined to be primary, secondary, or early non-primary/non-secondary syphilis. The CDC definition of syphilis is located at: <https://ndc.services.cdc.gov/case-definitions/syphilis-2018/>.
- b. Grantee shall achieve a partner index of at least 2.0 for all interviews conducted on individuals newly diagnosed with early syphilis. If data indicates less than a 2.0 partner index for all interviews conducted for early syphilis by Disease Intervention Specialists (DIS), DSHS may (at its sole discretion) require additional measures be taken by the Grantee to improve that percentage. In that scenario, Grantee must follow those additional measures, and do so according to the timetable mandated by DSHS.
- c. Grantee shall ensure that all partners initiated (partners obtained from the interview/case management process with locating information as outlined by Chapter 9 (Disease Intervention Specialist Performance Standards) of the DSHS HIV/STD Program POPS to attempt notification on early syphilis interviews) are notified of the disease exposure. If data indicates less than .75 partner notification index for all initiated partners, DSHS may, at its sole discretion, require additional measures be taken by the Grantee to improve that percentage. In that scenario, Grantee must follow those additional measures, and do so according to the timetable mandated by DSHS.
- d. Grantee shall ensure that all partners notified of syphilis exposure are tested and treated for syphilis, including incubating syphilis (disease intervention index). If data indicates less than 60% of notified partners are tested and treated as described, DSHS may (at its sole discretion) require additional measures be taken by the Grantee to improve that percentage. In that scenario, Grantee must follow those additional measures, and do so according to the timetable mandated by DSHS.
- e. Grantee shall ensure that a treatment index of at least 0.75 is achieved for all interviews conducted on individuals newly diagnosed with early syphilis. If data indicates less than 0.75 treatment index, DSHS may (at its sole discretion) require additional measures be taken by the Grantee to improve that percentage. In that scenario, Grantee must follow those

additional measures, and do so according to the timetable mandated by DSHS.

- f. Grantee shall ensure that 80% of pregnant women with syphilis are identified and treated appropriately and timely to prevent congenital syphilis.
- g. Grantee shall ensure that all infants born to a woman with a history of syphilis in their jurisdiction are investigated and reported within thirty (30) days of receiving report of birth as outlined by DSHS HIV/STI Program POPS, Chapter 23.
- h. For pregnant women, Grantee shall maintain a procedure to provide technical assistance and guidance for providers and systems of care that ensures testing for syphilis is conducted, at a minimum, at the first prenatal visit, during third trimester, and at delivery as required by Chapter 81, Texas Health and Safety Code, Section 81.090.
- i. Grantee shall ensure that all women of childbearing age with syphilis have a documented pregnancy status. Grantee shall also ensure that all notified partners who are women of childbearing age have a documented pregnancy status. DSHS may (at its sole discretion) require additional measures be taken by the Grantee to improve performance if data suggest that:
 - 1) less than 90% of women of childbearing age with reactive syphilis labs have a documented pregnancy status; and
 - 2) less than 80% of notified partners who are women of childbearing age have a documented pregnancy status.

In this scenario, Grantee must follow those additional measures and do so according to the timetable mandated by DSHS.

2. For HIV Objectives:

- a. Grantee shall ensure that all individuals newly diagnosed with HIV will be interviewed within seven (7) days in accordance with DSHS HIV/STD Program POPS. If data indicates less than 80% of individuals newly diagnosed with HIV are interviewed as described, DSHS may (at its sole discretion) require additional measures be taken by the Grantee to improve that percentage. In that scenario, Grantee must follow those additional measures, and do so according to the timetable mandated by DSHS.
- b. Grantee shall ensure that all individuals interviewed who have been newly diagnosed with HIV complete their first HIV medical appointment. If data indicates less than 85% of new HIV-positive clients interviewed complete their first HIV medical appointment, DSHS may (at its sole discretion) require additional measures be taken by the Grantee to improve that percentage. In that scenario, Grantee must follow those additional measures, and do so according to the timetable mandated by DSHS.

- c. Grantee shall achieve a partner index of at least 2.0 for interviews conducted on individuals newly diagnosed with HIV. If data indicates a partner index of less than 2.0 for individuals interviewed by DIS, DSHS may (at its sole discretion) require additional measures be taken by the Grantee to improve that percentage. In that scenario, Grantee must follow those additional measures, and do so according to the timetable mandated by DSHS.
- d. Grantee shall ensure that all partners initiated (partners obtained from the interview/case management process with enough locating information to attempt notification) on a new HIV interview are notified of the disease exposure. If data indicates less than 0.75 partner notification index, DSHS may (at its sole discretion) require additional measures be taken by the Grantee to improve that percentage. In that scenario, Grantee must follow those additional measures, and do so according to the timetable mandated by DSHS.
- e. Grantee shall ensure that all partners notified for HIV exposure are tested for HIV. If data indicates less than 60% of the notified partners are tested for HIV, DSHS may (at its sole discretion) require additional measures be taken by Grantee to improve that percentage. In that scenario, Grantee must follow those additional measures, and do so according to the timetable mandated by DSHS.
- f. Grantee shall ensure that all persons receiving PHFU (initiated partners, those co-infected with a bacterial STD such as syphilis, gonorrhea, and/or chlamydia, and/or individuals in the social-sexual network of an identified HIV genotype cluster) who have been previously diagnosed with HIV and have no evidence of care for more than 12 months are re-engaged to establish HIV medical services. The activities taken to locate the person must be documented in the designated data system. This includes confirmation that the client attended his/her HIV medical care appointment. All the tasks described in this provision must be completed by a Disease Intervention Specialist (DIS).

C. STD Surveillance Objectives

- 1. Grantee shall ensure 95% of the values for age, sex, county, facility type, and specimen collection date are collected for syphilis reporting.
- 2. Grantee shall ensure 95% of the values for age, sex, county, facility type, specimen collection date, race/ethnicity, gender, sexual orientation, sex of sex partners, pregnancy status, clinical signs/symptoms, HIV status, substance use, treatment received, and date of treatment are collected for primary and secondary syphilis reporting.
- 3. Grantee shall ensure 75% of syphilis cases have a documented adverse outcome status (possible, likely, verified, no) for neurological, ocular and otic manifestations.

III. TRAINING REQUIREMENTS

- A. Grantee shall ensure that staff comply with minimum training requirements of personnel operating under this Contract. Compliance will be monitored by DSHS.
- B. Grantee shall notify DSHS of completed trainings in the Semiannual Reports referenced in Section VI, Reporting Requirements, herein.
- C. Grantee shall require their staff to attend and ensure attendance at training, conferences, and meetings as directed by DSHS and described in this Section.
- D. DIS staff members must:
 - 1. Read and acknowledge Chapters 3 (HIV/STI Partner Services and Seropositive Notification) and 9 (Disease Intervention Specialists Performance Standards) of the DSHS HIV/STD Program POPS;
 - 2. Complete DSHS-approved Fundamentals of STD Intervention (FSTDI), including all prerequisites, within six (6) months of employment;
 - 3. Complete DSHS-approved Fundamentals of Counseling and Testing (FCT) or equivalent within six (6) months of employment;
 - 4. Complete training in, and demonstrate knowledge of, the designated database management system;
 - 5. Participate in the HIV Navigation in Texas (HNT) within one (1) year of employment;
 - 6. Complete field specimen collection and phlebotomy training that has been approved by the local health authority or clinical designee within sixty (60) days of employment;
 - 7. Demonstrate phlebotomy and specimen collection skills and competency before field specimen collection and annually thereafter. The Grantee shall maintain records of the completed training(s) and skills competency evaluations;
 - 8. Complete training for all locally sanctioned testing technologies used for specimen collection and processing;
 - 9. If having more than one (1) year of experience, complete additional courses as required by DSHS; and
 - 10. If assigned to complete Congenital Syphilis (CS) Investigations, complete CS trainings as directed by the CS Coordinator.
- E. First-Line Supervisors (FLS) staff must:
 - 1. Read and acknowledge Chapters 10 (First-Line Supervisors Performance Standards) and 11 (Regional and Local Health Department HIV/STD Program Manager Performance Standards);
 - 2. Complete all training activities which are required for DIS under this Contract, and FLS must also take the next available Texas First-Line Supervisor (TXFLS) training;
 - 3. If new to the jurisdiction, participate in the HIV Navigation in Texas within one (1) year of employment;
 - 4. Attend the DSHS FLS Summit;
 - 5. Attend quarterly DSHS FLS calls;
 - 6. Attend any other required DSHS trainings, as scheduled; and
 - 7. If assigned to review and approve Congenital Syphilis (CS) Investigations, complete CS trainings as directed by the CS Coordinator.

F. Program Manager (PM) staff members must:

1. Read and demonstrate understanding of the following DSHS HIV/STD Program POPS chapters: Chapter 3 (HIV/STI Partner Services and Seropositive Notification), Chapter 9 (Disease Intervention Specialists Performance Standards), Chapter 10 (First-Line Supervisors Performance Standards), and Chapter 11 (Regional and Local Health Department HIV/Program Manager Performance Standards);
2. Complete all training requirements of DIS and FLS;
3. Attend DSHS Leadership Meeting; and
4. Attend monthly DSHS Leadership calls.

G. STD Surveillance staff members must:

1. Read and acknowledge Chapter 8 (HIV/STI Surveillance) of DSHS HIV/STD Program POPS;
2. Attend STD Surveillance training, as scheduled by DSHS;
3. Attend STD Surveillance monthly meetings, as scheduled by DSHS; and
4. Attend any other DSHS-required trainings.
5. Upon request DSHS will provide additional recommended trainings and topics for all program staff.

IV. CONFIDENTIALITY

- A. Grantee shall designate and identify a HIPAA Privacy Officer, who is authorized to act on behalf of Grantee and is responsible for the development and implementation of the privacy and security requirements of federal and state privacy laws.
- B. Grantee shall ensure that its security procedures require that all of its computers and networks meet DSHS security standards, as certified by DSHS IT staff.
- C. Grantee shall provide a list to DSHS of personnel with access to secured areas and of all identified personnel who have received security training.
- D. Grantee shall provide a list to DSHS of personnel with access to all network drives where confidential information is stored and of all identified personnel who have received security training.
- E. Grantee shall ensure that requests for HIV/STD system user account terminations are sent to DSHS within one business day of the identification of need for account termination.
- F. Grantee shall transfer secure data electronically using the Public Health Information Network.
- G. Grantee shall maintain a visitors' log for individuals entering the secured areas; this must be reviewed quarterly by the LRP.
- H. Grantee shall verify HIV/STD system user passwords are changed at least every ninety (90) days; this must be verified by the LRP.

- I. Grantee shall ensure that portable devices used to store confidential data are approved by the LRP and encrypted.
- J. Grantee shall ensure that confidential data and documents are: (1) maintained in a secured area; (2) locked when not in use; (3) not left in plain sight; and (4) shredded before disposal.

V. HIV/STD RAPID RESPONSE PLAN

- A. DSHS will review the proposed Rapid Response Plan and provide guidance to the Grantee.
- B. Grantee shall develop, update, and submit a local HIV/STD Rapid Response Plan, and submit by February 1 of each year of the Contract to the designated DSHS staff. The plan must include how the Grantee will:
 - 1. Identify responsible parties for planned activities including, but not limited to, response coordinator, activity team lead, collaborative lead, and medical lead;
 - 2. Identify increases in disease or outbreaks;
 - 3. Increase active surveillance;
 - 4. Examine outbreak characteristics;
 - 5. Educate health care providers and the community of disease outbreak (e.g., including signs/symptoms, available resources, disease trends, reporting requirements, testing algorithms, and testing/treatment options);
 - 6. Inform media outlets, as appropriate;
 - 7. Conduct targeted screening efforts including testing in correctional settings (as appropriate);
 - 8. Enhance partner services;
 - 9. Expand clinical access and services (e.g., increase clinical hours or days of services, employ rapid testing, enhance prophylactic treatment protocols); and
 - 10. Adjust work hours for employees involved in the response to allow staff to work alternate hours or extended hours during response.
- C. Grantee shall establish and maintain collaborative relationships with local businesses, community clinics, and community-based organizations who serve populations most affected by HIV or other STDs, as well as with appropriate local and institutional individuals and groups (e.g., providers, hospitals, mental health and intellectually disabled facilities, infection control nurses), in order to implement the local Rapid Response Plan.
- D. Grantee shall continue to enhance their current HIV/STD surveillance system, including, but not limited to, improving reporting of providers and laboratories, and increasing the number of sites that report electronically.
- E. Grantee shall make all DSHS-directed revisions to the Rapid Response Plan and submit a revised version to the DSHS designated program consultant by the directed deadline.

- F. Grantee shall notify local leadership and key stakeholders of the finalized plan and maintain a copy within the Program.
- G. Grantee shall comply with the final, DSHS-approved version of the Rapid Response Plan when an outbreak is identified.
- H. Grantee shall designate program DIS persons to respond to local and statewide rapid response activities when necessary. The identified staff must complete DSHS identified trainings prior to assignment. The number of staff will be as directed by the DSHS Rapid Response Team leader, to conduct disease intervention activities as prescribed in the Grantee's final, approved STD Rapid Response Plan.
- I. Grantee shall participate in, follow guidelines for, and complete HIV cluster response activities for preventing and managing HIV outbreaks according to the Texas Cluster Detection and Response Plan. Grantee will designate staff members to respond to cluster assignments as directed by the Texas Cluster Detection Response Team.

VI. REPORTING REQUIREMENTS

- A. Grantee shall submit reports to DSHS in accordance with the schedule outlined in this section for the corresponding calendar year.

B. CALENDAR YEAR 2022 REPORTING:

REPORT NAME	FREQUENCY	PERIOD STARTS	PERIOD ENDS	DUE DATE
Semiannual Report	First six (6) months	03/01/2022	08/31/2022	09/30/2022
Semiannual Report	Remaining five (5) months	09/01/2022	01/31/2023	02/28/2023
Congenital Syphilis Case Investigation and Infant Syphilis Control Records	Monthly	03/01/2022	01/31/2023	Due thirty (30) calendar days after period being reported. Note: This Report is submitted through THISIS and is subject to HIPAA and PHI data requirements.
Local Responsible Party (LRP) Report	First six (6) months	03/01/2022	08/31/2022	09/30/2022
Final LRP Report	Remaining five (5) months	09/01/2022	01/31/2023	02/28/2023

Financial Status Report (FSR)	Biannually	03/01/2022	08/31/2022	09/30/2022
Final FSR	Remaining five (5) months	09/01/2022	01/31/2023	03/15/2023

C. CALENDAR YEAR 2023 REPORTING:

REPORT NAME	FREQUENCY	PERIOD STARTS	PERIOD ENDS	DUE DATE
Semiannual Report	First five (5) months	02/01/2023	06/30/2023	07/31/2023
Semiannual Report	Remaining six (6) months	07/01/2023	12/31/2023	01/31/2024
Congenital Syphilis Case Investigation and Infant Syphilis Control Records	Monthly	02/01/2023	12/31/2023	Due thirty (30) calendar days after period being reported. Note: This Report is submitted through THISIS and is subject to HIPAA and PHI data requirements.
Local Responsible Party (LRP) Report	First five (5) months	02/01/2023	06/30/2023	07/31/2023
Final LRP Report	Remaining six (6) months	07/01/2023	12/31/2023	01/31/2024
Financial Status Report (FSR)	Biannually	02/01/2023	06/30/2023	07/31/2023
Final FSR	Remaining six (6) months	07/01/2023	12/31/2023	02/15/2024

D. CALENDAR YEAR 2024 REPORTING:

REPORT NAME	FREQUENCY	PERIOD BEGIN	PERIOD END	DUE DATE
Semiannual Report	First six (6) months	01/01/2024	06/30/2024	08/16/2024
Semiannual Report	Remaining six (6) months	07/01/2024	12/31/2024	01/31/2025

Congenital Syphilis Case Investigation and Infant Syphilis Control Records	Monthly	01/01/2024	12/31/2024	Due thirty (30) calendar days after period being reported. Note: This Report is submitted electronically and is subject to HIPAA and PHI data requirements.
Local Responsible Party Biannual Security Assessment (LRP) Report	First six (6) months	01/01/2024	06/30/2024	07/31/2024
Local Responsible Party Biannual Security Assessment (LRP) Report	Remaining six (6) months	07/01/2024	12/31/2024	01/31/2025
Financial Status Report (FSR)	First six (6) months	01/01/2024	06/30/2024	07/31/2024
Final FSR	Remaining six (6) months	07/01/2024	12/31/2024	1/31/2025

E. CALENDAR YEAR 2025 REPORTING:

REPORT NAME	FREQUENCY	PERIOD BEGIN	PERIOD END	DUE DATE
Closeout Report	Once	01/01/2025	07/01/2025	07/31/2025
Congenital Syphilis Case Investigation and Infant Syphilis Control Records Tracking Sheet	Monthly	01/01/2025	07/31/2025	Due thirty (30) calendar days after period being reported. Note: This Report is submitted electronically and is subject to HIPAA and PHI data requirements.

Local Responsible Party Biannual Security Assessment (LRP) Report	First six (6) months	01/01/2025	06/30/2025	07/16/2025
Local Responsible Party Biannual Security Assessment (LRP) Report	Remaining month	07/01/2025	07/31/2025	08/31/2025
Financial Status Report (FSR)	First six (6) months	01/01/2025	06/30/2025	07/31/2025
Final FSR	Remaining month	07/01/2025	07/31/2025	08/31/2025

VII. INVOICE AND BUDGET

- A. Grantee shall submit invoices monthly, on the 30th day of the following month (28th or 29th day if February), or next business day if the 30th day falls on a weekend or holiday, to prevent delays in processing a subsequent month's invoicing. System Agency requires Grantee to submit, on a timely basis, a "zero dollar" invoice for a month in which it did not incur expenses. Grantee shall email invoices and support documentation to invoices@dshs.texas.gov and cmsinvoices@dshs.texas.gov simultaneously. Invoices received after the 30th of the month, or the next business day, are subject to denial of payment.
- B. Unless otherwise directed by System Agency, Grantee shall submit a reimbursement or payment request as a final close-out invoice no later than thirty (30) calendar days following the end of the term of the Contract. Reimbursement or payment requests received after the deadline may not be paid.
- C. System Agency reserves the right, where allowed by legal authority, to redirect funds in the event of financial shortfalls. DSHS will monitor Grantee's expenditures on a biannual basis. If expenditures are below the Contract amount of the budget year, then, System Agency, in its sole discretion, may reduce the Grantee's budget for the remainder of the Contract term. System Agency may also reduce Grantee's budget if Grantee has vacant positions existing for more than ninety (90) consecutive calendar days.
- D. Grantee will be paid on a cost reimbursement basis and in accordance with the budget for the corresponding year under this Contract.
- E. Grantee shall maintain an inventory of equipment, supplies, and real property. Grantee shall submit an annual cumulative report on DSHS Grantee's Property Inventory Report to the DSHS Contract Representative 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 \$500.00 or more, but less than \$5,000.00: 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 do not include a capitalized asset, real property, an improvement to real property, or infrastructure.

F. DSHS-approved budget may be revised by Grantee in accordance with the following requirements:

1. For any transfer between budget categories, Grantee shall provide notification of transfer between budget categories by submission of a request for budget change in DSHS-directed format (hereafter the “Budget Change Form”) to the DSHS Contract Representative, highlighting the areas affected by the budget transfer and written justification for the transfer request. After DSHS review, the designated DSHS Contract Representative will provide notification of acceptance or rejection to Grantee by email.
2. For transfer of funds between budget categories, other than the ‘Equipment’ and ‘Indirect Cost’ categories, for less than or equal to a cumulative twenty-five (25) percent of the total value of the respective Contract budget period, Grantee shall timely submit the Budget Change Form for DSHS approval. If the revision is approved, then the budget revision is not authorized, and the funds cannot be utilized until an amendment incorporating the change(s) is executed by the Parties.
3. For transfer of funds between budget categories, other than the ‘Equipment’ and ‘Indirect Cost’ categories, that cumulatively exceeds twenty-five (25) percent of the total value of the respective Contract budget period, Grantee shall submit timely written notification to DSHS Contract Representative using the Budget Change Form and request DSHS approval. If the revision is approved, then the budget revision is not authorized, and the funds cannot be utilized until an amendment incorporating the change(s) is executed by the Parties.
4. Any transfer between budget categories that includes ‘Equipment’ and/or ‘Indirect Cost’ categories must be incorporated by amendment. Grantee shall submit timely written notification to DSHS Contract Representative using the Budget Change Form and request DSHS approval. If the revision is approved, then the budget revision is not authorized, and the funds cannot be utilized until an amendment incorporating the change(s) is executed by the Parties.

ATTACHMENT B-5
BUDGET FOR 2025 CALENDAR YEAR

Budget Category	2025 Calendar Year (January 1, 2025, through July 31, 2025)
PERSONNEL	\$125,598.00
FRINGE BENEFITS	\$69,079.00
TRAVEL	\$7,735.00
EQUIPMENT	\$0.00
SUPPLIES	\$9,270.00
CONTRACTUAL	\$0.00
OTHER	\$17,550.00
TOTAL DIRECT CHARGES	\$229,232.00
INDIRECT CHARGES	\$0.00
TOTAL	\$229,232.00

HEALTH AND HUMAN SERVICES
Contract Number HHS001120300005
Attachment D2 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: InternalAffairsReferral@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. Gender Transitioning and Gender Reassignment Procedures and Treatments for Certain Children – Prohibited Use of Public Money; Prohibited State Health Plan Reimbursement.

Contractor understands, acknowledges, and agrees that, pursuant to Section 161.704 of the Texas Health and Safety Code (eff. Sept. 1, 2023), public money may not directly or indirectly be used, granted, paid, or distributed to any health care provider, medical school, hospital, physician, or any other entity, organization, or individual that provides or facilitates the provision of a procedure or treatment to a child that is prohibited under Section 161.702 of the Texas Health and Safety Code. Contractor also understands, acknowledges, and agrees that, pursuant to Section 161.705 of the Texas Health and Safety Code (eff. Sept. 1, 2023), HHSC may not provide Medicaid reimbursement and the child health plan program established under Chapter 62 may not provide reimbursement to a physician or health care provider for provision of a procedure or treatment to a child that is prohibited under Section 161.702 of the Texas Health and Safety Code. Contractor certifies that it is not ineligible to contract with System Agency under the terms of Chapter 161, Subchapter X, of the Texas Health and Safety Code.

40. 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.

41. 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.

42. COVID-19 Vaccinations

Contractor understands, acknowledges, and agrees that, pursuant to Article II of the General Appropriations Act, none of the General Revenue Funds appropriated to the Department of State Health Services (DSHS) may be used for the purpose of promoting or advertising COVID-19 vaccinations in the 2024-25 biennium. It is also the intent of the legislature that to the extent allowed by federal law, any federal funds allocated to DSHS shall be expended for activities other than promoting or advertising COVID-19 vaccinations. 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.

43. Entities that Boycott Energy Companies

In accordance with Senate Bill 13, Acts 2021, 87th Leg., R.S., pursuant to Section 2274.002 (eff. Sept. 1, 2023, Section 2276.002, pursuant to House Bill 4595, Acts 2023, 88th Leg., R.S.) 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 (eff. Sept. 1, 2023, Section 2276.002, pursuant to House Bill 4595, Acts 2023, 88th Leg., R.S.) 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.

44. 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.

45. 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.

46. 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.

47. 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) (eff. Apr. 1, 2025, Section 544.0106, pursuant to House Bill 4611, Acts 2023, 88th Leg., R.S.) is applicable to this Contract, Contractor affirms that it possesses the necessary occupational licenses and experience.

48. 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.

49. Foreign-Owned Companies in Connection with Critical Infrastructure

If Texas Government Code, Section 2274.0102(a)(1) (eff. Sept. 1, 2023, Section 2275.0102(a)(1), pursuant to House Bill 4595, Acts 2023, 88th Leg., R.S.) (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 (eff. Sept. 1, 2023, Section 2275.0102, pursuant to House Bill 4595, Acts 2023, 88th Leg., R.S.), 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 (eff. Sept. 1, 2023, Section 2275.0103, pursuant to House Bill 4595, Acts 2023, 88th Leg., R.S.), or (2) headquartered in any of those countries.

50. 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.

51. 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.

52. 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.

53. 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.

54. 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.

55. 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.

56. Equal Employment Opportunity

Contractor represents and warrants its compliance with all applicable duly enacted state and federal laws governing equal employment opportunities.

57. 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).

58. 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 applicable (d/b/a or ‘doing business as’)

Texas County(s) for Assumed Business Name (d/b/a or ‘doing business as’)
Attach Assumed Name Certificate(s) filed with the Texas Secretary of State and Assumed Name Certificate(s), if any, for each Texas County Where Assumed Name Certificate(s) has been filed.

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)



Texas Department of State
Health Services

Attachment H-2 HHS001120300005

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 "Yes" to this question, where can this information be accessed?

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: EA1BF9E3AB4C4B04B311DE098BEAF688		Status: Sent
Subject: Please DocuSign: AMENDING \$1,408,139.00; HHS001120300005; City of Lubbock A-5; STD/HIV-DIS		
Source Envelope:		
Document Pages: 36	Signatures: 0	Envelope Originator:
Certificate Pages: 2	Initials: 0	CMS Internal Routing Mailbox
AutoNav: Enabled		11493 Sunset Hills Road
Envelope Stamping: Enabled		#100
Time Zone: (UTC-06:00) Central Time (US & Canada)		Reston, VA 20190
		CMS.InternalRouting@dshs.texas.gov
		IP Address: 167.137.1.9

Record Tracking

Status: Original	Holder: CMS Internal Routing Mailbox	Location: DocuSign
10/30/2024 12:50:06 PM	CMS.InternalRouting@dshs.texas.gov	

Signer Events	Signature	Timestamp
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Mark McBrayer		Sent: 10/30/2024 1:06:40 PM
mmcbayer@mylubbock.us		
Security Level: Email, Account Authentication (None)		
Electronic Record and Signature Disclosure: Not Offered via DocuSign		
Helen Whittington		
helen.whittington@dshs.texas.gov		
Security Level: Email, Account Authentication (None)		
Electronic Record and Signature Disclosure: Not Offered via DocuSign		
Patty Melchior		
Patty.Melchior@dshs.texas.gov		
Security Level: Email, Account Authentication (None)		
Electronic Record and Signature Disclosure: Not Offered via DocuSign		
Kirk Cole		
Kirk.Cole@dshs.texas.gov		
Security Level: Email, Account Authentication (None)		
Electronic Record and Signature Disclosure: Not Offered via DocuSign		

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	Timestamp

Carbon Copy Events	Status	Timestamp
<div>Gloria Diaz gdiaz@mylubbock.us Financial Analyst Security Level: Email, Account Authentication (None) Electronic Record and Signature Disclosure: Not Offered via DocuSign</div>	<div>COPIED</div>	<div>Sent: 10/30/2024 1:06:39 PM Viewed: 10/30/2024 2:39:32 PM</div>
<div>Katherine Wells kwells@mylubbock.us Security Level: Email, Account Authentication (None) Electronic Record and Signature Disclosure: Not Offered via DocuSign</div>	<div>COPIED</div>	<div>Sent: 10/30/2024 1:06:38 PM Viewed: 10/30/2024 2:08:21 PM</div>
<div>CMS Internal Routing Mailbox CMS.InternalRouting@dshs.texas.gov Security Level: Email, Account Authentication (None) Electronic Record and Signature Disclosure: Not Offered via DocuSign</div>		
<div>Martha Jasse Martha.Jasse@dshs.texas.gov Security Level: Email, Account Authentication (None) Electronic Record and Signature Disclosure: Not Offered via DocuSign</div>		
Witness Events	Signature	Timestamp
Notary Events	Signature	Timestamp
Envelope Summary Events	Status	Timestamps
Envelope Sent	Hashed/Encrypted	10/30/2024 1:06:39 PM
Payment Events	Status	Timestamps

Information

Agenda Item

Resolution - Public Health Services: Consider a resolution authorizing the Mayor to execute Amendment No. 4 to the Department of State Health Services (DSHS) Contract No. HHS001057600030, and all related documents, by and between the City of Lubbock and the State of Texas, acting by and through DSHS, to provide funding for the Health Disparities Grant Program.

Item Summary

This is an existing grant. The Health Disparities Grant was initially awarded to the Public Health Department in September 2021, to fund projects to improve community health. The grant will fund contracted Community Health Workers (Premier Staffing or similar) who will support the LBK Community network, by helping users access the system and by supporting individuals in need to access services in the community.

The amendment will be effective as of the date last signed on the contract, and will terminate on May 31, 2026.

Fiscal Impact

Amendment No. 4 adds \$110,000 to the contract. The contract will not exceed \$685,000. A local match is not required for this grant.

Staff/Board Recommending

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

Attachments

Resolution
Contract

RESOLUTION

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

THAT the Mayor of the City of Lubbock is hereby authorized and directed to execute for and on behalf of the City of Lubbock, Amendment No. 4 to the Department of State Health Services (DSHS) Contract No. HHS001057600030, to provide funding for the Health Disparities Grant Program, by and between the City of Lubbock and the State of Texas, acting by and through DSHS, and all related documents. Said Amendment is attached hereto and incorporated in this resolution as if fully set forth herein and shall be included in the minutes of the City Council.

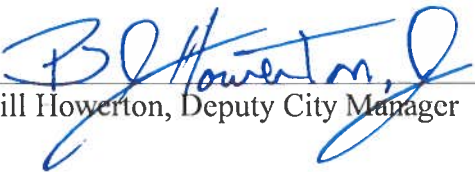
Passed by the City Council on _____.

MARK W. MCBRAYER, MAYOR

ATTEST:

Courtney Paz, City Secretary

APPROVED AS TO CONTENT:



Bill Howerton, Deputy City Manager

APPROVED AS TO FORM:



Rachael Foster, Assistant City Attorney

**DEPARTMENT OF STATE HEALTH SERVICES
CONTRACT NO. HHS001057600030
AMENDMENT NO. 4**

The **DEPARTMENT OF STATE HEALTH SERVICES** ("SYSTEM AGENCY" or "**DSHS**"), a pass-through entity, and **CITY OF LUBBOCK** ("**GRANTEE**"), collectively referred to as the "Parties" to that certain grant contract to provide funding for the Health Disparities Grant Program, effective Upon Execution, and denominated **DSHS Contract No. HHS001057600030** ("the Contract"), as amended, now desire to further amend the Contract.

WHEREAS, **DSHS** desires to add funds and redistribute funds among the budget categories; and

WHEREAS, **DSHS** desires to update terms and conditions of the Contract.

NOW, THEREFORE, the Parties amend and modify the Contract as follows:

1. **ARTICLE IV, BUDGET**, of the Contract is amended to add \$110,000.00 to the Contract, resulting in a total amount of this Contract will not exceed \$685,000.000. All expenditures under the Contract shall be in accordance with **ATTACHMENT B-4, REVISED BUDGET (OCTOBER 2024)**.
2. **ATTACHMENT B-3, REVISED BUDGET**, of the Contract is deleted in its entirety and replaced with **ATTACHMENT B-4, REVISED BUDGET (OCTOBER 2024)**, which is attached to this Amendment and incorporated and made part of the Contract for all purposes.
3. **ATTACHMENT C-2, HHS UNIFORM TERMS AND CONDITIONS – GRANT, v. 3.3**, of the Contract is deleted in its entirety and replaced with **ATTACHMENT C-3, HHS UNIFORM TERMS AND CONDITIONS – GRANT, v. 3.5**, which is attached to this Amendment and incorporated and made part of the Contract for all purposes.
4. **ATTACHMENT F-2, FFATA CERTIFICATION FORM**, of the Contract is attached to this Amendment and incorporated and made part of the Contract for all purposes.
5. This Amendment shall be effective as of the date last signed below.
6. Except as amended and modified by this Amendment, all terms and conditions of the Contract, as previously amended, shall remain in full force and effect.
7. Any further revisions to the Contract shall be by written agreement of the Parties.
8. Each Party represents and warrants that the person executing this Amendment on its behalf has full power and authority to enter into this Amendment.

SIGNATURE PAGE FOLLOWS

SIGNATURE PAGE FOR AMENDMENT NO. 4
DSHS CONTRACT NO. HHS001057600030

DEPARTMENT OF STATE HEALTH SERVICES CITY OF LUBBOCK

<hr/>	<hr/>
Signature	Signature
Printed Name: _____	Printed Name: _____
Title: _____	Title: _____
Date of Signature: _____	Date of Signature: _____

**ATTACHMENT B-4
REVISED BUDGET (OCTOBER 2024)**

A. Total Budget for Grant Agreement Term:

Budget Categories	Amount
PERSONNEL	\$94,000.00
FRINGE BENEFITS	\$39,480.00
TRAVEL	\$6,060.00
EQUIPMENT	\$0.00
SUPPLIES	\$1,312.00
CONTRACTUAL	\$535,000.00
OTHER	\$9,148.00
TOTAL DIRECT CHARGES	\$685,000.00
INDIRECT CHARGES	\$0.00
TOTAL	\$685,000.00

B. Amounts in table in Section A are cumulative amounts. All funding under the Grant Agreement is reimbursable for allowable costs under the Grant Agreement until May 31, 2026, or until the termination or expiration of the Grant Agreement, whichever is earlier.

Funding availability under the Grant Agreement is as follows:

1. Total amount available as of Contract Effective Date: \$500,000.00
2. Total amount available as of June 1, 2023: \$575,000.00
3. Total amount available as of May 30, 2024: \$575,000.00
4. Total amount available as of Amendment No. 4 Effective Date: \$685,000.00



TEXAS

Health and Human Services

Health and Human Services (HHS)

Uniform Terms and Conditions - Grant

Version 3.5

Published and Effective – September 2024

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; 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.

“Deliverables” 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.

“Solicitation Response” or “Application” 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’ website relative to travel reimbursements under this Contract, if any.

“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 *Texttravel* guidelines, which can currently be accessed at: <https://fmx.cpa.texas.gov/fmx/travel/texttravel/>

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

- i. 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 may be subject to sanctions and remedies for non-compliance.
- iii. If Grantee, within Grantee's fiscal year, expends federal funds awarded of at least \$750,000 for audit periods beginning before October 1, 2024 (beginning on or after October 1, 2024, at least \$1,000,000), 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 \$750,000 in state funds awarded or other amount specified in the TxGMS, 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 program-specific 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 Pre-existing 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 e-mail 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

All equipment and property acquired by Grantee, with funds awarded under this Grant Agreement, are subject to all applicable laws and governing authority including, but not limited to, applicable provisions of 2 CFR 200 and TxGMS. 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 all information required to determine compliance with the terms and conditions of this Grant Agreement and all state and federal rules, regulations, and statutes. Grantee shall ensure these same requirements are included in all subcontracts.
- 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. Grantee shall ensure these same requirements are included in all subcontracts.

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. Grantee shall ensure these same requirements are included in all subcontracts.
- 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. Grantee shall permit the System Agency or any of its duly authorized federal, state, or local authorities unrestricted access to and the right to examine all external contracts and or pricing models or methodologies related to the Grant Agreement. Grantee shall ensure these same requirements are included in all subcontracts. 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 oversight, including, but not limited to, reviews, inspections, audits and investigations, 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 and payments related to the Grant Agreement, including those related to a Subcontractor.
- E. Grantee shall include the System Agency's and any of its duly authorized representatives', as well as duly authorized federal, state, or local authorities, unrestricted 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, inspection or investigation 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.
- C. Grantee shall include the requirement to provide to System Agency (and any of its duly authorized federal, state, or local authorities) internal audit reports related to this Grant Agreement in any Subcontract it awards. Upon request by System Agency, Grantee shall enforce this requirement against its Subcontractor. Further, Grantee shall include in any Subcontract it awards a requirement that all Subcontractor Subcontracts must also include these provisions.

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. Grantee shall ensure the authority to audit funds received indirectly by subcontractors through the contract and the requirement to cooperate is included in any subcontract it awards.

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 Article VIII will survive termination or expiration of this Grant Agreement. Further, the obligations of Grantee under this Article VIII 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 grant-funded 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 Code W206
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.



TEXAS
Health and Human
Services

Texas Department of State
Health Services

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 "Yes" to this question, where can this information be accessed?

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: 8627248BF34B4F77AA81E0575B16D035

Status: Sent

Subject: Please DocuSign: HHS001057600030, Lubbock (City of) Health Department A-4 ; OHDP/COVID-LHD

Source Envelope:

Document Pages: 32

Signatures: 0

Envelope Originator:

Certificate Pages: 2

Initials: 0

CMS Internal Routing Mailbox

AutoNav: Enabled

11493 Sunset Hills Road

Envelope Stamping: Enabled

#100

Time Zone: (UTC-06:00) Central Time (US & Canada)

Reston, VA 20190

CMS.InternalRouting@dshs.texas.gov

IP Address: 167.137.1.12

Record Tracking

Status: Original

Holder: CMS Internal Routing Mailbox

Location: DocuSign

10/24/2024 9:08:59 AM

CMS.InternalRouting@dshs.texas.gov

Signer Events**Signature****Timestamp**

Mark McBrayer

Sent: 10/24/2024 9:21:02 AM

mmcbrayer@mylubbock.us

Security Level: Email, Account Authentication
(None)**Electronic Record and Signature Disclosure:**
Not Offered via DocuSign

Susana Garcia

Susana.Garcia@dshs.texas.gov

Security Level: Email, Account Authentication
(None)**Electronic Record and Signature Disclosure:**
Not Offered via DocuSign

Patty Melchior

Patty.Melchior@dshs.texas.gov

Security Level: Email, Account Authentication
(None)**Electronic Record and Signature Disclosure:**
Not Offered via DocuSign

Stephen Pont

Stephen.Pont@dshs.texas.gov

Security Level: Email, Account Authentication
(None)**Electronic Record and Signature Disclosure:**
Not Offered via DocuSign**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****Timestamp**

Carbon Copy Events	Status	Timestamp
Gloria Diaz gdiaz@mylubbock.us Financial Analyst Security Level: Email, Account Authentication (None) Electronic Record and Signature Disclosure: Not Offered via DocuSign	<div>COPIED</div>	Sent: 10/24/2024 9:21:01 AM Viewed: 10/24/2024 9:30:41 AM

CMS Internal Routing Mailbox
CMS.InternalRouting@dshs.texas.gov
Security Level: Email, Account Authentication (None)
Electronic Record and Signature Disclosure:
Not Offered via DocuSign

Giselle Statham
giselle.statham@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	10/24/2024 9:21:01 AM
Payment Events	Status	Timestamps

Information

Agenda Item

Resolution - Public Health Services: Consider a resolution authorizing the Mayor to execute Amendment No. 5 to the Department of State Health Services (DSHS) Contract No. HHS001120300005, and all related documents, under the STD/HIV-DIS Prevention Services Grant Program, by and between the City of Lubbock and the State of Texas, acting by and through DSHS.

Item Summary

This is an existing grant. The STD/HIV-DIS Grant was initially awarded to the Public Health Department in 2022, to provide financial assistance to strengthen public health follow-up activities for those recently diagnosed with a sexually transmitted disease, including treatment, linkage to care, partner notification, and focused screening of at-risk populations. The grant will enable staff to reach individuals outside the traditional clinical setting.

Amendment No. 5 increases the contract by \$229,232, updates the Statement of Work with new reporting requirements, revises certain attachments, and extends the contract term through July 31, 2025. An electronic signature is required for this contract.

Fiscal Impact

DSHS is adding \$229,232 to the grant. A local match is not required for this contract.

Staff/Board Recommending

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

Attachments

Resolution
Contract

RESOLUTION

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

THAT the Mayor of the City of Lubbock is hereby authorized and directed to execute for and on behalf of the City of Lubbock, Amendment No. 5 to the Department of State Health Services (DSHS) Contract No. HHS001120300005 under the STD/HIV-DIS Prevention Services Grant Program, by and between the City of Lubbock and the State of Texas, acting by and through DSHS, and all related documents. Said Amendment is attached hereto and incorporated in this resolution as if fully set forth herein and shall be included in the minutes of the City Council.


Passed by the City Council on _____.

MARK W. MCBRAYER, MAYOR

ATTEST:

Courtney Paz, City Secretary

APPROVED AS TO CONTENT:



Bill Howerton, Deputy City Manager

APPROVED AS TO FORM:



Rachael Foster, Assistant City Attorney



TEXAS
Health and Human
Services

Texas Department of State Health Services

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

The Honorable Mark McBrayer, Mayor
City of Lubbock
PO Box 2000
Lubbock, Texas 79457

Subject: Sexually Transmitted Disease/Human Immunodeficiency Virus
Disease Intervention Specialists (STD/HIV-DIS) Contract
Contract Number: HHS001120300005, Amendment No. 5
Contract Amount: \$1,408,139.00
Contract Term: March 1, 2022, through July 31, 2025

Dear Mayor McBrayer:

Enclosed is the STD/HIV-DIS amendment No. 5 between the Department of State Health Services and City of Lubbock.

The purpose of this contract is to control and prevent the spread of Sexually Transmitted Diseases (STDs), including Human Immunodeficiency Virus/Acquired Immunodeficiency Syndrome (HIV/AIDS) and viral hepatitis.

This amendment increases the contract by \$229,232.00, updates the Statement of Work with new reporting requirements, revises certain attachments, and extends the contract term through July 31, 2025.

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

Sincerely,

Martha Jasse, CTCD, CTCM
Contract Manager
(512) 776-6551
martha.jasse@dshs.texas.gov

**DEPARTMENT OF STATE HEALTH SERVICES
CONTRACT NO. HHS001120300005
AMENDMENT NO. 5**

The **DEPARTMENT OF STATE HEALTH SERVICES** ("System Agency" or "DSHS"), a pass-through entity, and **CITY OF LUBBOCK** ("Grantee"), each a "Party" and collectively the "Parties" to that certain grant contract to control and prevent the spread of Sexually Transmitted Diseases (STDs), including Human Immunodeficiency Virus/Acquired Immunodeficiency Syndrome (HIV/AIDS) and viral hepatitis under the STD/HIV-DIS Prevention Services Program, effective March 1, 2022, and denominated DSHS Contract No. HHS001120300005 ("Contract"), as amended, now desire to further amend the Contract.

WHEREAS, the Parties desire to extend the Contract term;

WHEREAS, DSHS desires to add funds to the Contract for services provided in Calendar Year 2025; and

WHEREAS, DSHS desires to update the reporting requirements in the Statement of Work.

NOW, THEREFORE, the Parties hereby amend and modify the Contract as follows:

1. **ARTICLE III, DURATION**, of the Contract is amended to reflect a revised termination date of July 31, 2025.
2. **ARTICLE IV, BUDGET**, of the Contract is revised to increase the Contract amount by \$229,232.00 for the 2025 Calendar Year, resulting in a revised total not-to-exceed Contract amount of \$1,408,139.00. All expenditures for the 2025 Calendar Year will be in accordance with **ATTACHMENT B-5, BUDGET FOR 2025 CALENDAR YEAR**.
3. **ATTACHMENT A-2, REVISED STATEMENT OF WORK (SEPTEMBER 2023)**, is deleted in its entirety and replaced with **ATTACHMENT A-3, REVISED STATEMENT OF WORK (JANUARY 2025)**, which is attached to this Amendment and incorporated into and made part of the Contract for all purposes.
4. **ATTACHMENT B-5, BUDGET FOR 2025 CALENDAR YEAR**, is attached to this Amendment and incorporated into and made part of the Contract for all purposes.
5. **ATTACHMENT D-1, HHS CONTRACT AFFIRMATIONS VERSION 2.2**, is hereby deleted in its entirety and replaced with **ATTACHMENT D-2, HHS CONTRACT AFFIRMATIONS V. 2.3**, which is attached to this Amendment and incorporated into and made part of the Contract for all purposes.
6. **ATTACHMENT H-2, FFATA CERTIFICATION FORM**, is attached to this Amendment and incorporated into and made part of the Contract for all purposes. Grantee is required to complete the certification to meet the federal requirement.
7. This Amendment No. 5 shall be effective on January 1, 2025.

8. Except as amended and modified by this Amendment No. 5, all terms and conditions of the Contract, as amended, shall remain in full force and effect.
9. Any further revisions to the Contract shall be by written agreement of the Parties.
10. Each Party represents and warrants that the person executing this Amendment No. 5 on its behalf has the full power and authority to enter into the Amendment.

SIGNATURE PAGE FOLLOWS

**SIGNATURE PAGE FOR AMENDMENT NO. 5
DSHS CONTRACT NO. HHS001120300005**

DEPARTMENT OF STATE HEALTH SERVICES

CITY OF LUBBOCK

By: _____

By: _____

Printed Name: _____

Printed Name: _____

Title: _____

Title: _____

Date of Signature: _____

Date of Signature: _____

**THE FOLLOWING ATTACHMENTS ARE ATTACHED AND INCORPORATED AS PART OF THE
CONTRACT:**

ATTACHMENT A-3: REVISED STATEMENT OF WORK (JANUARY 2025)
ATTACHMENT B-5: BUDGET FOR 2025 CALENDAR YEAR
ATTACHMENT D-2: HHS CONTRACT AFFIRMATIONS V. 2.3
ATTACHMENT H-2: FFATA CERTIFICATION FORM

ATTACHMENTS FOLLOW

ATTACHMENT A-3 REVISED STATEMENT OF WORK (JANUARY 2025)

I. GRANTEE RESPONSIBILITIES

- A. Grantee shall conduct programs, as described herein, to control and prevent the spread of Sexually Transmitted Infections (STIs), including human immunodeficiency virus/acquired immunodeficiency syndrome (HIV/AIDS) and viral hepatitis, in accordance with the Centers for Disease Control and Prevention (CDC) STD Program Operations Guidelines, located at: <http://www.cdc.gov/std/program/gl-2001.htm>.
- B. Grantee shall perform the following seven (7) core activities:
 - 1. Community and Individual Behavior Change Interventions;
 - 2. Medical and Laboratory Services;
 - 3. Partner Services;
 - 4. Leadership and Program Management;
 - 5. Surveillance and Data Management;
 - 6. Training and Professional Development; and
 - 7. Program Evaluation.
- C. Grantee shall maintain written program procedures covering the seven (7) core activities. All procedures must be consistent with the requirements of this Contract.
- D. Grantee shall perform the activities required under this Contract in the service area designated in this Contract. Service area includes the following county: Lubbock.
- E. Grantee shall designate one staff member to be a Local Responsible Party (LRP), who will be responsible overall for ensuring the security of the confidential HIV/STI information the Grantee maintains pursuant to this Contract.
- F. Grantee shall comply with all applicable federal and state policies, standards, and guidelines. The following documents are incorporated into this Contract by reference:
 - 1. DSHS HIV and STD Program Operating Procedures and Standards (POPS), located at: <http://www.dshs.texas.gov/hivstd/pops/default.shtm>;
 - 2. DSHS TB/HIV/STD and Viral Hepatitis Unit Security Policies and Procedures, located at: <http://www.dshs.texas.gov/hivstd/policy/security.shtm>;
 - 3. CDC STD Program Operations Guidelines, located at: <http://www.cdc.gov/std/program/gl-2001.htm>;
 - 4. CDC STD Treatment Guidelines, located at: <http://www.cdc.gov/std/treatment/>; and
 - 5. DSHS HIV and STD Program Policy Reporting Suspected Abuse and Neglect of Children, located at: <https://www.dshs.texas.gov/childabuserreporting/default.shtm>.
- G. Grantee shall comply with all applicable federal and state regulations and statutes, as amended, which are incorporated by reference, including, but not limited to:
 - 1. Chapters 81 and 85 of the Texas Health and Safety Code, especially Section 85.085 of the Texas Health and Safety Code (Physician Supervision of

- Medical Care), which requires that a licensed physician supervise any medical care or procedure provided under a testing program as required by law;
2. Chapter 94 of the Texas Health and Safety Code (relating to Education and Prevention Programs for Hepatitis C);
 3. Chapter 98 of the Texas Health and Safety Code (relating to the reporting of Sexually Transmitted Diseases including Human Immunodeficiency Virus);
 4. Title 25 Texas Administrative Code (TAC) Chapter 97; and
 5. Section 531.02161 of the Texas Government Code, as an update to provision of services, where there is delivery of an in-person service, there must also be an option of that service by telecommunications or through the use of information technology.
- H. Grantee shall perform all activities in accordance with the terms of this Contract and any subsequent instructions from DSHS. Grantee shall request DSHS written approval before diverting from applicable policies, procedures, and protocols and must update its implementation documentation within forty-eight (48) hours of making approved change(s). Changes must not be implemented unless DSHS written approval is provided to Grantee.
- I. Performance measures will be used to assess, in part, Grantee's effectiveness in providing the services described in this Contract, without waiving the enforceability of any of the other terms of the Contract.
- J. Grantee shall provide clinical services in accordance with Chapter 12 of DSHS HIV/STD Program POPS for examining, testing, and treating individuals served in public STD clinics. If data indicates that less than 90% of individuals served were examined, tested and/or treated for STD(s) as medically appropriate, within twenty-four (24) hours of seeking services, DSHS may (at its sole discretion) require additional measures be taken by the Grantee to improve that percentage. In that scenario, Grantee must follow those additional measures, and do so according to the timetable mandated by DSHS.
- K. Grantee shall ensure that individuals seeking STD diagnostic and/or treatment services in public STD clinics are medically managed according to Grantee written protocols and in compliance with DSHS HIV/STD Program POPS, and with CDC STD Treatment Guidelines 2021, as revised.
- L. Grantee shall ensure that individuals seeking STD diagnostic and/or treatment services in public STD clinics will be referred for Pre-Exposure Prophylaxis/Non-Occupational Post-Exposure Prophylaxis (PrEP/nPEP) services if at increased risk for HIV but currently HIV negative. Individuals to be prioritized for PrEP referrals include: Men who have Sex with Men (MSM) with rectal GC and/or syphilis; individuals who have an HIV+ partner; individuals in the social-sexual network of an identified HIV genotype cluster; and others at increased risk for HIV who could benefit from PrEP.
- M. Grantee shall ensure that individuals seeking STD diagnostic and/or treatment services in public STD clinics, who have been previously diagnosed with HIV and have no evidence of care for more than 12 months, be referred to a DIS or other linkage worker to ensure they are re-engaged into HIV medical care.

- N. Grantee shall explore mechanisms to expand testing and awareness of STDs via home testing and home self-collection kits and self-collection.
- O. Grantee shall explore mechanisms to use telemedicine or telehealth for individuals seeking STD diagnostic and treatment services and/or PrEP/nPEP services.
- P. Grantee shall ensure that a complaint process is maintained and posted in the areas where services are provided, in accordance with Chapter 12 (STI Clinical Standards) of the DSHS HIV/STD Program POPS.
- Q. Grantee shall maintain a staff retention policy.
- R. Grantee shall provide routine staffing updates for vacant positions, in accordance with DSHS required format and schedule for reporting.
- S. Grantee shall participate in targeted evaluation activities and other projects as required by DSHS or CDC.
- T. Grantee shall ensure that the client survey is conducted at a minimum of two (2) times per year for a total of thirty (30) days. The summary of the feedback must be available for review and identified concerns must be addressed within thirty (30) days of the feedback period.
- U. Grantee shall establish and maintain mutually agreed-upon written procedures with local providers to ensure the provision of partner services in accordance with DSHS HIV/STD Program POPS. The procedures must specify processes (e.g., communication) to facilitate timely partner elicitation by the local health department following the delivery of HIV-positive test results to clients by Grantee.
- V. Grantee shall establish and maintain mutually agreed-upon written procedures with local agencies who provide services frequently needed by clients seeking HIV/STD services from Grantee in accordance with DSHS HIV/STD Program POPS. The procedures must specify processes (e.g., communication) to facilitate timely partner elicitation by the local health department following the delivery of HIV-positive test results to clients by Grantee including, but not limited to, the following services:
 - 1. HIV testing and counseling;
 - 2. STD clinical services;
 - 3. Partner services;
 - 4. HIV medical and support services;
 - 5. Substance use treatment services;
 - 6. Harm reduction services; and
 - 7. Mental health services.

At a minimum, such procedures must address conditions associated with making and accepting client referrals. If Grantee provides all of the services in Subsections I(V)(1-7) herein in a specific geographic area, no such agreement is necessary for that area. Grantee shall maintain complete records of all referrals made. These procedures must be finalized and in place within thirty (30) days from the effective date of this Contract.

- W. Grantee shall ensure that performance of activities under this Contract is of a high quality and consistent with all the requirements of this Contract.

- X. Grantee shall conduct regular assessments of Grantee's performance, including compliance with DSHS Program procedures, policies and guidance, contractual conditions, attainment of performance measures, maintenance of adequate staff, and submission of required data and narrative reports. Failure to comply with stated requirements and contractual conditions may result in the immediate loss of Contract funds at the discretion of DSHS.
- Y. Grantee shall ensure that all staff designated to provide HIV and/or syphilis screening(s) by collecting blood-based specimens, in both field and clinical settings, complete DSHS-approved training prior to providing such services. Supplemental testing must be collected by venipuncture immediately, on site, after a point-of-care preliminary positive test result. Grantee staff shall offer and perform these tests unless the client refuses. HIV and syphilis specimens may be submitted through the DSHS public health laboratory, or another laboratory designated by the Grantee and approved in advance by DSHS.
- Z. Grantee shall ensure that all staff designated to deliver all HIV and/or STD results including positive results, in both field and clinical settings, complete DSHS-approved training prior to providing such services.
- AA. Grantee shall ensure that all staff conducting field work and designated to disclose the reason s/he is contacting persons (e.g., exposure to someone who tested positive for HIV and wanted to ensure s/he had the ability to be tested, positive test results were received from a provider, laboratory, life insurance company, etc.) complete DSHS-approved training prior to providing such services.
- BB. Grantee shall ensure that staff performing under this Contract deliver all reactive test results within the designated timeframes referenced in the DSHS HIV/STD Program POPS. Grantee staff shall ensure the client understands the infection(s) s/he has tested reactive for, is offered appropriate treatment for his/her infection(s) and is linked to other medical and social resources as appropriate (e.g., HIV testing and counseling; Pre-Exposure Prophylaxis (PrEP); Harm Reduction Services; STD clinical services; partner services; HIV medical and support services; substance use treatment services; and mental health services).
- CC. Grantee staff operating under this Contract may be reassigned by DSHS or Grantee to respond to Grantee's rapid response efforts or another public health follow-up (PHFU) program's response to address and intervene in the transmission of reportable STDs, HIV and/or other infections.
- DD. Grantee shall ensure that staff attend training identified by DSHS to respond to activities. The training will include planning, implementation and evaluation of rapid response activities.
- EE. Grantee shall maintain training records and ensure that staff complete and continue training as required by DSHS.

II. PERFORMANCE MEASURES

- A. **Overview.** Grantee shall follow the requirements for each of the STD Program Objectives in DSHS HIV and STD POPS, with special emphasis on outcomes excerpted below. If the data submitted by Grantee (or otherwise obtained by DSHS) indicates the Grantee's performance does not meet the standards stated in one (1)

or more of the objectives, DSHS may (at its sole discretion) require additional measures be taken by the Grantee to improve performance and Grantee must implement these measures according to a timetable directed by DSHS.

B. Public Health Follow-Up (PHFU) Program Objectives

1. For Syphilis Objectives:

- a. Grantee shall ensure that all individuals newly diagnosed with early syphilis are interviewed within three (3) days of assignment. If data indicates less than 80% of individuals newly diagnosed with early syphilis covered by the scope of this Contract are interviewed as described, DSHS may, at its sole discretion, require additional measures be taken by the Grantee to improve that percentage. In that scenario, Grantee must follow those additional measures, and do so according to the timetable mandated by DSHS. "Early syphilis" means all syphilis cases that are determined to be primary, secondary, or early non-primary/non-secondary syphilis. The CDC definition of syphilis is located at: <https://ndc.services.cdc.gov/case-definitions/syphilis-2018/>.
- b. Grantee shall achieve a partner index of at least 2.0 for all interviews conducted on individuals newly diagnosed with early syphilis. If data indicates less than a 2.0 partner index for all interviews conducted for early syphilis by Disease Intervention Specialists (DIS), DSHS may (at its sole discretion) require additional measures be taken by the Grantee to improve that percentage. In that scenario, Grantee must follow those additional measures, and do so according to the timetable mandated by DSHS.
- c. Grantee shall ensure that all partners initiated (partners obtained from the interview/case management process with locating information as outlined by Chapter 9 (Disease Intervention Specialist Performance Standards) of the DSHS HIV/STD Program POPS to attempt notification on early syphilis interviews) are notified of the disease exposure. If data indicates less than .75 partner notification index for all initiated partners, DSHS may, at its sole discretion, require additional measures be taken by the Grantee to improve that percentage. In that scenario, Grantee must follow those additional measures, and do so according to the timetable mandated by DSHS.
- d. Grantee shall ensure that all partners notified of syphilis exposure are tested and treated for syphilis, including incubating syphilis (disease intervention index). If data indicates less than 60% of notified partners are tested and treated as described, DSHS may (at its sole discretion) require additional measures be taken by the Grantee to improve that percentage. In that scenario, Grantee must follow those additional measures, and do so according to the timetable mandated by DSHS.
- e. Grantee shall ensure that a treatment index of at least 0.75 is achieved for all interviews conducted on individuals newly diagnosed with early syphilis. If data indicates less than 0.75 treatment index, DSHS may (at its sole discretion) require additional measures be taken by the Grantee to improve that percentage. In that scenario, Grantee must follow those

additional measures, and do so according to the timetable mandated by DSHS.

- f. Grantee shall ensure that 80% of pregnant women with syphilis are identified and treated appropriately and timely to prevent congenital syphilis.
- g. Grantee shall ensure that all infants born to a woman with a history of syphilis in their jurisdiction are investigated and reported within thirty (30) days of receiving report of birth as outlined by DSHS HIV/STI Program POPS, Chapter 23.
- h. For pregnant women, Grantee shall maintain a procedure to provide technical assistance and guidance for providers and systems of care that ensures testing for syphilis is conducted, at a minimum, at the first prenatal visit, during third trimester, and at delivery as required by Chapter 81, Texas Health and Safety Code, Section 81.090.
- i. Grantee shall ensure that all women of childbearing age with syphilis have a documented pregnancy status. Grantee shall also ensure that all notified partners who are women of childbearing age have a documented pregnancy status. DSHS may (at its sole discretion) require additional measures be taken by the Grantee to improve performance if data suggest that:
 - 1) less than 90% of women of childbearing age with reactive syphilis labs have a documented pregnancy status; and
 - 2) less than 80% of notified partners who are women of childbearing age have a documented pregnancy status.

In this scenario, Grantee must follow those additional measures and do so according to the timetable mandated by DSHS.

2. For HIV Objectives:

- a. Grantee shall ensure that all individuals newly diagnosed with HIV will be interviewed within seven (7) days in accordance with DSHS HIV/STD Program POPS. If data indicates less than 80% of individuals newly diagnosed with HIV are interviewed as described, DSHS may (at its sole discretion) require additional measures be taken by the Grantee to improve that percentage. In that scenario, Grantee must follow those additional measures, and do so according to the timetable mandated by DSHS.
- b. Grantee shall ensure that all individuals interviewed who have been newly diagnosed with HIV complete their first HIV medical appointment. If data indicates less than 85% of new HIV-positive clients interviewed complete their first HIV medical appointment, DSHS may (at its sole discretion) require additional measures be taken by the Grantee to improve that percentage. In that scenario, Grantee must follow those additional measures, and do so according to the timetable mandated by DSHS.

- c. Grantee shall achieve a partner index of at least 2.0 for interviews conducted on individuals newly diagnosed with HIV. If data indicates a partner index of less than 2.0 for individuals interviewed by DIS, DSHS may (at its sole discretion) require additional measures be taken by the Grantee to improve that percentage. In that scenario, Grantee must follow those additional measures, and do so according to the timetable mandated by DSHS.
- d. Grantee shall ensure that all partners initiated (partners obtained from the interview/case management process with enough locating information to attempt notification) on a new HIV interview are notified of the disease exposure. If data indicates less than 0.75 partner notification index, DSHS may (at its sole discretion) require additional measures be taken by the Grantee to improve that percentage. In that scenario, Grantee must follow those additional measures, and do so according to the timetable mandated by DSHS.
- e. Grantee shall ensure that all partners notified for HIV exposure are tested for HIV. If data indicates less than 60% of the notified partners are tested for HIV, DSHS may (at its sole discretion) require additional measures be taken by Grantee to improve that percentage. In that scenario, Grantee must follow those additional measures, and do so according to the timetable mandated by DSHS.
- f. Grantee shall ensure that all persons receiving PHFU (initiated partners, those co-infected with a bacterial STD such as syphilis, gonorrhea, and/or chlamydia, and/or individuals in the social-sexual network of an identified HIV genotype cluster) who have been previously diagnosed with HIV and have no evidence of care for more than 12 months are re-engaged to establish HIV medical services. The activities taken to locate the person must be documented in the designated data system. This includes confirmation that the client attended his/her HIV medical care appointment. All the tasks described in this provision must be completed by a Disease Intervention Specialist (DIS).

C. STD Surveillance Objectives

- 1. Grantee shall ensure 95% of the values for age, sex, county, facility type, and specimen collection date are collected for syphilis reporting.
- 2. Grantee shall ensure 95% of the values for age, sex, county, facility type, specimen collection date, race/ethnicity, gender, sexual orientation, sex of sex partners, pregnancy status, clinical signs/symptoms, HIV status, substance use, treatment received, and date of treatment are collected for primary and secondary syphilis reporting.
- 3. Grantee shall ensure 75% of syphilis cases have a documented adverse outcome status (possible, likely, verified, no) for neurological, ocular and otic manifestations.

III. TRAINING REQUIREMENTS

- A. Grantee shall ensure that staff comply with minimum training requirements of personnel operating under this Contract. Compliance will be monitored by DSHS.
- B. Grantee shall notify DSHS of completed trainings in the Semiannual Reports referenced in Section VI, Reporting Requirements, herein.
- C. Grantee shall require their staff to attend and ensure attendance at training, conferences, and meetings as directed by DSHS and described in this Section.
- D. DIS staff members must:
 - 1. Read and acknowledge Chapters 3 (HIV/STI Partner Services and Seropositive Notification) and 9 (Disease Intervention Specialists Performance Standards) of the DSHS HIV/STD Program POPS;
 - 2. Complete DSHS-approved Fundamentals of STD Intervention (FSTDI), including all prerequisites, within six (6) months of employment;
 - 3. Complete DSHS-approved Fundamentals of Counseling and Testing (FCT) or equivalent within six (6) months of employment;
 - 4. Complete training in, and demonstrate knowledge of, the designated database management system;
 - 5. Participate in the HIV Navigation in Texas (HNT) within one (1) year of employment;
 - 6. Complete field specimen collection and phlebotomy training that has been approved by the local health authority or clinical designee within sixty (60) days of employment;
 - 7. Demonstrate phlebotomy and specimen collection skills and competency before field specimen collection and annually thereafter. The Grantee shall maintain records of the completed training(s) and skills competency evaluations;
 - 8. Complete training for all locally sanctioned testing technologies used for specimen collection and processing;
 - 9. If having more than one (1) year of experience, complete additional courses as required by DSHS; and
 - 10. If assigned to complete Congenital Syphilis (CS) Investigations, complete CS trainings as directed by the CS Coordinator.
- E. First-Line Supervisors (FLS) staff must:
 - 1. Read and acknowledge Chapters 10 (First-Line Supervisors Performance Standards) and 11 (Regional and Local Health Department HIV/STD Program Manager Performance Standards);
 - 2. Complete all training activities which are required for DIS under this Contract, and FLS must also take the next available Texas First-Line Supervisor (TXFLS) training;
 - 3. If new to the jurisdiction, participate in the HIV Navigation in Texas within one (1) year of employment;
 - 4. Attend the DSHS FLS Summit;
 - 5. Attend quarterly DSHS FLS calls;
 - 6. Attend any other required DSHS trainings, as scheduled; and
 - 7. If assigned to review and approve Congenital Syphilis (CS) Investigations, complete CS trainings as directed by the CS Coordinator.

- F. Program Manager (PM) staff members must:
 - 1. Read and demonstrate understanding of the following DSHS HIV/STD Program POPS chapters: Chapter 3 (HIV/STI Partner Services and Seropositive Notification), Chapter 9 (Disease Intervention Specialists Performance Standards), Chapter 10 (First-Line Supervisors Performance Standards), and Chapter 11 (Regional and Local Health Department HIV/Program Manager Performance Standards);
 - 2. Complete all training requirements of DIS and FLS;
 - 3. Attend DSHS Leadership Meeting; and
 - 4. Attend monthly DSHS Leadership calls.
- G. STD Surveillance staff members must:
 - 1. Read and acknowledge Chapter 8 (HIV/STI Surveillance) of DSHS HIV/STD Program POPS;
 - 2. Attend STD Surveillance training, as scheduled by DSHS;
 - 3. Attend STD Surveillance monthly meetings, as scheduled by DSHS; and
 - 4. Attend any other DSHS-required trainings.
 - 5. Upon request DSHS will provide additional recommended trainings and topics for all program staff.

IV. CONFIDENTIALITY

- A. Grantee shall designate and identify a HIPAA Privacy Officer, who is authorized to act on behalf of Grantee and is responsible for the development and implementation of the privacy and security requirements of federal and state privacy laws.
- B. Grantee shall ensure that its security procedures require that all of its computers and networks meet DSHS security standards, as certified by DSHS IT staff.
- C. Grantee shall provide a list to DSHS of personnel with access to secured areas and of all identified personnel who have received security training.
- D. Grantee shall provide a list to DSHS of personnel with access to all network drives where confidential information is stored and of all identified personnel who have received security training.
- E. Grantee shall ensure that requests for HIV/STD system user account terminations are sent to DSHS within one business day of the identification of need for account termination.
- F. Grantee shall transfer secure data electronically using the Public Health Information Network.
- G. Grantee shall maintain a visitors' log for individuals entering the secured areas; this must be reviewed quarterly by the LRP.
- H. Grantee shall verify HIV/STD system user passwords are changed at least every ninety (90) days; this must be verified by the LRP.

- I. Grantee shall ensure that portable devices used to store confidential data are approved by the LRP and encrypted.
- J. Grantee shall ensure that confidential data and documents are: (1) maintained in a secured area; (2) locked when not in use; (3) not left in plain sight; and (4) shredded before disposal.

V. HIV/STD RAPID RESPONSE PLAN

- A. DSHS will review the proposed Rapid Response Plan and provide guidance to the Grantee.
- B. Grantee shall develop, update, and submit a local HIV/STD Rapid Response Plan, and submit by February 1 of each year of the Contract to the designated DSHS staff. The plan must include how the Grantee will:
 - 1. Identify responsible parties for planned activities including, but not limited to, response coordinator, activity team lead, collaborative lead, and medical lead;
 - 2. Identify increases in disease or outbreaks;
 - 3. Increase active surveillance;
 - 4. Examine outbreak characteristics;
 - 5. Educate health care providers and the community of disease outbreak (e.g., including signs/symptoms, available resources, disease trends, reporting requirements, testing algorithms, and testing/treatment options);
 - 6. Inform media outlets, as appropriate;
 - 7. Conduct targeted screening efforts including testing in correctional settings (as appropriate);
 - 8. Enhance partner services;
 - 9. Expand clinical access and services (e.g., increase clinical hours or days of services, employ rapid testing, enhance prophylactic treatment protocols); and
 - 10. Adjust work hours for employees involved in the response to allow staff to work alternate hours or extended hours during response.
- C. Grantee shall establish and maintain collaborative relationships with local businesses, community clinics, and community-based organizations who serve populations most affected by HIV or other STDs, as well as with appropriate local and institutional individuals and groups (e.g., providers, hospitals, mental health and intellectually disabled facilities, infection control nurses), in order to implement the local Rapid Response Plan.
- D. Grantee shall continue to enhance their current HIV/STD surveillance system, including, but not limited to, improving reporting of providers and laboratories, and increasing the number of sites that report electronically.
- E. Grantee shall make all DSHS-directed revisions to the Rapid Response Plan and submit a revised version to the DSHS designated program consultant by the directed deadline.

- F. Grantee shall notify local leadership and key stakeholders of the finalized plan and maintain a copy within the Program.
- G. Grantee shall comply with the final, DSHS-approved version of the Rapid Response Plan when an outbreak is identified.
- H. Grantee shall designate program DIS persons to respond to local and statewide rapid response activities when necessary. The identified staff must complete DSHS identified trainings prior to assignment. The number of staff will be as directed by the DSHS Rapid Response Team leader, to conduct disease intervention activities as prescribed in the Grantee's final, approved STD Rapid Response Plan.
- I. Grantee shall participate in, follow guidelines for, and complete HIV cluster response activities for preventing and managing HIV outbreaks according to the Texas Cluster Detection and Response Plan. Grantee will designate staff members to respond to cluster assignments as directed by the Texas Cluster Detection Response Team.

VI. REPORTING REQUIREMENTS

- A. Grantee shall submit reports to DSHS in accordance with the schedule outlined in this section for the corresponding calendar year.

B. CALENDAR YEAR 2022 REPORTING:

REPORT NAME	FREQUENCY	PERIOD STARTS	PERIOD ENDS	DUE DATE
Semiannual Report	First six (6) months	03/01/2022	08/31/2022	09/30/2022
Semiannual Report	Remaining five (5) months	09/01/2022	01/31/2023	02/28/2023
Congenital Syphilis Case Investigation and Infant Syphilis Control Records	Monthly	03/01/2022	01/31/2023	Due thirty (30) calendar days after period being reported. Note: This Report is submitted through THISIS and is subject to HIPAA and PHI data requirements.
Local Responsible Party (LRP) Report	First six (6) months	03/01/2022	08/31/2022	09/30/2022
Final LRP Report	Remaining five (5) months	09/01/2022	01/31/2023	02/28/2023

Financial Status Report (FSR)	Biannually	03/01/2022	08/31/2022	09/30/2022
Final FSR	Remaining five (5) months	09/01/2022	01/31/2023	03/15/2023

C. CALENDAR YEAR 2023 REPORTING:

REPORT NAME	FREQUENCY	PERIOD STARTS	PERIOD ENDS	DUE DATE
Semiannual Report	First five (5) months	02/01/2023	06/30/2023	07/31/2023
Semiannual Report	Remaining six (6) months	07/01/2023	12/31/2023	01/31/2024
Congenital Syphilis Case Investigation and Infant Syphilis Control Records	Monthly	02/01/2023	12/31/2023	Due thirty (30) calendar days after period being reported. Note: This Report is submitted through THISIS and is subject to HIPAA and PHI data requirements.
Local Responsible Party (LRP) Report	First five (5) months	02/01/2023	06/30/2023	07/31/2023
Final LRP Report	Remaining six (6) months	07/01/2023	12/31/2023	01/31/2024
Financial Status Report (FSR)	Biannually	02/01/2023	06/30/2023	07/31/2023
Final FSR	Remaining six (6) months	07/01/2023	12/31/2023	02/15/2024

D. CALENDAR YEAR 2024 REPORTING:

REPORT NAME	FREQUENCY	PERIOD BEGIN	PERIOD END	DUE DATE
Semiannual Report	First six (6) months	01/01/2024	06/30/2024	08/16/2024
Semiannual Report	Remaining six (6) months	07/01/2024	12/31/2024	01/31/2025

Congenital Syphilis Case Investigation and Infant Syphilis Control Records	Monthly	01/01/2024	12/31/2024	Due thirty (30) calendar days after period being reported. Note: This Report is submitted electronically and is subject to HIPAA and PHI data requirements.
Local Responsible Party Biannual Security Assessment (LRP) Report	First six (6) months	01/01/2024	06/30/2024	07/31/2024
Local Responsible Party Biannual Security Assessment (LRP) Report	Remaining six (6) months	07/01/2024	12/31/2024	01/31/2025
Financial Status Report (FSR)	First six (6) months	01/01/2024	06/30/2024	07/31/2024
Final FSR	Remaining six (6) months	07/01/2024	12/31/2024	1/31/2025

E. CALENDAR YEAR 2025 REPORTING:

REPORT NAME	FREQUENCY	PERIOD BEGIN	PERIOD END	DUE DATE
Closeout Report	Once	01/01/2025	07/01/2025	07/31/2025
Congenital Syphilis Case Investigation and Infant Syphilis Control Records Tracking Sheet	Monthly	01/01/2025	07/31/2025	Due thirty (30) calendar days after period being reported. Note: This Report is submitted electronically and is subject to HIPAA and PHI data requirements.

Local Responsible Party Biannual Security Assessment (LRP) Report	First six (6) months	01/01/2025	06/30/2025	07/16/2025
Local Responsible Party Biannual Security Assessment (LRP) Report	Remaining month	07/01/2025	07/31/2025	08/31/2025
Financial Status Report (FSR)	First six (6) months	01/01/2025	06/30/2025	07/31/2025
Final FSR	Remaining month	07/01/2025	07/31/2025	08/31/2025

VII. INVOICE AND BUDGET

- A. Grantee shall submit invoices monthly, on the 30th day of the following month (28th or 29th day if February), or next business day if the 30th day falls on a weekend or holiday, to prevent delays in processing a subsequent month's invoicing. System Agency requires Grantee to submit, on a timely basis, a "zero dollar" invoice for a month in which it did not incur expenses. Grantee shall email invoices and support documentation to invoices@dshs.texas.gov and cmsinvoices@dshs.texas.gov simultaneously. Invoices received after the 30th of the month, or the next business day, are subject to denial of payment.
- B. Unless otherwise directed by System Agency, Grantee shall submit a reimbursement or payment request as a final close-out invoice no later than thirty (30) calendar days following the end of the term of the Contract. Reimbursement or payment requests received after the deadline may not be paid.
- C. System Agency reserves the right, where allowed by legal authority, to redirect funds in the event of financial shortfalls. DSHS will monitor Grantee's expenditures on a biannual basis. If expenditures are below the Contract amount of the budget year, then, System Agency, in its sole discretion, may reduce the Grantee's budget for the remainder of the Contract term. System Agency may also reduce Grantee's budget if Grantee has vacant positions existing for more than ninety (90) consecutive calendar days.
- D. Grantee will be paid on a cost reimbursement basis and in accordance with the budget for the corresponding year under this Contract.
- E. Grantee shall maintain an inventory of equipment, supplies, and real property. Grantee shall submit an annual cumulative report on DSHS Grantee's Property Inventory Report to the DSHS Contract Representative 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 \$500.00 or more, but less than \$5,000.00: 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 do not include a capitalized asset, real property, an improvement to real property, or infrastructure.

F. DSHS-approved budget may be revised by Grantee in accordance with the following requirements:

1. For any transfer between budget categories, Grantee shall provide notification of transfer between budget categories by submission of a request for budget change in DSHS-directed format (hereafter the "Budget Change Form") to the DSHS Contract Representative, highlighting the areas affected by the budget transfer and written justification for the transfer request. After DSHS review, the designated DSHS Contract Representative will provide notification of acceptance or rejection to Grantee by email.
2. For transfer of funds between budget categories, other than the 'Equipment' and 'Indirect Cost' categories, for less than or equal to a cumulative twenty-five (25) percent of the total value of the respective Contract budget period, Grantee shall timely submit the Budget Change Form for DSHS approval. If the revision is approved, then the budget revision is not authorized, and the funds cannot be utilized until an amendment incorporating the change(s) is executed by the Parties.
3. For transfer of funds between budget categories, other than the 'Equipment' and 'Indirect Cost' categories, that cumulatively exceeds twenty-five (25) percent of the total value of the respective Contract budget period, Grantee shall submit timely written notification to DSHS Contract Representative using the Budget Change Form and request DSHS approval. If the revision is approved, then the budget revision is not authorized, and the funds cannot be utilized until an amendment incorporating the change(s) is executed by the Parties.
4. Any transfer between budget categories that includes 'Equipment' and/or 'Indirect Cost' categories must be incorporated by amendment. Grantee shall submit timely written notification to DSHS Contract Representative using the Budget Change Form and request DSHS approval. If the revision is approved, then the budget revision is not authorized, and the funds cannot be utilized until an amendment incorporating the change(s) is executed by the Parties.

**ATTACHMENT B-5
BUDGET FOR 2025 CALENDAR YEAR**

Budget Category	2025 Calendar Year (January 1, 2025, through July 31, 2025)
PERSONNEL	\$125,598.00
FRINGE BENEFITS	\$69,079.00
TRAVEL	\$7,735.00
EQUIPMENT	\$0.00
SUPPLIES	\$9,270.00
CONTRACTUAL	\$0.00
OTHER	\$17,550.00
TOTAL DIRECT CHARGES	\$229,232.00
INDIRECT CHARGES	\$0.00
TOTAL	\$229,232.00

HEALTH AND HUMAN SERVICES
Contract Number HHS001120300005
Attachment D2 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: InternalAffairsReferral@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. Gender Transitioning and Gender Reassignment Procedures and Treatments for Certain Children – Prohibited Use of Public Money; Prohibited State Health Plan Reimbursement.

Contractor understands, acknowledges, and agrees that, pursuant to Section 161.704 of the Texas Health and Safety Code (eff. Sept. 1, 2023), public money may not directly or indirectly be used, granted, paid, or distributed to any health care provider, medical school, hospital, physician, or any other entity, organization, or individual that provides or facilitates the provision of a procedure or treatment to a child that is prohibited under Section 161.702 of the Texas Health and Safety Code. Contractor also understands, acknowledges, and agrees that, pursuant to Section 161.705 of the Texas Health and Safety Code (eff. Sept. 1, 2023), HHSC may not provide Medicaid reimbursement and the child health plan program established under Chapter 62 may not provide reimbursement to a physician or health care provider for provision of a procedure or treatment to a child that is prohibited under Section 161.702 of the Texas Health and Safety Code. Contractor certifies that it is not ineligible to contract with System Agency under the terms of Chapter 161, Subchapter X, of the Texas Health and Safety Code.

40. 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.

41. 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.

42. COVID-19 Vaccinations

Contractor understands, acknowledges, and agrees that, pursuant to Article II of the General Appropriations Act, none of the General Revenue Funds appropriated to the Department of State Health Services (DSHS) may be used for the purpose of promoting or advertising COVID-19 vaccinations in the 2024-25 biennium. It is also the intent of the legislature that to the extent allowed by federal law, any federal funds allocated to DSHS shall be expended for activities other than promoting or advertising COVID-19 vaccinations. 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.

43. Entities that Boycott Energy Companies

In accordance with Senate Bill 13, Acts 2021, 87th Leg., R.S., pursuant to Section 2274.002 (eff. Sept. 1, 2023, Section 2276.002, pursuant to House Bill 4595, Acts 2023, 88th Leg., R.S.) 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 (eff. Sept. 1, 2023, Section 2276.002, pursuant to House Bill 4595, Acts 2023, 88th Leg., R.S.) 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.

44. 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.

45. 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.

46. 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.

47. 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) (eff. Apr. 1, 2025, Section 544.0106, pursuant to House Bill 4611, Acts 2023, 88th Leg., R.S.) is applicable to this Contract, Contractor affirms that it possesses the necessary occupational licenses and experience.

48. 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.

49. Foreign-Owned Companies in Connection with Critical Infrastructure

If Texas Government Code, Section 2274.0102(a)(1) (eff. Sept. 1, 2023, Section 2275.0102(a)(1), pursuant to House Bill 4595, Acts 2023, 88th Leg., R.S.) (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 (eff. Sept. 1, 2023, Section 2275.0102, pursuant to House Bill 4595, Acts 2023, 88th Leg., R.S.), 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 (eff. Sept. 1, 2023, Section 2275.0103, pursuant to House Bill 4595, Acts 2023, 88th Leg., R.S.), or (2) headquartered in any of those countries.

50. 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.

51. 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.

52. 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.

53. 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.

54. 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.

55. 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.

56. Equal Employment Opportunity

Contractor represents and warrants its compliance with all applicable duly enacted state and federal laws governing equal employment opportunities.

57. 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).

58. 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 applicable (d/b/a or 'doing business as')

Texas County(s) for Assumed Business Name (d/b/a or 'doing business as')
Attach Assumed Name Certificate(s) filed with the Texas Secretary of State and Assumed Name Certificate(s), if any, for each Texas County Where Assumed Name Certificate(s) has been filed.

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)



TEXAS
Health and Human
Services

Texas Department of State
Health Services

Attachment H-2 HHS001120300005

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 "Yes" to this question, where can this information be accessed?

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: EA1BF9E3AB4C4B04B311DE098BEAF688

Status: Sent

Subject: Please DocuSign: AMENDING \$1,408,139.00; HHS001120300005; City of Lubbock A-5; STD/HIV-DIS

Source Envelope:

Document Pages: 36

Signatures: 0

Envelope Originator:

Certificate Pages: 2

Initials: 0

CMS Internal Routing Mailbox

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11493 Sunset Hills Road

Envelope Stamping: Enabled

#100

Time Zone: (UTC-06:00) Central Time (US & Canada)

Reston, VA 20190

CMS.InternalRouting@dshs.texas.gov

IP Address: 167.137.1.9

Record Tracking

Status: Original

Holder: CMS Internal Routing Mailbox

Location: DocuSign

10/30/2024 12:50:06 PM

CMS.InternalRouting@dshs.texas.gov

Signer Events

Signature

Timestamp

Mark McBrayer

Sent: 10/30/2024 1:06:40 PM

mmcbrayer@mylubbock.us

Security Level: Email, Account Authentication
(None)

Electronic Record and Signature Disclosure:
Not Offered via DocuSign

Helen Whittington

helen.whittington@dshs.texas.gov

Security Level: Email, Account Authentication
(None)

Electronic Record and Signature Disclosure:
Not Offered via DocuSign

Patty Melchior

Patty.Melchior@dshs.texas.gov

Security Level: Email, Account Authentication
(None)

Electronic Record and Signature Disclosure:
Not Offered via DocuSign

Kirk Cole

Kirk.Cole@dshs.texas.gov

Security Level: Email, Account Authentication
(None)

Electronic Record and Signature Disclosure:
Not Offered via DocuSign

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

Timestamp

Carbon Copy Events	Status	Timestamp
Gloria Diaz gdiaz@mylubbock.us Financial Analyst Security Level: Email, Account Authentication (None) Electronic Record and Signature Disclosure: Not Offered via DocuSign	COPIED	Sent: 10/30/2024 1:06:39 PM Viewed: 10/30/2024 2:39:32 PM

Katherine Wells kwells@mylubbock.us Security Level: Email, Account Authentication (None) Electronic Record and Signature Disclosure: Not Offered via DocuSign	COPIED	Sent: 10/30/2024 1:06:38 PM Viewed: 10/30/2024 2:08:21 PM
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CMS Internal Routing Mailbox
CMS.InternalRouting@dshs.texas.gov
Security Level: Email, Account Authentication (None)
Electronic Record and Signature Disclosure:
Not Offered via DocuSign

Martha Jasse
Martha.Jasse@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	10/30/2024 1:06:39 PM
Payment Events	Status	Timestamps

Information

Agenda Item

Budget Ordinance Amendment 1st Reading - Finance: Consider Budget Ordinance Amendment 4, amending the FY 2024-25 Budget for municipal purposes respecting the Gateway Capital Project Fund to establish Capital Improvement Project 92895, East 19th Street from Keel Avenue to East Loop 289; providing for filing; and providing for a savings clause.

Item Summary

- I. Establish Capital Improvement Project 92895, East 19th Street, from Keel Avenue to East Loop 289, and appropriate funding in the amount of \$750,000. Funding will be from the Impact Fee Service Area D Fund.
- II. Amend the Impact Fee Service Area D Fund Transfer to the Gateway Capital Project Fund by increasing the appropriation by \$750,000, from \$0 to \$750,000. Funding will be from Fund Balance.

The purpose of this project is to expand the existing 2-lane asphalt road to a 4-lane concrete road.

Fiscal Impact

\$750,000 from the Impact Fee Service Area D Fund. The 2018 Master Thoroughfare Plan calls for 19th Street from Keel Avenue to East Loop 289 to be a Minor Arterial. Expanding this portion of 19th Street will support existing and future traffic loads.

Staff/Board Recommending

Cheryl Brock, Interim Chief Financial Officer

Attachments

Budget Amendment 4

ORDINANCE NO. _____

AN ORDINANCE AMENDING THE FY 2024-25 BUDGET FOR MUNICIPAL PURPOSES RESPECTING THE GATEWAY CAPITAL PROJECT FUND AND THE IMPACT FEE SERVICE AREA D FUND; 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 2024-25 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 2024-25 (Budget Amendment #4) for municipal purposes, as follows:

- I. Establish Capital Improvement Project 92895, East 19th Street, Keel Avenue to East Loop 289 and appropriate funding in the amount of \$750,000. Funding will be from the Impact Fee Service Area D Fund.
- II. Amend the Impact Fee Service Area D Fund Transfer to the Gateway Capital Project Fund by increasing the appropriation by \$750,000, from \$0 to \$750,000. Funding will be from 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 reading on _____.

Passed by the City Council on second reading on _____.

MARK W. MCBRAYER, MAYOR

ATTEST:

Courtney Paz
City Secretary

APPROVED AS TO CONTENT:



Cheryl Brock
Interim Chief Financial Officer

APPROVED AS TO FORM:



Amy Sims
Deputy City Attorney

Information

Agenda Item

Resolution - Right-of-Way: Consider a resolution authorizing the Mayor to accept, for and on behalf of the City of Lubbock, one (1) Street, Public Use, and Right-of-Way Deed, and all related documents, in connection with certain real property located in Section 5, Block E, of the GC & SF R.R. Co. Survey, Lubbock County, Texas (Parcel 1), at the northeast corner of 82nd Street and the I-27 frontage road, to be utilized for the 82nd Street and Martin Luther King, Jr. Boulevard Project, which is a portion of the 2022 Street Bond Project.

Item Summary

With the widening of 82nd Street from I-27 to the Martin Luther King (MLK) Jr. Boulevard, the following street dedication will allow for the construction of the arterial. Zuberi and Associates, Inc., a Texas Corporation, is dedicating right-of-way at the northeast corner of the 82nd Street and I-27 frontage Road to the City of Lubbock.

The proponents will dedicate 3,995 square feet of land for street right-of-way purposes, for \$40,971.50, plus \$5,004.00 as compensation for the improvements located within the proposed acquisition area, for a total of \$45,975.50, plus closing costs.

Fiscal Impact

The cost of the land acquisition is \$45,975.50, plus closing costs, and is funded in Capital Improvements Project 92825, Street Bond 82nd and MLK – 22 B.

Staff/Board Recommending

Erik Rejino, Assistant City Manager

John Turpin, P.E., Division Director of Engineering/City Engineer

Attachments

Resolution - 82nd St. Parcel 1

P1_Deed_Signed

GIS Map 82nd St. Parcel 1

CIP 92825 - Budget Detail

CIP 92825 - Project 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 accept for and on behalf of the City of Lubbock one (1) street, public use, and right-of-way deed in connection with certain real property located in Section 5, Block E, of the GC & SF R.R. Co. Survey, Lubbock County, Texas (Parcel 1), to be utilized for the 82nd Street and MLK Jr. Boulevard Project and all related documents. Said Deed 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 _____.

MARK W. MCBRAYER, MAYOR

ATTEST:

Courtney Paz, City Secretary

APPROVED AS TO CONTENT:



John Turpin, Division Director of Engineering/City Engineer

APPROVED AS TO FORM:



Amy L. Sims, Deputy City Attorney

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM THIS INSTRUMENT BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

**82nd Street and MLK Jr. Boulevard, 2022 Street Bond Project
Parcel No. 1
706, 708 & 710 82nd Street, Lubbock, Texas, 79404
MARTIN AMEEN BLK 22 L 11-15, Lubbock County, Texas**

**CITY OF LUBBOCK
STREET, PUBLIC USE AND RIGHT OF WAY DEED**

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

THAT **Zuberi and Associates, Inc., a Texas corporation**, herein called "GRANTOR", for and in consideration of the sum of TEN AND NO/100 (\$10.00) DOLLARS and other good and valuable consideration, to **the corporation** in hand paid by the **CITY OF LUBBOCK, TEXAS**, a Home Rule Municipal Corporation, Grantor does hereby grant, sell, and convey to Grantee for public use forever and for street right-of-way and utility purposes, the following described tract of land situated in Lubbock County, Texas, as more particularly described in the attached Exhibit "A".

The consideration cited herein represents a settlement and compromise by all parties as to the value of the property herein conveyed in order to avoid formal eminent domain proceedings and the added expense of litigation.

GRANTOR agrees to grant the property described in Exhibit "A" and releases the City of Lubbock from the obligation of obtaining an appraisal under Chapter 21 of the Texas Property Code.

TO HAVE AND TO HOLD this above described premises, together with all and singular the rights and appurtenances thereto in anywise belonging unto the said public forever so long as said premises are used for public street purposes.

[SIGNATURES APPEAR ON THE FOLLOWING PAGE]

WITNESS MY HAND this _____ day of _____, 2024

GRANTOR:

Zuberi and Associates, Inc., a Texas corporation

X

BY: Aamir Zuberi

Title: MD

CORPORATE ACKNOWLEDGEMENT

STATE OF TEXAS

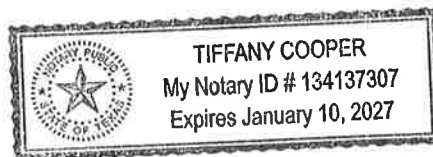
COUNTY OF Tarrant

This instrument was acknowledged before me on the 25 day of October, 2024
by Aamir Zuberi (Name), MD (Title) of
Zuberi and Associates, Inc., a Texas corporation, on behalf of said corporation. The
acknowledging person personally appeared by:

☒ physically appearing before me.

☐ appearing by an interactive two-way audio and video communication that meets the
requirements for online notarization under Texas Government Code chapter 406, subchapter C.

Tiffany Cooper
NOTARY PUBLIC, STATE OF TEXAS
My Commission Expires: 01/10/2027



Grantee's Address:

City of Lubbock
1314 Avenue K, 7th Floor
Lubbock, TX 79401

EXHIBIT "A"

DESCRIPTION – PARCEL 1 – ROW

Field notes describing a 3,925 square feet right-of-way (Tract 1) out of Lots 11 to 14, Block 22 of the Martin – Ameen Addition located in Section 5, Block E, of the GC & SF R.R. Co. Survey, Lubbock County, Texas

BEING a 3,925 square feet tract of land out of Lots 11, 12, 13, and 14, Block 22 of the Martin – Ameen Addition to the City of Lubbock, Lubbock County, Texas, as shown in Volume 315, Page 201, of the Official Public Records of Lubbock County, Texas, situated in Section 5, Block E, of the GC & SF R.R. Co. Survey, Lubbock County, Texas, and further described by metes and bounds as follows;

BEGINNING at a 1/2 inch iron rod with cap stamped "HUGO REED & ASSOC." (N: 7,253,789.47', E: 949,897.02') found for the northwest corner of this tract and being the same as the northwest corner said Lot 11, on the east line of Interstate 27;

THENCE South 88°13'30" East, along the common north line of said Lot 11 and south line of a 20 feet wide alley as shown on said Martin – Ameen Addition, a distance of **3.82 feet** to a 5/8 inch iron rod with yellow cap stamped "COBB FENDLEY BOUNDARY" set for a corner of this tract;

THENCE South 03°55'07" East, a distance of **30.42 feet** to a 5/8 inch iron rod with yellow cap stamped "COBB FENDLEY BOUNDARY" set for a corner of this tract;

THENCE along a **Curve** to the left with a **Radius of 87.50 feet**, an **Arc Length of 128.49 feet**, a **Delta Angle of 84°08'02"**, and **Chord Bearing and Distance of South 45°59'08" East, 117.25 feet**, to a 5/8 inch iron rod with yellow cap stamped "COBB FENDLEY BOUNDARY" set for a corner of this tract;

THENCE along a **Curve** to the right with a **Radius of 1,157.50 feet**, an **Arc Length of 67.04 feet**, a **Delta Angle of 03°19'06"**, and **Chord Bearing and Distance of South 86°23'36" East, 67.03 feet**, to a 5/8 inch iron rod with yellow cap stamped "COBB FENDLEY BOUNDARY" set for a corner of this tract;

THENCE South 84°44'02" East, a distance of **29.05 feet** to a 5/8 inch iron rod with yellow cap stamped "COBB FENDLEY BOUNDARY" set for a corner of this tract;

THENCE South 71°26'08" East, a distance of **41.83 feet** to a 5/8 inch iron rod with yellow cap stamped "COBB FENDLEY BOUNDARY" (N: 7,253,657.33', E: 950,122.72') set for a corner of this tract on the common south line of said Lot 14 and north line of 82nd Street, as described in Volume 1178, Page 342, and Volume 1187, Page 361, of the Official Public Records of Lubbock County, Texas, from which a Rail Road Spike (N: 7,253,537.48', E: 952,252.99') found for the southeast corner of said Section 5 bears South 01°44'33" West, 55.02 feet and South 88°15'27" East, 2,132.93 feet and a 1/2 inch iron rod with cap stamped "R.L. SMITH RPLS 3906" found for the most southern southeast corner of Lot 15 of said Martin – Ameen Addition, bears South 84°56'40" East, 107.08 feet;

EXHIBIT "A"

THENCE North 84°56'40" West, along said common line, at a distance of 19.52 feet passing a PK Nail found for the southwest corner of said Lot 14, and continuing along the common south line of Lots 13, 12, and 11, and the north line of said 82nd Street, for a total distance of **215.64 feet** to an "X" cut in concrete found for the most southern southwest corner of this tract and being the same as the most southern southwest corner said Lot 11;

THENCE along the common south line of said Lot 11 and north line of said 82nd Street, along a **Curve** to the right with a **Radius of 15.00 feet**, an **Arc Length of 24.37 feet**, a **Delta Angle of 93°03'11"**, and **Chord Bearing and Distance of North 41°27'56" West, 21.78 feet**, to an "X" cut in concrete found for the most western southwest corner of said Lot 11 on the east line of Interstate 27;

THENCE North 02°05'17" East, along the common west line of said Lot 11 and east line of Interstate 27, a distance of **96.88 feet** to the POINT OF BEGINNING and containing within these calls a calculated area of 3,925 square feet of land.

Field notes describing a 70 square feet right-of-way (Tract 2) out of Lot 15, Block 22 of the Martin – Ameen Addition located in Section 5, Block E, of the GC & SF R.R. Co. Survey, Lubbock County, Texas

BEING a 70 square feet tract of land out of Lot 15, Block 22 of the Martin – Ameen Addition to the City of Lubbock, Lubbock County, Texas, as shown in Volume 315, Page 201, of the Official Public Records of Lubbock County, Texas, situated in Section 5, Block E, of the GC & SF R.R. Co. Survey, Lubbock County, Texas, and further described by metes and bounds as follows;

BEGINNING at a 1/2 inch iron rod with cap stamped "R.L. SMITH RPLS 3906" found for the southwest corner of this tract and being the same as the most southern southeast corner of said Lot 15, on the north line of 82nd Street, as described in Volume 1178, Page 342, and Volume 1187, Page 361, of the Official Public Records of Lubbock County, Texas, from which a Rail Road Spike (N: 7,253,537.48', E: 952,252.99') found for the southeast corner of said Section 5 bears South 01°44'33" West, 48.84 feet and South 88°15'27" East, 2,026.04 feet and a PK Nail found for the southwest corner of Lot 14 of said Martin – Ameen Addition, bears North 84°56'40" West, 126.60 feet;

THENCE North 48°01'12" East, a distance of **21.76 feet** to a 1/2 inch iron rod with cap stamped "R.L. SMITH RPLS 3906" (N: 7,253,662.45', E: 950,245.55') found for the northeast corner of this tract and being the same as the most eastern southeast corner of said Lot 15, on the west line of Avenue F, as shown on said Martin – Ameen Addition, from which a 1/2 inch iron rod with cap stamped "R.L. SMITH RPLS 3906" found for the northeast corner of said Lot 15, bears North 01°44'33" East, 116.16 feet;

THENCE along the common south line of said Lot 15 and north line of said 82nd Street, along a **Curve** to the right with a **Radius of 15.00 feet**, an **Arc Length of 24.34 feet**, a **Delta Angle of 92°56'46"**, and **Chord Bearing and Distance of South 48°01'12" West, 21.76 feet** to the POINT OF BEGINNING and containing within these calls a calculated area of 70 square feet of land.

EXHIBIT "A"

Bearings shown hereon are referenced to the Texas Coordinate System of 1983, North Central Zone, and are based on the North American Datum of 1983, 2011 Adjustment. All coordinates shown hereon are Surface values displayed in US Survey Feet and may be converted to Grid values by dividing those Surface values by a Surface Adjustment Factor of 1.00021. All distances shown hereon are Surface values displayed in US Survey feet and may be converted to Grid values by dividing those Surface values by a Surface Adjustment Factor of 1.00021.

This written description is accompanied by a survey plat which covers the identical parcel that is described herein, signed and sealed on even date herewith and is hereby made a part of this document.

I, Jeffrey L. Fansler, a Registered Professional Land Surveyor in the State of Texas, hereby certify that this description and plat represent an on-the-ground survey made under my supervision.

Jeffrey L. Vanster 2024-03-07



Jeffrey L. Fansler
Registered Professional Land Surveyor
Texas Registration No. 4348

Cobb, Fendley & Associates, Inc.
TBPELS Land Surveying Firm No. 10046700

7727 Quaker Avenue, Suite A,
Lubbock, Texas 79424

2011 EXHIBIT 402

-5 88° 13' 30" E - 3.82'

LCAD ID: 12	LCAD ID:
R113500	R113522
W/2 L12	E/2 L12

13
LCAD ID: R113547

14 LCAD ID: R113572 15
14 & 15

1 1/2" I.R. - "R.L. SMITH RPLS 3506"

N 02° 05' 17" E - 96.88'

CT 1 ROW
9.925 SQ. FT.

VARIABLE WIDTH ROW
(V 1187, P 361 O.P.R.L.C.T.)

VARIABLE WIDTH ROW
(V 1178, P 342 O.P.R.L.C.T.)

13'

41.83'

TRACT 2 R.O.W.

AVENUE F
60' ROW PER PLAT
(V 315, P 201 O.P.R.L.C.T.)

N 01° 44' 33" E 116.16'

N/30' OF SECTION LINE ROW PER PLAT (V 315, P 201 O.P.R.L.C.T.)

82ND STREET

NOTES:

P.O.B. = POINT OF BEGINNING
I.R. = IRON ROD

1 inch = 50 ft.
GRAPHIC SCALE
(in feet)



L.C.R.E. = LUBBOCK COUNTY RIGHT-OF-WAY EASEMENT
SDD = STREET DEDICATION DEED
V./P. = VOLUME / PAGE
CCFN = COUNTY CLERK FILE NUMBER
O.P./L.C.T. = OFFICIAL, PUBLIC RECORDS, LUBBOCK COUNTY, TEXAS
R.L.A.C = RADIUS, ARC LENGTH, DELTA ANGLE, CHORD
● = MONUMENT FOUND (AS NOTED)
O = MONUMENT SET (3/4" IRON ROD SET WITH YELLOW PLASTIC CAP STAMPED "COBB FENDELEY BOUNDARY")
= PROPERTY LINE
= EASEMENT LINE - AS DESCRIBED
= ADJOINING PROPERTY LINE
= RIGHT-OF-WAY / RIGHT-OF-WAY EASEMENT LINE

NORTH 

Jeffrey L. Fanster 2021-03-07
 Jeffrey L. Fanster Date
 Registered Professional Land Surveyor
 No. 4348



DATE: _____

SCALE:
1" = 50'

DRAWN BY:
PTT

CHECKED BY:
JLF

SHEET NO. 4 of 4

SHEET ID:
302-019-01-PARCEL 1 ROW.dwg

PARCEL 1 - ROW

A 3.925 Sq. Ft. RIGHT-OF-WAY (TRACT 1), AND A 70 Sq. Ft. RIGHT-OF-WAY (TRACT 2), OUT OF LOTS 11 TO 15, BLOCK 22 OF THE MARTIN - AMEEN ADDITION, LOCATED IN SECTION 5, BLOCK E, OF THE GC & SF R.R. CO. SURVEY, LUBBOCK COUNTY, TEXAS

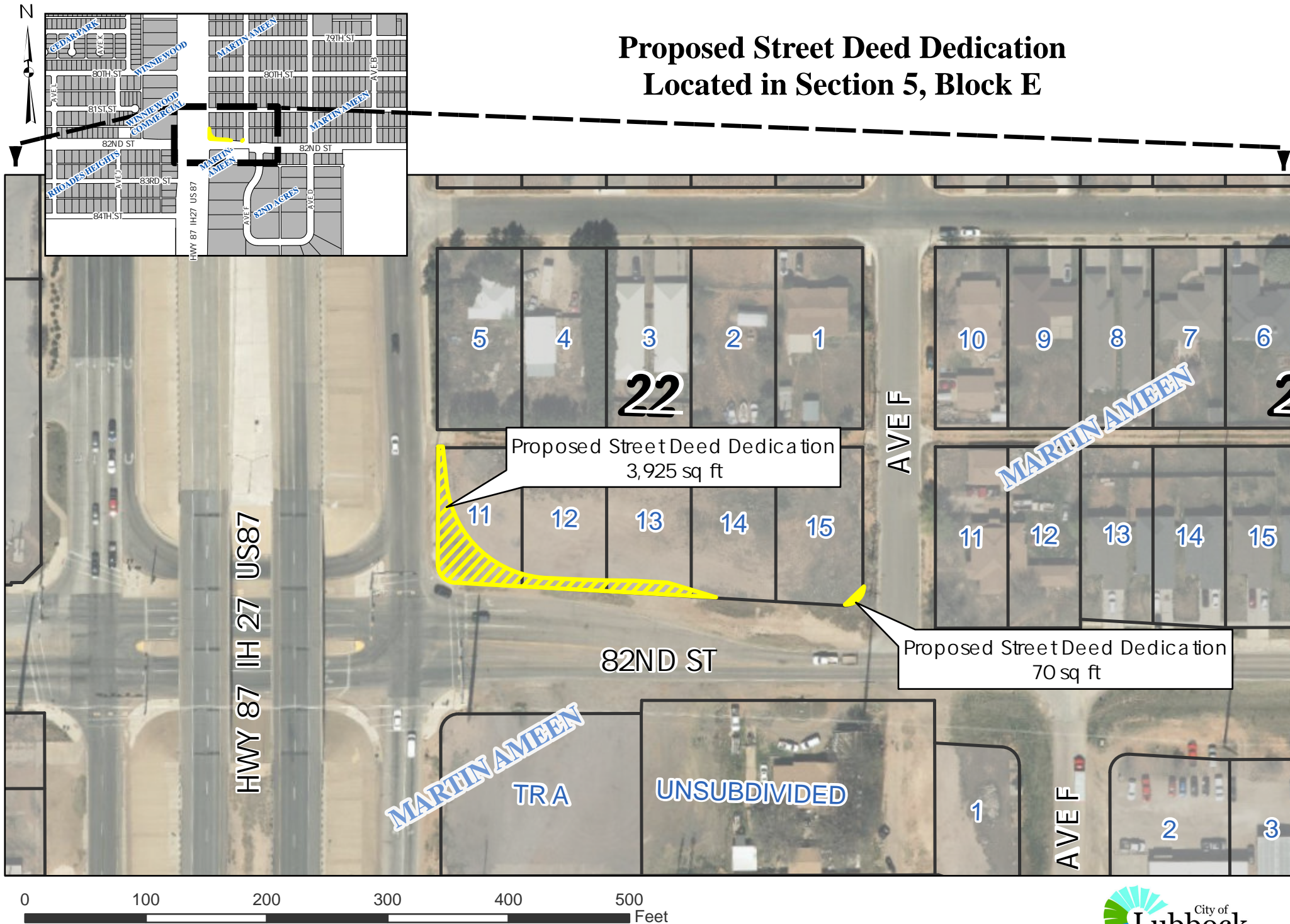
© copyright Cobb, Fendley & Associates, Inc.



CobbFendley

TBP&L Land Surveying Firm Registration No. 10046700
7727 Quaker Avenue, Suite A, Lubbock, Texas 79424
Phone: 806.993.0071 | www.cobbfendley.com

Proposed Street Deed Dedication Located in Section 5, Block E



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

City of Lubbock, TX
Capital Project
Project Cost Detail
December 3, 2024

Capital Project Number:	92825
Capital Project Name:	Street Bond 82nd and MLK - 22B

<i>Encumbered/Expended</i>	<u>Budget</u>
City of Lubbock Staff Time	\$ 15,232
Contract 17088 with LAN for Design Services on 82nd and MLK	3,424,877
Playa Lake 82 Land Purchase	700,000
Previous Project Land Purchases	314,270

<i>Agenda Items, December 3rd, 2024</i>	
Parcels 1, 33, and 35 Land Purchases	180,683

<i>Encumbered/Expended To Date</i>	<u>4,635,062</u>
---	------------------

<i>Estimated Costs for Remaining Appropriation</i>	
Purchase of Land and Roadway Construction	<u>1,064,938</u>
<i>Remaining Appropriation</i>	<u>1,064,938</u>

Total Appropriation	<u><u>\$ 5,700,000</u></u>
----------------------------	----------------------------



CIP 92825 82nd Street and MLK Blvd- 22B

New Roadway Infrastructure

Project Manager: Bailey Ratcliffe - Engineering

Project Scope

82nd Street from I-27 to MLK Blvd and MLK BLVD from 74th Street to 82nd Street are currently a two-lane paved road and are designated in the 2018 Thoroughfare Master Plan to become a seven-lane Principal Arterial and a five-lane Principal Arterial (Modified). Continued growth in east Lubbock has increased traffic demands along the 82nd Street and MLK BLVD corridors. This thoroughfare will include the ultimate design of a seven-lane and five-lane undivided thoroughfares with curb and gutter, drainage, streetlights, sidewalk improvements, utility adjustment and right of way acquisition services.

Project Justification

On November 8, 2022, Lubbock voters approved issuance of a \$200 million street improvements bond package for the purpose of providing permanent public improvements. The funding will acquire, construct and reconstruct street improvements, including but not limited to sidewalks, utility line relocations and traffic signalization, necessary and related storm drainage facilities, and the acquisition of land and rights-of-way for the full width dedication.

Project Highlights

Council Priorities Addressed:
Public Safety
Community Improvement
Growth and Development

Project History

- FY 2022-23 \$5,700,000 was appropriated by Ord. 2022-00169

Project Dates

Design Start Date: 01/2023
Design Completion: 01/2025
Bid for Constuction: 09/2025
Award Construction: 11/2025
Project Completion: 04/2029

Project Location

82nd St and Martin Luther King Boulevard

Project Appropriations

	Appropriation to Date	2024 - 25 Budget	2025 - 26 Budget	2026 - 27 Budget	2027 - 28 Budget	2028 - 29 Budget	2029 - 30 Budget
Construction	\$5,700,000	\$0	\$14,100,000	\$0	\$0	\$0	\$0
TOTAL	\$5,700,000	\$0	\$14,100,000	\$0	\$0	\$0	\$0

Project Funding

	Funding to Date	2024 - 25 Budget	2025 - 26 Budget	2026 - 27 Budget	2027 - 28 Budget	2028 - 29 Budget	2029 - 30 Budget
General Obligation Bonds	\$5,700,000	\$0	\$14,100,000	\$0	\$0	\$0	\$0
TOTAL	\$5,700,000	\$0	\$14,100,000	\$0	\$0	\$0	\$0

Operating Budget Impacts

Description	2024-25	2025-26	2026-27	2027-28	2028-29	2029-30	Total
No Impact Anticipated	\$0	\$0	\$0	\$0	\$0	\$0	\$0
TOTAL	\$0	\$0	\$0	\$0	\$0	\$0	\$0

Information

Agenda Item

Resolution - Right-of-Way: Consider a resolution authorizing the Mayor to accept, for and on behalf of the City of Lubbock, one (1) Street, Public Use, and Right-of-Way Deed, and all related documents, in connection with certain real property located in Section 23, Block E, of the SI Johnson Survey, Lubbock County, Texas (Parcel 33), on the east side of Martin Luther King, Jr. Boulevard between 77th Street and 79th Street, to be utilized for the 82nd Street and Martin Luther King, Jr. Boulevard Project, which is a portion of the 2022 Street Bond Project.

Item Summary

With the widening of Martin Luther King (MLK) Jr. Boulevard from 74th Street to 82nd Street, the following street dedication will allow for the construction of the arterial. Bernie Thiel and Bernie J. Thiel, Jr., Trustee of the Bernie J. Thiel, Jr. Trust, are dedicating right-of-way on the east side of MLK Jr. Boulevard, between 77th and 79th Streets to the City of Lubbock.

The proponents will dedicate 52,272 square feet of land for street right-of-way purposes, for \$98,407, plus \$1,500 as compensation for the improvements located within the proposed acquisition area, for a total of \$99,907, plus closing costs.

Fiscal Impact

The cost of the land acquisition is \$99,907, plus closing costs, and is funded in Capital Improvements Project 92825, Street Bond 82nd and MLK – 22 B.

Staff/Board Recommending

Erik Rejino, Assistant City Manager

John Turpin, P.E., Division Director of Engineering/City Engineer

Attachments

Resolution - 82nd St. Parcel 33
P33 Bernie Thiel Deed Executed
GIS Map - 82nd St. Parcel 33
CIP 92825 - Budget Detail
CIP 92825 - Project 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 accept for and on behalf of the City of Lubbock one (1) street, public use, and right-of-way deed in connection with certain real property located in Section 23, Block E, of the SI Johnson Survey, Lubbock County, Texas (Parcel 33), to be utilized for the 82nd Street and MLK Jr. Boulevard Project and all related documents. Said Deed is attached hereto and incorporated in this Resolution as if fully set forth herein and shall be included in the minutes of the Council.

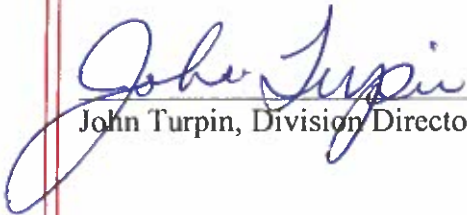
Passed by the City Council on _____.

**_____
MARK W. MCBRAYER, MAYOR**

ATTEST:

Courtney Paz, City Secretary

APPROVED AS TO CONTENT:



John Turpin, Division Director of Engineering/City Engineer

APPROVED AS TO FORM:



Amy L. Sims, Deputy City Attorney

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM THIS INSTRUMENT BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

**82nd Street and MLK Jr. Boulevard, 2022 Street Bond Project
Parcel No. 33
MLK Jr. Boulevard, Lubbock, TX 79404
Block E, Section 23, SI Johnson Survey, Tract 1 and Tract 2**

**CITY OF LUBBOCK
STREET, PUBLIC USE AND RIGHT OF WAY DEED**

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

THAT **BERNIE THIEL AND BERNIE J. THIEL JR., TRUSTEE OF THE BERNIE J. THIEL, JR. TRUST** herein called "GRANTOR", for and in consideration of the sum of TEN AND NO/100 (\$10.00) DOLLARS and other good and valuable consideration, to **him/her** in hand paid by the **CITY OF LUBBOCK, TEXAS**, a Home Rule Municipal Corporation, Grantor does hereby grant, sell, and convey to Grantee for public use forever and for street right-of-way and utility purposes, the following described tract of land situated in Lubbock County, Texas, as more particularly described in the attached Exhibit "A".

TO HAVE AND TO HOLD this above described premises, together with all and singular the rights and appurtenances thereto in anywise belonging unto the said public forever so long as said premises are used for public street right-of way and utility purposes.

[SIGNATURES APPEAR ON THE FOLLOWING PAGE]

WITNESS MY HAND this 19th day of September, 2024

GRANTOR:

Bernie Thiel and Bernie J. Thiel Jr., Trustee of the Bernie J. Thiel, Jr. Trust

BY: Bernie Thiel
Bernie Thiel

ACKNOWLEDGEMENT

STATE OF TEXAS

COUNTY OF Lubbock

This instrument was acknowledged before me on the 19th day of September, 2024 by Bernie Thiel and Bernie J. Thiel Jr., Trustee of the Bernie J. Thiel, Jr. Trust. The acknowledging person personally appeared by:

☒ physically appearing before me.

☐ appearing by an interactive two-way audio and video communication that meets the requirements for online notarization under Texas Government Code chapter 406, subchapter C.



Linda A. Sidner
NOTARY PUBLIC, STATE OF TEXAS
My Commission Expires: July 9, 2028

Grantee's Address:

City of Lubbock
1314 Avenue K, 7th Floor
Lubbock, TX 79401

Improvements in Acquisition

Improvement	Amount	Unit Cost	Replacement Value	Retention Value
Irrigation Riser	1	\$1,500.00	\$1,500.00	\$1.00

EXHIBIT "A"

DESCRIPTION – PARCEL 33

Field notes describing a 1.02 acre right-of-way out of Tracts "1" and "2", located in Section 23, Block E, of the SI Johnson Survey, Lubbock County, Texas.

BEING a 1.20 acre tract of land out of two tracts of land described as "Tract 1" and "Tract 2" in a Correctional Special Warranty Deed to the Bernie J. Thiel, Jr. Trust, recorded as County Clerk File Number 2022050600 of the Official Public Records of Lubbock County, Texas, situated in Section 23, Block E of the SI Johnson Survey, Lubbock County, Texas, and further described by metes and bounds as follows;

BEGINNING at a 5/8 inch iron rod with yellow cap stamped "COBB FENDLEY BOUNDARY" (N: 7,254,215.46', E: 957,657.08') set for the southeast corner of this tract on the common south line of said Tract 2 and north line of a called 9.098 acre tract described in a Cash Warranty Deed to Regina Denise Murph, recorded as County Clerk File Number 2021050258 of the Official Public Records of Lubbock County, Texas, from which a 1/2 inch iron rod (N: 7,253,288.01', E: 958,643.06') found for the southwest corner of Section 3, Block S, of the GC & SF R.R. CO. Survey, bears South 01°49'37" West, 908.50 feet and South 88°54'14" East, 1,015.14 feet;

THENCE North 88°50'03" West, along said common line, a distance of **49.97 feet** to a 1/2 inch iron rod found for the southwest corner of this tract and being the same as the northwest corner of said called 9.098 tract, on the east line of Martin Luther King Jr. Boulevard as shown on the S.I. Johnson's Sub-Division, recorded as Volume 59, Page 354 of the Official Public Records of Lubbock County, Texas;

THENCE North 01°49'18" East, along the east line of said Martin Luther King Jr. Boulevard, a distance of **1,047.25 feet** to a Point for the northwest corner of this tract, on the north line of said Tract 1;

THENCE South 88°52'10" East, along the north line of said Tract 1, a distance of **50.07 feet** to a 5/8 inch iron rod with yellow cap stamped "COBB FENDLEY BOUNDARY" (N: 7,255,262.21', E: 957,690.47') set for the northeast corner of this tract on the common north line of said Tract 1 and south line of Tract A of the Nelson Electric Addition, as shown in Volume 1592, Page 852 of the Official Public Records of Lubbock County, Texas;

THENCE South 01°49'37" West, a distance of **1,047.28 feet** to the POINT OF BEGINNING and containing within these calls a calculated area of 1.20 acres (52,382 square feet) of land.

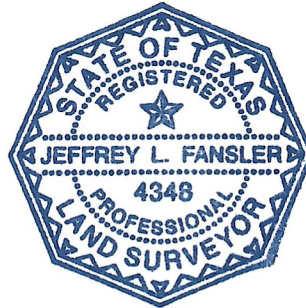
EXHIBIT "A"

Bearings shown hereon are referenced to the Texas Coordinate System of 1983, North Central Zone, and are based on the North American Datum of 1983, 2011 Adjustment. All coordinates shown hereon are Surface values displayed in US Survey Feet and may be converted to Grid values by dividing those Surface values by a Surface Adjustment Factor of 1.00021. All distances shown hereon are Surface values displayed in US Survey feet and may be converted to Grid values by dividing those Surface values by a Surface Adjustment Factor of 1.00021.

This written description is accompanied by a survey plat which covers the identical parcel that is described herein, signed and sealed on even date herewith and is hereby made a part of this document.

I, Jeffrey L. Fansler, a Registered Professional Land Surveyor in the State of Texas, hereby certify that this description and plat represent an on-the-ground survey made under my supervision.

Jeffrey L. Fansler 2024-03-08



Jeffrey L. Fansler Date
Registered Professional Land Surveyor
Texas Registration No. 4348

Cobb, Fendley & Associates, Inc.
TBPELS Land Surveying Firm No. 10046700

7727 Quaker Avenue, Suite A,
Lubbock, Texas 79424

EXHIBIT "A"

SECTION 23, BLOCK E

MARTIN LUTHER KING JR. BOULEVARD

60' ROW PER PLAT (V 59, P 354 O.P.R.L.C.T.)

N 01° 49' 18" E - 1047.25'

1.20 ACRES
(52,382 SQ. FT.)

S 01° 49' 37" W - 1047.28'

N88°50'03"W
49.97'

S 01° 49' 37" W 908.50'

P.O.B.:
N: 7,254,215.46', E: 957,657.08'

LCAD ID: R83586
CALLED 9.088 ACRES
MURPHY, REGINA DENISE
(CCFN: 2021050258 O.P.R.L.C.T.)

LCAD ID: R83195 - TRACT 2
BERNIE J THIEL JR TRUST
(CCFN: 2022050600 O.P.R.L.C.T.)

LCAD ID: R83195 - TRACT 1
BERNIE J THIEL JR TRUST
(CCFN: 2022050600 O.P.R.L.C.T.)

1/2" I.R.
SW CORN OF SEC. 3, BLK S
N: 7,253,288.01', E: 958,643.06'

MATCH LINE SHEET 4

LEGEND

P.O.B. = POINT OF BEGINNING

I.R. = IRON ROD

ROW = RIGHT-OF-WAY

AE = ACCESS EASEMENT

UE = UTILITY EASEMENT

L.C.R.E. = LUBBOCK COUNTY RIGHT-OF-WAY EASEMENT

SDD = STREET DEDICATION DEED

V./P. = VOLUME / PAGE

CCFN = COUNTY CLERK FILE NUMBER

O.P.R.L.C.T. = OFFICIAL PUBLIC RECORDS, LUBBOCK COUNTY, TEXAS

R.L.A.C. = RADIUS, ARC LENGTH, DELTA ANGLE, CHORD

● = MONUMENT FOUND (AS NOTED)

○ = MONUMENT SET (5/8" IRON ROD SET WITH YELLOW PLASTIC CAP

STAMPED "COBB FENDLEY BOUNDARY")

— = PROPERTY LINE

— = EASEMENT LINE - AS DESCRIBED

— = ADJOINING PROPERTY LINE

— = RIGHT-OF-WAY / RIGHT-OF-WAY EASEMENT LINE

DATE: 01/26/2024

SCALE: 1" = 100'

DRAWN BY: JLF

CHECKED BY: JLF

SHEET NO. 3 OF 4

JOB NUMBER: 2302-019-01

SHEET ID: 2302-019-01-PARCEL 33.dwg

PARCEL 33

A 1.20 ACRE (52,382 SQ. FT.) RIGHT-OF-WAY OUT OF TRACTS "1" AND "2",
LOCATED IN SECTION 23, BLOCK E, OF THE SI JOHNSON SURVEY,
LUBBOCK COUNTY, TEXAS.



Jeffrey L. Fansler
Registered Professional Land Surveyor
No. 4348

Jeffrey L. Fansler 2024-03-08

NOTES:

1. Bearings shown hereon are referenced to the Texas Coordinate System of 1983, North Central Zone, and are based on the North American Datum of 1983, 2011 Adjustment. All coordinates shown hereon are Surface values displayed in US Survey Feet and may be converted to Grid values by dividing those Surface values by a Surface Adjustment Factor of 1.00021. All distances shown hereon are Surface values displayed in US Survey feet and may be converted to Grid values by dividing those Surface values by a Surface Adjustment Factor of 1.00021.

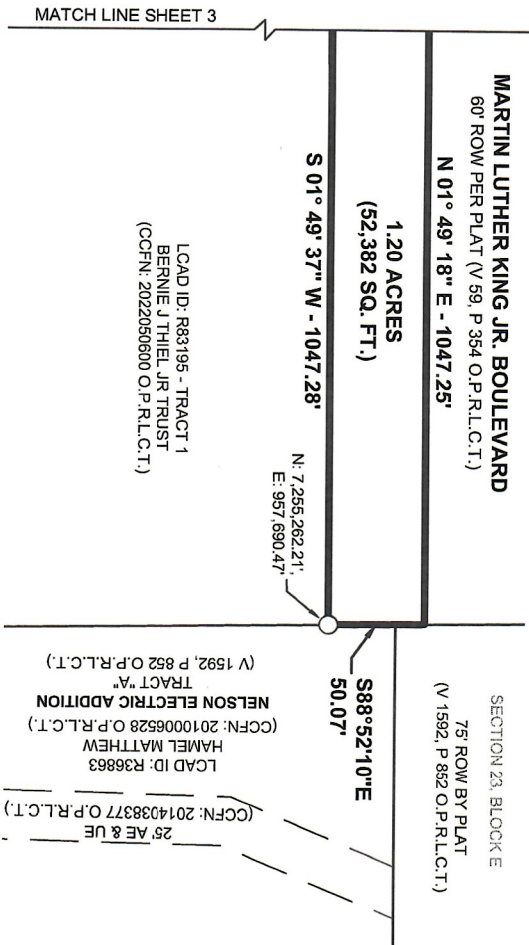
2. This survey plat is accompanied by a written description which covers the identical parcel that is shown hereon, signed and sealed on even date herewith and is hereby made a part of this document.

3. This survey plat was prepared without the benefit of a title report. The surveyor did not research subject property title information. All easements of record may not be shown.



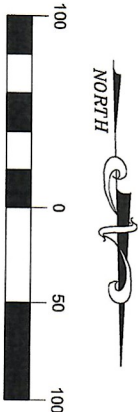
TBP&LS Land Surveying Firm Registration No. 10046700
7727 Quaker Avenue, Suite A, Lubbock, Texas 79424
Phone: 806.993.0071 | www.cobbfendley.com

EXHIBIT "A"



NOTES:

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LEGEND

- P.O.B. = POINT OF BEGINNING
I.R. = IRON ROD
ROW = RIGHT-OF-WAY
A.E. = ACCESS EASEMENT
UE = UTILITY EASEMENT
L.C.R.E. = LUBBOCK COUNTY RIGHT-OF-WAY EASEMENT
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R.L.A.C. = RADIUS, ARC LENGTH, DELTA ANGLE, CHORD
● = MONUMENT FOUND (AS NOTED)
○ = MONUMENT SET (5/8" IRON ROD SET WITH YELLOW PLASTIC CAP STAMPED "COBB FENDLEY BOUNDARY")

- = PROPERTY LINE
— = EASEMENT LINE - AS DESCRIBED
— = ADJOINING PROPERTY LINE
— = RIGHT-OF-WAY / RIGHT-OF-WAY EASEMENT LINE

Jeffrey L. Fansler
Registered Professional Land Surveyor
No. 4348



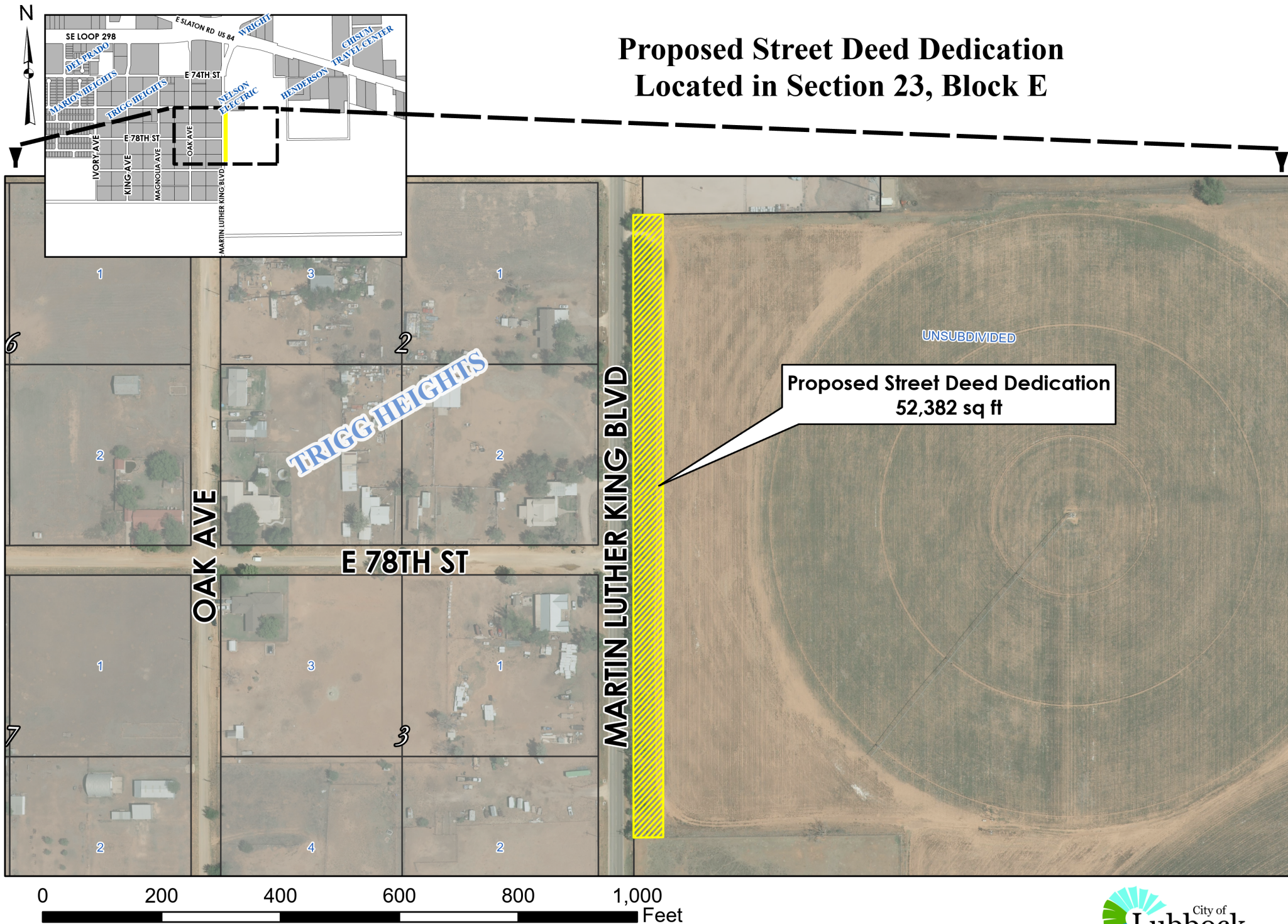
PARCEL 33

A 1.20 ACRE (52,382 SQ. FT.) RIGHT-OF-WAY OUT OF TRACTS "1" AND "2",
LOCATED IN SECTION 23, BLOCK E, OF THE SJ JOHNSON SURVEY,
LUBBOCK COUNTY, TEXAS.

CobbFendley

TBPELS Land Surveying Firm Registration No. 10046700
7727 Quaker Avenue, Suite A, Lubbock, Texas 79424
Phone: 806.993.0071 | www.cobbfendley.com

Proposed Street Deed Dedication Located in Section 23, Block E



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

City of Lubbock, TX
Capital Project
Project Cost Detail
December 3, 2024

Capital Project Number:	92825
Capital Project Name:	Street Bond 82nd and MLK - 22B

<i>Encumbered/Expended</i>	<u>Budget</u>
City of Lubbock Staff Time	\$ 15,232
Contract 17088 with LAN for Design Services on 82nd and MLK	3,424,877
Playa Lake 82 Land Purchase	700,000
Previous Project Land Purchases	314,270

<i>Agenda Items, December 3rd, 2024</i>	
Parcels 1, 33, and 35 Land Purchases	180,683

<i>Encumbered/Expended To Date</i>	<u>4,635,062</u>
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<i>Estimated Costs for Remaining Appropriation</i>	
Purchase of Land and Roadway Construction	<u>1,064,938</u>
<i>Remaining Appropriation</i>	<u>1,064,938</u>

Total Appropriation	<u><u>\$ 5,700,000</u></u>
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CIP 92825 82nd Street and MLK Blvd- 22B

New Roadway Infrastructure

Project Manager: Bailey Ratcliffe - Engineering

Project Scope

82nd Street from I-27 to MLK Blvd and MLK BLVD from 74th Street to 82nd Street are currently a two-lane paved road and are designated in the 2018 Thoroughfare Master Plan to become a seven-lane Principal Arterial and a five-lane Principal Arterial (Modified). Continued growth in east Lubbock has increased traffic demands along the 82nd Street and MLK BLVD corridors. This thoroughfare will include the ultimate design of a seven-lane and five-lane undivided thoroughfares with curb and gutter, drainage, streetlights, sidewalk improvements, utility adjustment and right of way acquisition services.

Project Justification

On November 8, 2022, Lubbock voters approved issuance of a \$200 million street improvements bond package for the purpose of providing permanent public improvements. The funding will acquire, construct and reconstruct street improvements, including but not limited to sidewalks, utility line relocations and traffic signalization, necessary and related storm drainage facilities, and the acquisition of land and rights-of-way for the full width dedication.

Project Highlights

Council Priorities Addressed:
Public Safety
Community Improvement
Growth and Development

Project History

- FY 2022-23 \$5,700,000 was appropriated by Ord. 2022-00169

Project Dates

Design Start Date: 01/2023
Design Completion: 01/2025
Bid for Constuction: 09/2025
Award Construction: 11/2025
Project Completion: 04/2029

Project Location

82nd St and Martin Luther King Boulevard

Project Appropriations

	Appropriation to Date	2024 - 25 Budget	2025 - 26 Budget	2026 - 27 Budget	2027 - 28 Budget	2028 - 29 Budget	2029 - 30 Budget
Construction	\$5,700,000	\$0	\$14,100,000	\$0	\$0	\$0	\$0
TOTAL	\$5,700,000	\$0	\$14,100,000	\$0	\$0	\$0	\$0

Project Funding

	Funding to Date	2024 - 25 Budget	2025 - 26 Budget	2026 - 27 Budget	2027 - 28 Budget	2028 - 29 Budget	2029 - 30 Budget
General Obligation Bonds	\$5,700,000	\$0	\$14,100,000	\$0	\$0	\$0	\$0
TOTAL	\$5,700,000	\$0	\$14,100,000	\$0	\$0	\$0	\$0

Operating Budget Impacts

Description	2024-25	2025-26	2026-27	2027-28	2028-29	2029-30	Total
No Impact Anticipated	\$0	\$0	\$0	\$0	\$0	\$0	\$0
TOTAL	\$0	\$0	\$0	\$0	\$0	\$0	\$0

Information

Agenda Item

Resolution - Right-of-Way: Consider a resolution authorizing the Mayor to accept, for and on behalf of the City of Lubbock, one (1) Street, Public Use, and Right-of-Way Deed, and all related documents, in connection with certain real property located in Section 23, Block E, of the SI Johnson Survey, Lubbock County, Texas (Parcel 35), on the east side of Martin Luther King, Jr. Boulevard, at 74th Street, to be utilized for the 82nd Street and Martin Luther King, Jr. Boulevard Project, which is a portion of the 2022 Street Bond Project.

Item Summary

With the widening of Martin Luther King (MLK) Jr. Boulevard from 74th Street to 82nd Street, the following street dedication will allow for the construction of the arterial. The Kinsey 2015 Real Estate Trust is dedicating right-of-way on the east side of MLK Jr. Boulevard at 74th Street to the City of Lubbock.

The proponents will dedicate 4,356 square feet of land for street right-of-way purposes, for \$35,000, plus closing costs.

Fiscal Impact

The cost of the land acquisition is \$35,000, plus closing costs, and is funded in Capital Improvements Project 92825, Street Bond 82nd and MLK – 22 B.

Staff/Board Recommending

Erik Rejino, Assistant City Manager

John Turpin, P.E., Division Director of Engineering/City Engineer

Attachments

Resolution - 82nd St. Parcel 33

P35_Deed_Signed

Location Exhibit

CIP 92825 - Budget Detail

CIP 92825 Project 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 accept for and on behalf of the City of Lubbock one (1) street, public use, and right-of-way deed in connection with certain real property located in Section 23, Block E, of the SI Johnson Survey, Lubbock County, Texas (Parcel 33), to be utilized for the 82nd Street and MLK Jr. Boulevard Project and all related documents. Said Deed 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 _____.

**_____
MARK W. MCBRAYER, MAYOR**

ATTEST:

Courtney Paz, City Secretary

APPROVED AS TO CONTENT:



John Turpin, Division Director of Engineering/City Engineer

APPROVED AS TO FORM:



Amy L. Sims, Deputy City Attorney

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM THIS INSTRUMENT BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

82nd Street and MLK Jr. Boulevard, 2022 Street Bond Project

Parcel No. 35

MLK Jr. Blvd., Lubbock, TX 79404

Section 23, Block E, SI Johnson Survey 12.987 Acres

CITY OF LUBBOCK
STREET, PUBLIC USE AND RIGHT OF WAY DEED

THE STATE OF TEXAS

§

§

KNOW ALL MEN BY THESE PRESENTS:

COUNTY OF LUBBOCK

§

THAT **Cody Kinsey, Trustee of the Kinsey 2015 Real Estate Trust**, herein called "GRANTOR", for and in consideration of the sum of TEN AND NO/100 (\$10.00) DOLLARS and other good and valuable consideration, to **him/her** in hand paid by the **CITY OF LUBBOCK, TEXAS**, a Home Rule Municipal Corporation, Grantor does hereby grant, sell, and convey to Grantee for public use forever and for street right-of-way and utility purposes, the following described tract of land situated in Lubbock County, Texas, as more particularly described in the attached Exhibit "A".

The consideration cited herein represents a settlement and compromise by all parties as to the value of the property herein conveyed in order to avoid formal eminent domain proceedings and the added expense of litigation.

GRANTOR agrees to grant the property described in Exhibit "A" and releases the City of Lubbock from the obligation of obtaining an appraisal under Chapter 21 of the Texas Property Code.

TO HAVE AND TO HOLD this above described premises, together with all and singular the rights and appurtenances thereto in anywise belonging unto the said public forever so long as said premises are used for public street purposes.

[SIGNATURES APPEAR ON THE FOLLOWING PAGE]

WITNESS MY HAND this 21 day of October, 2024

GRANTOR:

The Kinsey 2015 Real Estate Trust

By: 

Cody Kinsey, Trustee

CORPORATE ACKNOWLEDGEMENT

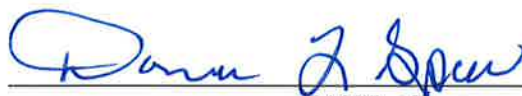
STATE OF TEXAS

COUNTY OF Lubbock

This instrument was acknowledged before me on the 21 day of October, 2024 by Cody Kinsey, Trustee of The Kinsey 2015 Real Estate Trust. The acknowledging person personally appeared by:

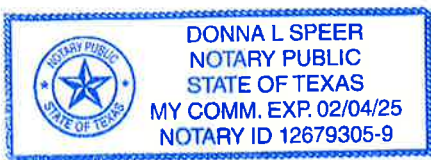
☒ physically appearing before me.

☐ appearing by an interactive two-way audio and video communication that meets the requirements for online notarization under Texas Government Code chapter 406, subchapter C.



NOTARY PUBLIC, STATE OF TEXAS

My Commission Expires: 2-4-2025



Grantee's Address:

City of Lubbock

1314 Avenue K, 7th Floor

Lubbock, TX 79401

EXHIBIT "A"

DESCRIPTION – PARCEL 35

Field notes describing a 0.10 acre right-of-way out of a called 12.987 acre tract, located in Section 23, Block E, of the SI Johnson Survey, Lubbock County, Texas.

BEING a 0.10 acre tract of land out of a called 12.987 acre tract described in a Special Warranty Deed to The Kinsey 2015 Real Estate Trust, recorded in County Clerk File Number 2018043482 of the Official Public Records of Lubbock County, Texas, situated in Section 23, Block E of the SI Johnson Survey, Lubbock County, Texas, and further described by metes and bounds as follows;

BEGINNING at a 5/8 inch iron rod with yellow cap stamped "COBB FENDLEY BOUNDARY" (N: 7,255,946.94', E: 957,712.32') set for the southeast corner of this tract on the common south line of said called 12.987 acre tract and north line of the remainder of a called 20.52 acre tract described in a Quitclaim Deed to Matthew Herman Hamel, recorded in County Clerk File Number 2010006528 of the Official Public Records of Lubbock County, Texas, from which a 1/2 inch iron rod (N: 7,253,288.01', E: 958,643.06') found for the southwest corner of Section 3, Block S, of the GC & SF R.R. CO. Survey, bears South 01°49'37" West, 2,640.85 feet and South 88°54'14" East, 1,015.14 feet;

THENCE North 88°45'15" West, along said common line, a distance of **50.13 feet** to a 1/2 inch iron rod with cap stamped "WSCI RPLS 4239" found for the southwest corner of this tract and being the same as the southwest corner of said called 12.987 acre tract, on the east line of Martin Luther King Jr. Boulevard, as shown on the S.I. Johnson's Sub-Division, recorded as Volume 59, Page 354 of the Official Public Records of Lubbock County, Texas;

THENCE North 01°50'07" East, along the common west line of said called 12.987 acre tract and east line of said Martin Luther King Jr. Boulevard, a distance of **53.97 feet** to a Point for a corner of this tract on the south line of a part of Martin Luther King Jr. Boulevard described in a Judgement Deed, recorded in Volume 750, Page 547 of the Official Public Records of Lubbock County, Texas;

THENCE South 88°11'35" East, along the common north line of said called 12.987 acre tract and south line of said Martin Luther King Jr. Boulevard described in said Judgement Deed, a distance of **32.77 feet** to a 1/2 inch iron rod found for a corner of this tract and being the same as a corner of said called 12.987 acre tract;

THENCE along the common west line of said called 12.987 acre tract and east line of said Martin Luther King Jr. Boulevard described in said Judgement Deed, along a **Curve** to the right with a **Radius of 761.25 feet, Arc Length of 162.32 feet, Delta Angle of 12°13'02"**, and **Chord Bearing and Distance of North 07°58'33" East, 162.02 feet** to a 5/8 inch iron rod with yellow cap stamped "COBB FENDLEY BOUNDARY" (N: 7,256,161.39', E: 957,719.17') set for the north corner of this tract, from which a 1/2 inch iron rod with cap stamped "HUGO REED & ASSOC." found for a corner of said called 12.987 acre tract, bears along a Curve to the right with a Radius of 761.25 feet, Arc Length of 112.48 feet, Delta Angle of 08°27'57", and Chord Bearing and Distance of North 18°19'03" East, 112.38 feet;

THENCE South 01°49'37" West, a distance of **214.56 feet** to the POINT OF BEGINNING and containing within these calls a calculated area of 0.10 acre (4,558 square feet) of land.

EXHIBIT "A"

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This written description is accompanied by a survey plat which covers the identical parcel that is described herein, signed and sealed on even date herewith and is hereby made a part of this document.

I, Jeffrey L. Fansler, a Registered Professional Land Surveyor in the State of Texas, hereby certify that this description and plat represent an on-the-ground survey made under my supervision.

Jeffrey L. Fansler 2024-03-08

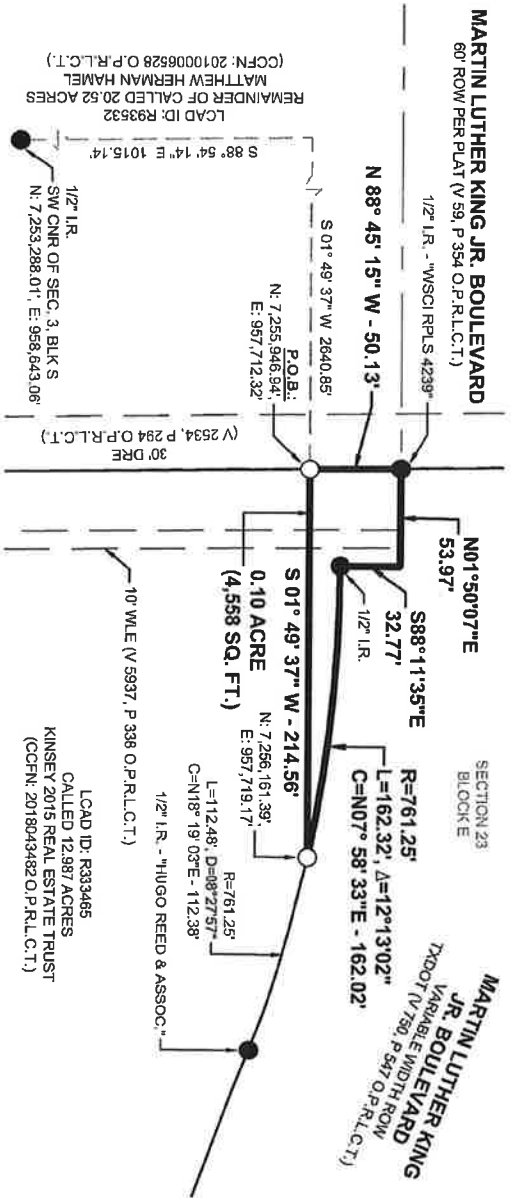


Jeffrey L. Fansler Date
Registered Professional Land Surveyor
Texas Registration No. 4348

Cobb, Fendley & Associates, Inc.
TBPELS Land Surveying Firm No. 10046700

7727 Quaker Avenue, Suite A,
Lubbock, Texas 79424

EXHIBIT "A"



NOTES:

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3. This survey plat was prepared without the benefit of a title report. The surveyor did not research subject property title information. All easements of record may not be shown.



GRAPHIC SCALE
(in feet)

LEGEND
 P.O.B. = POINT OF BEGINNING
 I.R. = IRON ROD
 ROW = RIGHT-OF-WAY
 A.E. = ACCESS EASEMENT
 U.E. = UTILITY EASEMENT
 PLE = POWER LINE EASEMENT
 DRE = DRAINAGE EASEMENT
 WLE = WATER LINE EASEMENT
 SWS = STORM WATER STORAGE EASEMENT
 SPS = SOUTHWESTERN PUBLIC SERVICE COMPANY
 L.C.R.E. = LUBBOCK COUNTY RIGHT-OF-WAY EASEMENT
 SDD = STREET DEDICATION DEED
 V / P = VOLUME / PAGE
 CCFN = COUNTY CLERK FILE NUMBER
 O.P.R.L.C.T. = OFFICIAL PUBLIC RECORDS, LUBBOCK COUNTY, TEXAS
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 ● = MONUMENT FOUND (AS NOTED)
 ○ = MONUMENT SET (9/8" IRON ROD SET WITH YELLOW PLASTIC CAP STAMPED "COBB FENDLEY BOUNDARY")
 --- = PROPERTY LINE
 --- = EASEMENT LINE - AS DESCRIBED
 --- = ADJOINING PROPERTY LINE
 --- = RIGHT-OF-WAY / RIGHT-OF-WAY EASEMENT LINE

Jeffrey L. Fansler
 2024-03-08



Jeffrey L. Fansler
 Registered Professional Land Surveyor
 No. 4348

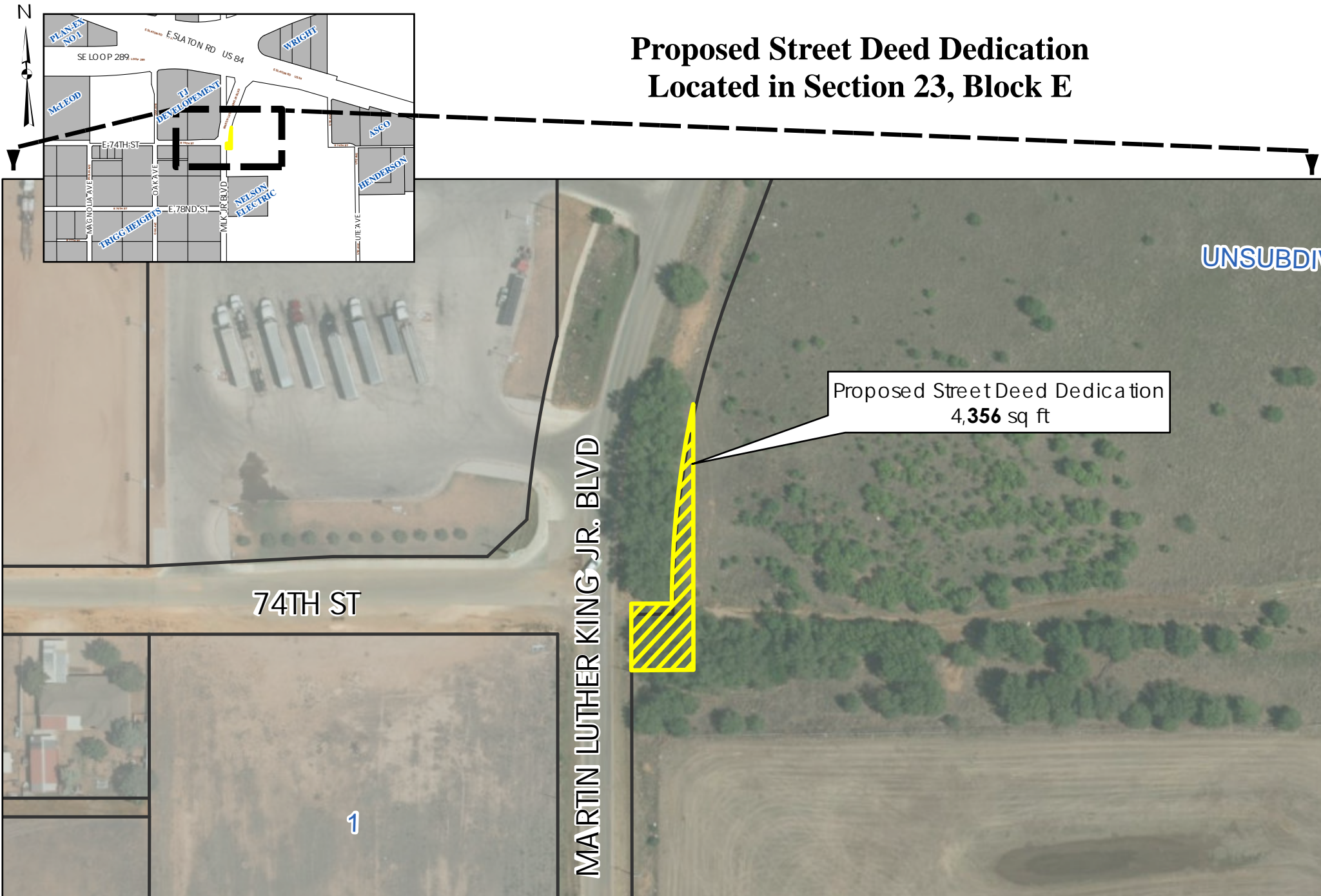
PARCEL 35

A 0.10 ACRE (4,558 SQ. FT.) RIGHT-OF-WAY OUT OF A CALLED 12.987 ACRE TRACT, LOCATED IN SECTION 23, BLOCK E, OF THE SI JOHNSON SURVEY, LUBBOCK COUNTY, TEXAS.

CobbFendley

TBPELS Land Surveying Firm Registration No. 10046700
 7727 Quaker Avenue, Suite A, Lubbock, Texas 79424
 Phone: 806.993.0071 | www.cobbfendley.com

Proposed Street Deed Dedication Located in Section 23, Block E



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

City of Lubbock, TX
Capital Project
Project Cost Detail
December 3, 2024

Capital Project Number:	92825
Capital Project Name:	Street Bond 82nd and MLK - 22B

<i>Encumbered/Expended</i>	<u>Budget</u>
City of Lubbock Staff Time	\$ 15,232
Contract 17088 with LAN for Design Services on 82nd and MLK	3,424,877
Playa Lake 82 Land Purchase	700,000
Previous Project Land Purchases	314,270

<i>Agenda Items, December 3rd, 2024</i>	
Parcels 1, 33, and 35 Land Purchases	180,683

<i>Encumbered/Expended To Date</i>	<u>4,635,062</u>
---	------------------

<i>Estimated Costs for Remaining Appropriation</i>	
Purchase of Land and Roadway Construction	<u>1,064,938</u>
<i>Remaining Appropriation</i>	<u>1,064,938</u>

Total Appropriation	<u><u>\$ 5,700,000</u></u>
----------------------------	----------------------------



CIP 92825 82nd Street and MLK Blvd- 22B

New Roadway Infrastructure

Project Manager: Bailey Ratcliffe - Engineering

Project Scope

82nd Street from I-27 to MLK Blvd and MLK BLVD from 74th Street to 82nd Street are currently a two-lane paved road and are designated in the 2018 Thoroughfare Master Plan to become a seven-lane Principal Arterial and a five-lane Principal Arterial (Modified). Continued growth in east Lubbock has increased traffic demands along the 82nd Street and MLK BLVD corridors. This thoroughfare will include the ultimate design of a seven-lane and five-lane undivided thoroughfares with curb and gutter, drainage, streetlights, sidewalk improvements, utility adjustment and right of way acquisition services.

Project Justification

On November 8, 2022, Lubbock voters approved issuance of a \$200 million street improvements bond package for the purpose of providing permanent public improvements. The funding will acquire, construct and reconstruct street improvements, including but not limited to sidewalks, utility line relocations and traffic signalization, necessary and related storm drainage facilities, and the acquisition of land and rights-of-way for the full width dedication.

Project Highlights

Council Priorities Addressed:
Public Safety
Community Improvement
Growth and Development

Project History

- FY 2022-23 \$5,700,000 was appropriated by Ord. 2022-00169

Project Dates

Design Start Date: 01/2023
Design Completion: 01/2025
Bid for Constuction: 09/2025
Award Construction: 11/2025
Project Completion: 04/2029

Project Location

82nd St and Martin Luther King Boulevard

Project Appropriations

	Appropriation to Date	2024 - 25 Budget	2025 - 26 Budget	2026 - 27 Budget	2027 - 28 Budget	2028 - 29 Budget	2029 - 30 Budget
Construction	\$5,700,000	\$0	\$14,100,000	\$0	\$0	\$0	\$0
TOTAL	\$5,700,000	\$0	\$14,100,000	\$0	\$0	\$0	\$0

Project Funding

	Funding to Date	2024 - 25 Budget	2025 - 26 Budget	2026 - 27 Budget	2027 - 28 Budget	2028 - 29 Budget	2029 - 30 Budget
General Obligation Bonds	\$5,700,000	\$0	\$14,100,000	\$0	\$0	\$0	\$0
TOTAL	\$5,700,000	\$0	\$14,100,000	\$0	\$0	\$0	\$0

Operating Budget Impacts

Description	2024-25	2025-26	2026-27	2027-28	2028-29	2029-30	Total
No Impact Anticipated	\$0	\$0	\$0	\$0	\$0	\$0	\$0
TOTAL	\$0	\$0	\$0	\$0	\$0	\$0	\$0

Information

Agenda Item

Resolution - Right-of-Way: Consider a resolution authorizing the Mayor to accept, for and on behalf of the City of Lubbock, one (1) Street, Public Use, and Right-of-Way Deed, and all related documents, in connection with certain real property (Parcel 5) located in Section 39, Block AK, of the GC R.R. Co. Survey, Lubbock County, Texas, on the west side of Upland Avenue and north of 37th Street, to be utilized for the Upland Avenue: 34th Street to 50th Street Project, which is a portion of the 2022 Street Bond Project.

Item Summary

Alejandro and Kathryn Rooney are dedicating right-of-way to the City of Lubbock to be utilized for roadway improvements on the Upland Avenue: 34th Street to 50th Street Capital Improvements Bond Project on the west side of Upland Avenue, north of 37th Street.

The proponents will dedicate a 4,963 square feet tract of land for street right-of-way purpose, subject to final approval by the City Council and approval of title.

Fiscal Impact

The cost of the land acquisition is \$55,000 plus closing costs. This acquisition is funded in Capital Improvements Project 92815, Upland Avenue: 34th Street to 50th Street – 22B.

Staff/Board Recommending

Erik Rejino, Assistant City Manager

John Turpin, P.E., Division Director of Engineering/City Engineer

Attachments

Parcel 5 - Resolution

Parcel 5 - Dedication Deed

Parcel 5 - GIS Map

CIP 92815 - Budget Detail

CIP 92815 - Project 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 accept for and on behalf of the City of Lubbock one (1) street, public use, and right-of-way deed in connection with certain real property (Parcel 5) located in Section 39, Block AK, of the GC R.R. Co. Survey, Lubbock County, Texas, to be utilized for the Upland Avenue Project and all related documents. Said Deed is attached hereto and incorporated in this Resolution as if fully set forth herein and shall be included in the minutes of the Council.

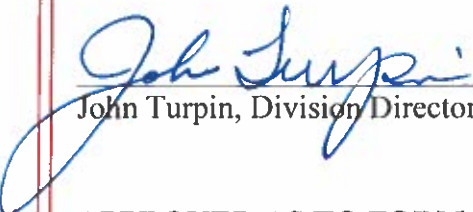
Passed by the City Council on _____.

MARK W. MCBRAYER, MAYOR

ATTEST:

Courtney Paz, City Secretary

APPROVED AS TO CONTENT:



John Turpin, Division Director of Engineering/City Engineer

APPROVED AS TO FORM:



Amy L. Sims, Deputy City Attorney

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM THIS INSTRUMENT BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

**Upland Avenue – 34th Street to 50th Street
Parcel No. 5
3602 Upland Avenue, Lubbock, Texas 79407
BLK AK SEC 39 AB 228 TR A5**

**CITY OF LUBBOCK
STREET, PUBLIC USE AND RIGHT OF WAY DEED**

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

THAT **Alejandro Rooney and wife, Kathryn Rooney**, herein called "GRANTOR", for and in consideration of the sum of TEN AND NO/100 (\$10.00) DOLLARS and other good and valuable consideration, to **him/her** in hand paid by the **CITY OF LUBBOCK, TEXAS**, a Home Rule Municipal Corporation, Grantor does hereby grant, sell, and convey to Grantee for public use forever and for street right-of-way and utility purposes, the following described tract of land situated in Lubbock County, Texas, as more particularly described in the attached Exhibit "A".

TO HAVE AND TO HOLD this above described premises, together with all and singular the rights and appurtenances thereto in anywise belonging unto the said public forever so long as said premises are used for public street right-of way and utility purposes.

[SIGNATURES APPEAR ON THE FOLLOWING PAGE]

WITNESS MY HAND this 8th day of November, 2024

GRANTOR(S):

Alejandro Rooney
Alejandro Rooney

Kathryn Rooney
Kathryn Rooney

ACKNOWLEDGEMENT

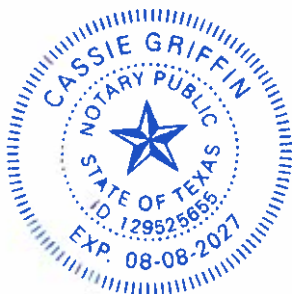
STATE OF Texas

COUNTY OF Lubbock

This instrument was acknowledged before me on the 8th day of November, 2024 by Alejandro Rooney and wife, Kathryn Rooney. The acknowledging person personally appeared by:

☒ physically appearing before me.

☐ appearing by an interactive two-way audio and video communication that meets the requirements for online notarization under Texas Government Code chapter 406, subchapter C.



Cassie Griffin
NOTARY PUBLIC, STATE OF Texas
My Commission Expires: 8/8/27

Grantee's Address:

City of Lubbock
1314 Avenue K, 7th Floor
Lubbock, TX 79401

EXHIBIT "A"

RIGHT-OF-WAY DESCRIPTION – PARCEL R127596

Field notes describing a 0.11 acre Right-of-Way out of a called 2.72 acres tract of land located in Section 39, Block AK, of the GC & SF R.R. Co. Survey, Lubbock County, Texas.

Being a 0.11 acre tract of land out of a called 2.72 acres tract described in a Special Warranty Deed to D & M Myers Trust, recorded in County Clerk File Number 2018047791, Official Public Records, Lubbock County, Texas situated in Section 39, Block AK, of the GC & SF R.R. Co. Survey, Lubbock Texas, and further described by metes and bounds as follows;

BEGINNING at a Point for the Northeast corner of this tract (N: 7,270,085.27', E: 910,463.60') on the common North line of said called 2.72 acres tract and the South line of the remainder of a called 3.00 acres tract described in a deed to Gary and Betty Kernell, recorded in County Clerk File Number 2005041119, Official Public Records, Lubbock County, Texas, and on the West line of a 40 feet wide Lubbock County Right-of-Way Easement for Upland Avenue described in Volume 486, Page 428, Official Public Records, Lubbock County, Texas, from which a Railroad Spike (N: 7,270,713.46', E: 910,524.09') Found for the Northeast corner of said Section 39, bears South 88°08'03" East, 40.00 feet and North 01°51'57" East, 629.83 feet;

THENCE South 01°51'57" West, along the West line of said Upland Avenue, a distance of **330.91 feet** to a Point for the Southeast corner of this tract on the common South line of said called 2.72 acres tract and North line of a called 0.91 acre tract, described in a Warranty Deed to Whiskey and Water LLC., recorded in County Clerk File Number 2022056036, Official Public Records, Lubbock County, Texas;

THENCE North 87°59'32" West, along said common line, a distance of **15.00 feet** to a 5/8 inch iron rod with yellow cap stamped "COBB FENDLEY BOUNDARY" (N: 7,269,755.06', E: 910,437.83') Set for the Southwest corner of this tract, from which a 5/8 inch iron rod Found for the Southwest corner of said called 2.72 acres tract, bears North 87°59'32" West, 304.73 feet;

THENCE North 01°51'57" East, a distance of **330.87 feet** to a 5/8 inch iron rod with yellow cap stamped "COBB FENDLEY BOUNDARY" (N: 7,270,085.75', E: 910,448.60') Set for the Northwest corner of this tract on the common North line of said called 2.72 acres tract and South line of said called 3.00 acres tract, from which a 1/2 inch iron pipe Found for reference to the Northwest corner of said called 2.72 acres tract, bears North 88°08'03" West, 304.36 feet;

THENCE South 88°08'03" East, along said common line, a distance of **15.00 feet** to the **POINT OF BEGINNING** and containing within these calls a calculated area of 0.11 acre (4,963 square feet).

EXHIBIT "A"

Bearings shown hereon are referenced to the Texas Coordinate System of 1983, North Central Zone, and are based on the North American Datum of 1983, 2011 Adjustment. All coordinates shown hereon are Surface values displayed in US Survey Feet and may be converted to Grid values by dividing those Surface values by a Surface Adjustment Factor of 1.00021. All distances shown hereon are Surface values displayed in US Survey feet and may be converted to Grid values by dividing those Surface values by a Surface Adjustment Factor of 1.00021. This written description is accompanied by a survey plat which covers the identical parcel that is described herein, signed and sealed on even date herewith and is hereby made a part of this document.

I, Jeffrey L. Fansler, a Registered Professional Land Surveyor in the State of Texas, hereby certify that this description and plat represent an on-the-ground survey made under my supervision.

Jeffrey L. Foster 2023-08-25

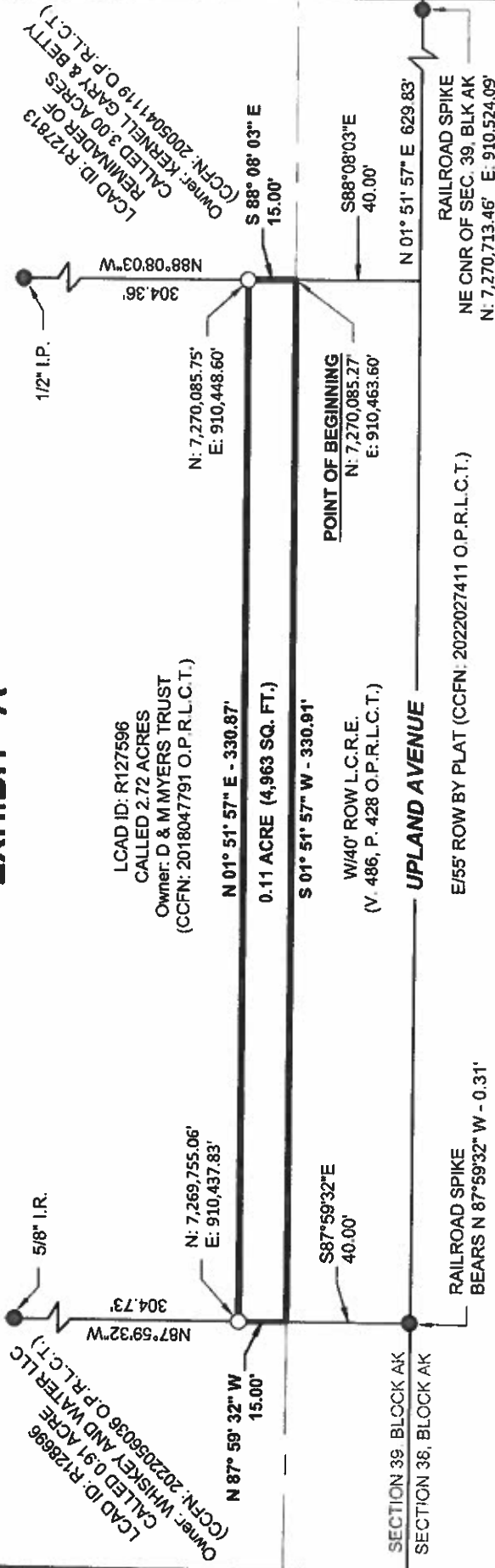


Jeffrey L. Fansler
Registered Professional Land Surveyor
Texas Registration No. 4348

Cobb, Fendley & Associates, Inc.
TBPELS Land Surveying Firm No. 10046700

7727 Quaker Avenue, Suite A,
Lubbock, Texas 79424

EXHIBIT "A"



NOTES:

1. Bearings shown hereon are referenced to the Texas Coordinate System of 1983, North Central Zone, and are based on the North American Datum of 1983. 2011 Adjustment. All coordinates shown hereon are Surface values displayed in US Survey Feet and may be converted to Grid values by dividing these Surface values by a Surface Adjustment Factor of 1.00021. All distances shown hereon are Surface values displayed in US Survey feet and may be converted to Grid values by dividing these Surface values by a Surface Adjustment Factor of 1.00021.
2. This survey plat is accompanied by a written description which covers the identical parcel that is shown hereon, signed and sealed on even date herewith and is hereby made a part of this document.
3. This survey plat was prepared without the benefit of a title report. The surveyor did not research subject property title information. All easements of record may not be shown.



- LEGEND**
- P.O.B. = POINT OF BEGINNING
 - I.R. = IRON ROD
 - I.P. = IRON PIPE
 - ROW = RIGHT-OF-WAY
 - L.C.R.E. = LUBBOCK COUNTY RIGHT-OF-WAY EASEMENT
 - V.I.P. = VOLUME / PAGE
 - O.P.R.L.C.T. = COUNTY CLERK FILE NUMBER
 - H.R.A. = HUGO REED & ASSOC.
 - A.M.D. = A.M.D. ENGINEERING
 - = MONUMENT FOUND (AS NOTED)
 - = MONUMENT SET (5/8" IRON ROD SET WITH YELLOW PLASTIC CAP STAMPED "COBB FENDLEY BOUNDARY")
 - = PROPERTY LINE
 - - - = EASEMENT LINE - AS DESCRIBED
 - - - = ADJOINING PROPERTY LINE
 - - - = RIGHT-OF-WAY / RIGHT-OF-WAY EASEMENT LINE



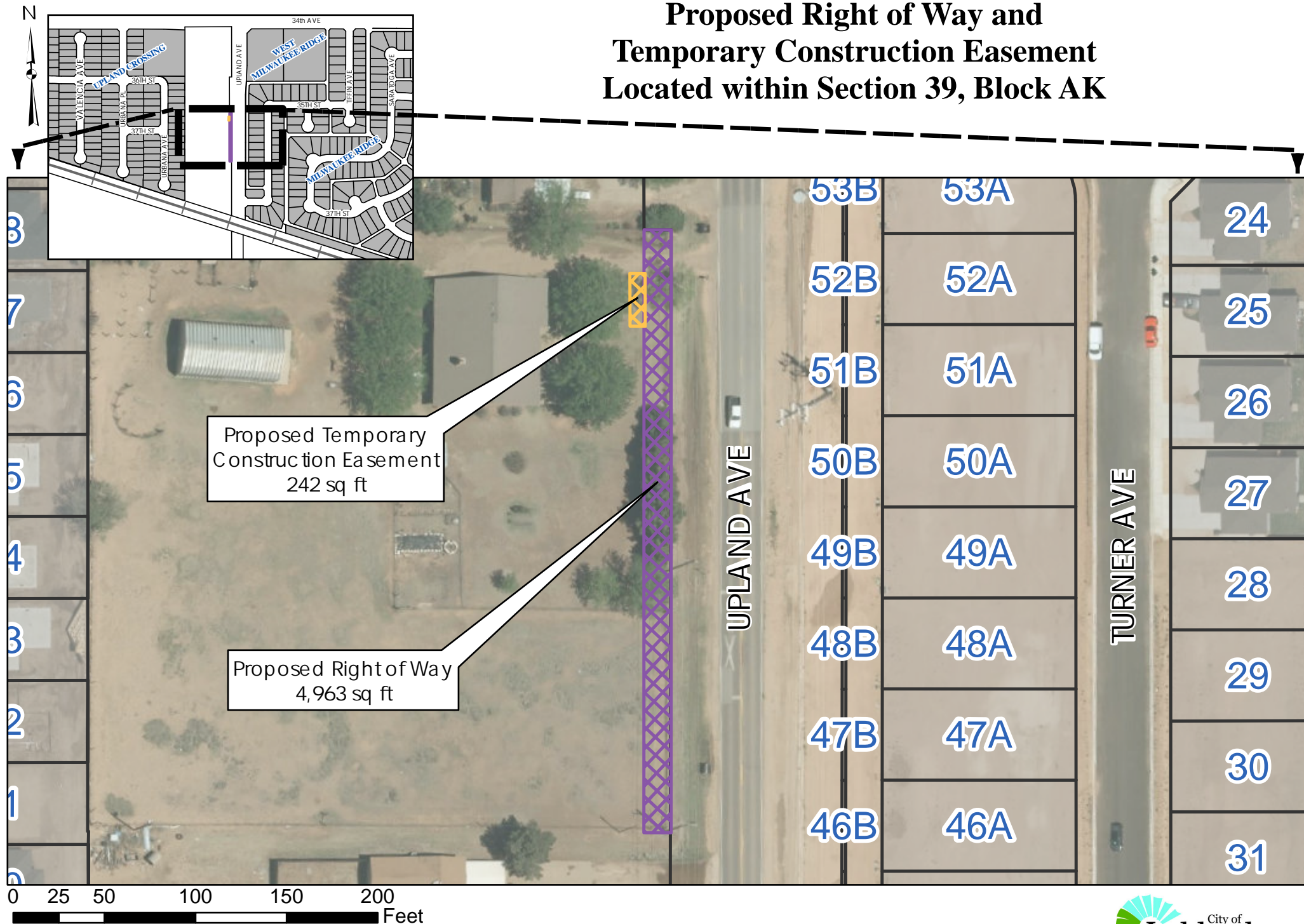
Jeffrey L. Fansler 2023-08-25
 Jeffrey L. Fansler
 Registered Professional Land Surveyor
 No. 4348

DATE:	08/24/2023
DRAWN BY:	PTT
CHECKED BY:	JLF
SHEET NO.	3 of 3
JOB NUMBER:	2302-013-02
SHEET ID:	2302-013-02-R127596-SURFACE (SF=1.00021).dwg

A 0.11 ACRE (4,963 SQ. FT.) RIGHT-OF-WAY OUT OF A CALLED 2.72 ACRES TRACT OF LAND LOCATED IN SECTION 39, BLOCK AK, OF THE GC & SF R.R. CO. SURVEY, LUBBOCK COUNTY, TEXAS.

CobbFendley
 TBPELS Surveying Firm Registration No. 10046700
 7727 Quaker Avenue, Suite A, Lubbock, Texas 79424
 Phone: 806.993.0071 | www.cobbfendley.com

Proposed Right of Way and Temporary Construction Easement Located within Section 39, Block AK



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.

**City of Lubbock
Capital Project
Project Cost Detail
December 3rd, 2024**

Capital Project Number:	92815
Capital Project Name:	Upland Ave: 34th to 50th Street - 22B

<i>Encumbered/Expended</i>	Budget
Staff time	\$ 32,691
Contract 17074 with Freese and Nichols for Design Services	1,639,143
Contract 17074 Amendment 1 with Freese and Nichols	393,388
Contract 17074 Amendment 2 with Freese and Nichols	620,141
Parcel 1 - ROW Acquisition	13,874
Parcel 2 - ROW Acquisition	13,121
Parcel 3 - ROW Acquisition	10,347
Parcel 4 - ROW Acquisition	15,482
Parcel 6 - ROW Acquisition	12,360
Parcel 7 - ROW Acquisition	95,666
Parcel 8 - ROW Acquisition	37,497
Parcel 9 - ROW Acquisition	83,938
Parcel 10 - ROW Acquisition	123,890
Parcel 11 - ROW Acquisition	23,025
Parcel 12 - ROW Acquisition	101,422
Parcel 13 - ROW Acquisition	74,031
Parcel 14 - ROW Acquisition	25,911
Parcel 15 - ROW Acquisition	3,984
Parcel 16 - ROW Acquisition	140,594
Parcel 17 - ROW Acquisition	1,997
Parcel 18 - ROW Acquisition	29,303
Parcel 19 - ROW Acquisition	44,250
Parcel 20 - ROW Acquisition	1,722
Parcel 21 - ROW Acquisition	45,114
Parcel 22 - ROW Acquisition	56,457

Agenda Item December 3, 2024

Parcel 5 - ROW Acquisition	55,000
<i>Encumbered/Expended To Date</i>	3,694,348

Estimated Cost for Remaining Appropriation

Construction Upland Ave 34th to 50th	13,805,652
<i>Remaining Appropriation</i>	-

Total Appropriation	\$ 17,500,000
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CIP 92815 Upland Ave from 34th Street to 50th Street - 22B

New Roadway Infrastructure

Project Manager: Bailey Ratcliffe - Engineering

Project Scope

Upland Avenue from 34th Street to 50th Street is currently a two-lane paved road and is designated in the 2018 Thoroughfare Master Plan to become a five-lane Principal Arterial (Modified). Continued growth in west Lubbock has increased traffic demands along the Upland Avenue corridor from 34th Street to 50th Street. This thoroughfare will include the ultimate design of a five-lane undivided thoroughfare with curb and gutter, drainage, streetlights, sidewalk improvements, utility adjustment and right of way acquisition services.

Project Justification

On November 8, 2022, Lubbock voters approved issuance of a \$200 million street improvements bond package for the purpose of providing permanent public improvements. The funding will acquire, construct and reconstruct street improvements, including but not limited to sidewalks, utility line relocations and traffic signalization, necessary and related storm drainage facilities, and the acquisition of land and rights-of-way for the full width dedication.

Project Highlights

Council Priorities Addressed:
Public Safety
Community Improvement
Growth and Development

Project History

- FY 2022-23 \$4,000,000 was appropriated by Ord. 2022-00169
- FY 2023-24 \$13,500,000 was appropriated by Ord. 2023-00108

Project Dates

Design Start Date: 01/2023
Design Completion: 01/2024
Bid for Constuction:10/2024
Award Construction: 12/2024
Project Completion: 06/2026

Project Location

Upland Ave - 34th to 50th St

Project Appropriations

	Appropriation to Date	2024 - 25 Budget	2025 - 26 Budget	2026 - 27 Budget	2027 - 28 Budget	2028 - 29 Budget	2029 - 30 Budget
Construction	\$17,500,000	\$0	\$0	\$0	\$0	\$0	\$0
TOTAL	\$17,500,000	\$0	\$0	\$0	\$0	\$0	\$0

Project Funding

	Funding to Date	2024 - 25 Budget	2025 - 26 Budget	2026 - 27 Budget	2027 - 28 Budget	2028 - 29 Budget	2029 - 30 Budget
General Obligation Bonds	\$17,500,000	\$0	\$0	\$0	\$0	\$0	\$0
TOTAL	\$17,500,000	\$0	\$0	\$0	\$0	\$0	\$0

Operating Budget Impacts

Description	2024-25	2025-26	2026-27	2027-28	2028-29	2029-30	Total
No Impact Anticipated	\$0	\$0	\$0	\$0	\$0	\$0	\$0
TOTAL	\$0	\$0	\$0	\$0	\$0	\$0	\$0

Information

Agenda Item

Resolution - Right-of-Way: Consider a resolution authorizing the Mayor to execute an Amendment to a Street Use License Agreement, and related documents, by and between the City of Lubbock and Geihlsler Properties, LLC, for awnings on the west side of Texas Avenue, between Broadway and 13th Street.

Item Summary

Geihlsler Properties, LLC was issued a Street Use License by Resolution No. 2020-R0097 for the purpose of erecting 3 awnings totaling 96.3 square feet in the right-of-way, on the west side of Texas Avenue, between Broadway and 13th Street.

The term of the license is for 20 years, payable every 5 years in advance, and each successive 5-year term not to exceed 20 years, unless either party gives written notice of termination to the other party. The license fee was miscalculated in the original license for each 5-year period. This amendment sets the correct fee for each 5-year term at \$500 paid in advance, pursuant to current City policy.

Fiscal Impact

\$500 to the General Fund

Staff/Board Recommending

Erik Rejino, Assistant City Manager

John Turpin, P.E., Division Director of Engineering/City Engineer

Attachments

Resolution - Geihlsler Properties

Amendment to Street Use License - Geihlsler Properties

GIS Map - Geihlsler Properties

RESOLUTION

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

THAT the Mayor of the City of Lubbock is hereby authorized and directed to execute for and on behalf of the City of Lubbock, an Amendment to Street Use License Agreement by and between the City of Lubbock and Geihlsler Properties, LLC, and related documents. Said Amendment is attached hereto and incorporated in this resolution as if fully set forth herein and shall be included in the minutes of the City Council.

Passed by the City Council on _____.

MARK W. MCBRAYER, MAYOR

ATTEST:

Courtney Paz, City Secretary

APPROVED AS TO CONTENT:



John Turpin, Division Director of Engineering/City Engineer

APPROVED AS TO FORM:



Amy L. Sims, Deputy City Attorney

RES.Amend Street Use License Agreement- Geihlsler Properties, LLC

AMENDMENT TO
STREET USE LICENSE

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

WHEREAS, pursuant to a Street Use License (the "Original License") dated on or about March 24, 2020, Resolution No. 2020-R0097, the CITY OF LUBBOCK (the "CITY") and GEIHSLER PROPERTIES, LLC, hereinafter called "LICENSEE.") entered into a street use license agreement whereby permitting LICENSEE the right to utilize CITY right-of-way for five (5) years;

WHEREAS, LICENSEE is required to pay CITY a stated amount for each year the Original License is in effect;

WHEREAS, the parties wish to amend the amount that LICENSEE is to pay CITY for the license agreement;

NOW, THEREFORE, for and in consideration of the premises and the mutual covenants herein contained, the CITY and LICENSEE agree to modify the Original License as follows:

1. The Original License shall be amended by amending Paragraph 1 of the Original License to read as follows:

1. LICENSEE shall pay to the CITY OF LUBBOCK as compensation for such grant the sum of FIVE HUNDRED AND NO/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 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. Except as expressly modified or amended herein, all terms and provisions of the Original Agreement shall be and remain in full force and effect as therein written.

AGREED TO AND ACCEPTED this _____ day of _____, 2024.

CITY OF LUBBOCK:

MARK W. MCBRAYER, MAYOR

GEIHSLER PROPERTIES, LLC:

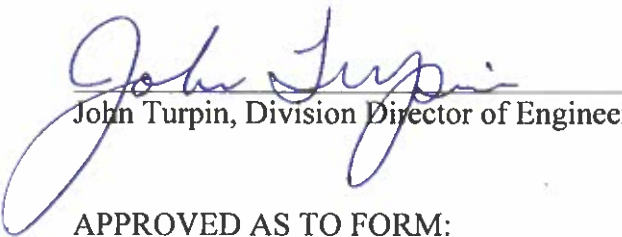
Name: _____

Title: _____

ATTEST:

Courtney Paz, City Secretary

APPROVED AS TO CONTENT:


John Turpin, Division Director of Engineering/City Engineer

APPROVED AS TO FORM:

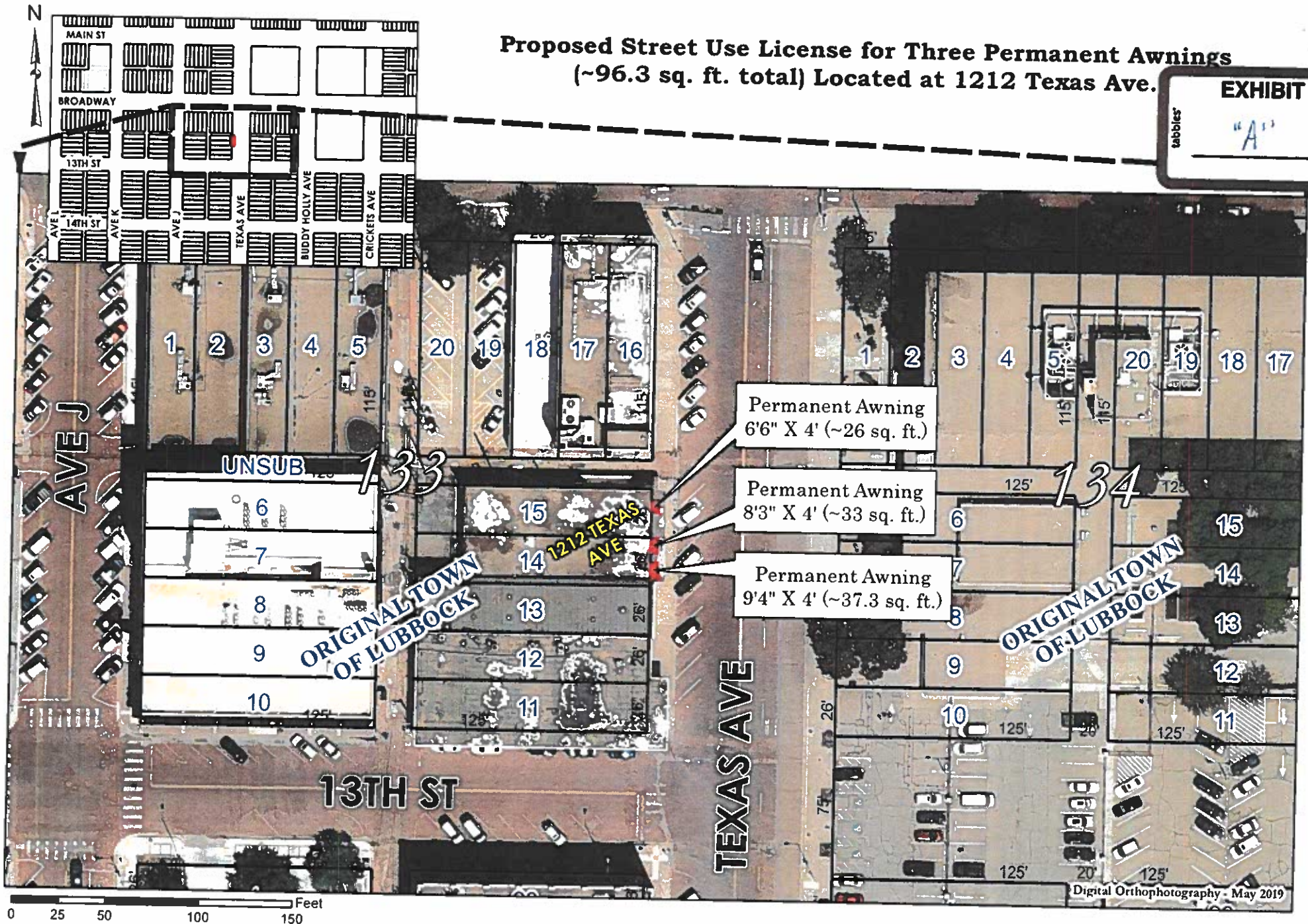

Amy L. Sims, Deputy City Attorney

**Proposed Street Use License for Three Permanent Awnings
(~96.3 sq. ft. total) Located at 1212 Texas Ave.**

EXHIBIT

tabbies

"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 - Engineering: Consider a resolution authorizing the Mayor to execute Amendment No. 2 to Contract 16588, with Freese and Nichols, Inc., for engineering services for a flood protection plan for watersheds.

Item Summary

The City of Lubbock proposes to complete flood protection planning activities for restoration of the Canyon Lakes System by completing a flood protection study of the 2 relevant Hydrologic Unit Code 10 watersheds. Recent storms have emphasized the need to implement detailed planning for flood protection in these areas. This related Capital Improvement Project 8667, Flood Protection Study, is a jointly funded project with the Texas Water Development Board (TWDB).

Since entering into this agreement with Freese and Nichols, Inc. (FNI), we have received additional guidance from the TWDB, which has extended the TWDB joint project completion and project expiration date to August 14, 2025.

Amendment No. 2 of Contract No. 16588 will bring the Professional Services Contract with FNI into alignment with the TWDB contract expiration and completion date. The proposed amendment does not change the dollar amount of the contract, nor does it change the scope of the project.

Fiscal Impact

None

Staff/Board Recommending

Erik Rejino, Assistant City Manager

John Turpin, P.E., Division Director of Engineering/City Engineer

Attachments

Resolution

Amendment 2 to Contract 16588

Amendment 1 to Contract 16588

Contract 16588

Location Exhibit

CIP 16588 - Budget Detail

CIP 16588 - Project Detail

RESOLUTION

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

THAT the Mayor of the City of Lubbock is hereby authorized and directed to execute for and on behalf of the City of Lubbock, Amendment No. 2 to the professional services agreement Contract No. 16588 for engineering services for a flood protection plan for watershed by and between the City of Lubbock and the Freese and Nichols, Inc., and related documents. Said Amendment is attached hereto and incorporated in this resolution as if fully set forth herein and shall be included in the minutes of the City Council.

Passed by the City Council on _____.

MARK W. MCBRAYER, MAYOR

ATTEST:

Courtney Paz, City Secretary

APPROVED AS TO CONTENT:



Erik Rejino, Assistant City Manager

APPROVED AS TO FORM:



Kelli Leisure, Senior Assistant City Attorney

**Amendment 2
To Agreement Between
The City of Lubbock, TX
And
Freese and Nichols, Inc.**

THIS IS THE SECOND AMENDMENT TO THE AGREEMENT dated and entered into on the 14th day of June, 2022, Contract No. 16588, by and between the City of Lubbock ("City") and Freese and Nichols, Inc. ("Engineer"), collectively (the "Parties").

Engineer is providing professional services for a flood protection plan for watersheds (the "Activities").

The Parties previously entered into Amendment No. 1 to the Agreement on August 23, 2022, changing certain language in the Agreement in order to comply with Texas Water Development Board requirements. On March 5, 2024 the Parties entered into a six-month extension to the term of the Agreement.

The Parties now agree to add additional time for the completion of the Activities.

NOW THEREFORE, the Parties enter into this amendment and agree as follows:

The term of the Agreement is hereby extended and shall expire on August 14, 2025.

All other terms of the Agreement remain the same and are not altered herein.

IN WITNESS HEREOF, the parties have executed this Agreement as of this ____ day of _____ 2024.

CITY OF LUBBOCK

Freese and Nichols, Inc.

MARK W. MCBRAYER, MAYOR



John Dewar, P.E., Vice President

ATTEST:

Courtney Paz, City Secretary

APPROVED AS TO CONTENT:



Bailey Ratcliffe, P.E.,
Interim Division Director of Engineering/City Engineer

APPROVED AS TO FORM:



Kelli Leisure, Senior Assistant City Attorney

August 23, 2022

RESOLUTION

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

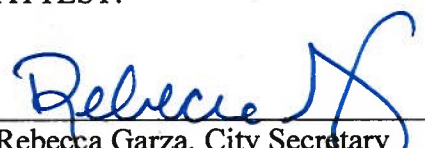
THAT the Mayor of the City of Lubbock is hereby authorized and directed to execute for and on behalf of the City of Lubbock, Amendment No. 1 to the Professional Services Agreement Contract No. 16588 for flood protection planning for watersheds – TWDB Project No. 40065, by and between the City of Lubbock and Freese and Nichols, Inc., and related documents. Said Amendment is attached hereto and incorporated in this resolution as if fully set forth herein and shall be included in the minutes of the City Council.

Passed by the City Council on August 23, 2022.



TRAY PAYNE, MAYOR

ATTEST:



Rebecca Garza, City Secretary

APPROVED AS TO CONTENT:



Erik Rejino, Assistant City Manager

APPROVED AS TO FORM:



Kelli Leisure, Assistant City Attorney

**Amendment 1
To Agreement Between
The City of Lubbock, TX
And
Freese and Nichols, Inc.**

THIS IS THE FIRST AMENDMENT TO THE AGREEMENT Contract No. 16588 dated and entered into the 14th day of June 2022 by and between the City of Lubbock (“City”) and Freese and Nichols, Inc. (“Engineer”), a Texas Professional Corporation, for flood protection planning for watersheds - Texas Water Development Board Project No. 40065 (“Project”).

WITNESSETH:

WHEREAS, the Engineer’s Project is for the carrying out and management of a watershed study funded by a Texas Water Development Board (TWDB) grant to the City.

WHEREAS, since entering into this Agreement, the Engineer has received guidance from the TWDB regarding a need to amend specific terms of the Agreement.

WHEREAS, now the City and Engineer enter into this Amendment No. 1 to bring the Agreement into compliance with the TWDB requirements for the Project.

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

NOW, THEREFORE, the City and Engineer agree to this FIRST AMENDMENT and the following changes to the terms of the Agreement:

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. Engineer agrees and acknowledges that it is subject to all applicable requirements of the master contract between the City of Lubbock and the Texas Water Development Board, including the applicable timeline. Engineer adopts herein by reference the requirements of Section II Article VII of the TWDB Contract, SUBCONTRACTS.

Exhibit “A” of the Agreement is hereby replaced by the attached Exhibit “A” and incorporated herein.

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.

IN WITNESS HEREOF, the parties have executed this Agreement as of this 23rd day of
August 2022.

CITY OF LUBBOCK



Tray Payne, Mayor

ATTEST:



Rebecca Garza, City Secretary

APPROVED AS TO CONTENT:



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




Erik Rejino, Assistant City Manager

APPROVED AS TO FORM:



Kelli Leisure, Assistant City Attorney

FREESE AND NICHOLS, INC.

By: 

John Dewar, P.E., Vice President



PROFESSIONAL SERVICES AGREEMENT

AMENDMENT # 1

City of Lubbock

FNI Project:

TBD

1314 Avenue K

Client Contract:

16588

Lubbock, TX 79401

Date:

7/26/2022

Project Name:

Flood Protection Planning for Watersheds

Reference: Resolution - 2022-R0259 - Contract 16588 with Freese and Nichols 6.14.22, attached

Amend ARTICLE VI. SCOPE OF WORK (Page 5 of 25)

Add after the first sentence, "Engineer agrees and acknowledges that it is subject to all applicable requirements of the master contract between the City of Lubbock and the Texas Water Development Board, including the applicable timeline. Engineer adopts herein by reference the requirements of Section II Article VII of the TWDB Contract, SUBCONTRACTS."

Amend ARTICLE VII. INDEPENDENT CONTRACTOR STATUS (Pages 5-6 of 25)

Delete all text after the first paragraph.

Description of Services:Amend EXHIBIT A – SCOPE OF SERVICES (Pages 14-24 of 25)

- Replace all references to "Basic Services" and replace with "Services."
- Under SCHEDULE and immediately after the first sentence, add "The duration of the project is from June 14, 2022, to June 14, 2024."
- Change "TASK & EXPENSE BUDGETS" TO "BUDGET."
- Under the TASK BUDGET chart, delete the EXPENSE BUDGET, chart, and associated footnotes.
- Under the TASK BUDGET chart, add "As charges are accrued for each task, the FNI invoice will include a full backup for all labor and expenses charged to the project. These charges will be summarized on a cover page and will match the standard TWDB Outlay documents."

Deliverables: No change
Schedule: No change
Compensation Type: Not to Exceed Fee
Current Contract Amount: \$750,000
Amount of this Amendment: \$0
Revised Total Amount Authorized: \$750,000

The services described above shall proceed as amended upon execution of this Amendment. All other provisions, terms, and conditions of the Professional Services Agreement which are not expressly amended shall remain in full force and effect.

City of Lubbock

By: _____

Name: _____

Title: _____

Date: _____

FREESE AND NICHOLS, INC.

By: _____

Name: _____

Title: _____

Date: _____


June 14, 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, Professional Services Agreement No. 16588 for flood protection planning for watersheds, by and between the City of Lubbock and Freese and Nichols, Inc., a Texas Corporation, 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 June 14, 2022.




TRAY PAYNE, MAYOR

ATTEST:



Rebecca Garza, City Secretary

APPROVED AS TO CONTENT:



Jessica McEachern, Assistant City Manager

APPROVED AS TO FORM:



Kelli Leisure, Assistant City Attorney

PROFESSIONAL SERVICES AGREEMENT

STATE OF TEXAS §

COUNTY OF LUBBOCK §

This Professional Service Agreement ("Agreement") Contract No. 16588 is entered into this 14th day of June, 2022, is by and between the City of Lubbock (the "City"), a Texas home rule municipal corporation, and Freese and Nichols, Inc. (the "Engineer"), a Texas corporation.

WITNESSETH

WHEREAS, The City desires to contract with the Engineer to provide professional services for Flood Protection Planning for Watersheds (TWDB Project No. 40065) (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 24 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 \$750,000.00 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.

1. Each Subcontract entered into to perform required work under this CONTRACT must contain the following:

- A. A detailed budget estimate with specific cost details for each task or specific item of work to be performed by the Subcontractor and for each category of reimbursable expenses.
- B. A clause stating the following: "Subcontractor agrees and acknowledges that it is subject Texas Water Development Board. Subcontractor adopts by reference the requirements of Article VII of the TWDB Contract for this Subcontract."

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

- 1. The Subcontract is subject to audit by the Texas State Auditor's Office, and Subcontractor must cooperate with any request for information from the Texas State Auditor, as further described in Section II, Article X, Paragraph 1K;
- 2. Payments under the Subcontract are contingent upon appropriation of funds by the Texas Legislature, as further described in Section II, Article X, Paragraph 1C;
- 3. Ownership of data, materials, and work papers, in any media, that is gathered, compiled, adapted for use, or generated by Subcontractor or GRANTEE will become data, materials, and work papers owned by TWDB and Subcontractor will have no proprietary rights in such data, materials, and work papers, except as further described in Section II, Article V;
- 4. Subcontractor must keep timely and accurate books and records of accounts according to Generally Accepted Accounting Principles;
- 5. Subcontractor is solely responsible for securing all required licenses and permits from local, state, and federal governmental entities and solely responsible for obtaining sufficient insurance in accordance with the general standards and practices of the industry or governmental entity; and
- 6. Subcontractor is an independent contractor and TWDB has no liability resulting from any failure of Subcontractor that results in breach of contract, property damage, personal injury, or death.

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 sub-consultant 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, INC.

Heather Keister, P.E.
1500 Broadway Street, Suite 1150
Lubbock, Texas, 79401
Telephone: 806-686-2706
Facsimile: 817-735-7491

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

Zoltan Fekete, P.E.
City of Lubbock
P.O. Box 2000
1314 Avenue K
Lubbock, Texas 79457
Email: zfekete@mylubbock.us
Telephone: 806-775-3317

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.

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EXECUTED as of the Effective Date hereof.

CITY OF LUBBOCK



Tray Payne, Mayor

ATTEST:




Rebecca Garza, City Secretary

APPROVED AS TO CONTENT:



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



Jessica McEachern, Assistant City Manager

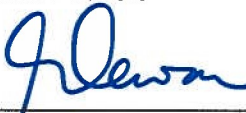
APPROVED AS TO FORM:



Kelli Leisure, Assistant City Attorney

Firm

Freese and Nichols

By: 

John Dewar, P.E., Vice President

EXHIBIT A - SCOPE OF SERVICES
Flood Protection Planning for Watersheds
City of Lubbock, Texas

Texas Water Development Board Project No. 40065

PROJECT UNDERSTANDING: The City of Lubbock has been awarded a grant under the newly created Texas Flood Infrastructure Fund (FIF) to develop a watershed study for the Canyon Lakes System on the City of Shallowater-Yellow House Draw HUC-10 (1205000113) and the Buffalo Springs Lake-North Fork Double Mountain Fork Brazos River HUC-10 (1205000301). The FIF is managed by the Texas Water Development Board (TWDB) and it was created to assist in the financing of drainage, flood mitigation and flood control projects. The watershed study will include the development of hydrologic and hydraulic models that will serve as planning tools to define flood hazard risks for private property and public infrastructure. The models will also provide a platform for developing and evaluating improvement alternatives. A dam safety assessment of a maximum of eight (8) dam structures will also be performed including inspections, hazard classifications updates, and breach analyses where applicable.

This flood protection planning study includes use of the best and most current data with regard to cumulative changes in land cover and land use (development), updated rainfall data (NOAA Atlas 14), updated topographic data (LiDAR), topographic survey and stream cross-sectional data, and application of new technology to develop more accurate floodplain modeling and mapping. Updated software shall be used to better represent the conditions in Lubbock. The updated models will be compared to the existing FEMA floodplain maps and all differences will be noted. Coordination with FEMA will occur throughout the process so that the submitted data complies with the latest FEMA requirements.

Task 1: Project Management and Meetings

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

Task 2: Public Outreach

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

participating community to draft and recommend adoption of floodplain ordinances that meet the NFIP minimum standards. Assistance will consist of written correspondence and one (1) teleconference to discuss floodplain ordinances. Model floodplain ordinances developed by the TWDB will be provided by the City of Lubbock, or designate, to each non-NFIP community for their consideration.

Task 3: Data Collection

- A. GIS data: topographic maps, LiDAR, zoning maps, storm drain system mapping, roadways, property lines, buildings, future land use maps, aerial imagery.
- B. Previous plans and studies from partnering entities and other related authorities.
- C. Existing hydrologic and hydraulic models.
- D. Dam and reservoir original design plans from local sponsor.
- E. Conduct up to (1) site visit to verify and document initial conditions.
- F. System inventory of streams and City/County roadways.
- G. Field Survey will be collected at bridge/culvert crossings and at intermittent creek cross sections to supplement and ground truth the LIDAR. At each crossing, survey will be collected for the hydraulic openings, railings, curbs, centerlines, and all other points necessary to adequately model the bridge or culvert. In addition, each crossing survey includes cross sections upstream of the crossing. Cross sections to be surveyed will include the channel geometry for 20 feet on either side of the banks. The remainder of the section will be supplemented with LIDAR as needed. The location of cross sections and crossings to be surveyed is defined to the road and railroad crossings that intersect the channel. This project will survey 2 low water crossings, 9 minor road/culverts crossings, 8 major road crossings, 4 Loop 289 crossings, 4 interstate I-27 crossings, 5 Dams/spillways, and 3 railroad crossings. The location of all survey to be collected will be verified with the City prior to commencing work.

Task 4. Screening Assessment

Development of a two-dimensional (2D) hydraulic model to perform high-level planning and analysis for the entirety of the Canyon Lakes System on the City of Shallowater-Yellow House Draw HUC-10 (1205000113) and the Buffalo Springs Lake-North Fork Double Mountain Fork Brazos River HUC-10 (1205000301). Perform "Rain-on-Mesh" analysis to define overland flow paths and identify flooding areas within and outside of the floodplain. Flow hydrographs will be developed for standard design storms including the 2, 5, 10, 25, 50, 100-year events (24-hr duration) for existing and ultimate development condition. Identify flood prone areas and document existing and fully developed structure overtopping (road crossings) and flooding potential (structures).

Task 5. Flood Risk Analysis

The purpose of this task is to develop detailed hydrologic and hydraulic modeling for City of Shallowater-Yellow House Draw HUC-10 (1205000113) and the Buffalo Springs Lake-North Fork Double Mountain Fork Brazos River HUC-10 (1205000301). These streams have been selected for detailed study due to the location of existing developments. The models will be developed in a format suitable for future submission to FEMA as a Letter of Map Revision (LOMR), but the preparation of a LOMR and associated FEMA coordination is beyond the scope of this study. A set of maps attached to this document are presented showing the project study area. In the study area, the detailed study area and 18 miles of detail streams analysis are shown in Figure 1 and Figure 2 are shown.

A. Base Model Development

Develop or update hydrologic and hydraulic models for the study area. The models will utilize the latest estimates of rainfall for the area (Atlas 14), and the most appropriate level of detail as outlined below.

- 1) Approximate Detail – Typically undeveloped, rural areas. Simplified hydrology and 1D unsteady flow hydraulic modeling of large riverine drainage features.
- 2) High Detail – Mostly developed areas, low to medium density. Detailed hydrology and high-resolution hydraulic modeling of open channels, including limited use of 2D modeling.
- 3) A map showing the approximate and detailed study area is attached as Figure 1.

B. Detailed Hydrologic Analysis

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

C. Detailed Hydraulic Analysis

- 1) Develop new unsteady hydraulic models.
- 2) Update channel and pond routings in hydrologic modeling.
- 3) Determine the existing and fully-developed water surface elevations for the 18 miles of streams within the detailed study area for the 2-, 5-, 10-, 25-, 50-, 100-, and 500-year storm events.
- 4) Develop the existing and fully-developed conditions 100-year floodplains within the stream study limits. Identify flood prone areas and document existing and fully-developed structure overtopping (road crossings) and flooding potential (structures).
- 5) Identify flood prone areas and document existing and fully-developed structure overtopping (road crossings) and flooding potential (structures).

Task 6. Critical Flood Hazard Alternatives Analysis

- A. Utilize staff input and results from Task 4 and 5 to identify up to ten (10) critical flood hazard areas within the City of Shallowater-Yellow House Draw HUC-10 (1205000113) and the Buffalo Springs Lake-North Fork Double Mountain Fork Brazos River HUC-10 (1205000301). Criteria for hazard ranking and flood areas will follow the procedures developed in the City of Lubbock SWMP.
- B. If necessary, refine hydrologic and hydraulic analyses to achieve greater level of detail for critical flood areas identified in Task 3. It is assumed that additional analysis will be required for up to five (5) areas.
- C. Develop up to two (2) conceptual level alternatives to resolve identified structure and roadway crossing flooding at up to ten (10) critical flood areas.
- D. Evaluate the alternatives for the 2-, 5-, 10-, 25-, 50- and 100-year storm events.
- E. Develop corresponding exhibits depicting the concept and resulting reduction in flooding

- F. Develop alternatives with the goal of minimizing flood risk considering economic constraints as specified by City. Achieving a 100-yr level of protection may not be economically feasible for all locations.
- G. Prepare planning level opinion of probable construction cost (OPCC) for each alternative in 2021 dollars.
- H. Rank project priorities using CIP prioritization criteria previously developed during Storm Water Master Plan effort.
- I. Identify funding sources and financing strategies to adequately fund the necessary improvements for high ranking projects.
- J. When possible and as applicable, evaluations of flood risk reduction solutions, including flood mitigation projects, should be consistent with “Technical Guidelines for Regional Flood Planning,” Exhibit C to Regional Flood Planning Grant Contracts, which can be found at:
<https://www.twdb.texas.gov/flood/planning/planningdocu/2023/index.asp>.
- K. Each feasible flood mitigation alternatives evaluated must identify and compare cost and benefits of projects. Quantification of cost will include engineering, permitting, easement and/or property acquisition, capital cost, operation and maintenance, and other costs as applicable. Quantification of benefit of the project will include the following items, as applicable:
 - Number of structures with reduced 100-year (1% annual chance) flood risk.
 - Number of structures removed from 100-year (1% annual chance) flood risk.
 - Number of structures removed from 500-year (0.2% annual chance) flood risk.
 - Residential structures removed from 100-year (1% annual chance) flood risk.
 - Estimated Population removed from 100-year (1% annual chance) flood risk.
 - Critical facilities removed from 100-year (1% annual chance) flood risk (#).
 - Number of low water crossings removed from 100-year (1% annual chance) flood risk (#).
 - Estimated reduction in road closure occurrences.
 - Estimated length of roads removed from 100-year flood risk (miles).
 - Estimated farm & ranch land removed from 100-year flood risk (acres). Estimated farm & ranch land at 100-year flood risk (acres) should only include farm and ranch land that are negatively impacted by flooding events and should not include land that benefits from floodplains for example rice fields.
 - Estimated reduction in fatalities (if available).
 - Estimated reduction in injuries (if available).
 - Pre-Project Level-of-Service
 - Post-Project Level-of-Service
 - Cost/ Structure removed
 - Percent Nature-based Solution (by cost)
 - Negative Impact (Y/N)
 - Negative Impact Mitigation (Y/N)
 - Social Vulnerability Index (SVI)

- Water Supply Benefit (Y/N)
 - Traffic Count for Low Water Crossings
- L. The recommended solutions must be permittable, constructable and implementable.
- M. The recommended flood risk reduction solutions must have no negative effect on neighboring areas in accordance with statutory requirements for regional flood plans (Texas Water Code § 16.062(i) and (j)(2)). Recommended flood risk reduction solutions, including flood mitigation projects, must meet the definition and requirements regarding no negative effect identified in Exhibit C to the Regional Flood Planning Contracts, Technical Guidelines for Regional Flood Planning, which can be found at: <https://www.twdb.texas.gov/flood/planning/planningdocu/2023/index.asp>. The flood mitigation projects identified from this FIF CAT 1 study must comply with 'no negative effect' in order to be included in the regional flood plans.

Task 7. Dam Safety Assessment

FNI will perform a Dam Safety Assessment for up to eight (8) dams within the City of Shallowater-Yellow House Draw HUC-10 (1205000113) and the Buffalo Springs Lake-North Fork Double Mountain Fork Brazos River HUC-10 (1205000301). Information about the dams included in this study is summarized in Table 1, based on data collected from the National Inventory of Dams, and other online resources.

Table 1: Dams Summary

Structure ID	Name	Texas ID	Lat, Long (Decimal degrees)	Height (feet)	Maximum Pool Storage (acre-feet)	Normal Pool Storage (acre-feet)
1	Lake Ransom Canyon Dam	TX04028	N 33.5244 W 101.6781	26	1,620	560
2	McMillan Dam	TX04027	N 33.5335 W 101.6948	76	8280	4200
3	Canyon Lakes Project Dam No 6	TX04787	N 33.5655 W 101.8022	18	345	345
4	Unnamed Structure No. 3	N.A.	N 33.5854 W 101.8284	N.A.	N.A.	N.A.
5	Unnamed Structure No. 2	N.A.	N 33.5900 W 101.8297	N.A.	N.A.	N.A.
6	Canyon Lakes Project Dam No 3	TX04786	N 33.6006 W 101.8484	9	73	73
7	Canyon Lakes Project Dam No 2	TX04317	N 33.608 W 101.8631	12	50	50
8	Unnamed Structure No. 1	N.A.	N 33.61461 W 101.8761	N.A.	N.A.	N.A.

The Dam Safety Assessment will consist of the following tasks for all the dams mentioned in table 1, unless indicated otherwise:

A. Data Collection

- 1) Original design plans (i.e. as-builts).

- 2) Repair of modification design plans.
- 3) Inspection reports.
- 4) Previous dam assessment reports, breach analyses and/or emergency action plans, if available.
- 5) Texas Commission on Environmental Quality (TCEQ) dam inventory data.
- 6) NRCS dam assessment reports, breach analyses and/or emergency action plans.

B. Site Visits

- 1) Perform site visit to visually assess dam conditions and current status of operation and maintenance (O&M) activities. All sites visits will not include assessing the interior of principal spillways or conduits.
- 2) Develop condition worksheet to record inspection findings, including representative photographs. The condition worksheet will be acceptable for this project and will not be required for submission to TCEQ.

C. Hydrologic Capacity Analysis

- 1) Generate Probable Maximum Precipitation (PMP) depths based on recently updated TCEQ PMP guidelines, released in January 2017, and in accordance with guidance in the Texas Administrative Code (TAC §299.15). Additionally, generate frequency precipitation depths (2-year through 100-year) in accordance with the Local Ordinance
- 2) Develop a hydrologic model in HEC-HMS for evaluating the Probable Maximum Flood (PMF) for each dam according to TCEQ guidelines and State criteria (TAC §299.15). The design flood, expressed as a percentage of the PMF, will be determined based on findings of dam breach analysis and hazard classification determination. Elevation-storage data will be computed based on available LiDAR topography data, and a spillway discharge rating curve will be computed based on dimensions of the structure provided in available construction drawings.
- 3) Evaluate the dams' existing capacity, expressed as a percentage of the PMF, to determine whether the dam complies with TCEQ criteria for hydrologic adequacy.
- 4) Results of the hydrologic analysis will be presented in a technical report combined with the dam breach analysis.

D. Dam Breach Analysis

- 1) Develop dam breach model in HEC-RAS using two-dimensional unsteady flow capabilities to evaluate the required breach scenarios – normal pool breach, barely overtopping breach (if necessary), and design flood (PMF) breach. Model will be defined based on gathered topography data, and results from the Hydrologic Assessment will provide inflow hydrographs for the model. Downstream model extents will be defined based on breach attenuation down to less than one foot incrementally between breach and non-breach scenarios. Based on initial empirical estimates, the breach inundation length is likely not to exceed twenty-seven miles downstream from Lake Ransom Canyon Dam. Downstream and intervening drainage basins will be

included from the hydrologic analysis to represent incoming flows from adjacent tributary streams. Due to the complexity of the system, it will be necessary to include all six structures mentioned in Table 1 in a single hydraulic model to properly analyze the breach and hydrologic capacity of Lake Ransom Canyon Dam and McMillan Dam

- 2) Based on results from the dam breach model, evaluate the downstream hazard classification of structures 1 and 2, see table 1, according to TCEQ criteria (TAC §299.14).
- 3) Prepare breach inundation maps of the final breach scenarios for inclusion in an Emergency Action Plan (EAP) only for structures 1 and 2, refer to table. The inundation extents will be delineated based on the available topography data, and the maps will use aerial imagery as the background with appropriate base map layers and labels. Data included on the maps will satisfy TCEQ requirements for inclusion in an Emergency Action Plan, to be prepared by other.
- 4) Develop estimates of population at risk (PAR) within the breach inundation area for structures 1 and 2, refer to table 1.
- 5) Furnish one (1) digital copy of a draft technical report (PDF format) documenting the processes, assumptions, and findings of both the Hydrologic Assessment and the Dam Breach Analysis.
- 6) Meet with Owner to discuss findings of the Hydrologic Assessment and Breach Analysis. Purpose of meeting will be to review hydraulic adequacy of the dam as it relates to TCEQ criteria and hazard classification determined from the dam breach analysis.

E. Conceptual Alternative Analysis

- 1) Based on the findings of the hydrologic assessment and hazard classification evaluation, develop one conceptual rehabilitation alternative for Lake Ransom Canyon Dam and McMillan Dam to upgrade the structures to comply with TCEQ hydrologic capacity criteria based on dam size and hazard classification (TAC §299.15).
- 2) Provide planning-level cost estimates, or opinions of probable construction costs (OPCC), for the conceptual alternatives. These estimates will be intended for comparative decision-making purposes only and may differ from the actual construction costs following detailed design.

Task 8. City of Lubbock Watershed Study – Technical Report

- A. Prepare Draft Technical Report documenting the findings and recommendations of the watershed study including digital deliverables such as field survey, GIS information, and hydrologic and hydraulic models in accordance with TWDB standards.
- B. Draft report will be submitted in digital format (.pdf file) for City and TWDB review. Up to one (1) round of revisions to the report will be performed after receiving City and TWDB feedback. Final report will be submitted in digital format (.pdf file) and up to three (3) hard copies will be provided.

ADDITIONAL SERVICES: Additional Services to be performed by FNI, if authorized by City, which are not included in the above described basic services, are described as follows:

1. Final design, bid, or construction phase services.
2. Analysis of areas beyond those outlined in the Scope of Basic Services.

3. Analysis of additional alternatives beyond those indicated in the Scope of Basic Services.
4. Additional site visits or meetings in excess of those defined on the Scope of Basic Services.
5. Application for state or federal permitting or an environmental document for NEPA clearance.
6. LOMR, CLOMR or other FEMA coordination.
7. Preparation of funding submittals or grant applications for projects.
8. Providing renderings, model, and mock-ups requested by the City.
9. Making revisions to drawings or other report documents when such revisions are 1) not consistent with approvals or instructions previously given by City or 2) due to other causes not solely within the control of FNI.
10. Providing services to investigate existing conditions or facilities, or to make measured drawings thereof, or to verify the accuracy of drawings or other information furnished by City.
11. Meeting or trips in excess of the number of meetings included in Article I for site visits, coordination meetings, or other activities.
12. Preparing data and reports for assistance to City 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.
13. 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.
14. Providing basic or additional services on an accelerated time schedule. The scope of this service include cost for overtime wages of employees and consultants, inefficiencies in work sequence and plotting or reproduction costs directly attributable to an accelerated time schedule directed by the City.
15. Providing document revisions in excess of those outlined in Scope of Basic Services.
16. Providing environmental services.
17. Making property, boundary and right-of-way surveys, preparation of easement and deed descriptions, including title search and examination of deed records.
18. Visits to the site in excess of the number described under Basic Service
19. Appearing before regulatory agencies or courts as an expert witness in any litigation with third parties or condemnation proceedings arising from the development or construction of the Project, including the preparation of engineering data and reports for assistance to the CLIENT.
20. Bid phase services.
21. Construction phase services.
22. Performing extensive, non-routine investigations, studies and analyses of work proposed by construction Contractors to correct defective work.
23. Performing extensive, non-routine investigations, studies, and analyses of substitutions of materials or equipment or deviations from the plans and specifications.
24. Geotechnical investigations and analysis services.

TIME OF COMPLETION: FNI is authorized to commence work on the Project upon execution of this AGREEMENT and agrees to complete the services within twenty-four (24) months of receiving notice to proceed.

If FNI's services are delayed through no fault of FNI, FNI shall be entitled to adjust contract schedule consistent with the number of days of delay. These delays may include but are not limited to delays in City or regulatory reviews, delays on the flow of information to be provided to FNI, governmental approvals, etc. These delays may result in an adjustment to compensation as outlined on the face of this AGREEMENT and in Attachment CO.

SCHEDULE

The proposed total duration for this study is twenty-four (24) months. See below for an estimate of project schedule by Task:

TASK	DESCRIPTION	DURATION
1.0	PROJECT MANAGEMENT AND MEETINGS	24 Months
2.0	PUBLIC OUTREACH	6 Months (parallel task)
3.0	DATA COLLECTION AND SURVEY	5 Months
4.0	SCREENING ASSESSMENT	3 Months
5.0	FLOOD RISK ANALYSIS HYDROLOGY & HYDRAULICS	8 Months
6.0	CRITICAL FLOOD HAZARD ALTERNATIVES ANALYSIS	4 Months
7.0	DAM SAFETY ASSESSMENT	12 Months (parallel task)
8.0	TECHNICAL REPORT	4 Months
Total Project Duration =		24 Months

TASK & EXPENSE BUDGETS

TASK BUDGET

TASK	DESCRIPTION	AMOUNT
1.0	PROJECT MANAGEMENT AND MEETINGS	\$ 53,797
2.0	PUBLIC OUTREACH	\$ 35,395
3.0	DATA COLLECTION AND SURVEY	\$ 159,476
4.0	SCREENING ASSESSMENT	\$ 64,497
5.0	FLOOD RISK ANALYSIS HYDROLOGY & HYDRAULICS	\$ 125,915
6.0	CRITICAL FLOOD HAZARD ALTERNATIVES ANALYSIS	\$ 82,984
7.0	DAM SAFETY ASSESSMENT	\$ 141,075
8.0	TECHNICAL REPORT	\$ 86,861
Total Task Budget =		\$ 750,000

EXPENSE BUDGET

CATEGORY	AMOUNT
Salaries & Wages ¹	\$ 193,875.89
Fringe ²	\$125,185.66
Travel ³	\$694.40
Subcontract Services	\$68,000
Other Expenses ⁴	\$2,740.00
Overhead ⁵	\$228,851.10
Profit	\$130,652.95
TOTAL	\$750,000.00

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

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

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

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

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

EXHIBIT B
LUBBOCK RATE SCHEDULE

<u>Position</u>	<u>Rate</u>
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

\$8.50 per hour

Travel

Standard IRS Rates

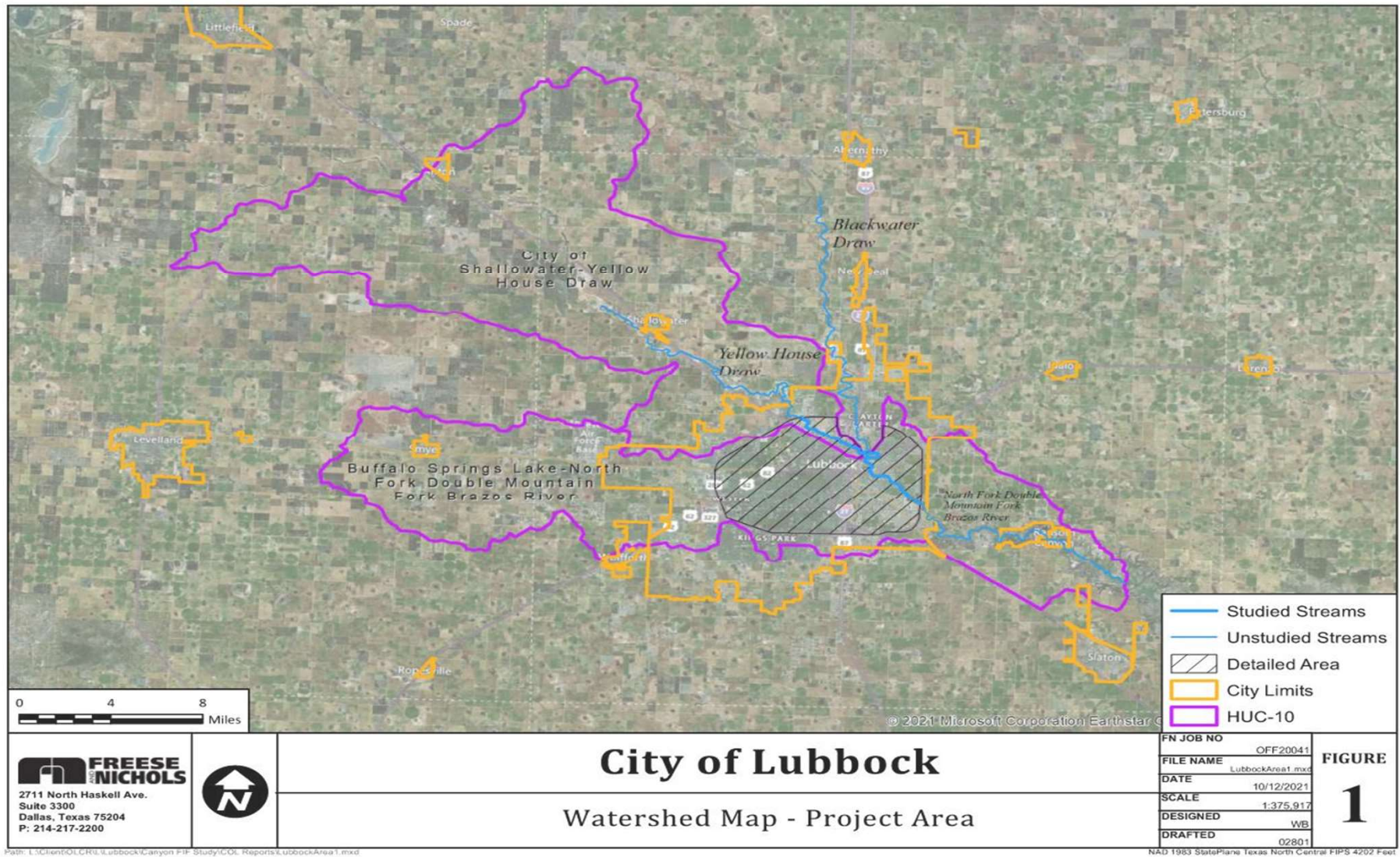
Bulk Printing and Reproduction

	<u>B&W</u>	<u>Color</u>
Small Format (per copy)	\$0.10	\$0.25
Large Format (per sq. ft.)		
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:

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. For Resident Representative services performed by non-FNI employees and CAD services performed in-house by non-FNI employees where FNI provides workspace and equipment to perform such services, these services will be billed at cost times a multiplier of 2.0. This markup approximates the cost to FNI if an FNI employee was performing the same or similar services.

Rates to be adjusted no more than 5% annually



**City of Lubbock
Capital Project
Project Cost Detail
December 3, 2024**

Capital Project Number: 8667
Capital Project Name: Flood Protection Study

<i>Encumbered/Expended</i>	<u>Budget</u>
Staff Time	\$ 3,696
Contract 16588 with Freese and Nichols	750,000
Amendment 1 to Contract 16588	-
 <i>Agenda Item December 3, 2024</i>	 <u> </u>
Amendment 2 to Contract 15688	<u>-</u>
<i>Encumbered/Expended to Date</i>	<u>753,696</u>
 <i>Estimated Costs for Remaining Appropriation</i>	
Future Infrastructure Funding Study	<u>8,804</u>
<i>Remaining Appropriation</i>	<u>8,804</u>
 Total Appropriation To Date	 <u><u>\$ 762,500</u></u>



CIP 8667 Flood Protection Study

Master Plan/Studies

Project Manager: Bailey Ratcliffe - Engineering

Project Scope

This flood protection planning study includes use of the best and most current data with regard to cumulative changes in land cover and land use, updated rainfall data, updated topographic data, topographic survey and stream cross-sectional data, and application of new technology to develop more accurate floodplain modeling and mapping. Updated software shall be used to better represent the conditions in Lubbock. The updated models will be compared to the existing FEMA floodplain maps and all differences will be noted. Coordination with FEMA will occur throughout the process so that the submitted data complies with the latest FEMA requirements. The scope of work for the flood protection planning study includes:

- Develop or update hydrologic and hydraulic models for the study area. The models will utilize the latest estimates of rainfall for the area (Atlas 14), and the most appropriate level of detail.
- Storm events to be evaluated including: 2-yr, 5-yr, 10-yr, 25-yr, 50-yr, 100-yr, and 500-yr storms.
- Hydrologic and Hydraulic (H&H) models will be based on the most current topography (LiDAR) and limited survey where appropriate.
- Develop inundation maps representing existing conditions for all storm events listed previously.
- Identify areas at risk for structural and major roadway flooding due to riverine conditions, damage centers.
- Identify flood mitigation measures for the damage centers identified above. These may include conveyance improvements, regional detention, levees, etc.

Project Justification

The City of Lubbock proposes to complete flood protection planning activities for restoration of the Canyon Lakes System, by completing a flood protection planning study of the two relevant hydraulic unit code – 10 (HUC-10) watersheds (City of Shallowater-Yellow House Draw HUC-10 (1205000113) and the Buffalo Springs Lake-North Fork Double Mountain Fork Brazos River HUC-10 (1205000301)). Recent storms have emphasized the need to implement detailed planning for flood protection in this area. The floodplain maps for this area were published in September 2007 and most of the waterways in these two HUC-10s do not have effective detailed hydrologic and hydraulic models. The publication of NOAA Atlas 14 data in October of 2018 and the resultant change in our understanding of extreme rainfall events has prompted the need for comprehensive floodplain modeling and mapping. This proposed project will aid in planning for regional projects that manage and control flood waters in order to reduce, or potentially eliminate, flood losses within the community served.

Project Highlights

Council Priorities Addressed:

Growth and Development
Fiscal Discipline

Project Dates

Start Date: 06/2022
Completion Date: 12/2024

Project History

- FY 2020-21 \$762,500 was appropriated by Ord. 2021-00129

Project Location

Internal Project

Project Appropriations

	Appropriation to Date	2025 - 26 Budget	2026 - 27 Budget	2027 - 28 Budget	2028 - 29 Budget	2029 - 30 Budget
Design	\$762,500	\$0	\$0	\$0	\$0	\$0
TOTAL	\$762,500	\$0	\$0	\$0	\$0	\$0

Project Funding

	Funding to Date	2025 - 26 Budget	2026 - 27 Budget	2027 - 28 Budget	2028 - 29 Budget	2029 - 30 Budget
Stormwater Fund Cash	\$200,000	\$0	\$0	\$0	\$0	\$0
Texas Water Development Board Bonds	\$562,500	\$0	\$0	\$0	\$0	\$0
TOTAL	\$762,500	\$0	\$0	\$0	\$0	\$0

Operating Budget Impacts

Description	2024-25	2025-26	2026-27	2027-28	2028-29	2029-30	Total
No Impact Anticipated	\$0	\$0	\$0	\$0	\$0	\$0	\$0
TOTAL	\$0	\$0	\$0	\$0	\$0	\$0	\$0

Information

Agenda Item

Resolution - Public Works Traffic Management: Consider a resolution authorizing the Mayor to execute an Interlocal Agreement with the Texas Department of Transportation, for continued operation of the Traffic Management Center, utilizing the TxDOT Intelligent Transportation System.

Item Summary

Through previously executed contracts, the Texas Department of Transportation (TxDOT) and the City of Lubbock jointly fund the City of Lubbock to operate the Traffic Management Center (TMC) and to manage the fiber optic network within the City limits.

This agreement is a continuation of interlocal agreements executed by the City on May 11, 2007, October 8, 2009, September 25, 2014, and September 24, 2019. The agreement enables the City of Lubbock Traffic Management Department to conduct daily operations of the TxDOT-Lubbock District Intelligent Traffic System (ITS) Freeway Management System. Traffic Management and TxDOT also jointly operate and manage underground infrastructure, including fiber optic cable and signal cable, within TxDOT right-of-way (ROW). These fiber optic cables are part of the City's communications upgrade funded by the 2009 Bond Election. The communications upgrade connects traffic signals, Pan-Tilt-Zoom (PTZ) cameras, and dynamic message signs (DMS) to the TMC.

During construction or excavation, underground utility lines must be identified so that infrastructure is not damaged. Where dirt work is being performed in the vicinity of traffic signals or fiber optic communication infrastructure, City staff will locate and identify fiber optic and traffic signal cables so that the communication network is not damaged. The City is registered with the Texas Excavation Notification Safety System, Inc., (Texas811, formerly known as DigTESS) and receives notification to locate City-owned underground lines inside the City limits. The City utilizes its Texas811 registration to jointly locate fiber optic infrastructure, or any other line, in TxDOT ROW.

Fiscal Impact

The City of Lubbock will be reimbursed by TxDOT each month during the 5-year term. During the first year, TxDOT reimbursement will not exceed \$117,000. Starting one year from the contract execution date, and each year following until contract termination, an adjustment will be made to the reimbursements to reflect the Consumer Price Index for All Urban Consumers (South) published by the United States Department of Labor.

Staff/Board Recommending

Erik Rejino, Assistant City Manager

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

Attachments

Resolution
Contract

RESOLUTION

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

THAT the Mayor of the City of Lubbock is hereby authorized and directed to execute for and on behalf of the City of Lubbock, an Interlocal Agreement, by and between the City of Lubbock and the State of Texas, acting through the Texas Department of Transportation (TxDOT), to operate the Traffic Management Center (TMC) at the City of Lubbock Traffic Engineering office for Sharing Intelligent Transportation System (ITS) Data and Operating ITS Hardware & Networks, 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.

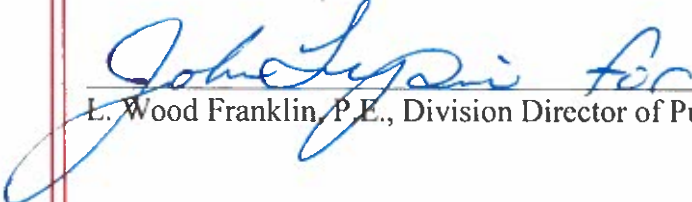
Passed by the City Council on _____.

MARK W. MCBRAYER, MAYOR

ATTEST:

Courtney Paz, City Secretary

APPROVED AS TO CONTENT:



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

APPROVED AS TO FORM:



Mitchell Satterwhite, First Assistant City Attorney

ccdocs II/RES.Interlocal Agrmt-TxDOT
October 28, 2024

THE STATE OF TEXAS §

THE COUNTY OF TRAVIS §

INTERLOCAL AGREEMENT
Sharing ITS Data, and Operating ITS Hardware & Networks

THIS CONTRACT is entered into by the Contracting Parties under Government Code, Chapter 791.

I. CONTRACTING PARTIES:

The Texas Department of Transportation
 City of Lubbock

TxDOT
 Local Government

II. PURPOSE: Operate the Traffic Management Center (TMC) at the City of Lubbock Traffic Engineering office utilizing TxDOT's Intelligent Transportation System (ITS) within the city limits of Lubbock.

III. STATEMENT OF SERVICES TO BE PERFORMED: TxDOT will undertake and carry out services described in **Attachment A**, Scope of Services.

IV. CONTRACT PAYMENT: The total amount of this contract shall not exceed **\$585,000** and shall conform to the provisions of **Attachment B**, Budget. Payments shall be billed monthly.

V. TERM OF CONTRACT: This contract begins when fully executed by both parties and terminates **five (5) years from that date**, or when otherwise terminated as provided in this Agreement.

VI. LEGAL AUTHORITY:

THE PARTIES certify that the services provided under this contract are services that are properly within the legal authority of the Contracting Parties.

The governing body, by resolution or ordinance, dated **{Enter Date of Resolution}**, has authorized the Local Government to obtain the services described in **Attachment A**.

This contract incorporates the provisions of **Attachment A**, Scope of Services, **Attachment B**, Budget, **Attachment C**, General Terms and Conditions, **Attachment D**, Resolution or Ordinance, **Attachment E**, Location Map Showing Project, **Attachment F**, Guidelines for Use of State Equipment and Infrastructure, and **Attachment G**, Staffing Schedule.

CITY OF LUBBOCK

By _____ Date _____

Mark W. McBrayer, Mayor

ATTEST

_____ Date _____

Courtney Paz, City Secretary

APPROVED AS
TO CONTENT

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

_____ Date 11/11/2024

APPROVED AS
TO FORM

 Mitch Satterwhite, Assistant City Attorney

_____ Date 11/11/24

FOR THE STATE OF TEXAS

Executed for the Executive Director and approved for the Texas Transportation Commission for the purpose and effect of activating and/or carrying out the orders, established policies or work programs heretofore approved and authorized by the Texas Transportation Commission

By _____ Date _____

Kenneth Stewart
 Director of Contract Services

ATTACHMENT A**Scope of Services**

TxDOT hereby grants the Local Government a non-exclusive right, license, and privilege to obtain and share transportation-related information. Functional requirements for Facilities, Hardware, Software, and Communications are outlined below as applicable. Each party is financially responsible for their own activities as outlined below.

RIGHTS GRANTED	
By TxDOT	By Local Government
<ol style="list-style-type: none"> 1. Facilities – Provide connection to TxDOT District Advanced Traffic Management System (ATMS) local area network as a client(s) at a secure level to be determined by TxDOT. 2. Hardware – Provide encoders, switches and convertors. 3. Software - Provide use of TxDOT ATMS software as a client(s) at a secure level to be determined by TxDOT. 4. Communications - Provide configuration of a client workstation on the TxDOT District CCTV control software with privilege for camera selection and access to pan, tilt, and zoom at a secure level to be determined by TxDOT. Guidelines for use of pan, tilt, and zoom are listed in Attachment D; Provide configuration on the TxDOT Lubbock District Dynamic Message Sign (DMS) system and allow the City of Lubbock Traffic Engineering staff (TMC Operators) to post messages that are specific to incident management and traffic control. Emergency operations and security messages including but not limited to Amber Alert, Silver Alert, Blue Alert, Endangered Missing Persons Alert, Pandemic Flu, burn bans, flooding, etc. will be posted by TxDOT Lubbock District staff. TxDOT reserves the right to pre-empt any message display at any time with another message. 	<ol style="list-style-type: none"> 1. Facilities - The Local Government operates a TMC on the sixth floor of the Citizens Tower building to conduct daily operations of TxDOT-Lubbock District ITS Freeway Management within the city limits of Lubbock.

PROVISION OF INFRASTRUCTURE	
By TxDOT	By Local Government
<ol style="list-style-type: none"> 1. Facilities - TxDOT will allocate \$117,000 each year of the biennium for the operation and maintenance of the ITS TMC at the City of Lubbock. TxDOT will reimburse the Local Government for actual costs related to the Local Government's responsibilities in the operations of the TMC. TxDOT will not charge administrative or other charges not identified in this agreement. 2. Hardware – The startup hardware and software was previously supplied to the City of Lubbock Traffic Engineering Department. Will provide replacement equipment according to TxDOT's refresh schedule. 	<ol style="list-style-type: none"> 1. Facilities - Provide the building and make any necessary improvements to their TMC control room at no cost to TxDOT. 2. Hardware - The Local Government is responsible for maintaining, in good condition, the hardware supplied to the Local Government by TxDOT. 3. Software - Local Government will retain ownership of all city purchased software. Maintain and incur the costs of all city owned equipment located at their TMC or other city owned facilities and will retain ownership of all city purchased equipment, supplies and software.

<p>Retain ownership of any equipment purchased by TxDOT for use at the ITS TMC at the City of Lubbock.</p> <p>3. Software - Provide software and support to allow The Local Government access to systems and data.</p> <p>Retain ownership of and be responsible for the maintenance and operations of all ITS software, and hardware located at TxDOT Lubbock's Information Resource Office (servers, decoders, etc.), and ITS field devices (dynamic message signs, closed circuit television cameras, microwave vehicle detection devices, etc.).</p> <p>4. TxDOT or TxDOT's contractor will be responsible for any damage done to fiber and/or signal cable lines located on TxDOT ROW. TxDOT will process any damage claims against the contractor in order to collect reimbursement for any associated costs.</p>	<p>4. Communications - The Local Government will maintain the TxDOT ITS fiber network; will provide certification of all fiber installations and repairs and will be reimbursed by TxDOT for their actual labor costs as defined in Attachment B, Budget.</p> <p>5. The Local Government will provide proper documentation to TxDOT in the form of invoices, time sheets, etc. to justify reimbursement requests.</p> <p>6. The Local Government in cooperation with TxDOT will utilize their membership in the Texas Excavation Safety System, Inc. (DigTess) to locate TxDOT-owned fiber optic and signal cable along ITS corridors and within the boundaries of signalized intersections within the city of Lubbock. The following is a list of parameters and commitments both parties agree to:</p> <ul style="list-style-type: none"> a. When Dig Tess notifies the Local Government to locate underground infrastructure in TxDOT right-of-way (ROW), the Local Government will notify TxDOT. b. The Local Government and TxDOT will jointly locate TxDOT fiber and/or signal cable lines that are in TxDOT ROW
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NON-MONETARY COMPENSATION	
By TxDOT	By Local Government
<ol style="list-style-type: none"> 1. TxDOT will specify, purchase and install all equipment, hardware, software, and related communications. 2. Provide technical assistance to the Local Government for operational management of the TMC, including training. 3. TxDOT will provide list of required information needed for inventory (i.e., type, manufacturer, model, serial number). 	<ol style="list-style-type: none"> 1. Staff and operate the TMC in accordance with the staffing schedule shown as Attachment F; the Local Government will submit changes to the hours of operations to the TxDOT Lubbock District Engineer for prior approval. 2. The Local Government agrees to give TxDOT voice and/or visual credit (TxDOT Logo) for sharing the information. TxDOT may transmit Lubbock District TMC ITS video information to the Local Government with an imbedded TxDOT Logo. The Local Government shall not block, modify, or remove the TxDOT Logo. 3. The Local Government will perform annual inventory of the hardware, software or other TxDOT equipment at the TMC and provide to TxDOT.

ATTACHMENT B

Budget

Reimbursable charges for work performed by the City of Lubbock:

- Reimbursements shall not exceed **\$117,000** per year.
- The reimbursements shall include the following two (2) services:
 - a. Operation of TMC shall be **\$99,500** per year
 - b. Fiber Optic Network Maintenance shall not exceed **\$17,500** per year and will be itemized in the following manner:
 - i. Technician (Hourly rate + Benefits)
 - ii. Materials

License Fee:

TxDOT agrees to waive any monetary fee associated with the use of the Lubbock District TMC ITS Closed Circuit Television (CCTV) Cameras

Annual Price Adjustment:

- Starting one year from the contract execution date, and each year following until contract termination, an adjustment shall be made to the reimbursements mentioned above to reflect the CPI-All Urban Consumers (South) Index published by the United States Department of Labor.

ATTACHMENT C**General Terms and Conditions****Article 1. Amendments**

This contract may only be amended by written agreement executed by both parties before the contract is terminated.

Article 2. Conflicts Between Agreements

If the terms of this contract conflict with the terms of any other contract between the parties, the most recent contract shall prevail.

Article 3. Disputes

TxDOT shall be responsible for the settlement of all contractual and administrative issues arising out of procurements entered in support of contract services.

Article 4. Ownership of Equipment

Except to the extent that a specific provision of this contract states to the contrary, all equipment purchased by TxDOT under this contract shall be owned by TxDOT.

Article 5. Termination

This contract terminates at the end of the contract term, when all services and obligations contained in this contract have been satisfactorily completed, by mutual written agreement, or 30 days after either party gives notice to the other party, whichever occurs first.

Article 6. Gratuities

Any person who is doing business with or who reasonably speaking may do business with TxDOT under this contract may not make any offer of benefits, gifts, or favors to employees of TxDOT.

Article 7. Responsibilities of the Parties

Each party acknowledges that it is not an agent, servant, or employee of the other party. Each party is responsible for its own acts and deeds and for those of its agents, servants, or employees.

Article 8. Compliance with Laws

The parties shall comply with all federal, state, and local laws, statutes, ordinances, rules, and regulations and with the orders and decrees of any courts or administrative bodies or tribunals in any manner affecting the performance of this agreement.

Article 9. State Auditor's Provision

The state auditor may conduct an audit or investigation of any entity receiving funds from TxDOT directly under the contract or indirectly through a subcontract under the contract. Acceptance of funds directly under the contract or indirectly through a subcontract under this contract acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. An entity that is the subject of an audit or investigation must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit.

Article 10. Signatory Warranty

Each signatory warrants that the signatory has necessary authority to execute this agreement on behalf of the entity represented.

Article 11. Notices

All notices to either party shall be delivered personally or sent by certified U.S. mail, postage prepaid, addressed to that party at the following address:

Local Government:	City of Lubbock ATTN: Division Director of Public Works P.O. Box 2000 Lubbock, TX 79457
TxDOT:	Texas Department of Transportation Lubbock District ATTN: Director of Transportation Operations 135 E. Slaton Highway Lubbock, TX 79404

All notices shall be deemed given on the date delivered in person or deposited in the mail. Either party may change the above address by sending written notice of the change to the other party. Either party may request in writing that notices shall be delivered personally or by certified U.S. mail, and that request shall be carried out by the other party.

ATTACHMENT D

Resolution or Ordinance

ATTACHMENT F
Guidelines for Use of State Equipment and Infrastructure

ITS FIELD EQUIPMENT: Closed Circuit Television (CCTV) Cameras; Dynamic Message Signs (DMS); Radar Vehicle Detection Systems (RVDS)

1. During the normal operating hours of the TMC, operational, access shall normally be limited to TxDOT, City of Lubbock Traffic Engineering and the City of Lubbock Police Department. This is the case during peak and non-peak hours. Peak traffic flow is normally considered to exist regularly during two periods of the day, Monday through Friday. In general, one period of peak traffic flow exists in the early morning and the other period of peak traffic flow exists in the late afternoon. Additional periods of peak traffic flow may exist at other times during the weekday and weekend due to special events and public gatherings. Precise times of regular and additional anticipated peak periods of traffic flow shall be the sole determination of TxDOT and may change from time to time.
2. During an incident, operational access shall be extended to emergency service agencies in addition to TxDOT and the City of Lubbock Traffic Engineering staff. An incident is defined as any condition in which traffic flow is not normal. As an example, abnormal traffic flow could be caused by debris in the road, such as a mattress or board, or could be caused by non-recurring congestion, such as on-lookers to an automobile accident, public gathering, construction, or roadway maintenance. The duration of the incident shall be considered complete once any TxDOT, City of Lubbock and/or emergency service personnel and vehicles have departed from the incident scene and traffic flow has returned to normal.
3. Only TxDOT and the City of Lubbock Traffic Engineering staff shall have operational control of the DMS system. Verbiage used in posting messages shall be limited to either those in a pre-approved library or specific to incident control for a given situation or broad general traffic and safety information, the intent and nature of which is approved by TxDOT. Changes to DMS messages or settings for any non-transportation related information purpose is forbidden at any time. A single breach of any of the above guidelines shall be grounds to immediately withdraw the privilege of DMS control.
4. During the hours in which the TMC is closed, the City of Lubbock Police Department and the Emergency Operations (TMC) staff will have Pan, Tilt, and Zoom control of the CCTV cameras for broad general traffic information as it relates to visual detailed information of an incident or other situations which impact the flow of traffic.

CCTV pan, tilt, and zoom for enforcement and any non-transportation related information purpose is forbidden at any time. A single breach of any of the above guidelines shall be grounds to immediately withdraw the privilege of pan, tilt, and zoom.
5. Access to ITS field equipment may be withdrawn at any time By TxDOT without notice if access is determined to not be in the best interest of TxDOT.

HARDWARE FOR CONTROL OF TxDOT TMC OPERATIONS

1. Equipment – All TxDOT equipment to be furnished to the Local Government is listed separately in Attachment A, Scope of Services. TxDOT retains full and complete title in the equipment and nothing in this agreement shall grant to the Local Government, its officers or employees ownership in the TxDOT equipment.
2. State Equipment Procurement – TxDOT shall purchase all hardware, software, and communications that it determines is initially needed to support the TxDOT ITS TMC operations in approved Local Government office locations.
3. Equipment Installation – TxDOT will provide for the installation of the equipment in the approved Local Government office locations. TxDOT will not pay for any Local Government employee time expended, any physical alterations the Local Government may make to its offices to accommodate the TxDOT or Local Government equipment, or for the installation of Local Government workstations.
4. Programming – TxDOT will perform all computer programming needed for the development and continued support of the TxDOT statewide ITS software.

5. **Maintenance** – TxDOT will provide maintenance required for the equipment during the term of the agreement. Provisions will be made by TxDOT for the timely repair or replacement of the TxDOT equipment. TxDOT will also provide the Local Government with ongoing basic maintenance support for the software installed on TxDOT equipment.

The Local Government shall be responsible for full repair or replacement costs for TxDOT equipment in the event the equipment placed under Local Government control is damaged or lost. The repair cost shall be determined by TxDOT. The replacement cost shall be determined by the cost of equivalent equipment under contract at the time the damage or loss occurs. In addition, the Local Government shall be responsible for any service costs resulting from problems caused by unauthorized software or hardware residing on the TxDOT or Local Government workstations. The TxDOT equipment will be monitored and any unauthorized software which is detected will be removed. The Local Government's payment for repair or replacement costs for damaged or lost TxDOT equipment, or service costs resulting from problems caused by unauthorized software residing on TxDOT workstations, or installation of unauthorized hardware on the TxDOT equipment, shall be remitted to TxDOT by the Local Government within 30 days of written request by TxDOT.

6. **Equipment Movement** – The Local Government shall notify TxDOT of its intent to add, move, close, or remodel (if equipment or cabling is affected) any Local Government office in which TxDOT or Local Government equipment is currently installed, or will need to be installed or removed. Notification must be in writing and shall be submitted prior to the anticipated date the change will occur. Minimum notification periods:
- 30 days in the case of an office close or remodeling;
 - 90 days in the case of an office location change;
 - 180 days in the case of an additional office location.
7. **Unauthorized Use of Equipment** – Unauthorized entry into TxDOT equipment for any reason, including but not limited to attempts to repair the hardware or load unapproved software, is expressly prohibited. Use of TxDOT equipment to connect or access other automated systems is subject to prior approval of TxDOT in writing.
8. **Electrical Requirements** – The Local Government shall meet and maintain minimum office electrical requirements as specified by TxDOT for operation of the equipment. The Local Government shall be responsible for the payment of all electrical power costs resulting from the operation of the TxDOT equipment. Unless otherwise specified by TxDOT, TxDOT equipment shall remain operating 24 hours a day, 7 days a week.
9. **Access** – TxDOT is authorized unlimited physical access to TxDOT equipment at the Local Government office locations during regular Local Government business hours to perform a physical inventory and unrestricted remote access for upgrades and maintenance.
10. **Training** – TxDOT shall provide on-site initial training for the Local Government's employees on the TxDOT statewide ITS system. TxDOT will provide the Local Government with reference materials and continuing training/advisory support for the system.

ATTACHMENT G
Staffing Schedule

There will be a minimum of one employee on duty. The Manager will provide additional staffing on an as needed basis during the hours of operations and for special events. Special events will be coordinated with TxDOT staff in advance to ensure proper management of traffic flow.

Monday	7:00 a.m. to 6:00 p.m.
Tuesday	7:00 a.m. to 6:00 p.m.
Wednesday	7:00 a.m. to 6:00 p.m.
Thursday	7:00 a.m. to 6:00 p.m.
Friday	7:00 a.m. to 6:00 p.m.

The TMC will be closed each day the City of Lubbock observes the following holidays:

- New Year's Day
- Martin Luther King Day
- Good Friday
- Memorial Day
- Independence Day, July 4th
- Labor Day
- Thanksgiving Day, and the day after Thanksgiving
- Christmas Eve and Christmas Day.

Operation of the system after hours will be handled through an on-call network using a remote computer to access and operate the ITS field devices.

Information

Agenda Item

Resolution - Public Works Traffic Management: Consider a resolution authorizing the Mayor to execute Agreement No. BF-20496631, with the BNSF Railway Company, for the City of Lubbock to furnish equipment, and for Rio Grande Pacific Technology, Inc. to install a Wayside Horn System at the 2nd Street and Avenue P (DOT No. 014932M) at-grade crossing located at Mile Post 673.535.

Item Summary

Through this agreement, BNSF Railway Company (BNSF) will re-wire the crossing house for interconnection to a new Wayside Horn System, installed by Rio Grande Pacific Technology in a separate contract. BNSF will re-use existing constant warning, flashers, and gates at the 2nd Street and Avenue P (DOT No. 014932M) at-grade crossing located at Mile Post 673.535. A separate agreement must be executed between the City and Rio Grande Pacific Technology to complete the construction of the Wayside Horn System. The Wayside Horn System will sound along Avenue P, eliminating the need for trains to utilize their engine-mounted horns at this crossing.

Fiscal Impact

This agreement for \$56,288 is funded in Capital Improvement Project 92742, Traffic Signal Upgrades FY 2021-22 through FY 2025-26.

Staff/Board Recommending

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

Attachments

Resolution
Contract

RESOLUTION

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

THAT the Mayor of the City of Lubbock is hereby authorized and directed to execute for and on behalf of the City of Lubbock, an Agreement, by and between the City of Lubbock and BNSF Railway Company concerning the ownership, removal, installation, and maintenance of a Horn System at Avenue P (DOT No. 014932M), 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 _____.

MARK W. MCBRAYER, MAYOR

ATTEST:

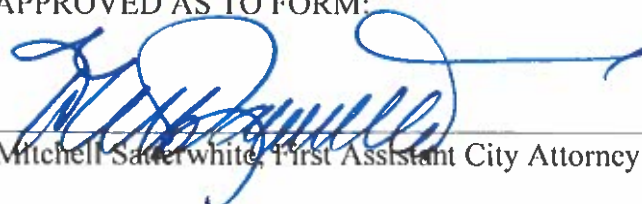
Courtney Paz, City Secretary

APPROVED AS TO CONTENT:



Erik Rejino, Assistant City Manager

APPROVED AS TO FORM:



Mitchell Satterwhite, First Assistant City Attorney

ccdcs II/RES.Agrmt-BNSF
October 31, 2024

WAYSIDE HORN AGREEMENT

BNSF File No.: BF-20496631
Mile Post 673.535
Line Segment 7106
U.S. DOT Number 014932M
Slaton Subdivision

THIS WAYSIDE HORN AGREEMENT (hereinafter called, this “Agreement”), is entered into effective as of May 24, 2024, by and between BNSF Railway Company, a Delaware Corporation (hereinafter called, “BNSF”), and the **City of Lubbock, Texas**, a municipal corporation, (hereinafter called, the “Agency”).

WITNESSETH

WHEREAS, BNSF has grade crossing warning devices located at the intersection of **Avenue P**, as indicated on Exhibit “A” attached hereto and made a part hereof; and

WHEREAS, the Agency is installing its automated horn system pursuant to the requirements of 49 CFR Part 222, (hereinafter called, “Wayside Horn System”) with the existing automatic grade crossing warning devices shown on Exhibit “A” subject to the mutual covenants contained in this Agreement;

NOW, THEREFORE, in consideration of the premises and of the mutual covenants and agreements of the parties contained herein, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

AGREEMENT

1. PURPOSE

The purpose of this Agreement is as follows: provide for the ownership, installation and maintenance by Agency or its contractor of the Wayside Horn System and other related improvements at the **Avenue P (DOT No. 014932M)** at-grade crossing located at railroad milepost **673.535**.

2. SCOPE OF WORK

- a. The Agency has requested the Wayside Horn to active simultaneous with the activation of the flashing lights.
- b. BNSF will provide an interface box with contact terminals, at Agency’s expense on the side of the railroad instrument cabin.

- c. Agency or its contractor will place the Wayside Horns, all necessary cable and conduit and horn confirmation signage ("Confirmation X") on Railroad property in accordance with Exhibit "A", attached to and made a part of this Agreement.
- d. The Agency or its contractor will connect the Wayside Horn System control signals to the contact terminals in the interface box including all necessary cable and conduit.
- e. BNSF will provide flagging services, at Agency's sole expense, necessary to protect BNSF train operations or BNSF property as set forth in more detail on Exhibit "C" attached to and made a part of this Agreement.
- f. The Agency or its contractor must install the new Wayside Horn System.
- g. An estimate of the actual costs for BNSF work (excluding flagging, which will depend upon contractor's activities) is shown on Exhibit "B" attached to and made a part of this Agreement. In the event installation of the improvements has not commenced within six (6) months following the effective date of this Agreement, BNSF may, in its sole and absolute discretion, revise the cost estimates set forth on Exhibit B. Agency shall have ten (10) days to review and approve the revised cost estimates. If the Agency does not respond within ten (10) days, the estimates shall be deemed to be approved by Agency. Once cost estimates are revised, the revised cost estimates will become a part of this Agreement as though originally set forth herein. Any item of work incidental to the items listed on Exhibit B not specifically mentioned therein may be included as a part of this Agreement upon written approval of the Agency, which approval will not be unreasonably withheld.
- h. The Agency must pay BNSF for the actual costs of any work performed by BNSF under this Agreement within thirty (30) days of the date of the invoice for such work, including flagging costs. During the construction of the improvements, BNSF may send Agency progressive invoices detailing the costs of the railroad work performed by BNSF under this Agreement. Upon completion of the improvements and all associated work, BNSF will send Agency a detailed invoice of final costs including flagging costs, segregated as to labor and materials for each item in the recapitulation shown on Exhibit B. Agency must pay the final invoice within ninety (90) days of the date of the final invoice. BNSF will assess a finance charge of .033% per day (12% per annum) on any unpaid sums or other charges due under this Agreement which are past our credit terms. The finance charge continues to accrue daily until the date payment is received by BNSF, not the date payment is made or the date postmarked on the payment. Finance charges will be assessed on delinquent sums and other charges as of the end of the month and will be reduced by amounts in dispute and any unposted payments received by the month's end. Finance charges will be noted on invoices sent to Agency under this section.

3. CONSTRUCTION AND MAINTENANCE

- a. BNSF will operate and maintain, at its expense, the necessary relays and the other materials required to preempt the Wayside Horn System with the grade crossing warning devices.
- b. BNSF will operate and maintain, at its expense, the grade crossing warning devices up to the contact terminals in the interface box.
- c. The Agency or its contractor must, at the Agency's expense, install the Wayside Horn System up to and including connection to the contact terminals in the interface box including all necessary cable and conduit.
- d. Following installation of the Wayside Horn System, the Agency will own, operate and maintain, at its expense, the Wayside Horn System up to and including connection to the contact terminals in the in the interface box including all necessary cable and conduit. When any such maintenance requires BNSF flagging or changes to BNSF contact terminals, Agency or its designate shall pay BNSF for all costs associated with such work
- e. The Agency shall maintain the Wayside Horn System in a good and operative condition and in accordance with all applicable laws and regulations, including without limitation Appendix E of 49 CFR Part 222.
- f. Through this Agreement, BNSF does not waive any rights it may have under existing federal law to sound the locomotive horn in case of emergency, when the Wayside Horn System is malfunctioning, when active grade crossing warning devices have malfunctioned, when roadway workers are present or when grade crossing warning systems are temporarily out of service during inspection, maintenance, or testing of the system or as is otherwise necessary in the sole opinion of BNSF.
- g. In the event Agency defaults on any of its obligations hereunder following ten (10) days written notice from BNSF, including without limitation, Agency's obligation to maintain the Wayside Horn System in good and operative condition, BNSF, may, at its option, remove the Wayside Horn System at the sole cost and expense of Agency. Upon removal of the Wayside Horn System, BNSF shall resume sounding the locomotive horn at the Avenue P (DOT No. 014932M) grade crossing.
- h. In the event BNSF incurs flagging or regulatory compliance expense related to a failure of the Agency's systems or equipment, Agency agrees to reimburse BNSF for the full amounts expended.

4. PROTECTION OF UNDERGROUND SYSTEMS

- a. Agency and its contractor is placed on notice that fiber optic, communication and other cable lines and systems (collectively, the "Lines") owned by various telecommunications or utility companies may be buried on BNSF's property or right-of-way. The Agency or its contractor must contact appropriate personnel to have the Lines located and make arrangements with the owner of the Lines regarding protective measures that must be followed prior to the commencement of any work on BNSF's property. The Agency or its contractor will be responsible for contacting BNSF's Engineering Representative (Roadmaster Kory Kirk at mobile # 806-341-8905 and Signal Supervisor Jarred Haile at mobile # 806-367-3190) and the telecommunications or utility companies and notifying them of any work that may damage these Lines or facilities and/or interfere with their service. The Agency or its contractor must also mark all Lines in order to verify their locations. Agency or its contractor must also use all reasonable methods when working in the BNSF right-of-way or on BNSF property to determine if any other Lines (fiber optic, cable, communication or otherwise) may exist.
- b. Failure to mark or identify Lines will be sufficient cause for BNSF to stop construction at no cost to BNSF until these items are completed.
- c. In addition to the liability terms contained elsewhere in this Agreement and to the fullest extent provided by law, Agency agrees to require its CONTRACTOR to hereby indemnify, defend and hold harmless BNSF for, from and against all cost, liability, and expense whatsoever (including, without limitation, attorney's fees and court costs and expenses) arising out of or in any way contributed to by any act or omission of Agency or its contractor, subcontractors, agents and/or employees that cause or in any way or degree contribute to: (1) any damage to or destruction of any Lines on BNSF's property or within BNSF's right-of-way; (2) any injury to or death of any person employed by or on behalf of (a) any telecommunications or utility company, (b) Agency's contractor or subcontractors, or (c) Agency, and (3) any claim or cause of action for alleged loss of profits or revenue by, or loss of service by a customer or user of such telecommunications or utility company(ies). **THE LIABILITY ASSUMED BY AGENCY'S CONTRACTOR WILL NOT BE AFFECTED BY THE FACT, IF IT IS A FACT, THAT THE DAMAGE, DESTRUCTION, INJURY, DEATH, CAUSE OF ACTION OR CLAIM WAS OCCASIONED BY OR CONTRIBUTED TO BY THE NEGLIGENCE OF BNSF, ITS AGENTS, SERVANTS, EMPLOYEES OR OTHERWISE, EXCEPT TO THE EXTENT THAT SUCH CLAIMS ARE PROXIMATELY CAUSED BY THE INTENTIONAL MISCONDUCT OR GROSS NEGLIGENCE OF BNSF.**
- d. Agency or its contractor will be responsible for the rearrangement of any facilities or Lines determined to interfere with the installation or construction of the improvements. Agency and/or its Contractor must cooperate fully with any telecommunications or utility company(ies) in performing such rearrangements.

5. INDEMNIFICATION

- a. Agency hereby indemnifies, defends and holds harmless BNSF for, from and against any and all claims, suits, losses, damages, costs and expenses for injury to or death to third parties or BNSF's officers and employees, and for loss and damage to property belonging to any third parties (including damage to the property of BNSF officers and employees), to the extent caused by the negligence of the Agency or any of its employees, agents or contractors. The Agency also releases BNSF from and waives any claims for injury or damage to the Agency's highway traffic control signals, the Wayside Horn System, or other equipment which may occur as a result of any of the work provided for in this Agreement or the operation or the maintenance thereafter of any of the Agency's highway Wayside Horn System, the traffic control signals, cables, connections at and about the grade crossing.
- b. To the fullest extent permitted by law, Agency hereby releases, indemnifies, defends and holds harmless BNSF and BNSF's affiliated companies, partners, successors, assigns, legal representatives, officers, directors, employees and agents for, from and against any and all claims, suits, liabilities, losses, damages, costs and expenses (including, without limitation, attorneys fees and court costs) for injury to or death to Agency employees, agents or representatives arising out of, resulting from or related to any act or omission of Agency or any work performed on or about BNSF's property or right-of-way, including without limitation, the installation and maintenance of the Wayside Horn System by the Agency. **THE LIABILITY ASSUMED BY THE AGENCY IN THIS PROVISION WILL NOT BE AFFECTED BY THE FACT, IF IT IS A FACT, THAT THE DESTRUCTION, DAMAGE, DEATH OR INJURY WAS OCCASIONED BY OR CONTRIBUTED TO BY THE NEGLIGENCE OF BNSF, ITS AGENTS, SERVANTS, EMPLOYEES OR OTHERWISE, EXCEPT TO THE EXTENT THAT SUCH CLAIMS ARE PROXIMATELY CAUSED BY THE GROSS NEGLIGENCE OR INTENTIONAL MISCONDUCT OF BNSF.**
- c. **Agency further agrees to release, indemnify and hold harmless BNSF for damages resulting from any labor claims under BNSF's collective bargaining agreements (and including attorneys' fees and court costs and expenses, if the subject of litigation) brought as a consequence of Agency's installation or maintenance of the Horn System, or otherwise from implementation of the terms of this Agreement.**
- d. The Agency further agrees, at its expense, in the name and on behalf of BNSF, that it will adjust and settle any claims made against BNSF and will appear and defend any suits or actions at law or in equity brought against BNSF on any claim or cause of action arising or growing out of or in any manner connected with any liability assumed by the Agency under this Agreement for which BNSF is alleged to be liable. BNSF will give notice to the Agency in writing of the receipt of pendency

of such claims and thereupon the Agency must proceed to adjust and handle to a conclusion such claims, and in the event of a suit being brought against BNSF, BNSF may forward the summons and complaint or process in connection therewith to the Agency, and the Agency must defend, adjust or settle such suits and protect, indemnify, and save harmless BNSF from and against all damages, judgments, decrees, attorney's fees, costs, and expenses growing out of or resulting from or incident to any such claims or suits.

6. AGENCY CONTRACTOR REQUIREMENTS

- a. While on or about BNSF property, Agency and its contractors must fully comply with BNSF's "Contractor Requirements" set forth in Exhibit C attached to and made a part of this Agreement. The "Contractor Requirements" include clearance requirements and personal protective equipment requirements. Agency and its contractors will be responsible for becoming familiar with BNSF's "Contractor Requirements". No work will be commenced within BNSF's property or right-of-way until each of the prime contractors employed in connection with said work must have (i) executed and delivered to BNSF an agreement in the form of Exhibit C-1, and (ii) delivered to and secured BNSF's approval of the required insurance.
- b. Prior to entering BNSF property, each person providing labor, material, supervision or services connected with the work to be performed on or about BNSF property must complete the safety training program (hereinafter called "BNSF Contractor Safety Orientation") at the following internet website: "www.BNSFContractor.com". Agency must ensure that each of its contractors, employees, subcontractors, agents or invitees completes the BNSF Contractor Safety Orientation before any work is performed under this Agreement. Additionally, Agency must ensure that each and every contractor, employee, subcontractor, agent or invitee possesses a card certifying completion of the BNSF Contractor Safety Orientation prior to entering BNSF property. Agency must renew the BNSF Contractor Safety Orientation annually.
- c. Prior to entering BNSF property, Agency or its contractors must prepare and implement a safety action plan acceptable to BSNF. Agency must audit compliance with the plan during the course of Agency's work. A copy of the plan and audit results must be kept at the work site and will be available for inspection by BNSF at all reasonable times.

7. INSURANCE

Agency must include the following provisions in any contract with its contractor(s) performing work on said Project:

Agency (if self-performing the work without a contractor), Contractor and/or agents must procure and maintain the following insurance coverage:

- a. Commercial General Liability insurance. This insurance shall contain broad form contractual liability with a combined single limit of a minimum of \$2,000,000 each occurrence and an aggregate limit of at least \$4,000,000 but in no event less than the amount otherwise carried by the Contractor. Coverage must be purchased on a post 2004 ISO occurrence form or equivalent and include coverage for, but not limit to the following:

- ◆ Bodily Injury and Property Damage
- ◆ Personal Injury and Advertising Injury
- ◆ Fire legal liability
- ◆ Products and completed operations

This policy shall also contain the following endorsements, which shall be indicated on the certificate of insurance:

- ◆ The definition of insured contract shall be amended to remove any exclusion or other limitation for any work being done within 50 feet of railroad property.
- ◆ Waiver of subrogation in favor of and acceptable to Railway.
- ◆ Additional insured endorsement in favor of and acceptable to Railway.
- ◆ Separation of insureds.
- ◆ The policy shall be primary and non-contributing with respect to any insurance carried by Railway.

It is agreed that the workers' compensation and employers' liability related exclusions in the Commercial General Liability insurance policy(s) required herein are intended to apply to employees of the policy holder and shall not apply to ***Railway*** employees.

No other endorsements limiting coverage as respects obligations under this Agreement may be included on the policy with regard to the work being performed under this agreement.

- b. Business Automobile Insurance. This insurance must contain a combined single limit of at least \$1,000,000 per occurrence, and include coverage for, but not limited to the following:

- ◆ Bodily injury and property damage
- ◆ Any and all vehicles owned, used or hired

The policy shall also contain the following endorsements or language, which shall be indicated on the certificate of insurance:

- ◆ Waiver of subrogation in favor of and acceptable to Railway.
- ◆ Additional insured endorsement in favor of and acceptable to Railway.

- ◆ Separation of insureds.
- c. Workers Compensation and Employers Liability insurance including coverage for, but not limited to:
 - ◆ Statutory liability under the worker's compensation laws of the state(s) in which the work is to be performed. If optional under State law, the insurance must cover all employees anyway.
 - ◆ Employers' Liability (Part B) with limits of at least \$500,000 each accident, \$500,000 by disease policy limit, \$500,000 by disease each employee.

This policy shall also contain the following endorsements or language, which shall be indicated on the certificate of insurance:

- ◆ Waiver of subrogation in favor of and acceptable to Railway.
- d. Railroad Protective Liability insurance naming only the **Railroad** as the Insured with coverage of at least \$2,000,000 per occurrence and \$6,000,000 in the aggregate. The policy must be issued on a standard ISO form CG 00 35 12 04 and include the following:
 - ◆ Endorsed to include the Pollution Exclusion Amendment.
 - ◆ Endorsed to include the Limited Seepage and Pollution Endorsement.
 - ◆ Endorsed to remove any exclusion for punitive damages.
 - ◆ No other endorsements restricting coverage may be added.
 - ◆ The original policy must be provided to the **Railroad** prior to performing any work or services under this Agreement.
 - ◆ Definition of "Physical Damage to Property" shall be endorsed to read: "means direct and accidental loss of or damage to all property owned by any named insured and all property in any named insured' care, custody, and control arising out of the acts or omissions of the contractor named on the Declarations.

In lieu of providing a Railroad Protective Liability Insurance policy, the Agency or its Contractor may participate in the railroad's (BNSF) Blanket Railroad Protective Liability Insurance Policy. Questions regarding procurement of the Railroad Protective Liability Insurance should be directed to Rosa Martinez at Marsh, USA, 214-303-8519 or Rosa.M.Martinez@marsh.com

- e. Other Requirements:

Where allowable by law, all policies (applying to coverage listed above) shall contain no exclusion for punitive damages.

Agency or its Contractor agrees to waive its right of recovery against **Railway** for all claims and suits against **Railway**. In addition, its insurers, through the terms of the policy or policy endorsement, waive their right of subrogation against **Railway** for all claims and suits. Contractor further waives its right of recovery, and its insurers also waive their right of subrogation against **Railway** for loss of its owned

or leased property or property under Agency's or its Contractor's care, custody or control.

Allocated Loss Expense shall be in addition to all policy limits for coverages referenced above.

Agency or its Contractor is not allowed to self-insure without the prior written consent of **Railway**. If granted by **Railway**, any self-insured retention or other financial responsibility for claims shall be covered directly by Agency or its Contractor in lieu of insurance. Any and all **Railway** liabilities that would otherwise, in accordance with the provisions of this Agreement, be covered by Agency's or its Contractor's insurance will be covered as if Agency or its Contractor elected not to include a deductible, self-insured retention or other financial responsibility for claims.

Prior to commencing services, Agency or its Contractor shall furnish to **Railway** an acceptable certificate(s) of insurance from an authorized representative evidencing the required coverage(s), endorsements, and amendments. The certificate should be directed to the following address:

BNSF Railway Company
c/o CertFocus
Toll Free: 877-576-2378
Email: BNSF@certfocus.com

Agency or its Contractor shall notify **Railway** in writing at least 30 days prior to any cancellation, non-renewal, substitution or material alteration.

Any insurance policy shall be written by a reputable insurance company acceptable to **Railway** or with a current Best's Guide Rating of A- and Class VII or better and authorized to do business in the state(s) in which the service is to be provided.

If coverage is purchased on a "claims made" basis, Agency or its Contractor hereby agrees to maintain coverage in force for a minimum of three years after expiration, cancellation or termination of this Agreement. Annually Agency or its Contractor agrees to provide evidence of such coverage as required hereunder.

Agency or its Contractor represents that this Agreement has been thoroughly reviewed by Agency's or its Contractor's insurance agent(s)/broker(s), who have been instructed by Agency or its Contractor to procure the insurance coverage required by this Agreement.

Not more frequently than once every five years, **Railway** may reasonably modify the required insurance coverage to reflect then-current risk management practices in the railroad industry and underwriting practices in the insurance industry.

If any portion of the operation is to be subcontracted by Agency or its Contractor, Agency or its Contractor shall require that the subcontractor shall provide and maintain insurance coverage(s) as set forth herein, naming **Railway** as an additional insured, and shall require that the subcontractor shall release, defend and indemnify **Railway** to the same extent and under the same terms and conditions as Agency or its Contractor is required to release, defend and indemnify **Railway** herein.

Failure to provide evidence as required by this section shall entitle, but not require, **Railway** to terminate this Agreement immediately. Acceptance of a certificate that does not comply with this section shall not operate as a waiver of Agency's or its Contractor's obligations hereunder.

The fact that insurance (including, without limitation, self-insurance) is obtained by Agency or its Contractor shall not be deemed to release or diminish the liability of Agency or its Contractor including, without limitation, liability under the indemnity provisions of this Agreement. Damages recoverable by **Railway** shall not be limited by the amount of the required insurance coverage.

In the event of a claim or lawsuit involving **Railway** arising out of this agreement, Agency or its Contractor will make available any required policy covering such claim or lawsuit.

These insurance provisions are intended to be a separate and distinct obligation on the part of the Agency or its Contractor. Therefore, these provisions shall be enforceable and Agency or its Contractor shall be bound thereby regardless of whether or not indemnity provisions are determined to be enforceable in the jurisdiction in which the work covered hereunder is performed.

For purposes of this section, **Railway** shall mean "Burlington Northern Santa Fe LLC", "BNSF Railway Company" and the subsidiaries, successors, assigns and affiliates of each.

8. SALES AND OTHER TAXES

In the event applicable sales taxes of a state or political subdivision of a state of the United States are levied or assessed in connection with and directly related to any amounts invoiced by Agency or its Contractor to Railway ("Sales Taxes"), Railway shall be responsible for paying only the Sales Taxes that Agency or its Contractor separately states on the invoice or other billing documents provided to Railway; *provided, however*, that (i) nothing herein shall preclude Railway from claiming whatever Sales Tax exemptions are applicable to amounts Agency or its Contractor bills Railway, (ii) Agency or its Contractor shall be responsible for all sales, use, excise, consumption, services and other taxes which may accrue on all services, materials, equipment, supplies or fixtures that Agency or its Contractor and its subcontractors use or consume in the performance of this Agreement, (iii) Agency or its Contractor shall be responsible for Sales Taxes (together with any

penalties, fines or interest thereon) that Agency or its Contractor fails to separately state on the invoice or other billing documents provided to Railway or fails to collect at the time of payment by Railway of invoiced amounts (except where Railway claims a Sales Tax exemption), and (iv) Agency or its Contractor shall be responsible for Sales Taxes (together with any penalties, fines or interest thereon) if Agency or its Contractor fails to issue separate invoices for each state in which Agency or its Contractor delivers goods, provides services or, if applicable, transfers intangible rights to Railway.

Upon request, Agency or its Contractor shall provide Railway satisfactory evidence that all taxes (together with any penalties, fines or interest thereon) that Agency or its Contractor is responsible to pay under this Agreement have been paid. If a written claim is made against Agency or its Contractor for Sales Taxes with respect to which Railway may be liable for under this Agreement, Agency or its Contractor shall promptly notify Railway of such claim and provide Railway copies of all correspondence received from the taxing authority. Railway shall have the right to contest, protest, or claim a refund, in Railway's own name, any Sales Taxes paid by Railway to Agency or its Contractor or for which Railway might otherwise be responsible for under this Agreement; provided, however, that if Railway is not permitted by law to contest any such Sales Tax in its own name, Agency or its Contractor shall, if requested by Railway at Railway's sole cost and expense, contest in Agency's or its Contractor's own name the validity, applicability or amount of such Sales Tax and allow Railway to control and conduct such contest.

Railway retains the right to withhold from payments made under this Agreement amounts required to be withheld under tax laws of any jurisdiction. If Agency or its Contractor is claiming a withholding exemption or a reduction in the withholding rate of any jurisdiction on any payments under this Agreement, before any payments are made (and in each succeeding period or year as required by law), Agency or its Contractor agrees to furnish to Railway a properly completed exemption form prescribed by such jurisdiction. Agency or its Contractor shall be responsible for any taxes, interest or penalties assessed against Railway with respect to withholding taxes that Railway does not withhold from payments to Agency or its Contractor.

9. EXHIBIT "C" CONTRACTOR REQUIREMENTS

The Agency (if self-performing the work without a contractor) or its Contractor must observe and comply with all provisions, obligations, requirements and limitations contained in the Agreement, and the Contractor Requirements set forth on Exhibit C attached to the Agreement and this Agreement, including, but not be limited to, payment of all costs incurred for any damages to Railway roadbed, tracks, and/or appurtenances thereto, resulting from use, occupancy, or presence of its employees, representatives, or agents or subcontractors on or about the construction site. Agency or its Contractor shall execute a Temporary Construction Crossing Agreement or Private Crossing Agreement (<http://www.bnsf.com/communities/faqs/permits-real-estate/>), for any temporary crossing requested to aid in the construction of this Project, if approved by BNSF.

10. TRAIN DELAY

Agency (if self-performing the work without a contractor) or its Contractor is responsible for and hereby indemnifies and holds harmless Railway (including its affiliated railway companies, and its tenants) for, from and against all damages arising from any unscheduled delay to a freight or passenger train which affects Railway's ability to fully utilize its equipment and to meet customer service and contract obligations. Agency or its Contractor will be billed, as further provided below, for the economic losses arising from loss of use of equipment, contractual loss of incentive pay and bonuses and contractual penalties resulting from train delays, whether caused by Agency or its Contractor, or subcontractors, or by the Railway performing work under this Agreement. Railway agrees that it will not perform any act to unnecessarily cause train delay.

For loss of use of equipment, Agency or its Contractor will be billed the current freight train hour rate per train as determined from Railway's records. Any disruption to train traffic may cause delays to multiple trains at the same time for the same period.

Additionally, the parties acknowledge that passenger, U.S. mail trains and certain other grain, intermodal, coal and freight trains operate under incentive/penalty contracts between Railway and its customer(s). Under these arrangements, if Railway does not meet its contract service commitments, Railway may suffer loss of performance or incentive pay and/or be subject to penalty payments. Agency or its Contractor is responsible for any train performance and incentive penalties or other contractual economic losses actually incurred by Railway which are attributable to a train delay caused by Agency or its Contractor or its subcontractors.

The contractual relationship between Railway and its customers is proprietary and confidential. In the event of a train delay covered by this Agreement, Railway will share information relevant to any train delay to the extent consistent with Railway confidentiality obligations. Damages for train delay are currently \$382.20 per hour per incident. The rate then in effect at the time of performance by the Agency or its Contractor hereunder will be used to calculate the actual costs of train delay pursuant to this agreement.

Agency or its Contractor and its subcontractors must give Railway's representative (Roadmaster Kory Kirk at mobile # 806-341-8905 and email: Kory.Kirk@bnsf.com) four (4) weeks advance notice of the times and dates for proposed work windows. Railway and Agency or its Contractor will establish mutually agreeable work windows for the project. Railway has the right at any time to revise or change the work windows due to train operations or service obligations. Railway will not be responsible for any additional costs or expenses resulting from a change in work windows. Additional costs or expenses resulting from a change in work windows shall be accounted for in Agency's or its Contractor's expenses for the project.

Agency or its Contractor and subcontractors must plan, schedule, coordinate and conduct all Agency's or its Contractor's work so as to not cause any delays to any trains.

11. Any notice provided for herein or concerning this Agreement must be in writing and will be deemed sufficiently given when sent by certified mail, return receipt requested, to the parties at the following addresses:

BNSF: Manager Public Projects
4200 Deen Road
Fort Worth, Texas 76106-3099

Agency: City of Lubbock Mayor
1314 Avenue K
Lubbock, TX 79457

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

AGENCY
CITY OF LUBBOCK, TEXAS

By: _____

Printed Name: _____

Title: _____

[REMAINDER OF THIS PAGE LEFT INTENTIONALLY BLANK]

(AGENCY Signature Page for Avenue P Agreement)

BNSF RAILWAY COMPANY

By: _____

Printed Name: Cheryl Townlian

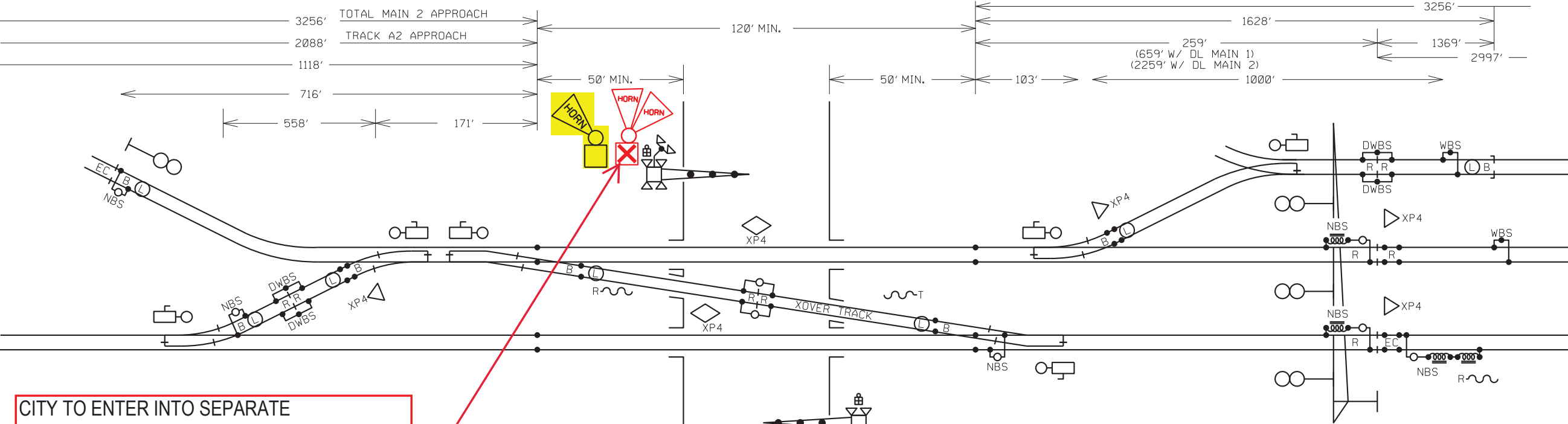
Title: Assistant Director Public Projects

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(BNSF Signature Page for Avenue P Agreement)

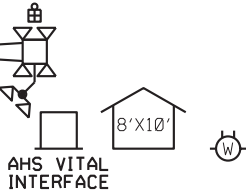
EXHIBIT "A"
Railroad SIGNAL Sketch
PAGE 1 OF 1












BNSF RAILWAY COMPANY



CITY TO ENTER INTO SEPARATE
INSTALLATION & REIMBURSEMENT
AGREEMENT WITH RIO TECH TO REMOVE
EXISTING AND INSTALL THE NEW WAYSIDE
HORN SYSTEM / DEVICES

M.P. 673.53
AVENUE "P"
DOT # 014 932 M
PROJECT# 94881



DRAWING SYMBOLS			
 RAILROAD BUNGALOW	 BIDIRECTIONAL CROSSING CONTROL	 GATE MECHANISM	 NARROW BAND SHUNT
 BELL	 CROSSING CONTROL CONNECTION	 AC POWER METER	 UNIDIRECTIONAL CROSSING CONTROL
 HARD WIRED SHUNT	 CANTILEVER	 INSULATED JOINTS	

SCOPE OF WORK
REUSE: FLASHERS, GATES & BUNGALOW
CONTROL DEVICES: CONSTANT WARNING
SALVAGE: NONE

GENERAL INFORMATION	
LOCATION	LUBBOCK, TX
STREET	AVENUE P
LINE SEGMENT	7106
MILEPOST	673.53
DOT#	014 932 M
DIVISION	RED RIVER
SUBDIVISION	SLATON
OFFICE	LENEXA, KS
SCALE	NOT TO SCALE
DATE	04/22/2024
FILE	94881-STATESKETCH-.DGN
DRAW	AMW

RED = IN YELLOW = OUT

EXHIBIT "B"
 Railroad SIGNAL Estimate for
 AVENUE P - DOT No. 014932M
 Revised on 4/23/2024

BNSF RAILWAY COMPANY
 FHPM ESTIMATE FOR
 CITY OF LUBBOCK

LOCATION WEST MARNELS TO LUBBOCK

DETAILS OF ESTIMATE

PLAN ITEM : 000364173

VERSION : 1

PURPOSE, JUSTIFICATION AND DESCRIPTION

RE-WIRE CROSSING HOUSE FOR INTERCONNECTION TO NEW WAYSIDE HORN SYSTEM (BY RIO TECH), RE-USING EXISTING
 CONSTANT WARNING / FLASHERS / GATES AT AVENUE P - DOT 014932M IN LUBBOCK, TX ON RED RIVER DIV; SLATON SUBDIV; LS
 7106; MP 673.53; SEQ# 94881.

MONTHLY POWER UTILITY COST CENTER : 61698.

THE MATERIAL LIST BELOW REFLECTS TYPICAL REPRESENTATIVE PACKAGES USED FOR ESTIMATING PURPOSES ONLY.

THIS ESTIMATE IS GOOD FOR 180 DAYS. THE ESTIMATE IS SUBJECT TO CHANGE IN COST FOR LABOR, MATERIAL, AND OVERHEAD.

CONTRACTS HAVE BEEN ESTABLISHED FOR PORTIONS OF SIGNAL WORK ON THE BNSF RAILROAD.

***** SIGNAL WORK ONLY *****

THE CITY OF LUBBOCK, TEXAS IS FUNDING 100% OF THIS PROJECT.

MAINTAIN PROPRIETARY CONFIDENTIALITY.

PRIMARY FUNDING SOURCE IS FHWA

** BUY AMERICA(N) APPLIES **

DESCRIPTION	QUANTITY	U/M	COST	TOTAL \$

LABOR				

SIGNAL FIELD - REPLACE	224.0	MH	11,138	
PAYROLL ASSOCIATED COSTS			7,279	
DA OVERHEADS			16,450	
EQUIPMENT EXPENSES			3,956	
INSURANCE EXPENSES			2,207	
TOTAL LABOR COST			41,030	41,030

MATERIAL				

MICS WIRING MATERIAL	1.0	LS N	2,000	
USE TAX			168	
OFFLINE TRANSPORTATION			25	
TOTAL MATERIAL COST			2,193	2,193

OTHER				

CONTRACT ENGINEERING	1.0	LS N	8,000	
TOTAL OTHER ITEMS COST			8,000	8,000
PROJECT SUBTOTAL				51,223
CONTINGENCIES				4,507
BILL PREPARATION FEE				558
GROSS PROJECT COST				56,288
LESS COST PAID BY BNSF				0
TOTAL BILLABLE COST				56,288

Information

Agenda Item

Resolution - Public Works Traffic Management: Consider a resolution authorizing the Mayor to execute an Agreement with Rio Grande Pacific Technology, Inc., for Professional Services to design and install a Wayside Horn System at the 2nd Street and Avenue P (DOT No. 014932M) at-grade crossing located at Mile Post 673.535.

Item Summary

This contract with Rio Grand Pacific Technology, Inc. (RioTech) includes the design, project management, installation, and testing of the new Wayside Horn System at the 2nd Street and Avenue P (DOT No. 014932M) at-grade crossing located at Mile Post 673.535. A separate agreement between the City and BNSF must be in place for the company to re-wire the crossing house to complete the Wayside Horn System.

The Wayside Horn System will sound along Avenue P, eliminating the need for trains to utilize their engine-mounted horns at this crossing.

Fiscal Impact

This agreement for \$122,485 is funded in Capital Improvement Project 92742, Traffic Signal Upgrades FY 2021-22 through FY 2025-26.

Staff/Board Recommending

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

Attachments

Resolution
Contract

RESOLUTION

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

THAT the Mayor of the City of Lubbock is hereby authorized and directed to execute for and on behalf of the City of Lubbock, an Professional Services Agreement, by and between the City of Lubbock and Rio Grande Pacific Technology, Inc. to remove existing automated horn systems, and install new Wayside Horn System Devices at Avenue P, 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 _____.

MARK W. MCBRAYER, MAYOR

ATTEST:

Courtney Paz, City Secretary

APPROVED AS TO CONTENT:



Erik Rejino, Assistant City Manager

APPROVED AS TO FORM:



Mitchell Satterwhite, First Assistant City Attorney

AGREEMENT FOR PROFESSIONAL SERVICES

This Agreement made this 3rd day of December, 2024, by and between the City of Lubbock, hereinafter called the **CLIENT**, and Rio Grande Pacific Technology, Inc., hereinafter called the **CONTRACTOR**, collectively referred to as the Parties.

The services to be performed hereunder are incidental to the following PROJECT:

**City of Lubbock
Lubbock, TX
Avenue P. and BNSF Wayside Horn System**

WITNESSETH: That for and in consideration of the mutual covenants and agreements hereinafter contained, the Parties hereto have mutually agreed and do agree as follows:

ARTICLE I. SERVICES BY THE **CONTRACTOR**

- 1.1 The **CONTRACTOR** agrees to perform all services, hereunder, using reasonable skill and judgment in accordance with applicable professional standards. **CONTRACTOR** agrees to keep the **CLIENT** informed on its progress through periodic reports, and to maintain accurate records relating to its services in connection with this project.
- 1.2 The **CONTRACTOR** agrees to provide, directly or by association with such other **CONTRACTORS** or Contractors as it may deem necessary to further the interest of the **CLIENT**, the basic services as described in **Exhibit A – Scope of Work**, attached hereto.

ARTICLE 2. RESPONSIBILITIES OF THE **CLIENT**

- 2.1 The **CLIENT** shall provide and make available to the **CONTRACTOR**, for his use, all maps, property descriptions, surveys, previous reports, historical data, and other information within its knowledge and possession relative to the services to be furnished hereunder. Data so furnished to the **CONTRACTOR** shall remain the property of the **CLIENT** and will be returned upon completion of its services.
- 2.2 The **CLIENT** shall designate a representative who shall be fully acquainted with the Project and who shall have authority to render decisions relative to the **CONTRACTOR'S** services as necessary for the orderly progress of the work. The representative shall be responsible for receiving and processing all information and documentation relative to the project on behalf of the **CLIENT**.
- 2.3 The **CLIENT** shall establish and maintain procedures for receiving, reviewing, recording, and acting on all information, documentation, payments, and acceptances of work and services relative to this project in an expeditious manner.
- 2.4 The **CLIENT** shall make provisions for the **CONTRACTOR** to enter upon public and private properties as required for the **CONTRACTOR** to perform its services hereunder.

ARTICLE 3. TIME OF PERFORMANCE

The services to be provided under this Agreement shall, unless otherwise provided, be commenced upon execution of this Agreement

ARTICLE 4. COMPENSATION FOR SERVICES

The **CLIENT** agrees to compensate the **CONTRACTOR** in accordance with the following schedule, and the Terms and Conditions of this Agreement:

- 4.1 **CLIENT** shall pay **CONTRACTOR** the sum of One Hundred Twenty-Two Thousand Four Hundred Eighty-Five Dollars (\$122,485.00) for **CONTRACTOR**'s performance of the Services pursuant to this Agreement, subject to adjustment as expressly provided in, and pursuant to, this Agreement. Work shall be paid based on lump sum basis.
- 4.2 A deposit of \$12,248.50 (10%) is payable by the **CLIENT** upon execution of this Agreement. For the remainder amount, the **CONTRACTOR** will invoice the **CLIENT** when the Services are complete
- 4.2 Invoices submitted by the **CONTRACTOR** to the **CLIENT** are due within 60 days of receipt.
- 4.3 The compensation as stated in this Agreement does not include sales tax, or other applicable duties as may be required by law. Any sales tax and duties required by law will be charged to the **CLIENT** in addition to the compensation.

ARTICLE 5. DELAYS

If the **CONTRACTOR** is delayed at any time in the progress of work by any act or neglect of the **CLIENT** or its agents, employees or contractors, or by changes in the work, or by extended reviews by the **CLIENT**, fire, unavoidable casualties, or by any causes beyond the **CONTRACTOR**'s control, the time schedule shall be extended for a reasonable length of time, and **CONTRACTOR**'s compensation may be subject to renegotiation for increased expenses due to escalation of prices, extended services, relocation of other expenses incidental to such delays.

ARTICLE 6. OWNERSHIP OF DOCUMENTS

All drawings, specifications, reports, records, and other work products developed by the **CONTRACTOR** in connection with this project are instruments of service for this project only and shall remain the property of the **CONTRACTOR** whether the project is completed or not. The **CONTRACTOR** shall furnish originals or copies of such work product to the **CLIENT** in accordance with the services required hereunder. Reuse of any of the work product of the **CONTRACTOR** by the **CLIENT** on an extension of this project or on any other project without the written permission of the **CONTRACTOR** shall be at the **CLIENT**'s risk and the **CLIENT** agrees to defend, indemnify and hold harmless the **CONTRACTOR** from all claims, damages, and expenses including attorneys' fees arising out of such unauthorized reuse by the **CLIENT** or by others acting through the **CLIENT**. Any reuse or adaptation of the **CONTRACTOR**'s work product shall entitle the **CONTRACTOR** to equitable compensation.

ARTICLE 7. INSURANCE

During the course of the services, the **CONTRACTOR** shall maintain the following Insurance:

- a. Commercial General Liability insurance. This insurance shall contain broad form contractual liability with a combined single limit of a minimum of \$2,000,000 each occurrence and an aggregate limit of at least \$4,000,000 but in no event less than the amount otherwise carried by the Contractor. Coverage must be purchased on a post 2004 ISO occurrence form or equivalent and include coverage for, but not limit to the following:
- Bodily Injury and Property Damage
 - Personal Injury and Advertising Injury
 - Fire legal liability
 - Products and completed operations
 -

This policy shall also contain the following endorsements, which shall be indicated on the certificate of insurance:

- The definition of insured contract shall be amended to remove any exclusion or other limitation for any work being done within 50 feet of railroad property.
- Waiver of subrogation in favor of and acceptable to Railway.
- Additional insured endorsement in favor of and acceptable to Railway.
- Separation of insureds.
- The policy shall be primary and non-contributing with respect to any insurance carried by Railway.

It is agreed that the workers' compensation and employers' liability related exclusions in the Commercial General Liability insurance policy(s) required herein are intended to apply to employees of the policy holder and shall not apply to *Railway* employees.

No other endorsements limiting coverage as respects obligations under this Agreement may be included on the policy with regard to the work being performed under this agreement.

- b. Business Automobile Insurance. This insurance must contain a combined single limit of at least \$1,000,000 per occurrence, and include coverage for, but not limited to the following:
- Bodily injury and property damage
 - Any and all vehicles owned, used or hired

The policy shall also contain the following endorsements or language, which shall be indicated on the certificate of insurance:

- Waiver of subrogation in favor of and acceptable to Railway.
- Additional insured endorsement in favor of and acceptable to Railway.
- Separation of insureds.

- c. Workers Compensation and Employers Liability insurance including coverage for, but not limited to:
- Statutory liability under the worker's compensation laws of the state(s) in which the work is to be performed. If optional under State law, the insurance must

-
- cover all employees anyway.
 - Employers' Liability (Part B) with limits of at least \$500,000 each accident, \$500,000 by disease policy limit, \$500,000 by disease each employee.

This policy shall also contain the following endorsements or language, which shall be indicated on the certificate of insurance:

- Waiver of subrogation in favor of and acceptable to Railway.

ARTICLE 8. TERMINATION

Either the **CLIENT** or the **CONTRACTOR** may terminate this Agreement at any time with or without cause upon giving the other party fourteen (14) calendar days prior written notice. The **CLIENT** shall within sixty (60) calendar days of termination pay the **CONTRACTOR** for all services rendered and all costs incurred up to the date of termination, in accordance with the compensation provisions of this contract.

ARTICLE 9. DISPUTES

In an effort to resolve any conflicts that arise during the design or construction of the project or following the completion of the project, the **CLIENT** and the **CONTRACTOR** agree that all disputes between them arising out of or relating to this Agreement shall be submitted to non-binding mediation unless the parties mutually agree otherwise.

ARTICLE 10. DESIGN WITHOUT CONSTRUCTION PHASE ENGINEERING SERVICES

If the basic services under this Agreement include design services, but do not include any construction phase engineering services by the **CONTRACTOR**, such as construction administration, construction observation, or review of the Contractor's work for general conformance with the Contract Documents, such services shall be provided by the **CLIENT** or others. The **CLIENT** assumes all responsibility for the **CLIENT's** interpretation of the Construction Documents, for construction administration, observation and supervision, and waives any and all claims and liability against the **CONTRACTOR** that may be in any way connected thereto.

ARTICLE 11. JOBSITE SAFETY

Neither the professional activities of the **CONTRACTOR** nor the presence of the **CONTRACTOR** or his employees and subcontractors at a construction site, shall relieve the General Contractor(s) or its subcontractor(s), and any other entity of their obligations, duties and responsibilities including, but not limited to, construction means, methods, sequence, techniques or procedures necessary for performing, superintending or coordinating all portions of the work of construction in accordance with the Contract Documents and any health or safety precaution required by any regulatory agencies. The **CONTRACTOR** and his personnel have no authority to exercise any control over any construction contractor or other entity or their employees in connection with their work or any health or safety precautions. Except for employees of the **CONTRACTOR**, the **CLIENT** agrees that the General Contractor(s) or its subcontractor(s) are responsible for jobsite safety, and shall include this intent in the **CLIENT's** agreement with the General Contractor(s) and/or subcontractor(s).

ARTICLE 12. GOVERNING LAW

Unless otherwise agreed in writing, this Agreement and the interpretation thereof shall be governed by the law of the State of Texas.

ARTICLE 13. SUCCESSORS AND ASSIGNS

The **CLIENT** and the **CONTRACTOR** each binds itself and its partners, successors, executors, administrators and assigns to the other party of this Agreement and to the partners, successors, executors, administrators and assigns of such other party with respect to all covenants of this Agreement. Neither party shall assign or transfer its interest in this Agreement without the written consent of the other.

ARTICLE 14. EXTENT OF AGREEMENT

This Agreement represents the entire and integrated agreement between the parties and supersedes all prior negotiations and representations. Nothing herein shall be deemed to create any contractual relationship between the **CONTRACTOR** and any other **CONTRACTOR** or contractor or material supplier on the project, nor obligate it to furnish any notices required under other such contracts, nor shall anything herein be deemed to give anyone not a party to this Agreement any right of action against a party which does not otherwise exist without regard to this Agreement.

ARTICLE 15. NOTICES

All notices and instructions given by either party to the other shall be in writing, and shall be deemed to be properly served if delivered to the address of record shown below, or if deposited in the United States Mail properly stamped with the required postage and addressed to such party at the address shown below. The date of service of a notice sent by mail shall be deemed to be the day following the date on which said notice is so deposited. Either party hereto shall have the right to change its address by giving the other party written notice thereof.

ARTICLE 16. ACCURACY OF SERVICES AND LIMITATION OF LIABILITY

- 16.1 The **CONTRACTOR** shall use reasonable professional skill and judgment in connection with services, hereunder, but does not warrant that such services are without errors and/or omissions. If, during the authorized use and prudent interpretation of documents or advice furnished by the **CONTRACTOR**, an error or omission is discovered within a reasonable time, the **CONTRACTOR** shall be responsible for correction of any work which must be removed or altered to meet the project requirements, provided the **CONTRACTOR** is given a reasonable opportunity to make remedial recommendations and to correct or arrange for the correction of the work itself. The **CONTRACTOR** will not be liable for the cost of procurement of work or services performed in correcting such errors and/or omissions where such work or services result in a value to the Project over and above that which the original work or services provided.
- 16.2 The **CONTRACTOR** agrees, to the fullest extent permitted by law, to indemnify and hold the **CLIENT** harmless from any damage, liability or cost (including reasonable attorneys' fees and costs of defense) to the extent caused by the **CONTRACTOR'S** negligent acts, errors or omissions in the performance of professional services under this Agreement and those of his or her subcontractors or anyone for whom the **CONTRACTOR** is legally liable.
- The **CLIENT** agrees, to the fullest extent permitted by law, to indemnify and hold the **CONTRACTOR** harmless from any damage, liability or cost (including reasonable attorneys' fees and costs of defense) to the extent caused by the **CLIENT'S** negligent acts, errors or omissions and those of his or her contractors, subcontractors or **CONTRACTORS** or anyone for whom the **CLIENT** is legally liable and arising from the project that is the subject of this Agreement.
- 16.3 To the fullest extent permitted by law, and notwithstanding any other provision of this Agreement, the total liability, in the aggregate, of the **CONTRACTOR** and the **CONTRACTOR'S** officers, directors, partners, employees, agents and subcontractors, and any of them, to the **CLIENT** and anyone claiming by, through or under the **CLIENT**, for any and all claims, losses, costs or damages of any nature whatsoever arising out of, resulting from or in any way related to the Project or the Agreement from any cause or causes, including but not limited to the negligence, professional errors or omissions, strict liability, breach of contract or warranty, express or implied, of the **CONTRACTOR** or the **CONTRACTOR'S** officers, directors, employees, agents or subcontractors, or any of them, shall not exceed the total compensation received by the Design Professional under this Agreement,.

ARTICLE 17. SPECIAL PROVISIONS

ACKNOWLEDGMENT OF COMPLETE AGREEMENT: This Agreement includes pages consecutively numbered 1 through, and the attachments thereto, identified as:

Exhibit A – Scope of Work

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first written above:

CLIENT:

City of Lubbock, TX

Sign _____

By _____

Title _____

Address: 1314 Avenue K

Lubbock, TX 79457

CONTRACTOR:

Rio Grande Pacific Technology, Inc.

Sign 

By Danny Fregia

Title VP of Systems Operations

Address: 6100 Southwest Blvd., Suite 410

Fort Worth, TX 76109

Information

Agenda Item

Resolution - Public Health Services: Consider a resolution authorizing the Mayor to execute a Memorandum of Understanding, by and between the City of Lubbock and the Plainview Serenity Center, Inc., regarding coordination of referrals with the City of Lubbock Health Department, and providing substance abuse services and co-occurring mental health services.

Item Summary

The Memorandum of Understanding establishes the roles and responsibilities for providing substance abuse services for clients referred to the Plainview Serenity Center, Inc.

Fiscal Impact

None

Staff/Board Recommending

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

Attachments

Resolution
Memorandum of Understanding

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 Memorandum of Understanding ("MOU") with Plainview Serenity Center, Inc., regarding coordination of referrals with the City of Lubbock Health Department and providing substance abuse services and co-occurring mental health services. Said MOU is attached hereto and incorporated in this Resolution as if fully set forth herein and shall be included in the minutes of the Council.

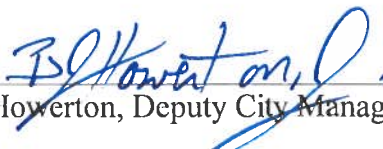
Passed by the City Council on _____.

MARK W. MCBRAYER, MAYOR

ATTEST:

Courtney Paz, City Secretary

APPROVED AS TO CONTENT:



Bill Howerton, Deputy City Manager

APPROVED AS TO FORM:



Rachael Foster, Assistant City Attorney

MEMORANDUM OF UNDERSTANDING

Plainview Serenity Center, Inc. is committed to providing Substance Abuse Services and Co-Occurring Mental Health services that includes screenings, assessments, case management, individual counseling, waitlist management, cognitive education groups, prevention education, and referrals for adults within the surrounding counties of the Texas Panhandle.

Plainview Serenity Center, Inc. also recognizes the importance of integrated treatment and recovery-oriented system of care to equip participants with the necessary tools that promote independence while enhancing their self-esteem and self-confidence while living a life of dual recovery.

These services will be provided for a grant period of September 1, 2024, through August 31, 2025, with an updated MOU submitted for signature for each funding year.

To accomplish this goal, we are pleased to coordinate with the City of Lubbock Health Department.

City of Lubbock Health Department will accept referrals:

1. Vaccinations.
2. Affordable Health Care.
3. Women's Health Care
4. Children and Family health services and issues
5. Environmental Health Inspections
6. City of Lubbock substance use disorder network
7. Financial assistance with such services as; residential and outpatient treatment for qualified individuals; detox qualifying individuals; transportation for appointments; prescription medication; vision hearing; clothing; personal hygiene; sober living; employment and education needs; street outreach; and prevention resources programs.

Plainview Serenity Center will provide the following services to individual meeting eligibility criteria:

1. Intensive Residential Treatment and Supportive Residential Treatment
2. Specialized Intensive and Supportive Residential
3. Women & Children Services- Intensive and Supportive Residential
4. Outpatient Substance Abuse Treatment

PLAINVIEW SERENITY CENTER, INC.

Paul Walker
Chief Executive Officer

5. COPSD

6. Comprehensive Continuum of Care (CCC) for Females

Term of Agreement:

This agreement is to begin September 1, 2024, and shall terminate August 31, 2025

The undersigned agencies do hereby certify that, the services specified above are necessary and essential for activities that are properly within the statutory functions and programs of the effected agencies and the proposed arrangements serve the interest of efficient administration.

Plainview Serenity Center:

City of Lubbock Health Dept. Designee:

Dr. Paul Walker CEO 10/17/24

Paul Walker

Date

Chief Executive Officer

Signature

Date

Juan Carlos Rodriguez

10/17/24

Date

Capacity Management Specialist

City of Lubbock

Attest:

By:

Mark McBrayer, Mayor

Attest:

By:

Courtney Paz, City Secretary

Approved as to Content:

By:

Katherine Wells
Katherine Wells, Director of Public Health

Approved as to Form:

By:

Rachael Foster
Rachael Foster, Assistant City Attorney

Plainview Serenity Center, Inc.

450 N. I-27

Plainview, Texas 79082

P: 806-293-9722

F: 806-293-1822

Information

Agenda Item

Resolution - Human Resources: Consider a resolution authorizing the Mayor to execute Contract 18167, with Concentra Medical Centers, for employment physical examinations and drug/alcohol screening.

Item Summary

The City requires that individuals whose positions involve strenuous physical exertion as part of their duties, pass a physical exam in order to be hired or promoted. Federal and state laws also mandate that certain employees undergo physical exams due to the nature of their job duties. All Civil Service employees must also pass a physical exam before they are hired and then again annually or before being promoted. Approximately 350-450 non-Civil Service employees and 100 Civil Service employees are required to get physicals annually.

The Americans with Disabilities Act Amended Act (ADAAA) substantially impacts the hiring and retention of persons with disabilities, therefore, the City must address the procedures used to determine an applicant's physical capabilities to perform specific job functions. Since ADAAA requires that the employer make reasonable accommodations for applicants or current employees who become disabled, the City relies on the expert opinion of its physician(s) for help in determining avenues for accommodating applicants/employees.

As a public employer, the City is entrusted with the health and safety of its employees and citizens. In keeping with this obligation, the City has instituted drug/alcohol screening of individuals who seek employment, employees who seek promotions to positions, employees who must comply with the Omnibus Transportation Employee Testing Act, and employees whose behavior on the job reflects a reasonable suspicion that drug or alcohol usage is a problem. In addition, it is anticipated that the City will be conducting random drug/alcohol screening on identified safety-sensitive positions. Due to the above-mentioned issues, the City requires drug/alcohol testing for approximately 1,000 applicants/employees each year.

In response to Request for Proposal (RFP) 24-18167-KM for employment physical examinations and drug/alcohol screening, proposals were received by three vendors.

The proposals were ranked with the following criteria.

- Responsiveness and Understanding of RFP - 30 points
- Efficiency and Timeliness - 20 points
- Expertise in Legal Testimony - 15 points
- References and Past Performance - 20 points
- Cost Efficiency - 15 points

The following proposals were received, and are ranked as follows, with a maximum of 100 points.

Contractor	Points
Occupational Health Centers of the Southwest, P.A. dba Concentra Medical Centers, Lubbock, Texas	82.71
HCAA Medical Group, PA dba OccMed Associates, LP, Lubbock, Texas	72.29
Statcare Urgent & Walk In Medical Care PLLC dba Nao Medical, Mineola, New York	46.07

Staff recommends contract award to the highest ranked firm, Concentra Medical Centers of Lubbock, Texas, to provide all employment physical examinations and drug/alcohol screenings, with the exception of the Annual Fire Physical and Special Teams Fire Physical, to include expert services.

Fiscal Impact

Costs are budgeted and paid from individual cost centers based on their individualized needs. The schedule of costs from Concentra Medical Centers is provided in Exhibit B.

Staff/Board Recommending

Bill Howerton, Deputy City Manager
Elizabeth Lara, Director of Human Resources

Attachments

Resolution BCBSTX Contract Addendum
Contract 18167 Concentra
Exhibit A Concentra General Req
Exhibit B BAFO Concentra
Exhibit C Insurance Requirements Concentra

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. 18167 for Pre-Employment Drug/Alcohol Screening & Physical Exams, by and between the City of Lubbock and Occupational Health Centers of the Southwest, P.A. dba Concentra Medical Centers, 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 _____.

MARK W. MCBRAYER, MAYOR

ATTEST:

Courtney Paz, City Secretary

APPROVED AS TO CONTENT:



Bill Howerton, Deputy City Manager

APPROVED AS TO FORM:



Mitchell Satterwhite, First Assistant City Attorney

ccdocs II/RES.Contract-Concentra Medical Centers
November 19, 2024

City of Lubbock
Pre-Employment Drug/Alcohol Screening & Physical Exams
Agreement

This Service Agreement (this “Agreement”) is entered into as of the ___ day of _____, **2024** (“Effective Date”) by and between Occupational Health Centers of the Southwest, P.A. dba Concentra Medical Centers (the Contractor), and the City of Lubbock (the “City”).

RECITALS

WHEREAS, the City has issued a Request for Proposals 24-18167-KM, Pre-Employment Drug/Alcohol Screening & Physical Exams and

WHEREAS, the proposal submitted by the Contractor has been selected as the proposal which best meets the needs of the City for this service; and

WHEREAS, Contractor desires to perform as an independent contractor to provide Pre-Employment Drug/Alcohol Screening & Physical Exams, upon terms and conditions maintained in this Agreement; and

NOW THEREFORE, for and in consideration of the mutual promises contained herein, the City and Contractor agree as follows:

City and Contractor acknowledge the Agreement consists of the following exhibits which are attached hereto and incorporated herein by reference, listed in their order of priority in the event of inconsistent or contradictory provisions:

1. This Agreement
2. Exhibit A – General Requirements
3. Exhibit B – Best and Final Offer
4. Exhibit C – Insurance Requirements

Scope of Work

Contractor shall provide the services that are specified in Exhibit A. The Contractor shall comply with all the applicable requirements set forth in Exhibit B and Exhibit C attached hereto.

Article 1

- 1.1 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.
- 1.2 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.
- 1.3 The Contractor must maintain the insurance coverage required during the term of this contract including any extensions. It is the responsibility of the Contractor to ensure that valid insurance is on file with the Purchasing and Contract Management Department as required by contract or contract may be terminated for non-compliance.

1.4 Prices quoted shall be guaranteed for a period for six (6) months upon City approval. At the beginning of year (3) of this Agreement, and each twelve (12) month period of this Agreement thereafter, the fees for the prior twelve (12) month period shall be automatically increased by three percent (3%).

1.5 This contract shall remain in effect until the first of the following occurs: (1) the expiration date, (2) performance of services ordered, or (3) termination of by either party with a 30 day written notice. The City of Lubbock reserves the right to award the canceled contract to the next lowest and best bidder as it deems to be in the best interest of the city.

Article 2 Miscellaneous.

2.1 This Agreement is made in the State of Texas and shall for all purposes be construed in accordance with the laws of said State, without reference to choice of law provisions.

2.2 This Agreement is performable in, and venue of any action related or pertaining to this Agreement shall lie in, Lubbock, Texas.

2.3 This Agreement and its Exhibits contains the entire agreement between the City and Contractor and supersedes any and all previous agreements, written or oral, between the parties relating to the subject matter hereof. No amendment or modification of the terms of this Agreement shall be binding upon the parties unless reduced to writing and signed by both parties.

2.4 This Agreement may be executed in counterparts, each of which shall be deemed an original.

2.5 In the event any provision of this Agreement is held illegal or invalid, the remaining provisions of this Agreement shall not be affected thereby.

2.6 The waiver of a breach of any provision of this Agreement by any parties or the failure of any parties otherwise to insist upon strict performance of any provision hereof shall not constitute a waiver of any subsequent breach or of any subsequent failure to perform.

2.7 This Agreement shall be binding upon and inure to the benefit of the parties and their respective heirs, representatives and successors and may be assigned by Contractor or the City to any successor only on the written approval of the other party.

2.8 All claims, disputes, and other matters in question between the Parties arising out of or relating to this Agreement or the breach thereof, shall be formally discussed and negotiated between the Parties for resolution. In the event that the Parties are unable to resolve the claims, disputes, or other matters in question within 30 days of written notification from the aggrieved Party to the other Party, the aggrieved Party shall be free to pursue all remedies available at law or in equity.

2.9 At any time during the term of the contract, or thereafter, the City, or a duly authorized audit representative of the City or the State of Texas, at its expense and at reasonable times, reserves the right to audit Contractor's records and books relevant to all services provided to the City under this Contract. In the event such an audit by the City reveals any errors or overpayments by the City, Contractor shall refund the City the full amount of such overpayments within 30 days of such audit findings, or the City, at its option, reserves the right to deduct such amounts owing the City from any payments due Contractor.

- 2.10 The City reserves the right to exercise any right or remedy to it by law, contract, equity, or otherwise, including without limitation, the right to seek any and all forms of relief in a court of competent jurisdiction. Further, the City shall not be subject to any arbitration process prior to exercising its unrestricted right to seek judicial remedy. The remedies set forth herein are cumulative and not exclusive, and may be exercised concurrently. To the extent of any conflict between this provision and another provision in, or related to, this document, this provision shall control.
- 2.11 The contractor shall not assign or sublet the contract, or any portion of the contract, without written consent from the Director of Purchasing and Contract Management. Should consent be given, the Contractor shall insure the Subcontractor or shall provide proof of insurance from the Subcontractor that complies with all contract insurance requirements document, this provision shall control.
- 2.12 Contractor acknowledges by supplying any Goods or Services that the Contractor has read, fully understands, and will be in full compliance with all terms and conditions and the descriptive material contained herein and any additional associated documents and Amendments. The City disclaims any terms and conditions provided by the Contractor unless agreed upon in writing by the parties. In the event of conflict between these terms and conditions and any terms and conditions provided by the Contractor, the terms and conditions provided herein shall prevail. The terms and conditions provided herein are the final terms agreed upon by the parties, and any prior conflicting terms shall be of no force or effect.
- 2.13 Contracts with Companies Engaged in Business with Iran, Sudan, or Foreign Terrorist Organization Prohibited. Pursuant to Section 2252.152 of the Texas Government Code, prohibits the City from entering into a contract with a vendor that is identified by The Comptroller as a company known to have contracts with or provide supplies or service with Iran, Sudan or a foreign terrorist organization.
- 2.14 Texas Public Information Act. The requirements of Subchapter J, Chapter 552, Government Code, may apply to this contract and the contractor or vendor agrees that the contract can be terminated if the contractor or vendor knowingly or intentionally fails to comply with a requirement of that subchapter. To the extent Subchapter J, Chapter 552, Government Code applies to this agreement, Contractor agrees to: (1) preserve all contracting information related to the contract as provided by the records retention requirements applicable to the governmental body for the duration of the contract; (2) promptly provide to the governmental body any contracting information related to the contract that is in the custody or possession of the entity on request of the governmental body; and (3) on completion of the contract, either: (A) provide at no cost to the governmental body all contracting information related to the contract that is in the custody or possession of the entity; or (B) preserve the contracting information related to the contract as provided by the records retention requirements applicable to the governmental body.
- 2.15 No Boycott of Israel. Pursuant to Section 2271.002 of the Texas Government Code, a) This section applies only to a contract that: (1) is between a governmental entity and a company with 10 or more full-time employees; and (2) has a value of \$100,000 or more that is to be paid wholly or partly from public funds of the governmental entity. (b) A governmental entity may not enter into a contract with a company for goods or services unless the contract contains a written verification from the company that it: (1) does not boycott Israel; and (2) will not boycott Israel during the term of the contract.

- 2.16 Texas Government Code 2274. By entering into this Agreement, Contractor verifies that: (1) it does not, and will not for the duration of the contract, have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association or (2) the verification required by Section 2274.002 of the Texas Government Code does not apply to the contract. If Contractor is a company with 10 or more full-time employees and if this Agreement has a value of at least \$100,000 or more, Contractor verifies that, pursuant to Texas Government Code Chapter 2274, it does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and will not discriminate during the term of the contract against a firearm entity or firearm trade association.
- 2.17 Contractor represents and warrants that: (1) it does not, and will not for the duration of the contract, boycott energy companies or (2) the verification required by Section 2274.002 of the Texas Government Code does not apply to the contract. If Contractor is a company with 10 or more full-time employees and if this Agreement has a value of at least \$100,000 or more, Contractor verifies that, pursuant to Texas Government Code Chapter 2274, it does not boycott energy companies; and will not boycott energy companies during the term of the Agreement. This verification is not required for an agreement where a governmental entity determines that these requirements are inconsistent with the governmental entity's constitutional or statutory duties related to the issuance, incurrence, or management of debt obligations or the deposit, custody, management, borrowing, or investment of funds.
- 2.18 Confidentiality. The Contractor shall retain all information received from or concerning the City and the City's business in strictest confidence and shall not reveal such information to third parties without prior written consent of the City, unless otherwise required by law.
- 2.19 Indemnify. The Contractor shall indemnify and save harmless the city of Lubbock and its elected officials, officers, agents, and employees from all suits, actions, losses, damages, claims, or liability of any kind, character, type, or description, including without limiting the generality of the foregoing, all expenses of litigation, court costs, and attorney's fees, for injury or death to any person, or injury to any property, received or sustained by any person or persons or property, to the extent arising out of, related to or occasioned by, the negligent acts of the Contractor, its agents, employees, and/or subcontractors, related to the performance, operations or omissions under this agreement and/or the use or occupation of city owned property. The indemnity obligation provided herein shall survive the expiration or termination of this agreement.
- 2.20 Medical Records. Contractor shall serve as the custodian of medical records created at the clinic during the term of this Agreement. Contractor, as custodian of records shall abide by all local, state, and federal requirements for such record retention during and after the term of this Agreement. Contractor shall also abide by all applicable laws related to Contractor and the medical service record retention. City acknowledges that Contractor will provide copies of medical records to any third-party requestor (with the appropriate executed release from the employee/patient, court order, or business affidavit, as applicable). City understands and acknowledges that the City is not entitled to access any patient medical records except to the extent allowed by law. Contractor is a "covered entity" as enumerated in 45 CFR §160.103. As a covered entity, Contractor may only disclose protected health information as authorized by and to the extent allowed by law. Upon the termination of this Agreement for any reason, Contractor shall maintain all records created against the statutory

and regulatory requirements. Should City request records be maintained by Contractor beyond any state, local or federal rule due to an ongoing audit or legal matter, then City shall be invoiced for such retention for as long as such records are retained until written notice from City to destroy such retained records. This Section shall survive the termination of this Agreement.

-----INTENTIONALLY LEFT BLANK-----

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

CITY OF LUBBOCK

OCCUPATIONAL HEALTH CENTERS
OF THE SOUTHWEST, P.A.

Mark McBrayer, Mayor

BY:

Signed by:
Robert G. Hassett, DO, MPH
601189CF35924C3

Authorized Representative

ATTEST:

Robert G. Hassett, DO, MPH
President, Treasurer & Corp. Secretary

Print Name

Courtney Paz, City Secretary

5080 spectrum Drive, Suite 1200w

Address

APPROVED AS TO CONTENT:



Addison, TX 75001

City, State, Zip Code

Elizabeth Lara, Director of Human Resources

APPROVED AS TO FORM


Mitch Satterwhite, First Assistant City Attorney

City of Lubbock, TX
RFP 24-18167-KM
Pre-Employment Drug/Alcohol Screening & Physical Exams

GENERAL REQUIREMENTS

1. INTENT

The City is soliciting proposals from qualified hospitals and healthcare professionals to provide pre-employment and promotional physical examinations and drug and alcohol screening.

2. OBJECTIVES

1. Ensure Compliance with ADAAA: The Americans with Disabilities Act Amendments Act (ADAAA) substantially impacts the hiring and retention of persons with disabilities. The City must establish procedures to evaluate an applicant's physical capabilities to perform specific job functions. We seek to develop an on-going relationship with physicians trained in occupational medicine. This relationship is crucial for physicians to understand our employees' work nature and make appropriate employment judgments. The ADAAA mandates reasonable accommodations for applicants or employees who become disabled, and we rely on our physicians' expert opinions to determine these accommodations.
2. Ensure Compliance with Civil Service Rules. Pre-employment and promotional physicals will be for specified job applicants, divided into two categories: Civil Service (Firefighters and Police Officers) and non-Civil Service. Civil Service medical/physical examinations must follow the specific standards required by the Local Government Code, Title 5, Chapter 143, and the Civil Service Commission Rules and Regulations Section 5.01. Non-Civil Service positions requiring physicals involve strenuous physical exertion as part of their duties. Annually, approximately 350-450 non-Civil Service and 100 Civil Service applicants will require these physicals.
3. Maintain Safety and Compliance: As a public employer, the City is entrusted with the health and safety of its employees and citizens. In keeping with this obligation, the City has instituted drug/alcohol screening of individuals who seek employment, employees who seek promotions to positions, employees who must comply with the Omnibus Transportation Employee Testing Act (DOT), and employees whose behavior on the job reflects a reasonable suspicion that drug or alcohol usage is a problem. This behavior could include occupational accidents or illness. Due to the above-mentioned issues, the City requires drug/alcohol testing for approximately 1,000 applicants/employees each year.

3. SCOPE OF SERVICES REQUESTED

Job descriptions outlining the essential functions and physical requirements will be provided upon contract award. The selected vendor will determine the necessary special testing for each position, such as:

- SCBA (Self-Contained Breathing Apparatus),
- Vision tests, and
- Color blindness tests.

The following services will be required by the successful Vendor:

1. Non-Civil Service Pre-Employment/Promotional Physical (with or without SCBA). Note that City of Lubbock employees are exempt from the physical provisions of 49 CFR 390.3(f)(2).
2. Fire Physical for Pre-employment (Baseline) must follow the specific standards required by the Local Government Code, Title 5, Chapter 143 for Civil Service positions.
3. Police Physical for Pre-employment and promotions must also follow the specific standards required by the Local Government Code, Title 5, Chapter 143 for Civil Service positions.
4. 911 Employee Physical – Pre-employment.

5. Asbestos Physical – Baseline and Annual.
6. Worksite Assessment – ADAAA and Workplace Disability Assessments.
7. Non-DOT Drug Screening: Non-DOT drug screening should screen for: marijuana metabolites, cocaine metabolites, amphetamines, opiate metabolites, and phencyclidine (PCP). Initial tests should be an immunoassay-based screen using the enzyme-multiplied immunoassay technique marketed under the trade name EMIT by Syva. A 24-hour turnaround time for routine-negative results is required. Confirmation tests are required for positive results in accordance with DOT guidelines.
8. Civil Service Drug Screening: The Civil Service drug screening will be a 10-panel drug screen, screening for: marijuana metabolites, cocaine metabolites, amphetamines, opiate metabolites, phencyclidine (PCP), propoxyphene, barbiturates, methaqualone, methadone, and benzodiazepines. Same testing methods and turnaround as Non-DOT are required.
9. DOT Drug Screening: Screening for marijuana and cocaine metabolites using the EMIT technique by Syva. 24-hour turnaround for routine-negative results, with confirmation tests for positive results. in accordance with DOT guidelines.
10. Optional Drug Screening: Optional drug screening should screen for: synthetic cannabinoids (“K2/Spice”), synthetic stimulants (“bath salts”), and anabolic-androgenic steroids.
11. Breath Alcohol Test: All breath alcohol tests must be administered by a certified Breath Alcohol Technician (BAT) with DOT-approved equipment. Immediate turnaround is required.

All tests must be performed by a Health and Human Services (HHS)-certified technician with documentation submitted for this RFP.

4. BASIC REQUIREMENTS FOR SCOPE OF SERVICES

In addition to the information requested, all responses must address the following requirements. **Any variations or exceptions from these requirements must be clearly stated in your response.**

1. Data Management/Administration/Reporting
 - A. The Vendor will establish regular administration and maintenance procedures for billing, record-keeping, and reporting physical results. The data remains the property of the City and must be turned over to the next vendor at the agreement's termination.
 - B. The Vendor must work with the City to customize their standard referral form or develop a unique form that facilitates invoicing, customer identification, and ease of use by the Human Resources Department. The ability to interface with an Employee Relations System in the future is required.
 - C. Advise the City of any changes in Federal requirements with respect to the regulations. Also, act as subject matter expert on related issues. **Do you provide expert witness testimony in court?**
 - D. Provide federally required record-keeping, reporting, verification, and inspection of records.
 - E. Provide employee compliance identification and verification.
2. General Services
 - A. Provide access to physical exams during regular business hours (Monday through Friday, 8 a.m. through 5 p.m.) at a location within Lubbock, Texas.
 - B. Provide forms used for patient intake information, physician’s recommendations, or other necessary documentation.

- C. Comply with all applicable federal, state, and local regulations including National Fire Protection Association (NFPA) 1582 and the City of Lubbock Civil Service Commission Rules and Regulations.

3. Physician Services

- A. Provide a maximum of two physicians to administer all physical exams to ensure consistency.
 - i. List the names and qualifications of physicians attending to the various physicals.
 - ii. What is the percent of time physician(s) spends on work-related physicals and evaluations?
- B. Provide documentation that the physician has reviewed the job description and any other applicable regulations before examining the applicant/employee and clearly document the results of each examination and whether they need to follow-up with their primary care physician (PCP) or specialist before a determination can be made.

The City has provided a sample Standard Physical Examination form, Fire Physical Examination form, and Police Physical Examination form to be completed by the physician. These forms may be revised based on the appropriate testing for the position.

- C. Physicians must be available for consultation with the Human Resources Department and/or the Risk Management Department.
 - D. Conduct on-site evaluations as needed for recommendations on workplace changes to reduce injuries.
 - E. Workplace disability assessments must be conducted by an Occupational Medicine physician.
 - i. List the names and qualifications of the physician(s) attending to workplace disability assessments.
 - ii. What is the percent of time physician(s) spends on workplace disability assessments?
4. Off-site Testing Services. Employees required to undergo testing at an off-site location are responsible for obtaining and providing results to the Vendor. The Vendor must maintain these records.

5. ADAAA Compliance

- A. Provide the City with the recommended physical capacity of the applicant to determine necessary job modifications.

The City has provided a sample Physician's Recommendation form that specifies the employee's/applicant's physical capabilities. These forms may be revised dependent on the requirements for the position.
- B. Conduct on-site evaluations as required to determine if a job can be accommodated for an applicant/employee.

6. Specimen Collection Services

- A. Provide access to collection sites for various types of testing during regular business hours (Monday through Friday, 8 a.m. through 5 p.m.). Primary collection sites must be within the City limits. Other collection sites must be made available for reasonable suspicion and post-accident testing during regular business hours in Texas. Ensure DOT guidelines are followed, with split samples required.
- B. Upon receipt of results, ensure 24-hour access to collection sites for reasonable suspicion and post-accident testing at the same billing rate as samples collected during normal business hours. Specimen collection must be done in accordance with DOT guidelines. Split samples will be required.

- C. Provide access to collection sites for pre-employment testing during regular business hours (Monday through Friday, 8 a.m. through 5 p.m.) for out-of-town applicants. Specimen collection must be done in accordance with DOT guidelines. Split samples will be required.
- D. Provide for proper chain of custody and all necessary forms relating thereto. Describe the chain of custody process, from collection to shipping and ensuring validation.
- E. Provide collection supplies and monitor procedures.
- F. Describe your collection site procedures.
- G. Provide transportation of specimen to certified laboratories.

7. Laboratory Services

- A. Provide testing (initial and confirmation tests) through a DOT-certified testing laboratory certified by HHS under the National Laboratory Certification Program (NLCP).
 - i. Are scientifically acceptable screening methods employed?
 - ii. List any limitations to the types of screening methods used.
 - iii. Describe the tests performed for both the initial and confirmation screening, including standards used for determining the presence of illegal substances.
- B. Ensure pre-employment, random, reasonable suspicion, post-accident, return to duty, and follow-up testing and storage of specimens (primary and split) comply with applicable regulations.
- C. Ensure negative results are reported to Medical Review Officer (MRO) within 24 hours and positive results within 48 hours (confirmation must be done in compliance with all applicable regulations).
- D. Provide confidential reporting to the City. Describe your procedures for reporting test results electronically, maintaining confidentiality, and ensuring that complete and accurate information reaches the appropriate authorized personnel.
- E. Provide proper documentation and storage of test results. Are the samples stored in a frozen condition? If stored in another format, indicate why.
- F. Provide results reporting and monthly summaries to MRO.
- G. Provide list of currently used laboratories for specimen testing including location, certifications, and length of time in business.

8. Medical Review Officer (MRO) Services

- A. Provide qualified MRO services to handle test results and make determinations on substance abuse status. List the name and qualifications of your MRO. What process does your MRO follow?
- B. Ensure MRO contacts employees for medical information.
- C. Ensure MRO investigates information, reviews it, and determines the positive or negative status of substance abuse.
- D. Ensure MRO communication of results is legally compliant.
- E. Ensure MRO documents test results in accordance with the applicable rules and regulations.
- F. Ensure MRO provides examinations, if required.

9. Alcohol Testing

- A. Administer evidential breath tests using an evidential breath testing device (EBT) that is on the National Highway Traffic Safety Administration (NHTSA) conforming products lists (CPL). Testing must be administered by a certified breath alcohol technician (BAT) or screening test technician (STT) in compliance with the applicable federal, state, and local regulations.
 - i. Are scientifically acceptable screening methods employed?
 - ii. List any limitations to the types of screening methods used.
 - iii. Describe the tests performed for both the initial and confirmation screening, including standards used for determining the presence of illegal substances.

5. QUALIFICATION DATA

All responses must also address the following requirements and answer the related questions. **Any variations or exceptions from these requirements must be clearly stated in your response.** All Pricing Proposal Sheets must include an itemized list of services and cost for each service.

1. Interested firms and individuals shall submit their qualifications by completing the Vendor Acknowledgment Form and Contact Person Form.
2. The completeness and accuracy of the data provided by each firm will be considered in the selection process, in addition to the content of the data. Additional data and/or material related to the qualification of a firm may also be submitted; however, such data and/or material may or may not be given value when considering the qualification of a firm.
3. In addition to the information required for the specific categories of data management/administration/reporting, general services, physician services, off-site testing services, ADAAA compliance, specimen collection services, laboratory services, MRO services, and alcohol testing, all responses must also contain the following information:

Physical Examinations

- A. Although there are various departmentalized physicals required by the City, please describe the test components that are a part of all physical examinations conducted by your agency.
- B. Please describe the test components that are a part of SCBA testing in accordance with OSHA standards.
- C. Please describe the test components that are a part of Fire Physicals conducted in accordance with OSHA 29 CFR 1910.134, NFPA 1582 and City of Lubbock Civil Service Commission Rules and Regulations Section 5.01. (OSHA 29 CFR 1910.134 can be found online at: https://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=standards&p_id=12716, The current edition of NFPA 1582 can be found online at: <http://www.nfpa.org/codes-and-standards/document-information-pages?mode=code&code=1582&tab=about>, and the current City of Lubbock Civil Service Commission Rules and Regulations Section 5.01 has been provided in this packet as Attachment One.)
 - i. Pre-employment physical (Baseline)
- D. Please describe the test components that are a part of Police Physicals conducted in accordance with City of Lubbock Civil Service Commission Rules and Regulations Section 5.01. (The current City of Lubbock Civil Service Commission Rules and Regulations Section 5.01 has been provided in this packet as Attachment One.)
 - i. Pre-employment physical

- ii. Promotional physical
- E. The 911 Employee Physical will test for audio, vision, and colorblindness and must meet DOT guidelines. Please describe the test components for this physical.
 - i. Pre-employment physical
- F. Please describe the test components that are a part of Asbestos exams in accordance with OSHA standards.
 - i. Baseline physical
 - ii. Annual physical
- G. Describe your patient intake and examination procedures in terms of available hours for employment physicals, background information required, general examination procedures, reasons for x-rays, urinalysis or other tests required.
- H. Cost for a standard pre-employment/promotional physical examination, physical examinations for those employees who are required to use SCBA respirators, and cost for expert services, including expert testimony, consulting, advising, and researching.
- I. Cost for those employees who are required to pass a standard Fire physical examination, and cost for expert services, including expert testimony, consulting, advising, and researching.
- J. Cost for those employees who are required to pass a Police physical examination, and cost for expert services, including expert testimony, consulting, advising, and researching.
- K. Cost for those employees who are required to pass a 911 Employee physical examination, and cost for expert services, including expert testimony, consulting, advising, and researching. See attached.
- L. Cost for those employees who are required to pass a standard Asbestos physical examination, and cost for expert services, including expert testimony, consulting, advising, and researching.
- M. Cost for follow-up consultation concerning job modifications, cost for on-site visit and recommendations to high injury areas, or to determine accommodations for return to work, disqualification for work, or for persons with disabilities, and cost for expert services, including expert testimony, consulting, advising, and researching.

Drug /Alcohol Screening

- A. Describe how you specifically meet the criteria for testing under the Omnibus Transportation Employee Testing Act (DOT).
- B. All drug tests must be performed by an HHS-certified facility. Documentation of such certification must be submitted with RFP.
- C. Provide procedural instructions for conducting drug/alcohol screening in the event of equipment failure or inadequate staffing at a designated site. Should your agency conduct multiple sites in the same city, please provide information on which site will be designated as a primary testing site, after-hours testing site, and/or an emergency testing site.
- D. Provide information on licenses, certifications, training, and experience of individuals responsible for the enumerated services.
- E. Provide information on ongoing training which is provided to staff members to ensure current knowledge of DOT regulations.
- F. Provide the instructions that are given to lab personnel, including any checklists used.

- G. Provide samples of consent forms, questionnaires, written notices, procedure checklists, post-collection checklists, or any other sample forms required.
- H. Provide copies of the last three (3) external proficiency testing cycles for all analyses required in this proposal.
- I. The City is requesting the last three (3) ratings the lab agency, which the vendors plan to use for drug testing, received from HHS. The intent of the request is to determine if the lab your agency intends to use is in good standing with HHS.
- J. Cost of non-DOT and DOT drug screening.
- K. Cost of Civil Service drug screening.
- L. Cost of Optional drug screening, namely, for synthetic cannabinoids, synthetic stimulants, and anabolic-androgenic steroids.
- M. Cost of alcohol screening.

4. References and Past Performance

- A. Provide at least 3 references from previous clients who can attest to the provider's reliability and quality of service. The City may contact these references to gather information on the vendor's performance.
- B. Include performance metrics from previous contracts, such as success rates, client satisfaction scores, and any documented improvements in client operations.

ATTACHMENT ONE
CITY OF LUBBOCK
CIVIL SERVICE COMMISSION
RULES AND REGULATIONS

RULE 5 FIREFIGHTER AND POLICE OFFICER PHYSICAL AND EDUCATIONAL

REQUIREMENTS FOR APPOINTMENT

Section 5.01 Medical and Physical Requirements

The medical and physical requirements for the position of Firefighter and Police Officer are defined as follows:

- a) Physical Capabilities - All applicants are required, prior to employment, to pass a medical/physical examination performed by a physician selected by the Commission. The purpose of such examination is to ensure the applicants medical fitness to consistently perform the following physical components:
 - 1) Police Officer: There are, at a minimum, seven (7) physical ability areas that are frequent and critical to the adequate performance of the position of police officer. The applicant must be of a physical condition to adequately perform in these areas. These areas are:
 - a) Climbing - Requires the ability to climb stairs, ladders and over fences and walls.
 - b) Pushing - Requires the ability to push such objects as a vehicle, with or without assistance.
 - c) Dragging/Pulling - Requires the ability to drag/pull objects or an unconscious, semi-conscious or passive resisting person.
 - d) Lifting/Carrying - Requires the ability to lift or carry an object such as a spare tire, small television or stereo set, or assist in lifting an unconscious or disabled person.
 - e) Running - requires the ability to maneuver, while running, around obstacles such as vehicles and trees or shrubs and maintain balance while negotiating rough terrain and uneven surfaces such as ditches, curbs and walkways.
 - f) Jumping - Requires the ability to jump obstacles such as narrow ditches, small shrubs and fences.
 - g) Crawling - Requires the ability to crawl through confined spaces such as storm drains, attics and crawl spaces that are typical in building searches.
 - 2) Firefighter - There are several physical ability areas that are frequent and critical to the adequate performance of the position of firefighter. The

applicant must be of physical condition to adequately perform in these areas. These areas are:

- a) Climbing - Requires the ability to mount and dismount various pieces of fire equipment while wearing full complement of firefighting safety equipment such as self-contained breathing apparatus (which weighs approximately forty-five pounds), boots, gloves, pants, coat, and helmet.
 - b) Requires the ability to climb and descend stairs, fences, walls and ladders ranging from eight feet to 100 feet.
 - c) Dragging/Pulling - Requires the ability to drag/pull a variety of fire hoses ranging from 30 pounds to several hundred pounds; requires the ability to drag/pull heavy, bulky items such as personal household items and commonly used fire tools and equipment; requires the ability to drag/pull an unconscious or semi-conscious person to safety.
 - d) Lifting/Carrying - Requires the ability to lift/carry, with assistance, fire department tools, equipment and hoses, or assist in lifting or carrying an unconscious or disabled person.
 - e) Forcible Entry - Requires the ability to use heavy sharp or blunt objects to make a safe passage through roofs or doors.
- b) Physical Examination - The physical examination shall include a thorough medical examination to determine whether applicants are physically sound and free from any defect, which may adversely affect the performance of the duties of the position for which they are being considered. The physician may administer tests and examinations including a back x-ray, chest x-rays, laboratory tests or other tests and examination as are deemed necessary and proper. The examination shall include, but not be limited to the following requirements:
- 1) Medical History: Applicants are required to provide, at the physician's request, a full and accurate medical history. Falsification of such information shall result in rejection.
 - 2) Vision
 - a) Police Officers - Police officer candidates shall possess uncorrected visual acuity of 20/100 or better in each eye with both eyes correctable, with eye glasses, to at least 20/20 binocular vision, or 20/200 or better vision correctable to at least 20/20 binocular vision with contact lenses.
 - Color Perception - Ability to discriminate between the basic color groups.
 - b) Firefighters - With Glasses or Contacts: minimum uncorrected binocular visual acuity of 20/100 and minimum corrected binocular visual acuity of 20/30.

Successful long-term soft contact wearers will not be required to meet uncorrected visual acuity standards.

Peripheral Vision: minimum uncorrected peripheral vision of 140 degrees in the horizontal median in each eye.

Color Perception: Must be able to discriminate between red, green and yellow.

3) Hearing

a) Police Officers - Police officer candidates shall be able to pass a "forced whisper" test.

b) Firefighters - All applicants shall be able to hear sounds within the normal hearing range as defined by NFPA 1582.

4) Cardiovascular system - Resting Blood Pressure shall not have a consistent reading above 140 /90 mm Hg. An elevated reading above 140/90 mm Hg requires no more than five repeated tests separated by a few minutes to determine reliability. The rhythm of the heart shall be strong and regular.

5) Muscular and Skeletal System - The development of the muscular and skeletal frame and the condition of the joints shall be free from any defect or injury, which may adversely affect the performance of the duties of the position for which they are being considered. The applicant shall be free from chronic strains and spasms.

6) Motor Skills Applicants shall have normal eye-hand coordination and shall possess the manual dexterity to operate small tools or equipment.

7) Contagious Diseases - Applicants shall be free from contagious diseases which would prevent or limit their performance of the duties for which they are being considered or which would present a health problem for employees of the department.

8) Applicants shall be free from chronic diseases that prevent the performance of duties of the position for which they are being considered.

9) Respiratory System - Applicants shall be free from chronic infections and respiratory ailments, which would prevent the performance of the duties for which they are being considered.

c) Other Requirements -The above physical requirements are not exclusive.

SAMPLE DOCUMENTS

STANDARD

I certify that I have reviewed the job description for the position of before completing the physical examination.

Physician Signature

“SAMPLE DOCUMENT”
CITY OF LUBBOCK, TX
PHYSICAL EXAM
FIRE

Employee's Name:		Position Title:	
Date of Exam:		Examining Physician:	
Components Performed	Able to Perform Job Tasks	Unable to Perform Job Tasks	Significant Changes Noted from Previous Exam (If applicable)
<input type="checkbox"/> Physical Exam			
<input type="checkbox"/> EKG			
<input type="checkbox"/> X-rays			
<input type="checkbox"/> Laboratory Tests			
<input type="checkbox"/> Urinalysis			
<input type="checkbox"/> Vision Test			
<input type="checkbox"/> Audiometry			
<input type="checkbox"/> Spirometry			
<p style="text-align: center;">Explanation of Abnormal Results/Significant Changes:</p> <div style="text-align: right; margin-top: 20px;"> <input type="checkbox"/> Medically cleared to perform job tasks. <input type="checkbox"/> Denied medical clearance for current job tasks. </div>			

I certify that I have reviewed NFPA 1582 and City of Lubbock Civil Service Commission Rules and Regulations Section 5.01 before completing the physical examination.

Physician Signature

“SAMPLE DOCUMENT”
CITY OF LUBBOCK, TX
PHYSICAL EXAM
POLICE

Employee's Name:		Position Title:	
Date of Exam:		Examining Physician:	
Components Performed	Able to Perform Job Tasks	Unable to Perform Job Tasks	Significant Changes Noted from Previous Exam (If applicable)
<input type="checkbox"/> Physical Exam			
<input type="checkbox"/> X-rays			
<input type="checkbox"/> Laboratory Tests			
<input type="checkbox"/> Vision Test			
<input type="checkbox"/> Forced Whisper			
<p style="text-align: center;">Explanation of Abnormal Results/Significant Changes:</p> <div style="text-align: right; margin-top: 20px;"> <input type="checkbox"/> Medically cleared to perform job tasks. <input type="checkbox"/> Denied medical clearance for current job tasks. </div>			

I certify that I have reviewed City of Lubbock Civil Service Commission Rules and Regulations Section 5.01 before completing the physical examination.

Physician Signature

“SAMPLE DOCUMENT”

**CITY OF LUBBOCK, TX
PHYSICIAN RECOMMENDATIONS
EMPLOYMENT PHYSICAL**

Applicant/Employee Name: _____

Job Title: _____

Examination Date: _____

PHYSICAL CAPABILITIES

The following represents the overall physical capabilities that can be performed safely by the individual listed above during an eight to ten-hour shift:

Based on the following criteria:

Rarely: **less than 10% of the shift.**
Occasionally: **up to 33% of the shift.**
Frequently: **up to 66% of the shift.**
Continuously: **from 67% to 100% of the shift.**

_____ **% of time the individual can stand.**
_____ **% of time the individual can walk.**
_____ **% of time the individual can sit.**
_____ **% climbing – to ascend or descend ladders, scaffolding, stairs, poles, or inclined surfaces.**
_____ **% bending – to flex upper trunk forward.**
_____ **% kneeling – bending the legs at the knees to come to rest on the knee or knees.**

LIFTING: To exert physical strength necessary to move objects from one level to another.

	NEVER	RARELY	OCCAS	FREQ	CONT
Under 10 lbs <input type="checkbox"/> Yes <input type="checkbox"/> No	_____	_____	_____	_____	_____
10 to 25 lbs. <input type="checkbox"/> Yes <input type="checkbox"/> No	_____	_____	_____	_____	_____
25 to 50 lbs. <input type="checkbox"/> Yes <input type="checkbox"/> No	_____	_____	_____	_____	_____
50 to 75 lbs. <input type="checkbox"/> Yes <input type="checkbox"/> No	_____	_____	_____	_____	_____
75 to 100 lbs. <input type="checkbox"/> Yes <input type="checkbox"/> No	_____	_____	_____	_____	_____
Over 100 lbs. <input type="checkbox"/> Yes <input type="checkbox"/> No	_____	_____	_____	_____	_____

TWISTING: To rotate upper trunk to the right or left from neutral while sitting or standing.

☐NEVER ☐RARELY ☐OCCAS ☐FREQ ☐CONT

DRIVING: To rotate upper trunk to the right or left from neutral while sitting or standing.

☐NEVER ☐RARELY ☐OCCAS ☐FREQ ☐CONT

Vehicles or other moving equipment used as part of this job: ☐Yes ☐No If so, list type of vehicle(s):

REACHING: To position arms with any degree of elbow flexion.

☐NEVER ☐RARELY ☐OCCAS ☐FREQ ☐CONT
NEVER RARELY OCCAS FREQ CONT

Above shoulder height: ☐Yes☐No

At shoulder height: ☐Yes☐No

Below shoulder height: ☐Yes☐No

HAND COORDINATION:

	RIGHT	LEFT	BOTH	HOW OFTEN	HOW LONG
Major Hand:	_____	_____	_____	_____	_____
Fine manipulation:	_____	_____	_____	_____	_____
Gross manipulation:	_____	_____	_____	_____	_____
Simple Grasping:	_____	_____	_____	_____	_____
Power Grip:	_____	_____	_____	_____	_____
Hand Twisting:	_____	_____	_____	_____	_____

COORDINATION (EYE, HAND, and FOOT): Operation of foot and hand controls.

☐NEVER ☐RARELY ☐OCCAS ☐FREQ ☐CONT

TALKING/SEEING/HEARING:

☐NEVER ☐RARELY ☐OCCAS ☐FREQ ☐CONT

CARRYING: Transporting an object, usually holding it in the hands, arms or shoulders.

	NEVER	RARELY	OCCAS	FREQ	CONT
Under 10 lbs <input type="checkbox"/> Yes <input type="checkbox"/> No	_____	_____	_____	_____	_____
10 to 25 lbs. <input type="checkbox"/> Yes <input type="checkbox"/> No	_____	_____	_____	_____	_____
25 to 50 lbs. <input type="checkbox"/> Yes <input type="checkbox"/> No	_____	_____	_____	_____	_____
50 to 75 lbs. <input type="checkbox"/> Yes <input type="checkbox"/> No	_____	_____	_____	_____	_____
75 to 100 lbs. <input type="checkbox"/> Yes <input type="checkbox"/> No	_____	_____	_____	_____	_____
Over 100 lbs. <input type="checkbox"/> Yes <input type="checkbox"/> No	_____	_____	_____	_____	_____

PULLING: To draw towards oneself, in a particular direction, or into a particular position.

☐NEVER ☐RARELY ☐OCCAS ☐FREQ ☐CONT

PUSHING: To exert force on or against an object in order to move it away.

☐NEVER ☐RARELY ☐OCCAS ☐FREQ ☐CONT

CROUCHING/STOOPING: To flex upper trunk forward at waist; partial flexion of knees.

☐NEVER ☐RARELY ☐OCCAS ☐FREQ ☐CONT

KNEELING/SQUATTING: To rest on bent knees; to rest on one's heels with bent knees.

☐NEVER ☐RARELY ☐OCCAS ☐FREQ ☐CONT

CRAWLING: To move entire body along a surface with hip/knee flexion and arm extension / flexion.

☐NEVER ☐RARELY ☐OCCAS ☐FREQ ☐CONT

ENVIRONMENTAL CONDITIONS: **Can work under conditions tolerable to the general population:**

- | | | | |
|-------------------------------|--------------------------------|------------------------------------|-----------------------------------|
| <input type="checkbox"/> Dust | <input type="checkbox"/> Fumes | <input type="checkbox"/> Heat | <input type="checkbox"/> Indoors |
| <input type="checkbox"/> Cold | <input type="checkbox"/> Noise | <input type="checkbox"/> Vibration | <input type="checkbox"/> Outdoors |

SUMMARY RECOMMENDATION:

- ☐ **This individual is physically capable of performing the duties as described in the job description of**

- ☐ **This individual will require modifications to be able to perform the position of**

Suggestions for modifying this job:

Physician Signature

Date

City of Lubbock, TX
RFP 24-18167-KM
Pre-Employment Drug/Alcohol Screening Physical Exams
BAFO

				Occupational Health Centers of the Southwest, P.A. dba Concentra Medical Centers	
				Addison, TX \$3,989.00	
#	Items	Quantity Required (+/-)	UOM	Unit Price	Total Cost
1 -Standard Pre-Employment/Promotional Physical					
#1-1	Standard Pre-Employment/Promotional Physical	1	EA	\$ 69.00	\$ 69.00
#1-2	Standard Pre-Employment/Promotional Physical (With SCBA)	1	EA	\$ 75.00	\$ 75.00
#1-3	Expert Testimony, Consulting, Advising, and Researching	1	HR	\$ 50.00	
2 - Fire (Physician Assistants (PAs) will not be allowed to conduct fire department physicals)					
#2-1	1 Standard Fire Physical (In accordance with OSHA 29 CFR 1910.134, NFPA 1582 2013 Edition Section 7.3 through 7.7 and Annex A.6.1.1 and A.6.1.2, and City of Lubbock Civil Service Commission Rules and Regulations Section 5.01.)	1	EA	\$ 1,181.00	\$ 1,181.00
#2-2	Expert Testimony, Consulting, Advising, and Researching	1	HR	\$ 50.00	\$ 50.00
3 - Police					
#3-1	Police Physical (In accordance with City of Lubbock Civil Service Commission Rules and Regulations Section 5.01. Attachment 1)	1	EA	\$ 975.00	\$ 975.00
#3-2	Expert Testimony, Consulting, Advising, and Researching	1	HR	\$ 50.00	\$ 50.00
4 - 911 Employee Physical					
#4-1	Employee Physical	1	EA	\$ 153.00	\$ 153.00
#4-2	Expert Testimony, Consulting, Advising, and Researching	1	HR	\$ 50.00	\$ 50.00
5 - Asbestos Physical					
#5-1	Asbestos Physical (In accordance with OSHA Standards)	1	EA	\$ 377.00	\$ 377.00
#5-2	Expert Testimony, Consulting, Advising, and Researching	1	HR	\$ 50.00	\$ 50.00

City of Lubbock, TX
RFP 24-18167-KM
Pre-Employment Drug/Alcohol Screening Physical Exams
BAFO

				Occupational Health Centers of the Southwest, P.A. dba Concentra Medical Centers	
				Location	Addison, TX
				Total Cost	\$3,989.00
6 - Worksite Assessment					
#6-1	Workplace Disability Assessment/Recommendation - Worksite Assessment (Requires written recommendations. The City also requires Vendor to use an Occupational Medicine physician for these services. This physician may be a subcontractor for the Vendor)	1	EA	\$ 150.00	\$ 150.00
#6-2	Workplace Disability Assessment/Recommendation - Physical Exam and Medical Record Evaluation (Requires written recommendations. The City also requires Vendor to use an Occupational Medicine physician for these services. This physician may be a subcontractor for the Vendor)	1	EA	\$ 225.00	\$ 225.00
#6-3	Expert Testimony, Consulting, Advising, and Researching	1	HR	\$ 50.00	\$ 50.00
7 - Non-Dot/Dot Drug Screening					
#7-1	Non-DOT Drug Screening - Cost of Urinalysis with screening	1	EA	\$ 49.00	\$ 49.00
#7-2	DOT Drug Screening - Cost of Urinalysis with screening:	1	EA	\$ 55.00	\$ 55.00
8 - Civil Service Drug Screening					
#8-1	Civil Service Drug Screening - Cost of Urinalysis with Screening	1	EA	\$ 55.00	\$ 55.00
9 - Optional Drug Screening					
#9-1	Drug Screening for Synthetic Cannabinoids - Cost of Urinalysis with screening	1	EA	\$ 100.00	\$ 100.00
#9-2	Drug Screening for Synthetic Stimulants - Cost of Urinalysis with screening	1	EA	\$ 95.00	\$ 95.00
#9-3	Drug Screening for Anabolic-Androgenic Steroids - Cost of Urinalysis with screening	1	EA	\$ 130.00	\$ 130.00
10 - Alcohol Screening					
#10-1	Alcohol Screening - Cost Of Breath Alcohol Testing	1	EA	\$ 50.00	\$ 50.00

Pre-Employment Drug/ Alcohol Screening & Physical Exams 24-18167-KM



PRESENTED TO
City of Lubbock

October 4, 2024
4:00 P.M. CST

PRESENTED BY



Nicole Wardlow
Director of Sales
5080 Spectrum Drive
Addison, TX 75001
Mobile: 945-546-3002
Email: Nwardlow@concentra.com



October 4, 2024

Kiara Morgan
Buyer IV
City of Lubbock
1314 Ave K, 9th Floor
Lubbock, Texas 79401

RE: 24-18167-KM for Pre-Employment Drug/Alcohol Screening & Physical Exams
Response to Best and Final Offer

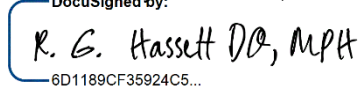
Dear Ms. Kiara Morgan,

This submission confirms Concentra's receipt of the City of Lubbock's follow-up questions, dated October 1, 2024. Within this document, we address all inquiries related to our response to the City's RFP 24-18167-KM - Pre-Employment Drug/Alcohol Screening & Physical Exams.

We value the City's continued consideration of Concentra as a potential partner and are pleased to provide our response to the requested information on the following pages.

Concentra appreciates the opportunity to participate in the City's process. Should you have any questions, please feel free to contact me via phone or by e-mail.

Respectfully submitted,

DocuSigned by:

6D1189CF35924C5...

Robert G, Hassett, DO, MPH
President, Secretary, and Treasurer
Occupational Health Centers of the Southwest, P.A., dba Concentra Medical Centers

Response to Request for Clarification

The evaluation committee is requesting a breakdown of Workplace Disability Assessments.

Concentra Workflow process for Fit For Duty / Return to Work Evaluation:

1. The center will collect details regarding the patient needing the return to work evaluation. (collect name, phone number and deadline for clinician).
2. The clinician will provide a checklist to the assigned the medical assistant after speaking with the contact on what is needed for the appointment. All records must be collected prior to the date of the visit.
3. The assigned medical assistant will reach out to the patient to set an appointment. The assigned medical assistant will ensure all information is received prior to the appointment.
4. The essential job function must be available to clinician prior to appointment.
5. When the patient presents for a Return to Work Evaluation exam, clinician will review the chart including job description and any prior records.
6. The patient would then visit with clinician who will get a detailed history of the injury/illness including what treatments were given.
7. The clinician will also complete review of systems and a detailed physical examination.
8. The clinician will then make a determination based on the history and physical evaluation if the patient can return to work with or without restrictions.
9. If the patient cannot perform the proper exam, then the physical therapist may collaborate with the employer to consider scheduling a work place assessment if necessary.
10. If approved by the employer, A Concentra ADapt specialist will come to the job site and perform a Functional Job Analysis. The results and measurements will be utilized to create a Human Performance Evaluation (HPE) which will be performed at the Concentra center.

2. Cost of Non-Rapid drug screening for a 5 panel test and Non-Rapid DOR 10 panel test.

\$55. We provide a separate pricing sheet for the City's review.

VENDOR ACKNOWLEDGEMENT

In compliance with this procurement, the undersigned offeror having examined the request for proposal, instructions to offerors, documents associated with the request for proposals, and being familiar with the conditions to be met, has reviewed the information regarding:

- Insurance Requirements
- Suspension and Debarment Certification
- Texas Government Code Section 2252.152
- Texas Government Code Section 2271.002
- Texas Government Code 2274

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

DocuSigned by:
R. G. Hassett DO, MPH
eD1180CF35924C8

Authorized Signature

Robert G. Hassett. DO, MPH

Print/Type Name

Occupational Health Centers of the Southwest, P.A. dba Concentra Medical Centers

Company Name

President, Treasurer and Corporate Secretary

Title

9/4/2024

Date

6048 Marsha Sharp Fwy

Address

Lubbock, TX 79407

City, State Zip Code

Contact for questions, clarifications, etc.	
Name and Title:	Nicole Wardlow, Director of Sales
Mailing Address:	6048 Marsha Sharp Fwy
City, State, Zip:	Lubbock, TX 79407
Telephone No:	806-745-2200
Fax No:	806-745-3267
E-Mail:	nwardlow@concentra.com

INSURANCE REQUIREMENTS

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.**

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.

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):

Commercial Liability Requirements: \$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).

Professional Medical Malpractice Liability Requirements: \$1M occurrence / \$2M aggregate

Auto Liability Requirements: \$1M occurrence

Workers Compensation Requirements: Employer Liability (\$1M) is required with Workers Compensation.

Cyber Liability Requirements: \$1M of coverage is needed for Cyber Liability

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 a 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 **all endorsements** thereto and may make any reasonable request for deletion, revision, or modification of particular policy terms, conditions, limitations, or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any of such policies). Upon such request by the City, the Contractor shall exercise reasonable efforts to accomplish such changes in policy coverages, and shall pay the cost thereof. Any costs will be paid by the Contractor.

REQUIRED PROVISIONS

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

- a. Name the City of Lubbock and its officers, employees, and elected representatives as additional insureds, (as the interest of each insured may appear) as to all applicable coverage, except on the Professional Medical Malpractice Liability and Workers' Compensation policies;
- 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, except on the Professional Medical Malpractice Liability policy;
- 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

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.

Information

Agenda Item

Ordinance 2nd Reading - Business Development: Consider Ordinance No. 2024-O0148, designating the North Park Development area as Tax Increment Reinvestment Zone No. 4; establishing a Board of Directors; establishing an effective date; establishing a Tax Increment Fund for the North Park Tax Increment Financing District; providing a severability clause; and enacting other matters related thereto.

Item Summary

On November 12, 2024, the City Council approved the first reading of the ordinance.

The City of Lubbock received a petition from property owners requesting that the City establish a Tax Increment Financing District (TIF) for the proposed North Park Development area. The area covers approximately 332.8 acres within the City of Lubbock, generally bounded by Erskine Street to the north, North Winston Avenue to the east, West Loop 289 to the south, and Frankford Avenue to the west.

On September 24, 2024, the City Council approved a resolution finding that the Petitioners represented more than 50% of the appraised value of the property in the area, which satisfies the requirements of Section 311.005(a)(4) of the Tax Increment Financing Act. On October 8, 2024, the City Council held a public hearing allowing interested parties to speak in favor of or in opposition to the creation of the reinvestment zone, its boundaries, or the concept of tax increment financing, as required by the Act. The next step in the creation process is to approve the first reading of the Creation Ordinance.

The purpose of this TIF District is to facilitate development or redevelopment by financing the costs of public works, public improvements, programs, or other projects benefiting the zone, plus other costs incidental to those expenditures, all of which are costs that are authorized by the Act. The proposed improvements include development of a playa lake park, administrative expenses, and maintenance costs. The total costs of the public improvements, including administrative costs, and financing and interest expenses, are estimated to be \$3,621,900. Based on the feasibility study, during the term of the zone, new development is estimated to generate approximately \$48,077,342 in total new real property tax revenue for the City, and approximately \$40,761,470 for the County. The estimated base appraised value for the Zone is \$88,709,973 (as of January 1, 2024), and is estimated to increase to \$610,581,201 upon expiration.

The Zone will be governed by an advisory board that will report directly to the City Council. The Board will consist of nine members, six of which will be appointed by the City Council, with one member being appointed by the Commissioners Court of Lubbock County, one seat being reserved for the state senator or their designee, and one seat being reserved for the state representative or their designee. The Board will be appointed within 60 days of final approval of the ordinance. The Zone will take effect immediately upon approval of the ordinance, and will terminate no later than December 31, 2054.

The ordinance includes a preliminary draft of the reinvestment zone financing plan. A final Project and Finance Plan will be reviewed by the Advisory Board once created, and will be brought back to the City

Council for final approval.

Fiscal Impact

A new fund will be created for the North Park Tax Increment Reinvestment Zone revenues and expenses with funding dependent on development within the TIF.

Staff/Board Recommending

Bill Howerton, Deputy City Manager

Brianna Brown, Business Development Director

Attachments

Ordinance

Exhibit A

Exhibit B

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF LUBBOCK, TEXAS, DESIGNATING A GEOGRAPHIC AREA WITHIN THE CITY AS A TAX INCREMENT REINVESTMENT ZONE PURSUANT TO CHAPTER 311 OF THE TEXAS TAX CODE, TO BE KNOWN AS REINVESTMENT ZONE NUMBER FOUR, CITY OF LUBBOCK; DESCRIBING THE BOUNDARIES OF THE ZONE; CREATING A BOARD OF DIRECTORS FOR THE ZONE; ESTABLISHING A TAX INCREMENT FUND; ESTABLISHING THE DURATION OF THE ZONE; CONTAINING FINDINGS RELATED TO THE CREATION OF THE ZONE; PROVIDING THAT THE ZONE TAKE EFFECT IMMEDIATELY UPON PASSAGE OF THE ORDINANCE; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Lubbock, Texas (the "City"), pursuant to Texas Tax Code Chapter 311, as amended, known as the Tax Increment Financing Act (the "Act"), may designate a geographic area within the City as a tax increment reinvestment zone if the City Council determines that development or redevelopment in the area would not occur solely through private investment in the reasonably foreseeable future and the area satisfies the requirements of the Act; and

WHEREAS, in accordance with § 311.005(a)(4) of the Act, on September 16, 2024, the City received a petition (the "Petition") from owners of certain real property, such owners being Slide North Apartments, L.L.C., a Texas limited liability company; Slide North Townhomes, L.L.C., a Texas limited liability company; North Loop 289, Ltd., a Texas limited partnership; Northpark 289 DE, LLC, a Delaware limited liability company; North Park Lubbock Development, Inc., a Texas corporation; North park Lubbock Development, Ltd., a Texas limited partnership; and Brentwood Loop Realty, Ltd., a Texas limited partnership, (the "Petitioners") requesting the City to establish a reinvestment zone encompassing an area of land described by metes and bounds in the petition, being approximately 332.8 acres located within the municipal limits of the City of Lubbock; and

WHEREAS, the Petitioners represented to the City in their Petition that they own more than more than fifty percent (50%) of the appraised value of the property in the area described in the Petition and satisfy the requirements of § 311.005(a)(4) of the Act; and

WHEREAS, the City Council, on September 24, 2024, approved a resolution finding that the Petitioners represented more than percent (50%) of the appraised value of the property in the area described in the Petition, satisfied the requirements of § 311.005(a)(4) of the Act, scheduled a public hearing on the creation of the reinvestment zone and directed the City Manager, or his designee, to develop a preliminary reinvestment zone financing plan for the area described in the Petition as required by § 311.003 of the Act; and

WHEREAS, the City Council held a public hearing on October 8, 2024, on the creation of a reinvestment zone for the area described in the Petition allowing any interested person speak for or against the creation of the reinvestment zone, its boundaries, or the concept of tax increment financing; and

WHEREAS, notice of the aforementioned public hearing was published in The Lubbock Avalanche Journal, a newspaper having general circulation in the City, more than seven days before the date of the hearing; and

WHEREAS, representatives of the Petitioners and citizens offered testimony and evidence in favor of creating the reinvestment zone while there was no evidence presented against the creation of the zone; and

WHEREAS, the City has taken all actions required to create the reinvestment zone, including but not limited to, all actions required by the Act, the Texas Open Meetings Act, and all other laws applicable to the creation of the zone; and

WHEREAS, the City Council believes it would be in the best interest of the City of Lubbock to create the reinvestment zone as described in this ordinance, establish a board of directors for the reinvestment zone, establish a tax increment fund for the reinvestment zone and make further findings relating to the creation of the reinvestment zone as further described in this ordinance; **NOW THEREFORE**,

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

SECTION 1. The recitals and findings outlined above are found to be true and correct and are hereby incorporated and adopted herein as though set forth fully herein.

SECTION 2. Findings.

- (a) The proposed reinvestment zone meets the requirements of §311.005 of the Act in that:
 - (i) The Petitioners represent more than percent (50%) of the appraised value of the property in the area described in the Petition and satisfy the requirements of §311.005(a)(4) of the Act; and
 - (ii) Development or redevelopment in the area would not occur solely through private investment in the reasonably foreseeable future.
- (b) The proposed zone is in a geographic area completely within the City's corporate limits or extraterritorial jurisdiction.
- (c) The improvements in the proposed zone will significantly enhance the value of all the taxable real property in the zone and will be of general benefit to the municipality.
- (d) The proposed zone is being designated pursuant to Texas Tax Code §311.005(a)(4).
- (e) The total appraised value of taxable real property in the proposed zone and in existing reinvestment zones does not exceed 25 percent of the total appraised value of taxable real property in the City of Lubbock and in the industrial districts created by the City of Lubbock.
- (f) The City has prepared a preliminary reinvestment zone financing plan as required by Texas Tax Code § 311.003(b), such plan being attached hereto as *Exhibit A*.

SECTION 3. Name and Boundaries. The proposed zone shall be identified as "Reinvestment Zone Number Four, City of Lubbock" (the "Zone" or "Reinvestment Zone") whose boundaries shall constitute a geographic area completely within the City's corporate limits and more particularly described by metes and bounds in the survey attached hereto as *Exhibit B*.

SECTION 4. Board of Directors.

- (a) Membership. There is established a board of directors for the Zone (the "Board") that shall consist of nine members. Six members shall be appointed to the Board by the City Council to Places 1,2,3,4,5 and 6. Place 7 of the Board shall be appointed by Commissioners Court of Lubbock County, Texas (the "County") if the County has approved the payment of all or part of the tax increment produced by the County into the tax increment fund for the Zone. If the County fails to approve the payment of all or part of the tax increment produced by the County into the tax increment fund for the Zone, the Commissioners Court shall be deemed to have waived its right to appoint a member to Place 7 and Place 7 shall be appointed by the City Council. Place 8 of the Board shall be reserved for the state senator, or their designee, in whose district the Zone is located. Place 9 of the Board shall be reserved for the state representative, or their designee, in whose district the Zone is located. The members of the Board for Places 1-7 shall be appointed by resolution of the respective governing bodies within sixty (60) days of the passage of this ordinance or within a reasonable time thereafter. All members appointed to the Board, except for the ex officio members, shall own real property in the Zone or be an employee or agent of a person that owns real property in the Zone and meet the eligibility requirements set forth in the Act.
- (b) Term. Places 1-7 of the Board shall serve staggered terms of two years with the initial terms of Places 1, 2, 3 and 7 being one year. The City Council shall designate a member of the Board to serve as the chairman of the Board and the Board shall elect from its members a vice chair and other officers as it sees fit. The chairman shall serve a term as chairman for a term of one (1) year beginning on January 1st and is eligible for reappointment.
- (c) Duties. The Board shall make recommendations to the City Council concerning the administration of the Zone. It shall prepare and adopt a project plan and a reinvestment zone financing plan for the zone ("Project and Finance Plan") as required by the Act and shall submit the Project and Finance Plan to the City Council for approval. The Board may enter into agreements as the Board considers necessary or convenient to implement the Project and Finance Plan and reimburse such costs associated with implementing the Project and Finance Plan ("Project Costs") from the TIRZ Fund established pursuant to Section 8 of this Ordinance. The Board shall possess all powers necessary to prepare, implement and monitor such Project and Finance Plan as the City Council considers advisable including the submission of an annual report on the status of the Zone.
- (d) State Senator/State Representative Waiver of Service on Board. In the event a state senator or state representative, who is an ex officio member of the board of the directors of the Zone, after receiving notice and following the provisions outlined in Texas Tax Code § 311.0092, elects not to serve on the board or designate another individual to serve in their place, they shall not be counted as a member of the board for voting or quorum purposes.

SECTION 5. Effective Immediately/Duration of the Zone. The Zone shall take effect immediately upon passage and approval of this Ordinance. The Zone shall terminate on December 31, 2054 (with final year's tax due by January 31, 2055), unless otherwise terminated in accordance with this section or applicable state law. The City shall have the right to terminate the Zone prior to the expiration of its stated term if all of the Project Costs have been paid in full. If upon

expiration of the stated term of the Zone, the Project Costs have not been paid, the City and/or the County, shall have not obligation to pay any shortfall.

SECTION 6. Tax Increment Base. The “tax increment base” for purposes of calculating the City TIRZ Increment, and if the County participates in the Zone the County TIRZ Increment, means the total appraised value of all real property in the Zone that is taxable by the City and/or the County, respectively, as of January 1, 2024.

SECTION 7. Captured Appraised Value. The “captured appraised value” for purposes of calculating the annual City TIRZ Increment, and if the County participates in the Zone the County TIRZ Increment, means the total real property value taxable (including increases in tax values attributable to changes in use) by a taxing unit for a year and located in the Zone for that year less the tax increment base of the unit.

SECTION 8. Tax Increment Fund. There is hereby created and established a tax increment fund (the “TIRZ Fund”) for the Zone which may be divided and maintained into such subaccounts as necessary and convenient to carry out the purposes of the Act. The City TIRZ Increment and the County TIRZ Increment shall be deposited into the TIRZ Fund as of the effective date of the Zone. The TIRZ Fund and all subaccounts shall be maintained at the depository bank of the City and shall be secured in the manner prescribed by law for funds of Texas cities. Prior to the termination of the Zone, funds shall be disbursed from the TIRZ Fund only to pay Project Costs.

The TIRZ Fund shall consist of the following:

- (i) the percentage of the tax increment, as defined by Texas Tax Code § 311.012(a), that each taxing unit which levies real property taxes in the Zone, other than the City, has elected to dedicate to the TIRZ Fund under an agreement with the City as authorized by Texas Tax Code § 311.013(f); and
- (ii) one hundred percent (100%) of the City’s tax increment as defined by Texas Tax Code § 311.012(a) (the “City TIRZ Increment”), subject to any binding agreement executed at any time by the City that pledges a portion of such tax increment or an amount of other legally available funds whose calculation is based on receipt of any portion of such tax increment.

SECTION 9. Repealed. All other terms and provisions of the Code of Ordinances, City of Lubbock, not in conflict herewith and not hereby amended shall remain in full force and effect.

SECTION 10. Effective Date. This Ordinance shall take effect immediately upon its passage as provided by law with the effective date being the date of passage on its second reading.

SECTION 11. Severability. If any provision, section, subsection, sentence, clause or the application of same to any person or set of circumstances for any reason is held to be unconstitutional, void or invalid or for any reason unenforceable, the validity of the remaining portions of this ordinance or the application thereby shall remain in effect, it being the intent of the City Council of the City of Lubbock, Texas in adopting this ordinance, that no portion thereof or provision contained herein shall become inoperative or fail by any reasons of unconstitutionality of any other portion or provision.

SECTION 12. Publication. 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 _____, 2024.

Passed by the City Council on second reading this _____ day of _____, 2024.

MARK W. MCBRAYER, MAYOR

ATTEST:

Courtney Paz, City Secretary

APPROVED AS TO CONTENT:



Bill Howerton, Deputy City Manager

APPROVED AS TO FORM:



Matthew L. Wade, City Attorney



NORTH PARK REINVESTMENT ZONE,
CITY OF LUBBOCK, TEXAS
PRELIMINARY PROJECT AND FINANCE PLAN
NOVEMBER 12, 2024



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SECTION 1: DEFINITIONS

Capitalized terms used in this Preliminary Plan shall have the meanings given to them in **Section I** below unless otherwise defined in this Preliminary Plan or unless the context in which a term is used clearly requires a different meaning. Unless otherwise defined, a reference to a “Section,” or an “Exhibit,” shall be a reference to a Section of this Preliminary Plan or an Exhibit or Appendix attached to and made a part of this Preliminary Plan for all purposes.

“**Act**” means Chapter 311, Texas Tax Code, as amended, “Tax Increment Financing Act”.

“**Administrative Costs**” means the actual, direct costs paid or incurred by or on behalf of the City to administer the Zone, including planning, engineering, legal services, organizational costs, publicizing costs, or implementations costs paid by or on behalf of the City that are directly related to the administration of the Zone.

“**Appraisal District**” means the Lubbock Central Appraisal District.

“**Board**” means the Board of Directors for the Zone.

“**Captured Appraised Value**” means the new taxable value generated in addition to the Tax Increment Base on a parcel-by-parcel basis for each year during the term of the Zone, as calculated and confirmed annually by the Appraisal District.

“**City**” means the City of Lubbock, Texas.

“**City Council**” means the governing body of the City.

“**County**” means Lubbock County, Texas.

“**Creation Ordinance**” means Ordinance No. [REDACTED] adopted by the City Council on November [REDACTED], 2024.

“**Developer**” means North Park Development, Inc. and its successors or assigns.

“**Feasibility Study**” means the economic feasibility study as evaluated over the term of the Zone and focused only on direct financial benefits, as shown on **Exhibit E**.

“**Final Plan**” means the future *North Park Reinvestment Zone, City of Lubbock Final Project and Finance Plan*.

“**Interlocal Agreement**” means an agreement entered into between the City and the County under which the County agrees to participate in the Zone.

“Non-Project Costs” means those certain costs that will be spent to develop in the Zone, but will not be financed by the Zone, and will be financed by private funds, as described in **Section 6**, and shown on **Exhibit B**.

“Preliminary Plan” means the *North Park Reinvestment Zone, City of Lubbock Preliminary Project and Finance Plan*.

“Project Costs” means the total project costs in the Zone, including the actual costs of the Public Improvements, and the Administrative Costs.

“Projects” means those Public Improvements anticipated to be funded from the Property of the Zone and any programs administered by the Board pursuant to Chapter 380 of the Local Government Code, as authorized by Section 311.010 of the Tax Code, as amended.

“Property” means 332.8 acres of land as depicted on **Exhibit A** and identified on **Exhibit F**.

“Public Improvements” means the proposed public improvements to be financed by the Zone, which includes landscaping, trails, drainage, stormwater, public amenities, entryways, artwork, signage, sitework, paving, erosion control, lighting, construction management and soft costs related thereto, as depicted on **Exhibit G**, and detailed on **Exhibit C**.

“Tax Increment Base” means total appraised value of taxable real property in the Zone at the time of creation of the Zone, as calculated and certified by the Appraisal District.

“TIF Agreement” an agreement by and between the Developer, the City, and the Board, entitled **“North Park Reinvestment Zone Reimbursement Agreement,”** relating to the implementation of the Final Plan.

“TIF Fund” means the tax increment fund created by the City and segregated from all other funds of the City.

“TIF Increment Receipts” means one hundred percent (100%) of the City’s ad valorem real property taxes collected and received by the City on the Captured Appraised Value in the Zone, and one hundred percent (100%) of the County’s ad valorem real property taxes collected and received by the County on the Captured Appraised Value in the Zone.

“Zone” means North Park Reinvestment Zone, City of Lubbock, as depicted on **Exhibit A**, and described on **Exhibit F**.

SECTION 2: INTRODUCTION

2.1 Authority and Purpose

The City has the authority under the Act to designate a contiguous or noncontiguous geographic area within the corporate limits or extraterritorial jurisdiction of the City as a tax increment reinvestment zone to promote development or redevelopment of the area because the City Council determined that development or redevelopment would not occur solely through private investment in the reasonably foreseeable future, that the Zone is economically feasible, and that creation of the Zone is in the best interest of the City and the property in the Zone. The purpose of the Zone is to facilitate such development or redevelopment by financing the costs of public works, public improvements, programs, and other projects benefiting the Zone, plus other costs incidental to those expenditures, all of which costs are authorized by the Act.

2.2 Eligibility Requirements

Section 311.005(4) of the tax code states an area is eligible under the Act to be designated as a tax increment reinvestment zone if the area:

- 4) is in an area described in a petition requesting that the area be designated as a reinvestment zone, if the petition is submitted to the governing body of the City by the owners of property constituting at least fifty percent (50%) of the appraised value of the property in the area according to the most recent certified appraisal roll for the county in which the area is located.

The City cannot, however, designate a zone if more than thirty percent (30%) of the property in the proposed zone, excluding property that is publicly owned, is used for residential purposes, or if the total appraised value of taxable real property in the proposed zone and in existing reinvestment zones exceeds fifty percent (50%) of the total appraised value of taxable real property in the City and in industrial districts created by the City.

2.3 The Zone

The Property within the Zone is described in a Petition submitted to the City by the owners of property constituting at least 50% of the appraised value of Property within the Zone according to the 2024 Lubbock Central Appraisal District.

2.4 Preliminary Plan and Hearing

Before the City Council adopts the Creation Ordinance, the City Council must prepare a Preliminary Plan in accordance with the Act and hold a public hearing on the creation of the Zone and its benefits to the City and to the Property, at which public hearing interested persons shall be given the opportunity to speak for and against the creation of the Zone, the boundaries of the

Zone and the concept of tax increment financing, and at which hearing the owners of the Property shall be given a reasonable opportunity to protest the inclusion of their Property in the Zone. The requirement of the Act for a preliminary reinvestment zone project and finance plan is satisfied by this Preliminary Plan, the purpose of which is to describe, in general terms, the development of the Zone, and the economic incentive that would be undertaken by the Zone. A description of the uses of the Property is located in **Exhibit E**, and confirmed by the adoption of this Final Plan.

2.5 Creation of the Zone

Upon the closing of the above referenced public hearing, the City Council shall consider the Creation Ordinance and the following findings:

- 1) that a Petition has been submitted to the City by the owners of property constituting at least 50% of the appraised value of Property within the Zone,
- 2) that improvements in the Zone will significantly enhance the value of all the taxable real property in the Zone and will be of general benefit to the City, and
- 3) that the Zone meets the requirements of Section 311.005 of the Act.

Among other provisions required by the Act, the Creation Ordinance shall appoint the Board.

2.6 Board Recommendations

After the creation of the Zone, the Board shall review the Final Plan and recommends its approval to the City Council pursuant to which the City shall contribute the TIF Increment Receipts into the TIF Fund to pay a portion of the Project Costs benefiting the Zone.

SECTION 3: DESCRIPTION AND MAPS

3.1 Existing Uses and Conditions

The Property is currently zoned as per **Exhibit ____ (attach zoning map)**. It is intended to be developed with mixed uses. The Property is partially developed, and is lacking public improvements that: (1) the City could not provide, and (2) would not be provided solely through private investment in the foreseeable future.

3.2 Proposed Uses

The proposed uses of the Property in the City include a mixed-use project, as shown on **Exhibit F**.

SECTION 4: PROPOSED CHANGES TO ORDINANCES, PLANS, CODES, RULES, AND REGULATIONS

The Property is wholly located in the corporate limits of the City and shall be subject to the City's zoning regulations. The Property is currently zoned as shown on **Exhibit __** **(attach zoning map)**. The City has exclusive jurisdiction over the Property, design, construction, installation, and inspection of water, sewer, drainage, roadway, and other public infrastructure. No proposed changes to zoning ordinances, comprehensive plan, building codes, or other municipal ordinances are planned.

SECTION 5: RELOCATION OF DISPLACED PERSONS

No persons will be displaced and in need of relocation due to the creation of the Zone or implementation of the Final Plan.

SECTION 6: NON-PROJECT COSTS

Non-Project Costs are costs that will be spent to develop in the Zone but will not be financed by the Zone, and will be financed by private funds. The list of Non-Project Costs is shown on Exhibit B and are estimated to be approximately \$104,374,139.

SECTION 7: PUBLIC IMPROVEMENTS

7.1 Categories of Public Improvements

All Public Improvements shall be designed and constructed in accordance with all applicable City standards and shall otherwise be inspected, approved, and accepted by the City. At the City's option, the Public Improvements may be expanded to include any other category of improvements authorized by the Act.

7.2 Locations of Public Improvements

The estimated locations of the proposed Public Improvements are depicted on **Exhibit G**. These locations may be revised, with the approval of the City, from time to time without amending the Final Plan.

SECTION 8: PROJECT COSTS

8.1 Project Costs

The total costs, including Public Improvements, Administrative Costs, and financing and interest expenses are estimated to be \$3,621,900, as shown on **Exhibit C**. It is anticipated that additional

Public Improvements may be constructed in the future and the City Council may amend the Final Plan to include those additional Public Improvements and their costs.

8.2 Estimated Administrative Costs

The Administrative Costs will be calculated each year by the City of Lubbock. The Administrative Costs shall be paid each year from the TIF Fund before any other Project Costs are paid.

8.3 Maintenance Costs

The Final Plan shall allow provide for maintenance costs to be paid by the City TIF Increment Receipts.

8.4 Estimated Timeline of Incurred Costs

The Administrative Costs will be incurred annually through the remaining duration of the Zone. It is estimated the costs for constructing the Public Improvements will be incurred between 2024 and 2025, as shown on **Exhibit D**.

SECTION 9: FEASIBILITY STUDY

The Feasibility Study focuses on only direct financial benefits (i.e. ad valorem tax revenues from the development of Public Improvements in the Zone). Based on the Feasibility Study attached as **Exhibit E**, during the term of the Zone, new development is estimated to generate approximately \$48,077,342 in total new real property tax revenue for the City, and approximately \$40,761,470 in total new real property tax revenue for the County.

One hundred percent (100%) of all taxing revenues generated for taxing entities, other than the City and the County, by the new development within the Zone will be retained by the respective taxing entities. Based on the development and revenue projections, the feasibility of the Zone has been demonstrated.

SECTION 10: ESTIMATED BONDED INDEBTEDNESS

No tax increment reinvestment zone bonds or public indebtedness by the City secured by the tax increments pursuant to the Act is contemplated.

SECTION 11: APPRAISED VALUE

11.1 Tax Increment Base

The Tax Increment Base is estimated to be \$88,709,973 and shall be confirmed by the Appraisal District. Each year, the Appraisal District shall confirm the Captured Appraised Value of the Zone.

11.2 Estimated Captured Appraised Value

It is estimated that upon expiration of the term of the Zone, the total Captured Appraised Value of taxable real property in the Zone will be approximately \$610,581,201 as shown on **Exhibit E**. The actual Captured Appraised Value, as certified by the Appraisal District each year, will be used to calculate the TIF Increment Receipts pursuant to the Final Plan.

SECTION 12: METHOD OF FINANCING

12.1 TIF Fund Contributions

The Final Plan shall obligate the City to deposit the City TIF Increment into the TIF Fund beginning in 2025. The Final Plan shall also allow the City to use TIF Increment Receipts for maintenance.

The Interlocal Agreement shall obligate the County to deposit the County TIF Increment into the County Project Subaccount of the TIF Fund beginning in 2025.

The funds deposited into the City Project Subaccount and the County Project Subaccount of the TIF Fund shall be prioritized and allocated as follows:

1. For the reasonable Administrative Costs of the Zone, estimated to not exceed \$10,000 per year as shown in **Exhibit E**; then
2. For reasonable maintenance costs; then
3. For the payment to the Developer of actual costs of the Project Costs; then
4. Any excess revenue may be used in any other matter as authorized by the City and allowed pursuant to the Act; then
5. After all eligible Project Costs have been paid, any excess County Project Subaccount of the TIF Fund revenue shall be returned annually to the General Fund of the County.

The City may amend the Final Plan in compliance with the TIF Agreement, including but not limited to what is considered a Project Cost.

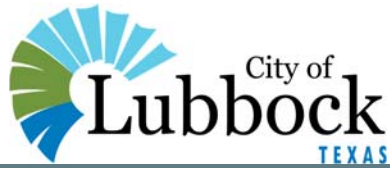
SECTION 13: DURATION OF THE ZONE, TERMINATION

13.1 Duration

The stated term of the Zone shall commence upon the execution of the Creation Ordinance and shall continue until December 31, 2054, with the last payment being due by January 31, 2055, unless otherwise terminated in accordance with the Creation Ordinance.

13.2 Termination

The Zone shall terminate on the earlier of (i) December 31, 2054, or (ii) at such time that the obligations of the Zone, including all Project Costs, have been paid in full. Nothing in this Section is intended to prevent the City from extending the term of the Zone in accordance with the Act.



LIST OF EXHIBITS

Unless otherwise stated, all references to "Exhibits" contained in this Preliminary Plan shall mean and refer to the following exhibits, all of which are attached to and made a part of this Preliminary Plan for all purposes.

Exhibit A	Map of the Zone
Exhibit B	Non-Project Costs
Exhibit C	Project Costs
Exhibit D	Estimated Timeline of Incurred Costs
Exhibit E	Feasibility Study
Exhibit F	Legal Description of the Zone
Exhibit G	Map of the Public Improvements

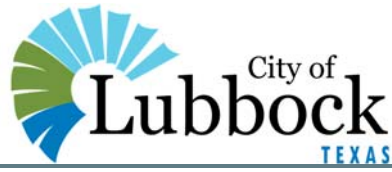


EXHIBIT A – MAP OF THE ZONE

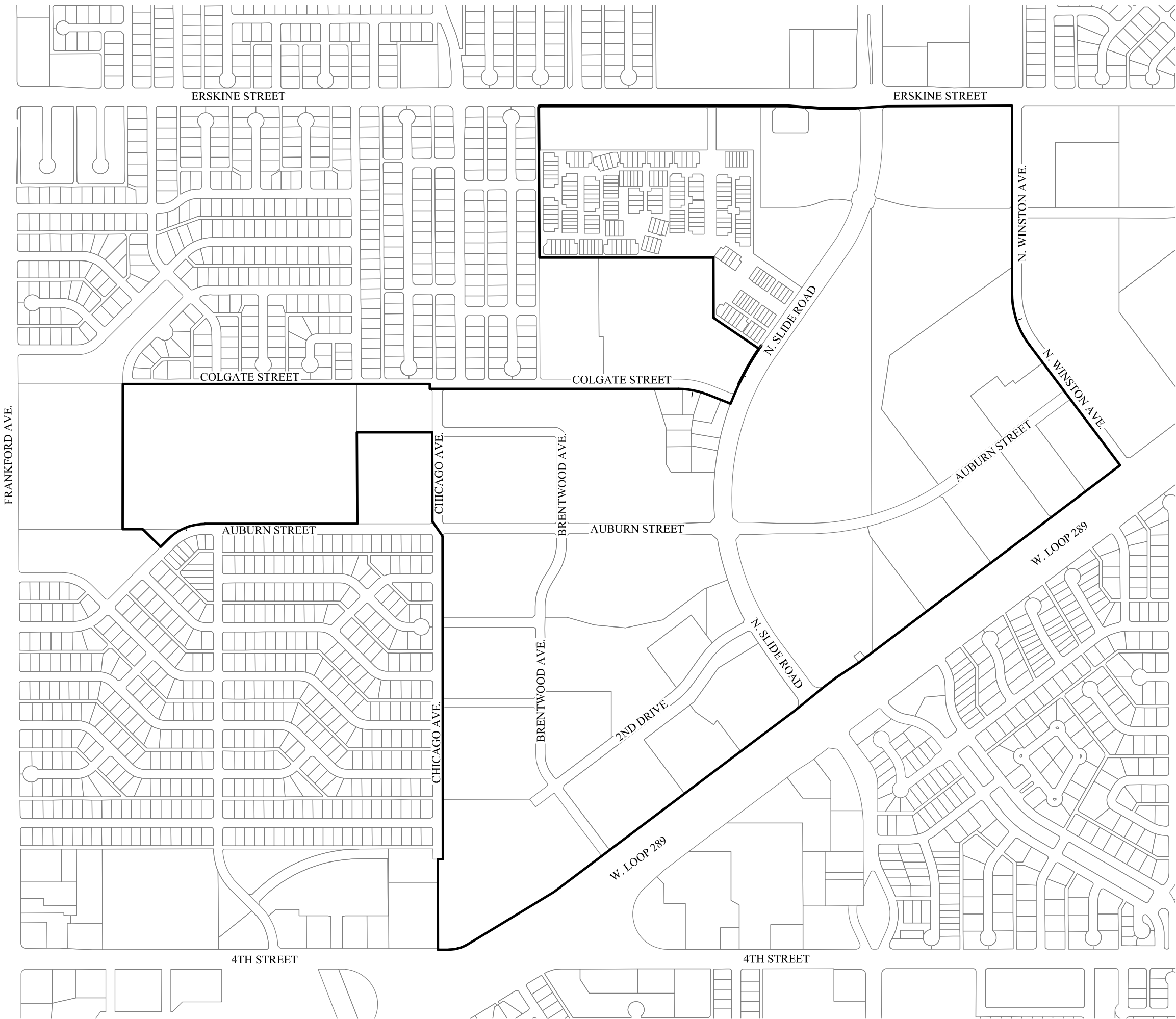
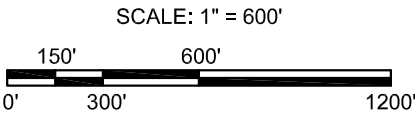


EXHIBIT OF
NORTH PARK TIF PARCEL,



NOTES:

HEAVY LINES INDICATE LIMITS OF PARCEL.

THIS DRAWING IS FOR LOCATION PURPOSES ONLY.

NO PORTION OF THIS DRAWING REPRESENTS AN ACTUAL SURVEY MADE ON THE GROUND.

STREETS NAMES DERIVED FROM LUBBOCK COUNTY APPRAISAL DISTRICT'S PARCEL VIEWER MAP ([GIS.BISCLIENT.COM/LUBBOCKCAD](https://gis.bisclient.com/lubbockcad)).

LINEWORK DERIVED FROM CITY OF LUBBOCK GIS SHAPE FILE ([CI.LUBBOCK.TX.US/DEPARTMENTS/GIS-DATA-SERVICES/PUBLIC-DATA](https://ci.lubbock.tx.us/departments/gis-data-services/public-data)).

SHEET 1 OF 4
DESCRIPTION ATTACHED AS SHEETS 2-4 OF 4



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

CIVIL ENGINEERING
LAND SURVEYING

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

Accuracy - Efficiency - Integrity

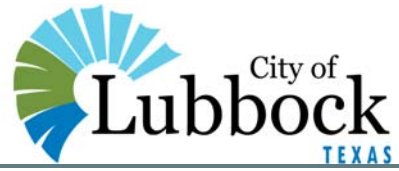


EXHIBIT B – NON-PROJECT COSTS

Description	Units/ Sq.Ft. ^[a]	Non-Project Costs ^[b]	
		per Unit/ Sq.Ft.	Total
Lot Type:			
Comm/Retail 1	491,000	\$ 49.70	\$ 24,404,255.75
Comm/Retail 2	175,000	\$ 38.12	\$ 6,671,101.44
Office	25,000	\$ 36.47	\$ 911,694.72
Professional Medical	290,000	\$ 36.63	\$ 10,622,912.64
Multi-Family	668	\$ 38,581.83	\$ 25,772,663.68
Comm/Retail 3	165,000	\$ 42.95	\$ 7,087,072.26
For Sale SFD	50	\$ 10,232.00	\$ 511,600.00
Rental TH	240	\$ 42,551.36	\$ 10,212,326.40
Rental TH 2	195	\$ 45,843.57	\$ 8,939,495.95
Student Housing	234	\$ 39,491.52	\$ 9,241,015.68
Total			\$ 104,374,138.52

Footnotes:

[a] Represent preliminary 2024 estimates provided by the developer. Actual amounts subject to change.

[b] Represent estimated direct lot costs not associated with the Project costs.

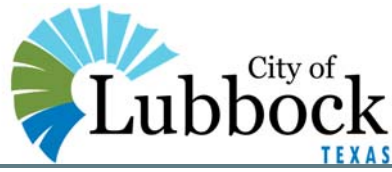


EXHIBIT C – PROJECT COSTS

Description	Total Costs ^[a]
A. Playa Lake Park	
Park / Landscaping / Pond	\$ 1,482,113.12
Sculptures	\$ 1,717,886.88
Subtotal	\$ 3,021,900.00
Soft Costs & Construction Mgt	\$ 300,000.00
Contingency (10.0%)	\$ 300,000.00
Total Project Costs	\$ 3,621,900.00

Footnotes:

[a] Represent estimates only and are subject to change. Costs may be increased or decreased.

EXHIBIT D – ESTIMATED TIMELINE OF INCURRED COSTS

TIF Year	Year	Total Project Costs ^[a]	
		Annual ^[b]	Cumulative
0	Base Year		[1]
1	2025	\$ 1,810,950.00	\$ 1,810,950.00
2	2026	\$ 1,810,950.00	\$ 3,621,900.00
3	2027		\$ 3,621,900.00
4	2028		\$ 3,621,900.00
5	2029		\$ 3,621,900.00
	Total	\$ 3,621,900.00	

Footnotes:

[a] Does not include administrative costs or financing and interest costs, which shall be incurred annually.

[b] For illustrative purposes only. Subject to change.

EXHIBIT E – FEASIBILITY STUDY

Land Use Category		Comm/Retail 1			Comm/Retail 2			Office			Professional Medical		
		Avg.			Avg.			Avg.			Avg.		
		Bldg	Value		Bldg	Value		Bldg	Value		Bldg	Value	
		Sq.Ft. ^[a]	per Metric ^[b]	Value	Sq.Ft. ^[a]	per Metric ^[b]	Value	Sq.Ft. ^[a]	per Metric ^[b]	Value	Sq.Ft. ^[a]	per Metric ^[b]	Value
0	Base Year	-	\$ 248.52	\$ -	-	\$ 190.60	\$ -	-	\$ 182.34	\$ -	-	\$ 183.15	\$ -
1	2025	-	\$ 248.52	\$ -	-	\$ 190.60	\$ -	-	\$ 182.34	\$ -	-	\$ 183.15	\$ -
2	2026	-	\$ 248.52	\$ -	-	\$ 190.60	\$ -	-	\$ 182.34	\$ -	-	\$ 183.15	\$ -
3	2027	-	\$ 248.52	\$ -	-	\$ 190.60	\$ -	-	\$ 182.34	\$ -	-	\$ 183.15	\$ -
4	2028	-	\$ 248.52	\$ -	-	\$ 190.60	\$ -	-	\$ 182.34	\$ -	-	\$ 183.15	\$ -
5	2029	-	\$ 248.52	\$ -	-	\$ 190.60	\$ -	-	\$ 182.34	\$ -	-	\$ 183.15	\$ -
6	2030	34,000	\$ 248.52	\$ 8,449,680.00	-	\$ 190.60	\$ -	-	\$ 182.34	\$ -	10,000	\$ 183.15	\$ 1,831,500.00
7	2031	34,000	\$ 248.52	\$ 8,449,680.00	-	\$ 190.60	\$ -	-	\$ 182.34	\$ -	10,000	\$ 183.15	\$ 1,831,500.00
8	2032	34,000	\$ 248.52	\$ 8,449,680.00	-	\$ 190.60	\$ -	-	\$ 182.34	\$ -	10,000	\$ 183.15	\$ 1,831,500.00
9	2033	34,000	\$ 248.52	\$ 8,449,680.00	-	\$ 190.60	\$ -	-	\$ 182.34	\$ -	10,000	\$ 183.15	\$ 1,831,500.00
10	2034	34,000	\$ 248.52	\$ 8,449,680.00	-	\$ 190.60	\$ -	-	\$ 182.34	\$ -	10,000	\$ 183.15	\$ 1,831,500.00
11	2035	39,200	\$ 248.52	\$ 9,741,984.00	10,000	\$ 190.60	\$ 1,906,000.00	-	\$ 182.34	\$ -	30,000	\$ 183.15	\$ 5,494,500.00
12	2036	39,200	\$ 248.52	\$ 9,741,984.00	10,000	\$ 190.60	\$ 1,906,000.00	-	\$ 182.34	\$ -	30,000	\$ 183.15	\$ 5,494,500.00
13	2037	39,200	\$ 248.52	\$ 9,741,984.00	10,000	\$ 190.60	\$ 1,906,000.00	-	\$ 182.34	\$ -	30,000	\$ 183.15	\$ 5,494,500.00
14	2038	39,200	\$ 248.52	\$ 9,741,984.00	10,000	\$ 190.60	\$ 1,906,000.00	-	\$ 182.34	\$ -	30,000	\$ 183.15	\$ 5,494,500.00
15	2039	39,200	\$ 248.52	\$ 9,741,984.00	10,000	\$ 190.60	\$ 1,906,000.00	-	\$ 182.34	\$ -	30,000	\$ 183.15	\$ 5,494,500.00
16	2040	25,000	\$ 248.52	\$ 6,213,000.00	25,000	\$ 190.60	\$ 4,765,000.00	5,000	\$ 182.34	\$ 911,700.00	18,000	\$ 183.15	\$ 3,296,700.00
17	2041	25,000	\$ 248.52	\$ 6,213,000.00	25,000	\$ 190.60	\$ 4,765,000.00	5,000	\$ 182.34	\$ 911,700.00	18,000	\$ 183.15	\$ 3,296,700.00
18	2042	25,000	\$ 248.52	\$ 6,213,000.00	25,000	\$ 190.60	\$ 4,765,000.00	5,000	\$ 182.34	\$ 911,700.00	18,000	\$ 183.15	\$ 3,296,700.00
19	2043	25,000	\$ 248.52	\$ 6,213,000.00	25,000	\$ 190.60	\$ 4,765,000.00	5,000	\$ 182.34	\$ 911,700.00	18,000	\$ 183.15	\$ 3,296,700.00
20	2044	25,000	\$ 248.52	\$ 6,213,000.00	25,000	\$ 190.60	\$ 4,765,000.00	5,000	\$ 182.34	\$ 911,700.00	18,000	\$ 183.15	\$ 3,296,700.00
21	2045	-	\$ 248.52	\$ -	-	\$ 190.60	\$ -	-	\$ 182.34	\$ -	-	\$ 183.15	\$ -
22	2046	-	\$ 248.52	\$ -	-	\$ 190.60	\$ -	-	\$ 182.34	\$ -	-	\$ 183.15	\$ -
23	2047	-	\$ 248.52	\$ -	-	\$ 190.60	\$ -	-	\$ 182.34	\$ -	-	\$ 183.15	\$ -
24	2048	-	\$ 248.52	\$ -	-	\$ 190.60	\$ -	-	\$ 182.34	\$ -	-	\$ 183.15	\$ -
25	2049	-	\$ 248.52	\$ -	-	\$ 190.60	\$ -	-	\$ 182.34	\$ -	-	\$ 183.15	\$ -
26	2050	-	\$ 248.52	\$ -	-	\$ 190.60	\$ -	-	\$ 182.34	\$ -	-	\$ 183.15	\$ -
27	2051	-	\$ 248.52	\$ -	-	\$ 190.60	\$ -	-	\$ 182.34	\$ -	-	\$ 183.15	\$ -
28	2052	-	\$ 248.52	\$ -	-	\$ 190.60	\$ -	-	\$ 182.34	\$ -	-	\$ 183.15	\$ -
29	2053	-	\$ 248.52	\$ -	-	\$ 190.60	\$ -	-	\$ 182.34	\$ -	-	\$ 183.15	\$ -
30	2054	-	\$ 248.52	\$ -	-	\$ 190.60	\$ -	-	\$ 182.34	\$ -	-	\$ 183.15	\$ -
31	2055	-	\$ 248.52	\$ -	-	\$ 190.60	\$ -	-	\$ 182.34	\$ -	-	\$ 183.15	\$ -
Total		491,000		\$122,023,320.00	175,000		\$ 33,355,000.00	25,000		\$ 4,558,500.00	290,000		\$ 53,113,500.00

Footnotes:

[a] Estimated absorption per developer. For illustration purposes only and is subject to change.

[b] Represents the weighted average value per metric by land use type. Assumes 0.0% annual inflation.

[c] Represents the estimated TIF term. Subject to change pending discussion with City.

Land Use Category		Multi-Family			Comm/Retail 3			For Sale SFD			Rental TH		
		Avg.			Avg.			Avg.			Avg.		
		Value			Value			Value			Value		
TIF	Year ^[c]	No. of Units ^[a]	per Metric ^[b]	Value	Bldg Sq.Ft. ^[a]	per Metric ^[b]	Value	No. of Units ^[a]	per Metric ^[b]	Value	No. of Units ^[a]	per Metric ^[b]	Value
0	Base Year	-	\$ 192,909.16	\$ -	-	\$ 214.76	\$ -	-	\$ 51,160.00	\$ -	-	\$ 212,756.80	\$ -
1	2025	68	\$ 192,909.16	\$ 13,117,822.88	-	\$ 214.76	\$ -	10	\$ 51,160.00	\$ 511,600.00	48	\$ 212,756.80	\$10,212,326.40
2	2026	-	\$ 192,909.16	\$ -	-	\$ 214.76	\$ -	10	\$ 51,160.00	\$ 511,600.00	48	\$ 212,756.80	\$10,212,326.40
3	2027	-	\$ 192,909.16	\$ -	-	\$ 214.76	\$ -	10	\$ 51,160.00	\$ 511,600.00	48	\$ 212,756.80	\$10,212,326.40
4	2028	-	\$ 192,909.16	\$ -	-	\$ 214.76	\$ -	10	\$ 51,160.00	\$ 511,600.00	48	\$ 212,756.80	\$10,212,326.40
5	2029	-	\$ 192,909.16	\$ -	-	\$ 214.76	\$ -	10	\$ 51,160.00	\$ 511,600.00	48	\$ 212,756.80	\$10,212,326.40
6	2030	60	\$ 192,909.16	\$ 11,574,549.60	-	\$ 214.76	\$ -	-	\$ 51,160.00	\$ -	-	\$ 212,756.80	\$ -
7	2031	60	\$ 192,909.16	\$ 11,574,549.60	-	\$ 214.76	\$ -	-	\$ 51,160.00	\$ -	-	\$ 212,756.80	\$ -
8	2032	60	\$ 192,909.16	\$ 11,574,549.60	-	\$ 214.76	\$ -	-	\$ 51,160.00	\$ -	-	\$ 212,756.80	\$ -
9	2033	60	\$ 192,909.16	\$ 11,574,549.60	-	\$ 214.76	\$ -	-	\$ 51,160.00	\$ -	-	\$ 212,756.80	\$ -
10	2034	60	\$ 192,909.16	\$ 11,574,549.60	-	\$ 214.76	\$ -	-	\$ 51,160.00	\$ -	-	\$ 212,756.80	\$ -
11	2035	60	\$ 192,909.16	\$ 11,574,549.60	33,000	\$ 214.76	\$ 7,087,080.00	-	\$ 51,160.00	\$ -	-	\$ 212,756.80	\$ -
12	2036	60	\$ 192,909.16	\$ 11,574,549.60	33,000	\$ 214.76	\$ 7,087,080.00	-	\$ 51,160.00	\$ -	-	\$ 212,756.80	\$ -
13	2037	60	\$ 192,909.16	\$ 11,574,549.60	33,000	\$ 214.76	\$ 7,087,080.00	-	\$ 51,160.00	\$ -	-	\$ 212,756.80	\$ -
14	2038	60	\$ 192,909.16	\$ 11,574,549.60	33,000	\$ 214.76	\$ 7,087,080.00	-	\$ 51,160.00	\$ -	-	\$ 212,756.80	\$ -
15	2039	60	\$ 192,909.16	\$ 11,574,549.60	33,000	\$ 214.76	\$ 7,087,080.00	-	\$ 51,160.00	\$ -	-	\$ 212,756.80	\$ -
16	2040	-	\$ 192,909.16	\$ -	-	\$ 214.76	\$ -	-	\$ 51,160.00	\$ -	-	\$ 212,756.80	\$ -
17	2041	-	\$ 192,909.16	\$ -	-	\$ 214.76	\$ -	-	\$ 51,160.00	\$ -	-	\$ 212,756.80	\$ -
18	2042	-	\$ 192,909.16	\$ -	-	\$ 214.76	\$ -	-	\$ 51,160.00	\$ -	-	\$ 212,756.80	\$ -
19	2043	-	\$ 192,909.16	\$ -	-	\$ 214.76	\$ -	-	\$ 51,160.00	\$ -	-	\$ 212,756.80	\$ -
20	2044	-	\$ 192,909.16	\$ -	-	\$ 214.76	\$ -	-	\$ 51,160.00	\$ -	-	\$ 212,756.80	\$ -
21	2045	-	\$ 192,909.16	\$ -	-	\$ 214.76	\$ -	-	\$ 51,160.00	\$ -	-	\$ 212,756.80	\$ -
22	2046	-	\$ 192,909.16	\$ -	-	\$ 214.76	\$ -	-	\$ 51,160.00	\$ -	-	\$ 212,756.80	\$ -
23	2047	-	\$ 192,909.16	\$ -	-	\$ 214.76	\$ -	-	\$ 51,160.00	\$ -	-	\$ 212,756.80	\$ -
24	2048	-	\$ 192,909.16	\$ -	-	\$ 214.76	\$ -	-	\$ 51,160.00	\$ -	-	\$ 212,756.80	\$ -
25	2049	-	\$ 192,909.16	\$ -	-	\$ 214.76	\$ -	-	\$ 51,160.00	\$ -	-	\$ 212,756.80	\$ -
26	2050	-	\$ 192,909.16	\$ -	-	\$ 214.76	\$ -	-	\$ 51,160.00	\$ -	-	\$ 212,756.80	\$ -
27	2051	-	\$ 192,909.16	\$ -	-	\$ 214.76	\$ -	-	\$ 51,160.00	\$ -	-	\$ 212,756.80	\$ -
28	2052	-	\$ 192,909.16	\$ -	-	\$ 214.76	\$ -	-	\$ 51,160.00	\$ -	-	\$ 212,756.80	\$ -
29	2053	-	\$ 192,909.16	\$ -	-	\$ 214.76	\$ -	-	\$ 51,160.00	\$ -	-	\$ 212,756.80	\$ -
30	2054	-	\$ 192,909.16	\$ -	-	\$ 214.76	\$ -	-	\$ 51,160.00	\$ -	-	\$ 212,756.80	\$ -
31	2055	-	\$ 192,909.16	\$ -	-	\$ 214.76	\$ -	-	\$ 51,160.00	\$ -	-	\$ 212,756.80	\$ -
Total		668		\$128,863,318.88	165,000		\$35,435,400.00	50		\$2,558,000.00	240		\$51,061,632.00

Footnotes:

[a] Estimated absorption per developer. For illustration purposes only and is subject to change.

[b] Represents the weighted average value per metric by land use type. Assumes 0.0% annual inflation.

[c] Represents the estimated TIF term. Subject to change pending discussion with City.

Land Use Category		Rental TH 2			Student Housing			Total Value
		Avg. Value			Avg. Value			
		No. of Units ^[a]	per Metric ^[b]	Value	No. of Units ^[a]	per Metric ^[b]	Value	
TIF Year	Year ^[c]							
0	Base Year	-	\$ 229,217.84	\$ -	-	\$ 197,457.60	\$ -	\$ -
1	2025	39	\$ 229,217.84	\$ 8,939,495.76	234	\$ 197,457.60	\$46,205,078.40	\$ 78,986,323.44
2	2026	39	\$ 229,217.84	\$ 8,939,495.76	-	\$ 197,457.60	\$ -	\$ 19,663,422.16
3	2027	39	\$ 229,217.84	\$ 8,939,495.76	-	\$ 197,457.60	\$ -	\$ 19,663,422.16
4	2028	39	\$ 229,217.84	\$ 8,939,495.76	-	\$ 197,457.60	\$ -	\$ 19,663,422.16
5	2029	39	\$ 229,217.84	\$ 8,939,495.76	-	\$ 197,457.60	\$ -	\$ 19,663,422.16
6	2030	-	\$ 229,217.84	\$ -	-	\$ 197,457.60	\$ -	\$ 21,855,729.60
7	2031	-	\$ 229,217.84	\$ -	-	\$ 197,457.60	\$ -	\$ 21,855,729.60
8	2032	-	\$ 229,217.84	\$ -	-	\$ 197,457.60	\$ -	\$ 21,855,729.60
9	2033	-	\$ 229,217.84	\$ -	-	\$ 197,457.60	\$ -	\$ 21,855,729.60
10	2034	-	\$ 229,217.84	\$ -	-	\$ 197,457.60	\$ -	\$ 21,855,729.60
11	2035	-	\$ 229,217.84	\$ -	-	\$ 197,457.60	\$ -	\$ 35,804,113.60
12	2036	-	\$ 229,217.84	\$ -	-	\$ 197,457.60	\$ -	\$ 35,804,113.60
13	2037	-	\$ 229,217.84	\$ -	-	\$ 197,457.60	\$ -	\$ 35,804,113.60
14	2038	-	\$ 229,217.84	\$ -	-	\$ 197,457.60	\$ -	\$ 35,804,113.60
15	2039	-	\$ 229,217.84	\$ -	-	\$ 197,457.60	\$ -	\$ 35,804,113.60
16	2040	-	\$ 229,217.84	\$ -	-	\$ 197,457.60	\$ -	\$ 15,186,400.00
17	2041	-	\$ 229,217.84	\$ -	-	\$ 197,457.60	\$ -	\$ 15,186,400.00
18	2042	-	\$ 229,217.84	\$ -	-	\$ 197,457.60	\$ -	\$ 15,186,400.00
19	2043	-	\$ 229,217.84	\$ -	-	\$ 197,457.60	\$ -	\$ 15,186,400.00
20	2044	-	\$ 229,217.84	\$ -	-	\$ 197,457.60	\$ -	\$ 15,186,400.00
21	2045	-	\$ 229,217.84	\$ -	-	\$ 197,457.60	\$ -	\$ -
22	2046	-	\$ 229,217.84	\$ -	-	\$ 197,457.60	\$ -	\$ -
23	2047	-	\$ 229,217.84	\$ -	-	\$ 197,457.60	\$ -	\$ -
24	2048	-	\$ 229,217.84	\$ -	-	\$ 197,457.60	\$ -	\$ -
25	2049	-	\$ 229,217.84	\$ -	-	\$ 197,457.60	\$ -	\$ -
26	2050	-	\$ 229,217.84	\$ -	-	\$ 197,457.60	\$ -	\$ -
27	2051	-	\$ 229,217.84	\$ -	-	\$ 197,457.60	\$ -	\$ -
28	2052	-	\$ 229,217.84	\$ -	-	\$ 197,457.60	\$ -	\$ -
29	2053	-	\$ 229,217.84	\$ -	-	\$ 197,457.60	\$ -	\$ -
30	2054	-	\$ 229,217.84	\$ -	-	\$ 197,457.60	\$ -	\$ -
31	2055	-	\$ 229,217.84	\$ -	-	\$ 197,457.60	\$ -	\$ -
Total		195	\$44,697,478.80		234	\$46,205,078.40		\$521,871,228.08

Footnotes:

[a] Estimated absorption per developer. For illustration purposes only and is subject to change.

[b] Represents the weighted average value per metric by land use type. Assumes 0.0% annual inflation.

[c] Represents the estimated TIF term. Subject to change pending discussion with City.

TIF Year[f] Year		I. Incremental Value					
		Inflation ^[a]	Taxable Value	Value Additions as of January 1 ^[b]	Total Taxable Value	Less: Existing Base Year Value ^[c]	Incremental Value
0	Base Year	0.0%	\$ -	\$ -	\$ 88,709,973.00	\$ (88,709,973.00)	\$ -
1	2025	0.0%	88,709,973.00	-	88,709,973.00	(88,709,973.00)	-
2	2026	0.0%	88,709,973.00	78,986,323.44	167,696,296.44	(88,709,973.00)	78,986,323.44
3	2027	0.0%	167,696,296.44	19,663,422.16	187,359,718.60	(88,709,973.00)	98,649,745.60
4	2028	0.0%	187,359,718.60	19,663,422.16	207,023,140.76	(88,709,973.00)	118,313,167.76
5	2029	0.0%	207,023,140.76	19,663,422.16	226,686,562.92	(88,709,973.00)	137,976,589.92
6	2030	0.0%	226,686,562.92	19,663,422.16	246,349,985.08	(88,709,973.00)	157,640,012.08
7	2031	0.0%	246,349,985.08	21,855,729.60	268,205,714.68	(88,709,973.00)	179,495,741.68
8	2032	0.0%	268,205,714.68	21,855,729.60	290,061,444.28	(88,709,973.00)	201,351,471.28
9	2033	0.0%	290,061,444.28	21,855,729.60	311,917,173.88	(88,709,973.00)	223,207,200.88
10	2034	0.0%	311,917,173.88	21,855,729.60	333,772,903.48	(88,709,973.00)	245,062,930.48
11	2035	0.0%	333,772,903.48	21,855,729.60	355,628,633.08	(88,709,973.00)	266,918,660.08
12	2036	0.0%	355,628,633.08	35,804,113.60	391,432,746.68	(88,709,973.00)	302,722,773.68
13	2037	0.0%	391,432,746.68	35,804,113.60	427,236,860.28	(88,709,973.00)	338,526,887.28
14	2038	0.0%	427,236,860.28	35,804,113.60	463,040,973.88	(88,709,973.00)	374,331,000.88
15	2039	0.0%	463,040,973.88	35,804,113.60	498,845,087.48	(88,709,973.00)	410,135,114.48
16	2040	0.0%	498,845,087.48	35,804,113.60	534,649,201.08	(88,709,973.00)	445,939,228.08
17	2041	0.0%	534,649,201.08	15,186,400.00	549,835,601.08	(88,709,973.00)	461,125,628.08
18	2042	0.0%	549,835,601.08	15,186,400.00	565,022,001.08	(88,709,973.00)	476,312,028.08
19	2043	0.0%	565,022,001.08	15,186,400.00	580,208,401.08	(88,709,973.00)	491,498,428.08
20	2044	0.0%	580,208,401.08	15,186,400.00	595,394,801.08	(88,709,973.00)	506,684,828.08
21	2045	0.0%	595,394,801.08	15,186,400.00	610,581,201.08	(88,709,973.00)	521,871,228.08
22	2046	0.0%	610,581,201.08	-	610,581,201.08	(88,709,973.00)	521,871,228.08
23	2047	0.0%	610,581,201.08	-	610,581,201.08	(88,709,973.00)	521,871,228.08
24	2048	0.0%	610,581,201.08	-	610,581,201.08	(88,709,973.00)	521,871,228.08
25	2049	0.0%	610,581,201.08	-	610,581,201.08	(88,709,973.00)	521,871,228.08
26	2050	0.0%	610,581,201.08	-	610,581,201.08	(88,709,973.00)	521,871,228.08
27	2051	0.0%	610,581,201.08	-	610,581,201.08	(88,709,973.00)	521,871,228.08
28	2052	0.0%	610,581,201.08	-	610,581,201.08	(88,709,973.00)	521,871,228.08
29	2053	0.0%	610,581,201.08	-	610,581,201.08	(88,709,973.00)	521,871,228.08
30	2054	0.0%	610,581,201.08	-	610,581,201.08	(88,709,973.00)	521,871,228.08
31	2055	0.0%	-	-	-	-	-
Total			\$ 610,581,201.08	\$ 521,871,228.08	\$ 610,581,201.08		\$ 521,871,228.08

Footnotes:

[a] Estimate for illustration purposes only.

[b] Assumes value additions are reflected on tax rolls the year following construction.

[c] Represents the property's 2024 taxable value per LCAD and developer.

[d] Represents 2023 property tax rates.

[e] Estimate only. Funds also available for maintenance costs. Actual amount to be approved by City.

TIF Year[f] Year		Incremental Value	II. City Tax Increment Revenue			III. County Tax Increment Revenue			
			City Ad Valorem	Revenues	Revenues to TIF	County Ad Valorem	Revenues	Revenues	Total
			Revenues	to City	Project Costs	Revenues	to County	to TIF	TIF Project Cost
			(\$0.4802)[d]	(0%)[e]	(100%)[e]	(\$0.3475)[d]	(0%)[e]	(100%)[g]	Contribution
0	Base Year	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
1	2025	-	-	-	-	-	-	-	-
2	2026	78,986,323.44	379,263.89	-	379,263.89	274,483.00	-	274,483.00	653,746.89
3	2027	98,649,745.60	473,680.56	-	473,680.56	342,814.77	-	342,814.77	816,495.34
4	2028	118,313,167.76	568,097.24	-	568,097.24	411,146.54	-	411,146.54	979,243.78
5	2029	137,976,589.92	662,513.91	-	662,513.91	479,478.31	-	479,478.31	1,141,992.22
6	2030	157,640,012.08	756,930.59	-	756,930.59	547,810.08	-	547,810.08	1,304,740.66
7	2031	179,495,741.68	861,873.93	-	861,873.93	623,760.27	-	623,760.27	1,485,634.20
8	2032	201,351,471.28	966,817.28	-	966,817.28	699,710.46	-	699,710.46	1,666,527.74
9	2033	223,207,200.88	1,071,760.62	-	1,071,760.62	775,660.65	-	775,660.65	1,847,421.27
10	2034	245,062,930.48	1,176,703.97	-	1,176,703.97	851,610.84	-	851,610.84	2,028,314.81
11	2035	266,918,660.08	1,281,647.31	-	1,281,647.31	927,561.03	-	927,561.03	2,209,208.34
12	2036	302,722,773.68	1,453,565.78	-	1,453,565.78	1,051,982.83	-	1,051,982.83	2,505,548.61
13	2037	338,526,887.28	1,625,484.24	-	1,625,484.24	1,176,404.63	-	1,176,404.63	2,801,888.87
14	2038	374,331,000.88	1,797,402.71	-	1,797,402.71	1,300,826.43	-	1,300,826.43	3,098,229.14
15	2039	410,135,114.48	1,969,321.17	-	1,969,321.17	1,425,248.23	-	1,425,248.23	3,394,569.40
16	2040	445,939,228.08	2,141,239.64	-	2,141,239.64	1,549,670.03	-	1,549,670.03	3,690,909.67
17	2041	461,125,628.08	2,214,159.26	-	2,214,159.26	1,602,443.84	-	1,602,443.84	3,816,603.10
18	2042	476,312,028.08	2,287,078.89	-	2,287,078.89	1,655,217.64	-	1,655,217.64	3,942,296.53
19	2043	491,498,428.08	2,359,998.51	-	2,359,998.51	1,707,991.44	-	1,707,991.44	4,067,989.95
20	2044	506,684,828.08	2,432,918.14	-	2,432,918.14	1,760,765.25	-	1,760,765.25	4,193,683.38
21	2045	521,871,228.08	2,505,837.76	-	2,505,837.76	1,813,539.05	-	1,813,539.05	4,319,376.81
22	2046	521,871,228.08	2,505,837.76	-	2,505,837.76	1,813,539.05	-	1,813,539.05	4,319,376.81
23	2047	521,871,228.08	2,505,837.76	-	2,505,837.76	1,813,539.05	-	1,813,539.05	4,319,376.81
24	2048	521,871,228.08	2,505,837.76	-	2,505,837.76	1,813,539.05	-	1,813,539.05	4,319,376.81
25	2049	521,871,228.08	2,505,837.76	-	2,505,837.76	1,813,539.05	-	1,813,539.05	4,319,376.81
26	2050	521,871,228.08	1,813,539.05	-	1,813,539.05	2,505,837.76	-	2,505,837.76	4,319,376.81
27	2051	521,871,228.08	1,813,539.05	-	1,813,539.05	2,505,837.76	-	2,505,837.76	4,319,376.81
28	2052	521,871,228.08	1,813,539.05	-	1,813,539.05	2,505,837.76	-	2,505,837.76	4,319,376.81
29	2053	521,871,228.08	1,813,539.05	-	1,813,539.05	2,505,837.76	-	2,505,837.76	4,319,376.81
30	2054	521,871,228.08	1,813,539.05	-	1,813,539.05	2,505,837.76	-	2,505,837.76	4,319,376.81
31	2055	-	-	-	-	-	-	-	-
Total		\$ 521,871,228.08	\$ 48,077,341.71	\$ -	\$ 48,077,341.71	\$ 40,761,470.32	\$ -	\$ 40,761,470.32	\$ 88,838,812.03

[f] Assumes a TIF term of 30 years. Assumes tax increment is collected and available the year after it is reflected on the tax rolls, with final collections in year 31. Subject to negotiation with City.

[g] Estimate per prior City approved tax increment zones.

[h] Assumes eligible costs, including interest, and maintenance available to be reimbursed with TIF revenues.

[i] Estimate only. Actual amount and timing subject to change.

TIF Year[f] Year		IV. TIF Contribution Available for Project Costs			V. Developer Project Cost Reimbursement				VI. Remaining TIF Allocation		
		Total Contribution Available ^[f]	TIF Administrative Costs ^[g]	Remaining for Project Costs ^[h]	Project Costs Incurred ^[i]	Add: Interest Accrued @ 7.50% ^[j]	Less: TIF Reimbursement	Outstanding Reimbursable Balance	Total Remaining TIF	Remaining TIF to City ^[k]	Remaining TIF to County
0	Base Year	\$ -	\$ -	\$ -	\$ 2,173,140.00			\$ 2,173,140.00	\$ -		
1	2025	-	-	-	1,448,760.00	162,985.50	-	3,784,885.50	-	-	-
2	2026	-	-	-	-	283,866.41	-	4,068,751.91	-	-	-
3	2027	653,746.89	(40,000.00)	613,746.89	-	305,156.39	613,746.89	3,760,161.41	-	-	-
4	2028	816,495.34	(10,000.00)	806,495.34	-	282,012.11	806,495.34	3,235,678.18	-	-	-
5	2029	979,243.78	(10,000.00)	969,243.78	-	242,675.86	969,243.78	2,509,110.27	-	-	-
6	2030	1,141,992.22	(10,000.00)	1,131,992.22	-	188,183.27	1,131,992.22	1,565,301.32	-	-	-
7	2031	1,304,740.66	(10,000.00)	1,294,740.66	-	117,397.60	1,294,740.66	387,958.25	-	-	-
8	2032	1,485,634.20	(10,000.00)	1,475,634.20	-	29,096.87	417,055.12	-	1,058,579.08	614,122.72	444,456.36
9	2033	1,666,527.74	(10,000.00)	1,656,527.74	-	-	-	-	1,656,527.74	961,015.89	695,511.84
10	2034	1,847,421.27	(10,000.00)	1,837,421.27	-	-	-	-	1,837,421.27	1,065,959.24	771,462.03
11	2035	2,028,314.81	(10,000.00)	2,018,314.81	-	-	-	-	2,018,314.81	1,170,902.58	847,412.23
12	2036	2,209,208.34	(10,000.00)	2,199,208.34	-	-	-	-	2,199,208.34	1,275,845.93	923,362.42
13	2037	2,505,548.61	(10,000.00)	2,495,548.61	-	-	-	-	2,495,548.61	1,447,764.39	1,047,784.22
14	2038	2,801,888.87	(10,000.00)	2,791,888.87	-	-	-	-	2,791,888.87	1,619,682.86	1,172,206.02
15	2039	3,098,229.14	(10,000.00)	3,088,229.14	-	-	-	-	3,088,229.14	1,791,601.32	1,296,627.82
16	2040	3,394,569.40	(10,000.00)	3,384,569.40	-	-	-	-	3,384,569.40	1,963,519.78	1,421,049.62
17	2041	3,690,909.67	(10,000.00)	3,680,909.67	-	-	-	-	3,680,909.67	2,135,438.25	1,545,471.42
18	2042	3,816,603.10	(10,000.00)	3,806,603.10	-	-	-	-	3,806,603.10	2,208,357.87	1,598,245.22
19	2043	3,942,296.53	(10,000.00)	3,932,296.53	-	-	-	-	3,932,296.53	2,281,277.50	1,651,019.03
20	2044	4,067,989.95	(10,000.00)	4,057,989.95	-	-	-	-	4,057,989.95	2,354,197.12	1,703,792.83
21	2045	4,193,683.38	(10,000.00)	4,183,683.38	-	-	-	-	4,183,683.38	2,427,116.75	1,756,566.63
22	2046	4,319,376.81	(10,000.00)	4,309,376.81	-	-	-	-	4,309,376.81	2,500,036.38	1,809,340.44
23	2047	4,319,376.81	(10,000.00)	4,309,376.81	-	-	-	-	4,309,376.81	2,500,036.38	1,809,340.44
24	2048	4,319,376.81	(10,000.00)	4,309,376.81	-	-	-	-	4,309,376.81	2,500,036.38	1,809,340.44
25	2049	4,319,376.81	(10,000.00)	4,309,376.81	-	-	-	-	4,309,376.81	2,500,036.38	1,809,340.44
26	2050	4,319,376.81	(10,000.00)	4,309,376.81	-	-	-	-	4,309,376.81	2,500,036.38	1,809,340.44
27	2051	4,319,376.81	(10,000.00)	4,309,376.81	-	-	-	-	4,309,376.81	1,809,340.44	2,500,036.38
28	2052	4,319,376.81	(10,000.00)	4,309,376.81	-	-	-	-	4,309,376.81	1,809,340.44	2,500,036.38
29	2053	4,319,376.81	(10,000.00)	4,309,376.81	-	-	-	-	4,309,376.81	1,809,340.44	2,500,036.38
30	2054	4,319,376.81	(10,000.00)	4,309,376.81	-	-	-	-	4,309,376.81	1,809,340.44	2,500,036.38
31	2055	4,319,376.81	(10,000.00)	4,309,376.81	-	-	-	-	4,309,376.81	1,809,340.44	2,500,036.38
Total		\$ 88,838,812.03	\$ (320,000.00)	\$ 88,518,812.03	\$ 3,621,900.00	\$ 1,611,374.01	\$ 5,233,274.01		\$ 83,285,538.01	\$ 44,863,686.27	\$ 38,421,851.75

[j] Assumes a 7.50% interest rate payable on the outstanding balance.
[k] Amounts available, at City's discretion, to fund other costs (e.g. Lopez and Frankford parks).

EXHIBIT F – LEGAL DESCRIPTION OF THE ZONE



**DESCRIPTION FOR A TIF DELINEATION REQUEST IN
SECTION 1, BLOCK JS, E.L. AND R.R. RR. CO. SURVEY, ABSTRACT NO. 281 AND
SECTION 22, BLOCK A, T.T. RR. CO. SURVEY, ABSTRACT NO'S. 1543 AND 1544,
LUBBOCK COUNTY, TEXAS**

(Sheets 2-4 of 4, Exhibit attached as Sheet 1)

Description of a tract of land prepared for TIF Delineation purposes only and being located in Section 1, Block JS, E.L. and R.R. RR. Co. Survey, Abstract No. 281, Lubbock County, Texas and in Section 22, Block A, T.T. RR. Co. Survey, Abstract No. 1543 and 1544, Lubbock County, Texas, said tract being approximately 332.8 acres being further described by metes and bounds as follows:

BEGINNING at a point that bears S. $88^{\circ} 06' 33''$ E. approximately 2,032.8 feet and S. $01^{\circ} 49' 18''$ W. approximately 55.0 feet from the northwest corner of said Section 1;

THENCE S. $88^{\circ} 06' 33''$ E. an approximate distance of 1525.09 feet to a point for a corner of this tract;

THENCE S. $83^{\circ} 58' 14''$ E. an approximate distance of 200.23 feet to a point for a corner of this tract;

THENCE S. $88^{\circ} 01' 40''$ E. an approximate distance of 216.46 feet to a point for a corner of this tract;

THENCE N. $88^{\circ} 10' 43''$ E. an approximate distance of 195.17 feet to a point for a corner of this tract;

THENCE S. $88^{\circ} 19' 33''$ E. an approximate distance of 765.26 feet to a point for a corner of this tract;

THENCE S. $01^{\circ} 54' 10''$ W. an approximate distance of 1148.28 feet to a point for a corner of this tract;

THENCE southerly along a curve to the left an approximate arc distance of 342.32 feet, said curve having a radius of approximately 530.13 feet, a delta angle of $36^{\circ} 59' 49''$, an approximate chord length of 336.40 feet and a chord bearing of S. $16^{\circ} 36' 02''$ E. to a point for a corner of this tract;

THENCE S. $35^{\circ} 05' 56''$ E. an approximate distance of 922.99 feet to a point for a corner of this tract;

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This description was prepared for purposes of a TIF Delineation request and does not represent a survey made upon the ground.

Prepared for: North Park Development, Inc.
August 23, 2024

230621- North Park TIF Parcel-Desc

EXHIBIT G – MAP OF THE PUBLIC IMPROVEMENTS



AMD ENGINEERING, LLC

**TAX INCREMENT FINANCING
ENGINEER'S REPORT**

Prepared by:



September 23, 2024

TBPE Reg. No. F-9197

TBPELS Reg. No. 10178500

TAX INCREMENT FINANCING ENGINEER'S REPORT

September 23, 2024

Introduction:

Playa Lake Park (working title, the actual name of the park is to be designated by the City of Lubbock) is a proposed public park and lake consisting of landscaping, irrigation, walking trails/sidewalks, a constant level pond with fountain, and a statue of Quanah Parker on approximately 16.03-acres of land. This park is located at the southeast corner of North Slide Road and Auburn Street in the City of Lubbock, Texas. This park development will be constructed in a single phase of construction.

This report includes the supporting documentation for the formation of the Tax Increment Financing (TIF) and the financing of this project by the Petitioner to finance the public infrastructure items listed below that are necessary for the buildout of the park.

The 16.03-acre park is located within the TIF boundary of approximately 332.8 acres. The boundary of the TIF is shown on the attached Appendix 1.

Development Improvements:

- **Demolition:** This includes the demolition and haul-off of the existing concrete drainage flume at the east end of the intersection of North Slide Road and 2nd Drive. This drainage flume consists of reinforced concrete installed with the North Slide Road construction project. This flume will be replaced by rock gabions and landscaping.
- **Sculpture:** This includes the artist's fees and materials for the completion of a bronze statue of Quanah Parker and a large arrow, two separate sculptures. The sculptor is Eddie Dixon.
- **Earthwork:** This includes the cutting of the existing playa lake to reshape the drainage flume area off Slide Road to beautify the area with natural landscaping and reduce erosion. This also includes the earthwork efforts necessary to raise the statue and surrounding area above the 100-year flood elevation while maintaining the playa lake's storm water holding capacity. This item also includes fine grading around the landscaping features.
- **Landscaping and Hardscape:** Improvements include a lined pond with two fountains, large decorative boulders and rocks to mimic the caprock escarpment, concrete

sidewalks, decorative gravel, decorative retaining walls, gabion mattresses and blocks, pedestrian bridges, accessible handrailing, limestone blocks, flagstone pathways (mortared in), pedestrian and decorative lighting, park benches, trash receptacles, decomposed granite hardscaping features, native seeding, sod, irrigation, and various native plantings and trees.

- **Soft Costs:** This includes costs related to designing, constructing, installing, and financing the park. This includes surveying, engineering, landscape architectural design, soils testing, construction management, legal fees, consulting fees, inspection fees, District Formation Costs, and other TIF costs incurred and paid by the Developer.

Development Costs:

An Engineers' Opinion of Probable Cost has been prepared for Playa Lake Park as described above and is included as the Tax Increment Financing Cost Estimate. The Opinion of Probable Cost is based on contractor pricing and AMD Engineering, LLC's reasonable professional judgement and experience and does not constitute a warranty, expressed or implied, that the actual cost will not vary.

Development and Construction Schedule:

- Begin June 2024 – Complete December 2025

APPENDIX 1

TIF BOUNDARY

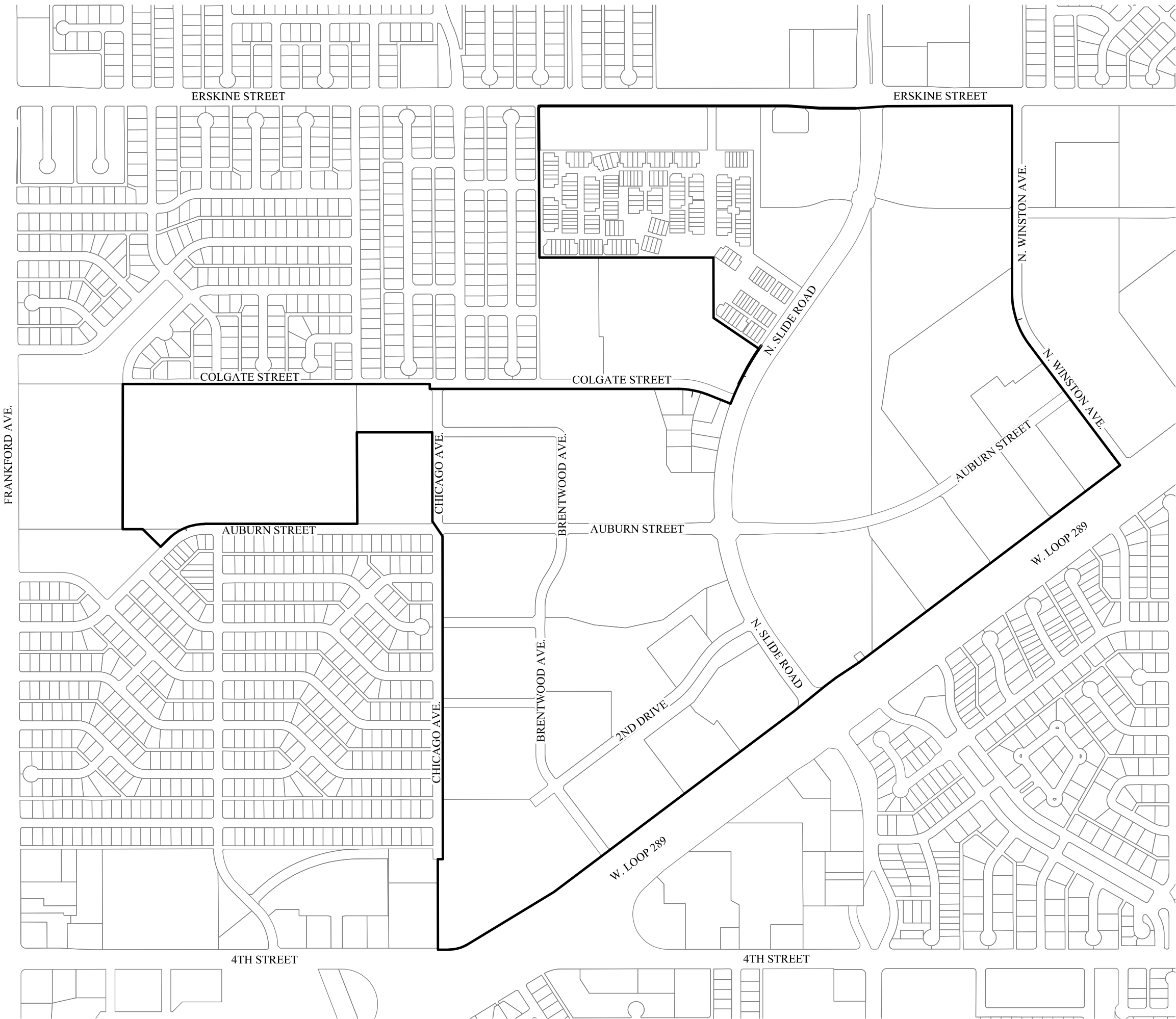
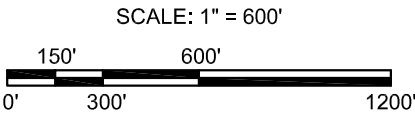


EXHIBIT OF
NORTH PARK TIF PARCEL,



NOTES:

HEAVY LINES INDICATE LIMITS OF PARCEL.

THIS DRAWING IS FOR LOCATION PURPOSES ONLY.

NO PORTION OF THIS DRAWING REPRESENTS AN ACTUAL SURVEY MADE ON THE GROUND.

STREETS NAMES DERIVED FROM LUBBOCK COUNTY APPRAISAL DISTRICT'S PARCEL VIEWER MAP ([GIS.BISCLIENT.COM/LUBBOCKCAD](https://gis.bisclient.com/lubbockcad)).

LINEWORK DERIVED FROM CITY OF LUBBOCK GIS SHAPE FILE ([CI.LUBBOCK.TX.US/DEPARTMENTS/GIS-DATA-SERVICES/PUBLIC-DATA](https://ci.lubbock.tx.us/departments/gis-data-services/public-data)).

SHEET 1 OF 4
DESCRIPTION ATTACHED AS SHEETS 2-4 OF 4



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

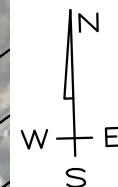
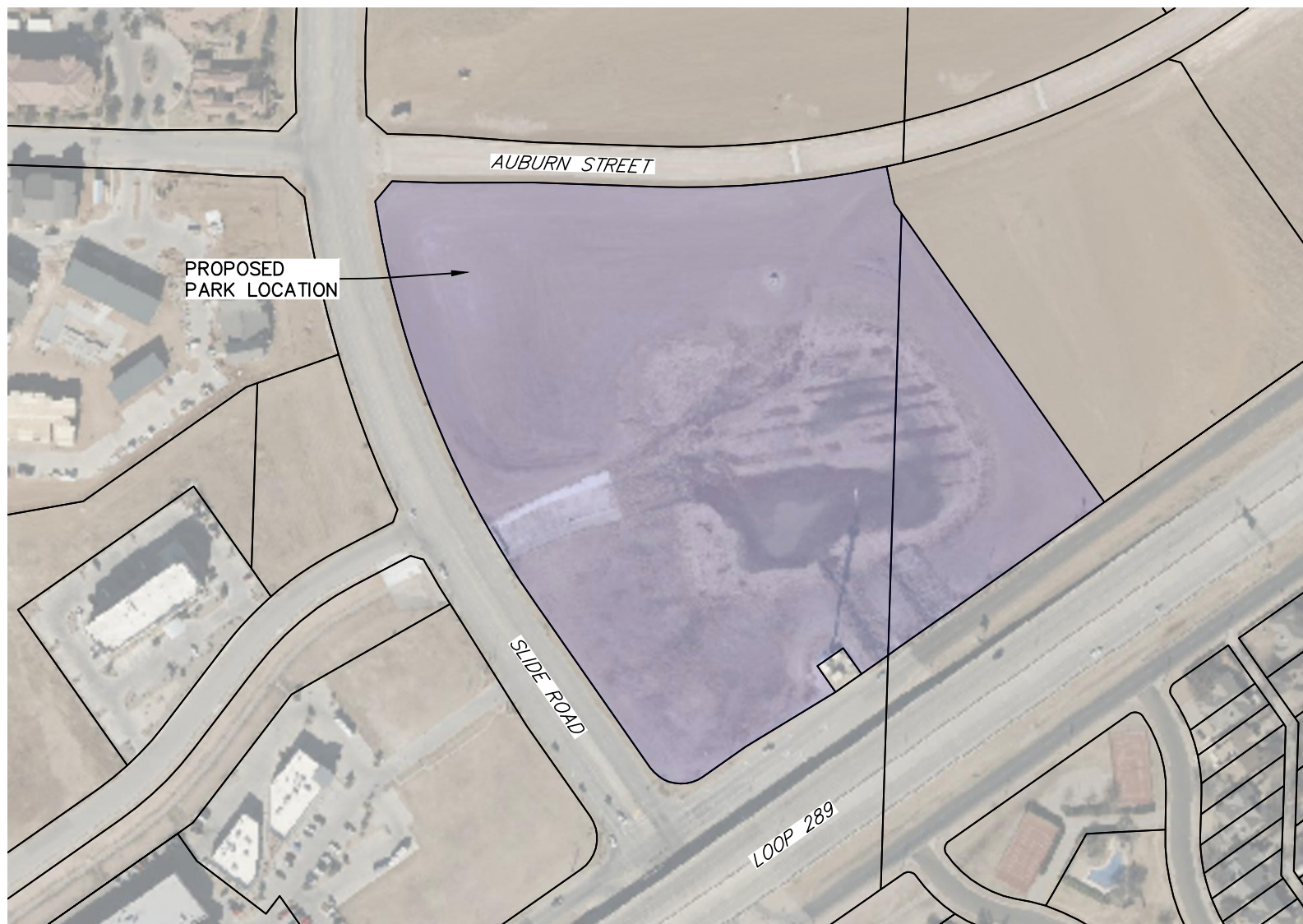
CIVIL ENGINEERING
LAND SURVEYING

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

Accuracy - Efficiency - Integrity

APPENDIX 2

SITE LOCATION MAP



QUANAH PARKER PARK SITE LOCATION



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

CIVIL ENGINEERING
LAND PLANNING

Phone: 806-771-5976
Fax: 806-771-7625
TBPE Reg. # F-9197

Accuracy - Efficiency - Integrity

APPENDIX 3

OPINION OF PROBABLE COST

ENGINEERS OPINION OF PROBABLE COST
for
PLAYA LAKE PARK
September 20, 2024

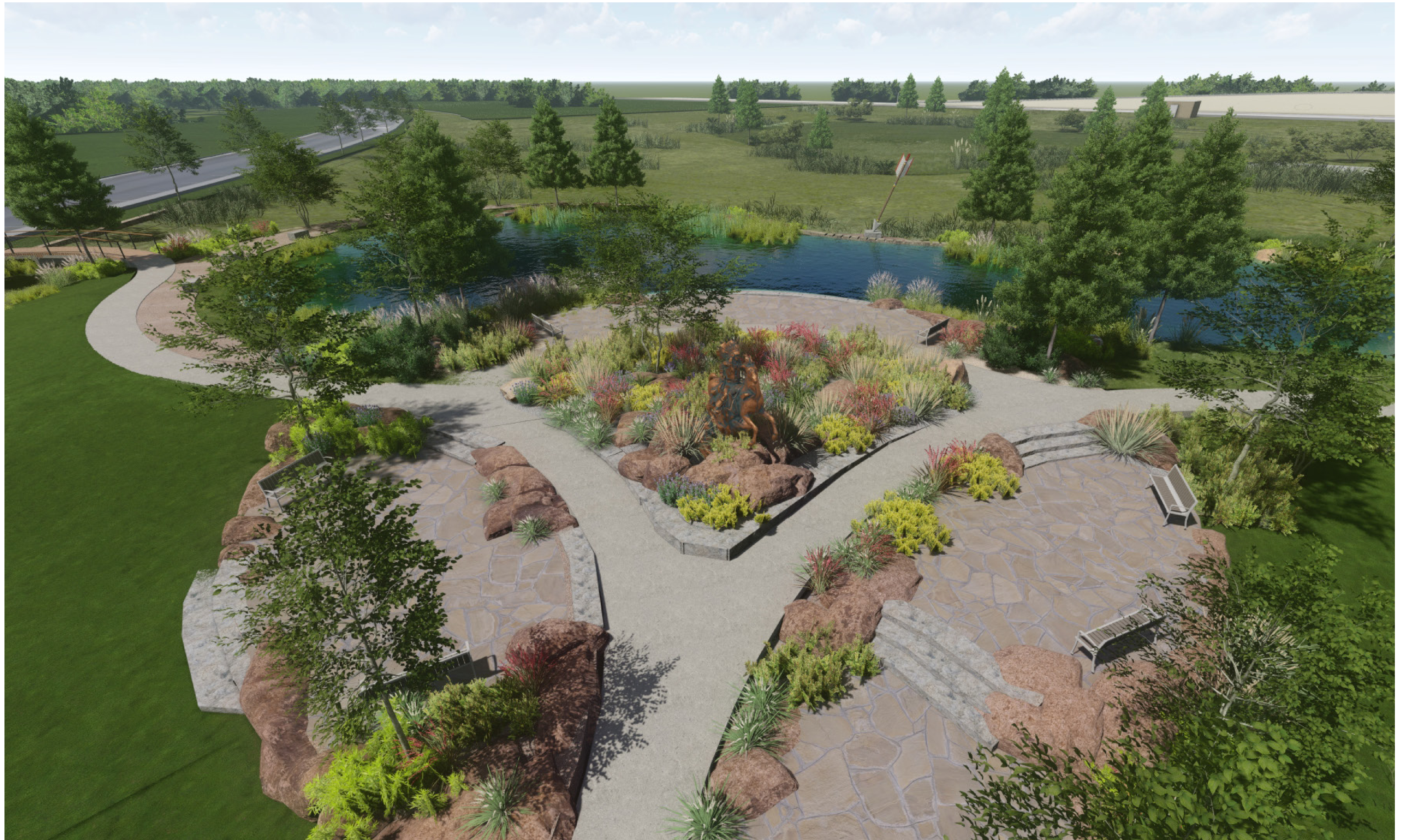
This estimate is preliminary based on schematic designs, historical contractor pricing, landscape architect estimates, and engineer estimates. The quantities and pricing are subject to change based on final scope and bid prices at the time of bidding.

ITEM NO.	DESCRIPTION	ESTIMATED PRICE
1	Site / earthwork / concrete removal and disposal / fine grading, complete and in place:	\$ 765,000.00
2	Gabion mattresses and blocks, including all materials necessary, complete and in place:	\$ 52,000.00
3	Concrete sidewalks and pathways, including all materials necessary, complete and in place:	\$ 168,000.00
4	Decorative retaining walls, pedestrian bridges, and handrail systems, including all materials necessary, complete and in place:	\$ 106,000.00
5	Large landscaping boulders, furnished and installed, complete and in place:	\$ 102,500.00
6	Trees and plantings, as per the landscape plan, furnished and installed, complete and in place:	\$ 98,000.00
7	Irrigation system with controls, complete and in place as per the landscape irrigation plan, plumbed to a well:	\$ 85,000.00
8	Cut limestone 2'x2'x5' blocks, furnished and installed, complete and in place:	\$ 132,000.00
9	Flagstone pathways as per the landscape plan, furnished and installed, complete and in place:	\$ 28,000.00
10	Low voltage lighting package as per the landscape plan, furnished and installed, complete and in place:	\$ 35,000.00
11	Park benches as per the landscape plan, furnished and installed, complete and in place:	\$ 9,000.00
12	Trash receptables, furnished and installed, complete and in place:	\$ 6,200.00
13	Various grades of decomposed granite as per the landscape plan, furnished and installed, complete and in place:	\$ 8,700.00
14	Sod as per the landscape plan, furnished and installed, complete and in place:	\$ 19,000.00
15	Black steel edging as per the landscape plan, furnished and installed, complete and in place:	\$ 5,000.00
16	Native trail seed drill/hydromulch as per the landscape plan, furnished and installed, complete and in place:	\$ 39,000.00
17	Native seed wetland mix drill/hydromulch as per the landscape plan, furnished and installed, complete and in place:	\$ 3,500.00
18	7.5-horse water well, including drilling and all electrical and appurtenances necessary, complete and in place:	\$ 45,000.00
19	Pond liner system, complete and in place:	\$ 75,000.00
20	Decorative water fountains (2), including all materials, pumps, and electrical, complete and in place:	\$ 40,000.00
21	Statue of Quannah Parker and Arrow, including artist fees and concrete foundations, complete and in place:	\$ 1,200,000.00
22	Soft costs and Construction management	\$ 300,000.00
23	Contingency	\$ 300,000.00

PROJECT TOTAL \$ 3,621,900.00

APPENDIX 4

PARK RENDERING - STATUE



PLAYA LAKE PARK

JANUARY 10, 2024

VIEW 03



APPENDIX 5

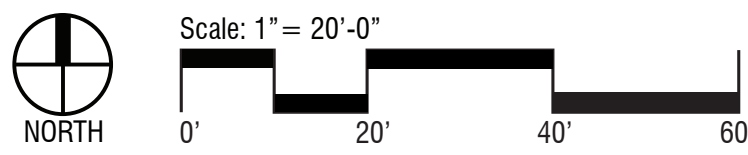
PARK RENDERING – LANDSCAPE/HARDSCAPE



PLAYA LAKE PARK

JANUARY 10, 2024

SITE PLAN ENLARGEMENT

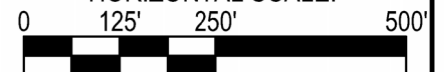


APPENDIX 6

EARTHWORK LIMITS



HORIZONTAL SCALE:



QUANAH PARKER PARK EARTHWORK LIMITS



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

CIVIL ENGINEERING
LAND PLANNING

Phone: 806-771-5976
Fax: 806-771-7625
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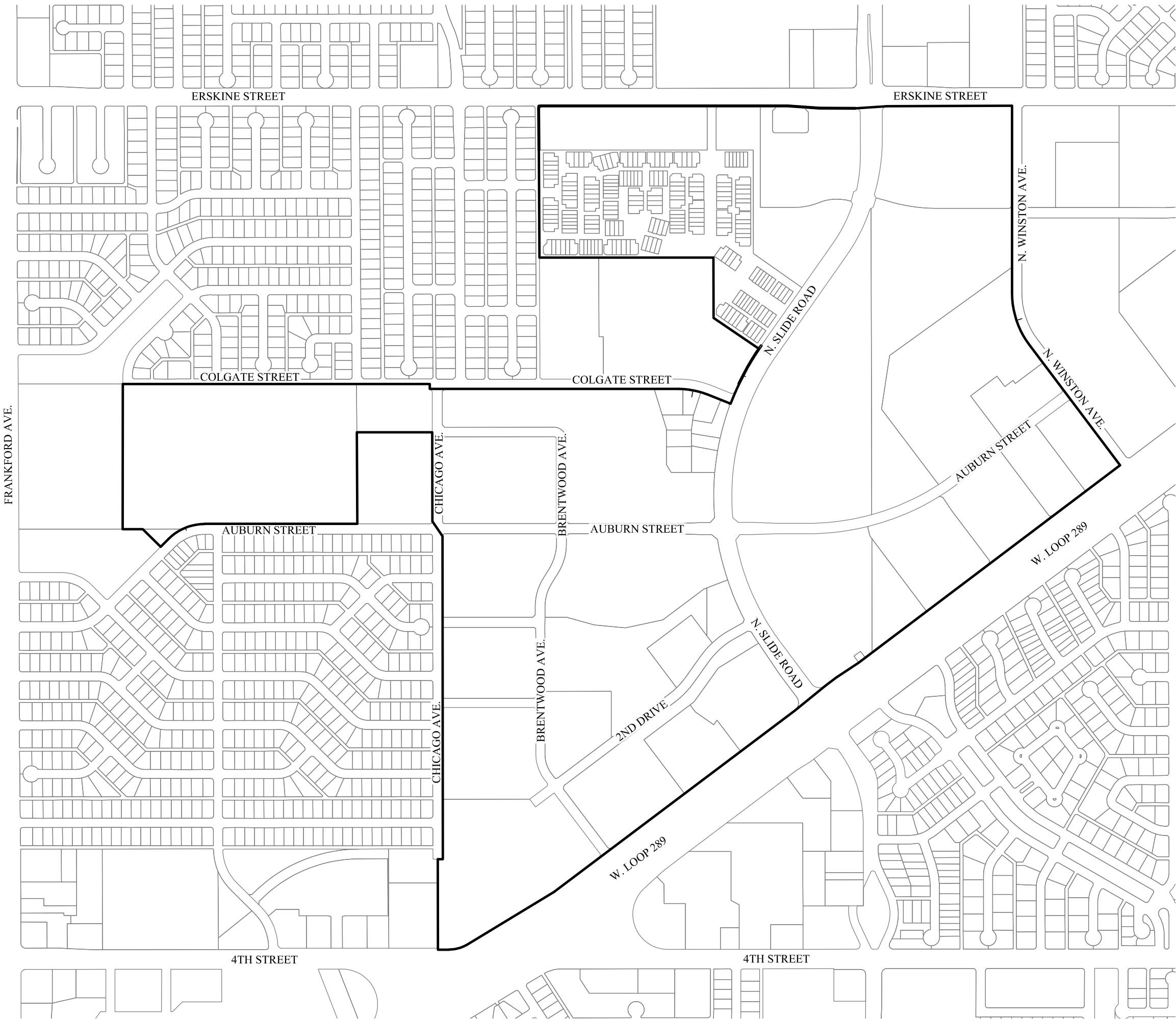
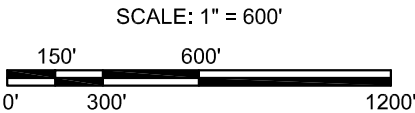


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**DESCRIPTION FOR A TIF DELINEATION REQUEST IN
SECTION 1, BLOCK JS, E.L. AND R.R. RR. CO. SURVEY, ABSTRACT NO. 281 AND
SECTION 22, BLOCK A, T.T. RR. CO. SURVEY, ABSTRACT NO'S. 1543 AND 1544,
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Prepared for: North Park Development, Inc.
August 23, 2024

230621- North Park TIF Parcel-Desc

Information

Agenda Item

Resolution - Business Development: Consider a resolution authorizing the Mayor to execute Amendment No. 2 to Professional Services Agreement Contract 17764, with West Texas Services, Inc. dba Tom's Tree Place, for services related to right-of-way improvements in the North Overton Tax Increment Financing District boundary at 9th Street and 10th Street.

Item Summary

On January 23, 2024, the City Council approved Contract 17764, with Tom's Tree Place. This contract is for improvements in the public right-of-way between Avenue S and Avenue U on 9th and 10th Streets. Improvements will include removal of existing ground material, irrigation repair, and installation of new ground material. All improvements will be completed in accordance with the Overton Park Public Improvement Guidelines, as adopted by the City Council in January 2004.

On July 9, 2024, City Council approved Amendment No. 1, which added improvements in the sections of right-of-way on Avenue S and Avenue U, that were not included in the original contract.

Amendment No. 2 is for additional improvements on 9th Street and 10th Street between Avenue V and Avenue U, including portions on Avenue V and Avenue U that were not originally included in the project scope. This amendment will add \$137,202.88 to the project, and an additional 12 months to the contact time. The cost of Amendment No. 2 is funded in the North Overton Tax Increment Financing (TIF) District Fund. The North Overton TIF Board approved this amount at their November 7, 2024 Board Meeting, and recommend approval by the City Council.

Fiscal Impact

Amendment No. 2 for Contact 17764, in the amount of \$137,202.88, is funded in Capital Improvement Project 95524, North Overton TIF Public Improvement Projects.

Staff/Board Recommending

Bill Howerton, Deputy City Manager
Brianna Brown, Business Development Director
North Overton TIF Advisory Board

Attachments

Resolution
Amendment 2
Exhibit A
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, Amendment No. 2 to the professional services agreement Contract No. 17764 for right-of-way improvements on 9th and 10th Streets in the North Overton TIF by and between the City of Lubbock and the West Texas Services, Inc. dba Tom's Tree Place, and related documents. Said Amendment is attached hereto and incorporated in this resolution as if fully set forth herein and shall be included in the minutes of the City Council.

Passed by the City Council on _____.

MARK W. MCBRAYER, MAYOR

ATTEST:

Courtney Paz, City Secretary

APPROVED AS TO CONTENT:



Bill Howerton, Deputy City Manager

APPROVED AS TO FORM:



Kelli Leisure, Senior Assistant City Attorney

**Amendment 2
To Agreement Between
The City of Lubbock, TX
and
West Texas Services, Inc. dba Tom's Tree Place**

THIS IS THE SECOND AMENDMENT TO THE AGREEMENT dated and entered into on the 23rd day of January 2024, Contract No. 17764, by and between the City of Lubbock ("City") and West Texas Services, Inc. dba Tom's Tree Place ("Contractor").

Contractor is providing professional services for Tax Increment Finance District 9th and 10th Street Right-of-Way Improvements (the "Activities").

The Parties entered into Amendment No. 1 on July 9, 2024 to expand the scope of services.

Now the Parties desire again to enlarge the scope of services to be performed by the Contractor while completing the Activities.

WITNESSETH:

The City and Contractor now agree to enlarge the scope of services in this Agreement, details of which are as set forth in Exhibit "A" and incorporated herein. The cost of said services shall not exceed one hundred thirty-seven thousand two hundred two dollars and 88/100 (\$137,202.88). The Contractor shall have an additional twelve (12) months to complete the services herein.

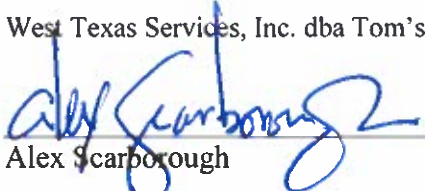
All other portions of the original Agreement shall remain in place and are not altered by this amendment.

IN WITNESS HEREOF, the parties have executed this Agreement as of this ____ day of _____ 2024.

CITY OF LUBBOCK

MARK MCBRAYER, Mayor

West Texas Services, Inc. dba Tom's Tree Place



Alex Scarborough

ATTEST:

Courtney Paz, City Secretary

APPROVED AS TO CONTENT:



Brianna Brown, Director of Business Development

APPROVED AS TO FORM:



Kelli Leisure, Senior Assistant City Attorney



tom's
TREE PLACE

Date

9/17/2024

Ordered By:

City of Lubbock

PO Number:

9TH and 10TH Streets

Home Telephone:

Mobile Telephone:

Email:

ESTIMATE FOR OVERTON RESIDENTIAL

**City of Lubbock
9th St and 10th St
Lubbock, TX 79401**

TTP Salesperson:

Toby Rowin, RLA

Tom's Tree Place

5104 34th Street Lubbock, Texas 79410

806.799.3677 - Voice 806.799.8743 - Fax

www.tomstreeplace.com

Quantity	Description	Comments	Size	Unit Cost	Line Total
	DEMO				
17323	Demo of Existing Soil to 4"-Depth		SF	\$1.50	\$25,984.50
	LANDSCAPE				
212	Decomposed Granite Mulch (1"-Minus)		CY	\$200.00	\$42,400.00
	IRRIGATION				
129	Repair/Replace Existing Irrigation		Per Tree	\$50.00	\$6,450.00
	GENERAL CONDITIONS				
30	Barricades, Signage, and Pedestrian and Vehicular Traffic Control		Per Day	\$125.00	\$3,750.00
	Includes: Ave U - Ave V (From Glenna Goodacre Corner to 10th St. Alley) 9th St. and 10th St. from Ave U to Ave V				
	Materials Total				\$78,584.50
	Installation Total				\$58,618.38
	Subtotal				\$137,202.88
	Tax @ 0.00%				\$0.00
	Final Total				\$137,202.88

**City of Lubbock, TX
Capital Project
Project Cost Detail
December 3, 2024**

Capital Project Number:	92254
Capital Project Name:	North Overton TIF Public Improvements

		Budget
<i>Encumbered/Expended</i>		
Chipotle's Mexican Grill Development Agreement - Tract 1C-1	\$	23,572
McCanton Wood Water Loop Agreement - Tract 1C-1		22,000
LKM Matador Development Agreement - Tract 1B-2		161,765
Gold Properties, LLC Development Agreement - Tract 1C-3A		53,717
ACC OP (Tract 6) Contract		93,000
Racer Classic Car Wash		9,351
2401 9th Street LLC (Potbelly)		51,878
Jackie Moon Properties, LLC		78,547
MH Civic Constructors - GGB		292,572
Public improvements Reimbursement		(55,719)
Landscaping in the Parkway		26,723
Haven Campus Communities - Lubbock, LLC		322,155
City of Lubbock Staff Time		4,079
ACC OP (Tracts 32 and 33) LLC		583,287
Haven Campus Communities		340,549
West Texas Services, Inc - GGB		514,856
West Texas Services, Inc - Ramirez		450,000
West Texas Services, Inc - 9th and 10th Street		192,210
West Texas Services, Inc - GGB Medians		606,209
West Texas Services, Inc. Mac Davis Roundabout		\$425,040
West Texas Services - 9th and 10th Street Amendment No.1		\$44,911
 <i>Agenda Item December 3, 2024</i>		
West Texas Services, Inc. Contract 17764 Amendment No.2		137,203
<i>Encumbered/Expended to Date</i>		4,377,905
 <i>Estimated Costs for Remaining Appropriation</i>		
Public Improvements		1,269,446
<i>Remaining Appropriation</i>		1,269,446
Total Appropriation To Date	\$	5,647,351



CIP 92254 North Overton TIF Public Improvements

Installation and Repair of Public Improvements

Project Manager: Brianna Brown - Business Development

Project Scope

Construction of public improvements in the right-of-way for the remaining undeveloped tracts. Also included in the project is the repair or replacement of public improvements in the right of way for already developed areas, such as the relocation and replacement of bollards on Glenna Goodacre Boulevard and any other replacement of the original construction that is needed.

Project Justification

The project is part of the ongoing redevelopment in the North Overton TIF to replace 70-year old infrastructure.

Completed projects:

GGB Completion - \$87,458.21

Chipotles Development Agreement - \$23,571.60

LKM Matador Development Agreement (92254B) - \$161,765

Golden Properties Agreement (92254C)- 53,716.92

Tract 6 Development Agreement (92254D) - 93,000

Racer Classic Car Wash Development Agreement (92254E) - \$8,640

2402 9th Street Development Agreement (92254F) - \$51,878

Jackie Moon Development Agreement (92254G) - 78,547

ACC OPP Development Agreement (92254H) - \$583,287

Haven Campus Communities - 18Nineteen (92254I) - \$322,155

Removal of Pedestrian Lights - \$1800.96

Irrigation Water Line Relocate Tract 3 - \$19,625

McCantonwood Agreement - \$22,105

Haven II Development Agreement - \$340,549

Completion of the landscaping in the parkway on the last two blocks of GGB - \$514,855

2022-23: Completed a project to install public improvements on Glenna Goodacre Blvd. between Avenue U and Avenue T.

2023-24: Completed a landscaping project in the public right-of-way on 9th and 10th Streets between Avenue U and Avenue S.

2023-24: Completed a landscaping project in the Glenna Goodacre medians.

2023-24: Started a repair project in the roundabout and adjacent right-of-way at Mac Davis and Avenue X.

Project Highlights

Council Priorities Addressed:
Community Improvement, Economic Development

Project History

- Prior to FY 2016-17 \$2,247,032 had been appropriated
- FY 2016-17 \$150,000 was appropriated by Ord. 2016-00135
- FY 2017-18 \$1,000,000 was appropriated by Ord. 2017-00111
- FY 2021-22 \$249,680 was reassigned by BCR 2022-26
- FY 2022-23 \$1,000,000 was appropriated by Ord. 2022-00136
- FY 2023-24 \$750,000 was appropriated by Ord. 2023-00108
- FY 2023-24 \$750,000 was appropriated by Ord. 2023-00151

Project Dates

FY 2024-25: Complete a public improvement project on the South side of Glenna Goodacre Boulevard between Avenue Q and Avenue R; Complete an irrigation optimization project through the North Overton TIF District.

Project Location

Project Appropriations

	Appropriation to Date	2024 - 25 Budget	2025 - 26 Budget	2026 - 27 Budget	2027 - 28 Budget	2028 - 29 Budget	2029 - 30 Budget
Construction	\$5,647,351	\$1,000,000	\$750,000	\$750,000	\$0	\$0	\$0
TOTAL	\$5,647,351	\$1,000,000	\$750,000	\$750,000	\$0	\$0	\$0

Project Funding

	Funding to Date	2024 - 25 Budget	2025 - 26 Budget	2026 - 27 Budget	2027 - 28 Budget	2028 - 29 Budget	2029 - 30 Budget
General Fund CO Bonds	\$1,500,000	\$0	\$0	\$0	\$0	\$0	\$0
North Overton TIF Fund Cash	\$3,400,320	\$1,000,000	\$750,000	\$750,000	\$0	\$0	\$0
North Overton TIF Fund Bonds	\$747,031	\$0	\$0	\$0	\$0	\$0	\$0
TOTAL	\$5,647,351	\$1,000,000	\$750,000	\$750,000	\$0	\$0	\$0

Operating Budget Impacts

Description	2024-25	2025-26	2026-27	2027-28	2028-29	2029-30	Total
No Impact Anticipated	\$0	\$0	\$0	\$0	\$0	\$0	\$0
TOTAL	\$0	\$0	\$0	\$0	\$0	\$0	\$0

Information

Agenda Item

Resolution - Parks and Recreation: Consider a resolution authorizing the Mayor to execute Lease Number 99006906-1 with PNC Bank, National Association, for the lease of a fleet of golf cars and utility vehicles for Meadowbrook Golf Course, from E-Z-GO Golf Carts, in accordance with Omnia Contract #R210201, and all related documents.

Item Summary

Effective January 1, 2025, the City will assume full responsibility for the maintenance and operations of Meadowbrook Golf Course. As part of this transition, a fleet of golf carts will be required to support the needs of golfers and course operations. The fleet will include 150 E-Z-GO golf carts and 6 Cushman utility vehicles (3 utility vehicles, 2 beverage service carts, and 1 range picker).

Lender Information:

PNC Bank, National Association
655 Business Center Drive
Horsham, PA 19044

Vendor Information:

E-Z-GO
1451 Marvin Griffin Road
Augusta, GA 30906

This lease will be facilitated through E-Z-GO's Omnia Contract # R210201, with a 48-month agreement and payments scheduled from March through October of each year. The annual cost will be \$279,401.60 for 4 years.

Fiscal Impact

The total annual cost for this lease is \$279,401.60. This has been budgeted in the Meadowbrook Golf Course Budget.

Staff/Board Recommending

Brooke Witcher, Assistant City Manager
Colby VanGundy, Director of Parks and Recreation

Attachments

Resolution
PNC Lease Agreement
E-Z-GO Proposal

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, Lease Number 99006906-1, by and between the City of Lubbock and PNC Bank, National Association, for the lease of a fleet of golf carts and utility vehicles for Meadowbrook Golf Course, from E-Z-GO Golf Carts, in accordance with Omnia Contract #R210201, consistent with the terms attached hereto and incorporated herein, and all related documents.

Passed by the City Council on _____.

MARK W. MCBRAYER, MAYOR

ATTEST:

Courtney Paz, City Secretary

APPROVED AS TO CONTENT:

Brooke Witcher
Brooke Witcher, Assistant City Manager

APPROVED AS TO FORM:

Rachael Foster
Rachael Foster, Assistant City Attorney



Dated as of November 20, 2024

Lease Number 99006906-1

City of Lubbock, Texas
1314 Ave K
Lubbock, TX 79401

Dear Customer:

Enclosed are the necessary documents needed to complete your lease transaction. Please review, sign and return the following:

- Lease – Please have the Authorized Signor execute the documents and provide their title.
- Amendment to Lease Agreement - Please have the Authorized Signor execute the documents and provide their title.
- Certificate of Acceptance – **At the point of delivery, fill out this form and return the original to us. We will be unable to disburse funds until we receive this signed form.**
- Schedule of Payments – Please sign and provide the title of the signor.
- Resolution-Certificate of Incumbency – List your Authorized Representative(s) and their title(s) in the body of the Resolution. Have the Authorized Representatives provide their names, title and signatures(s) on the lines which appear under the Authorized Representative Signature Section near the bottom of the Resolution. Finally, have the Secretary or appropriate Trustee attest to the information of the Authorized Representative(s) by signing and printing his/her name, title and date on the **last** signature line provided. **The person who validates the signature should not sign the Lease Agreement.** The Resolution must reflect the title(s) of the individual(s) who have authorization to sign the documents.
- Minutes of Governing Body (approving the purchase & finance of equipment) – Please return a copy with the documents.
- Opinion of Counsel – Please have your attorney sign this form.
- Insurance Request Form – Please provide the Self-Insurance Letter.
- If you are tax exempt, please provide a copy of your Tax Exemption Certificate.
- Above documentation can be emailed to SMEDocs@leaserv.com.

Thank you for choosing PNC Bank, National Association for your financing needs. We appreciate your business. If I can be of assistance, please contact me at joanne.malliaras@pnc.com.

If you have questions or need information on your contract in the future, you can call our customer service team at 800-559-2755 or email them at customercare@leaserv.com.

Sincerely,

Joanne Malliaras

Commercial Transaction Coordinator

Lease Agreement

Dated as of November 20, 2024

Lease Number: 99006906-1

Lessor: PNC Bank, National Association
655 Business Center Drive
Horsham, Pennsylvania 19044

Lessee: LESSEE FULL LEGAL NAME
City of Lubbock, Texas
1314 Ave K
Lubbock, TX 79401
FEDERAL TAX ID
756000590

Equipment Description: Equipment Location: Meadowbrook Golf Course, 601 Municipal Drive, Lubbock, TX 79403

Quantity	Description	Serial No.
150	E-Z-GO RXV EX1 GAS	
150	PACE 7EX GPS	
3	CUSHMAN HAULER 1200 GAS	
2	CUSHMAN REFRESHER OASIS GAS	
1	CUSHMAN HAULER 800X GAS	

Payment Information

Number of Payments: 32	Rent Amount: \$34,925.20 + Applicable Taxes	Payable: Due Date (to be inserted by Lessor): <input type="checkbox"/> Monthly <input type="checkbox"/> Quarterly	Lease Term (in months): 48 months	End of Lease Provision: <input checked="" type="checkbox"/> FMV- Cars <input type="checkbox"/> Rental <input type="checkbox"/> PUT - _____ <input type="checkbox"/> FMV – Turf (Annual Hours _____) <input type="checkbox"/> \$1 Out
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☒ See Schedule A for variable payment structure.

Lessee shall pay Rent payments exclusively from legally available funds in U.S. currency to Lessor in the amounts and on the dates set forth herein, without notice or demand.

TERMS AND CONDITIONS

1. **LEASE.** Subject to the terms of this Lease, Lessee agrees to lease from Lessor the equipment (the “Equipment”) described above when Lessor accepts this Lease. Lessee agrees to be bound by all the terms of this Lease.
2. **DELIVERY AND ACCEPTANCE OF EQUIPMENT.** Acceptance of the Equipment occurs upon delivery. When Lessee receives the Equipment, Lessee agrees to inspect it and to verify by telephone or in writing such information as Lessor may require. Delivery and installation costs are Lessee’s responsibility. If Lessee signed a purchase contract for the Equipment, by signing this Lease Lessee assigns its rights, but none of its obligations under the purchase contract, to Lessor.
3. **RENT.** Lessee agrees to pay Lessor Rent (plus applicable taxes) in the amount and frequency stated above. If Lessee’s Rent payments are due in Advance, Lessee’s first Rent payment is due on the date Lessee accepts the Equipment under the Lease. Lessor will advise Lessee as to (a) the due date of each Rent payment, and (b) the address to which Lessee must send payments. Rent is due whether or not Lessee receives an invoice from Lessor. Lessee will pay Lessor any required advance rent when Lessee signs this Lease. Lessee authorizes Lessor to change the Rent by not more than 15% due to changes in the Equipment configuration, which may occur prior to Lessor’s acceptance of this Lease. Restrictive endorsements on checks Lessee sends to Lessor will not reduce Lessee’s obligations to Lessor. Lessee hereby authorizes Lessor to insert a Due Date where applicable under this Lease once determined.
NON-APPROPRIATION OF FUNDS. Lessee intends to remit all Rent and other payments to Lessor for the full Lease Term if funds are legally available. In the event Lessee is not granted an appropriation of funds at any time during the Lease Term for the Equipment subject to this Lease and operating funds are not otherwise available to Lessee to pay the Rent and other payments due and to become due under this Lease, and there is no other legal procedure or available funds by or with which payment can be made to Lessor, and the non-appropriation did not result from an act or omission by Lessee, Lessee shall have the right to return the Equipment as provided herein and terminate this Lease on the last day of the fiscal period for which appropriations were received without penalty or expense to Lessee, except as the portion of Rent for which funds shall have been appropriated and budgeted. At least 30 days prior to the end of Lessee’s fiscal year, Lessee’s chief executive officer (or legal counsel) shall certify in writing that (a) funds have not been appropriated for the upcoming fiscal period, (b) such non-appropriation did not result from any act or failure to act by Lessee, and (c) Lessee has exhausted all funds legally available for the payment of Rent.
4. **UNCONDITIONAL OBLIGATION.** LESSEE AGREES THAT IT IS UNCONDITIONALLY OBLIGATED TO PAY ALL RENT AND ANY OTHER AMOUNTS DUE UNDER THIS LEASE IN ALL FISCAL YEARS IN WHICH FUNDS HAVE BEEN APPROPRIATED NO MATTER WHAT HAPPENS, EVEN IF THE EQUIPMENT IS DAMAGED OR DESTROYED, IF IT IS DEFECTIVE OR IF LESSEE HAS TEMPORARY OR PERMANENT LOSS OF ITS USE. LESSEE IS NOT ENTITLED TO ANY REDUCTION OR SET-OFF AGAINST RENT OR OTHER AMOUNTS DUE UNDER THIS LEASE FOR ANY REASON WHATSOEVER.
5. **DISCLAIMER OF WARRANTIES.** THE EQUIPMENT IS BEING LEASED TO LESSEE IN “AS IS” CONDITION. LESSEE AGREES THAT LESSOR HAS NOT MANUFACTURED THE EQUIPMENT AND THAT LESSEE HAS SELECTED THE EQUIPMENT BASED

UPON LESSEE'S OWN JUDGMENT. LESSEE HAS NOT RELIED ON ANY STATEMENTS LESSOR OR ITS EMPLOYEES HAVE MADE. LESSOR HAS NOT MADE AND DOES NOT MAKE ANY EXPRESS OR IMPLIED REPRESENTATIONS OR WARRANTIES WHATSOEVER, INCLUDING WITHOUT LIMITATION, THE EQUIPMENT'S MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, SUITABILITY, DESIGN, CONDITION, DURABILITY, OPERATION, QUALITY OF MATERIALS OR WORKMANSHIP, OR COMPLIANCE WITH SPECIFICATIONS OR APPLICABLE LAW. Lessee is aware of the name of the Equipment manufacturer. If the manufacturer has provided Lessor with a warranty, Lessor assigns its rights to such warranty to Lessee and Lessee may enforce all warranty rights directly against the manufacturer of the Equipment. Lessee agrees to settle any dispute regarding performance of the Equipment directly with the manufacturer of the Equipment.

- 6. TITLE AND SECURITY INTEREST.** Unless otherwise required by the laws of the state where Lessee is located, Lessor shall have title to the Equipment during the Lease Term.
- 7. USE, MAINTENANCE AND REPAIR.** Lessee will not move the Equipment from the Equipment Location without Lessor's advance written consent. Lessee will give Lessor reasonable access to the Equipment Location so that Lessor can check the Equipment's existence, condition and proper maintenance. Lessee will use the Equipment in the manner for which it was intended, as required by all applicable manuals and instructions, and keep it eligible for any manufacturer's certification and/or standard full-service maintenance contract. At Lessee's own cost and expense, Lessee will keep the Equipment in good repair, condition and working order, ordinary wear and tear excepted. Lessee will not make any permanent alterations to the Equipment and will remove any alterations or markings from the Equipment before returning to Lessor.
- 8. TAXES.** Unless a proper exemption certificate is provided, applicable sales and use taxes will be added to the Rent. Lessee agrees to pay Lessor, when invoiced, all taxes (including any sales, use and personal property taxes), fines, interest and penalties relating to this Lease and the Equipment (excluding taxes based on Lessor's net income). Lessee agrees to file any required personal property tax returns and, if Lessor asks, Lessee will provide Lessor with proof of payment. Lessor does not have to contest any tax assessments.
- 9. INDEMNITY.** Lessor is not responsible for any injuries, damages, penalties, claims or losses, including legal expenses, incurred by Lessee or any other person caused by the transportation, installation, manufacture, selection, purchase, lease, ownership, possession, modification, maintenance, condition, operation, use, return or disposition of the Equipment. To the extent permitted by law, Lessee agrees to reimburse Lessor for and defend Lessor against any claims for such losses, damages, penalties, claims, injuries, or expenses. This indemnity continues even after this Lease has expired, for acts or omissions that occurred during the Lease Term.
- 10. IDENTIFICATION.** Lessee authorizes Lessor to insert or correct missing information on this Lease, including serial numbers and any other information describing the Equipment.
- 11. LOSS OR DAMAGE.** Lessee is responsible for any loss of the Equipment from any cause at all, whether or not insured, from the time the Equipment is shipped to Lessee until it is returned to Lessor. If any item of Equipment is lost, stolen or damaged, Lessee will promptly notify Lessor of such event. Then, at Lessor's option, Lessee will either (a) repair the Equipment so that it is in good condition and working order, eligible for any manufacturer's certification, or (b) pay Lessor an amount equal to the Net Book Value (as defined herein) of the lost, stolen or damaged Equipment. If Lessee has satisfied their obligations herein, Lessor will forward to Lessee any insurance proceeds which Lessor receives for lost, damaged, or destroyed Equipment. If Lessee is in default, Lessor will apply any insurance proceeds Lessor receives to reduce Lessee's obligations pursuant to this Lease.
- 12. INSURANCE.** Lessee agrees to (a) keep the Equipment fully insured against loss, naming Lessor as loss payee, and (b) obtain a general public liability insurance policy covering both personal injury and property damage in amounts not less than Lessor may tell Lessee, naming Lessor as additional insured, until Lessee has met all their obligations under this Lease. Lessor is under no duty to tell Lessee if Lessee's insurance coverage is adequate. The policies shall state that Lessor is to be notified of any proposed cancellation at least 30 days prior to the date set for cancellation. Upon Lessor's request, Lessee agrees to provide Lessor with evidence of insurance acceptable to Lessor. If Lessee does not provide Lessor with evidence of proper insurance within ten days of Lessor's request or Lessor receives notice of policy cancellation, Lessor may (but Lessor is not obligated to) obtain insurance on Lessor's interest in the Equipment at Lessee's expense. Lessee will pay all insurance premiums and related charges.
- 13. DEFAULT.** Lessee will be in default under this Lease if any of the following happens: (a) Lessor does not receive any Rent or other payment due under this Lease within ten days after its due date, (b) Lessee fails to perform or observe any other promise or obligation in this Lease and does not correct the default within ten days after Lessor sends Lessee written notice of default, (c) any representation, warranty or statement Lessee has made in this Lease shall prove to have been false or misleading in any material respect, (d) any insurance carrier cancels or threatens to cancel any insurance on the Equipment, (e) the Equipment or any part of it is abused, illegally used, misused, lost, destroyed, or damaged beyond repair, (f) a petition is filed by or against Lessee under any bankruptcy or insolvency laws, or (g) Lessee defaults on any other agreement between it and Lessor (or Lessor's affiliates).
- 14. REMEDIES.** Upon the occurrence of a default, Lessor may, in its sole discretion, do any or all of the following: (a) provide written notice to Lessee of default, (b) as liquidated damages for loss of a bargain and not as a penalty, declare due and payable, the present value of (i) any and all amounts which may be then due and payable by Lessee to Lessor under this Lease, plus (ii) all Rent payments remaining through the end of the then current fiscal year, discounted at the higher of 3% or the lowest rate allowed by law plus the Fair Market Value (as defined herein) of the Equipment (collectively, the "Net Book Value") and (c) require Lessee to immediately return the Equipment to Lessor. Lessor has the right to require Lessee to make the Equipment available to Lessor for repossession during reasonable business hours or Lessor may repossess the Equipment, so long as Lessor does not breach the peace in doing so, or Lessor may use legal process in compliance with applicable law pursuant to court order to have the Equipment repossessed. Lessee will not make any claims against Lessor or the Equipment for trespass, damage or any other reason. If Lessor takes possession of the Equipment Lessor may (a) sell or lease the Equipment at public or private sale or lease without notice, and/or (b) exercise such other rights as may be allowed by applicable law. Although Lessee agrees that Lessor has no obligation to sell the Equipment, if Lessor does sell the Equipment, Lessor will reduce the Net Book Value by the amounts Lessor receives. Lessee will immediately pay Lessor the remaining Net Book Value. Lessee agrees (a) to pay all of the costs Lessor incurs to enforce Lessor's rights against Lessee, including attorney's fees, and (b) that Lessor will retain all of Lessor's rights against Lessee even if Lessor does not choose to enforce them at the time of Lessee's default. Lessee acknowledges and agrees that the Equipment may contain GPS tracking capabilities and consent to the use by us of GPS tracking, and all information gathered therefrom, to locate the Equipment at any time if such Equipment is not returned by you in accordance with this Lease. Lessee further authorizes the manufacturer of the Equipment to share any GPS tracking information (including without limitation geolocation information) with us upon our request (which request should only be made by us upon a default, event of default and/or your failure to return the Equipment in accordance with the terms of this Lease).
- 15. LESSEE'S OPTION AT END OF LEASE.** Notwithstanding anything contained in the Lease to the contrary, so long as no default shall have occurred and be continuing, Lessee may, at Lessee's option, purchase the Equipment leased pursuant to this Lease on an "as is, where is"

basis, without representation or warranty, express or implied, at the end of the Lease Term at a price equal to the Fair Market Value thereof, plus applicable taxes. Fair Market Value shall be the retail in-place value of the Equipment as determined solely by Lessor. This purchase option as applicable shall only be available if Lessee gives Lessor 90 days' prior written notice of Lessee's irrevocable intent to exercise such option and Lessor and Lessee shall have agreed to all terms and conditions of such purchase prior to the expiration date of the Lease Term. Until the Equipment is returned as required below, all terms of the Lease shall remain in full force and effect including the obligation to pay Rent calculated on a monthly basis.

- 16. RETURN OF EQUIPMENT.** If (a) default occurs, (b) a non-appropriation of funds occurs as provided herein, or (c) Lessee does not exercise its purchase option at the end of the Lease Term, Lessee will immediately return the Equipment to any location(s) in the continental United States and aboard any carriers(s) Lessor may designate. The Equipment must be properly packed for shipment in accordance with the manufacturer's recommendations or specifications, freight prepaid and insured, maintained in accordance with this Lease, and in "Average Saleable Condition." "Average Saleable Condition" means that all of the Equipment is immediately available for use by a third-party buyer, user or lessee, other than Lessee named in this Lease, without the need for any repair or refurbishment. Lessee will pay Lessor for any missing or defective parts or accessories. Lessee will continue to pay Rent calculated on a monthly basis until the Equipment is received and accepted by Lessor.
- 17. LESSEE'S REPRESENTATIONS AND WARRANTIES.** Lessee hereby represents and warrants to Lessor that as of the date of this Lease, and throughout the Lease Term: (a) Lessee is the entity indicated in this Lease; (b) Lessee is a state or a fully constituted political subdivision or agency of the State in which Lessee is located; (c) Lessee is duly organized and existing under the constitution and laws of the state in which they are located; (d) Lessee is authorized to enter into and carry out Lessee's obligations under this Lease, any documents relative to the acquisition of the Equipment and any other documents required to be delivered in connection with this Lease (collectively, the "Documents"); (e) the Documents have been duly authorized, executed and delivered by Lessee in accordance with all applicable laws, rules, ordinances, and regulations, the Documents are valid, legal, binding agreements, enforceable in accordance with their terms and the person(s) signing the Documents have the authority to do so, are acting with the full authorization of Lessee's governing body, and hold the offices indicated below their signature, each of which are genuine; (f) the Equipment is essential to the immediate performance of a governmental or proprietary function by Lessee within the scope of Lessee's authority; (g) Lessee intends to use the Equipment for the entire Lease Term for such function and shall take all necessary action to include in Lessee's annual budget any funds required to fulfill Lessee's obligations for each fiscal year during the Lease Term; (h) Lessee has complied fully with all applicable law governing open meetings, public bidding and appropriations required in connection with this Lease and the acquisition of the Equipment; (i) Lessee's obligations to remit Rent under this Lease constitutes a current expense and not a debt under applicable state law and no provision of this Lease constitutes a pledge of Lessee's tax or general revenues, and any provision which is so constructed by a court of competent jurisdiction is void from the inception of this lease; and (j) all financial information Lessee has provided to Lessor is true and accurate and provides a good representation of Lessee's financial condition.
- 18. LESSEE'S PROMISES.** In addition to the other provisions of this Lease, Lessee agrees that during the term of this Lease (a) Lessee will promptly notify Lessor in writing if it moves its principal office or changes its name or legal structure, (b) Lessee will provide to Lessor such financial information as may reasonably request from time to time, and (c) Lessee will take any action Lessor reasonably requests to protect Lessor's rights in the Equipment and to meet Lessee's obligations under this Lease.
- 19. ASSIGNMENT. LESSEE WILL NOT SELL, TRANSFER, ASSIGN, PLEDGE, SUB-LEASE OR PART WITH POSSESSION OF THE EQUIPMENT OR FILE OR PERMIT A LIEN TO BE FILED AGAINST THE EQUIPMENT.** Lessee will not attach any of the Equipment to any real estate.
- 20. ASSIGNMENT BY LESSOR.** This Lease, and the rights of Lessor hereunder and in and to the Equipment, may be assigned and reassigned in whole or in part to one or more assignees by Lessor or its assigns at any time without the necessity of obtaining the consent of Lessee. Upon an assignment, Lessee agrees to make all payments as designated in the assignment, notwithstanding any claim, defense, setoff or counterclaim whatsoever (whether arising from a breach of this Lease or otherwise) that Lessee may from time to time have against Lessor or Lessor's assigns.
- 21. COLLECTION EXPENSES, OVERDUE PAYMENT.** Lessee agrees that Lessor can, but does not have to, take on Lessee's behalf any action which Lessee fails to take as required by this Lease, and Lessor's expenses will be in addition to that of the Rent which Lessee owes Lessor. If Lessor receives any payment from Lessee after the due date, Lessee shall pay Lessor on demand as a late charge 5% of such overdue amount, limited, however, to the maximum amount allowed by law.
- 22. MISCELLANEOUS.** This Lease contains the entire agreement and supersedes any conflicting provision of any equipment purchase order or any other agreement. **TIME IS OF THE ESSENCE IN THIS LEASE.** If a court finds any provision of Lease to be unenforceable, the remaining terms of this Lease shall remain in effect. **THIS LEASE IS A "FINANCE LEASE" AS DEFINED IN ARTICLE 2A OF THE UNIFORM COMMERCIAL CODE.** Lessee authorizes Lessor (or Lessor's agent) to (a) obtain credit reports, (b) make such other credit inquiries as Lessor may deem necessary, and (c) furnish payment history information to credit reporting agencies. To the extent permitted by law, Lessor may charge Lessee a fee of \$250.00 to cover Lessor's documentation and investigation costs.
- 23. NOTICES.** All of Lessee's written notices to Lessor must be sent by certified mail or recognized overnight delivery service, postage prepaid, to Lessor at Lessor's address stated in this Lease, or by facsimile transmission to Lessor's facsimile telephone number, with oral confirmation of receipt. All of Lessor's notices to Lessee may be sent first class mail, postage prepaid, to Lessee's address stated in this Lease. At any time after this Lease is signed, Lessee or Lessor may change an address or facsimile telephone number by giving notice to the other of the change.
- 24. ANTI-MONEY LAUNDERING/INTERNATIONAL TRADE COMPLIANCE.** Lessee represents, warrants and covenants to Lessor, as of the date of this Lease, the date of each advance of proceeds under the Lease, the date of any renewal, extension or modification of this Lease, and at all times until this Lease has been terminated and all amounts thereunder have been indefeasibly paid in full, that: (a) no Covered Entity (i) is a Sanctioned Person; (ii) has any of its assets in a Sanctioned Jurisdiction or in the possession, custody or control of a Sanctioned Person; (iii) does business in or with, or derives any of its operating income from investments in or transactions with, any Sanctioned Jurisdiction or Sanctioned Person; (b) the proceeds of this Lease will not be used to fund any unlawful activity; (c) the funds used to repay the Lease are not derived from any unlawful activity; (d) each Covered Entity is in compliance with, and no Covered Entity engages in any dealings or transactions prohibited by, any laws of the United States, including but not limited to any Anti-Terrorism Laws; and (e) no Equipment is or will become Embargoed Property. Lessee covenants and agrees that (a) it shall immediately notify Lessor in writing upon the occurrence of a Reportable Compliance Event; and (b) if, at any time, any Equipment becomes Embargoed Property, in addition to all other rights and remedies available to Lessor, upon request by Lessor, Lessee shall provide substitute Equipment acceptable to Lessor that is not Embargoed Property.

As used herein: “**Anti-Terrorism Laws**” means any laws relating to terrorism, trade sanctions programs and embargoes, import/export licensing, money laundering, or bribery, all as amended, supplemented or replaced from time to time; “**Compliance Authority**” means each and all of the (a) U.S. Treasury Department/Office of Foreign Assets Control, (b) U.S. Treasury Department/Financial Crimes Enforcement Network, (c) U.S. State Department/Directorate of Defense Trade Controls, (d) U.S. Commerce Department/Bureau of Industry and Security, (e) U.S. Internal Revenue Service, (f) U.S. Justice Department, and (g) U.S. Securities and Exchange Commission; “**Covered Entity**” means Lessee, its affiliates and subsidiaries, all other obligors, all owners of the foregoing, and all brokers or other agents of Lessee acting in any capacity in connection with this Lease; “**Embargoed Property**” means any property (a) in which a Sanctioned Person holds an interest; (b) beneficially owned, directly or indirectly, by a Sanctioned Person; (c) that is due to or from a Sanctioned Person; (d) that is located in a Sanctioned Jurisdiction; or (e) that would otherwise cause any actual or possible violation by Lessor of any applicable Anti-Terrorism Law if Lessor were to obtain an encumbrance on, lien on, pledge of or security interest in such property or provide services in consideration of such property; “**Reportable Compliance Event**” means (1) any Covered Entity becomes a Sanctioned Person, or is indicted, arraigned, investigated or custodially detained, or receives an inquiry from regulatory or law enforcement officials, in connection with any Anti-Terrorism Law or any predicate crime to any Anti-Terrorism Law, or self-discovers facts or circumstances implicating any aspect of its operations with the actual or possible violation of any Anti-Terrorism Law; (2) any Covered Entity engages in a transaction that has caused or may cause Lessor to be in violation of any Anti-Terrorism Laws, including a Covered Entity’s use of any proceeds of the Lease to fund any operations in, finance any investments or activities in, or, make any payments to, directly or indirectly, a Sanctioned Jurisdiction or Sanctioned Person; or (3) any Equipment becomes Embargoed Property; “**Sanctioned Jurisdiction**” means a country subject to a sanctions program maintained by any Compliance Authority; and “**Sanctioned Person**” means any individual person, group, regime, entity or thing listed or otherwise recognized as a specially designated, prohibited, sanctioned or debarred person or entity, or subject to any limitations or prohibitions (including but not limited to the blocking of property or rejection of transactions), under any order or directive of any Compliance Authority or otherwise subject to, or specially designated under, any sanctions program maintained by any Compliance Authority.



- 25. USA PATRIOT ACT NOTICE.** To help the government fight the funding of terrorism and money laundering activities, Federal law requires all financial institutions to obtain, verify and record information that identifies each lessee that opens an account. What this means: when the Lessee opens an account, Lessor will ask for the business name, business address, taxpayer identifying number and other information that will allow the Lessor to identify Lessee, such as organizational documents. For some businesses and organizations, Lessor may also need to ask for identifying information and documentation relating to certain individuals associated with the business or organization.
- 26. WAIVERS. LESSOR AND LESSEE EACH AGREE TO WAIVE, AND TO TAKE ALL REQUIRED STEPS TO WAIVE, ALL RIGHTS TO A JURY TRIAL.** To the extent Lessee is permitted by applicable law, Lessee waives all rights and remedies conferred upon a lessee by Article 2A (Sections 508-522) of the Uniform Commercial Code. To the extent Lessee is permitted by applicable law, Lessee waives any rights they now or later may have under any statute or otherwise which requires Lessor to sell or otherwise use any Equipment to reduce Lessor’s damages, which requires Lessor to provide Lessee with notice of default, intent to accelerate amounts becoming due or acceleration of amounts becoming due, intent to sale the Equipment at a public or private sale, or which may otherwise limit or modify any of Lessor’s rights or remedies. Lessor will not be liable for specific performance of this Lease or for any losses, damages, delay or failure to deliver Equipment.
- 27. IMPORTANT INFORMATION ABOUT PHONE CALLS.** By providing telephone number(s) to Lessor, now or at any later time, Lessee authorizes Lessor and its affiliates and designees to contact Lessee regarding Lessee account(s) with Lessor or its affiliates, whether such accounts are Lessee individual accounts or business accounts for which Lessee is a contact, at such numbers using any means, including but not limited to placing calls using an automated dialing system to cell, VoIP or other wireless phone number, or leaving prerecorded messages or sending text messages, even if charges may be incurred for the calls or text messages. Lessee consents that any phone call with Lessor may be monitored or recorded by Lessor.

IMPORTANT: READ BEFORE SIGNING. THE TERMS OF THIS LEASE SHOULD BE READ CAREFULLY BECAUSE ONLY THOSE TERMS IN WRITING ARE ENFORCEABLE. TERMS OR ORAL PROMISES WHICH ARE NOT CONTAINED IN THIS WRITTEN AGREEMENT MAY NOT BE LEGALLY ENFORCED. THE TERMS OF THIS LEASE MAY ONLY BE CHANGED BY ANOTHER WRITTEN AGREEMENT BETWEEN LESSEE AND LESSOR. LESSEE AGREES TO COMPLY WITH THE TERMS AND CONDITIONS OF THIS LEASE. LESSEE AGREES THAT THE EQUIPMENT WILL BE USED FOR BUSINESS PURPOSES ONLY AND NOT FOR PERSONAL, FAMILY OR HOUSEHOLD PURPOSES.

LESSEE CERTIFIES THAT ALL THE INFORMATION GIVEN IN THIS LEASE AND LESSEE’S APPLICATION WAS CORRECT AND COMPLETE WHEN THIS LEASE WAS SIGNED. THIS LEASE IS NOT BINDING UPON LESSOR OR EFFECTIVE UNLESS AND UNTIL LESSOR EXECUTES THIS LEASE. THIS LEASE WILL BE GOVERNED BY THE LAWS OF THE STATE OF THE LESSEE.

Lessor: PNC Bank, National Association
655 Business Center Drive
Horsham, PA 19044

Lessee: City of Lubbock, Texas
1314 Ave K
Lubbock, TX 79401

Signature: 	Signature: 
Print Name:	Print Name:
Title:	Title:
Date:	Date:

AMENDMENT TO LEASE AGREEMENT

This Amendment (“**Amendment**”), dated and effective as of November 20, 2024, is to that certain Lease Agreement Number 99006906-1 dated November 20, 2024 (the “**Lease**”) between City of Lubbock, Texas, with its principal place of business at 1314 Ave K, Lubbock, TX 79401 (“**Lessee**”), and PNC Bank, National Association, with an address at 655 Business Center Drive, Suite 250 Horsham, PA 19044 (“**Lessor**”).

In consideration of the mutual covenants contained herein and other valuable consideration received, and with the intent to be legally bound, the parties amend the Lease as follows:

- 3. RENT.** The sixth sentence of Section 3 is modified and amended by replacing it with the following: “Any change in the Rent amount due to changes in the Equipment configuration, which may occur prior to Lessor’s acceptance of this Lease, requires a two-way letter amendment signed by both parties.”
- 16. RETURN OF EQUIPMENT.** The first sentence of Section 16 is modified and amended by replacing it with the following: “If (a) default occurs, (b) a non-appropriation of funds occurs as provided herein, or (c) Lessee does not exercise its purchase option at the end of the Lease Term, Lessee will immediately return the Equipment to a location designated by Lessor within two hundred fifty (250) miles of Lessee’s address on this Lease.”
- 23. NOTICES.** The second sentence of Section 23 is modified and amended by replacing it with the following: “All of Lessor’s written notices to Lessee must be sent by certified mail or recognized overnight delivery service, postage prepaid; provided, however, no invoice or bill for payment shall be treated as Notice pursuant to this section.”

The following is added as Section 28:

“28. CHOICE OF LAW AND VENUE. This Lease shall be governed and construed according to the laws of the state of Texas. Venue for any action or proceeding shall be in a court of competent jurisdiction in Lubbock County, Texas.”

All other terms and conditions of the Lease shall remain unchanged and in full force and effect. Any defined terms used herein shall have the meanings contained in the Lease.

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be executed as of the date above written.

[REMAINDER OF THE PAGE INTENTIONALLY LEFT BLANK – SIGNATURE PAGE TO FOLLOW]

CITY OF LUBBOCK, TEXAS

Authorized Signature

Printed Name

Title

PNC BANK, NATIONAL ASSOCIATION

Authorized Signature

Printed Name

Title

CERTIFICATE OF ACCEPTANCE

Lease Number: 99006906-1

In compliance with the terms, conditions and provisions of Lease Agreement # 99006906-1 ("**Lease**") by and between the undersigned **City of Lubbock, Texas** ("**Lessee**") and PNC Bank, National Association ("**Lessor**"), Lessee hereby:

1. certifies and warrants that all Equipment described in the Lease referenced above ("**Equipment**") is delivered, inspected and fully installed, and operational as of the Acceptance Date as indicated below;
2. accepts all the Equipment for all purposes under the Lease and all attendant documents as of the date of return of this Certificate to Lessor ("**Acceptance Date**"); and
3. restates and reaffirms, as of such Acceptance Date, each of the representations, warranties and covenants heretofore given to Lessor in the Lease.

Lessor is hereby authorized to insert serial numbers on the Lease.

Lessee: City of Lubbock, Texas

1314 Ave K
Lubbock, TX 79401

Signature:

X

Print Name:

Title:

Date:

SCHEDULE A

Lease Number 99006906-1

This Schedule supplements and is hereby incorporated by reference as part of above referenced Lease # ("Lease") by and between Lessee and Lessor.

Variable Payments Structure

Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
2025		\$0.00	\$34,925.20	\$34,925.20	\$34,925.20	\$34,925.20	\$34,925.20	\$34,925.20	\$34,925.20	\$34,925.20	\$0.00	\$0.00
2026	\$0.00	\$0.00	\$34,925.20	\$34,925.20	\$34,925.20	\$34,925.20	\$34,925.20	\$34,925.20	\$34,925.20	\$34,925.20	\$0.00	\$0.00
2027	\$0.00	\$0.00	\$34,925.20	\$34,925.20	\$34,925.20	\$34,925.20	\$34,925.20	\$34,925.20	\$34,925.20	\$34,925.20	\$0.00	\$0.00
2028	\$0.00	\$0.00	\$34,925.20	\$34,925.20	\$34,925.20	\$34,925.20	\$34,925.20	\$34,925.20	\$34,925.20	\$34,925.20	\$0.00	\$0.00
2029	\$0.00											

Plus applicable taxes.

Lessor: PNC Bank, National Association

Lessee: City of Lubbock, Texas

Signature:

X

Signature:

X

Print Name:

Print Name:

Title:

Title:

Date:

Date:

RESOLUTION AND CERTIFICATE OF INCUMBENCY
Lease Number 99006906-1

Lessee: **City of Lubbock, Texas**

Amount: **\$1,117,606.40** (Payment x Term)

WHEREAS, Lessee, a body politic and corporate duly organized and existing as a political subdivision, municipal corporation or similar public entity of the State or Commonwealth ("State") is authorized by the laws of the State to purchase, acquire and lease certain equipment and other property for the benefit of the Lessee and its inhabitants and to enter into contracts with respect thereto; and

WHEREAS, pursuant to applicable law, the governing body of the Lessee ("Governing Body") is authorized to acquire, dispose of and encumber real and personal property, including, without limitation, rights and interest in property, leases and easements necessary to the functions or operations of the Lessee.

WHEREAS, the Governing Body hereby finds and determines that the execution of one or more Lease Agreements or lease schedules ("Leases") in the amount not exceeding the amount stated above for the purpose of acquiring the property ("Equipment") to be described in the Leases is appropriate and necessary to the functions and operations of the Lessee.

WHEREAS, PNC Bank, National Association ("Lessor") shall act as Lessor under said Leases.

NOW, THEREFORE, Be It Ordained by the Governing Body of the Lessee:

Section 1. Either one of the _____ OR _____ (each an "Authorized Representative") acting on behalf of the Lessee, is hereby authorized to negotiate, enter into, execute, and deliver one or more Leases in substantially the form set forth in the document presently before the Governing Body, which document is available for public inspection at the office of the Lessee. Each Authorized Representative acting on behalf of the Lessee is hereby authorized to negotiate, enter into, execute, and deliver such other documents relating to the Lease as the Authorized Representative deems necessary and appropriate. All other related contracts and agreements necessary and incidental to the Leases are hereby authorized.

Section 2. By a written instrument signed by any Authorized Representative, said Authorized Representative may designate specifically identified officers or employees of the Lessee to execute and deliver agreements and documents relating to the Leases on behalf of the Lessee.

Section 3. The Lessee's obligations under the Leases shall be subject to annual appropriation or renewal by the Governing Body as set forth in each Lease and the Lessee's obligations under the Leases shall not constitute general obligations of the Lessee or indebtedness under the Constitution or laws of the State.

Section 4. This resolution shall take effect immediately upon its adoption and approval.

NAMES AND TITLES OF AUTHORIZED REPRESENTATIVES: AUTHORIZED LEASE SIGNORS ONLY

Name (print)	Title:

ADOPTED AND APPROVED as of the date signed below.

Section 5. I, the undersigned Secretary/Clerk identified below, does hereby certify that I am the duly elected or appointed and acting Secretary/Clerk of the above Lessee, a political subdivision duly organized and existing under the laws of the State where Lessee is located, that I have the title stated below, and that, as of the date hereof, the individuals named above are the duly elected or appointed officers of the Lessee holding the offices set forth opposite their respective names.

The undersigned Secretary/Clerk of the above-named Lessee hereby certifies and attests that the undersigned has access to the official records of the Governing Body of the Lessee, that the foregoing resolutions were duly adopted by said Governing Body of the Lessee at a meeting of said Governing Body and that such resolutions have not been amended or altered and are in full force and effect on the date stated below.

LESSEE: **City of Lubbock, Texas**

Signature of Secretary/Clerk of Lessee

Signature:

X

Print Name:

Title:

Date:

OPINION OF COUNSEL

I have acted as counsel to: City of Lubbock, Texas (“Lessee”) with respect to this Lease Agreement by and between the Lessee and Lessor (the “Lease”), and in this capacity have reviewed the original or duplicate originals of the Lease and such other documents as I have deemed relevant. Based upon the foregoing, I am of the opinion that: (A) the execution, delivery and performance of the Lease by Lessee has been duly authorized by all necessary action on the part of Lessee; (B) the Lease constitutes a legal, valid and binding obligation of Lessee enforceable in accordance with its terms (during all fiscal years within the Lease term in which funds have been appropriated), except as limited by laws of general application affecting the enforcement of creditors’ rights, and does not constitute a debt of Lessee which is prohibited by state law; (C) the authorization, approval and execution of the Lease and all other proceedings of Lessee related to the transactions contemplated thereby have been performed in accordance with all open-meeting laws, public bidding laws, and other applicable state laws. The undersigned certifies that (s)he is an attorney duly authorized to practice law in the State of Texas.

The foregoing opinions are limited to laws of such State and federal laws of the United States.

Attorney of Lessee

By: _____
Print Name: _____
Law firm: _____



November 20, 2024

City of Lubbock, Texas

1314 Ave K
Lubbock, TX 79401
Attn:

RE: Insurance Coverage Requirements for Equipment Financing Transaction between
PNC Bank, National Association and City of Lubbock, Texas

Under the terms of your Agreement # 99006906-1, you are required to carry adequate insurance coverage on the financed equipment. If your Certificate of Insurance is not received, and your Agreement is \$1,000,000 or less you will automatically be enrolled in our Equipment Protection Program underwritten by Great American. If your Agreement is over \$1,000,000 evidence of insurance is required prior to funding. Please forward this request to your insurance company, agent or broker as soon as possible and ask for the evidence of insurance to be sent to the address below.

PNC Bank, National Association will have an insurable interest in the following equipment:

Quantity	Description
150	E-Z-GO RXV EX1 GAS
150	PACE 7EX GPS
3	CUSHMAN HAULER 1200 GAS
2	CUSHMAN REFRESHER OASIS GAS
1	CUSHMAN HAULER 800X GAS

As a condition to entering into the equipment financing transaction, PNC Bank, National Association requires the following at all times during the term of the transaction:

1. All of the equipment must be insured for its full insurable value on a 100% replacement cost basis. The replacement cost must be listed on the Certificate of Insurance.
2. PNC Bank, National Association must be named as lender loss payee under a property insurance policy insuring all risks to the equipment, including fire, theft, and other customary coverage under an "extended coverage" endorsement.
3. For leases only, PNC Bank, National Association must receive evidence that a comprehensive general liability insurance policy is in place with a minimum coverage of \$1,000,000. PNC Bank, National Association must be named as an additional insured under the liability policy.
4. Each property insurance policy must contain a lender's loss payable clause, or special endorsement, in which the insurer agrees that any loss will be payable in accordance with the policy terms, notwithstanding any act or negligence of the insured.
5. Each policy must provide for 30 days' written notice to PNC Bank, National Association prior to any cancellation, non-renewal or amendment of the policy.

The evidence of insurance can consist of a Certificate of Insurance form for this specific transaction or a blanket certificate for all equipment financed by PNC, Evidence of Insurance form, Memorandum of Insurance, binder for insurance, declarations page, or the actual policy and endorsements, in each case naming PNC Bank, National Association as follows:

PNC Bank, National Association, and its successors and assigns, as lender loss payee
Attn: Insurance Department
655 Business Center Drive, Suite 250
Horsham, PA 19044

When completed, the evidence of insurance should be emailed to: SMEDocs@leaserv.com

Lessee: City of Lubbock, Texas

Signature:

X

Print Name:

Title:

Date:



Customer Information

Lease # 99006906-1

Please provide the following information. By providing such information, you will enable us to ensure prompt payment of your vendor and the correct processing of your lease transaction.

Thank you.

Lessee Information

Full Business Legal Name: : City of Lubbock, Texas	Federal Tax ID Number: 756000590
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Preferred Method of Payment:

Is a Purchase Order required on Invoices? ☐ YES ☐ NO PO # _____

Please enter your preferred method (Mail/Email): _____

- Mail - If you would like to receive your Monthly Invoice by Mail, please provide this information:

Invoices should be directed to:	Attention:		
Address:	City:	State:	Zip:

- Email - If you would like to receive your Monthly Invoice by Email, please provide this information:

Contact Name:	Email:
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Contact Information

In order to verify receipt of equipment and review terms and conditions of the lease, please provide contact information for one or more staff that can assist in this process.

Contact 1:	Phone:
Email:	
Contact 2:	Phone:
Email:	

I hereby attest the above information is accurate.

Signature X	Date
----------------	------

Email:

PNC Bank, National Association ("PNC"), is required to collect and remit sales/use tax in the taxing jurisdiction where your equipment will be located. If you select that you are exempt by marking one of the checkboxes below, you must provide a valid exemption certificate. If you do not provide this certificate *prior* to the booking of your transaction, you will be responsible for sales tax on all accrued payments.

- If tax has been remitted up front and financed into your lease payment, your account will not be marked sales tax exempt if you provide an exemption certificate after your transaction has been booked.
- If your tax is remitted on a monthly basis, your lease may be marked sales tax exempt for the remaining payments left to be invoiced if you provide a valid exemption certificate after your transaction has been booked.
- In the event we do not receive a valid sales tax exemption certificate prior to the date your lease commences, you will be charged sales/use tax.

Personal property tax returns will be filed as required by local law. In the event that any tax abatements or special exemptions are available on the equipment you will be leasing from us, please notify us as soon as possible and forward the related documentation to us. This will ensure that your leased equipment will be reported correctly.

Please indicate below if your lease is subject to tax or whether a valid exemption exists.

Sales Tax

- ☐ I agree that my lease is subject to sales/use tax.
- ☐ I am exempt from sales/use tax and I have attached a completed exemption certificate to PNC.
- ☐ I am claiming a partial exemption from tax. I have attached a completed exemption certificate or other documented proof of this partial exemption.
- ☐ I agree that my business is subject to sales/use tax and I have attached a completed resale certificate. This certificate indicates that I will be responsible for collection and remittance of sales/use tax based on the subsequent re-rental of the property.

If applicable to the tax rates in your state, are you outside the city limits or in an unincorporated area?

- ☐ Inside city limits ☐ Outside city limits ☐ Unincorporated area

Property Tax

- ☐ I have a valid abatement or property tax exemption (documentation attached).
- ☐ Location: State _____
Taxing District _____

Additional comments:

Lease Number 99006906-1

Lessee: City of Lubbock, Texas

Signature:

X

Print Name:

Title:

Date:

The Best Will Always Have Our
Name On It.



PREPARED FOR:

CITY OF LUBBOCK: MEADOWBROOK GOLF COURSE

Partner with the Industry Leader



ELITE
LITHIUM



**ADVANCED
INTELLIBRAKE™
TECHNOLOGY**

September 19, 2024

CITY OF LUBBOCK,

E-Z-GO® is honored to prepare this exclusive proposal for MEADOWBROOK GOLF COURSE and its members. Since 1954, E-Z-GO has been at the forefront of innovation, reliability and service for the last 70 years. We are committed to providing our customers with vehicle solutions that exceed expectations and perform to the demands of your facilities.

E-Z-GO and Cushman® vehicles are manufactured with purpose in mind. We have taken the golf car industry by storm with technologies such as the Samsung Powered ELiTE Lithium batteries, a first-of-its-kind EX1 gas engine, and our Textron Pace systems. These technologies, paired with our reliable fleet and utility vehicle options, provide an experience refined to elevate and improve any course to a premium caliber.

The E-Z-GO and Cushman advantage goes far beyond our products. You'll gain access to a level of service and support unsurpassed in the industry, through the largest fleet of factory direct service technicians, our strong network of factory-owned branch locations and authorized distributors.

Through highly reputable regional sponsorships, professional golfers and industry partners, we are dedicated to advancing the game of golf and the industry that fuels it.

Our constant pursuit for innovation, performance and customer service elevated our name to the premium provider in the industry. We're committed to the game and will never stop looking for what's next. Never settling has put our products on the most prestigious courses and facilities in the world so if you're looking for the best, E-Z-GO and Cushman have you covered.

As you review the enclosed materials, please do not hesitate to contact me with additional questions. I look forward to hearing from you soon, and to serving you at MEADOWBROOK GOLF COURSE.

With sincere appreciation,

Luke Martin
Territory Sales Mgr
(325) 895-0815
lmartin2@textron.com



RXV GAS

STANDARD FEATURES

BEST-IN-CLASS-FUEL ECONOMY	A SMOOTH, QUIET REFINED RIDE	INTEGRATED STARTER/GENERATOR
2-YEAR OIL CHANGE INTERVALS	LOWEST COST OF OPERATION	GREENEST GAS ENGINE

ACCESSORIES

Body Color Ocean Gray	150
Premium Seat Gray	150
Hole-in-One 18x8.50-8, 4 Ply, White Steel Wheel	150
Spoke, Silver (Set of 4)	150
High Capacity 12V Battery	150
Premium Steering Wheel	150
Tow Bar Permanent	150
USB Port	150
Sand Bottle (Single) (Both)	300
Sand Bottle Premium Seat Bracket ()	150
Windshield Mounted Message Holder	150
Sun Canopy, 54" Black	150
Windshield, Fold Down	150
Custom Logo/Decals	150
Freight	150
Pace Wiring Harness Screens	150

PACE 7EX (60 MO)

STANDARD FEATURES

REAL-TIME VEHICLE DATA	AUTOMATIC SOFTWARE UPDATES	7" ULTRA-BRIGHT TOUCHSCREEN DISPLAY
ACCURATE HOLE AND YARDAGE GPS	ENHANCED HD HOLE GRAPHICS	GEOFENCING & VEHICLE ALERTS

ACCESSORIES

PACE 7EX (48 MO)

STANDARD FEATURES

REAL-TIME VEHICLE DATA	AUTOMATIC SOFTWARE UPDATES	7" ULTRA-BRIGHT TOUCHSCREEN DISPLAY
ACCURATE HOLE AND YARDAGE GPS	ENHANCED HD HOLE GRAPHICS	GEOFENCING & VEHICLE ALERTS

ACCESSORIES

Proposal

CITY OF LUBBOCK

September 19, 2024

REFRESHER OASIS

STANDARD FEATURES

13.5-HP EFI GAS ENGINE	4 COLD STORAGE DRAWERS	12.1-SQ-FT WRAP-AROUND COUNTER
MERCHANDISE CABINET	500 CAN CAPACITY	MERCHANDISE CABINET

ACCESSORIES

Cowl Color Forest Green	2
Refresher Unit Color Graphite Gray	2
Side Decals Matte Black	2
Standard Seat Gray	2
K399 Load Star 20.5 x 8 - 10, 6 Ply Rated, Black Wheel	2
10" Silver Wheel Cover (Set of 4)	2
Two Wheel Mechanical Brakes	2
Brush Guard	2
Small Fender Flares (Included with 10" wheels)	2
Comfort Grip Steering Wheel with Scorecard Holder	2
Hour Meter	2
12 Volt Heavy Duty Battery	2
Fuel/Oil Gauge	2
USB Outlet (not available with CE)	2
Halogen Headlights	2
Counter Top White	2
Sun Canopy, Slate (with Pebble Platinum)	2
Airpots (two, three liter airpots mounted on the dry goods section)	2
Consumable Ice Bin with Lid	2
Windshield, Flat with Side Mirrors	2
Freight	2



HAULER 800X GAS

STANDARD FEATURES

13.5-HP EFI GAS ENGINE	800-LB VEHICLE LOAD CAPACITY	FUNCTIONAL DASHBOARD WITH STORAGE
8.4-CU-FT CARGO BED	HEADLIGHTS & BRUSHGUARD	LIFTED SUSPENSION

ACCESSORIES

K399 Load Star 20.5 x 8 - 10, 6 Ply Rated, Black Wheel	1
Body Color Forest Green	1
Side Decals Matte Black	1
Contoured Seat Gray	1
Two Wheel Mechanical Brakes	1
Brush Guard	1
Comfort Grip Steering Wheel with Scorecard Holder	1
Large Fender Flares	1
12 Volt Heavy Duty Battery	1
Fuel/Oil Gauge	1
Hour Meter	1
Halogen Headlights	1
Plastic Bed Box (Manual Lift)	1
2 in (5 cm) Receiver (Rear)	1
Ball Cage - ROPS Certified	1
Easy Picker Range Picker Adapter (* Brushguard not available)	1
Freight	1

Proposal

CITY OF LUBBOCK

September 19, 2024

HAULER 1200 GAS

STANDARD FEATURES

13.5-HP EFI GAS ENGINE	1,200-LB VEHICLE LOAD CAPACITY	800-LB BED LOAD CAPACITY
12-CU-FT CARGO BED	FUNCTIONAL DASHBOARD WITH STORAGE	1,500-LB TOWING CAPACITY

ACCESSORIES

Body Color Bright White	3
K399 Load Star 20.5 x 8 - 10, 6 Ply Rated, Black Wheel	3
Side Decals Matte Black	3
Contoured Seat Gray	3
Two Wheel Mechanical Brakes	3
Brush Guard	3
Small Fender Flares (Included with 10" wheels)	3
Comfort Grip Steering Wheel	3
Halogen Headlights	3
Fuel/Oil Gauge	3
Hour Meter (Gas Models)	3
USB Outlet (not available with CE)	3
12 Volt Heavy Duty Battery	3
Plastic Bed Box (Manual Lift): 39" x 44" x 12" - 12 cu ft	3
2 in (5 cm) Receiver (Rear)	3
Sun Canopy Top, Plastic, Black	3
Windshield, Fold Down	3
Drop In Refresher w/ Consumable Ice Tray	2
Freight	3



Proposal

CITY OF LUBBOCK

September 19, 2024

FAIR MARKET VALUE LEASE

✓	YEAR	MODEL	QTY	TERM	CAR/MONTH	TOTAL MONTHLY PRICE
	2025	RXV Gas	150	48 Month	\$150.20	\$22,530.00
		Pace 7EX (48 Mo)	150	48 Month	\$63.05	\$9,457.50
	2025	Refresher Oasis	2	48 Month	\$680.45	\$1,360.90
	2025	Hauler 800X Gas	1	48 Month	\$390.84	\$390.84
	2025	Hauler 1200 Gas	3	48 Month	\$395.32	\$1,185.96
					MONTHLY AMOUNT	\$34,925.20

OMNIA CONTRACT #R210201

Please note that this proposal is for seasonal pay. Payment months will be March - October.

PROGRAM DETAILS

NUMBER OF PAYMENTS PER YEAR	PAYMENT MONTHS	DELIVERY	FIRST PAYMENT
8	MARCH-OCTOBER	DECEMBER 2024	One Month After Delivery

SPECIAL CONSIDERATIONS

While it is our intent to honor the quoted pricing, the final pricing may change due to factors beyond the control of E-Z-GO. Final interest rates, pricing, and trade values will be determined 90 days prior to delivery. Trades must be in working condition and free from major cosmetic or mechanical damage, at time of pickup, to receive full trade value.

Based on the structure of the above proposed deal, the following documentation will be required for all deals, to establish creditworthiness:

LEASED NEEDS:

- Signed Credit Application, Last two full years of Audited Financial Statements, and YTD Financial Statements (Income Statement, Balance Sheet)

CASH PURCHASE NEEDS:

- Bank Letter (Proof of Funds at 90 days prior to delivery) OR Financials (Income Statement, Balance Sheet) to establish a Credit Limit with E-Z-GO.

While it's our intent to hold this pricing, this pricing is subject to change due to factors that are beyond the control of E-Z-GO. Final interest rates, trade values, and pricing will be determined 90 days prior to delivery.

Proposal

CITY OF LUBBOCK

September 19, 2024

The terms of the Pace Technology Data Systems Agreement (available under “Download Documents” at <https://ezgo.com/pacetechnologyprivacy>) governs the use of Pace Technology systems and services, including the entry and processing of any Personal Data.

NOTE: All goods ordered in error by the Customer or goods the Customer wishes to return are subject to a restock fee. The restock fee is 3% of the original invoice value of the goods. Prices quoted above are those currently in effect and are guaranteed subject to acceptance within 30 days of the date of this proposal. Applicable state taxes, local taxes, and insurance are not included. Lease rates may change if alternate financing is required. Payment schedule(s) does not include any finance, documentation, or initiation fees that may be included with the first payment. All lease cars and trades must be in running condition and a fleet inspection will be performed prior to pick up. It is the club's responsibility to either repair damages noted or pay for the repairs to be completed. All electric cars must have a working charger. All pricing and trade values are contingent upon management approval. Any change to the accessory list must be obtained in writing at least 30 days prior to production date.

CITY OF LUBBOCK

E-Z-GO

Accepted by: _____

Accepted by: _____

Title: _____

Title: _____

Date: _____

Date: _____

Part or Component	Warranty Period
FRAME - WORKMANSHIP	LIFETIME
MAJOR SUSPENSION COMPONENTS - Steering Gearbox, steering column, shocks, struts and leaf springs	4 years
MAJOR ELECTRONICS – Electric motor, solid state speed controller and battery charger	4 years
LEAD ACID DEEP CYCLE BATTERY – RXV ELECTRIC MODELS:	Earlier of 4 years or 25,000 amp hours*
GAS CAR BATTERY (Gas cars with added electrical loads must be equipped with heavy duty battery)	2 years
PEDAL GROUP - Pedal assemblies, brake assemblies, brake cables and motor brake	4 years
CANOPY SYSTEM - Canopy and canopy struts	4 years
SEATS - Seat bottom, seat back and hip restraints	3 years
POWERTRAIN – Gasoline engine, gasoline axle, clutches, engine air intake and exhaust system	4 years
POWERTRAIN – Electric axle	3 years
BODY GROUP – Front and rear cowl, side panels and instrument panel	3 years
OTHER ELECTRICAL COMPONENTS – Solenoid, limit switches, starter generator, voltage regulator, F&R switch, charger cord and charger receptacle	3 years
ALL OPTIONS AND ACCESSORIES - All options and accessories supplied by Company at time of purchase	2 years
ALL OTHER COMPONENTS - All other components supplied by Company at time of purchase	2 years
INITIAL ADJUSTMENTS – Initial alignment, adjustments, fastener retightening	90 Days
ALL PACE SCREENS supplied by Company at time of purchase	5 Years
ALL OTHER PACE COMPONENTS supplied by Company at time of purchase	3 Years
* Added electrical components not part of original Vehicle drive system equipment that consume equal to or more than .4 amps shall reduce the amp hour battery warranty by fifteen percent (15%). Added electrical components not part of original Vehicle drive system equipment that consume less than .4 amps shall reduce the amp hour battery warranty by ten percent (10%). See reverse for other battery warranty limitations, conditions and exceptions.	

- shows indications that routine maintenance was not performed per the Owner's Manual, including but not limited to rotation of fleet, proper tire inflation, lack of charging, inadequate battery watering, use of contaminated water, loose battery hold downs, routine scheduled oil and filter changes, corroded battery cables and loose battery terminals;
- lacks an adequate number of operating battery chargers, uses unapproved battery chargers for the vehicle or uses extension cords with battery chargers;
- shows indications that the charger has been modified to charge vehicles not approved for the charger;
- gasoline vehicles fueled with unleaded gasoline containing more than 10% ethanol, E85 ethanol fuel or other non-recommended fuels, contaminated gasoline or other non-recommended lubricants;
- shows indications that the speed governor was adjusted or modified to permit the Vehicle to operate beyond Company specifications;
- shows indications it has been altered or modified in any way from Company specifications, including but not limited to alterations to the speed braking system, electrical system, passenger capacity or seating;
- has been altered to be used in an application other than a fleet golf vehicle such as a Personal Transportation Vehicle (PTV), utility vehicle, or other non-fleet golf vehicle

- has non-Company approved electrical accessories or electrical energy consuming devices installed on a gasoline powered Vehicle without installation of a heavy duty 12V battery; or
- is equipped with non-standard tires not approved by Company for the application.

USE OF NON-APPROVED COMPANY PARTS AND ACCESSORIES: THIS LIMITED WARRANTY IS VOID WITH RESPECT TO ANY PROPERTY DAMAGE OR ADDITIONAL ENERGY CONSUMPTION ARISING FROM OR RELATED TO PARTS OR ACCESSORIES NOT MANUFACTURED OR AUTHORIZED BY THE COMPANY, OR WHICH WERE NOT INSTALLED BY THE COMPANY, ITS DEALERS OR DISTRIBUTORS, INCLUDING BUT NOT LIMITED TO NON-APPROVED GPS SYSTEMS, COOLING AND HEATING SYSTEMS, COMMUNICATION SYSTEMS, INFORMATION SYSTEMS, OR OTHER FORMS OF ENERGY CONSUMING DEVICES WIRED DIRECTLY OR INDIRECTLY TO THE VEHICLE BATTERIES.

REMEDY: Purchaser's sole and exclusive remedy under this Limited Warranty in the event of a defect in material or workmanship in the Vehicle, any part or component, or battery charger during the applicable Warranty Period is that E-Z-GO will, at its sole option, repair or replace any defective parts. If the Company elects to repair or replace a defective part, the Company may at its discretion provide a factory reconditioned part or new component from an alternate supplier. All replaced parts become the sole property of the Company. This exclusive remedy will not be deemed to have failed of its essential purpose so long as the Company has made reasonable efforts to repair or replace the defective parts.

DISCLAIMER: THIS LIMITED WARRANTY IS THE SOLE AND EXCLUSIVE WARRANTY PROVIDED FOR THE VEHICLES AND BATTERY CHARGER AND IS MADE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, ALL SUCH OTHER WARRANTIES BEING EXPLICITLY DISCLAIMED.

LIABILITY LIMITATIONS: IN NO CASE SHALL THE COMPANY BE LIABLE FOR INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO DEATH, PERSONAL INJURY OR PROPERTY DAMAGE ARISING FROM OR RELATED TO ANY ALLEGED FAILURE IN A VEHICLE OR BATTERY CHARGER, OR ANY DAMAGE OR LOSS TO THE PURCHASER OR ANY THIRD PARTY FOR LOST TIME, INCONVENIENCE OR ANY ECONOMIC LOSS, WHETHER OR NOT THE COMPANY WAS APPRISED OF THE FORSEEABILITY OF SUCH DAMAGES OR LOSSES. THE RIGHT OF PURCHASER TO RECOVER DAMAGES WITHIN THE LIMITATIONS SET FORTH IN THIS SECTION IS PURCHASER'S EXCLUSIVE ALTERNATIVE REMEDY IF THE LIMITED REMEDY OF REPAIR OR REPLACEMENT OF THE VEHICLE FAILS OF ITS ESSENTIAL PURPOSE. THE PARTIES AGREE THAT THIS ALTERNATIVE REMEDY WILL BE ENFORCEABLE EVEN IF THE LIMITED REMEDY OF REPAIR OR REPLACEMENT FAILS OF ITS ESSENTIAL PURPOSE. ANY LEGAL CLAIM OR ACTION ARISING THAT ALLEGES BREACH OF WARRANTY MUST BE BROUGHT WITHIN THREE (3) MONTHS FROM THE DATE THE WARRANTY CLAIM ARISES. THIS LIMITED WARRANTY GIVES YOU SPECIFIC LEGAL RIGHTS AND YOU MAY HAVE OTHER RIGHTS WHICH VARY FROM STATE TO STATE. SOME STATES DO NOT ALLOW THE EXCLUSION OF INCIDENTAL DAMAGES OR LIMITATIONS ON HOW LONG AN IMPLIED WARRANTY MAY LAST, SO THE ABOVE EXCLUSIONS AND LIMITATIONS MAY NOT APPLY TO YOU.

WARNING: ANY MODIFICATION OR CHANGE TO THE VEHICLE OR BATTERY CHARGER WHICH ALTERS THE WEIGHT DISTRIBUTION OR STABILITY OF THE VEHICLE, INCREASES THE VEHICLE'S SPEED, OR ALTERS THE OUTPUT OF THE BATTERY CHARGER BEYOND FACTORY SPECIFICATIONS, CAN RESULT IN PROPERTY DAMAGE, PERSONAL INJURY OR DEATH. DONOTMAKEANYSUCHMODIFICATIONSORCHANGES. SUCH MODIFICATIONS OR CHANGES WILL VOID THE LIMITED WARRANTY. THE COMPANY DISCLAIMS RESPONSIBILITY FOR ANY SUCH MODIFICATIONS, CHANGES OR ALTERATIONS WHICH WOULD ADVERSELY IMPACT THE SAFE OPERATION OF THE VEHICLE OR BATTERY CHARGER.

LEAD ACID DEEP CYCLE BATTERY WARRANTY LIMITATIONS, CONDITIONS AND EXCEPTIONS:

- The amp hour Warranty Period for electric Vehicle batteries is as recorded by the Vehicle's controller.
- Claims for battery warranty replacement require specific testing, as specified by the TSV Customer Care / Warranty Department. The Company, or an authorized Company dealer or distributor, should be contacted to obtain a copy of the required tests, which must be performed and corrected for temperature, based upon BCI (Battery Council International) recommendations.
- **NON-FACTORY INSTALLED PARTS OR ACCESSORIES INSTALLED DIRECTLY TO LESS THAN THE COMPLETE VEHICLE BATTERY PACK WILL VOID THE WARRANTY FOR THE ENTIRE BATTERY PACK.**
- **ALL NON-FACTORY INSTALLED ACCESSORIES REQUIRE THE INSTALLATION AND USE OF A COMPANY APPROVED DC TO DC CONVERTER THAT USES ENERGY FROM ALL BATTERIES.**
- **Electric Vehicle storage facilities must provide the following:**
 - ample electrical power to charge all Vehicles and allow the charger to shut off automatically;
 - battery chargers must each have an independent dedicated 15 amp circuit;
 - each battery charger must be connected to its circuit with at minimum a NEMA 15-5R three-pin receptacle;
 - five (5) air exchanges per hour in the charging facility;
 - if the facility utilizes an electrical energy management system, the timer must be set to have available fourteen (14) hours of electricity; and
 - one (1) functional charger for each Vehicle in the fleet with a proper electrical supply as specified above.

OTHER COMPANY RIGHTS:

- Company may perform vehicle inspections (directly or through assigned E-Z-GO representatives) through the term of the warranty period.
- Company may improve, modify or change the design of any Company vehicle, part or battery charger without being responsible to modify previously manufactured vehicles, parts or battery chargers.
- Company may audit and inspect the Purchaser's facility, maintenance records and its Vehicles by a Company representatives prior to approving a warranty claim and may contract with a third party to evaluate the Purchaser's storage facilities, fuel storage tanks and/or batteries.
- **THE WARRANTY FOR ALL VEHICLES IN A FLEET SHALL BE VOIDED IF DATA SUBMITTED FOR AN INDIVIDUAL VEHICLE WARRANTY CLAIM CONTAINS**
AUTHORITY: No Company employee, dealer, distributor or representative, or any other person, has any authority to bind the Company beyond the terms of this Limited Warranty without the express written approval of the TSV Customer Care / Warranty Department.

EMISSIONS CONTROL WARRANTY: The Vehicle may also be subject to an emissions control warranty, as required by the U.S. Environmental Protection Agency and California Air Resources Board, which is provided in a separate Statement with the Vehicle.

**FOR FURTHER INFORMATION, CALL 1-800-774-3946, GO TO TSV.COM, OR WRITE TO TEXTRON SPECIALIZED VEHICLES INC., ATTENTION:
TSV CUSTOMER CARE / WARRANTY DEPARTMENT, 1451 MARVIN GRIFFIN ROAD, AUGUSTA, GEORGIA 30906 USA.**

TSV P/N 646534G25



Limited Warranty Terms and Conditions – TSV Commercial / Turf Vehicles

The Textron Specialized Vehicles (TSV) Division of Textron Inc. ("Company") provides that any new Model Year 2024 Cushman Commercial / Turf vehicle (the "Vehicle") and/or battery charger purchased from Company, a Company affiliate, or an authorized Company dealer or distributor, or leased from a leasing company approved by Company, shall be free from defects in material or workmanship under normal use and service (the "Limited Warranty"). This Limited Warranty with respect only to parts and labor is extended to the Original Retail Purchaser or the Original Retail Lessee ("Purchaser") for defects reported to the Company no later than the following warranty periods for the Vehicle parts and components set forth below (the "Warranty Period"):

Vehicle	Warranty Period
Cushman Commercial/Turf Vehicles (Refresher, Shuttle, Hauler):	
<ul style="list-style-type: none"> Frame – workmanship Gas Engine All other parts and components unless otherwise noted 	Lifetime 3 years 2 years
• INITIAL ADJUSTMENTS – Initial alignment, adjustments, fastener retightening	90 days
Lead Acid Deep Cycle Batteries	Earlier of 2 years or 23,000 amp hours*
ALL PACE SCREENS supplied by Company at time of purchase	5 Years
• ALL OTHER PACE COMPONENTS supplied by Company at time of purchase	3 Years
<i>* Added electrical components not part of original Vehicle drive system equipment that consume equal to or more than .4 amps shall reduce the amp hour battery warranty by fifteen percent (15%). Added electrical components not part of original Vehicle drive system equipment that consume less than .4 amps shall reduce the amp hour battery warranty by ten percent (10%). See reverse for other battery warranty limitations, conditions and exceptions.</i>	

The Warranty Period for all parts and components of the Vehicle other than Lead Acid Deep Cycle Batteries shall commence on the date of delivery to the Purchaser's location or the date on which the Vehicle is placed in Purchaser-requested storage.

The Warranty Period for Lead Acid Deep Cycle Batteries shall commence on the earliest of the date: •

- of Vehicle delivery to the Purchaser's location,
- on which the Vehicle is placed in Purchaser-requested storage or
- that is one (1) year from the date of sale or lease of the Vehicle by the Company to an authorized company dealer or distributor.

Parts repaired or replaced under this Limited Warranty are warranted for the remainder of the length of the Warranty Period. This Limited Warranty applies only to the Purchaser and not to any subsequent purchaser or lessee without the prior written approval of the Customer Care / Warranty Department.

EXCLUSIONS: Specifically **EXCLUDED** from this Limited Warranty are:

- routine maintenance items, normal wear and tear, cosmetic deterioration or electrical components damaged as a result of fluctuations in electric current;
- damage to or deterioration of a Vehicle, part or battery charger resulting from inadequate maintenance, neglect, abuse, accident or collision;
- damage resulting from installation or use of parts or accessories not approved by Company, including but not limited to subsequent failures of the Vehicle, other parts or the battery charger due to the installation and/or use of parts and accessories not approved by Company;
- warranty repairs made by other than a Company branch or an authorized and qualified Dealer designee. Warranty repairs by other than a Company branch or an authorized and qualified Dealer or designee shall void the Limited Warranty;
- damage or loss resulting from acts of nature, vandalism, theft, war or other events over which Company has no control;
- any and all expenses incurred in transporting the Vehicle to and from the Company or an authorized and qualified Dealer, distributor or designee for warranty service or in performing field warranty service; and
- any and all expenses, fees or duties incurred relative to inbound freight, importation, or customs.

THIS LIMITED WARRANTY MAY BE VOIDED OR LIMITED AT THE SOLE DISCRETION OF COMPANY IF THE VEHICLE AND/OR BATTERY CHARGER:

- shows indications that routine maintenance was not performed per the Owner's Manual, including but not limited to proper tire inflation, lack of charging, inadequate Lead Acid battery watering, use of contaminated water, loose battery hold downs, corroded battery cables and loose battery terminals;
- lacks an adequate number of operating battery chargers, uses unapproved battery chargers for the vehicle or uses extension cords with battery chargers;
- gasoline powered Vehicles fueled with unleaded gasoline containing more than 10% ethanol, E85 ethanol fuel or other non-recommended fuels, contaminated gasoline or other non-recommended lubricants;
- shows indications that the speed governor was adjusted or modified to permit the Vehicle to operate beyond Company specifications;
- shows indications it has been altered or modified in any way from Company specifications, including but not limited to alterations to the speed braking system, electrical system, passenger capacity or seating;
- has non-Company approved electrical accessories or electrical energy consuming devices installed on a gasoline Vehicle without installation of a heavy duty 12V battery;
- has non-Company approved electrical accessories or electrical energy consuming devices installed on an electric powered Vehicle without installation of an adequately sized DC to DC converter to draw energy from the entire battery pack;
- adjustments are made to the injection pump fuel delivery system or CVT system; or • is equipped with non-standard tires not approved by the Company.

USE OF NON-APPROVED COMPANY PARTS AND ACCESSORIES: THIS LIMITED WARRANTY IS VOID WITH RESPECT TO ANY PROPERTY DAMAGE OR ADDITIONAL ENERGY CONSUMPTION ARISING FROM OR RELATED TO PARTS OR ACCESSORIES NOT MANUFACTURED OR AUTHORIZED BY COMPANY, OR WHICH WERE NOT INSTALLED BY COMPANY, ITS DEALERS OR DISTRIBUTORS, INCLUDING BUT NOT LIMITED TO GPS SYSTEMS, COOLING AND HEATING SYSTEMS, COMMUNICATION SYSTEMS, INFORMATION SYSTEMS, OR OTHER FORMS OF ENERGY CONSUMING DEVICES WIRED DIRECTLY OR INDIRECTLY TO THE VEHICLE BATTERIES.



REMEDY: Purchaser's sole and exclusive remedy under this Limited Warranty in the event of a defect in material or workmanship in the Vehicle, any part or component, or battery charger during the applicable Warranty Period is that Company will, at its sole option, repair or replace any defective parts. If Company elects to repair or replace a defective part, Company may at its discretion provide a factory reconditioned part or new component from an alternate supplier. All replaced parts become the sole property of Company. This exclusive remedy will not be deemed to have failed of its essential purpose so long as Company has made reasonable efforts to repair or replace the defective parts.

DISCLAIMER: THIS LIMITED WARRANTY IS THE SOLE AND EXCLUSIVE WARRANTY PROVIDED FOR THE VEHICLES AND BATTERY CHARGER AND IS MADE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, ALL SUCH OTHER WARRANTIES BEING EXPLICITLY DISCLAIMED.

LIABILITY LIMITATIONS: IN NO CASE SHALL COMPANY BE LIABLE FOR INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO DEATH, PERSONAL INJURY OR PROPERTY DAMAGE, ARISING FROM OR RELATED TO ANY ALLEGED FAILURE IN A VEHICLE OR BATTERY CHARGER, OR ANY DAMAGE OR LOSS TO THE PURCHASER OR ANY THIRD PARTY FOR LOST TIME, INCONVENIENCE OR ANY ECONOMIC LOSS, WHETHER OR NOT COMPANY WAS APPRISED OF THE FORSEEABILITY OF SUCH DAMAGES OR LOSSES. THE RIGHT OF PURCHASER TO RECOVER DAMAGES WITHIN THE LIMITATIONS SET FORTH IN THIS SECTION IS PURCHASER'S EXCLUSIVE ALTERNATIVE REMEDY IF THE LIMITED REMEDY OF REPAIR OR REPLACEMENT OF THE VEHICLE FAILS OF ITS ESSENTIAL PURPOSE. THE PARTIES AGREE THAT THIS ALTERNATIVE REMEDY WILL BE ENFORCEABLE EVEN IF THE LIMITED REMEDY OF REPAIR OR REPLACEMENT FAILS OF ITS ESSENTIAL PURPOSE. ANY LEGAL CLAIM OR ACTION ARISING THAT ALLEGES BREACH OF WARRANTY MUST BE BROUGHT WITHIN THREE (3) MONTHS FROM THE DATE THE WARRANTY CLAIM ARISES. THIS LIMITED WARRANTY GIVES YOU SPECIFIC LEGAL RIGHTS AND YOU MAY HAVE OTHER RIGHTS WHICH VARY FROM STATE TO STATE. SOME STATES DO NOT ALLOW THE EXCLUSION OF INCIDENTAL DAMAGES OR LIMITATIONS ON HOW LONG AN IMPLIED WARRANTY MAY LAST, SO THE ABOVE EXCLUSIONS AND LIMITATIONS MAY NOT APPLY TO YOU

WARNING: ANY MODIFICATION OR CHANGE TO THE VEHICLE OR BATTERY CHARGER WHICH ALTERS THE WEIGHT DISTRIBUTION OR STABILITY OF THE VEHICLE, INCREASES THE VEHICLE'S SPEED, OR ALTERS THE OUTPUT OF THE BATTERY CHARGER BEYOND FACTORY SPECIFICATIONS, CAN RESULT IN PROPERTY DAMAGE, PERSONAL INJURY OR DEATH. DO NOT MAKE ANY SUCH MODIFICATIONS OR CHANGES. SUCH MODIFICATIONS OR CHANGES WILL VOID THE LIMITED WARRANTY. COMPANY DISCLAIMS RESPONSIBILITY FOR ANY SUCH MODIFICATIONS, CHANGES OR ALTERATIONS WHICH WOULD ADVERSELY IMPACT THE SAFE OPERATION OF THE VEHICLE OR BATTERY CHARGER.

LEAD ACID DEEP CYCLE BATTERY WARRANTY LIMITATIONS, CONDITIONS AND EXCEPTIONS:

- Claims for battery warranty replacement require specific testing, as specified by the Customer Care / Warranty Department. Company, or an authorized Company dealer or distributor, should be contacted to obtain a copy of the required tests, which must be performed and corrected for temperature, based upon BCI (Battery Council International) recommendations.
- **NON-FACTORY INSTALLED PARTS OR ACCESSORIES INSTALLED DIRECTLY TO LESS THAN THE COMPLETE VEHICLE BATTERY PACK WILL VOID THE WARRANTY FOR THE ENTIRE BATTERY PACK.**
- **ALL NON-FACTORY INSTALLED ACCESSORIES REQUIRE THE INSTALLATION AND USE OF A COMPANY APPROVED DC TO DC CONVERTER THAT USES ENERGY FROM ALL BATTERIES.**
- **Electric Vehicle storage facilities must provide the following:**
 - ample electrical power to charge all Vehicles and allow the charger to shut off automatically;
 - battery chargers must each have an independent dedicated 15 amp circuit;
 - each battery charger must be connected to its circuit with at minimum a NEMA 15-5R three-pin receptacle;
 - five (5) air exchanges per hour in the charging facility; and
 - one (1) functional charger for each Vehicle in the fleet with a proper electrical supply as specified above.

OTHER COMPANY RIGHTS:

- Company may improve, modify or change the design of any TSV vehicle, part or battery charger without being responsible to modify previously manufactured vehicles, parts or battery chargers.
- Company may audit and inspect the Purchaser's facility, maintenance records and its Vehicles by Company representatives prior to approving a warranty claim and may contract with a third party to evaluate the Purchaser's storage facilities, fuel storage tanks and/or batteries.

AUTHORITY: No Company employee, dealer, distributor or representative, or any other person, has any authority to bind Company beyond the terms of this Limited Warranty without the express written approval of the Customer Care / Warranty Department.

EMISSIONS CONTROL WARRANTY: The Vehicle may also be subject to an emissions control warranty, as required by the U.S. Environmental Protection Agency and California Air Resources Board, which is provided with the Vehicle.

FOR FURTHER INFORMATION, CALL 1-800-774-3946, GO TO TXTSV.COM, OR WRITE TO TSV DIVISION OF TEXTRON INC., ATTENTION: TSV CUSTOMER CARE / WARRANTY DEPARTMENT, 1451 MARVIN GRIFFIN ROAD, AUGUSTA, GEORGIA 30906 USA.

TSV P/N 646529G25



Information

Agenda Item

Resolution - Parks and Recreation: Consider a resolution authorizing the Mayor to execute Lease Number 99006906-2, and all related documents, with PNC Bank, National Association, for the lease of a maintenance equipment package for Meadowbrook Golf Course, from United Ag & Turf, in accordance with Sourcewell Grounds Maintenance Contract 031121-DAC (PG BT CG 76), Sourcewell Ag Contract 082923-DAC (PG BA CG 76) and BuyBoard Contract.

Item Summary

Effective January 1, 2025, the City will assume full responsibility for the maintenance and operations of Meadowbrook Golf Course. As part of this transition, a maintenance equipment package will be needed to maintain both golf courses and surrounding areas.

The equipment package includes mowers, utility vehicles, specialty equipment, and larger pieces of equipment such as tractors and top dressers. The lease will be facilitated through PNC Bank in accordance with Sourcewell Grounds Maintenance Contract 031121-DAC (PG BT CG 76), Sourcewell Ag Contract 082923-DAC (PG BA CG 76) and BuyBoard Contract 706-23, with a 48-month term for a total of \$270,929.10 annually.

Lender Information:

PNC Bank, National Association
655 Business Center Drive
Horsham, PA 19044

Vendor Information:

United Ag & Turf
2098 Valley View Lane
Farmers Branch, TX 75234

Fiscal Impact

The total annual cost to lease this equipment package is \$270,929.10, which is included in the Meadowbrook Golf Course Budget.

Staff/Board Recommending

Brooke Witcher, Assistant City Manager
Colby VanGundy, Director of Parks and Recreation

Attachments

Resolution

PNC Lease Agreement
United Ag & Turf Proposal

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, Lease Number 99006906-2, by and between the City of Lubbock and PNC Bank, National Association, for the lease of a maintenance equipment package for Meadowbrook Golf Course, from United Ag & Turf, in accordance with Sourcewell Grounds Maint Contract 031121-DAC (PG BT CG 76), Sourcewell Ag Contract 082923-DAC (PG BA CG 76), and BuyBoard Contract 706-23, consistent with the terms attached hereto and incorporated herein, and all related documents.

Passed by the City Council on _____.

MARK W. MCBRAYER, MAYOR

ATTEST:

Courtney Paz, City Secretary

APPROVED AS TO CONTENT:



Brooke Witcher, Assistant City Manager

APPROVED AS TO FORM:



Rachael Foster, Assistant City Attorney



Dated as of November 21, 2024

Lease Number 99006906-2

City of Lubbock, Texas
1314 Ave K
Lubbock, TX 79401

Dear Customer:

Enclosed are the necessary documents needed to complete your lease transaction. Please review, sign and return the following:

- Lease – Please have the Authorized Signor execute the documents and provide their title.
- Certificate of Acceptance – **At the point of delivery, fill out this form and return the original to us. We will be unable to disburse funds until we receive this signed form.**
- Schedule of Payments – Please sign and provide the title of the signor.
- Resolution-Certificate of Incumbency – List your Authorized Representative(s) and their title(s) in the body of the Resolution. Have the Authorized Representatives provide their names, title and signatures(s) on the lines which appear under the Authorized Representative Signature Section near the bottom of the Resolution. Finally, have the Secretary or appropriate Trustee attest to the information of the Authorized Representative(s) by signing and printing his/her name, title and date on the **last** signature line provided. **The person who validates the signature should not sign the Lease Agreement.** The Resolution must reflect the title(s) of the individual(s) who have authorization to sign the documents.
- Minutes of Governing Body (approving the purchase & finance of equipment) – Please return a copy with the documents.
- Opinion of Counsel – Please have your attorney sign this form.
- Amendment to Lease Agreement – Please sign, print your name, title and date.
- State Provisions Rider (TX) - Please sign, print your name, title and date.
- Insurance Request Form: Physical and Liability Insurance Certificates (**Required**) – Fill in your insurer's information and sign. Please contact your insurer, prior to delivery, to obtain a certificate of insurance. Please enclose the certificate with the signed documentation or have the insurer fax the certificate directly to me.
- If you are tax exempt, please provide a copy of your Tax Exemption Certificate.
- Authorization for Automatic Payment Form – Please complete this form and provide a copy of your company's voided check if you wish to set up automatic payments.
- Above documentation can be emailed to SMEDocs@leaserv.com.

Thank you for choosing PNC Bank, National Association for your financing needs. We appreciate your business. If I can be of assistance, please contact me at SMEDocs@leaserv.com or kkurtz@pnc.com.

If you have questions or need information on your contract in the future, you can call our customer service team at 800-559-2755 or email them at customercare@leaserv.com.

Sincerely,

Kate Kurtz
Commercial Transaction Coordinator III

CERTIFICATE OF ACCEPTANCE

Lease Number: 99006906-2

In compliance with the terms, conditions and provisions of Lease Agreement # 99006906-2 ("**Lease**") by and between the undersigned **City of Lubbock, Texas** ("**Lessee**") and PNC Bank, National Association ("**Lessor**"), Lessee hereby:

1. certifies and warrants that all Equipment described in the Lease referenced above ("**Equipment**") is delivered, inspected and fully installed, and operational as of the Acceptance Date as indicated below;
2. accepts all the Equipment for all purposes under the Lease and all attendant documents as of the date of return of this Certificate to Lessor ("**Acceptance Date**"); and
3. restates and reaffirms, as of such Acceptance Date, each of the representations, warranties and covenants heretofore given to Lessor in the Lease.

Lessor is hereby authorized to insert serial numbers on the Lease.

Lessee: City of Lubbock, Texas

1314 Ave K
Lubbock, TX 79401

Signature:

X

Print Name:

Title:

Date:



AMENDMENT TO LEASE AGREEMENT

This Amendment ("**Amendment**"), dated and effective as of November 21, 2024, is to that certain Lease Agreement Number 99006906-2 dated November 21, 2024 (the "**Lease**") between City of Lubbock, Texas, with its principal place of business at 1314 Ave K, Lubbock, TX 79401 ("**Lessee**"), and PNC Bank, National Association, with an address at 655 Business Center Drive, Suite 250 Horsham, PA 19044 ("**Lessor**").

In consideration of the mutual covenants contained herein and other valuable consideration received, and with the intent to be legally bound, the parties amend the Lease as follows:

- 3. **RENT.** The sixth sentence of Section 3 is modified and amended by replacing it with the following: "Any change in the Rent amount due to changes in the Equipment configuration, which may occur prior to Lessor's acceptance of this Lease, requires a two-way letter amendment signed by both parties."

- 16. **RETURN OF EQUIPMENT.** The first sentence of Section 16 is modified and amended by replacing it with the following: "If (a) default occurs, (b) a non-appropriation of funds occurs as provided herein, or (c) Lessee does not exercise its purchase option at the end of the Lease Term, Lessee will immediately return the Equipment to a location designated by Lessor within two hundred fifty (250) miles of Lessee's address on this Lease."

- 23. **NOTICES.** The second sentence of Section 23 is modified and amended by replacing it with the following: "All of Lessor's written notices to Lessee must be sent by certified mail or recognized overnight delivery service, postage prepaid; provided, however, no invoice or bill for payment shall be treated as Notice pursuant to this section."

The following is added as Section 28:
"28. CHOICE OF LAW AND VENUE. This Lease shall be governed and construed according to the laws of the state of Texas. Venue for any action or proceeding shall be in a court of competent jurisdiction in Lubbock County, Texas."

All other terms and conditions of the Lease shall remain unchanged and in full force and effect. Any defined terms used herein shall have the meanings contained in the Lease.

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be executed as of the date above written.

CITY OF LUBBOCK, TEXAS

PNC BANK, NATIONAL ASSOCIATION

Authorized Signature

Authorized Signature

Printed Name

Printed Name

Title

Title

Additional State Provisions Rider

This Rider is executed and delivered by the undersigned Lessor and the undersigned Lessee regarding Customer No 99006906 ("Lease").

If the Lessee is a state government agency or political subdivision of a state listed below, the additional provisions listed below for the respective state apply to the Lease as provided for below:

State	Additional Provisions
Florida	Notwithstanding anything contained in the Lease, the Lessor shall not have title to the Equipment as owner nor be granted a security interest to the extent such a grant or holding title violates Florida law. In addition, any insurance provisions naming Lessor as lender loss payee, loss payee, and/or additional insured shall not be applicable.
Georgia	<p>Notwithstanding anything to the contrary contained in the Lease, the Lease Term commences on, and interest accrues from, the date this Lease is executed by you as set forth on your signature line below, and in accordance with applicable Georgia law, the initial term shall continue in effect until midnight on December 31 of the calendar year in which this Lease is executed. The Lease Term shall automatically renew for each succeeding calendar year for the remaining period of the stated Lease Term, unless you give notice to us by December 1 of a calendar year stating your intention not to renew this Lease for the period after December 31 of such calendar year. If you deliver such notice of nonrenewal of the Lease Term, this Lease shall terminate absolutely and without further obligation on your part, including any obligation to pay Rent payments for the period after termination, at the end of such calendar year. In the event that your governing body does not approve an appropriation of funds at any time during the Lease Term for the payment of Rent payments and other amounts (if any) due and to become due for the succeeding fiscal year during the Lease Term for the Equipment subject to this Lease, you shall have the right to return such Equipment in accordance with the terms hereof, and terminate this Lease on the last day of the fiscal year for which sufficient appropriations were received without penalty or expense to you, except as to the portion of Rent payments for which funds shall have been appropriated and budgeted. At least 15 days prior to the end of your fiscal year in which your governing body shall not have approved an appropriation of funds for the succeeding fiscal year, your chief finance or budgetary official shall certify in writing to us that funds have not been appropriated for the succeeding fiscal year.</p> <p>In addition, Lessee hereby agrees to complete, execute and deliver to Lessor with respect to the Lease, on the date of its execution and delivery, a Certificate of Compliance with Georgia Law in substantially the form attached to this Rider as the "Georgia Exhibit".</p>
Kansas	Lessee hereby agrees to complete, execute and deliver to Lessor with respect to the Lease, on the date of its execution and delivery, a Certificate of Compliance with Kansas Law in substantially the form attached to this Rider as the "Kansas Exhibit".
New York	<p>NOT APPLICABLE FOR NEW YORK STATE GOVERNMENT ENTITIES. APPLICABLE FOR ALL OTHER GOVERNMENT ENTITIES IN NEW YORK.</p> <p>For purposes of Section 109-b(2)(f) of the General Municipal Law of the State of New York, Lessor and Lessee hereby agree that the Lease shall be deemed executory only to the extent of monies appropriated and available for the purpose of the Lease, and no liability on account thereof shall be incurred by Lessee beyond the amount of such monies. The Lease is not a general obligation of Lessee. Neither the full faith and credit nor the taxing power of Lessee are pledged to the payment of any amount due or to become due under the Lease. It is understood that neither the Lease nor any representation by any public employee or officer creates any legal or moral obligation to appropriate or make monies available for the purpose of the Lease.</p> <p>In addition to Lessee's representations, warranties and covenants set forth in the Lease, Lessee hereby further represents to Lessor as follows: (a) the stated full Lease Term of the Lease does not exceed the "period of probable usefulness" prescribed by Section 11.00 of the Local Finance Law of the State of New York for the equipment, machinery or apparatus financed under the Lease; (b) the authorization for the issuance of obligations to finance the equipment, machinery or apparatus to be leased, acquired and financed under the Lease is not required by law to be subject to (i) a permissive or mandatory referendum, (ii) a supermajority vote of Lessee's governing board or (iii) a referendum only if the obligations have a maturity not less than a specified minimum period; and (c) the amount of unpaid periodic payments (excluding interest) proposed to be made under the Lease and those other installment purchase contracts entered into by Lessee pursuant to Section 109-b of the General Municipal Law of the State of New York, together with the amount of outstanding indebtedness, do not exceed 115% of the limit prescribed by Section 104.00 of the Local Finance Law of the State of New York and the total amount of such payments (excluding interest) under the Lease and all such other installment purchase contracts do not exceed 40% of such limit.</p>
Ohio	<p>NOT APPLICABLE FOR OHIO STATE GOVERNMENT ENTITIES. APPLICABLE FOR ALL OTHER GOVERNMENT ENTITIES IN OHIO.</p> <p>Lessee hereby agrees to complete, execute, and deliver to Lessor with respect to the Lease, a Certificate of Adequate Resources in substantially the form attached to this Addendum as the "Ohio Exhibit".</p>
Texas	Pursuant to Section 2270.002 of the Texas Government Code, Lessor hereby certifies that it does not boycott Israel and will not boycott Israel during the term of this Lease.

PNC Bank, National Association
("Lessor")

X
Authorized Signature

Print Name

Title:

655 Business Center Drive
Horsham, PA 19044

City of Lubbock, Texas
("Lessee")

X
Authorized Signature

Print Name)

Title

Date
1314 Ave K
Lubbock, TX 79401

Lease Agreement

Dated as of November 21, 2024

Lease Number: 99006906-2

Lessor: PNC Bank, National Association
655 Business Center Drive
Horsham, Pennsylvania 19044

Lessee: LESSEE FULL LEGAL NAME
City of Lubbock, Texas
1314 Ave K
Lubbock, TX 79401
FEDERAL TAX ID
756000590

Equipment Description and Location: 1314 Ave K, Lubbock, TX 79401

Quantity	Description
3	New John Deere 2400 Precision Cut Mower
2	New John Deere 2400 Precision Cut Mower
2	New John Deere 8800A Terrain Cut Mower
2	New John Deere 1600 Turbo Terrain Cut Mower
1	New John Deere Z Trac
1	New John Deere Pro Gator 2020A
1	New John Deere Pro Gator 2020A
1	New John Deere Pro Gator 2020A
1	New John Deere HD300 Sprayer
2	New John Deere Gator TX
6	New John Deere Gator TX
1	New John Deere Quick Adjust Reels
3	New John Deere Quick Adjust Reels
1	New John Deere Pro Gator 2030A
1	New John Deere HD200 Sprayer
1	New John Deere 4066M Compact Tractor
1	New John Deere 485A Backhoe
1	New John Deere 5075D Utility Tractor
1	New John Deere 5075D Utility Tractor
1	New Dakota 410 Pull Behind Topdresser
2	New Buffalo Turbine Blower
1	New Agrimetel GR 660
1	New Wiedenmann Terra Groomer
1	New Bernhard ED 4300 Grinder
1	New Bernhard AM 4100 Grinder
1	New Wiedenmann Terra Spike SL6

Payment Information

Number of Payments: 4	Rent Amount: "See Schedule A" + Applicable Taxes	Payable: Due Date (to be inserted by Lessor): <div><input type="checkbox"/> Monthly <input type="checkbox"/> Quarterly</div>	Lease Term (in months): 48 months	End of Lease Provision: <div><input type="checkbox"/> FMV- Cars <input type="checkbox"/> Rental <input type="checkbox"/> PUT - _____ <input checked="" type="checkbox"/> FMV – Turf (Annual Hours 600) <input type="checkbox"/> \$1 Out</div>
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☒ See Schedule A for variable payment structure.

Lessee shall pay Rent payments exclusively from legally available funds in U.S. currency to Lessor in the amounts and on the dates set forth herein, without notice or demand.

TERMS AND CONDITIONS

1. **LEASE.** Subject to the terms of this Lease, Lessee agrees to lease from Lessor the equipment (the "Equipment") described above when Lessor accepts this Lease. Lessee agrees to be bound by all the terms of this Lease.
2. **DELIVERY AND ACCEPTANCE OF EQUIPMENT.** Acceptance of the Equipment occurs upon delivery. When Lessee receives the Equipment, Lessee agrees to inspect it and to verify by telephone or in writing such information as Lessor may require. Delivery and installation costs are Lessee's responsibility. If Lessee signed a purchase contract for the Equipment, by signing this Lease Lessee assigns its rights, but none of its obligations under the purchase contract, to Lessor.
3. **RENT.** Lessee agrees to pay Lessor Rent (plus applicable taxes) in the amount and frequency stated above. If Lessee's Rent payments are due in Advance, Lessee's first Rent payment is due on the date Lessee accepts the Equipment under the Lease. Lessor will advise Lessee as to (a) the due date of each Rent payment, and (b) the address to which Lessee must send payments. Rent is due whether or not Lessee receives an invoice from Lessor. Lessee will pay Lessor any required advance rent when Lessee signs this Lease. Lessee authorizes Lessor to change the Rent by not more than 15% due to changes in the Equipment configuration, which may occur prior to Lessor's acceptance of this Lease. Restrictive endorsements on checks Lessee sends to Lessor will not reduce Lessee's obligations to Lessor. Lessee hereby authorizes Lessor to insert a Due Date where applicable under this Lease once determined.
NON-APPROPRIATION OF FUNDS. Lessee intends to remit all Rent and other payments to Lessor for the full Lease Term if funds are legally available. In the event Lessee is not granted an appropriation of funds at any time during the Lease Term for the Equipment subject to this Lease and operating funds are not otherwise available to Lessee to pay the Rent and other payments due and to become due under this Lease, and there is no other legal procedure or available funds by or with which payment can be made to Lessor, and the non-appropriation did not result from an act or omission by Lessee, Lessee shall have the right to return the Equipment as provided herein and terminate this Lease on the last day of the fiscal period for which appropriations were received without penalty or expense to Lessee, except as the portion of Rent for which funds shall have been appropriated and budgeted. At least 30 days prior to the end of Lessee's fiscal year, Lessee's chief executive officer (or legal counsel) shall certify in writing that (a) funds have not been appropriated for the upcoming fiscal period, (b) such non-appropriation did not result from any act or failure to act by Lessee, and (c) Lessee has exhausted all funds legally available for the payment of Rent.
4. **UNCONDITIONAL OBLIGATION.** LESSEE AGREES THAT IT IS UNCONDITIONALLY OBLIGATED TO PAY ALL RENT AND ANY OTHER AMOUNTS DUE UNDER THIS LEASE IN ALL FISCAL YEARS IN WHICH FUNDS HAVE BEEN APPROPRIATED NO MATTER WHAT HAPPENS, EVEN IF THE EQUIPMENT IS DAMAGED OR DESTROYED, IF IT IS DEFECTIVE OR IF LESSEE HAS TEMPORARY OR PERMANENT LOSS OF ITS USE. LESSEE IS NOT ENTITLED TO ANY REDUCTION OR SET-OFF AGAINST RENT OR OTHER AMOUNTS DUE UNDER THIS LEASE FOR ANY REASON WHATSOEVER.
5. **DISCLAIMER OF WARRANTIES.** THE EQUIPMENT IS BEING LEASED TO LESSEE IN "AS IS" CONDITION. LESSEE AGREES THAT LESSOR HAS NOT MANUFACTURED THE EQUIPMENT AND THAT LESSEE HAS SELECTED THE EQUIPMENT BASED UPON LESSEE'S OWN JUDGMENT. LESSEE HAS NOT RELIED ON ANY STATEMENTS LESSOR OR ITS EMPLOYEES HAVE MADE. LESSOR HAS NOT MADE AND DOES NOT MAKE ANY EXPRESS OR IMPLIED REPRESENTATIONS OR WARRANTIES WHATSOEVER, INCLUDING WITHOUT LIMITATION, THE EQUIPMENT'S MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, SUITABILITY, DESIGN, CONDITION, DURABILITY, OPERATION, QUALITY OF MATERIALS OR WORKMANSHIP, OR COMPLIANCE WITH SPECIFICATIONS OR APPLICABLE LAW. Lessee is aware of the name of the Equipment manufacturer. If the manufacturer has provided Lessor with a warranty, Lessor assigns its rights to such warranty to Lessee and Lessee may enforce all warranty rights directly against the manufacturer of the Equipment. Lessee agrees to settle any dispute regarding performance of the Equipment directly with the manufacturer of the Equipment.
6. **TITLE AND SECURITY INTEREST.** Unless otherwise required by the laws of the state where Lessee is located, Lessor shall have title to the Equipment during the Lease Term.
7. **USE, MAINTENANCE AND REPAIR.** Lessee will not move the Equipment from the Equipment Location without Lessor's advance written consent. Lessee will give Lessor reasonable access to the Equipment Location so that Lessor can check the Equipment's existence, condition and proper maintenance. Lessee will use the Equipment in the manner for which it was intended, as required by all applicable manuals and instructions, and keep it eligible for any manufacturer's certification and/or standard full-service maintenance contract. At Lessee's own cost and expense, Lessee will keep the Equipment in good repair, condition and working order, ordinary wear and tear excepted. Lessee will not make any permanent alterations to the Equipment and will remove any alterations or markings from the Equipment before returning to Lessor.
8. **TAXES.** Unless a proper exemption certificate is provided, applicable sales and use taxes will be added to the Rent. Lessee agrees to pay Lessor, when invoiced, all taxes (including any sales, use and personal property taxes), fines, interest and penalties relating to this Lease and the Equipment (excluding taxes based on Lessor's net income). Lessee agrees to file any required personal property tax returns and, if Lessor asks, Lessee will provide Lessor with proof of payment. Lessor does not have to contest any tax assessments.
9. **INDEMNITY.** Lessor is not responsible for any injuries, damages, penalties, claims or losses, including legal expenses, incurred by Lessee or any other person caused by the transportation, installation, manufacture, selection, purchase, lease, ownership, possession, modification, maintenance, condition, operation, use, return or disposition of the Equipment. To the extent permitted by law, Lessee agrees to reimburse Lessor for and defend Lessor against any claims for such losses, damages, penalties, claims, injuries, or expenses. This indemnity continues even after this Lease has expired, for acts or omissions that occurred during the Lease Term.
10. **IDENTIFICATION.** Lessee authorizes Lessor to insert or correct missing information on this Lease, including serial numbers and any other information describing the Equipment.
11. **LOSS OR DAMAGE.** Lessee is responsible for any loss of the Equipment from any cause at all, whether or not insured, from the time the Equipment is shipped to Lessee until it is returned to Lessor. If any item of Equipment is lost, stolen or damaged, Lessee will promptly notify Lessor of such event. Then, at Lessor's option, Lessee will either (a) repair the Equipment so that it is in good condition and working order, eligible for any manufacturer's certification, or (b) pay Lessor an amount equal to the Net Book Value (as defined herein) of the lost, stolen or damaged Equipment. If Lessee has satisfied their obligations herein, Lessor will forward to Lessee any insurance proceeds which Lessor receives for lost, damaged, or destroyed Equipment. If Lessee is in default, Lessor will apply any insurance proceeds Lessor receives to reduce Lessee's obligations pursuant to this Lease.
12. **INSURANCE.** Lessee agrees to (a) keep the Equipment fully insured against loss, naming Lessor as loss payee, and (b) obtain a general public liability insurance policy covering both personal injury and property damage in amounts not less than Lessor may tell Lessee, naming Lessor as additional insured, until Lessee has met all their obligations under this Lease. Lessor is under no duty to tell Lessee if Lessee's

insurance coverage is adequate. The policies shall state that Lessor is to be notified of any proposed cancellation at least 30 days prior to the date set for cancellation. Upon Lessor's request, Lessee agrees to provide Lessor with evidence of insurance acceptable to Lessor. If Lessee does not provide Lessor with evidence of proper insurance within ten days of Lessor's request or Lessor receives notice of policy cancellation, Lessor may (but Lessor is not obligated to) obtain insurance on Lessor's interest in the Equipment at Lessee's expense. Lessee will pay all insurance premiums and related charges.

- 13. DEFAULT.** Lessee will be in default under this Lease if any of the following happens: (a) Lessor does not receive any Rent or other payment due under this Lease within ten days after its due date, (b) Lessee fails to perform or observe any other promise or obligation in this Lease and does not correct the default within ten days after Lessor sends Lessee written notice of default, (c) any representation, warranty or statement Lessee has made in this Lease shall prove to have been false or misleading in any material respect, (d) any insurance carrier cancels or threatens to cancel any insurance on the Equipment, (e) the Equipment or any part of it is abused, illegally used, misused, lost, destroyed, or damaged beyond repair, (f) a petition is filed by or against Lessee under any bankruptcy or insolvency laws, or (g) Lessee defaults on any other agreement between it and Lessor (or Lessor's affiliates).
- 14. REMEDIES.** Upon the occurrence of a default, Lessor may, in its sole discretion, do any or all of the following: (a) provide written notice to Lessee of default, (b) as liquidated damages for loss of a bargain and not as a penalty, declare due and payable, the present value of (i) any and all amounts which may be then due and payable by Lessee to Lessor under this Lease, plus (ii) all Rent payments remaining through the end of the then current fiscal year, discounted at the higher of 3% or the lowest rate allowed by law plus the Fair Market Value (as defined herein) of the Equipment (collectively, the "Net Book Value") and (c) require Lessee to immediately return the Equipment to Lessor. Lessor has the right to require Lessee to make the Equipment available to Lessor for repossession during reasonable business hours or Lessor may repossess the Equipment, so long as Lessor does not breach the peace in doing so, or Lessor may use legal process in compliance with applicable law pursuant to court order to have the Equipment repossessed. Lessee will not make any claims against Lessor or the Equipment for trespass, damage or any other reason. If Lessor takes possession of the Equipment Lessor may (a) sell or lease the Equipment at public or private sale or lease without notice, and/or (b) exercise such other rights as may be allowed by applicable law. Although Lessee agrees that Lessor has no obligation to sell the Equipment, if Lessor does sell the Equipment, Lessor will reduce the Net Book Value by the amounts Lessor receives. Lessee will immediately pay Lessor the remaining Net Book Value. Lessee agrees (a) to pay all of the costs Lessor incurs to enforce Lessor's rights against Lessee, including attorney's fees, and (b) that Lessor will retain all of Lessor's rights against Lessee even if Lessor does not choose to enforce them at the time of Lessee's default. Lessee acknowledges and agrees that the Equipment may contain GPS tracking capabilities and consent to the use by us of GPS tracking, and all information gathered therefrom, to locate the Equipment at any time if such Equipment is not returned by you in accordance with this Lease. Lessee further authorizes the manufacturer of the Equipment to share any GPS tracking information (including without limitation geolocation information) with us upon our request (which request should only be made by us upon a default, event of default and/or your failure to return the Equipment in accordance with the terms of this Lease).
- 15. LESSEE'S OPTION AT END OF LEASE.** Notwithstanding anything contained in the Lease to the contrary, so long as no default shall have occurred and be continuing, Lessee may, at Lessee's option, purchase the Equipment leased pursuant to this Lease on an "as is, where is" basis, without representation or warranty, express or implied, at the end of the Lease Term at a price equal to the Fair Market Value thereof, plus applicable taxes. Fair Market Value shall be the retail in-place value of the Equipment as determined solely by Lessor. This purchase option as applicable shall only be available if Lessee gives Lessor 90 days' prior written notice of Lessee's irrevocable intent to exercise such option and Lessor and Lessee shall have agreed to all terms and conditions of such purchase prior to the expiration date of the Lease Term. Until the Equipment is returned as required below, all terms of the Lease shall remain in full force and effect including the obligation to pay Rent calculated on a monthly basis.
- 16. RETURN OF EQUIPMENT.** If (a) default occurs, (b) a non-appropriation of funds occurs as provided herein, or (c) Lessee does not exercise its purchase option at the end of the Lease Term, Lessee will immediately return the Equipment to any location(s) in the continental United States and aboard any carriers(s) Lessor may designate. The Equipment must be properly packed for shipment in accordance with the manufacturer's recommendations or specifications, freight prepaid and insured, maintained in accordance with this Lease, and in "Average Saleable Condition." "Average Saleable Condition" means that all of the Equipment is immediately available for use by a third-party buyer, user or lessee, other than Lessee named in this Lease, without the need for any repair or refurbishment. Lessee will pay Lessor for any missing or defective parts or accessories. Lessee will continue to pay Rent calculated on a monthly basis until the Equipment is received and accepted by Lessor.
- 17. LESSEE'S REPRESENTATIONS AND WARRANTIES.** Lessee hereby represents and warrants to Lessor that as of the date of this Lease, and throughout the Lease Term: (a) Lessee is the entity indicated in this Lease; (b) Lessee is a state or a fully constituted political subdivision or agency of the State in which Lessee is located; (c) Lessee is duly organized and existing under the constitution and laws of the state in which they are located; (d) Lessee is authorized to enter into and carry out Lessee's obligations under this Lease, any documents relative to the acquisition of the Equipment and any other documents required to be delivered in connection with this Lease (collectively, the "Documents"); (e) the Documents have been duly authorized, executed and delivered by Lessee in accordance with all applicable laws, rules, ordinances, and regulations, the Documents are valid, legal, binding agreements, enforceable in accordance with their terms and the person(s) signing the Documents have the authority to do so, are acting with the full authorization of Lessee's governing body, and hold the offices indicated below their signature, each of which are genuine; (f) the Equipment is essential to the immediate performance of a governmental or proprietary function by Lessee within the scope of Lessee's authority; (g) Lessee intends to use the Equipment for the entire Lease Term for such function and shall take all necessary action to include in Lessee's annual budget any funds required to fulfill Lessee's obligations for each fiscal year during the Lease Term; (h) Lessee has complied fully with all applicable law governing open meetings, public bidding and appropriations required in connection with this Lease and the acquisition of the Equipment; (i) Lessee's obligations to remit Rent under this Lease constitutes a current expense and not a debt under applicable state law and no provision of this Lease constitutes a pledge of Lessee's tax or general revenues, and any provision which is so constructed by a court of competent jurisdiction is void from the inception of this lease; and (j) all financial information Lessee has provided to Lessor is true and accurate and provides a good representation of Lessee's financial condition.
- 18. LESSEE'S PROMISES.** In addition to the other provisions of this Lease, Lessee agrees that during the term of this Lease (a) Lessee will promptly notify Lessor in writing if it moves its principal office or changes its name or legal structure, (b) Lessee will provide to Lessor such financial information as may reasonably request from time to time, and (c) Lessee will take any action Lessor reasonably requests to protect Lessor's rights in the Equipment and to meet Lessee's obligations under this Lease.
- 19. ASSIGNMENT. LESSEE WILL NOT SELL, TRANSFER, ASSIGN, PLEDGE, SUB-LEASE OR PART WITH POSSESSION OF THE EQUIPMENT OR FILE OR PERMIT A LIEN TO BE FILED AGAINST THE EQUIPMENT.** Lessee will not attach any of the Equipment to any real estate.

- 20. ASSIGNMENT BY LESSOR.** This Lease, and the rights of Lessor hereunder and in and to the Equipment, may be assigned and reassigned in whole or in part to one or more assignees by Lessor or its assigns at any time without the necessity of obtaining the consent of Lessee. Upon an assignment, Lessee agrees to make all payments as designated in the assignment, notwithstanding any claim, defense, setoff or counterclaim whatsoever (whether arising from a breach of this Lease or otherwise) that Lessee may from time to time have against Lessor or Lessor's assigns.
- 21. COLLECTION EXPENSES, OVERDUE PAYMENT.** Lessee agrees that Lessor can, but does not have to, take on Lessee's behalf any action which Lessee fails to take as required by this Lease, and Lessor's expenses will be in addition to that of the Rent which Lessee owes Lessor. If Lessor receives any payment from Lessee after the due date, Lessee shall pay Lessor on demand as a late charge 5% of such overdue amount, limited, however, to the maximum amount allowed by law.
- 22. MISCELLANEOUS.** This Lease contains the entire agreement and supersedes any conflicting provision of any equipment purchase order or any other agreement. **TIME IS OF THE ESSENCE IN THIS LEASE.** If a court finds any provision of Lease to be unenforceable, the remaining terms of this Lease shall remain in effect. **THIS LEASE IS A "FINANCE LEASE" AS DEFINED IN ARTICLE 2A OF THE UNIFORM COMMERCIAL CODE.** Lessee authorizes Lessor (or Lessor's agent) to (a) obtain credit reports, (b) make such other credit inquiries as Lessor may deem necessary, and (c) furnish payment history information to credit reporting agencies. To the extent permitted by law, Lessor may charge Lessee a fee of \$250.00 to cover Lessor's documentation and investigation costs.
- 23. NOTICES.** All of Lessee's written notices to Lessor must be sent by certified mail or recognized overnight delivery service, postage prepaid, to Lessor at Lessor's address stated in this Lease, or by facsimile transmission to Lessor's facsimile telephone number, with oral confirmation of receipt. All of Lessor's notices to Lessee may be sent first class mail, postage prepaid, to Lessee's address stated in this Lease. At any time after this Lease is signed, Lessee or Lessor may change an address or facsimile telephone number by giving notice to the other of the change.
- 24. ANTI-MONEY LAUNDERING/INTERNATIONAL TRADE COMPLIANCE.** Lessee represents, warrants and covenants to Lessor, as of the date of this Lease, the date of each advance of proceeds under the Lease, the date of any renewal, extension or modification of this Lease, and at all times until this Lease has been terminated and all amounts thereunder have been indefeasibly paid in full, that: (a) no Covered Entity (i) is a Sanctioned Person; (ii) has any of its assets in a Sanctioned Jurisdiction or in the possession, custody or control of a Sanctioned Person; (iii) does business in or with, or derives any of its operating income from investments in or transactions with, any Sanctioned Jurisdiction or Sanctioned Person; (b) the proceeds of this Lease will not be used to fund any unlawful activity; (c) the funds used to repay the Lease are not derived from any unlawful activity; (d) each Covered Entity is in compliance with, and no Covered Entity engages in any dealings or transactions prohibited by, any laws of the United States, including but not limited to any Anti-Terrorism Laws; and (e) no Equipment is or will become Embargoed Property. Lessee covenants and agrees that (a) it shall immediately notify Lessor in writing upon the occurrence of a Reportable Compliance Event; and (b) if, at any time, any Equipment becomes Embargoed Property, in addition to all other rights and remedies available to Lessor, upon request by Lessor, Lessee shall provide substitute Equipment acceptable to Lessor that is not Embargoed Property.
- As used herein: "**Anti-Terrorism Laws**" means any laws relating to terrorism, trade sanctions programs and embargoes, import/export licensing, money laundering, or bribery, all as amended, supplemented or replaced from time to time; "**Compliance Authority**" means each and all of the (a) U.S. Treasury Department/Office of Foreign Assets Control, (b) U.S. Treasury Department/Financial Crimes Enforcement Network, (c) U.S. State Department/Directorate of Defense Trade Controls, (d) U.S. Commerce Department/Bureau of Industry and Security, (e) U.S. Internal Revenue Service, (f) U.S. Justice Department, and (g) U.S. Securities and Exchange Commission; "**Covered Entity**" means Lessee, its affiliates and subsidiaries, all other obligors, all owners of the foregoing, and all brokers or other agents of Lessee acting in any capacity in connection with this Lease; "**Embargoed Property**" means any property (a) in which a Sanctioned Person holds an interest; (b) beneficially owned, directly or indirectly, by a Sanctioned Person; (c) that is due to or from a Sanctioned Person; (d) that is located in a Sanctioned Jurisdiction; or (e) that would otherwise cause any actual or possible violation by Lessor of any applicable Anti-Terrorism Law if Lessor were to obtain an encumbrance on, lien on, pledge of or security interest in such property or provide services in consideration of such property; "**Reportable Compliance Event**" means (1) any Covered Entity becomes a Sanctioned Person, or is indicted, arraigned, investigated or custodially detained, or receives an inquiry from regulatory or law enforcement officials, in connection with any Anti-Terrorism Law or any predicate crime to any Anti-Terrorism Law, or self-discovers facts or circumstances implicating any aspect of its operations with the actual or possible violation of any Anti-Terrorism Law; (2) any Covered Entity engages in a transaction that has caused or may cause Lessor to be in violation of any Anti-Terrorism Laws, including a Covered Entity's use of any proceeds of the Lease to fund any operations in, finance any investments or activities in, or, make any payments to, directly or indirectly, a Sanctioned Jurisdiction or Sanctioned Person; or (3) any Equipment becomes Embargoed Property; "**Sanctioned Jurisdiction**" means a country subject to a sanctions program maintained by any Compliance Authority; and "**Sanctioned Person**" means any individual person, group, regime, entity or thing listed or otherwise recognized as a specially designated, prohibited, sanctioned or debarred person or entity, or subject to any limitations or prohibitions (including but not limited to the blocking of property or rejection of transactions), under any order or directive of any Compliance Authority or otherwise subject to, or specially designated under, any sanctions program maintained by any Compliance Authority.
- 25. USA PATRIOT ACT NOTICE.** To help the government fight the funding of terrorism and money laundering activities, Federal law requires all financial institutions to obtain, verify and record information that identifies each lessee that opens an account. What this means: when the Lessee opens an account, Lessor will ask for the business name, business address, taxpayer identifying number and other information that will allow the Lessor to identify Lessee, such as organizational documents. For some businesses and organizations, Lessor may also need to ask for identifying information and documentation relating to certain individuals associated with the business or organization.
- 26. WAIVERS. LESSOR AND LESSEE EACH AGREE TO WAIVE, AND TO TAKE ALL REQUIRED STEPS TO WAIVE, ALL RIGHTS TO A JURY TRIAL.** To the extent Lessee is permitted by applicable law, Lessee waives all rights and remedies conferred upon a lessee by Article 2A (Sections 508-522) of the Uniform Commercial Code. To the extent Lessee is permitted by applicable law, Lessee waives any rights they now or later may have under any statute or otherwise which requires Lessor to sell or otherwise use any Equipment to reduce Lessor's damages, which requires Lessor to provide Lessee with notice of default, intent to accelerate amounts becoming due or acceleration of amounts becoming due, intent to sale the Equipment at a public or private sale, or which may otherwise limit or modify any of Lessor's rights or remedies. Lessor will not be liable for specific performance of this Lease or for any losses, damages, delay or failure to deliver Equipment.
- 27. IMPORTANT INFORMATION ABOUT PHONE CALLS.** By providing telephone number(s) to Lessor, now or at any later time, Lessee authorizes Lessor and its affiliates and designees to contact Lessee regarding Lessee account(s) with Lessor or its affiliates, whether such accounts are Lessee individual accounts or business accounts for which Lessee is a contact, at such numbers using any means, including

but not limited to placing calls using an automated dialing system to cell, VoIP or other wireless phone number, or leaving prerecorded messages or sending text messages, even if charges may be incurred for the calls or text messages. Lessee consents that any phone call with Lessor may be monitored or recorded by Lessor.

IMPORTANT: READ BEFORE SIGNING. THE TERMS OF THIS LEASE SHOULD BE READ CAREFULLY BECAUSE ONLY THOSE TERMS IN WRITING ARE ENFORCEABLE. TERMS OR ORAL PROMISES WHICH ARE NOT CONTAINED IN THIS WRITTEN AGREEMENT MAY NOT BE LEGALLY ENFORCED. THE TERMS OF THIS LEASE MAY ONLY BE CHANGED BY ANOTHER WRITTEN AGREEMENT BETWEEN LESSEE AND LESSOR. LESSEE AGREES TO COMPLY WITH THE TERMS AND CONDITIONS OF THIS LEASE. LESSEE AGREES THAT THE EQUIPMENT WILL BE USED FOR BUSINESS PURPOSES ONLY AND NOT FOR PERSONAL, FAMILY OR HOUSEHOLD PURPOSES.

LESSEE CERTIFIES THAT ALL THE INFORMATION GIVEN IN THIS LEASE AND LESSEE’S APPLICATION WAS CORRECT AND COMPLETE WHEN THIS LEASE WAS SIGNED. THIS LEASE IS NOT BINDING UPON LESSOR OR EFFECTIVE UNLESS AND UNTIL LESSOR EXECUTES THIS LEASE. THIS LEASE WILL BE GOVERNED BY THE LAWS OF THE STATE OF THE LESSEE.

Lessor: PNC Bank, National Association

655 Business Center Drive
Horsham, PA 19044

Lessee: City of Lubbock, Texas

1314 Ave K
Lubbock, TX 79401

Signature: <div>X</div>	Signature: <div>X</div>
Print Name:	Print Name:
Title:	Title:
Date:	Date:

SCHEDULE A
Lease Number 99006906-2

This Schedule supplements and is hereby incorporated by reference as part of above referenced Lease # ("Lease") by and between Lessee and Lessor.

Lease Number 99006906-2

Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
2025		\$270,929.10	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
2026	\$0.00	\$270,929.10	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
2027	\$0.00	\$270,929.10	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
2028	\$0.00	\$270,929.10	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
2029	\$0.00											

Plus applicable taxes. Payment on invoice could be different based on applicability of sales and use tax.

Lessor: PNC Bank, National Association

Lessee: City of Lubbock, Texas

Signature: X	Signature: X
Print Name:	Print Name:
Title:	Title:
Date:	Date:

RESOLUTION AND CERTIFICATE OF INCUMBENCY
Lease Number 99006906-2

Lessee: **City of Lubbock, Texas**

Amount: **\$1,083,716.40** (Payment x Term)

WHEREAS, Lessee, a body politic and corporate duly organized and existing as a political subdivision, municipal corporation or similar public entity of the State or Commonwealth ("State") is authorized by the laws of the State to purchase, acquire and lease certain equipment and other property for the benefit of the Lessee and its inhabitants and to enter into contracts with respect thereto; and

WHEREAS, pursuant to applicable law, the governing body of the Lessee ("Governing Body") is authorized to acquire, dispose of and encumber real and personal property, including, without limitation, rights and interest in property, leases and easements necessary to the functions or operations of the Lessee.

WHEREAS, the Governing Body hereby finds and determines that the execution of one or more Lease Agreements or lease schedules ("Leases") in the amount not exceeding the amount stated above for the purpose of acquiring the property ("Equipment") to be described in the Leases is appropriate and necessary to the functions and operations of the Lessee.

WHEREAS, PNC Bank, National Association ("Lessor") shall act as Lessor under said Leases.

NOW, THEREFORE, Be It Ordained by the Governing Body of the Lessee:

Section 1. Either one of the _____ OR _____ (each an "Authorized Representative") acting on behalf of the Lessee, is hereby authorized to negotiate, enter into, execute, and deliver one or more Leases in substantially the form set forth in the document presently before the Governing Body, which document is available for public inspection at the office of the Lessee. Each Authorized Representative acting on behalf of the Lessee is hereby authorized to negotiate, enter into, execute, and deliver such other documents relating to the Lease as the Authorized Representative deems necessary and appropriate. All other related contracts and agreements necessary and incidental to the Leases are hereby authorized.

Section 2. By a written instrument signed by any Authorized Representative, said Authorized Representative may designate specifically identified officers or employees of the Lessee to execute and deliver agreements and documents relating to the Leases on behalf of the Lessee.

Section 3. The Lessee's obligations under the Leases shall be subject to annual appropriation or renewal by the Governing Body as set forth in each Lease and the Lessee's obligations under the Leases shall not constitute general obligations of the Lessee or indebtedness under the Constitution or laws of the State.

Section 4. This resolution shall take effect immediately upon its adoption and approval.

NAMES AND TITLES OF AUTHORIZED REPRESENTATIVES: AUTHORIZED LEASE SIGNORS ONLY

Name (print)	Title:

ADOPTED AND APPROVED as of the date signed below.

Section 5. I, the undersigned Secretary/Clerk identified below, does hereby certify that I am the duly elected or appointed and acting Secretary/Clerk of the above Lessee, a political subdivision duly organized and existing under the laws of the State where Lessee is located, that I have the title stated below, and that, as of the date hereof, the individuals named above are the duly elected or appointed officers of the Lessee holding the offices set forth opposite their respective names.

The undersigned Secretary/Clerk of the above-named Lessee hereby certifies and attests that the undersigned has access to the official records of the Governing Body of the Lessee, that the foregoing resolutions were duly adopted by said Governing Body of the Lessee at a meeting of said Governing Body and that such resolutions have not been amended or altered and are in full force and effect on the date stated below.

LESSEE: **City of Lubbock, Texas**

Signature of Secretary/Clerk of Lessee

Signature:

X

Print Name:

Title:

Date:

OPINION OF COUNSEL

I have acted as counsel to: City of Lubbock, Texas (“Lessee”) with respect to this Lease Agreement by and between the Lessee and Lessor (the “Lease”), and in this capacity have reviewed the original or duplicate originals of the Lease and such other documents as I have deemed relevant. Based upon the foregoing, I am of the opinion that: (A) the execution, delivery and performance of the Lease by Lessee has been duly authorized by all necessary action on the part of Lessee; (B) the Lease constitutes a legal, valid and binding obligation of Lessee enforceable in accordance with its terms (during all fiscal years within the Lease term in which funds have been appropriated), except as limited by laws of general application affecting the enforcement of creditors’ rights, and does not constitute a debt of Lessee which is prohibited by state law; (C) the authorization, approval and execution of the Lease and all other proceedings of Lessee related to the transactions contemplated thereby have been performed in accordance with all open-meeting laws, public bidding laws, and other applicable state laws. The undersigned certifies that (s)he is an attorney duly authorized to practice law in the State of Texas.

The foregoing opinions are limited to laws of such State and federal laws of the United States.

Attorney of Lessee

By: _____

Print Name: _____

Law firm: _____



November 21, 2024

City of Lubbock, Texas

1314 Ave K
Lubbock, TX 79401
Attn:

RE: Insurance Coverage Requirements for Equipment Financing Transaction between
PNC Bank, National Association and City of Lubbock, Texas

Under the terms of your Agreement # 99006906-2, you are required to carry adequate insurance coverage on the financed equipment. If your Certificate of Insurance is not received, and your Agreement is \$1,000,000 or less you will automatically be enrolled in our Equipment Protection Program underwritten by Great American. If your Agreement is over \$1,000,000 evidence of insurance is required prior to funding. Please forward this request to your insurance company, agent or broker as soon as possible and ask for the evidence of insurance to be sent to the address below.

PNC Bank, National Association will have an insurable interest in the following equipment:

Quantity	Description	Serial No.
3	New John Deere 2400 Precision Cut Mower	
2	New John Deere 2400 Precision Cut Mower	
2	New John Deere 8800A Terrain Cut Mower	
2	New John Deere 1600 Turbo Terrain Cut Mower	
1	New John Deere Z Trac	
1	New John Deere Pro Gator 2020A	
1	New John Deere Pro Gator 2020A	
1	New John Deere Pro Gator 2020A	
1	New John Deere HD300 Sprayer	
2	New John Deere Gator TX	
6	New John Deere Gator TX	
1	New John Deere Quick Adjust Reels	
3	New John Deere Quick Adjust Reels	
1	New John Deere Pro Gator 2030A	
1	New John Deere HD200 Sprayer	
1	New John Deere 4066M Compact Tractor	
1	New John Deere 485A Backhoe	
1	New John Deere 5075D Utility Tractor	
1	New John Deere 5075D Utility Tractor	
1	New Dakota 410 Pull Behind Topdresser	
2	New Buffalo Turbine Blower	
1	New Agrimetel GR 660	
1	New Wiedenmann Terra Groomer	
1	New Bernhard ED 4300 Grinder	
1	New Bernhard AM 4100 Grinder	
1	New Wiedenmann Terra Spike SL6	

As a condition to entering into the equipment financing transaction, PNC Bank, National Association requires the following at all times during the term of the transaction:

1. All of the equipment must be insured for its full insurable value on a 100% replacement cost basis. The replacement cost must be listed on the Certificate of Insurance.

2. PNC Bank, National Association must be named as lender loss payee under a property insurance policy insuring all risks to the equipment, including fire, theft, and other customary coverage under an "extended coverage" endorsement.
3. For leases only, PNC Bank, National Association must receive evidence that a comprehensive general liability insurance policy is in place with a minimum coverage of \$1,000,000. PNC Bank, National Association must be named as an additional insured under the liability policy.
4. Each property insurance policy must contain a lender's loss payable clause, or special endorsement, in which the insurer agrees that any loss will be payable in accordance with the policy terms, notwithstanding any act or negligence of the insured.
5. Each policy must provide for 30 days' written notice to PNC Bank, National Association prior to any cancellation, non-renewal or amendment of the policy.

The evidence of insurance can consist of a Certificate of Insurance form for this specific transaction or a blanket certificate for all equipment financed by PNC, Evidence of Insurance form, Memorandum of Insurance, binder for insurance, declarations page, or the actual policy and endorsements, in each case naming PNC Bank, National Association as follows:

PNC Bank, National Association, and its successors and assigns, as lender loss payee
Attn: Insurance Department
655 Business Center Drive, Suite 250
Horsham, PA 19044

When completed, the evidence of insurance should be emailed to: SMEDocs@leaserv.com

Lessee: City of Lubbock, Texas

Signature:

X

Print Name:

Title:

Date:



Customer Information

Lease # 99006906-2

Please provide the following information. By providing such information, you will enable us to ensure prompt payment of your vendor and the correct processing of your lease transaction.

Thank you.

Lessee Information

Full Business Legal Name: City of Lubbock, Texas	Federal Tax ID Number: 756000590
--	----------------------------------

Preferred Method of Payment:

Is a Purchase Order required on Invoices? ☐ YES ☐ NO PO # _____

Please enter your preferred method (Mail/Email): _____

- Mail - If you would like to receive your Monthly Invoice by Mail, please provide this information:

Invoices should be directed to:	Attention:		
Address:	City:	State:	Zip:

- Email - If you would like to receive your Monthly Invoice by Email, please provide this information:

Contact Name:	Email:
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Contact Information

In order to verify receipt of equipment and review terms and conditions of the lease, please provide contact information for one or more staff that can assist in this process.

Contact 1:	Phone:
Email:	
Contact 2:	Phone:
Email:	

I hereby attest the above information is accurate.

Signature X	Date
----------------	------

Email:



A. CUSTOMER INFORMATION:

Customer Name(s) City of Lubbock, Texas	Customer Number 99006906
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This Authorization For Automatic Withdrawal ("Authorization") given by Obligor authorizes Financier to withdraw funds from and/or to debit the account referenced below or in the attached voided check ("Account") in the amount of the monthly charges which may include, in addition to regular monthly payments, interim rent, taxes or other fees incurred from time to time on the above referenced Agreement together with any other agreements between Obligor and Financier entered into after the date of this Authorization (individually and collectively, the "Agreements"). This withdrawal will be made monthly on the due date specified in the Agreement. This Authorization will remain in full force until Obligor has notified Financier in writing at least 30 days in advance of its decision to terminate or suspend this Authorization or until all amounts due under the Agreement are paid in full. Obligor further acknowledges and agrees that suspension or termination of this Authorization will not relieve the Obligor or its guarantors of its obligation to make payments to Financier. Suspension or termination of this Agreement will constitute an automatic default on the Agreement or any other financing agreements with the Financier in the event this Authorization was a credit approval requirement.

Obligor agrees to maintain a balance in the Account sufficient to cover such monthly amounts. In the event any withdrawal made under this Authorization is not paid upon presentation, Financier reserves the right to cancel this Authorization and require Obligor to remit all payments and other sums due and payable under the terms of the Agreement directly to Financier. Obligor acknowledges and agrees that all payments due under the terms of the Agreement are the responsibility of Obligor. If any payment is not made due to the temporary suspension of service or cancellation or because of insufficient funds in the Account, Financier may at its discretion attempt to process the payment again and Obligor agrees to additional fees, which will be initiated as a separate transaction from the payment. If Financier is unable to process payments under this Authorization, Obligor shall be required to make the payment manually on time. If this is not done, late charges (as defined in the Agreement) shall apply.

Obligor agrees not to dispute these scheduled transactions with its bank provided the transactions correspond to the terms indicated in this Authorization.

Signature below indicates that Obligor has verified and confirmed that all of the information provided above is correct. A copy of a voided check or an executed letter from your bank providing your account name, account number and ABA number is attached to this Authorization.

ATTACH VOIDED CHECK HERE

**A voided check from your checking account must be included in this application
(Do not use a deposit ticket or temporary check)**

Customer: City of Lubbock, Texas

Signature

X

Print Name

Title

Date

PNC Bank, National Association ("PNC"), is required to collect and remit sales/use tax in the taxing jurisdiction where your equipment will be located. If you select that you are exempt by marking one of the checkboxes below, you must provide a valid exemption certificate. If you do not provide this certificate *prior* to the booking of your transaction, you will be responsible for sales tax on all accrued payments.

- If tax has been remitted up front and financed into your lease payment, your account will not be marked sales tax exempt if you provide an exemption certificate after your transaction has been booked.
- If your tax is remitted on a monthly basis, your lease may be marked sales tax exempt for the remaining payments left to be invoiced if you provide a valid exemption certificate after your transaction has been booked.
- In the event we do not receive a valid sales tax exemption certificate prior to the date your lease commences, you will be charged sales/use tax.

Personal property tax returns will be filed as required by local law. In the event that any tax abatements or special exemptions are available on the equipment you will be leasing from us, please notify us as soon as possible and forward the related documentation to us. This will ensure that your leased equipment will be reported correctly.

Please indicate below if your lease is subject to tax or whether a valid exemption exists.

Sales Tax

- ☐ I agree that my lease is subject to sales/use tax.
- ☐ I am exempt from sales/use tax and I have attached a completed exemption certificate to PNC.
- ☐ I am claiming a partial exemption from tax. I have attached a completed exemption certificate or other documented proof of this partial exemption.
- ☐ I agree that my business is subject to sales/use tax and I have attached a completed resale certificate. This certificate indicates that I will be responsible for collection and remittance of sales/use tax based on the subsequent re-rental of the property.

If applicable to the tax rates in your state, are you outside the city limits or in an unincorporated area?

- ☐ Inside city limits ☐ Outside city limits ☐ Unincorporated area

Property Tax

- ☐ I have a valid abatement or property tax exemption (documentation attached).
- ☐ Location: State _____
Taxing District _____

Additional comments:

Lease Number 99006906-2

Lessee: City of Lubbock, Texas

Signature:

X

Print Name:

Title:

Date:



JOHN DEERE

ALL PURCHASE ORDERS MUST BE MADE OUT TO (VENDOR):

United Ag & Turf
2098 Valley View Lane
FARMERS BRANCH, TX 75234
US

ALL PURCHASE ORDERS MUST BE SENT TO DELIVERING DEALER:

United Ag & Turf
2098 Valley View Lane
Farmers Branch, TX 75234
214-630-3300
farmersbranchjd@unitedagt.com

Quote Summary

Prepared For:

CITY OF LUBBOCK PARKS AND RECREATION
PO BOX 2000
LUBBOCK, TX 79457
Business: 806-767-2683

Delivering Dealer:

United Ag & Turf
Logan Knapp
2098 Valley View Lane
Farmers Branch, TX 75234
Phone: 214-630-3300
Mobile: 325-201-3420
loganknapp@unitedagt.com

Thank you for choosing United Ag & Turf and John Deere for this Partnership. We are excited and proud to help Meadowbrook grow into the future.

The below list of Core Golf Equipment represents what will be considered a "True Lease". These are the pieces that will receive the most wear & tear. The annual base payment projection below is based on current interest rates and does not include property tax.

Quote ID: 31620210

Created On: 05 September 2024

Last Modified On: 22 November 2024

Expiration Date: 20 December 2024

SourceWell # 25001

Please make all PO's & Payments to:

United Ag & Turf
7736 Central Park Dr
Waco, Tx 76712

Current True Lease Projections:

48 month options -

Annual Payment - \$270,929.10

(Projected price also includes equipment on Quote ID# 31625750)

Equipment Summary	Selling Price	Qty	Extended
JOHN DEERE 2400 PrecisionCut Triplex Mower -14 Blade / Greens	\$ 42,466.00 X	3 =	\$ 127,398.00
Contract: Sourcewell Grounds Maint 031121-DAC (PG BT CG 76)			

Salesperson : X _____

Accepted By : X _____

Confidential



JOHN DEERE

ALL PURCHASE ORDERS MUST BE MADE OUT TO (VENDOR):

United Ag & Turf
2098 Valley View Lane
FARMERS BRANCH, TX 75234
US

ALL PURCHASE ORDERS MUST BE SENT TO DELIVERING DEALER:

United Ag & Turf
2098 Valley View Lane
Farmers Branch, TX 75234
214-630-3300
farmersbranchjd@unitedagt.com

Price Effective Date: September 4, 2024

JOHN DEERE 2400 PrecisionCut \$ 41,694.16 X 2 = \$ 83,388.32
Triplex Mower -11 Blade

Contract: Sourcewell Grounds Maint 031121-DAC (PG BT CG 76)

Price Effective Date: September 4, 2024

JOHN DEERE 8800A TerrainCut \$ 83,676.64 X 2 = \$ 167,353.28
Rough/Fairway Mower

Contract: Sourcewell Grounds Maint 031121-DAC (PG BT CG 76)

Price Effective Date: September 4, 2024

JOHN DEERE 1600 Turbo \$ 71,523.84 X 2 = \$ 143,047.68
TerrainCut Commercial Wide-Area
Mower with 4-Post ROPS Canopy

Contract: Sourcewell Grounds Maint 031121-DAC (PG BT CG 76)

Price Effective Date: September 4, 2024

JOHN DEERE Z960M ZTrak \$ 13,453.33 X 1 = \$ 13,453.33

Contract: Sourcewell Grounds Maint 031121-DAC (PG BT CG 76)

Price Effective Date: September 4, 2024

JOHN DEERE ProGator 2020A \$ 33,080.08 X 1 = \$ 33,080.08
(Gas)

Contract: Sourcewell Grounds Maint 031121-DAC (PG BT CG 76)

Price Effective Date: September 4, 2024

JOHN DEERE ProGator 2020A \$ 38,380.08 X 1 = \$ 38,380.08
(Gas) -with Bishop CartPath Edger

Contract: Sourcewell Grounds Maint 031121-DAC (PG BT CG 76)

Price Effective Date: September 4, 2024

JOHN DEERE ProGator 2030A for \$ 36,725.95 X 1 = \$ 36,725.95
Sprayer Attachment

Contract: Sourcewell Grounds Maint 031121-DAC (PG BT CG 76)

Price Effective Date: September 4, 2024

JOHN DEERE HD300 SelectSpray \$ 18,405.36 X 1 = \$ 18,405.36
for ProGator - 2030A

Contract: Sourcewell Grounds Maint 031121-DAC (PG BT CG 76)

Price Effective Date: September 4, 2024

Salesperson : X _____

Accepted By : X _____

Confidential



ALL PURCHASE ORDERS MUST BE MADE OUT TO (VENDOR):

United Ag & Turf
2098 Valley View Lane
FARMERS BRANCH, TX 75234
US

ALL PURCHASE ORDERS MUST BE SENT TO DELIVERING DEALER:

United Ag & Turf
2098 Valley View Lane
Farmers Branch, TX 75234
214-630-3300
farmersbranchjd@unitedagt.com

JOHN DEERE GATOR™TX Turf - \$ 11,770.28 X 2 = \$ 23,540.56
Superintendents Cart
Contract: Sourcewell Grounds Maint 031121-DAC (PG BT CG 76)
Price Effective Date: September 4, 2024

JOHN DEERE GATOR™TX Turf \$ 10,695.28 X 1 = \$ 10,695.28
Contract: Sourcewell Grounds Maint 031121-DAC (PG BT CG 76)
Price Effective Date: September 4, 2024

JOHN DEERE GATOR™TX Turf \$ 10,695.28 X 5 = \$ 53,476.40
Contract: Sourcewell Grounds Maint 031121-DAC (PG BT CG 76)
Price Effective Date: September 4, 2024

JOHN DEERE Quick-Adjust 5 - 14 \$ 10,894.88 X 1 = \$ 10,894.88
Blade Cutting Units (Extra Reels)
Contract: Sourcewell Grounds Maint 031121-DAC (PG BT CG 76)
Price Effective Date: September 4, 2024

JOHN DEERE Quick-Adjust 5 -- \$ 10,243.28 X 3 = \$ 30,729.84
Verti-Cutting Units for 2400PC's
Contract: Sourcewell Grounds Maint 031121-DAC (PG BT CG 76)
Price Effective Date: September 4, 2024

JOHN DEERE ProGator 2030A \$ 36,521.04 X 1 = \$ 36,521.04
(Diesel) - For 200gal Sprayer
Contract: Sourcewell Grounds Maint 031121-DAC (PG BT CG 76)
Price Effective Date: September 16, 2024

JOHN DEERE HD200 SelectSpray \$ 18,067.15 X 1 = \$ 18,067.15
for ProGator 2030A
Contract: Sourcewell Grounds Maint 031121-DAC (PG BT CG 76)
Price Effective Date: September 16, 2024

Equipment Total **\$ 845,157.23**

* Includes Fees and Non-contract items

Quote Summary

Salesperson : X _____

Accepted By : X _____

Confidential



JOHN DEERE

**ALL PURCHASE ORDERS MUST BE MADE OUT
TO (VENDOR):**

United Ag & Turf
2098 Valley View Lane
FARMERS BRANCH, TX 75234
US

**ALL PURCHASE ORDERS MUST BE SENT
TO DELIVERING DEALER:**

United Ag & Turf
2098 Valley View Lane
Farmers Branch, TX 75234
214-630-3300
farmersbranchjd@unitedagt.com

Equipment Total	\$ 845,157.23
Trade In	
SubTotal	\$ 845,157.23
Total	\$ 845,157.23
Down Payment	(0.00)
Rental Applied	(0.00)
Balance Due	\$ 845,157.23

Salesperson : X _____

Accepted By : X _____

Confidential



JOHN DEERE

Selling Equipment

Quote Id: 31620210

Customer Name: CITY OF LUBBOCK PARKS AND RECREATION

ALL PURCHASE ORDERS MUST BE MADE OUT TO (VENDOR):

United Ag & Turf
2098 Valley View Lane
FARMERS BRANCH, TX 75234
US

ALL PURCHASE ORDERS MUST BE SENT TO DELIVERING DEALER:

United Ag & Turf
2098 Valley View Lane
Farmers Branch, TX 75234
214-630-3300
farmersbranchjd@unitedagt.com

JOHN DEERE 2400 PrecisionCut Triplex Mower -14 Blade / Greens

Hours:

Stock Number:

Contract: Sourcewell Grounds Maint 031121-DAC (PG BT
CG 76)

Selling Price *
\$ 42,466.00

Price Effective Date: September 4, 2024

* Price per item - includes Fees and Non-contract items

Code	Description	Qty	List Price	Discount%	Discount Amount	Contract Price	Extended Contract Price
1274TC	2400 PrecisionCut Triplex Mower (Model Year 2024)	3	\$ 38,484.00	24.00	\$ 9,236.16	\$ 29,247.84	\$ 87,743.52
Standard Options - Per Unit							
001A	United States and Canada	3	\$ 0.00	24.00	\$ 0.00	\$ 0.00	\$ 0.00
183E	JDLink™ Modem	3	\$ 0.00	24.00	\$ 0.00	\$ 0.00	\$ 0.00
0443	All Other Countries (English / Spanish)	3	\$ 0.00	24.00	\$ 0.00	\$ 0.00	\$ 0.00
1022	Smooth Tires and Wheels (20x10.00-10, 2 ply)	3	\$ 745.00	24.00	\$ 178.80	\$ 566.20	\$ 1,698.60
1190	Two-Wheel Drive (2WD)	3	\$ 0.00	24.00	\$ 0.00	\$ 0.00	\$ 0.00
1214	Quick Adjust 5 (QA5) 14-blade Cutting Units	3	\$ 12,219.00	24.00	\$ 2,932.56	\$ 9,286.44	\$ 27,859.32
1300	50.8 mm (2-in.) Diameter Machined Grooved Solid Rollers with Solid Endcaps	3	\$ 784.00	24.00	\$ 188.16	\$ 595.84	\$ 1,787.52
1400	Cutting Unit ONLY Counterweights	3	\$ 297.00	24.00	\$ 71.28	\$ 225.72	\$ 677.16
1602	50.8 mm (2-in.) Diameter Wide Tube / Hollow Smooth Front Rollers	3	\$ 534.00	24.00	\$ 128.16	\$ 405.84	\$ 1,217.52
2009	Standard Seat	3	\$ 701.00	24.00	\$ 168.24	\$ 532.76	\$ 1,598.28
3200	Cutting Unit Attaching Yokes and Paddle Clip Style Molded One-Piece Grass Catchers	3	\$ 2,308.00	24.00	\$ 553.92	\$ 1,754.08	\$ 5,262.24
9770	Hydraulic Oil Leak Detector	3	\$ 2,219.00	24.00	\$ 532.56	\$ 1,686.44	\$ 5,059.32
9805	Cutting Unit Top Shield Extensions	3	\$ 134.00	24.00	\$ 32.16	\$ 101.84	\$ 305.52
Standard Options Total			\$ 19,941.00		\$ 4,785.84	\$ 15,155.16	\$ 45,465.48



JOHN DEERE

Selling Equipment

Quote Id: 31620210

Customer Name: CITY OF LUBBOCK PARKS AND RECREATION

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United Ag & Turf
2098 Valley View Lane
FARMERS BRANCH, TX 75234
US

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2098 Valley View Lane
Farmers Branch, TX 75234
214-630-3300
farmersbranchjd@unitedagt.com

Dealer Attachments/Non-Contract/Open Market							
Open Market	Delivery	3	\$ 400.00	0.00	\$ 0.00	\$ 400.00	\$ 1,200.00
Dealer Attachments Total			\$ 400.00		\$ 0.00	\$ 400.00	\$ 1,200.00
Value Added Services Total			\$ 0.00			\$ 0.00	\$ 0.00
Additional Discounts							
	Multi-unit Discount	3			\$ 2,337.00	\$ -2,337.00	\$ -7,011.00
Additional Discount Total					\$ 2,337.00	\$ -2,337.00	\$ -7,011.00
Total Selling Price			\$ 58,825.00		\$ 16,359.00	\$ 42,466.00	\$ 127,398.00

JOHN DEERE 2400 PrecisionCut Triplex Mower -11 Blade

Equipment Notes:

Hours:

Stock Number:

Selling Price *

Contract: Sourcewell Grounds Maint 031121-DAC (PG BT CG 76)

\$ 41,694.16

Price Effective Date: September 4, 2024

* Price per item - includes Fees and Non-contract items

Code	Description	Qty	List Price	Discount%	Discount Amount	Contract Price	Extended Contract Price
1274TC	2400 PrecisionCut Triplex Mower (Model Year 2024)	2	\$ 38,484.00	24.00	\$ 9,236.16	\$ 29,247.84	\$ 58,495.68
Standard Options - Per Unit							
001A	United States and Canada	2	\$ 0.00	24.00	\$ 0.00	\$ 0.00	\$ 0.00
183E	JDLink™ Modem	2	\$ 0.00	24.00	\$ 0.00	\$ 0.00	\$ 0.00
0443	All Other Countries (English / Spanish)	2	\$ 0.00	24.00	\$ 0.00	\$ 0.00	\$ 0.00
1022	Smooth Tires and Wheels (20x10.00-10, 2 ply)	2	\$ 745.00	24.00	\$ 178.80	\$ 566.20	\$ 1,132.40
1190	Two-Wheel Drive (2WD)	2	\$ 0.00	24.00	\$ 0.00	\$ 0.00	\$ 0.00
1203	Quick Adjust 5 (QA5) 11-blade Cutting Units	2	\$ 11,147.00	24.00	\$ 2,675.28	\$ 8,471.72	\$ 16,943.44

**JOHN DEERE**

Selling Equipment

Quote Id: 31620210

Customer Name: CITY OF LUBBOCK PARKS AND RECREATION

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United Ag & Turf
2098 Valley View Lane
FARMERS BRANCH, TX 75234
US

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Farmers Branch, TX 75234
214-630-3300
farmersbranchjd@unitedagt.com

1300	50.8 mm (2-in.) Diameter Machined Grooved Solid Rollers with Solid Endcaps	2	\$ 784.00	24.00	\$ 188.16	\$ 595.84	\$ 1,191.68
1400	Cutting Unit ONLY Counterweights	2	\$ 297.00	24.00	\$ 71.28	\$ 225.72	\$ 451.44
1602	50.8 mm (2-in.) Diameter Wide Tube / Hollow Smooth Front Rollers	2	\$ 534.00	24.00	\$ 128.16	\$ 405.84	\$ 811.68
2009	Standard Seat	2	\$ 701.00	24.00	\$ 168.24	\$ 532.76	\$ 1,065.52
3200	Cutting Unit Attaching Yokes and Paddle Clip Style Molded One-Piece Grass Catchers	2	\$ 2,308.00	24.00	\$ 553.92	\$ 1,754.08	\$ 3,508.16
9770	Hydraulic Oil Leak Detector	2	\$ 2,219.00	24.00	\$ 532.56	\$ 1,686.44	\$ 3,372.88
9805	Cutting Unit Top Shield Extensions	2	\$ 134.00	24.00	\$ 32.16	\$ 101.84	\$ 203.68
Standard Options Total			\$ 18,869.00		\$ 4,528.56	\$ 14,340.44	\$ 28,680.88
Dealer Attachments/Non-Contract/Open Market							
Open Market	Delivery	2	\$ 400.00	0.00	\$ 0.00	\$ 400.00	\$ 800.00
Dealer Attachments Total			\$ 400.00		\$ 0.00	\$ 400.00	\$ 800.00
Value Added Services							
Total			\$ 0.00		\$ 0.00	\$ 0.00	\$ 0.00
Additional Discounts							
	Multi-unit Discount	2			\$ 2,294.12	\$ -2,294.12	\$ -4,588.24
Additional Discount Total					\$ 2,294.12	\$ -2,294.12	\$ -4,588.24
Total Selling Price			\$ 57,753.00		\$ 16,058.84	\$ 41,694.16	\$ 83,388.32

JOHN DEERE 8800A TerrainCut Rough/Fairway Mower

Equipment Notes:**Hours:****Stock Number:****Selling Price ***

Contract: Sourcewell Grounds Maint 031121-DAC (PG BT
CG 76)

\$ 83,676.64**Price Effective Date:** September 4, 2024

* Price per item - includes Fees and Non-contract items

**JOHN DEERE**

Selling Equipment

Quote Id: 31620210

Customer Name: CITY OF LUBBOCK PARKS AND RECREATION

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2098 Valley View Lane
FARMERS BRANCH, TX 75234
US

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2098 Valley View Lane
Farmers Branch, TX 75234
214-630-3300
farmersbranchjd@unitedagt.com

Code	Description	Qty	List Price	Discount%	Discount Amount	Contract Price	Extended Contract Price
150GTC	8800A TerrainCut Rough Mower	2	\$ 113,929.00	24.00	\$ 27,342.96	\$ 86,586.04	\$ 173,172.08
Standard Options - Per Unit							
001A	United States/Canada	2	\$ 0.00	24.00	\$ 0.00	\$ 0.00	\$ 0.00
183E	JDLink™ Modem	2	\$ 0.00	24.00	\$ 0.00	\$ 0.00	\$ 0.00
0443	All Other Countries (English / Spanish)	2	\$ 0.00	24.00	\$ 0.00	\$ 0.00	\$ 0.00
9764	Canopy Kit	2	\$ 896.00	24.00	\$ 215.04	\$ 680.96	\$ 1,361.92
9863	21 In. Rear Roller Scraper, 8800A.	2	\$ 837.00	24.00	\$ 200.88	\$ 636.12	\$ 1,272.24
Standard Options Total			\$ 1,733.00		\$ 415.92	\$ 1,317.08	\$ 2,634.16
Dealer Attachments/Non-Contract/Open Market							
Open Market	Delivery	2	\$ 400.00	0.00	\$ 0.00	\$ 400.00	\$ 800.00
Dealer Attachments Total			\$ 400.00		\$ 0.00	\$ 400.00	\$ 800.00
Value Added Services Total			\$ 0.00			\$ 0.00	\$ 0.00
Additional Discounts							
Multi-unit Discount		2			\$ 4,626.48	\$ -4,626.48	\$ -9,252.96
Additional Discount Total					\$ 4,626.48	\$ -4,626.48	\$ -9,252.96
Total Selling Price			\$ 116,062.00		\$ 32,385.36	\$ 83,676.64	\$ 167,353.28

JOHN DEERE 1600 Turbo TerrainCut Commercial Wide-Area Mower with 4-**Equipment Notes:****Hours:****Stock Number:****Selling Price ***

Contract: Sourcewell Grounds Maint 031121-DAC (PG BT CG 76)

\$ 71,523.84**Price Effective Date:** September 4, 2024

* Price per item - includes Fees and Non-contract items

**JOHN DEERE**

Selling Equipment

Quote Id: 31620210

Customer Name: CITY OF LUBBOCK PARKS AND RECREATION

ALL PURCHASE ORDERS MUST BE MADE OUT TO (VENDOR):United Ag & Turf
2098 Valley View Lane
FARMERS BRANCH, TX 75234
US**ALL PURCHASE ORDERS MUST BE SENT TO DELIVERING DEALER:**United Ag & Turf
2098 Valley View Lane
Farmers Branch, TX 75234
214-630-3300
farmersbranchjd@unitedagt.com

Code	Description	Qty	List Price	Discount%	Discount Amount	Contract Price	Extended Contract Price
0736TC	1600 Turbo TerrainCut Commercial Wide-Area Mower with 4-Post ROPS Canopy	2	\$ 93,584.00	23.00	\$ 21,524.32	\$ 72,059.68	\$ 144,119.36
Standard Options - Per Unit							
001A	United States and Canada	2	\$ 0.00	23.00	\$ 0.00	\$ 0.00	\$ 0.00
183N	JDLink™ Modem	2	\$ 0.00	23.00	\$ 0.00	\$ 0.00	\$ 0.00
0443	US English w/ Spanish (Bi-Lingual) Operator's Manual	2	\$ 0.00	23.00	\$ 0.00	\$ 0.00	\$ 0.00
Standard Options Total			\$ 0.00		\$ 0.00	\$ 0.00	\$ 0.00
Dealer Attachments/Non-Contract/Open Market							
open market	Delivery	2	\$ 400.00	0.00	\$ 0.00	\$ 400.00	\$ 800.00
Dealer Attachments Total			\$ 400.00		\$ 0.00	\$ 400.00	\$ 800.00
Value Added Services Total			\$ 0.00			\$ 0.00	\$ 0.00
Additional Discounts							
	Multi-unit Discount	2			\$ 935.84	\$ -935.84	\$ -1,871.68
Additional Discount Total					\$ 935.84	\$ -935.84	\$ -1,871.68
Total Selling Price			\$ 93,984.00		\$ 22,460.16	\$ 71,523.84	\$ 143,047.68

JOHN DEERE Z960M ZTrak

Equipment Notes:**Hours:****Stock Number:****Selling Price *****Contract:** Sourcwell Grounds Maint 031121-DAC (PG BT CG 76)**\$ 13,453.33****Price Effective Date:** September 4, 2024

* Price per item - includes Fees and Non-contract items

Code	Description	Qty	List Price	Discount%	Discount Amount	Contract Price	Extended Contract Price
2234TC	Z960M ZTrak	1	\$ 15,809.00	23.00	\$ 3,636.07	\$ 12,172.93	\$ 12,172.93

Confidential



JOHN DEERE

Selling Equipment

Quote Id: 31620210

Customer Name: CITY OF LUBBOCK PARKS AND RECREATION

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214-630-3300
farmersbranchjd@unitedagt.com

Standard Options - Per Unit							
001A	United States/Canada	1	\$ 0.00	23.00	\$ 0.00	\$ 0.00	\$ 0.00
1036	24x12x12 Pneumatic Turf Tire for 54 In. and 60 In. Decks	1	\$ 0.00	23.00	\$ 0.00	\$ 0.00	\$ 0.00
1505	60 In. Mulch On Demand Mower Deck	1	\$ 1,100.00	23.00	\$ 253.00	\$ 847.00	\$ 847.00
2091	Deluxe Comfort Seat with Armrests (22.5" High Back)	1	\$ 0.00	23.00	\$ 0.00	\$ 0.00	\$ 0.00
Standard Options Total			\$ 1,100.00		\$ 253.00	\$ 847.00	\$ 847.00
Dealer Attachments/Non-Contract/Open Market							
BUC11438	LED front work lights (2)	1	\$ 266.43	23.00	\$ 61.28	\$ 205.15	\$ 205.15
Open Market	Delivery	1	\$ 400.00	0.00	\$ 0.00	\$ 400.00	\$ 400.00
Dealer Attachments Total			\$ 666.43		\$ 61.28	\$ 605.15	\$ 605.15
Value Added Services Total			\$ 0.00			\$ 0.00	\$ 0.00
Additional Discounts							
	Multi-unit Discount	1			\$ 171.75	\$ -171.75	\$ -171.75
Additional Discount Total					\$ 171.75	\$ -171.75	\$ -171.75
Total Selling Price			\$ 17,575.43		\$ 4,122.10	\$ 13,453.33	\$ 13,453.33

JOHN DEERE ProGator 2020A (Gas)

Equipment Notes:

Hours:

Stock Number:

Selling Price *

Contract: Sourcwell Grounds Maint 031121-DAC (PG BT CG 76)

\$ 33,080.08

Price Effective Date: September 4, 2024

* Price per item - includes Fees and Non-contract items

Code	Description	Qty	List Price	Discount%	Discount Amount	Contract Price	Extended Contract Price
140ETC	ProGator 2020A (Gas)	1	\$ 42,074.00	24.00	\$ 10,097.76	\$ 31,976.24	\$ 31,976.24
Standard Options - Per Unit							
001A	US/Canada	1	\$ 0.00	24.00	\$ 0.00	\$ 0.00	\$ 0.00

**JOHN DEERE**

Selling Equipment

Quote Id: 31620210

Customer Name: CITY OF LUBBOCK PARKS AND RECREATION

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United Ag & Turf
 2098 Valley View Lane
 FARMERS BRANCH, TX 75234
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United Ag & Turf
 2098 Valley View Lane
 Farmers Branch, TX 75234
 214-630-3300
 farmersbranchjd@unitedagt.com

183E	JDLINK™ Modem	1	\$ 0.00	24.00	\$ 0.00	\$ 0.00	\$ 0.00
1139	Standard Front Tires 23x10.5-12 (4 PR)	1	\$ 0.00	24.00	\$ 0.00	\$ 0.00	\$ 0.00
1162	Wide Rear Multi-Trac (2) Tires and (2) Wheels, 26 x 14-12 (4 PR)	1	\$ 0.00	24.00	\$ 0.00	\$ 0.00	\$ 0.00
1190	2WD Traction Unit	1	\$ 0.00	24.00	\$ 0.00	\$ 0.00	\$ 0.00
2200	Factory Installed Auxiliary Hydraulics	1	\$ 0.00	24.00	\$ 0.00	\$ 0.00	\$ 0.00
9776	Cargo Box	1	\$ 3,092.00	24.00	\$ 742.08	\$ 2,349.92	\$ 2,349.92
9778	Quick Connect Kit	1	\$ 223.00	24.00	\$ 53.52	\$ 169.48	\$ 169.48
Standard Options Total			\$ 3,315.00		\$ 795.60	\$ 2,519.40	\$ 2,519.40
Dealer Attachments/Non-Contract/Open Market							
Open Market	Delivery	1	\$ 400.00	0.00	\$ 0.00	\$ 400.00	\$ 400.00
Dealer Attachments Total			\$ 400.00		\$ 0.00	\$ 400.00	\$ 400.00
Value Added Services Total			\$ 0.00			\$ 0.00	\$ 0.00
Additional Discounts							
	Multi-unit Discount	1			\$ 1,815.56	\$ -1,815.56	\$ -1,815.56
Additional Discount Total					\$ 1,815.56	\$ -1,815.56	\$ -1,815.56
Total Selling Price			\$ 45,789.00		\$ 12,708.92	\$ 33,080.08	\$ 33,080.08

JOHN DEERE ProGator 2020A (Gas) -with Bishop CartPath Edger**Equipment Notes:**

Hours:

Stock Number:

Selling Price *

Contract: Sourcewell Grounds Maint 031121-DAC (PG BT
 CG 76)

\$ 38,380.08

Price Effective Date: September 4, 2024

* Price per item - includes Fees and Non-contract items

Code	Description	Qty	List Price	Discount%	Discount Amount	Contract Price	Extended Contract Price
140ETC	ProGator 2020A (Gas)	1	\$ 42,074.00	24.00	\$ 10,097.76	\$ 31,976.24	\$ 31,976.24
Standard Options - Per Unit							

**JOHN DEERE**

Selling Equipment

Quote Id: 31620210

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US

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Farmers Branch, TX 75234
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farmersbranchjd@unitedagt.com

001A	US/Canada	1	\$ 0.00	24.00	\$ 0.00	\$ 0.00	\$ 0.00
183E	JDLink™ Modem	1	\$ 0.00	24.00	\$ 0.00	\$ 0.00	\$ 0.00
1139	Standard Front Tires 23x10.5-12 (4 PR)	1	\$ 0.00	24.00	\$ 0.00	\$ 0.00	\$ 0.00
1162	Wide Rear Multi-Trac (2) Tires and (2) Wheels, 26 x 14-12 (4 PR)	1	\$ 0.00	24.00	\$ 0.00	\$ 0.00	\$ 0.00
1190	2WD Traction Unit	1	\$ 0.00	24.00	\$ 0.00	\$ 0.00	\$ 0.00
2200	Factory Installed Auxiliary Hydraulics	1	\$ 0.00	24.00	\$ 0.00	\$ 0.00	\$ 0.00
9776	Cargo Box	1	\$ 3,092.00	24.00	\$ 742.08	\$ 2,349.92	\$ 2,349.92
9778	Quick Connect Kit	1	\$ 223.00	24.00	\$ 53.52	\$ 169.48	\$ 169.48
Standard Options Total			\$ 3,315.00		\$ 795.60	\$ 2,519.40	\$ 2,519.40
Dealer Attachments/Non-Contract/Open Market							
Open Market	Delivery	1	\$ 400.00	0.00	\$ 0.00	\$ 400.00	\$ 400.00
Open Market	Bishop CartPath Edger	1	\$ 5,300.00	0.00	\$ 0.00	\$ 5,300.00	\$ 5,300.00
Dealer Attachments Total			\$ 5,700.00		\$ 0.00	\$ 5,700.00	\$ 5,700.00
Value Added Services Total			\$ 0.00			\$ 0.00	\$ 0.00
Additional Discounts							
	Multi-unit Discount	1			\$ 1,815.56	\$ -1,815.56	\$ -1,815.56
Additional Discount Total					\$ 1,815.56	\$ -1,815.56	\$ -1,815.56
Total Selling Price			\$ 51,089.00		\$ 12,708.92	\$ 38,380.08	\$ 38,380.08

JOHN DEERE ProGator 2030A for Sprayer Attachment

Equipment Notes:**Hours:****Stock Number:****Selling Price ***

Contract: Sourcewell Grounds Maint 031121-DAC (PG BT
CG 76)

\$ 36,725.95**Price Effective Date:** September 4, 2024

* Price per item - includes Fees and Non-contract items

**JOHN DEERE**

Selling Equipment

Quote Id: 31620210

Customer Name: CITY OF LUBBOCK PARKS AND RECREATION

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214-630-3300
farmersbranchjd@unitedagt.com

Code	Description	Qty	List Price	Discount%	Discount Amount	Contract Price	Extended Contract Price
141ETC	ProGator 2030A (Diesel)	1	\$ 44,977.00	24.00	\$ 10,794.48	\$ 34,182.52	\$ 34,182.52
Standard Options - Per Unit							
001A	US/Canada	1	\$ 0.00	24.00	\$ 0.00	\$ 0.00	\$ 0.00
183E	JDLink™ Modem	1	\$ 0.00	24.00	\$ 0.00	\$ 0.00	\$ 0.00
0443	All Other Countries - Operator's Manual - English/ Spanish	1	\$ 0.00	24.00	\$ 0.00	\$ 0.00	\$ 0.00
1139	Standard Front Tires 23x10.5-12 (4 PR)	1	\$ 0.00	24.00	\$ 0.00	\$ 0.00	\$ 0.00
1162	Wide Rear Multi-Trac (2) Tires and (2) Wheels, 26 x 14-12 (4 PR)	1	\$ 0.00	24.00	\$ 0.00	\$ 0.00	\$ 0.00
1190	2WD Traction Unit	1	\$ 0.00	24.00	\$ 0.00	\$ 0.00	\$ 0.00
2200	Factory Installed Auxiliary Hydraulics	1	\$ 0.00	24.00	\$ 0.00	\$ 0.00	\$ 0.00
9774	Throttle/Governor Control Kit	1	\$ 634.00	24.00	\$ 152.16	\$ 481.84	\$ 481.84
9778	Quick Connect Kit	1	\$ 223.00	24.00	\$ 53.52	\$ 169.48	\$ 169.48
9870	LED Worklight Kit - ProGator	1	\$ 771.00	24.00	\$ 185.04	\$ 585.96	\$ 585.96
Standard Options Total			\$ 1,628.00		\$ 390.72	\$ 1,237.28	\$ 1,237.28
Dealer Attachments/Non-Contract/Open Market							
BTC10091	4-Post Rollover Protective Structure (ROPS) Conversion Kit (Green)	1	\$ 2,764.89	24.00	\$ 663.57	\$ 2,101.32	\$ 2,101.32
BM20433	Heavy-Duty Front Spring Kit	1	\$ 541.41	24.00	\$ 129.94	\$ 411.47	\$ 411.47
TCB10910	Heavy-Duty Rear Spring Kit	1	\$ 541.41	24.00	\$ 129.94	\$ 411.47	\$ 411.47
Open Market	Delivery	1	\$ 400.00	0.00	\$ 0.00	\$ 400.00	\$ 400.00
Dealer Attachments Total			\$ 4,247.71		\$ 923.45	\$ 3,324.26	\$ 3,324.26
Value Added Services Total			\$ 0.00			\$ 0.00	\$ 0.00
Additional Discounts							
Multi-unit Discount			1		\$ 2,018.11	\$ -2,018.11	\$ -2,018.11
Additional Discount Total					\$ 2,018.11	\$ -2,018.11	\$ -2,018.11
Total Selling Price			\$ 50,852.71		\$ 14,126.76	\$ 36,725.95	\$ 36,725.95



JOHN DEERE

Selling Equipment

Quote Id: 31620210

Customer Name: CITY OF LUBBOCK PARKS AND RECREATION

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US

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214-630-3300
farmersbranchjd@unitedagt.com

JOHN DEERE HD300 SelectSpray for ProGator - 2030A

Equipment Notes:

Hours:

Stock Number:

Selling Price *

Contract: Sourcewell Grounds Maint 031121-DAC (PG BT CG 76)

\$ 18,405.36

Price Effective Date: September 4, 2024

* Price per item - includes Fees and Non-contract items

Code	Description	Qty	List Price	Discount%	Discount Amount	Contract Price	Extended Contract Price
1156TC	HD300 SelectSpray(For ProGators 2020A, 2020 and 2030A, 2030)	1	\$ 20,753.00	24.00	\$ 4,980.72	\$ 15,772.28	\$ 15,772.28
Standard Options - Per Unit							
001A	United States and Canada	1	\$ 0.00	24.00	\$ 0.00	\$ 0.00	\$ 0.00
2003	Gen3 Digital Manual Rate Controller for Centrifugal or Diaphragm Pump	1	\$ 0.00	24.00	\$ 0.00	\$ 0.00	\$ 0.00
3000	18 Ft. Spray Boom with Electro-Hydraulic Lift	1	\$ 0.00	24.00	\$ 0.00	\$ 0.00	\$ 0.00
6452	Stainless Steel Centrifugal Pump	1	\$ 929.00	24.00	\$ 222.96	\$ 706.04	\$ 706.04
9000	Extended Range Flat-Fan Style Nozzle Package	1	\$ 276.00	24.00	\$ 66.24	\$ 209.76	\$ 209.76
9005	Flood Style Nozzle Package	1	\$ 311.00	24.00	\$ 74.64	\$ 236.36	\$ 236.36
9010	Low Drift Nozzle Kit	1	\$ 245.00	24.00	\$ 58.80	\$ 186.20	\$ 186.20
9031	Electric Foam Maker	1	\$ 2,513.00	24.00	\$ 603.12	\$ 1,909.88	\$ 1,909.88
9869	Hose Plumbing Kit	1	\$ 536.00	24.00	\$ 128.64	\$ 407.36	\$ 407.36
Standard Options Total			\$ 4,810.00		\$ 1,154.40	\$ 3,655.60	\$ 3,655.60
Additional Discounts							
Multi-unit Discount			1		\$ 1,022.52	\$ -1,022.52	\$ -1,022.52
Additional Discount Total					\$ 1,022.52	\$ -1,022.52	\$ -1,022.52
Total Selling Price			\$ 25,563.00		\$ 7,157.64	\$ 18,405.36	\$ 18,405.36

JOHN DEERE GATOR™TX Turf - Superintendents Cart



JOHN DEERE

Selling Equipment

Quote Id: 31620210

Customer Name: CITY OF LUBBOCK PARKS AND RECREATION

ALL PURCHASE ORDERS MUST BE MADE OUT TO (VENDOR):

United Ag & Turf
2098 Valley View Lane
FARMERS BRANCH, TX 75234
US

ALL PURCHASE ORDERS MUST BE SENT TO DELIVERING DEALER:

United Ag & Turf
2098 Valley View Lane
Farmers Branch, TX 75234
214-630-3300
farmersbranchjd@unitedagt.com

Equipment Notes:

Hours:

Stock Number:

Selling Price *

Contract: Sourcewell Grounds Maint 031121-DAC (PG BT
CG 76)

\$ 11,770.28

Price Effective Date: September 4, 2024

* Price per item - includes Fees and Non-contract items

Code	Description	Qty	List Price	Discount%	Discount Amount	Contract Price	Extended Contract Price
559WM	GATOR™TX Turf (Model Year 2025)	2	\$ 14,299.00	24.00	\$ 3,431.76	\$ 10,867.24	\$ 21,734.48
Standard Options - Per Unit							
001F	US 49 State	2	\$ 0.00	24.00	\$ 0.00	\$ 0.00	\$ 0.00
0505	Build to Order	2	\$ 0.00	24.00	\$ 0.00	\$ 0.00	\$ 0.00
1015	Turf Tires	2	\$ 0.00	24.00	\$ 0.00	\$ 0.00	\$ 0.00
2016	Non Adjustable Seat	2	\$ 0.00	24.00	\$ 0.00	\$ 0.00	\$ 0.00
3001	Deluxe Cargo Box with Paint and Reflectors	2	\$ 0.00	24.00	\$ 0.00	\$ 0.00	\$ 0.00
3100	Cargo Box Manual Lift	2	\$ 0.00	24.00	\$ 0.00	\$ 0.00	\$ 0.00
4099	Less Front Protection Package	2	\$ 0.00	24.00	\$ 0.00	\$ 0.00	\$ 0.00
4199	Less Rear Protection Package	2	\$ 0.00	24.00	\$ 0.00	\$ 0.00	\$ 0.00
Standard Options Total			\$ 0.00		\$ 0.00	\$ 0.00	\$ 0.00
Dealer Attachments/Non-Contract/Open Market							
Open Market	Delivery	2	\$ 400.00	0.00	\$ 0.00	\$ 400.00	\$ 800.00
Open Market	Perry Canopy 44010503	2	\$ 800.00	0.00	\$ 0.00	\$ 800.00	\$ 1,600.00
Open Market	Perry Windshield FW2002	2	\$ 275.00	0.00	\$ 0.00	\$ 275.00	\$ 550.00
Dealer Attachments Total			\$ 1,475.00		\$ 0.00	\$ 1,475.00	\$ 2,950.00
Value Added Services Total			\$ 0.00			\$ 0.00	\$ 0.00
Additional Discounts							
Multi-unit Discount		2			\$ 571.96	\$ -571.96	\$ -1,143.92
Additional Discount Total					\$ 571.96	\$ -571.96	\$ -1,143.92

**JOHN DEERE**

Selling Equipment

Quote Id: 31620210

Customer Name: CITY OF LUBBOCK PARKS AND RECREATION

ALL PURCHASE ORDERS MUST BE MADE OUT TO (VENDOR):United Ag & Turf
2098 Valley View Lane
FARMERS BRANCH, TX 75234
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Farmers Branch, TX 75234
214-630-3300
farmersbranchjd@unitedagt.com

Total Selling Price	\$ 15,774.00	\$ 4,003.72	\$ 11,770.28	\$ 23,540.56
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JOHN DEERE GATOR™TX Turf

Equipment Notes:

Hours:

Stock Number:

Selling Price *

Contract: Sourcewell Grounds Maint 031121-DAC (PG BT
CG 76)

\$ 10,695.28

Price Effective Date: September 4, 2024

* Price per item - includes Fees and Non-contract items

Code	Description	Qty	List Price	Discount%	Discount Amount	Contract Price	Extended Contract Price
559WM	GATOR™TX Turf (Model Year 2025)	1	\$ 14,299.00	24.00	\$ 3,431.76	\$ 10,867.24	\$ 10,867.24
Standard Options - Per Unit							
001F	US 49 State	1	\$ 0.00	24.00	\$ 0.00	\$ 0.00	\$ 0.00
0505	Build to Order	1	\$ 0.00	24.00	\$ 0.00	\$ 0.00	\$ 0.00
1015	Turf Tires	1	\$ 0.00	24.00	\$ 0.00	\$ 0.00	\$ 0.00
2016	Non Adjustable Seat	1	\$ 0.00	24.00	\$ 0.00	\$ 0.00	\$ 0.00
3001	Deluxe Cargo Box with Paint and Reflectors	1	\$ 0.00	24.00	\$ 0.00	\$ 0.00	\$ 0.00
3100	Cargo Box Manual Lift	1	\$ 0.00	24.00	\$ 0.00	\$ 0.00	\$ 0.00
4099	Less Front Protection Package	1	\$ 0.00	24.00	\$ 0.00	\$ 0.00	\$ 0.00
4199	Less Rear Protection Package	1	\$ 0.00	24.00	\$ 0.00	\$ 0.00	\$ 0.00
Standard Options Total			\$ 0.00		\$ 0.00	\$ 0.00	\$ 0.00
Dealer Attachments/Non-Contract/Open Market							
Open Market	Delivery	1	\$ 400.00	0.00	\$ 0.00	\$ 400.00	\$ 400.00
Dealer Attachments Total			\$ 400.00		\$ 0.00	\$ 400.00	\$ 400.00
Value Added Services Total			\$ 0.00			\$ 0.00	\$ 0.00
Additional Discounts							
	Multi-unit Discount	1			\$ 571.96	\$ -571.96	\$ -571.96

Confidential

**JOHN DEERE**

Selling Equipment

Quote Id: 31620210

Customer Name: CITY OF LUBBOCK PARKS AND RECREATION

ALL PURCHASE ORDERS MUST BE MADE OUT TO (VENDOR):United Ag & Turf
2098 Valley View Lane
FARMERS BRANCH, TX 75234
US**ALL PURCHASE ORDERS MUST BE SENT TO DELIVERING DEALER:**United Ag & Turf
2098 Valley View Lane
Farmers Branch, TX 75234
214-630-3300
farmersbranchjd@unitedagt.com

Additional Discount Total		\$ 571.96	\$ -571.96	\$ -571.96
Total Selling Price	\$ 14,699.00	\$ 4,003.72	\$ 10,695.28	\$ 10,695.28

JOHN DEERE GATOR™TX Turf

Equipment Notes:**Hours:****Stock Number:****Selling Price *****Contract:** Sourcewell Grounds Maint 031121-DAC (PG BT
CG 76)**\$ 10,695.28****Price Effective Date:** September 4, 2024

* Price per item - includes Fees and Non-contract items

Code	Description	Qty	List Price	Discount%	Discount Amount	Contract Price	Extended Contract Price
559WM	GATOR™TX Turf (Model Year 2025)	5	\$ 14,299.00	24.00	\$ 3,431.76	\$ 10,867.24	\$ 54,336.20
Standard Options - Per Unit							
001F	US 49 State	5	\$ 0.00	24.00	\$ 0.00	\$ 0.00	\$ 0.00
0505	Build to Order	5	\$ 0.00	24.00	\$ 0.00	\$ 0.00	\$ 0.00
1015	Turf Tires	5	\$ 0.00	24.00	\$ 0.00	\$ 0.00	\$ 0.00
2016	Non Adjustable Seat	5	\$ 0.00	24.00	\$ 0.00	\$ 0.00	\$ 0.00
3001	Deluxe Cargo Box with Paint and Reflectors	5	\$ 0.00	24.00	\$ 0.00	\$ 0.00	\$ 0.00
3100	Cargo Box Manual Lift	5	\$ 0.00	24.00	\$ 0.00	\$ 0.00	\$ 0.00
4099	Less Front Protection Package	5	\$ 0.00	24.00	\$ 0.00	\$ 0.00	\$ 0.00
4199	Less Rear Protection Package	5	\$ 0.00	24.00	\$ 0.00	\$ 0.00	\$ 0.00
Standard Options Total			\$ 0.00		\$ 0.00	\$ 0.00	\$ 0.00
Dealer Attachments/Non-Contract/Open Market							
Open Market	Delivery	5	\$ 400.00	0.00	\$ 0.00	\$ 400.00	\$ 2,000.00
Dealer Attachments Total			\$ 400.00		\$ 0.00	\$ 400.00	\$ 2,000.00
Value Added Services Total			\$ 0.00			\$ 0.00	\$ 0.00
Additional Discounts							

Confidential



JOHN DEERE

Selling Equipment

Quote Id: 31620210

Customer Name: CITY OF LUBBOCK PARKS AND RECREATION

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farmersbranchjd@unitedagt.com

Multi-unit Discount	5	\$ 571.96	\$ -571.96	\$ -2,859.80
Additional Discount Total		\$ 571.96	\$ -571.96	\$ -2,859.80
Total Selling Price	\$ 14,699.00	\$ 4,003.72	\$ 10,695.28	\$ 53,476.40

JOHN DEERE Quick-Adjust 5 - 14 Blade Cutting Units (Extra Reels)

Equipment Notes:

Hours:

Stock Number:

Selling Price *

Contract: Sourcewell Grounds Maint 031121-DAC (PG BT
CG 76)

\$ 10,894.88

Price Effective Date: September 4, 2024

* Price per item - includes Fees and Non-contract items

Code	Description	Qty	List Price	Discount%	Discount Amount	Contract Price	Extended Contract Price
5002TC	Quick-Adjust 5 Cutting Units for 2500B, 2500E, 2400, 2550, 2700, and 2750 Triplex Mowers	1	\$ 11,112.00	24.00	\$ 2,666.88	\$ 8,445.12	\$ 8,445.12
Standard Options - Per Unit							
001A	US / Canada	1	\$ 0.00	24.00	\$ 0.00	\$ 0.00	\$ 0.00
1224	14-Blade Cutting Unit	1	\$ 1,072.00	24.00	\$ 257.28	\$ 814.72	\$ 814.72
1301	2 In. (5 cm) x 22 In. (55.9 cm) Diameter Machined Smooth Solid Roller	1	\$ 751.00	24.00	\$ 180.24	\$ 570.76	\$ 570.76
1400	QA5 Cutting Unit Only Counterweight	1	\$ 296.00	24.00	\$ 71.04	\$ 224.96	\$ 224.96
1602	2 In. (5 cm) x 22 In. (55.9 cm) Diameter Wide Tube / Hollow Smooth Rollers	1	\$ 532.00	24.00	\$ 127.68	\$ 404.32	\$ 404.32
3208	Cutting Unit Attaching Yokes Only for 2400 / 2500 / 2550 PrecisionCut and E-Cut Hybrid Triplex Mowers	1	\$ 957.00	24.00	\$ 229.68	\$ 727.32	\$ 727.32
9805	Cutting Unit Top Shield Extensions	1	\$ 134.00	24.00	\$ 32.16	\$ 101.84	\$ 101.84
Standard Options Total			\$ 3,742.00		\$ 898.08	\$ 2,843.92	\$ 2,843.92
Dealer Attachments/Non-Contract/Open Market							

**JOHN DEERE**

Selling Equipment

Quote Id: 31620210

Customer Name: CITY OF LUBBOCK PARKS AND RECREATION

ALL PURCHASE ORDERS MUST BE MADE OUT TO (VENDOR):United Ag & Turf
2098 Valley View Lane
FARMERS BRANCH, TX 75234
US**ALL PURCHASE ORDERS MUST BE SENT TO DELIVERING DEALER:**United Ag & Turf
2098 Valley View Lane
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214-630-3300
farmersbranchjd@unitedagt.com

Open Market	Delivery	1	\$ 200.00	0.00	\$ 0.00	\$ 200.00	\$ 200.00
Dealer Attachments Total			\$ 200.00		\$ 0.00	\$ 200.00	\$ 200.00
Additional Discounts							
	Multi-unit Discount	1			\$ 594.16	\$ -594.16	\$ -594.16
Additional Discount Total					\$ 594.16	\$ -594.16	\$ -594.16
Total Selling Price			\$ 15,054.00		\$ 4,159.12	\$ 10,894.88	\$ 10,894.88

JOHN DEERE Quick-Adjust 5 -- Verti-Cutting Units for 2400PC's

Equipment Notes:**Hours:****Stock Number:****Selling Price *****Contract:** Sourcewell Grounds Maint 031121-DAC (PG BT
CG 76)**\$ 10,243.28****Price Effective Date:** September 4, 2024

* Price per item - includes Fees and Non-contract items

Code	Description	Qty	List Price	Discount%	Discount Amount	Contract Price	Extended Contract Price
5002TC	Quick-Adjust 5 Cutting Units for 2500B, 2500E, 2400, 2550, 2700, and 2750 Triplex Mowers	3	\$ 11,112.00	24.00	\$ 2,666.88	\$ 8,445.12	\$ 25,335.36
Standard Options - Per Unit							
001A	US / Canada	3	\$ 0.00	24.00	\$ 0.00	\$ 0.00	\$ 0.00
1225	Verticutter	3	\$ -120.00	24.00	\$ -28.80	\$ -91.20	\$ -273.60
1301	2 In. (5 cm) x 22 In. (55.9 cm) Diameter Machined Smooth Solid Roller	3	\$ 751.00	24.00	\$ 180.24	\$ 570.76	\$ 1,712.28
1400	QA5 Cutting Unit Only Counterweight	3	\$ 296.00	24.00	\$ 71.04	\$ 224.96	\$ 674.88
1602	2 In. (5 cm) x 22 In. (55.9 cm) Diameter Wide Tube / Hollow Smooth Rollers	3	\$ 532.00	24.00	\$ 127.68	\$ 404.32	\$ 1,212.96
3208	Cutting Unit Attaching Yokes Only for 2400 / 2500 / 2550 PrecisionCut and E-Cut Hybrid Triplex Mowers	3	\$ 957.00	24.00	\$ 229.68	\$ 727.32	\$ 2,181.96



JOHN DEERE

Selling Equipment

Quote Id: 31620210

Customer Name: CITY OF LUBBOCK PARKS AND RECREATION

ALL PURCHASE ORDERS MUST BE MADE OUT TO (VENDOR):

United Ag & Turf
2098 Valley View Lane
FARMERS BRANCH, TX 75234
US

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United Ag & Turf
2098 Valley View Lane
Farmers Branch, TX 75234
214-630-3300
farmersbranchjd@unitedagt.com

9805	Cutting Unit Top Shield Extensions	3	\$ 134.00	24.00	\$ 32.16	\$ 101.84	\$ 305.52
9849	55.9 cm (22-in.) Rear Roller Scrapers (Solid) for QA5 or QA7 with 50.8 mm (2-in.) Smooth Rear Rollers	3	\$ 167.00	24.00	\$ 40.08	\$ 126.92	\$ 380.76
9850	55.9 cm (22-in.) Front Roller Scrapers (Solid) for QA5 Cutting Units with 50.8 mm (2-in.) Smooth Front Rollers	3	\$ 120.00	24.00	\$ 28.80	\$ 91.20	\$ 273.60
Standard Options Total			\$ 2,837.00		\$ 680.88	\$ 2,156.12	\$ 6,468.36
Dealer Attachments/Non-Contract/Open Market							
Open Market	Delivery	3	\$ 200.00	0.00	\$ 0.00	\$ 200.00	\$ 600.00
Dealer Attachments Total			\$ 200.00		\$ 0.00	\$ 200.00	\$ 600.00
Additional Discounts							
	Multi-unit Discount	3			\$ 557.96	\$ -557.96	\$ -1,673.88
Additional Discount Total					\$ 557.96	\$ -557.96	\$ -1,673.88
Total Selling Price			\$ 14,149.00		\$ 3,905.72	\$ 10,243.28	\$ 30,729.84

JOHN DEERE ProGator 2030A (Diesel) - For 200gal Sprayer

Equipment Notes:

Hours:

Stock Number:

Selling Price *

Contract: Sourcewell Grounds Maint 031121-DAC (PG BT CG 76)

\$ 36,521.04

Price Effective Date: September 16, 2024

* Price per item - includes Fees and Non-contract items

Code	Description	Qty	List Price	Discount%	Discount Amount	Contract Price	Extended Contract Price
141ETC	ProGator 2030A (Diesel)	1	\$ 44,977.00	24.00	\$ 10,794.48	\$ 34,182.52	\$ 34,182.52
Standard Options - Per Unit							
001A	US/Canada	1	\$ 0.00	24.00	\$ 0.00	\$ 0.00	\$ 0.00
183E	JDLink™ Modem	1	\$ 0.00	24.00	\$ 0.00	\$ 0.00	\$ 0.00
0443	All Other Countries - Operator's Manual - English/ Spanish	1	\$ 0.00	24.00	\$ 0.00	\$ 0.00	\$ 0.00

**JOHN DEERE**

Selling Equipment

Quote Id: 31620210

Customer Name: CITY OF LUBBOCK PARKS AND RECREATION

ALL PURCHASE ORDERS MUST BE MADE OUT TO (VENDOR):

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FARMERS BRANCH, TX 75234
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1139	Standard Front Tires 23x10.5-12 (4 PR)	1	\$ 0.00	24.00	\$ 0.00	\$ 0.00	\$ 0.00
1162	Wide Rear Multi-Trac (2) Tires and (2) Wheels, 26 x 14-12 (4 PR)	1	\$ 0.00	24.00	\$ 0.00	\$ 0.00	\$ 0.00
1190	2WD Traction Unit	1	\$ 0.00	24.00	\$ 0.00	\$ 0.00	\$ 0.00
2200	Factory Installed Auxiliary Hydraulics	1	\$ 0.00	24.00	\$ 0.00	\$ 0.00	\$ 0.00
9774	Throttle/Governor Control Kit	1	\$ 634.00	24.00	\$ 152.16	\$ 481.84	\$ 481.84
9778	Quick Connect Kit	1	\$ 223.00	24.00	\$ 53.52	\$ 169.48	\$ 169.48
9837	Canopy with Rear View Mirror	1	\$ 1,049.00	24.00	\$ 251.76	\$ 797.24	\$ 797.24
9870	LED Worklight Kit - ProGator	1	\$ 771.00	24.00	\$ 185.04	\$ 585.96	\$ 585.96
Standard Options Total			\$ 2,677.00		\$ 642.48	\$ 2,034.52	\$ 2,034.52
Dealer Attachments/Non-Contract/Open Market							
Open Market	Delivery	1	\$ 400.00	24.00	\$ 96.00	\$ 304.00	\$ 304.00
Dealer Attachments Total			\$ 400.00		\$ 96.00	\$ 304.00	\$ 304.00
Value Added Services Total			\$ 0.00		\$ 0.00	\$ 0.00	\$ 0.00
Total Selling Price			\$ 48,054.00		\$ 11,532.96	\$ 36,521.04	\$ 36,521.04

JOHN DEERE HD200 SelectSpray for ProGator 2030A

Equipment Notes:**Hours:****Stock Number:****Selling Price ***

Contract: Sourcwell Grounds Maint 031121-DAC (PG BT
CG 76)

\$ 18,067.15**Price Effective Date:** September 16, 2024

* Price per item - includes Fees and Non-contract items

Code	Description	Qty	List Price	Discount%	Discount Amount	Contract Price	Extended Contract Price
3769M	HD200 SelectSpray (for ProGators 2020A, 2020 and 2030A, 2030)	1	\$ 19,043.00	24.00	\$ 4,570.32	\$ 14,472.68	\$ 14,472.68

Standard Options - Per Unit

Confidential

**JOHN DEERE**

Selling Equipment

Quote Id: 31620210

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United Ag & Turf
 2098 Valley View Lane
 Farmers Branch, TX 75234
 214-630-3300
 farmersbranchjd@unitedagt.com

001A	United States and Canada	1	\$ 0.00	24.00	\$ 0.00	\$ 0.00	\$ 0.00
2003	Gen3 Digital Manual Rate	1	\$ 0.00	24.00	\$ 0.00	\$ 0.00	\$ 0.00
	Controller for Centrifugal or						
	Diaphragm Pump						
3000	18 Ft. Spray Boom with	1	\$ 0.00	24.00	\$ 0.00	\$ 0.00	\$ 0.00
	Electro-Hydraulic Lift						
6452	Stainless Steel Centrifugal	1	\$ 929.00	24.00	\$ 222.96	\$ 706.04	\$ 706.04
	Pump						
9869	Hose Plumbing Kit	1	\$ 536.00	24.00	\$ 128.64	\$ 407.36	\$ 407.36
	Standard Options Total		\$ 1,465.00		\$ 351.60	\$ 1,113.40	\$ 1,113.40
Dealer Attachments/Non-Contract/Open Market							
VGB10129	Low Drift Nozzle Kit	1	\$ 264.29	24.00	\$ 63.43	\$ 200.86	\$ 200.86
BM19256	Extended Range Flat-Fan	1	\$ 297.46	24.00	\$ 71.39	\$ 226.07	\$ 226.07
	Style Nozzle Package						
BTC11027	Electric Foam Marker	1	\$ 2,702.81	24.00	\$ 648.67	\$ 2,054.14	\$ 2,054.14
	Dealer Attachments Total		\$ 3,264.56		\$ 783.49	\$ 2,481.07	\$ 2,481.07
Total Selling Price			\$ 23,772.56		\$ 5,705.41	\$ 18,067.15	\$ 18,067.15



JOHN DEERE

Extended Repair Plan Proposal

PowerGard™ Protection Plan Residential

Date : November 22, 2024

Machine/Use Information		Plan Description	Price	
Manufacturer	JOHN DEERE	Plan Type:	Deductible:	
Equipment Type	2400 PRECISIONCUT MOWER	Coverage:	Quoted Price	\$ 0.00
Model	2400 PRECISIONCUT MOWER	Total Months:		
		Total Hours:		

THIS PROPOSAL IS VALID FOR 30-DAYS FROM DATE ISSUED. GRACE pricing is offered only early during the Deere basic warranty period and has no surcharges. After this period, DELAYED PURCHASE pricing (surcharged) is offered later during the John Deere Basic Warranty. Many PowerGard quotes presented in the Delayed Purchase Period will require inspection/certification process and must also pass fluid testing. The Total Months and Total Hours listed above include the John Deere Basic Warranty terms (24 months / 2000 hours on Tractors, 24 months on Golf & Turf Products, 12 months for all AG Harvesting and Sprayer equipment, and 12 months/1000 hours on most Gator Utility Vehicles). "Limited" Plan coverage = Engine & Powertrain only. "Comprehensive" Plan coverage = Full Machine.

Proposal Prepared for:

I have been offered this coverage and

Customer Name - Please Print

☐ I ACCEPT the Residential plan

☒ I DECLINE the Residential plan

Customer Signature

If declined, I fully understand that my equipment listed above is not covered for repair expenses due to component failures beyond the original basic warranty period provided by John Deere.

Note : This is not a contract. For specific PowerGard™ Protection plan Residential coverage, please refer to the terms and conditions on John Deere's public website(www.JohnDeere.com) under Services & Support >Warranty > Extended Warranties > PowerGard protection plan Residential.

Date : November 22, 2024

Machine/Use Information		Plan Description	Price	
Manufacturer	JOHN DEERE	Plan Type:	Deductible:	
Equipment Type	2400 PRECISIONCUT MOWER	Coverage:	Quoted Price	\$ 0.00
Model	2400 PRECISIONCUT MOWER	Total Months:		
		Total Hours:		

THIS PROPOSAL IS VALID FOR 30-DAYS FROM DATE ISSUED. GRACE pricing is offered only early during the Deere basic warranty period and has no surcharges. After this period, DELAYED PURCHASE pricing (surcharged) is offered later during the John Deere Basic Warranty. Many PowerGard quotes presented in the Delayed Purchase Period will require inspection/certification process and must also pass fluid testing. The Total Months and Total Hours listed above include the John Deere Basic Warranty terms (24 months / 2000 hours on Tractors, 24 months on Golf & Turf Products, 12 months for all AG Harvesting and Sprayer equipment, and 12 months/1000 hours on most Gator Utility Vehicles). "Limited" Plan coverage = Engine & Powertrain only. "Comprehensive" Plan coverage = Full Machine.

Confidential



JOHN DEERE

Proposal Prepared for:

I have been offered this coverage and

Customer Name - Please Print

☐ I ACCEPT the Residential plan

☒ I DECLINE the Residential plan

Customer Signature

If declined, I fully understand that my equipment listed above is not covered for repair expenses due to component failures beyond the original basic warranty period provided by John Deere.

Note : This is not a contract. For specific PowerGard™ Protection plan Residential coverage, please refer to the terms and conditions on John Deere's public website(www.JohnDeere.com) under Services & Support >Warranty > Extended Warranties > PowerGard protection plan Residential.

Date : November 22, 2024

Machine/Use Information

Plan Description

Price

Manufacturer	JOHN DEERE	Plan Type:	Deductible:
Equipment Type	2400 PRECISIONCUT MOWER	Coverage:	Quoted Price \$ 0.00
Model	2400 PRECISIONCUT MOWER	Total Months:	
		Total Hours:	

THIS PROPOSAL IS VALID FOR 30-DAYS FROM DATE ISSUED. GRACE pricing is offered only early during the Deere basic warranty period and has no surcharges. After this period, DELAYED PURCHASE pricing (surcharged) is offered later during the John Deere Basic Warranty. Many PowerGard quotes presented in the Delayed Purchase Period will require inspection/certification process and must also pass fluid testing. The Total Months and Total Hours listed above include the John Deere Basic Warranty terms (24 months / 2000 hours on Tractors, 24 months on Golf & Turf Products, 12 months for all AG Harvesting and Sprayer equipment, and 12 months/1000 hours on most Gator Utility Vehicles). "Limited" Plan coverage = Engine & Powertrain only. "Comprehensive" Plan coverage = Full Machine.

Proposal Prepared for:

I have been offered this coverage and

Customer Name - Please Print

☐ I ACCEPT the Residential plan

☒ I DECLINE the Residential plan

Customer Signature

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JOHN DEERE

Date : November 22, 2024

Machine/Use Information		Plan Description	Price	
Manufacturer	JOHN DEERE	Plan Type:	Deductible:	
Equipment Type	2400 PRECISIONCUT MOWER	Coverage:	Quoted Price	\$ 0.00
Model	2400 PRECISIONCUT MOWER	Total Months:		
		Total Hours:		

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Proposal Prepared for:

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Date : November 22, 2024

Machine/Use Information		Plan Description	Price	
Manufacturer	JOHN DEERE	Plan Type:	Deductible:	
Equipment Type	2400 PRECISIONCUT MOWER	Coverage:	Quoted Price	\$ 0.00
Model	2400 PRECISIONCUT MOWER	Total Months:		
		Total Hours:		

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Confidential



JOHN DEERE

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Date : November 22, 2024

Machine/Use Information

Plan Description

Price

Manufacturer **JOHN DEERE**

Plan Type:

Deductible:

Equipment Type 8800A
TERRAINCUT

Coverage:

Quoted Price \$ 0.00

Model 8800A
TERRAINCUT

Total Months:

Total Hours:

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Date : November 22, 2024

Machine/Use Information

Plan Description

Price

Manufacturer **JOHN DEERE**

Plan Type:

Deductible:

Equipment Type 8800A
TERRAINCUT

Coverage:

Quoted Price \$ 0.00

Model 8800A
TERRAINCUT

Total Months:

Total Hours:

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Confidential



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Date : November 22, 2024

Machine/Use Information

Plan Description

Price

Manufacturer JOHN DEERE

Plan Type:

Deductible:

Equipment Type 1600 WIDE AEA FRONT MOWER

Coverage:

Quoted Price \$ 0.00

Model 1600 WIDE AEA FRONT MOWER

Total Months:

Total Hours:

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Date : November 22, 2024

Machine/Use Information

Plan Description

Price

Manufacturer JOHN DEERE

Plan Type:

Deductible:

Equipment Type 1600 WIDE AEA FRONT MOWER

Coverage:

Quoted Price \$ 0.00

Model 1600 WIDE AEA FRONT MOWER

Total Months:

Total Hours:

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JOHN DEERE

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Date : November 22, 2024

Machine/Use Information

Plan Description

Price

Manufacturer JOHN DEERE

Plan Type:

Deductible:

Equipment Type Z960M GAS

Coverage:

Quoted Price \$ 0.00

Model Z960M GAS

Total Months:

Total Hours:

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Date : November 22, 2024

Machine/Use Information

Plan Description

Price

Manufacturer JOHN DEERE

Plan Type:

Deductible:

Equipment Type 2020A
PROGATOR

Coverage:

Quoted Price \$ 0.00

Model 2020A
PROGATOR

Total Months:

Total Hours:

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Confidential



JOHN DEERE

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Date : November 22, 2024

Machine/Use Information

Plan Description

Price

Manufacturer **JOHN DEERE**

Plan Type:

Deductible:

Equipment Type 2020A
PROGATOR

Coverage:

Quoted Price \$ 0.00

Model 2020A
PROGATOR

Total Months:

Total Hours:

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Date : November 22, 2024

Machine/Use Information

Plan Description

Price

Manufacturer **JOHN DEERE**

Plan Type:

Deductible:

Equipment Type PROGATOR
2030A DIESEL

Coverage:

Quoted Price \$ 0.00

Model PROGATOR
2030A DIESEL

Total Months:

Total Hours:

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JOHN DEERE

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Date : November 22, 2024

Machine/Use Information

Plan Description

Price

Manufacturer **JOHN DEERE**

Plan Type:

Deductible:

Equipment Type TX 4X2 TURF VEHICLE

Coverage:

Quoted Price \$ 0.00

Model TX 4X2 TURF VEHICLE

Total Months:

Total Hours:

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Date : November 22, 2024

Machine/Use Information

Plan Description

Price

Manufacturer **JOHN DEERE**

Plan Type:

Deductible:

Equipment Type TX 4X2 TURF VEHICLE

Coverage:

Quoted Price \$ 0.00

Model TX 4X2 TURF VEHICLE

Total Months:

Total Hours:

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Confidential



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Date : November 22, 2024

Machine/Use Information

Plan Description

Price

Manufacturer JOHN DEERE

Plan Type:

Deductible:

Equipment Type TX 4X2 TURF VEHICLE

Coverage:

Quoted Price \$ 0.00

Model TX 4X2 TURF VEHICLE

Total Months:

Total Hours:

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Date : November 22, 2024

Machine/Use Information

Plan Description

Price

Manufacturer JOHN DEERE

Plan Type:

Deductible:

Equipment Type TX 4X2 TURF VEHICLE

Coverage:

Quoted Price \$ 0.00

Model TX 4X2 TURF VEHICLE

Total Months:

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Confidential



JOHN DEERE

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Machine/Use Information

Plan Description

Price

Manufacturer JOHN DEERE

Plan Type:

Deductible:

Equipment Type TX 4X2 TURF VEHICLE

Coverage:

Quoted Price \$ 0.00

Model TX 4X2 TURF VEHICLE

Total Months:

Total Hours:

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Date : November 22, 2024

Machine/Use Information

Plan Description

Price

Manufacturer JOHN DEERE

Plan Type:

Deductible:

Equipment Type TX 4X2 TURF VEHICLE

Coverage:

Quoted Price \$ 0.00

Model TX 4X2 TURF VEHICLE

Total Months:

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Confidential



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Machine/Use Information

Plan Description

Price

Manufacturer **JOHN DEERE**

Plan Type:

Deductible:

Equipment Type TX 4X2 TURF VEHICLE

Coverage:

Quoted Price \$ 0.00

Model TX 4X2 TURF VEHICLE

Total Months:

Total Hours:

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Proposal Prepared for:

I have been offered this coverage and

Customer Name - Please Print

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PowerGard™ Protection Plan Residential (Residential plan) is:

The PowerGard™ Protection Plan Residential is an extended repair plan that provides parts and labor coverage up to four years beyond the manufacturer's warranty. It is available on all riding lawn equipment, zero-turn radius mowers, utility vehicles, utility tractors and compact utility tractors. Your John Deere equipment will be in the hands of qualified, certified technicians from John Deere dealers using Genuine John Deere Parts.

Not covered under a Residential plan:

Residential plans do not cover routine maintenance services or items normally designed to be replaced by the purchaser due to normal wear and tear. They do not cover any product used for commercial or rental applications. They also do not cover repairs for damage from accident, misuse, fire, theft, or exposure to weather conditions such as lightning, hail, flood or water. See the actual PowerGard™ Protection Plan Residential Terms and Conditions for a complete listing of coverage, and limitations and conditions under the program.



JOHN DEERE

Benefits of a Residential plan:

- Offer the choice of adding up to 4 years of repair coverage beyond the machine's factory warranty.
- Do not require preapproval before repairs are made by the authorized John Deere dealership.
- Is transferable by the original purchaser for the balance of the original agreement period.
- Ensures higher resale value and makes equipment more marketable during sale or trade-in.
- Comprehensive Plans:
 - No deductibles and no out-of-pocket costs on covered repairs.
 - Free transportation for factory warranty and extended repair plan repairs for the term of the plan (Note: A surcharge may apply for machines located outside of the dealership's normal service area).
- Limited Powertrain Plans:
 - Low deductibles on covered repairs
 - Do not provide transportation coverage



ALL PURCHASE ORDERS MUST BE MADE OUT TO (VENDOR):

United Ag & Turf
2098 Valley View Lane
FARMERS BRANCH, TX 75234
US

ALL PURCHASE ORDERS MUST BE SENT TO DELIVERING DEALER:

United Ag & Turf
2098 Valley View Lane
Farmers Branch, TX 75234
214-630-3300
farmersbranchjd@unitedagt.com

Quote Summary**Prepared For:**

CITY OF LUBBOCK PARKS AND RECREATION
PO BOX 2000
LUBBOCK, TX 79457
Business: 806-767-2683

Delivering Dealer:

United Ag & Turf
Logan Knapp
2098 Valley View Lane
Farmers Branch, TX 75234
Phone: 214-630-3300
Mobile: 325-201-3420
loganknapp@unitedagt.com

Thank you for choosing United Ag & Turf and John Deere for this Partnership. We are excited and proud to help Meadowbrook grow into the future.

Quote ID: 31625750
Created On: 05 September 2024
Last Modified On: 22 November 2024
Expiration Date: 20 December 2024

SourceWell # 25001

BuyBoard 706-23

Please make all PO's & Payments to:

United Ag & Turf
7736 Central Park Dr
Waco, Tx 76712

Please notate different Contract Numbers on any potential PO's or Letters of Intent

Lease Projections for this quote are included in Quote ID # 31620210

Equipment Summary	Selling Price	Qty	Extended
JOHN DEERE 4066M Compact Utility Tractor (52 PTO hp) Contract: Sourcewell Grounds Maint 031121-DAC (PG BT CG 76) Price Effective Date: September 5, 2024	\$ 44,734.25 X	1 =	\$ 44,734.25
JOHN DEERE 485A Backhoe Contract: Sourcewell Grounds Maint 031121-DAC (PG BT CG 76) Price Effective Date: September 5, 2024	\$ 11,475.08 X	1 =	\$ 11,475.08
JOHN DEERE 5075E Open Operator Station Utility Tractor Contract: Sourcewell Ag 082923-DAC (PG BA CG 76) Price Effective Date: September 4, 2024	\$ 43,456.54 X	1 =	\$ 43,456.54

Salesperson : X _____

Accepted By : X _____

Confidential



ALL PURCHASE ORDERS MUST BE MADE OUT TO (VENDOR):

United Ag & Turf
2098 Valley View Lane
FARMERS BRANCH, TX 75234
US

ALL PURCHASE ORDERS MUST BE SENT TO DELIVERING DEALER:

United Ag & Turf
2098 Valley View Lane
Farmers Branch, TX 75234
214-630-3300
farmersbranchjd@unitedagt.com

JOHN DEERE 2038R Compact Utility Tractor (30 PTO hp) \$ 26,082.53 X 1 = \$ 26,082.53
Contract: Sourcewell Grounds Maint 031121-DAC (PG BT CG 76)
Price Effective Date: September 11, 2024

DAKOTA 410 Pull Behind Top Dresser **UAT BuyBoard Contract 706-23 ** \$ 21,780.00 X 1 = \$ 21,780.00
Contract:
Price Effective Date:

BUFFALO TURBINE BLOWER ** UAT BuyBoard 706-23 ** \$ 11,699.00 X 2 = \$ 23,398.00
Contract:
Price Effective Date:

AGRIMETAL GR 660 **UAT BuyBoard 706-23** \$ 26,120.00 X 1 = \$ 26,120.00
Contract:
Price Effective Date:

WIEDENMANN TERRA GROOM **UAT BuyBoard 706-23** \$ 6,783.00 X 1 = \$ 6,783.00
Contract:
Price Effective Date:

BERNHARD ED 4300 **UAT BuyBoard 706-23** \$ 65,364.00 X 1 = \$ 65,364.00
Contract:
Price Effective Date:

BERNHARD AM 4100 **UAT BuyBoard 706-23** \$ 30,696.00 X 1 = \$ 30,696.00
Contract:
Price Effective Date:

WIEDENMANN Terra Spike SL6 **UAT BuyBoard 706-23** \$ 28,477.00 X 1 = \$ 28,477.00
Contract:
Price Effective Date:

Salesperson : X _____

Accepted By : X _____



JOHN DEERE

**ALL PURCHASE ORDERS MUST BE MADE OUT
TO (VENDOR):**

United Ag & Turf
2098 Valley View Lane
FARMERS BRANCH, TX 75234
US

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TO DELIVERING DEALER:**

United Ag & Turf
2098 Valley View Lane
Farmers Branch, TX 75234
214-630-3300
farmersbranchjd@unitedagt.com

Equipment Total

\$ 328,366.40

* Includes Fees and Non-contract items

Quote Summary

Equipment Total **\$ 328,366.40**

Trade In

SubTotal **\$ 328,366.40**

Total **\$ 328,366.40**

Down Payment (0.00)

Rental Applied (0.00)

Balance Due \$ 328,366.40

Salesperson : X _____

Accepted By : X _____

Confidential



Selling Equipment

Quote Id: 31625750

Customer Name: CITY OF LUBBOCK PARKS AND RECREATION

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United Ag & Turf
2098 Valley View Lane
FARMERS BRANCH, TX 75234
US

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Farmers Branch, TX 75234
214-630-3300
farmersbranchjd@unitedagt.com

JOHN DEERE 4066M Compact Utility Tractor (52 PTO hp)

Hours:

Stock Number:

Contract: Sourcwell Grounds Maint 031121-DAC (PG BT
CG 76)

Selling Price *
\$ 44,734.25

Price Effective Date: September 5, 2024

* Price per item - includes Fees and Non-contract items

Code	Description	Qty	List Price	Discount%	Discount Amount	Contract Price	Extended Contract Price
037BLV	4066M Compact Utility Tractor (52 PTO hp)	1	\$ 45,469.00	18.00	\$ 8,184.42	\$ 37,284.58	\$ 37,284.58
Standard Options - Per Unit							
0202	United States	1	\$ 0.00	18.00	\$ 0.00	\$ 0.00	\$ 0.00
0409	English Operator's Manual and Decal Kit	1	\$ 0.00	18.00	\$ 0.00	\$ 0.00	\$ 0.00
1520	eHydro™	1	\$ 1,418.00	18.00	\$ 255.24	\$ 1,162.76	\$ 1,162.76
1718	Factory Installed Loader with Bucket	1	\$ 7,981.00	18.00	\$ 1,436.58	\$ 6,544.42	\$ 6,544.42
2000	Open Station with Standard Seat	1	\$ 0.00	18.00	\$ 0.00	\$ 0.00	\$ 0.00
4061	Less iMatch™ Quick Hitch Category 1	1	\$ 0.00	18.00	\$ 0.00	\$ 0.00	\$ 0.00
5243	44x18-20 (4PR, R3 Turf, 1 Position)	1	\$ -589.00	18.00	\$ -106.02	\$ -482.98	\$ -482.98
6243	27x10.50-15 (4PR, R3 Turf, 2 Position)	1	\$ 0.00	18.00	\$ 0.00	\$ 0.00	\$ 0.00
Standard Options Total			\$ 8,810.00		\$ 1,585.80	\$ 7,224.20	\$ 7,224.20
Dealer Attachments/Non-Contract/Open Market							
LVA19706	Oil Line	1	\$ 109.38	18.00	\$ 19.69	\$ 89.69	\$ 89.69
LVA19123	Oil Line	1	\$ 165.59	18.00	\$ 29.81	\$ 135.78	\$ 135.78
Dealer Attachments Total			\$ 274.97		\$ 49.50	\$ 225.47	\$ 225.47
Value Added Services Total			\$ 0.00			\$ 0.00	\$ 0.00
Total Selling Price			\$ 54,553.97		\$ 9,819.72	\$ 44,734.25	\$ 44,734.25

**JOHN DEERE**

Selling Equipment

Quote Id: 31625750

Customer Name: CITY OF LUBBOCK PARKS AND RECREATION

**ALL PURCHASE ORDERS MUST BE MADE OUT
TO (VENDOR):**United Ag & Turf
2098 Valley View Lane
FARMERS BRANCH, TX 75234
US**ALL PURCHASE ORDERS MUST BE SENT
TO DELIVERING DEALER:**United Ag & Turf
2098 Valley View Lane
Farmers Branch, TX 75234
214-630-3300
farmersbranchjd@unitedagt.com

JOHN DEERE 485A Backhoe

Equipment Notes:**Hours:****Stock Number:****Selling Price *****Contract:** Sourcewell Grounds Maint 031121-DAC (PG BT
CG 76)**\$ 11,475.08****Price Effective Date:** September 5, 2024

* Price per item - includes Fees and Non-contract items

Code	Description	Qty	List Price	Discount%	Discount Amount	Contract Price	Extended Contract Price
6185LV	485A Backhoe	1	\$ 13,994.00	18.00	\$ 2,518.92	\$ 11,475.08	\$ 11,475.08
Standard Options - Per Unit							
0202	United States	1	\$ 0.00	18.00	\$ 0.00	\$ 0.00	\$ 0.00
0409	English Operator's Manual and Decal Kit	1	\$ 0.00	18.00	\$ 0.00	\$ 0.00	\$ 0.00
1000	Subframe Mounting	1	\$ 0.00	18.00	\$ 0.00	\$ 0.00	\$ 0.00
3012	12 In. Bucket	1	\$ 0.00	18.00	\$ 0.00	\$ 0.00	\$ 0.00
Standard Options Total			\$ 0.00		\$ 0.00	\$ 0.00	\$ 0.00
Total Selling Price			\$ 13,994.00		\$ 2,518.92	\$ 11,475.08	\$ 11,475.08

JOHN DEERE 5075E Open Operator Station Utility Tractor

Equipment Notes:**Hours:****Stock Number:****Selling Price *****Contract:** Sourcewell Ag 082923-DAC (PG BA CG 76)**\$ 43,456.54****Price Effective Date:** September 4, 2024

* Price per item - includes Fees and Non-contract items

Code	Description	Qty	List Price	Discount%	Discount Amount	Contract Price	Extended Contract Price
08C0LV	5075E Open Operator Station Utility Tractor	1	\$ 35,041.00	14.00	\$ 4,905.74	\$ 30,135.26	\$ 30,135.26
Standard Options - Per Unit							
183N	JDLink™ Modem	1	\$ 0.00	14.00	\$ 0.00	\$ 0.00	\$ 0.00
0202	United States	1	\$ 0.00	14.00	\$ 0.00	\$ 0.00	\$ 0.00

Confidential



Selling Equipment

Quote Id: 31625750

Customer Name: CITY OF LUBBOCK PARKS AND RECREATION

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2098 Valley View Lane
FARMERS BRANCH, TX 75234
US

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farmersbranchjd@unitedagt.com

0409	English Operator's Manual	1	\$ 0.00	14.00	\$ 0.00	\$ 0.00	\$ 0.00
0500	Less Package	1	\$ 0.00	14.00	\$ 0.00	\$ 0.00	\$ 0.00
1363	SyncShuttle™ 9F/3R TSS Transmission with 540 PTO	1	\$ 0.00	14.00	\$ 0.00	\$ 0.00	\$ 0.00
1799	Less Loader Prep Package	1	\$ 0.00	14.00	\$ 0.00	\$ 0.00	\$ 0.00
2006	Open Operator Station - MFWD	1	\$ 0.00	14.00	\$ 0.00	\$ 0.00	\$ 0.00
3310	Single Mechanical Stackable Rear SCV	1	\$ 0.00	14.00	\$ 0.00	\$ 0.00	\$ 0.00
3400	Less Mid Valves	1	\$ 0.00	14.00	\$ 0.00	\$ 0.00	\$ 0.00
5185	16.9-28 In. 6PR R1 Bias	1	\$ 0.00	14.00	\$ 0.00	\$ 0.00	\$ 0.00
6040	Mechanical Front Wheel Drive (MFWD)	1	\$ 6,632.00	14.00	\$ 928.48	\$ 5,703.52	\$ 5,703.52
6111	11.2-24 10PR R1 Bias	1	\$ 1,416.00	14.00	\$ 198.24	\$ 1,217.76	\$ 1,217.76
Standard Options Total			\$ 8,048.00		\$ 1,126.72	\$ 6,921.28	\$ 6,921.28
Dealer Attachments/Non-Contract/Open Market							
Open Market	Delivery	1	\$ 400.00	0.00	\$ 0.00	\$ 400.00	\$ 400.00
Open Market	Turf Tires & Rims	1	\$ 6,000.00	0.00	\$ 0.00	\$ 6,000.00	\$ 6,000.00
Dealer Attachments Total			\$ 6,400.00		\$ 0.00	\$ 6,400.00	\$ 6,400.00
Value Added Services Total			\$ 0.00			\$ 0.00	\$ 0.00
Total Selling Price			\$ 49,489.00		\$ 6,032.46	\$ 43,456.54	\$ 43,456.54

JOHN DEERE 2038R Compact Utility Tractor (30 PTO hp)

Equipment Notes:

Hours:

Stock Number:

Selling Price *

Contract: Sourcwell Grounds Maint 031121-DAC (PG BT
CG 76)

\$ 26,082.53

Price Effective Date: September 11, 2024

* Price per item - includes Fees and Non-contract items

**JOHN DEERE**

Selling Equipment

Quote Id: 31625750

Customer Name: CITY OF LUBBOCK PARKS AND RECREATION

ALL PURCHASE ORDERS MUST BE MADE OUT TO (VENDOR):

United Ag & Turf
2098 Valley View Lane
FARMERS BRANCH, TX 75234
US

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United Ag & Turf
2098 Valley View Lane
Farmers Branch, TX 75234
214-630-3300
farmersbranchjd@unitedagt.com

Code	Description	Qty	List Price	Discount%	Discount Amount	Contract Price	Extended Contract Price
1556LV	2038R Compact Utility Tractor (30 PTO hp)	1	\$ 31,253.00	18.00	\$ 5,625.54	\$ 25,627.46	\$ 25,627.46
Standard Options - Per Unit							
0202	United States	1	\$ 0.00	18.00	\$ 0.00	\$ 0.00	\$ 0.00
0409	English	1	\$ 0.00	18.00	\$ 0.00	\$ 0.00	\$ 0.00
1795	Less Loader	1	\$ 0.00	18.00	\$ 0.00	\$ 0.00	\$ 0.00
4061	Less iMatch™ Quick Hitch	1	\$ 0.00	18.00	\$ 0.00	\$ 0.00	\$ 0.00
5207	14-17.5 (4PR, R3 Turf, 1 Position) Bias Ply	1	\$ -78.00	18.00	\$ -14.04	\$ -63.96	\$ -63.96
6207	23X8.50-14 (4PR, R3 Turf, 1 Position) Bias Ply	1	\$ -73.00	18.00	\$ -13.14	\$ -59.86	\$ -59.86
Standard Options Total			\$ -151.00		\$ -27.18	\$ -123.82	\$ -123.82
Dealer Attachments/Non-Contract/Open Market							
UC13263	Quik-Tatch Weight, 42 lb (19 kg)	6	\$ 80.26	18.00	\$ 14.45	\$ 394.86	\$ 394.86
LVB24952	Front Weight Bracket Extension Kit	1	\$ 224.40	18.00	\$ 40.39	\$ 184.01	\$ 184.01
Dealer Attachments Total			\$ 705.96		\$ 127.09	\$ 578.87	\$ 578.87
Value Added Services Total			\$ 0.00			\$ 0.00	\$ 0.00
Total Selling Price			\$ 31,807.96		\$ 5,725.45	\$ 26,082.51	\$ 26,082.51

DAKOTA 410 Pull Behind Top Dresser **UAT BuyBoard Contract 706-23 ****Equipment Notes:**

Hours: 0

Stock Number:

Selling Price *

Contract:

\$ 21,780.00

Price Effective Date:

* Price per item - includes Fees and Non-contract items

Code	Description	Qty	List Price	Discount%	Discount Amount	Contract Price	Extended Contract Price
C4111	Dakota 410 Pull Behind Topdresser	1	\$ 20,380.00	0.00	\$ 0.00	\$ 20,380.00	\$ 20,380.00

Confidential



Selling Equipment

Quote Id: 31625750

Customer Name: CITY OF LUBBOCK PARKS AND RECREATION

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TO (VENDOR):**

United Ag & Turf
2098 Valley View Lane
FARMERS BRANCH, TX 75234
US

**ALL PURCHASE ORDERS MUST BE SENT
TO DELIVERING DEALER:**

United Ag & Turf
2098 Valley View Lane
Farmers Branch, TX 75234
214-630-3300
farmersbranchjd@unitedagt.com

Dealer Attachments/Non-Contract/Open Market							
Factory	Freight	1	\$ 600.00	0.00	\$ 0.00	\$ 600.00	\$ 600.00
Shop	Setup	1	\$ 400.00	0.00	\$ 0.00	\$ 400.00	\$ 400.00
Open	Delivery Fee	1	\$ 400.00	0.00	\$ 0.00	\$ 400.00	\$ 400.00
Market							
Dealer Attachments Total			\$ 1,400.00		\$ 0.00	\$ 1,400.00	\$ 1,400.00
Total Selling Price			\$ 21,780.00		\$ 0.00	\$ 21,780.00	\$ 21,780.00

BUFFALO TURBINE BLOWER ** UAT BuyBoard 706-23 **

Equipment Notes:

Hours: 0

Stock Number:

Selling Price *

Contract:

\$ 11,699.00

Price Effective Date:

* Price per item - includes Fees and Non-contract items

Code	Description	Qty	List Price	Discount%	Discount Amount	Contract Price	Extended Contract Price
BT-CKB 6	Buffalo Blower with Wireless Remote	2	\$ 10,499.00	0.00	\$ 0.00	\$ 10,499.00	\$ 20,998.00
Dealer Attachments/Non-Contract/Open Market							
Open Market	Delivery	2	\$ 200.00	0.00	\$ 0.00	\$ 200.00	\$ 400.00
Factory	Freight	2	\$ 500.00	0.00	\$ 0.00	\$ 500.00	\$ 1,000.00
Shop	Setup	2	\$ 500.00	0.00	\$ 0.00	\$ 500.00	\$ 1,000.00
Dealer Attachments Total			\$ 1,200.00		\$ 0.00	\$ 1,200.00	\$ 2,400.00
Total Selling Price			\$ 11,699.00		\$ 0.00	\$ 11,699.00	\$ 23,398.00

AGRIMETAL GR 660 **UAT BuyBoard 706-23**

Equipment Notes:

Hours: 0

Stock Number:

Selling Price *

Contract:

\$ 26,120.00

Price Effective Date:

* Price per item - includes Fees and Non-contract items



Selling Equipment

Quote Id: 31625750

Customer Name: CITY OF LUBBOCK PARKS AND RECREATION

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United Ag & Turf
2098 Valley View Lane
FARMERS BRANCH, TX 75234
US

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United Ag & Turf
2098 Valley View Lane
Farmers Branch, TX 75234
214-630-3300
farmersbranchjd@unitedagt.com

Code	Description	Qty	List Price	Discount%	Discount Amount	Contract Price	Extended Contract Price
39-99-0015	AgriMetal Greens Roller w/ Trailer & Light Kit	1	\$ 24,500.00	0.00	\$ 0.00	\$ 24,500.00	\$ 24,500.00
Dealer Attachments/Non-Contract/Open Market							
Factory	Freight	1	\$ 500.00	0.00	\$ 0.00	\$ 500.00	\$ 500.00
Shop	Setup	1	\$ 720.00	0.00	\$ 0.00	\$ 720.00	\$ 720.00
Open Market	Delivery	1	\$ 400.00	0.00	\$ 0.00	\$ 400.00	\$ 400.00
Dealer Attachments Total			\$ 1,620.00		\$ 0.00	\$ 1,620.00	\$ 1,620.00
Total Selling Price			\$ 26,120.00		\$ 0.00	\$ 26,120.00	\$ 26,120.00

WIEDENMANN TERRA GROOM **UAT BuyBoard 706-23**							
Equipment Notes:							
Hours: 0							
Stock Number:						Selling Price *	
Contract:						\$ 6,783.00	
Price Effective Date:							
* Price per item - includes Fees and Non-contract items							
Code	Description	Qty	List Price	Discount%	Discount Amount	Contract Price	Extended Contract Price
515005 0	Terra Groom Drag Brush w/ eElectric bogey wheels	1	\$ 3,905.00	0.00	\$ 0.00	\$ 3,905.00	\$ 3,905.00
Standard Options - Per Unit							
124910 5	Brushes (white) w/Soft Bristles for fine turf	1	\$ 985.00	0.00	\$ 0.00	\$ 985.00	\$ 985.00
515960 0	Warranty Extension for 2nd Year	1	\$ 143.00	0.00	\$ 0.00	\$ 143.00	\$ 143.00
Standard Options Total			\$ 1,128.00		\$ 0.00	\$ 1,128.00	\$ 1,128.00
Dealer Attachments/Non-Contract/Open Market							
Factory	Freight	1	\$ 600.00	0.00	\$ 0.00	\$ 600.00	\$ 600.00
Shop	Setup	1	\$ 750.00	0.00	\$ 0.00	\$ 750.00	\$ 750.00
Open Market	Delivery	1	\$ 400.00	0.00	\$ 0.00	\$ 400.00	\$ 400.00
Dealer Attachments Total			\$ 1,750.00		\$ 0.00	\$ 1,750.00	\$ 1,750.00
Total Selling Price			\$ 6,783.00		\$ 0.00	\$ 6,783.00	\$ 6,783.00

**JOHN DEERE**

Selling Equipment

Quote Id: 31625750

Customer Name: CITY OF LUBBOCK PARKS AND RECREATION

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2098 Valley View Lane
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US**ALL PURCHASE ORDERS MUST BE SENT
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2098 Valley View Lane
Farmers Branch, TX 75234
214-630-3300
farmersbranchjd@unitedagt.com**BERNHARD ED 4300 **UAT BuyBoard 706-23******Equipment Notes:**

Hours: 0

Stock Number:**Selling Price *****Contract:****\$ 65,364.00****Price Effective Date:**

* Price per item - includes Fees and Non-contract items

Code	Description	Qty	List Price	Discount%	Discount Amount	Contract Price	Extended Contract Price
A12497	EXPRESS DUAL 4300 REEL GRINDER	1	\$ 63,824.00	0.00	\$ 0.00	\$ 63,824.00	\$ 63,824.00
Dealer Attachments/Non-Contract/Open Market							
Factory	Freight	1	\$ 1,000.00	0.00	\$ 0.00	\$ 1,000.00	\$ 1,000.00
Shop	Setup	1	\$ 140.00	0.00	\$ 0.00	\$ 140.00	\$ 140.00
Open Market	Delivery	1	\$ 400.00	0.00	\$ 0.00	\$ 400.00	\$ 400.00
Open Market	Free Onsite Training	1	\$ 0.00	0.00	\$ 0.00	\$ 0.00	\$ 0.00
Dealer Attachments Total			\$ 1,540.00		\$ 0.00	\$ 1,540.00	\$ 1,540.00
Total Selling Price			\$ 65,364.00		\$ 0.00	\$ 65,364.00	\$ 65,364.00

BERNHARD AM 4100 **UAT BuyBoard 706-23****Equipment Notes:**

Hours: 0

Stock Number:**Selling Price *****Contract:****\$ 30,696.00****Price Effective Date:**

* Price per item - includes Fees and Non-contract items

Code	Description	Qty	List Price	Discount%	Discount Amount	Contract Price	Extended Contract Price
A11589	ANGLEMASTER 4100 BEDKNIFE GRINDER	1	\$ 30,156.00	0.00	\$ 0.00	\$ 30,156.00	\$ 30,156.00
Dealer Attachments/Non-Contract/Open Market							

**JOHN DEERE**

Selling Equipment

Quote Id: 31625750

Customer Name: CITY OF LUBBOCK PARKS AND RECREATION

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FARMERS BRANCH, TX 75234
US

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farmersbranchjd@unitedagt.com

Open Market	Delivery	1	\$ 400.00	0.00	\$ 0.00	\$ 400.00	\$ 400.00
Shop	Setup	1	\$ 140.00	0.00	\$ 0.00	\$ 140.00	\$ 140.00
Open Market	Free Onsite Training	1	\$ 0.00	0.00	\$ 0.00	\$ 0.00	\$ 0.00
Dealer Attachments Total			\$ 540.00		\$ 0.00	\$ 540.00	\$ 540.00
Total Selling Price			\$ 30,696.00		\$ 0.00	\$ 30,696.00	\$ 30,696.00

WIEDENMANN Terra Spike SL6 **UAT BuyBoard 706-23****Equipment Notes:**

Hours: 0

Stock Number:

Selling Price *

Contract:

\$ 28,477.00

Price Effective Date:

* Price per item - includes Fees and Non-contract items

Code	Description	Qty	List Price	Discount%	Discount Amount	Contract Price	Extended Contract Price
870004 1	Deep Tine Greens Aerification	1	\$ 24,950.00	0.00	\$ 0.00	\$ 24,950.00	\$ 24,950.00
Standard Options - Per Unit							
123768 0	Turf Retainers	1	\$ 850.00	0.00	\$ 0.00	\$ 850.00	\$ 850.00
Standard Options Total			\$ 850.00		\$ 0.00	\$ 850.00	\$ 850.00
Dealer Attachments/Non-Contract/Open Market							
1237970	Multi Tine Holder	6	\$ 275.00	0.00	\$ 0.00	\$ 1,650.00	\$ 1,650.00
Factory	Freight	1	\$ 600.00	0.00	\$ 0.00	\$ 600.00	\$ 600.00
Shop	Setup	1	\$ 427.00	0.00	\$ 0.00	\$ 427.00	\$ 427.00
Dealer Attachments Total			\$ 2,677.00		\$ 0.00	\$ 2,677.00	\$ 2,677.00
Total Selling Price			\$ 28,477.00		\$ 0.00	\$ 28,477.00	\$ 28,477.00



Extended Repair Plan Proposal

PowerGard™ Protection Plan Residential

Date : November 22, 2024

Machine/Use Information

Plan Description

Price

Manufacturer JOHN DEERE

Plan Type:

Deductible:

Equipment Type 4066M TRAC

Coverage:

Quoted Price \$ 0.00

Model 4066M TRAC

Total Months:

Total Hours:

THIS PROPOSAL IS VALID FOR 30-DAYS FROM DATE ISSUED. GRACE pricing is offered only early during the Deere basic warranty period and has no surcharges. After this period, DELAYED PURCHASE pricing (surcharged) is offered later during the John Deere Basic Warranty. Many PowerGard quotes presented in the Delayed Purchase Period will require inspection/certification process and must also pass fluid testing. The Total Months and Total Hours listed above include the John Deere Basic Warranty terms (24 months / 2000 hours on Tractors, 24 months on Golf & Turf Products, 12 months for all AG Harvesting and Sprayer equipment, and 12 months/1000 hours on most Gator Utility Vehicles). "Limited" Plan coverage = Engine & Powertrain only. "Comprehensive" Plan coverage = Full Machine.

Proposal Prepared for:

I have been offered this coverage and

Customer Name - Please Print

☐ I ACCEPT the Residential plan

☒ I DECLINE the Residential plan

Customer Signature

If declined, I fully understand that my equipment listed above is not covered for repair expenses due to component failures beyond the original basic warranty period provided by John Deere.

Note : This is not a contract. For specific PowerGard™ Protection plan Residential coverage, please refer to the terms and conditions on John Deere's public website(www.JohnDeere.com) under Services & Support >Warranty > Extended Warranties > PowerGard protection plan Residential.

Date : November 22, 2024

Machine/Use Information

Plan Description

Price

Manufacturer JOHN DEERE

Plan Type:

Deductible:

Equipment Type 5075E TRACT

Coverage:

Quoted Price \$ 0.00

Model 5075E TRACT

Total Months:

Total Hours:

THIS PROPOSAL IS VALID FOR 30-DAYS FROM DATE ISSUED. GRACE pricing is offered only early during the Deere basic warranty period and has no surcharges. After this period, DELAYED PURCHASE pricing (surcharged) is offered later during the John Deere Basic Warranty. Many PowerGard quotes presented in the Delayed Purchase Period will require inspection/certification process and must also pass fluid testing. The Total Months and Total Hours listed above include the John Deere Basic Warranty terms (24 months / 2000 hours on Tractors, 24 months on Golf & Turf Products, 12 months for all AG Harvesting and Sprayer equipment, and 12 months/1000 hours on most Gator Utility Vehicles). "Limited" Plan coverage = Engine & Powertrain only. "Comprehensive" Plan coverage = Full Machine.



JOHN DEERE

Proposal Prepared for:

I have been offered this coverage and

Customer Name - Please Print

☐ I ACCEPT the Residential plan

☒ I DECLINE the Residential plan

Customer Signature

If declined, I fully understand that my equipment listed above is not covered for repair expenses due to component failures beyond the original basic warranty period provided by John Deere.

Note : This is not a contract. For specific PowerGard™ Protection plan Residential coverage, please refer to the terms and conditions on John Deere's public website(www.JohnDeere.com) under Services & Support >Warranty > Extended Warranties > PowerGard protection plan Residential.

Date : November 22, 2024

Machine/Use Information

Plan Description

Price

Manufacturer **JOHN DEERE**

Plan Type:

Deductible:

Equipment Type 2038R TRAC

Coverage:

Quoted Price \$ 0.00

Model 2038R TRAC

Total Months:

Total Hours:

THIS PROPOSAL IS VALID FOR 30-DAYS FROM DATE ISSUED. GRACE pricing is offered only early during the Deere basic warranty period and has no surcharges. After this period, DELAYED PURCHASE pricing (surcharged) is offered later during the John Deere Basic Warranty. Many PowerGard quotes presented in the Delayed Purchase Period will require inspection/certification process and must also pass fluid testing. The Total Months and Total Hours listed above include the John Deere Basic Warranty terms (24 months / 2000 hours on Tractors, 24 months on Golf & Turf Products, 12 months for all AG Harvesting and Sprayer equipment, and 12 months/1000 hours on most Gator Utility Vehicles). "Limited" Plan coverage = Engine & Powertrain only. "Comprehensive" Plan coverage = Full Machine.

Proposal Prepared for:

I have been offered this coverage and

Customer Name - Please Print

☐ I ACCEPT the Residential plan

☒ I DECLINE the Residential plan

Customer Signature

If declined, I fully understand that my equipment listed above is not covered for repair expenses due to component failures beyond the original basic warranty period provided by John Deere.

Note : This is not a contract. For specific PowerGard™ Protection plan Residential coverage, please refer to the terms and conditions on John Deere's public website(www.JohnDeere.com) under Services & Support >Warranty > Extended Warranties > PowerGard protection plan Residential.

PowerGard™ Protection Plan Residential (Residential plan) is:

The PowerGard™ Protection Plan Residential is an extended repair plan that provides parts and labor coverage up to four years beyond the manufacturer's warranty. It is available on all riding lawn equipment, zero-turn radius mowers, utility vehicles, utility tractors and compact utility tractors. Your John Deere equipment will be in the hands of qualified, certified technicians from John Deere dealers using Genuine John Deere Parts.

Not covered under a Residential plan:

Residential plans do not cover routine maintenance services or items normally designed to be replaced by the purchaser due to normal wear and tear. They do not cover any product used for commercial or rental applications. They also do not cover repairs for damage from accident, misuse, fire, theft, or exposure to weather conditions such as lightning, hail, flood or water. See the actual PowerGard™ Protection Plan Residential Terms and Conditions for a complete listing of coverage, and limitations and conditions under the program.



Benefits of a Residential plan:

- Offer the choice of adding up to 4 years of repair coverage beyond the machine's factory warranty.
- Do not require preapproval before repairs are made by the authorized John Deere dealership.
- Is transferable by the original purchaser for the balance of the original agreement period.
- Ensures higher resale value and makes equipment more marketable during sale or trade-in.
- Comprehensive Plans:
 - No deductibles and no out-of-pocket costs on covered repairs.
 - Free transportation for factory warranty and extended repair plan repairs for the term of the plan (Note: A surcharge may apply for machines located outside of the dealership's normal service area).
- Limited Powertrain Plans:
 - Low deductibles on covered repairs
 - Do not provide transportation coverage

Information

Agenda Item

Resolution - Information Technology: Consider a resolution authorizing the Mayor to execute Amendment No. 4 to Contract 12643, with Environmental Systems Research Institute, Inc., for Geographic Information Systems Software and Services.

Item Summary

In December 2012, the City of Lubbock contracted with Environmental Services Research Institute (ESRI) for Geographic Information Systems (GIS) Software and Services. ESRI is the industry standard mapping software that provides spatial information for a variety of third-party software systems used by the City, including Asset Management and Permit and Licensing Systems. The City renewed this contract in 2015, 2018, and 2021.

The contract continues the City's successful relationship with ESRI, by entering into an agreement for another 3 years, from December 17, 2024, through December 16, 2027. This contract is an Enterprise License Agreement (ELA), which is a bundled package for licensing software, technical services, web services, and maintenance. This gives City departments access to a variety of ESRI software, plus technical services and training. The contract provides software and services for all City departments, including Public Safety, Engineering, Planning, Public Works, Parks, and Lubbock Power & Light.

ESRI is the owner and manufacturer of their GIS software, and is the sole source of all U.S. domestic ELA's. Therefore, this is a sole source procurement, exempt from competitive bidding, pursuant to Texas Local Government Code Chapter 252.022 (a)(7)(A).

Fiscal Impact

The first year cost of this ELA is \$380,000, with a total 3-year contract amount of \$1,140,000, which is funded in the Information Technology Operating Budget.

Staff/Board Recommending

Brooke Witcher, Assistant City Manager
Jennifer Frescaz, Chief Information Officer

Attachments

Resolution - ESRI Contract
Amendment No. 4 - ESRI Contract

RESOLUTION

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

THAT the Mayor of the City of Lubbock is hereby authorized and directed to execute for and on behalf of the City of Lubbock, an amendment to renew, modify, and extend Service Contract No. 12643 for Geographic Information Systems (GIS) Software & Services, by and between the City of Lubbock and Environmental Systems Research Institute Inc. (ESRI), and related documents. Said Amendment is attached hereto and incorporated in this resolution as if fully set forth herein and shall be included in the minutes of the City Council.

Passed by the City Council on _____.

MARK W. MCBRAYER, MAYOR

ATTEST:

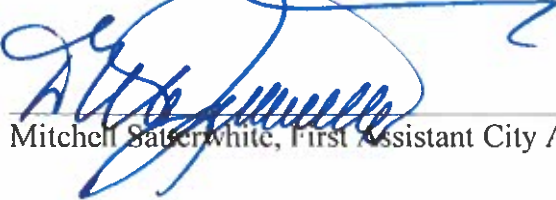
Courtney Paz, City Secretary

APPROVED AS TO CONTENT:



Brooke Witcher, Assistant City Manager

APPROVED AS TO FORM:



Mitchell Sasserwhite, First Assistant City Attorney

Amendment No. 4 Agreement No. 237354 (formerly 2015ELA3977)



This Amendment No. 4 is entered into by and between City of Lubbock, Texas ("City"), and Environmental Systems Research Institute, Inc. ("Esri"), and is effective as of December 17, 2024 ("Amendment No. 4 Effective Date").

WHEREAS, Esri and City entered into an Enterprise Agreement with an effective date of December 17, 2015 (hereinafter "EA" or "Agreement"); and

WHEREAS, the parties desire to amend the Agreement to extend the term for an additional three (3) years for an additional one million one hundred forty thousand dollars (\$1,140,000) and update applicable language and appendices;

NOW THEREFORE, the parties agree to the following:

1. Article 1 Definitions. Delete and replace "License Agreement" with the following:

"License Agreement" means Master Agreement No. 00333418.0. If the signed Master Agreement excludes terms and conditions applicable for the use of EA Products or Services included in this EA, including but not limited to the Advantage Program, such applicable terms and conditions found in the Master Agreement, Products and Services (E204) at <https://www.esri.com/en-us/legal/terms/full-master-agreement> shall apply."

2. All references to Esri Enterprise Advantage Program (EEAP) Enterprise Agreement (EA) Addendum (E125-EA) 2015EAP3977 is hereby deleted from the Agreement. Advantage Program terms and conditions shall be subject to those applicable terms in the License Agreement.
3. Article 7.1 Term. The term of this Agreement is extended for an additional three (3) years from December 17, 2024, through December 16, 2027, unless this Agreement is terminated earlier as provided therein.
4. Delete and replace Appendix A Products and Deployment Schedule with the attached Appendix A Products and Deployment Schedule, which shall supersede and apply on the Amendment No. 4 Effective Date.
5. Delete and replace Appendix B EA Fee Schedule with the attached Appendix B EA Fee Schedule, which shall supersede and apply on the Amendment No. 4 Effective Date.
6. Delete and replace Appendix D EA Points of Contact with the attached Appendix D EA Points of Contact, which shall supersede and apply on the Amendment No. 4 Effective Date.

Except as may be specifically modified by this Amendment No. 4, all other terms and conditions of the Agreement and any Amendment(s) or Addendum(s) constitute the entire agreement between the parties and supersede all prior and contemporaneous agreements or representations, written or oral, concerning the subject matter of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment No. 4 as of the date of the last party to sign below.

ACCEPTED AND AGREED:

CITY OF LUBBOCK, TEXAS
(City)

By: _____
Authorized Signature

Printed Name: MARK McBrayer

Title: MAYOR

Date: _____

ENVIRONMENTAL SYSTEMS
RESEARCH INSTITUTE, INC.
(Esri)

By: Tamisa Greening
Authorized Signature

Printed Name: Tamisa Greening

Title: Director, Contracts & Legal

Date: 11.13.24

ATTEST: _____
Courtney Paz, City Secretary

APPROVED AS TO CONTENT:

Jennifer Frescaz
Jennifer Frescaz, Chief Information Officer

APPROVED AS TO FORM:

Mitch Satterwhite
Mitch Satterwhite, First Assistant City Attorney

**APPENDIX A
PRODUCTS AND DEPLOYMENT SCHEDULE**

City may Deploy the EA Products up to the total quantity of licenses indicated below to Customers during the term of this EA.

**Table A-1
EA Products—Uncapped Quantities**

Product	Quantity
ArcGIS Enterprise: ArcGIS Enterprise (Advanced and Standard)	Uncapped
ArcGIS Enterprise Extensions: ArcGIS 3D Analyst, ArcGIS Data Reviewer, ArcGIS Geostatistical Analyst, ArcGIS Network Analyst, ArcGIS Schematics, ArcGIS Spatial Analyst, and ArcGIS Workflow Manager	Uncapped
ArcGIS GIS Server: Advanced, Standard, Basic	Uncapped
ArcGIS Enterprise Additional Capability Servers: ArcGIS Image Server, ArcGIS GeoEvent Server	Uncapped
ArcGIS Monitor	Uncapped
ArcGIS Runtime Advanced	Uncapped
ArcGIS Runtime Analysis Extension	Uncapped

**Table A-2
EA Products—Capped Quantities**

Perpetual Products	Existing Qty	Qty to be deployed	Total
ArcGIS Desktop Advanced – Concurrent Use Rolled-In	50	0	50
ArcGIS Data Interoperability for Desktop Concurrent Use Rolled-In	6	0	6
ArcGIS Workflow Manager Server Advanced Up to Four Cores Perpetual License	0	1	1
ArcGIS Knowledge Server Up to Four Cores Perpetual License	0	1	1

Annual Subscription Products	Term 1	Term 2	Term 3
ArcGIS Data Interoperability for ArcGIS Pro (Add-on App) for ArcGIS Online Creator or Professional User Type Annual Subscription	10	10	10
ArcGIS Drone2Map Standard for ArcGIS Online Annual Subscription	1	1	2
ArcGIS Business Analyst Web App Standard Online Annual Subscription	10	10	10
ArcGIS Developer Bundle Annual Subscription	1	1	1

User Type Products	Term 1	Term 2	Term 3
ArcGIS Enterprise			
ArcGIS Enterprise Mobile Worker Annual Subscription	30	40	50
ArcGIS Enterprise Creator Annual Subscription	40	50	60
ArcGIS Online			
ArcGIS Online Organizational Subscriptions: 3	N/A	N/A	N/A
ArcGIS Online Viewer Annual Subscriptions	175	200	225
ArcGIS Online Mobile Worker Annual Subscriptions	30	40	50
ArcGIS Online Creator Annual Subscriptions	90	100	110
ArcGIS Online Professional Plus (formerly Advanced) User Type Annual Subscription (500 Annual Credits / User)	50	50	50

**APPENDIX B
EA FEE SCHEDULE**

The EA Fee is **\$1,140,000**. The EA Fee is in consideration of the EA Products, EA Maintenance, Esri User Conference registrations, and Advantage Program.

	Year 1	Year 2	Year 3	EA Fee
Payments	\$380,000	\$380,000	\$380,000	\$1,140,000

Number of Esri User Conference Registrations per Year	3
Number of Tier 1 Help Desk Callers That May Contact Esri for Tier 2 Support	7
Number of Sets of Backup Media, if Requested	2
Advantage Program (AP)	100 Advisor Hours per Year 50 Learning and Services Credits per Year
Term of EA	Three (3) Years 12/17/2024 – 12/16/2027

**APPENDIX D
EA POINTS OF CONTACT**

Either party may change its point of contact by written notice to the other party.

1. Esri point of contact for order processing issues:

Name: Customer Service
Esri
380 New York Street
Redlands, CA 92373-8100
Email: service@esri.com
Phone: 888-377-4575
Fax: 909-307-3083

2. Esri contact for Tier 2 Support issues:

MyEsri: <https://my.esri.com>
Phone: 909-793-3774 (within the United States only)
Web: <https://support.esri.com>

3. City centralized point of contact for order release and administrative issues:

Name: Jennifer Frescaz, Chief Information Officer
Email: jfrescaz@mylubbock.us
Phone: 806-775-2366
Fax:

4. All invoices to City will be mailed to the address listed below:

City Office: IT
Name: Jay Zhine
Address: PO Box 2000
Lubbock TX 79457

5. All deliverables to City will be shipped to the address listed below:

City Office: IT
Name: Susan Nagihara
Address: PO Box 2000
Lubbock TX 79457

6. All notices to City will be mailed to the address listed below:

City Office:
Name: Jennifer Frescaz, Chief Information Officer
Address: PO Box 2000
Lubbock TX 79457

Master Agreement Product and Services



Agreement No. 00333418.0

This Master Agreement ("Agreement") is between the entity shown below ("Customer") and **Environmental Systems Research Institute, Inc. ("Esri")**, a California corporation with a place of business at 380 New York Street, Redlands, California 92373-8100 USA.

This Agreement is the sole and entire agreement of the parties as to the subject matter of this Agreement and supersedes any previous agreements, understandings, and arrangements relating to such subject matter. Neither party has relied on any statement, representation, or warranty not expressly stated in this Agreement. This Agreement comprises this signature page, the terms and conditions that begin on the following page, and all referenced attachments. Except for Product or Service descriptions, quantities, pricing, and delivery instructions, or as agreed in an Ordering Document signed by both parties, all terms included in any Ordering Document are void and of no effect. Any modification(s) or amendment(s) to this Agreement must be in writing and signed by both parties.

The parties may sign this Agreement in counterparts or via electronic signatures; such execution is valid even if an original paper document bearing both parties' original signatures is not delivered. This Agreement is executed and effective as of the last date signed below.

The authorized representatives of each party accept and agree to the terms of this Agreement by signing below:

**City of Lubbock
(Customer)**

**Environmental Systems Research Institute, Inc.
(Esri)**

Signature:

Signature:

Printed Name: Mark McBrayer

Printed Name: Tamisa Greening

Title: MAYOR

Title: Director, Contracts & Legal

Date: _____

Date: 11.13.24

ATTEST:

Courtney Paz, City Secretary

APPROVED AS TO CONTENT:

Jennifer Frescaz
Jennifer Frescaz, Chief Information Officer

APPROVED AS TO FORM:

Mitch Satterwhite
Mitch Satterwhite, First Assistant City Attorney

Customer Contact Information

Contact: Jennifer Frescaz, CIO

Telephone: 806-775-2372

Address: PO Box 2000

Fax: _____

City, State, ZIP: Lubbock TX 79457

Email: Jfrescaz@mylubbock.us

Attachment A contains definitions of capitalized terms used throughout this Agreement. Each section of this Agreement may include additional definitions that are used exclusively within that section.

1.0 GENERAL GRANT OF RIGHTS AND RESTRICTIONS

1.1 Grant of Rights. In consideration of Customer's payment of all applicable fees and in accordance with this Agreement, Esri

- a. Provides Services as set forth in this Agreement;
- b. Grants to Customer a nonexclusive, nontransferable right and license or subscription to access and use Esri Offerings as set forth in the Specifications and applicable Ordering Documents; and
- c. Authorizes Customer to copy and make derivative works of the Documentation for Customer's own internal use in conjunction with Customer's authorized use of Esri Offerings. Customer will include the following copyright attribution notice acknowledging the proprietary rights of Esri and its licensors in any derivative work:

"Portions of this document include intellectual property of Esri and its licensors and are used under license. Copyright © [Customer will insert the actual copyright date(s) from the source materials.] Esri and its licensors. All rights reserved."

The grants of rights in this section (i) continue for the duration of the subscription or applicable Term or perpetually if no Term is applicable or identified in the Ordering Documents and (ii) are subject to additional rights and restrictions in this Agreement including Attachment B.

1.2 Consultant or Contractor Access. Customer may authorize its consultants or contractors to (i) host Esri Offerings for Customer's benefit and (ii) use Esri Offerings exclusively for Customer's benefit. Customer will be solely responsible for its consultants' and contractors' compliance with this Agreement and will ensure that each consultant or contractor discontinues use of Esri Offerings upon completion of work for Customer. Access to or use of Esri Offerings by consultants or contractors that is not exclusively for Customer's benefit is prohibited.

1.3 Reservation of Rights. All Esri Offerings are the copyrighted works of Esri or its licensors; all rights not specifically granted in this Agreement are reserved.

1.4 Customer Content. Esri does not acquire any rights in Customer Content under this Agreement other than as needed to provide Esri Offerings and Services to Customer.

2.0 SOFTWARE AND ONLINE SERVICES

2.1 Definitions. The following definitions supplement the definitions provided in Attachment A:

- a. **"Anonymous Users"** means all who have public access (i.e., without having to provide a Named User Credential) to any part of Customer Content or Customer's Value-Added Applications.
- b. **"App Login Credential(s)"** means a system-generated application login and associated password, provided when registering a Value-Added Application with Online Services, which when embedded in a Value-Added Application allows the Value-Added Application to access and use Online Services.
- c. **"Commercial App Deployment License"** means a license to distribute Value-Added Applications to third parties for a fee.
- d. **"Concurrent Use License"** means a license to install and use Software on computer(s) on a network, provided that the number of simultaneous users may not exceed the number of licenses acquired. A Concurrent Use License includes the right to run passive failover instances of Concurrent Use License management software in a separate operating system environment for temporary failover support.
- e. **"Deployment License"** means a license to incorporate ArcGIS Runtime components in Value-Added Applications and distribute Value-Added Applications to Customer's end users.
- f. **"Deployment Server License"** means a license to use Software under a Server License for all uses permitted in this Agreement and as described in the Documentation.
- g. **"Development Server License"** means a license to use Software under a Server License only to build and test Value-Added Applications as described in the Documentation.

- h. **"Development Use"** means the right to install and use Products to build and test Value-Added Applications as described in the Documentation.
- i. **"Failover License"** means a license to install Software on redundant systems for failover operations, but the redundantly installed Software may be operational only during the period the primary site is nonoperational. Except for system maintenance and updating of databases, the redundant Software installation(s) will remain dormant while the primary site (or any other redundant site) is operational.
- j. **"Named User(s)"** is Customer's employee, agent, consultant, or contractor to whom Customer has assigned a unique, secure login credential (identity) enabling access to a Product that requires such identity in order to access identity-managed capabilities within a Product for Customer's exclusive benefit. For educational use, Named Users may include registered students.
- k. **"Named User Credential(s)"** means an individual person's login and associated password enabling that person to access and use Products.
- l. **"Named User License"** means the right for a single Named User to use a specific Esri Offering.
- m. **"Online Services Subscription"** means a limited-term subscription conveying the right for one or more Named Users to access and use Online Services.
- n. **"Redistribution License"** means a license to reproduce and distribute Software provided that
 1. Customer reproduces and distributes the Software in its entirety;
 2. A license agreement that protects the Software to the same extent as this Agreement accompanies each copy of the Software, and the recipient agrees to the terms and conditions of the license agreement;
 3. Customer reproduces all copyright and trademark attributions and notices; and
 4. Customer does not charge a fee to others for the use of the Software.
- o. **"Server License"** means a license to install and use Software on any computer being used as a server. Server Licenses may be subject to a limited number of server cores or distributed deployment on multiple servers as described in the Ordering Documents or Documentation. If the Software description includes failover use rights, each Server License includes a Failover License.
- p. **"Sharing Tools"** means publishing capabilities included with Customer's authorized use of Online Services or ArcGIS Enterprise that allow Customer to make Customer Content and Value-Added Applications available to third parties or Anonymous Users.
- q. **"Single Use License"** means a license for a single authorized end user to install and use Software on a single computer. The single authorized end user may also install a second copy for the end user's exclusive use on a second computer as long as only 1 copy of Software is in use at any time. No other end user may use Software under the same license at the same time for any other purpose.
- r. **"Staging Server License"** means a license to use Software under a Server License to build and test Value-Added Applications and map caches; conduct user acceptance, performance, and load testing of other third-party software; stage new commercial data updates; and conduct training activities as described in the Documentation. Customer may use Value-Added Applications and map caches with Development and Deployment Server Licenses.

2.2 License and Subscription Types. Esri provides Products under one or more of the license or subscription types identified in the definitions above. The Documentation and Ordering Documents identify which license or subscription type(s) applies to the ordered Products.

2.3 Software Terms of Use.

- a. Customer may
 1. Install, access, or store Software and Data on electronic storage device(s);
 2. Make archival copies and routine computer backups;
 3. Install and use a newer version of Software concurrently with the version to be replaced during a reasonable transition period not to exceed 6 months, provided that the deployment of either version does not exceed Customer's licensed quantity; thereafter, Customer will not use more Software in the aggregate than Customer's total licensed quantity. This concurrent use right does not apply to Software licensed for Development Use;
 4. Move Software in the licensed configuration to a replacement computer;

5. Distribute Software and any associated Authorization Codes required for use of a Deployment License to third parties; and
 6. Governmental or not-for-profit organizations that operate a website or offer Internet services may use server Software for revenue-generating purposes on a cost-recovery basis and not for profit.
- b. Customer may customize Software using any macro or scripting language, APIs, or source or object code libraries but only to the extent that such customization is described in the Documentation.
 - c. Customer may use all fonts provided with Software for any authorized use of the Software. Customer may also use Esri fonts separately to print any output created by the Software. Any use restrictions for third-party fonts included with the Software are set forth in the font file itself.
 - d. Esri publishes Product-specific Software terms of use at <https://www.esri.com/legal/scope-of-use>.

2.4 Online Services Terms of Use.

- a. **Online Services Descriptions.** Esri publishes Online Services Subscription-specific terms of use at <https://www.esri.com/legal/scope-of-use>. Use of Online Services is also subject to the Cloud Services terms found in [Attachment B](#).
- b. **Modifications of Online Services.** Esri may change Online Services and associated APIs at any time, subject to 30 days' notice of material changes and 90 days' notice for deprecations. If any modification, discontinuation, or deprecation of Online Services causes a material, adverse impact to Customer's operations, Esri may, at its discretion, attempt to repair, correct, or provide a workaround for Online Services. If a viable solution is not commercially reasonable, Customer may cancel its subscription to Online Services, and when applicable, Esri will issue a prorated refund.
- c. **Sharing Customer Content.** Sharing Customer Content using Sharing Tools enables third parties to use, store, cache, copy, reproduce, (re)distribute, and (re)transmit Customer Content through Online Services. Esri is not responsible for any loss, deletion, modification, or disclosure of Customer Content resulting from use or misuse of Sharing Tools. Customer's use of Sharing Tools is at Customer's sole risk.

2.5 Named User Licenses. Except as expressly set forth in this Agreement, the following terms apply to Software and Online Services for which Customer acquires Named User Licenses.

a. Named Users.

1. Named User login credentials are for designated users only and may not be shared with other individuals.
2. Customer may reassign a Named User License to another user if the former user no longer requires access to the Software or Online Services.
3. Customer may not add third parties as Named Users, other than third parties included within the definition of Named Users.

- b. **Anonymous Users.** Anonymous Users may only access Software or Online Services through Value-Added Applications that provide access to services or Content, that has been published for shared access through the use of Sharing Tools.

2.6 Value-Added Applications.

1. Customer is responsible for the development, operation, and technical support of Customer Content and Value-Added Applications.
2. Customer may not embed a Named User Credential into Value-Added Applications. Value-Added Applications that enable access to Customer Content that is not publicly shared through the use of Sharing Tools must require individual users to log in to the application(s) with their unique Named User login credentials.
3. Customer may embed an App Login Credential into Value-Added Applications that provide access by Anonymous Users to services or Content, that has been published for shared access by Anonymous Users through the use of Sharing Tools.
4. Customer may not embed an App Login Credential into Value-Added Applications that enables access to Customer Content that is not publicly shared through the use of Sharing Tools. Value-Added Applications

that enable access to Customer Content that is not publicly shared through the use of Sharing Tools must require individual users to log in to the application(s) with their unique Named User login credentials.

5. Customer may not provide a third party, other than third parties included within the definition of Named Users, with access to Software or Online Services, other than through Customer's Value-Added Application(s).
6. Customer may transfer Value-Added Applications to any third party for use in conjunction with the third party's own Software license or Online Services Subscription.

2.7 Limited-Use Programs.

- a. **Trial, Evaluation, and Beta Programs.** Products acquired under a trial, evaluation, or Beta program are licensed for evaluation and testing purposes only and not for commercial use. Any such use is at Customer's own risk, and the Products do not qualify for Maintenance. If Customer does not convert to a purchased license or subscription prior to the expiration of the trial, evaluation, or Beta license, Customer may lose any Customer Content and customizations made during the license term. If Customer does not wish to purchase a license or subscription, Customer should export such Customer Content before the license expires.
- b. **Educational Programs.** Customer agrees to use Products provided under an educational program solely for educational purposes during the educational use Term. Customer shall not use Products for any Administrative Use unless Customer has acquired an Administrative Use license. "Administrative Use" means administrative activities that are not directly related to instruction or education, such as asset mapping, facilities management, demographic analysis, routing, campus safety, and accessibility analysis. Customer shall not use Products for revenue-generating or for-profit purposes.
- c. **Grant Programs.** Customer may use Products provided under a grant program for noncommercial purposes only. Except for cost recovery of using and operating the Products, Customer shall not use Products for revenue-generating or for-profit purposes.
- d. **Other Esri Limited-Use Programs.** If Customer acquires Products under any limited-use program not listed above, Customer's use of the Products may be subject to the terms set forth in the applicable launching page or enrollment form or as described on Esri's website in addition to the nonconflicting terms of this Agreement.

3.0 DATA

3.1 Definitions. The following definitions supplement the definitions provided in [Attachment A](#):

- a. **"Business Listing Data"** means any dataset that includes a list of businesses and may include other associated business attributes.
- b. **"Esri Content Package(s)"** means a digital file containing Online Services basemap Data extracted from the Online Services.
- c. **"Street Data"** means Data that includes or depicts information about roads, streets, and related features.

3.2 Permitted Uses.

- a. Unless otherwise authorized in writing, Customer may only use Data with the Products for which Esri has provided the Data.
- b. Subject to the restrictions set forth in this Agreement and provided that Customer affixes an attribution statement to the Data representations acknowledging Esri or its applicable licensor(s) as the source of the portion(s) of the Data used for the Data representation, Customer may:
 1. Create representations of Data in hard-copy or static, electronic format (e.g., PDF, GIF, JPEG, HTML); in ArcGIS Web Maps; or in Esri Story Maps apps for the purposes of visualizing Data (including basic interactions such as panning, zooming, and identifying map features with simple pop-ups); and
 2. Use and include such representations of Data in presentation packages, marketing studies, or other reports or documents containing map images or data summaries derived from the use of Esri Products to third parties.

- c. Customer may take Online Services basemaps offline through Esri Content Packages and subsequently deliver (transfer) them to any device for use with licensed ArcGIS Runtime applications and ArcGIS Desktop. Customer may not otherwise scrape, download, or store Data.
- d. Customer may make any internal use of geocoded results that are obtained and stored in compliance with this Agreement. Customer may not redistribute geocoded results except to (i) use and/or display on a map in connection with Customer's public, non-revenue generating website(s), (ii) permit access to third-parties for the purposes of Customer's business, or (iii) deliver to third parties, on a noncommercial/non-revenue generating basis, static results, static output or static base map renderings.

3.3 Use Restrictions.

- a. Customer may not act directly or authorize its customers to cobrand Data, use Data in any unauthorized service or product, or offer Data through or on behalf of any third party.
- b. Customer may not use or allow third parties to use Data, for the purpose of compiling, enhancing, verifying, supplementing, adding to, or deleting from compilation of information that is sold, rented, published, furnished, or in any manner provided to a third party.
- c. *Business Listing Data.* Unless authorized in writing, Customer may not use Business Listing Data for any direct marketing purposes, resale publication, or distribution to any third party as part of any mailing list, directory, classified advertising, or other compilation of information.
- d. *Street Data.* Customer may use Street Data for mapping, geocoding, routing, and transportation network analysis purposes. Unless otherwise authorized in writing, Customer may not use Street Data for
 - 1. Real-time navigational guidance, including alerting a user about upcoming maneuvers, such as warning of an upcoming turn or calculating an alternate route if a turn is missed;
 - 2. Synchronized multivehicle routing; or
 - 3. Synchronized route optimization.
- e. *Business Analyst Data.* Customer may cache Data provided with ArcGIS Business Analyst Mobile App on a mobile device for use in conjunction with its use of ArcGIS Business Analyst Server. Customer may not otherwise cache or download such Data.
- f. *Partial Dataset Licenses:* If Customer orders a subset of a dataset (e.g., a country, region, state, or local portion of a global database), Customer may use only the licensed subset, not any other portion of the full dataset.
- g. *Michael Bauer Research International Boundaries Data ("MBR Data").* Customer's right to use data downloaded to Customer's premises (e.g., MBR Data stored in ArcGIS Enterprise, ArcGIS Desktop) terminates 2 years after download.

3.4 Supplemental Terms and Conditions for Data. Certain Data licensors require Esri to flow down additional attribution requirements and terms of use to Customer. These terms supplement and amend the terms of this Agreement and are available at www.esri.com/legal/third-party-data.

4.0 MAINTENANCE

4.1 US Customers. Esri will provide Maintenance for Software and Online Services in accordance with the Esri Maintenance and Support Program and this Agreement if Customer is in the United States.

4.2 Customers outside the United States. Customer may obtain maintenance services from their local Esri authorized distributor under the authorized distributor's own standard support policy and in accordance with the Esri Product Life Cycle Support Policy.

5.0 PROFESSIONAL SERVICES

5.1 Definitions. The following definitions supplement the definitions provided in Attachment A:

- a. **"Invention(s)"** means a patentable invention, discovery, innovation, or improvement, excluding Deliverables, relating to the subject matter of a Task Order.

- b. **"Inventor(s)"** means a party's principal, employee, consultant, or independent contractor that solely or jointly develops Inventions during Esri's performance under a Task Order.
- c. **"Professional Service Package(s)"** means a predefined unit of Professional Services, provided at a firm fixed price.

5.2 Permitted Uses. Customer may use, copy, and modify Deliverables solely in conjunction with Customer's authorized use of Products.

5.3 Task Orders and Project Schedule.

- a. Esri will provide Professional Services and Deliverables as specified in the Task Order.
- b. Each Task Order will reference this Agreement and specify the commencement date and, if known, the period of performance.
- c. Task Orders may have the format shown in Attachment C or any other agreed-upon format.
- d. Each party will identify, in writing, the project manager who is responsible for Professional Services and Deliverables described in Task Orders. By written notice to the other party's technical administrator, either party may replace the project manager at any time with a similarly qualified person.
- e. Other than pricing and descriptions of Professional Services to be performed, terms and conditions in a Task Order are not binding unless both parties have signed the Task Order. The terms of a signed Task Order take precedence over conflicting terms in this Agreement.

5.4 Ownership of Deliverables and Inventions.

- a. Esri or its licensors own and retain ownership of Deliverables.
- b. Each party will retain all rights, title and ownership to any Inventions made or conceived solely by the respective Party's Inventors during the term of this Agreement, including, but not limited to, such Inventions that Esri's Inventors solely make or conceive while providing technical assistance pursuant to this Agreement.
- c. The parties will jointly own any Inventions made or conceived jointly by Inventors from both Parties. The Parties will negotiate in good faith and cooperate reasonably in (i) deciding whether or not to seek or maintain, or to continue to seek or maintain, patent protection in any country on any joint Invention and the extent and scope of such protection and (ii) protecting and enforcing any patents issued on such joint Invention.

5.5 Acceptance.

- a. **For Firm Fixed Price Task Orders.** Unless otherwise agreed to in the applicable Task Order, Customer will complete its acceptance review within 10 working days of receiving each Deliverable and classify the Deliverables as follows:
 - 1. "DELIVERABLE ACCEPTED" means a Deliverable conforming to the applicable Task Order with no more than minor nonconformities.
 - 2. "DELIVERABLE ACCEPTED WITH REWORK" means a Deliverable substantially conforming to the applicable Task Order but having a significant number of identified nonconformities and accepted subject to rework by Esri. Esri will rework the Deliverable for the identified nonconformities and resubmit it within 30 days. Customer will rerun its acceptance review for the nonconformities detected in the initial review within 10 working days of such resubmission and will reclassify the Deliverable as either DELIVERABLE ACCEPTED or DELIVERABLE REJECTED.
 - 3. "DELIVERABLE REJECTED" means a Deliverable that fails to substantially conform to applicable Task Order(s). Esri will rework the Deliverable and resubmit it to Customer within 30 days, at which time Customer will have 10 working days to rerun its acceptance review and reclassify the deliverable as either DELIVERABLE ACCEPTED or DELIVERABLE REJECTED.

Customer may not use any Deliverable in its business operations before acceptance as described in a.1 or a.2. If Customer does not notify Esri in writing within 10 working days after delivery that it has classified the Deliverable as ACCEPTED WITH REWORK or REJECTED in accordance with a.2 or a.3, or if Customer

uses the Deliverable in its business operations, the Deliverable will be deemed, as of the first of either of these events to occur, to have been accepted.

- b. **For Task Orders with Professional Service Packages.** Professional Services that Esri performs under Professional Service Packages will be deemed accepted unless Customer notifies Esri within 10 days after performance. Customer may purchase additional Professional Service Packages as needed to complete Customer's work requirements.
- c. **For Time and Materials Task Orders.** Professional Services are provided strictly on a time and materials basis subject to the Task Order not-to-exceed funding limit. The Professional Services provided will be deemed accepted and in compliance with the professional and technical standards of the software industry unless Customer notifies Esri within 10 days after performance. Deliverables produced under a time and materials Task Order will not be subject to acceptance testing.

5.6 Warranty for Deliverables. Esri warrants to Customer that firm fixed price Deliverables materially comply with Specifications for a period of 90 days from acceptance, subject to the limitations and disclaimers of liability set forth in the "Limited Warranties and Disclaimers" section of Attachment B.

5.7 Changes. The parties may make changes within the general scope of a Task Order by mutual agreement. To document any agreed-to scope changes within the general scope of the Task Order that affects the cost or time required to provide a Deliverable, the parties will jointly sign a written amendment to the Task Order that includes an equitable adjustment in the price, schedule, or both.

5.8 Customer Termination for Convenience. Customer may terminate any Task Order at any time upon 30 days' written notice to Esri and upon payment to Esri of all amounts due to date pursuant to this Agreement, including reasonable expenses incurred as a direct result of the termination and the pro rata contract price for the Task Orders affected.

5.9 Payment; Invoices.

- a. **For Firm Fixed Price Task Orders.** Unless otherwise specified in a Task Order, Esri will prepare and submit monthly invoices based on the percentage of completion for each Deliverable as of the end of the preceding month. Upon acceptance of all Deliverables under a Task Order, the unpaid balance of the total Task Order value is due.
- b. **For Professional Service Packages.** Esri will submit an invoice for Professional Service Packages on receipt of an agreed-upon Task Order. Esri may, at its sole discretion, stop work to avoid exceeding the total labor hours or number of days allotted in the applicable Professional Service Package description set forth in the applicable scope of work. Professional Service Packages expire if not used within 12 months of the Esri invoice date.
- c. **For Time and Materials Task Orders.**
 - 1. Esri will submit to Customer written monthly invoices to the Customer address provided in the Task Order. The invoices will include the payment due for work performed, including travel time, and any other direct costs (ODCs) incurred as authorized under a Task Order. The amount invoiced for labor will be equal to the number of hours expended during the previous month, multiplied by the applicable labor rates. Esri will invoice meals on a per diem basis in accordance with the full daily limits specified on the government Defense Travel website at <https://www.defensetravel.dod.mil/site/perdiemCalc.cfm>. Esri and Customer may include hourly labor rates in this Agreement; if the parties elect to do so, Attachment D will identify the hourly labor rates for each labor category. Esri may change hourly labor rates for Services; any increase in the first 5 years will not exceed 5 percent per year. Esri will invoice ODCs, including travel-related expenses incurred, plus a 15 percent burden.
 - 2. Esri may reallocate the budget between activities, labor categories, and ODCs as necessary to facilitate the work effort, provided the overall price is not exceeded. If Esri reaches the funded not-to-exceed Task Order value and the activities are not completed, Customer may increase the order funding to allow additional work to be performed, or Esri may stop work without further obligation or liability.

5.10 System and Data Access. Each Task Order will specify any requirement for Customer to give Esri personnel access to Customer's systems or data.

6.0 ESRI MANAGED CLOUD SERVICES

6.1 Definitions. The following definitions supplement the definitions provided in Attachment A:

- a. **"Esri Managed Cloud Services Environment"** means the hardware, Software, Data, and network platform that Esri or its third-party supplier provides as part of Esri Managed Cloud Services.
- b. **"Hosting"** means the business of housing and making accessible Customer Content via the Internet.

6.2 Provision of Esri Managed Cloud Services.

- a. **General Terms.** Use of Esri Managed Cloud Services is subject to the Cloud Services terms found in Attachment B of this Agreement.
- b. **Requirements Planning.** It is Customer's responsibility to plan for and address with Esri changes to Customer's requirements, such as the need for additional capacity, the update of an application or dataset, or increased level of system availability.
- c. **Compensation and Expenses.** Esri will invoice Customer for the one-time setup fee upon Task Order execution. Thereafter, Esri will invoice Customer monthly for the Esri Managed Cloud Services to be provided the following month. Customer will pay invoices within 30 days of receipt. Customer is responsible for any shipping or temporary storage costs incurred during the delivery of Customer Content to Esri or removal of Customer Content from the Esri Managed Cloud Services Environment. This paragraph does not apply to Esri Managed Cloud Services provided under the Advantage Program (see the section entitled "Advantage Program" in this Agreement).
- d. **Risk of Loss.** Risk of loss for all Customer Content shall at all times remain with Customer, and it is Customer's sole responsibility to maintain regular backups of Customer Content. Risk of loss for the Esri Managed Cloud Services Environment shall at all times remain with Esri.
- e. **Personally Identifiable Information.** Prior to providing any Customer Content under this Agreement, Customer shall notify Esri if Customer Content includes personally identifiable information.
- f. **Public Software.** Customer may not use, and may not authorize its end users or contractors to combine or use any Esri Offerings with any software (including any underlying dependencies), documentation, or other material distributed under an open source or other similar licensing or distribution model that requires as a condition of such model that any component of the Esri Offering to be (1) disclosed or distributed in source code form, (2) made available free of charge to third parties, or (3) modifiable without restriction by third parties.
- g. **Monitoring.** Customer will provide information and other materials related to its Customer Content as reasonably requested by Esri or its Hosting partner to verify Esri's or Customer's compliance with this Agreement. Esri or its Hosting partner, as applicable, may browse, index, or otherwise monitor the external interfaces of any Customer Content solely for the purpose of verifying compliance with this Agreement.

7.0 TRAINING

7.1 Definitions. The following definitions supplement the definitions provided in Attachment A:

- a. **"Customer-Supplied Training Data"** means any digital dataset(s) including, but not limited to, geographic vector data, coordinates, raster data reports, or associated tabular attributes supplied by Customer for use in training.
- b. **"Esri Academy LMS Integration Subscription"** means an optional term-limited subscription to Esri Academy enabling a specific number of unique Customer student(s) access to Self-Paced E-Learning through the customer's Learning Management System.
- c. **"Esri E-Learning Content (SCORM Format) License"** means an optional term-limited license that provides Esri customers with Esri's e-learning content in SCORM (Shareable Content Object Reference Model) format to import into their Learning Management System.
- d. **"Esri Mobile Lab"** means a service in which Esri will deliver and set up a training environment at the Customer's site for use in conjunction with scheduled Esri Training Events only. The Esri Mobile Lab will include certain hardware, software, power cords, and network switches necessary for the instructor to set up the environment.

- e. **"Esri Training Event(s)"** means an Esri site class, Esri instructor-led online class, a Customer site/private class, workshop, or coaching services.
- f. **"Esri Training Representative"** means Customer's primary Esri liaison in organizing private Esri Training Events.
- g. **"Student(s)"** means a Customer employee or agent who is a registered participant in a specific Esri Training Event or Training-related services. If Customer is an individual, then Student means Customer.
- h. **"Training Pass"** means a nonrefundable, nontransferable block of prepaid training days with a fixed price per day throughout the Term of the Training Pass.
- i. **"Esri Mobile Router"** means a service in which Esri will deliver and setup a mobile router at the Customer's site for use in conjunction with a scheduled Esri Training Event only. The mobile router provides high-speed wireless internet access needed to run the Esri Training Event.
- j. **"Learning Management System" or "LMS"** shall mean third-party software acquired separately by Customer that allows Customer to consume E-Learning Content (SCORM Format) for the purpose of re-serving it to the Customer's internal employees.

7.2 Permitted and Prohibited Uses.

- a. Esri provides Training Materials for Training purposes only and for the exclusive use of the Student who attends the Training course for which the Training Materials are provided.
- b. Customer may reproduce copies of Training Materials for registered Students.
- c. Customer may not and may not permit any Student to (i) separate the component parts of Training Materials for any use or (ii) use audio or video recording equipment during an Esri Training Event.
- d. Esri may issue temporary Product authorizations if Customer has an insufficient number of Products available for Training. Customer may use such Products as Training Materials under the terms of this Agreement. Customer will uninstall all deployed Products and return any media provided by Esri upon conclusion of the Esri Training Event.
- e. Customer will retain ownership of any Customer-Supplied Training Data.

7.3 Esri's Responsibilities.

Esri will

- a. Provide an instructor qualified to conduct Training;
- b. Provide all necessary Training Materials for Student; and
- c. Confirm Esri Training Events approximately 10 business days prior to the scheduled start date. Esri will only confirm Student registrations that include a payment method. Registrations without a confirmed payment method are placed on the reservation waiting list. All reservations on the waiting list are subject to availability. Customer site/Private class and coaching services confirmation is also dependent on receipt of the completed Customer site training request form.

7.4 Customer's Responsibilities.

Customer will

- a. Ensure that all Students have received confirmation from Esri to participate in an Esri Training Event. Esri reserves the right to disconnect any Student who permits unregistered student access to an online classroom Esri Training Event. In such case, the full Esri Training Event fee will be invoiced and payable;
- b. Ensure that all Students meet the minimum prerequisites for the applicable Esri Training Event as listed on Esri's training website;
- c. Submit Student registrations with payment method information at least 15 business days before the scheduled start date;
- d. Provide the Esri Training Representative with a list of names and email addresses of any Students who are to attend an Esri Training Event at least 3 business days before the scheduled start date, for compliance with the US embargoed country lists and the various US Government Lists of Parties of Concern or Specially Designated Nationals lists;

- e. For classes held at the Customer-designated facility, complete a client-site training request form; consult with Esri personnel to determine classroom, computer, and network requirements; and provide all such required classrooms, computers, and network access;
- f. Ensure that Student use of Training Materials provided by Esri complies with the terms of this Agreement; and
- g. Assume full liability and responsibility for Student attending Training course(s) under this Agreement.
- h. If the Esri Mobile Lab or Mobile Router is used, Customer will
 - 1. Take delivery of the Esri Mobile Lab or Mobile Router from the shipping agent, and keep it in a secure, locked area at all times;
 - 2. Immediately report any previously damaged Esri Mobile Lab or Mobile Router equipment to the Esri Training Representative upon receipt of the shipment; and
 - 3. Be financially responsible for loss of, damage to, or theft of Esri Mobile Lab or Mobile Router equipment while in Customer's possession.

7.5 Student Registration and Training Event Change Policy.

- a. Customer will provide advance written notice to Esri Customer Service at service@esri.com to reschedule or cancel any Esri Training Event or to substitute a student in a scheduled Esri Training Event.
- b. A replacement Student must be from the same Customer organization as the Student being replaced.
- c. If Customer reschedules an Esri Training Event three or fewer days before the scheduled start date, Esri will charge Customer 50 percent of the fee plus the cost of the rescheduled Esri Training Event.
- d. If Customer (i) cancels an Esri Training Event 3 or fewer days before the scheduled start date without concurrently rescheduling or (ii) is absent without notice from the Esri Training Event, Customer will be liable for the full Esri Training Event fee.
- e. If cancellation of an Esri Training Event is necessary due to causes beyond the party's reasonable control, the affected party may reschedule or cancel the Esri Training Event without incurring any liability.
- f. *Termination of Agreement.* Students who are currently registered for an Esri Training Event as of the date of termination of this Agreement may attend the scheduled Esri Training Event, subject to the terms and conditions of this Agreement.

7.6 Invoicing; Prepaid Fees.

- a. Esri will invoice Customer upon completion of the Esri Training Event or on purchase of a Training Pass. On Customer request, Esri will invoice in advance for an Esri Training Event.
- b. If Customer is invoiced and pays that invoice prior to the scheduled Esri Training Event, then Customer has 1 year from the date of the invoice to consume training days. For a multiyear order, training days must be consumed by the end date specified on the Esri quotation. Thereafter, all prepaid fees are forfeited.
- c. Training Pass policies and redemption rates are described at <https://www.esri.com/training/training-for-organizations/>.

This section 7.6 does not apply to Training provided under the Advantage Program.

7.7 Availability and General Provision of Wireless Service

- a. Esri will not be liable for any failure of or delay in the performance of this Agreement for the period that such failure or delay is due to wireless service interruptions or unavailability.

7.8 Esri E-Learning in the Customer's Learning Management System

- a. Esri E-Learning Content (SCORM format) License, specific terms of use incorporated by reference are found at <https://www.esri.com/content/dam/esrisites/en-us/media/legal/scorm-lms/scorm-terms-and-conditions.pdf>
- b. Esri Academy LMS Integration Subscription, specific terms of use incorporated by reference are found at <https://www.esri.com/content/dam/esrisites/en-us/media/legal/scorm-lms/lms-terms-and-conditions.pdf>

8.0 ADVANTAGE PROGRAM

8.1 Definitions. The following definitions supplement the definitions provided in Attachment A:

- a. **"Activity Description"** means a mutually agreed upon written statement that confirms the number of Learning and Services Credits that Esri estimates is required to perform an activity and authorizes Esri to begin work based on such estimate. The Activity Description serves as the Task Order for Services provided under the Advantage Program.
- b. **"Advantage Program"** means either Advantage Program, as described at www.esri.com/services/eeap/components, or the Advantage Program for Partners, as described at www.esri.com/partners/bpap/components.
- c. **"Authorized Contact"** means Customer's point of contact for the Advantage Program identified below.
- d. **"Learning and Services Credits"** means a contracted unit of exchange that Customer may use to acquire Professional Services, Training, PSS, Esri Managed Cloud Services, or related travel expenses as described below.
- e. **"Premium Support Services" or "PSS"** means a prioritized incident management and technical support program further described at <https://support.esri.com/en/support/premium>.
- f. **"Advisor"** means an Esri consultant assigned to work with Customer to provide Professional Services such as advising Customer on GIS strategies, facilitating annual planning, and developing and coordinating a collaborative work plan under the Advantage Program.

8.2 Advantage Program Description. The Advantage Program is provided on an order-by-order, annual subscription basis and provides strategy and planning support in addition to a menu of items including Professional Services, Training, PSS, and Esri Managed Cloud Services that Customer can select to best meet its needs with guidance from Advisor. The Advantage Program may change from time to time. The Advantage Program includes the following:

- a. **Advisor.** Customer will receive up to the number of Advisor hours ordered. Customer may elect to retain additional Advisor hours for a supplemental price.
- b. **Annual Planning Meeting.** A 1-day annual planning meeting is included.
- c. **Work Plan.** A collaboratively developed document is designed to drive the program's implementation through definition of Customer's GIS vision, goals, and objectives.
- d. **Learning and Services Credits.** Customer will receive the number of Learning and Services Credits ordered. Customer may use the credits toward any combination of Professional Services, Training, PSS, Esri Managed Cloud Services, or related travel expenses. Customer may order, for an additional price, additional Learning and Services Credits. Learning and Services Credits may be exchanged as described at the applicable Advantage Program website. Esri will provide a monthly report outlining usage of Learning and Services Credits to date to the Authorized Contact.
- e. **Technology Webcasts.** Esri will provide an email invitation to the Authorized Contact for webcasts presenting business and technical information related to enterprise GIS.
- f. **No Project Services.** The Advantage Program is not designed for Esri to provide project-specific Professional Services such as custom application or database development for solutions or applications. Esri will not provide these types of Professional Services under the Advantage Program and does not warrant that Deliverables provided under an Advantage Program will comply with Specifications.

8.3 Authorized Contact Information. Customer identifies the following person as its initial Authorized Contact.

(to be completed by Customer):

Contact Name: Jennifer Frescaz, Chief Information Officer

Address: PO Box 2000

City, State, ZIP: Lubbock TX 79457

Email: jfrescaz@mylubbock.us

Telephone: 806-775-2372

Fax: _____

8.4 Current on Maintenance. Customer must remain current on standard Software Maintenance during the Advantage Program term.

8.5 Authorization of Learning and Services Credits Use. Customer will contact its account manager or Advisor to consume Learning and Services Credits for a particular request. Esri will submit an Activity Description by email to Customer for confirmation and authorization to use Learning and Services Credits. Customer may authorize the consumption of Learning and Services Credits by submitting an email. Esri will begin work and deduct the estimated credit amount stated in the Activity Description from the unused Learning and Services Credits available.

8.6 Activity Descriptions for Esri Managed Cloud Services. The Activity Description for Esri Managed Cloud Services orders must include the following:

- a. **The Esri Managed Cloud Services Term.** The time period in which Esri provides the Esri Managed Cloud Services to Customer. The Esri Managed Cloud Services term does not begin until setup and deployment of the data and application are complete.
- b. **Targeted System Availability.** The minimum percentage of time that Customer has external access to the application and associated Customer Content through the Internet. Examples of supported levels of system availability are 95 percent, 99 percent, and 99.9 percent. Not all Esri Managed Cloud Services offerings include a Targeted System Availability.
- c. **Number of Anticipated Requests.** A The number of requests made by an end user through a client (e.g., desktop computer, web application, mobile device) and sent to a server(s) that is set up in the Esri Managed Cloud Services Environment by Esri and performs computational tasks on behalf of the end user. An example of a common request used in a GIS is a map request. A map request is made every time a user pans, zooms, or queries a map service.
- d. **Amount of Data Storage.** The storage capacity required to retain digital data, which is to be used and consumed in Customer GIS applications or Cloud Services.
- e. **Learning and Services Credits Consumption.** The price for the Esri Managed Cloud Services in Learning and Services Credits.

The Data storage location may be defined in the Activity Description.

8.7 Travel and Per Diem Expenses. Any Esri travel and per diem expenses will be quoted separately. Travel expenses will include a 15 percent burden, and per diem will be determined in accordance with the full daily limits specified on the government Defense Travel website at <https://www.defensetravel.dod.mil/site/perdiemCalc.cfm>. Customer will use Learning and Services Credits for travel and per diem expenses.

8.8 Notification of Consumed Credits. Esri will notify Customer if the authorized Learning and Services Credits are consumed prior to completion of the requested work. Customer may elect to direct the use of additional Learning and Services Credits, if available; procure additional Learning and Services Credits; or notify Esri to stop work on such requested work. Esri reserves the right to stop work if Customer has consumed all its Learning and Services Credits.

8.9 Review of Proposed Activities. Any activities proposed to be completed under the Advantage Program will be subject to Esri's review and approval to ensure alignment with the intent of the program.

8.10 Invoicing.

- a. Esri shall invoice Customer as quoted for the Advantage Program subscription, additional Learning and Services Credits, or Advisor services upon receipt of Customer's order. Subsequently, Esri will invoice annually at least 30 days in advance of the Advantage Program subscription expiration date. Esri will extend the Advantage Program subscription for a subsequent annual term upon receipt of Customer's payment of the renewal invoice. Esri will invoice fees for additional Learning and Services Credits or Advisor services upon receipt of Customer's order.
- b. Pricing for program renewals and new or additional Services will be in accordance with Esri's standard pricing at the time of purchase or renewal.

8.11 Termination and Expiration. Upon termination or expiration of an Advantage Program subscription:

- a. Services will end as of the expiration or termination date stated; and
- b. Unless either party terminates the Advantage Program subscription for cause, Customer may apply any unused Learning and Services Credits toward any Professional Services, Training, PSS, or related travel expenses that are scheduled as of the termination or expiration date, provided that the Learning and Services Credits are used within 3 months after the termination or expiration date. Any other unused Learning and Services Credits will expire 30 days after the expiration or termination date; if Customer renews the Advantage Program subscription within this time period, any unused Learning and Services Credits will remain valid for up to 2 years from the purchase date or termination of this Agreement, whichever comes first.

ATTACHMENT A GLOSSARY OF TERMS

The following glossary of terms applies to all Esri Offerings and Services that Esri may provide to its customers. Certain Esri Offerings or Services may not be within the scope of this Agreement. Please disregard any terms that are not applicable to Esri Offerings or Services offered under this Agreement.

"Affiliate" means any entity that directly or indirectly (i) Controls; (ii) is Controlled by; or (iii) is under common Control with a party, where "Control" means having more than 50 percent of the voting stock or other voting interest in the Controlled entity.

"API" means application programming interface.

"ArcGIS Website" means www.arcgis.com and any related or successor websites.

"Authorization Code(s)" means any key, authorization number, enablement code, login credential, activation code, token, user name and password, or other mechanism required for use of Esri Offerings.

"Beta" means any alpha, beta, or other prerelease version of a Product.

"Cloud Services" means Online Services and Esri Managed Cloud Services.

"Content" means data, images, photographs, animations, video, audio, text, maps, databases, data models, spreadsheets, user interfaces, graphics components, icons, software, and other resources used in connection with Esri Offerings and Services.

"Control" means having more than 50 percent of the voting stock or other voting interest in the Controlled entity.

"Customer Content" means any Content that Customer provides, uses, or develops in connection with Customer's use of Esri Offerings or Services, including Value-Added Applications. Customer Content excludes any feedback, suggestions, or requests for improvements that Customer provides to Esri.

"Data" means any commercially available digital dataset(s) including, but not limited to, geographic vector data, raster data reports, or associated tabular attributes that Esri bundles with other Esri Offerings or delivers independently.

"Deliverables" means anything that Esri delivers to Customer as a result of performance of Professional Services.

"Documentation" means all user reference documentation that Esri provides with a Deliverable or an Esri Offering.

"Esri Managed Cloud Services" means a Customer-specific cloud infrastructure, Software, Data, and network platform that Esri hosts, manages, and makes available to Customer or Customer's end users via the Internet.

"Esri Offering(s)" means any Product or Documentation. If Esri provides Training or Professional Services directly to Customer, then Esri Offerings also include Deliverables and Training Materials. Esri Offerings exclude Services and Third-Party Content.

"GIS" means geographic information system.

"Maintenance" means a subscription program that Esri provides and that entitles Customer to Product updates and other benefits such as access to technical support and self-paced, web-based learning resources.

"Malicious Code" means software viruses; worms; time bombs; Trojan horses; or any other computer code, files, denial of service, or programs designed to interrupt, destroy, or limit the functionality of any computer software, hardware, or telecommunications equipment.

"Online Services" means any commercially available, Internet-based geospatial system that Esri provides, including applications and associated APIs for storing, managing, publishing, and using maps, data, and other information. Online Services exclude Data and Content.

"Ordering Document(s)" means a sales quotation, Maintenance renewal quote, purchase order, proposal, Task Order, or other document identifying Esri Offerings, updates, or Services that Customer orders.

"Perpetual License" means a license to use a version of the Esri Offering for which applicable license fees have been paid, indefinitely, unless terminated by Esri or Customer as authorized under this Agreement.

"Product(s)" means Software, Data, and Online Services.

"Professional Services" means any development or consulting services that Esri provides to Customer.

"Sample(s)" means sample code, sample applications, add-ons, or sample extensions of Products.

"Service(s)" means Maintenance. If Esri provides Esri Managed Cloud Services, Training, or Professional Services directly to Customer, then Services also include Esri Managed Cloud Services, Training, and Professional Services.

"Software" means any proprietary commercial off-the-shelf software, excluding Data, accessed or downloaded from an Esri-authorized website or that Esri delivers on any media in any format including backups, updates, service packs, patches, hot fixes, or permitted merged copies.

"Specification(s)" means (i) the Documentation for Software and Online Services, (ii) the scope of work set forth in any Task Order, or (iii) Esri's published course descriptions for Training.

"Subscription" means a license for use of an Esri Offering for a limited time period or a right to receive Services for a limited time period.

"Task Order(s)" means an Ordering Document for Services.

"Term License" means a license for use of an Esri Offering for a limited time period ("**Term**").

"Third-Party Content" means any Content that Customer may obtain from a third-party website or that persons other than Esri employees, suppliers, or contractors may directly contribute to Esri's website.

"Training" means (i) Product training or (ii) related training that Esri provides under this Agreement.

"Training Materials" means digital or printed Content required to complete Training, which may include, but is not limited to, workbooks, data, concepts, exercises, assessments, and exams.

"Value-Added Application(s)" means an application developed by Customer for use in conjunction with the authorized use of any Software, Data, or Online Services.

ATTACHMENT B GENERAL TERMS AND CONDITIONS

The following general terms and conditions apply to all Esri Offerings and Services that Esri may offer to its customers. Certain Esri Offerings or Services may not be available under this Agreement. Please disregard any terms that are not applicable to Esri Offerings or Services offered under this Agreement.

ARTICLE B.1—GENERAL USE RESTRICTIONS

Except as expressly permitted in this Agreement, Customer will not

- a. Sell, rent, lease, sublicense, distribute, lend, time-share, or assign Services or Esri Offerings;
- b. Distribute or provide direct access to Services or Esri Offerings to third parties, in whole or in part, including, but not limited to, extensions, components, or Dynamic Link Libraries;
- c. Distribute Authorization Codes to third parties;
- d. Reverse engineer, decompile, or disassemble any Product or Deliverable delivered in compiled form;
- e. Make any attempt to circumvent the technological measure(s) that controls access to or use of Esri Offerings;
- f. Store, cache, use, upload, distribute, or sublicense Content or otherwise use Esri Offerings in violation of Esri's or a third-party's rights, including intellectual property rights, privacy rights, nondiscrimination laws, export laws, or any other applicable law or regulation;
- g. Remove or obscure any Esri or its licensors' patent, copyright, trademark, proprietary rights notices, or legends contained in or affixed to any Esri Offerings, output, metadata file, or online or hard-copy attribution page of any Data or Documentation;
- h. Unbundle or independently use individual or component parts of Esri Offerings;
- i. Incorporate any portion of Esri Offerings into a product or service for third-party use that competes with the Esri Offerings;
- j. Publish or in any other way communicate the results of benchmark tests run on Beta Products without the prior written permission of Esri and its licensors; or
- k. Use, incorporate, modify, distribute, provide access to, or combine any Esri Offerings in a manner that would subject any Esri Offering to open-source or open-database license terms (e.g. GPL) that require any part of the Esri Offering to be subject to additional terms, for example
 - 1. Disclosed in source code form to third parties;
 - 2. Licensed to third parties for the purpose of making derivative works; or
 - 3. Redistributable to third parties at no charge; or
- l. Generate revenue by providing access to Software or Online Services through a Value-Added Application.

These restrictions will not apply to the extent that they conflict with applicable law or regulation.

ARTICLE B.2—TERM AND TERMINATION

B.2.1 Customer may terminate this Agreement or any Esri Offerings license or subscription at any time upon written notice to Esri. Termination without cause does not entitle Customer to receive any refund of fees paid. Any right to terminate pending Services engagements for convenience is set forth in the applicable section in the body of this Agreement. Either party may terminate this Agreement or any license or subscription for a material breach that is not cured within 30 days of written notice to the breaching party. Upon any termination of this Agreement for breach, Esri will stop providing Services. Any licenses in Esri Offerings that survive termination of this Agreement continue under the terms of this Agreement.

B.2.2 If Esri terminates this Agreement following Customer's breach, then Esri may also, at its election, terminate Customer's licenses or subscriptions to Esri Offerings. If Customer terminates this Agreement for cause or convenience, then Customer may, at its election, also terminate Customer's licenses or subscriptions to Esri Offerings.

B.2.3 Upon any termination or expiration of a license or subscription, Customer will

- a. Stop accessing and using the terminated or expired Esri Offerings;
- b. Clear any client-side data cache derived from the terminated or expired Cloud Services; and
- c. Stop using and uninstall, remove, and destroy all copies of the terminated or expired Esri Offerings in Customer's possession or control, including any modified or merged portions thereof, in any form, and execute and deliver evidence of such actions to Esri or its authorized distributor.

Esri may stop performing Services immediately upon written notice to Customer if a bankruptcy or insolvency proceeding is commenced by or against Customer until the trustee cures any existing defaults and provides adequate assurance of future performance under this Agreement. This Agreement terminates upon the insolvency, liquidation, or dissolution of either party.

ARTICLE B.3—LIMITED WARRANTIES AND DISCLAIMERS

B.3.1 Limited Warranties. Except as disclaimed below, Esri warrants to Customer that (i) Products and Training will substantially comply with the applicable Specifications and (ii) Services will substantially conform to the professional and technical standards of the industry. The warranty period for Esri Offerings offered under a Perpetual License and for Services runs for 90 days from the date of delivery or from the date of acceptance if this Agreement provides an acceptance period. The warranty period for Esri Offerings offered under a subscription or Term License basis runs for the lesser of (i) the duration of the subscription or term or (ii) 90 days from delivery or acceptance if this Agreement provides an acceptance period.

B.3.2 Special Disclaimer. Third-Party Content; Data; Samples; hot fixes; patches; updates; Online Services provided at no charge; and trial, evaluation, and Beta Products are delivered "as is" and without warranty of any kind.

B.3.3 General Disclaimer. Except for the express limited warranties set forth in this Agreement, Esri disclaims all other warranties or conditions of any kind, whether express or implied, including, but not limited to, warranties or conditions of merchantability, fitness for a particular purpose, and noninfringement of intellectual property rights. Esri is not responsible for any nonconformities with Specifications or loss, deletion, modification, or disclosure of Customer Content caused by Customer's modification of any Esri Offering other than as specified in the Documentation. Esri does not warrant that Esri Offerings, or Customer's operation of the same, will be uninterrupted, error free, fault tolerant, or fail-safe or that all nonconformities can or will be corrected, or will result in Customer's compliance with any applicable law. Esri Offerings are not designed, manufactured, or intended for use in environments or applications that may lead to death, personal injury, or physical property or environmental damage. Customer should not follow any navigational route suggestions that appear to be hazardous, unsafe, or illegal. Any such uses will be at Customer's own risk and cost.

B.3.4 Disclaimers.

- a. **Internet Disclaimer.** Neither party will be liable for damages under any theory of law related to the performance or discontinuance of operation of the Internet or to regulation of the Internet that might restrict or prohibit the operation of Cloud Services.
- b. **Third-Party Websites; Third-Party Content.** Esri is not responsible for any third-party website or Third-Party Content that appears in or is referenced by Esri Offerings or Esri websites, including www.esri.com, developers.arcgis.com, livingatlas.arcgis.com and www.arcgis.com. Providing links to third-party websites and resources does not imply an endorsement, affiliation, or sponsorship of any kind.
- c. **Artificial Intelligence (AI)/Machine Learning (ML) Disclaimer.** As specified in the Documentation, certain Esri Offerings may integrate third-party AI/ML software libraries and third-party or Esri created pre-trained AI/ML models for various tasks including, but not limited to, object detection, image obfuscation, image classification, or text or speech recognition. Customer may use these capabilities at its option and such AI/ML capabilities are delivered "as is" and without warranty of any kind. In certain cases, the Esri Offering may provide Customers the ability to configure their own custom

AI/ML models to meet Customer's unique requirements, which except for the express warranties contained in this Agreement, shall be at Customer's own risk.

B.3.5 Exclusive Remedy. Customer's exclusive remedy and Esri's entire liability for breach of the limited warranties in this section will be to replace any defective media and to (i) repair, correct, or provide a workaround for the applicable Esri Offering or Services or (ii) at Esri's election, terminate Customer's right to use and refund the fees paid for Esri Offerings or Services that do not meet Esri's limited warranties.

ARTICLE B.4—LIMITATION OF LIABILITY

B.4.1 Disclaimer of Liability. (a) Neither Customer, Esri, nor any Esri authorized distributor or third-party licensor will be liable for any indirect, special, incidental, or consequential damages; lost profits; lost sales; loss of goodwill; or costs of procurement of substitute goods or services
(b) Neither Customer, Esri nor any Esri authorized distributor or third-party licensor will be liable for any direct damages exceeding the applicable license fees, or current subscription fees, or Services fees paid or owed to Esri during the twelve (12) month period prior to the date upon which the related claim arose.

B.4.2 The limitations and exclusions of liability in the preceding paragraph do not apply to Customer's infringement, misuse, or misappropriation of Esri's or Esri's licensors' intellectual property rights, either party's indemnification obligations, gross negligence, willful misconduct, or violations of the Export Compliance clause of this Agreement.

B.4.3 Applicability of Disclaimers and Limitations. Esri or its authorized distributor has set its fees and entered into this Agreement in reliance on the disclaimers and limitations in this Agreement; the fees reflect an allocation of risk that is an essential basis of the bargain between the parties. **These limitations will apply whether or not a party is aware of the possibility of any damage and notwithstanding any failure of essential purpose of any exclusive, limited remedy.**

B.4.4 The foregoing disclaimers, limitations, and exclusions may be invalid in some jurisdictions and apply only to the extent permitted by applicable law or regulation in Customer's jurisdiction. Customer may have additional rights that may not be waived or disclaimed. Esri does not seek to limit Customer's warranty or remedies to any extent not permitted by law.

ARTICLE B.5—INDEMNIFICATIONS

B.5.1 Definitions. The following definitions supplement the definitions provided in Attachment A:

- a. **"Claim"** means any claim, action, or demand by a third party.
- b. **"Indemnitees"** means Customer and its directors, officers, and employees.
- c. **"Infringement Claim(s)"** means any Claim alleging that Customer's use of or access to any Esri Offering or Service infringes a patent, copyright, trademark, or trade secret.
- d. **"Loss(es)"** means expenditure, damage award, settlement amount, cost, or expense, including awarded attorneys' fees.

B.5.2 Infringement Indemnity.

- a. Esri will defend, hold all Indemnitees harmless from, and indemnify any Loss arising out of an Infringement Claim.
- b. If Esri determines that an Infringement Claim is valid, Esri may, at its expense, either (i) obtain rights for Customer to continue using the Esri Offerings or Services or (ii) modify the Esri Offerings or Services while maintaining substantially similar functionality. If neither alternative is commercially reasonable, Esri may terminate Customer's right to use the Esri Offerings or Services and will refund any (a) license fees that Customer paid for the infringing Esri Offerings or Services acquired under a Perpetual License, prorated on a 5-year, straight-line depreciation basis beginning from the initial date of delivery or (b) unused portion of fees paid for Term Licenses, subscriptions, and Maintenance.

- c. Esri has no obligation to defend an Infringement Claim or to indemnify Customer to the extent the Infringement Claim arises out of (i) the combination or integration of Esri Offerings or Services with a product, process, system, or element that Esri has not supplied or specified in the Specification; (ii) alteration of Esri Offerings or Services by anyone other than Esri or its subcontractors; (iii) compliance with Customer's specifications; or (iv) use of Esri Offerings or Services after Esri either provides a modified version to avoid infringement or terminates Customer's right to use the Esri Offerings or Services.

B.5.3 General Indemnity. Esri will defend and hold all Indemnitees harmless from, and indemnify any Loss arising out of, any Claim for bodily injury, death, or tangible or real property damage brought against any of the Indemnitees to the extent arising from any negligent act or omission or willful misconduct by Esri or its directors, officers, employees, or agents performing Services while on Customer's site.

B.5.4 Conditions for Indemnification. As conditions for indemnification, Indemnitee will (i) promptly notify Esri in writing of the Claim, (ii) provide all available documents describing the Claim, (iii) give Esri sole control of the defense of any action and negotiation related to the defense or settlement of any Claim, and (iv) reasonably cooperate in the defense of the Claim at Esri's request and expense.

B.5.5 This section sets forth the entire obligation of Esri, its authorized distributor, and its third party licensors regarding any Claim for which Esri must indemnify Customer.

ARTICLE B.6—INSURANCE

If Esri is providing Services, Esri will carry, at a minimum, the following coverage:

- a. Comprehensive general liability or commercial general liability with a minimum coverage of \$1,000,000.00 (US dollars) combined single limit per occurrence for bodily injury, including death, and property damage liability to include the following:
 1. Premises and operations;
 2. Blanket contractual liability;
 3. Broad form property damage;
 4. Independent contractors;
 5. Personal injury, with employee exclusion deleted; and
 6. Completed operations.
- b. Workers' compensation insurance, with waiver of subrogation, in an amount that complies with statutory limits.

ARTICLE B.7—SECURITY AND COMPLIANCE

B.7.1 Security. Esri publishes its security capabilities at <https://trust.arcgis.com>. Customer may give Esri personnel access to Customer systems or to Customer or third-party personal information, controlled information, or sensitive data if access is essential for Esri's performance of Services and if Esri expressly agrees to such access. Esri will use reasonable administrative, technical, and physical safeguards to protect such data and guard against unauthorized access. Customer bears responsibility to (i) confirm that Esri's published security and privacy controls meet all applicable legal requirements for protection of Customer Content and (ii) upload or share Customer Content through Cloud Services only when it is legal to do so. Esri is not responsible to review Customer Content to ensure compliance with applicable laws and regulations. Customer must contact Esri at securesupport@esri.com for further instruction before providing any Customer Content that requires security measures other than Esri's published security capabilities.

B.7.2 Malicious Code. Esri will use commercially reasonable efforts to ensure that Esri Offerings will not transmit any Malicious Code to Customer. Esri is not responsible for Malicious Code that Customer introduces to Esri Offerings or that is introduced through Third-Party Content.

B.7.3 Export Compliance. Each party will comply with all applicable export and trade sanctions laws and regulations, including the US Department of Commerce's Export Administration Regulations (EAR), the US Department of State's International Traffic in Arms Regulations (ITAR), the US Department of Treasury, Office of Foreign Assets Control (OFAC) Regulations, and other applicable export laws. Customer will not export, reexport,

transfer, release, or otherwise dispose of, in whole or in part, or permit access to or transfer or use of Services or Esri Offerings to any United States embargoed countries currently including Iran, Syria, North Korea, Cuba, Crimea region of Ukraine, the Donetsk People's Republic (DNR) and Luhansk People's Republic (LNR), or denied entities or persons except in accordance with all then-current applicable US government export laws and regulations. Customer will not export, reexport, transfer, or use Services or Esri Offerings for certain missile, nuclear, chemical, or biological activities or end uses without proper authorization from the US government. Customer shall immediately notify Esri in writing if any US government entity or agency denies, suspends, or revokes Customer's export privileges. Customer will not upload, store, or process in Cloud Services any Customer Content that (i) has an Export Control Classification Number (ECCN) other than EAR99 or (ii) is controlled for export from the United States under ITAR. Customer will notify Esri in advance if Esri's performance of any Services or provision of any Esri Offerings is related to any defense article, defense service, or technical data, as defined under the ITAR Sections 120.31, 120.32 and 120.33, respectively; Esri will not perform any such Services or provide any such Esri Offerings until Esri obtains any necessary export license from the US government. Customer will reasonably assist Esri in applying for and obtaining an export license if needed.

B.7.4 Privacy. Esri will process personal data according to the terms of the Data Processing Addendum available at <https://www.esri.com/en-us/privacy/overview>.

ARTICLE B.8—CLOUD SERVICES

B.8.1 Prohibited Uses. Customer shall not provide Customer Content or otherwise access or use Cloud Services in a manner that

- a. Creates or transmits spam, spoofings, or phishing email or offensive, hate related or defamatory material; or stalks or makes threats of physical harm;
- b. Stores or transmits any Malicious Code;
- c. Violates any law or regulation;
- d. Infringes or misappropriates the rights of any third party;
- e. Probes, scans, or tests the vulnerability of Cloud Services or breach any security or authentication measures used by Cloud Services without written approval from Esri's Product Security Officer; or
- f. Benchmarks the availability, performance, or functionality of Cloud Services.

B.8.2 Service Interruption. System failures or other events beyond Esri's reasonable control may interrupt Customer's access to Cloud Services. Esri may not be able to provide advance notice of such interruptions.

B.8.3 Customer Content.

- a. Customer grants Esri and its subcontractors a nonexclusive, nontransferable, worldwide right to host, run, modify, and reproduce Customer Content as needed to provide Cloud Services to Customer. Esri will not access, use, or disclose Customer Content without Customer's written permission except as reasonably necessary to support Customer's use of Cloud Services. Except for the limited rights granted to Esri under this Agreement, Customer retains all its rights, title, and interest in the Customer Content.
- b. If Customer accesses Cloud Services with an application provided by a third party, Esri may disclose Customer Content to such third party as necessary to enable interoperation between the application, Cloud Services, and Customer Content.
- c. Esri may disclose Customer Content if required to do so by law or regulation or by order of a court or other government body, in which case Esri will reasonably attempt to limit the scope of disclosure.
- d. When Customer's use of Cloud Services ends, Esri will either
 - 1. Make Customer Content available to Customer for download for a period of 30 days unless Customer requests a shorter window of availability or Esri is legally prohibited from doing so; or
 - 2. Download all Customer Content in Esri's possession to a medium of Customer's choosing and deliver such Customer Content to Customer.

Esri will have no further obligations to store or return Customer Content at the conclusion of the Cloud Services.

B.8.4 Removal of Customer Content. Esri may remove or delete Customer Content if there is reason to believe that uploading Customer Content to or using it with Cloud Services materially violates this Agreement. If reasonable under these circumstances, Esri will notify Customer before removing Customer Content. Esri will respond to any Digital Millennium Copyright Act takedown notices in accordance with Esri's copyright policy, available at www.esri.com/legal/dmca_policy.

B.8.5 Service Suspension. Esri may suspend access to Cloud Services (i) if Customer materially breaches this Agreement and fails to timely cure the breach; (ii) if Esri reasonably believes that Customer's use of Cloud Services will subject Esri to immediate liability or adversely affect the integrity, functionality, or usability of the Cloud Services; (iii) for scheduled maintenance; (iv) to enjoin a threat or attack on Cloud Services; or (v) if Cloud Services become prohibited by law or regulated to a degree that continuing to provide them would impose a commercial hardship. When feasible, Esri will notify Customer of any Cloud Services suspension beforehand and give Customer reasonable opportunity to take remedial action.

Esri is not responsible for any damages, liabilities, or losses that may result from any interruption or suspension of Cloud Services or removal of Customer Content as described above.

B.8.6 Notice to Esri. Customer will promptly notify Esri if Customer becomes aware of any unauthorized use of Customer's subscription or any other breach of security regarding Cloud Services.

ARTICLE B.9—GENERAL PROVISIONS

B.9.1 Payment. Customer will pay each correct invoice no later than 30 days after receipt and will remit payment to the address stated on the invoice. Customers outside the United States will pay the authorized distributor's invoices in accordance with the authorized distributor's payment terms.

B.9.2 Feedback. Esri may freely use any feedback, suggestions, or requests for Product improvement that Customer provides to Esri.

B.9.3 Patents. Customer may not seek, and may not permit any other user to seek, a patent or similar right worldwide that is based on or incorporates any Products. This express prohibition on patenting will not apply to Customer's software and technology except to the extent that Products, or any portion thereof, are part of any claim or preferred embodiment in a patent application or a similar application.

B.9.4 Reserved.

B.9.5 Taxes and Fees; Shipping Charges. Pricing of Esri Offerings and Services that Esri quotes to Customer is exclusive of any and all applicable taxes or fees including, but not limited to, sales tax, use tax, or value-added tax (VAT); customs, duties, or tariffs; shipping and handling charges; and vendor enrollment fees. Esri will add any fees that it is required to pay to the total amount of its invoice to Customer. Esri may include estimated taxes and shipping and handling charges in its quotations but may adjust these fees on invoicing. For Customers outside the United States, the authorized distributor may quote taxes or fees in accordance with its own policies.

B.9.6 Compliance Review. Customer will keep accurate and complete records and accounts pertaining to its compliance with its obligations under this Agreement. Esri or its authorized distributor may conduct a compliance review of these records and accounts with no less than 14 business days' written notice or may appoint an independent third party to conduct such a compliance review on its behalf. Customer will promptly correct any noncompliance identified during the compliance review. Neither Esri nor Esri's authorized distributor may conduct a compliance review of Customer within 12 months after the conclusion of any prior compliance review that does not reveal any material Customer noncompliance.

B.9.7 No Implied Waivers. The failure of either party to enforce any provision of this Agreement is not a waiver of the provisions or of the right of such party thereafter to enforce that or any other provision.

B.9.8 Severability. If any provision of this Agreement is held to be unenforceable for any reason, (i) such provision will be reformed only to the extent necessary to make the intent of the language enforceable, and (ii) all other provisions of this Agreement will remain in effect.

B.9.9 Successor and Assigns. Customer will not assign, sublicense, or transfer Customer's rights or delegate Customer's obligations under this Agreement without Esri's and its authorized distributor's prior written consent, and any attempt to do so without consent will be void. This Agreement will be binding on the respective successors and assigns of the parties to this Agreement. Notwithstanding, a contractor under contract to the government to deliver Products may assign this Agreement and Products acquired for delivery to its government customer upon written notice to Esri, provided the government customer assents to the terms of this Agreement. Upon mutual agreement, Esri's Affiliates may provide Services under the terms of this Agreement; in such cases, the Ordering Documents will identify the Affiliate as the party that provides the Services. Esri's authorized distributors are not Affiliates of Esri.

B.9.10 Survival of Terms. The Glossary of Terms and provisions of the following Articles of these General Terms and Conditions will survive the expiration or termination of this Agreement: "Limited Warranties and Disclaimers," "Limitation of Liability," "Indemnifications," and "General Provisions."

B.9.11 US Government Customer. The Products are commercial items, developed at private expense, provided to Customer under this Agreement. If Customer is a US government entity or US government contractor, Esri licenses or provides subscriptions to Customer in accordance with this Agreement under FAR Subparts 12.211/12.212 or DFARS Subpart 227.7202. Esri Data and Online Services are licensed or subscribed under the same DFARS Subpart 227.7202 policy as commercial computer software for acquisitions made under DFARS. Products are subject to restrictions, and this Agreement strictly governs Customer's use, modification, performance, reproduction, release, display, or disclosure of Products. Agreement provisions that are inconsistent with federal law regulation will not apply. A US government Customer may transfer Software to any of its facilities to which it transfers the computer(s) on which it has installed such Software. If any court, arbitrator, or board holds that a US government Customer has greater rights to any portion of Products under applicable public procurement law, such rights will extend only to the portions affected.

B.9.12 Governing Law. This Agreement is not subject to the United Nations Convention on Contracts for the International Sale of Goods.

- a. **Government Entities.** If Customer is a government entity, the applicable laws of Customer's jurisdiction govern this Agreement.
- b. **Nongovernment Entities.** US federal law and the law of the State of California exclusively govern this Agreement, excluding their respective choice of law principles.

B.9.13 Dispute Resolution. The parties will use the following dispute resolution processes:

- a. **Equitable Relief.** Either party will have the right to seek an injunction, specific performance, or other equitable relief in any court of competent jurisdiction without the requirement of posting a bond or proving injury as a condition for relief.
- b. **US Government Agencies.** This Agreement is subject to the Contract Disputes Act of 1978, as amended (41 USC 601–613).
- c. **Other Government Entities.** Esri will comply with mandatory dispute resolutions under applicable law.
- d. **Arbitration.** Except as noted above, the parties will submit to binding arbitration to resolve any dispute arising out of or relating to this Agreement that cannot be settled through negotiation. If Customer is in the United States or one of its territories or outlying areas, the Commercial Arbitration Rules of the American Arbitration Association will govern the arbitration proceedings. If Customer is outside the United States, the Rules of Arbitration of the International Chamber of Commerce will govern the proceedings. The parties will select a single arbitrator in accordance with the applicable arbitration rules. The language of the arbitration will be English. Arbitration will be at an agreed-upon location. Either party will, at the request of the other, make available documents or witnesses relevant to the major aspects of the dispute.

B.9.14 Force Majeure. A party will not be liable for any failure of or delay in the performance of this Agreement for the period that such failure or delay is due to causes beyond the party's reasonable control. Such causes may

include, but are not limited to, acts of God, war, strikes, labor disputes, cyber attacks, laws, regulations, government orders, or any other force majeure event.

B.9.15 Independent Contractor. Esri is and at all times will be an independent contractor. Nothing in this Agreement creates an employer/employee, principal/agent, or joint venture relationship between Esri or its authorized distributor and Customer. No party has any authority to enter into contracts on behalf of another party or otherwise act on behalf of another party.

B.9.16 Notice. Customer may send notices required under this Agreement to Esri at the following address:

Environmental Systems Research Institute, Inc.
Attn.: Contracts and Legal Department
380 New York Street
Redlands, CA 92373-8100
USA
Tel.: 909-793-2853
Email: LegalNotices@esri.com

ATTACHMENT C
SAMPLE TASK ORDER
Esri Agreement No. _____
Task Order No. _____

In accordance with the terms and conditions of the above-referenced Agreement between Environmental Systems Research Institute, Inc. ("**Esri**"), and _____ ("**Customer**"), _____ ("**Customer Address**"), this Task Order authorizes preparation and provision of the Deliverables described and in accordance with the terms, schedule, and start/end date(s) specified below.

1. Scope of Work: *[As applicable, specifically identify and describe Deliverables including custom code, map data, technical data (including technical assistance), and the resources to be provided by Customer (including Customer-supplied personnel, software, hardware, and digital or hard-copy data) and place of delivery and location where technical assistance will be provided.]*

In addition to the foregoing, Customer agrees that its employees, representatives, and subcontractors will cooperate and communicate with Esri during performance of this Task Order. Without cost to Esri, Customer shall provide, allow access to, or assist Esri in obtaining all data Esri requests for performance of this Task Order, including, but not limited to, (1) copies of previously prepared reports, maps, plans, surveys, records, and other documents in the control or possession of Customer and (2) copies of ordinances, codes, regulations, or other governmental documents.

2. Contract Type: *[Firm Fixed Price (FFP) or Time and Materials (T&M)]*:
3. Total Task Order Value (if FFP) or Not-to-Exceed Value (if T&M):
4. Customer Address for the Receipt of Esri Invoices:
5. Delivery Schedule or Start/End Date(s) for Each Deliverable:
6. Special Considerations:
7. Esri Project Manager: *[insert name, telephone, fax, and email address]*
Esri Senior Contract Administrator: *[insert name, telephone, fax, and email address]*
Customer Project Manager: *[insert name, telephone, fax, and email address]*
Customer Senior Contract Administrator: *[insert name, telephone, fax, and email address]*
Customer Accounts Payable Contact: *[insert name, telephone, fax, and email address]*

ACCEPTED AND AGREED:

[sample only—do not sign]
(Customer)

Signature: [sample only—do not sign]

Printed Name: _____

Title: _____

Date: _____

ENVIRONMENTAL SYSTEMS
RESEARCH INSTITUTE, INC.
(Esri)

Signature: [sample only—do not sign]

Printed Name: _____

Title: _____

Date: _____

ATTACHMENT D
TIME AND MATERIALS RATE SCHEDULE

See Quotation for Pricing.

Information

Agenda Item

Resolution - Information Technology: Consider a resolution authorizing the Mayor to execute Purchase Order 33001926, with CDW Government, Inc., for a two-year renewal of Mimecast Email Management System Services with Threat Protection from cybersecurity threats.

Item Summary

The purchase from CDW Government, Inc., is for a two-year renewal of Email Management Security with Threat Protection for the period of December 8, 2024, through December 7, 2026. Email is a primary threat vector for malware such as ransomware. The Email Security Management Platform provides help to protect against rapidly evolving cybersecurity threats presented through everyday email messages.

The purchase of the email management support plan is made available through the State of Texas Department of Information Resources (DIR) Contract DIR-CPO-5303. Texas Local Government Code Chapter 271.083 authorizes local governments to acquire hardware, software, and other Information Technology products through the DIR program. Pursuant to the Texas Government Code Chapter 791.025, purchases from DIR contracts meet competitive bid requirements.

Fiscal Impact

The annual cost of \$138,363.51 is budgeted in the Information Technology FY 2024-25 Operating Budget. The second year renewal will be requested in the 2025-26 Information Technology Operating Budget. The total cost of the Email Management plan is \$276,727.02.

Staff/Board Recommending

Brooke Witcher, Assistant City Manager
Jennifer Frescaz, Chief Information Officer

Attachments

Resolution - CDW Govt.
PO 33001926 - CDW Government

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. 33001926, for 2-year Renewal of the Mimecast Email Management Services, per DIR-CPO-5303, by and between the City of Lubbock and CDW Government, Inc., and related documents. Said Purchase Order is attached hereto and incorporated in this resolution as if fully set forth herein and shall be included in the minutes of the City Council.

Passed by the City Council on _____.

MARK W. MCBRAYER, MAYOR

ATTEST:

Courtney Paz, City Secretary

APPROVED AS TO CONTENT:



Brooke Witcher, Assistant City Manager

APPROVED AS TO FORM:



Mitchell Satterwhite, First Assistant City Attorney

ccdcs II/RES.CDW Government, Inc.-PurchaseOrd
November 7, 2024



PURCHASE ORDER

Page - 1
Date - 11/7/2024
Order Number 33001926 000 OP
Branch/Plant 3410

TO: CDW GOVERNMENT INC
75 REMITTANCE DRIVE
SUITE 1515
CHICAGO IL 60675-1515

SHIP TO: CITY OF LUBBOCK
INFORMATION TECHNOLOGY
1314 AVENUE K - BASEMENT
LUBBOCK TX 79401

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

BY: 
Marta Alvarez, Director of Purchasing & Contract Management

Ordered 12/3/2024 Freight
Requested 12/3/2024 Taken By K MORGAN
Delivery Per J Zhine / Req # 62505 Quote #PDSV048 / DIR-CPO-5303

If you have any questions about this order, please contact Jay Zhine at 806-775-2366 or via email at JZhine@mylubbock.us

Description/Supplier Item	Ordered	Unit Cost	UM	Extension	Request Date
Mimecast Cyber Resilience Pro	2,500.000	53.1500	EA	132,875.00	12/20/2024
Plan #M_CYBER-RES-PRO_1000_A					
Mimecast Adv Supp/Tech Supp Y1	1.000	5,488.5100	EA	5,488.51	12/20/2024
#M_ADV-SP_1_A					
Mimecast Cyber Resilience Pro	2,500.000	53.1500	EA	132,875.00	12/20/2024
Plan #M_CYBER-RES-PRO_1000_A					
Mimecast Adv Supp/Tech Supp Y2	1.000	5,488.5100	EA	5,488.51	12/20/2024
#M_ADV-SP_1_A					
Total Order				276,727.02	
Terms NET 30					

This purchase order encumbers funds in the amount of \$276,727.02 awarded to CDW Government, Inc. of Chicago, IL, on _____, 2024. The following is incorporated into and made part of this purchase order by reference: Quote dated November 4, 2024, from CDW Government, Inc. of Chicago, IL, and DIR-CPO-5303.

Resolution # _____

CITY OF LUBBOCK:

ATTEST:

Mark McBrayer, Mayor

Courtney Paz, City Secretary



PURCHASE ORDER

Page - 2
Date - 11/7/2024
Order Number 33001926 000 OP
Branch/Plant 3410

TO: CDW GOVERNMENT INC
75 REMITTANCE DRIVE
SUITE 1515
CHICAGO IL 60675-1515

SHIP TO: CITY OF LUBBOCK
INFORMATION TECHNOLOGY
1314 AVENUE K - BASEMENT
LUBBOCK TX 79401

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

BY: 
Marta Alvarez, Director of Purchasing & Contract Management

Ordered 12/3/2024 Freight
Requested 12/3/2024 Taken By K MORGAN
Delivery Per J Zhine / Req # 62505 Quote #PDSV048 / DIR-CPO-5303

If you have any questions about this order, please contact Jay Zhine at 806-775-2366 or via email at JZhine@mylubbock.us

INSURANCE REQUIRED:

Commercial General Liability:

\$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).

Additional Policies:

Cyber Liability Requirements: \$1M of coverage is needed for Cyber Liability

Technology Errors and Omissions Requirements: \$1M of coverage is needed

*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.

1. **SELLER TO PACKAGE GOODS.** Seller will package goods in accordance with good commercial practice. Each shipping container shall be clearly and permanently marked as follows (a) Seller's name and address, (b) Consignee's name, address and purchase order or purchase release number and the supply agreement number if applicable, (c) Container number and total number of containers, e.g. box 1 of 4 boxes, and (d) the number of the container bearing the packing slip. Seller shall bear cost of packaging unless otherwise provided. Goods shall be suitably packed to secure lowest transportation costs and to conform with requirements of common carriers and any applicable specifications. Buyer's count or weight shall be final and conclusive on shipments not accompanied by packing lists.
2. **SHIPMENT UNDER RESERVATION PROHIBITED.** Seller is not authorized to ship the goods under reservation and no tender of a bill of lading will operate as a tender of goods.
3. **TITLE AND RISK OF LOSS.** The title and risk of loss of the goods shall not pass to Buyer until Buyer actually receives and takes possession of the goods at the point or points of delivery.
4. **NO REPLACEMENT OF DEFECTIVE TENDER.** Every tender of delivery of goods must fully comply with all provisions of this contract as to time of delivery, quality and the like. If a tender is made which does not fully conform, this shall constitute a breach and Seller shall not have the right to substitute a conforming tender, provided, where the time for performance has not yet expired, the Seller may reasonably notify Buyer of his intention to cure and may then make a conforming tender within the contract time but not afterward.
5. **INVOICES & PAYMENTS.** a. Seller shall submit separate invoices, in duplicate, one each purchase order or purchase release after each delivery. Invoices shall indicate the purchase order or purchase release number and the supply agreement number if applicable. Invoices shall be itemized and transportation charges, if any, shall be listed separately. A copy of the bill of lading, and the freight waybill when applicable, should be attached to the invoice. Mail To: Accounts Payable, City of Lubbock, P. O. Box 2000, Lubbock, Texas 79457. Payment shall not be due until the above instruments are submitted after delivery.
6. **GRATUITIES.** The Buyer may, by written notice to the Seller, cancel this contract without liability to Seller if it is determined by Buyer that gratuities, in the form of entertainment, gifts or otherwise, were offered or given by the Seller, or any agent or representative of the Seller, to any officer or employee of the City of Lubbock with a view to securing a contract or securing favorable treatment with respect to the awarding or amending, or the making of any determinations with respect to the performing of such a contract. In the event this contract is canceled by Buyer pursuant to this provision, Buyer shall be entitled, in addition to any other rights and remedies, to recover or withhold the amount of the cost incurred by Seller in providing such gratuities.
7. **SPECIAL TOOLS & TEST EQUIPMENT.** If the price stated on the face hereof includes the cost of any special tooling or special test equipment fabricated or required by Seller for the purpose of filling this order, such special tooling equipment and any process sheets related thereto shall become the property of the Buyer and to the extent feasible shall be identified by the Seller as such.
8. **WARRANTY-PRICE.** a. The price to be paid by the Buyer shall be that contained in Seller's bid which Seller warrants to be no higher than Seller's current process on orders by others for products of the kind and specification covered by this agreement for similar quantities under similar of like conditions and methods of purchase. In the event Seller breaches this warranty, the prices of the items shall be reduced to the Seller's current prices on orders by others, or in the alternative. Buyer may cancel this contract without liability to Seller for breach or Seller's actual expense. b. The Seller warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for commission, percentage, brokerage, or contingent fee excepting bona fide employees of bona fide established commercial or selling agencies maintained by the Seller for the purpose of securing business. For breach of violation of this warranty the Buyer shall have the right in addition to any other right of rights to cancel this contract without liability and to deduct from the contract price, or otherwise recover without liability and to deduct from the contract price, or otherwise recover the full amount of such commission, percentage, brokerage or contingent fee.
9. **WARRANTY-PRODUCT.** Seller shall not limit or exclude any implied warranties and any attempt to do so shall render this contract voidable at the option of the Buyer. Seller warrants that the goods furnished will conform to the specification, drawings, and descriptions listed in the bid invitation, and to the sample(s) furnished by the Seller, if any. In the event of a conflict or between the specifications, drawings, and descriptions, the specifications shall govern. Notwithstanding any provisions contained in the contractual agreement, the Seller represents and warrants fault-free performance and fault-free result in the processing date and date related data (including, but not limited to calculating, comparing and sequencing) of all hardware, software and firmware products delivered and services provided under this Contract, individually or in combination, as the case may be from the effective date of this Contract. The obligations contained herein apply to products and services provided by the Seller, its sub- Seller or any third party involved in the creation or development of the products and services to be delivered to the City of Lubbock under this Contract. Failure to comply with any of the obligations contained herein, may result in the City of Lubbock availing itself of any of its rights under the law and under this Contract including, but not limited to, its right pertaining to termination or default. The warranties contained herein are separate and discrete from any other warranties specified in this Contract, and are not subject to any disclaimer of warranty, implied or expressed, or limitation of the Seller's liability which may be specified in this Contract, its appendices, its schedules, its annexes or any document incorporated in this Contract by reference.
10. **SAFETY WARRANTY.** Seller warrants that the product sold to the Buyer shall conform to the standards promulgated by the U. S. Department of Labor under the Occupational Safety and Health Act of 1970. In the event the product does not conform to OSHA standards, Buyer may return the product for correction or replacement at the Seller's expense. In the event Seller fails to make the appropriate correction within a reasonable time, correction made by Buyer will be at the Seller's expense.
11. **NO WARRANTY BY BUYER AGAINST INFRINGEMENTS.** As part of this contract for sale Seller agrees to ascertain whether goods manufactured in accordance with the specifications attached to this agreement will give rise to the rightful claim of any third person by way of infringement of the like. Buyer makes no warranty that the production of goods according to the specification will not give rise to such a claim, and in no event shall Buyer be liable to Seller for indemnification in the event that Seller is sued on the grounds of infringement of the like. If Seller is of the opinion that an infringement or the like will result, he will notify the Buyer to this effect in writing within two weeks after the signing of this agreement. If Buyer does not receive notice and is subsequently held liable for the infringement or the like, Seller will save Buyer harmless. If Seller in good faith ascertains the production of the goods in accordance with the specifications will result in infringement or the like, the contract shall be null and void.
12. **NON APPROPRIATION.** All funds for payment by the City under this contract are subject to the availability of an annual appropriation for this purpose by the City. In the event of nonappropriation of funds by the City Council of the City of Lubbock for the goods or services provided under the contract, the City will terminate the contract, without termination charge or other liability, on the last day of the then-current fiscal year or when the appropriation made for the then-current year for the goods or services covered by this contract is spent, whichever event occurs first. If at any time funds are not appropriated for the continuance of this contract, cancellation shall be accepted by the Seller on thirty (30) days prior written notice, but failure to give such notice shall be of no effect and the City shall not be obligated under this contract beyond the date of termination.
13. **RIGHT OF INSPECTION.** Buyer shall have the right to inspect the goods at delivery before accepting them.
14. **CANCELLATION.** Buyer shall have the right to cancel for default all or any part of the undelivered portion of this order if Seller breaches any of the terms hereof including warranties of Seller or if the Seller becomes insolvent or commits acts of bankruptcy. Such right of cancellation is in addition to and not in lieu of any other remedies which Buyer may have in law or equity.
15. **TERMINATION.** The performance of work under this order may be terminated in whole, or in part by the Buyer

in accordance with this provision. Termination of work hereunder shall be effected by the delivery of the Seller of a "Notice of Termination" specifying the extent to which performance of work under the order is terminated and the date upon which such termination becomes effective. Such right or termination is in addition to and not in lieu of the rights of Buyer set forth in Clause 14, herein.

16. **FORCE MAJEURE.** Neither party shall be held responsible for losses, resulting if the fulfillment of any terms of provisions of this contract is delayed or prevented by any cause not within the control of the party whose performance is interfered with, and which by the exercise of reasonable diligence said party is unable to prevent.
17. **ASSIGNMENT-DELEGATION.** No right or interest in this contract shall be assigned or delegation of any obligation made by Seller without the written permission of the Buyer. Any attempted assignment or delegation by Seller shall be wholly void and totally ineffective for all purpose unless made in conformity with this paragraph.
18. **WAIVER.** No claim or right arising out of a breach of this contract can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party.
19. **INTERPRETATION-PAROLE EVIDENCE.** This writing, plus any specifications for bids and performance provided by Buyer in its advertisement for bids, and any other documents provided by Seller as part of his bid, is intended by the parties as a final expression of their agreement and intended also as a complete and exclusive statement of the terms of their agreement. Whenever a term defined by the Uniform Commercial Code is used in this agreement, the definition contained in the Code is to control.
20. **APPLICABLE LAW.** This agreement shall be governed by the Uniform Commercial Code. Wherever the term "Uniform Commercial Code" is used, it shall be construed as meaning the Uniform Commercial Code as adopted in the State of Texas as effective and in force on the date of this agreement.
21. **RIGHT TO ASSURANCE.** Whenever one party to this contract in good faith has reason to question the other party's intent to perform he may demand that the other party give written assurance of his intent to perform. In the event that a demand is made and no assurance is given within five (5) days, the demanding party may treat this failure as an anticipatory repudiation of the contract.
22. **INDEMNIFICATION.** Seller shall indemnify, keep and save harmless the Buyer, its agents, officials and employees, against all injuries, deaths, loss, damages, claims, patent claims, suits, liabilities, judgments, costs and expenses, which may in anywise accrue against the Buyer in consequence of the granting of this Contract or which may anywise result therefrom, whether or not it shall be alleged or determined that the act was caused through negligence or omission of the Seller or its employees, or of the subSeller or assignee or its employees, if any, and the Seller shall, at his own expense, appear, defend and pay all charges of attorneys and all costs and other expenses arising therefrom of incurred in connection therewith, and, if any judgment shall be rendered against the Buyer in any such action, the Seller shall, at its own expenses, satisfy and discharge the same Seller expressly understands and agrees that any bond required by this contract, or otherwise provided by Seller, shall in no way limit the responsibility to indemnify, keep and save harmless and defend the Buyer as herein provided.
23. **TIME.** It is hereby expressly agreed and understood that time is of the essence for the performance of this contract, and failure by contract to meet the time specifications of this agreement will cause Seller to be in default of this agreement.
24. **MBE.** The City of Lubbock hereby notifies all bidders that in regard to any contract entered into pursuant to this request, minority and women business enterprises will be afforded equal opportunities to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, sex or natural origin in consideration for an award.
25. **NON-ARBITRATION.** The City reserves the right to exercise any right or remedy to it by law, contract, equity, or otherwise, including without limitation, the right to seek any and all forms of relief in a court of competent jurisdiction. Further, the City shall not be subject to any arbitration process prior to exercising its unrestricted right to seek judicial remedy. The remedies set forth herein are cumulative and not exclusive, and may be exercised concurrently. To the extent of any conflict between this provision and another provision in, or related to, this document, this provision shall control.
26. **RIGHT TO AUDIT.** At any time during the term of the contract, or thereafter, the City, or a duly authorized audit representative of the City or the State of Texas, at its expense and at reasonable times, reserves the right to audit Contractor's records and books relevant to all services provided to the City under this Contract. In the event such an audit by the City reveals any errors or overpayments by the City, Contractor shall refund the City the full amount of such overpayments within thirty (30) days of such audit findings, or the City, at its option, reserves the right to deduct such amounts owing the City from any payments due Contractor.
27. The Contractor shall not assign or sublet the contract, or any portion of the contract, without written consent from the Director of Purchasing and Contract Management.
28. Contracts with Companies Engaged in Business with Iran, Sudan, or Foreign Terrorist Organization Prohibited. Pursuant to Section 2252.152 of the Texas Government Code, prohibits the City from entering into a contract with a vendor that is identified by The Comptroller as a company known to have contracts with or provide supplies or service with Iran, Sudan or a foreign terrorist organization
29. Texas Government Code. Section 2252.908 requires a business entity entering into certain contracts with a governmental entity or state agency to file with the governmental entity or state agency a disclosure of interested parties at the time the business entity submits the signed contract to the governmental entity or state agency. Instructions for completing Form 1295 are available at: <http://www.ci.lubbock.tx.us/departmentsal-websites/departments/purchasing/vendor-information>
30. No Boycott of Israel. Pursuant to Section 2271.002 of the Texas Government Code, Respondent certifies that either (i) it meets an exemption criteria under Section 2271.002; or (ii) it does not boycott Israel and will not boycott Israel during the term of the contract resulting from this solicitation. Respondent shall state any facts that make it exempt from the boycott certification in its Response.
31. No Boycott of Energy Companies. Pursuant to Section 2274 of the Texas Government Code, Respondent certifies that either (i) it meets an exemption criteria under Section 2274.002; or (ii) it does not boycott Energy Companies and will not boycott Energy Companies during the term of the contract resulting from this solicitation. Respondent shall state any facts that make it exempt from the boycott certification in its Response.
32. No Boycott of a Firearm Entity or Firearm Trade Association. Pursuant to Section 2274 of the Texas Government Code, Respondent certifies that either (i) it meets an exemption criteria under Section 2274.002; or (ii) it does not boycott a Firearm Entity or Firearm Trade Association and will not boycott a Firearm Entity or Firearm Trade Association during the term of the contract resulting from this solicitation. Respondent shall state any facts that make it exempt from the boycott certification in its Response.
33. Contracts with Companies Engaged in Business with Iran, Sudan, or Foreign Terrorist Organization Prohibited. Pursuant to Section 2252.152 of the Texas Government Code, prohibits the City from entering into a contract with a vendor that is identified by The Comptroller as a company known to have contracts with or provide supplies or service with Iran, Sudan or a foreign terrorist organization
34. **TEXAS PUBLIC INFORMATION ACT.** The requirements of Subchapter J, Chapter 552, Government Code, may apply to this contract and the contractor or vendor agrees that the contract can be terminated if the contractor or vendor knowingly or intentionally fails to comply with a requirement of that subchapter.
35. Pursuant to Section 552.301(c) of the Texas Government Code, the City of Lubbock has designated the following email address for which public information requests may be made by an emailed request: orr@mylubbock.us. Please send this request to this email address for it to be processed



Thank you for choosing CDW. We have received your quote.

Hardware Software Services IT Solutions Brands Research Hub

QUOTE CONFIRMATION

MATTHEW MATLOCK,

Thank you for considering CDW•G for your technology needs. The details of your quote are below. **If you are an eProcurement or single sign on customer, please log into your system to access the CDW site.** You can search for your quote to retrieve and transfer back into your system for processing.

For all other customers, click below to convert your quote to an order.

Convert Quote to Order

QUOTE #	QUOTE DATE	QUOTE REFERENCE	CUSTOMER #	GRAND TOTAL
PDSV048	11/4/2024	MIMECAST 2 YR	1293402	\$276,727.02

QUOTE DETAILS				
ITEM	QTY	CDW#	UNIT PRICE	EXT. PRICE
MIMECAST CYBER RESILIENCE PRO PLAN Mfg. Part#: M_CYBER-RES-PRO_1000_A Electronic distribution - NO MEDIA Contract: Texas Software DIR-CPO-5303 (DIR-CPO-5303)	2500	6156042	\$53.15	\$132,875.00
Mimecast Advanced Support - technical support - 1 year Mfg. Part#: M_ADV-SP_1_A Electronic distribution - NO MEDIA Contract: Texas Software DIR-CPO-5303 (DIR-CPO-5303)	1	7805949	\$5,488.51	\$5,488.51
MIMECAST CYBER RESILIENCE PRO PLAN Mfg. Part#: M_CYBER-RES-PRO_1000_A Electronic distribution - NO MEDIA Contract: Texas Software DIR-CPO-5303 (DIR-CPO-5303)	2500	6156042	\$53.15	\$132,875.00
Mimecast Advanced Support - technical support - 1 year Mfg. Part#: M_ADV-SP_1_A Electronic distribution - NO MEDIA Contract: Texas Software DIR-CPO-5303 (DIR-CPO-5303)	1	7805949	\$5,488.51	\$5,488.51

SUBTOTAL		\$276,727.02
SHIPPING		\$0.00
SALES TAX		\$0.00
GRAND TOTAL		\$276,727.02

PURCHASER BILLING INFO	DELIVER TO
------------------------	------------

Billing Address:

CITY OF LUBBOCK
ACCTS PAYABLE
PO BOX 2000
LUBBOCK, TX 79457-0001
Phone: (806) 775-3000

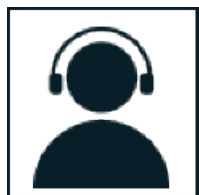
Payment Terms: Net 30 Days-Govt State/Local

Shipping Address:

CITY OF LUBBOCK
JAY ZHINE
1314 AVENUE K
BASEMENT
LUBBOCK, TX 79401-2606
Shipping Method: ELECTRONIC DISTRIBUTION

Please remit payments to:

CDW Government
75 Remittance Drive
Suite 1515
Chicago, IL 60675-1515

**Sales Contact Info**

Nick Trapani | (877) 325-2502 | nick.trapani@cdwg.com

LEASE OPTIONS

FMV TOTAL	FMV LEASE OPTION	BO TOTAL	BO LEASE OPTION
\$276,727.02	\$7,831.37/Month	\$276,727.02	\$9,004.70/Month

Monthly payment based on 36 month lease. Other terms and options are available. Contact your Account Manager for details. Payment quoted is subject to change.

Why finance?

- Lower Upfront Costs. Get the products you need without impacting cash flow. Preserve your working capital and existing credit line.
- Flexible Payment Terms. 100% financing with no money down, payment deferrals and payment schedules that match your company's business cycles.
- Predictable, Low Monthly Payments. Pay over time. Lease payments are fixed and can be tailored to your budget levels or revenue streams.
- Technology Refresh. Keep current technology with minimal financial impact or risk. Add-on or upgrade during the lease term and choose to return or purchase the equipment at end of lease.
- Bundle Costs. You can combine hardware, software, and services into a single transaction and pay for your software licenses over time! We know your challenges and understand the need for flexibility.

General Terms and Conditions:

This quote is not legally binding and is for discussion purposes only. The rates are estimate only and are based on a collection of industry data from numerous sources. All rates and financial quotes are subject to final review, approval, and documentation by our leasing partners. Payments above exclude all applicable taxes. Financing is subject to credit approval and review of final equipment and services configuration. Fair Market Value leases are structured with the assumption that the equipment has a residual value at the end of the lease term.

Need Help?

My Account



Support



Call 800.800.4239

[About Us](#) | [Privacy Policy](#) | [Terms and Conditions](#)

This order is subject to CDW's Terms and Conditions of Sales and Service Projects at

<http://www.cdwg.com/content/terms-conditions/product-sales.aspx>

For more information, contact a CDW account manager.

© 2024 CDW•G LLC, 200 N. Milwaukee Avenue, Vernon Hills, IL 60061 | 800.808.4239

Information

Agenda Item

Resolution - Lubbock Fire Rescue: Consider a resolution authorizing the Mayor to execute Purchase Order 10028002, with Heat Safety Equipment Inc., for Self Contained Breathing Apparatus.

Item Summary

Lubbock Fire Rescue seeks replacement of Self Contained Breathing Apparatus (SCBA) air-paks attributed to end of service life and non-compliance with National Fire Protection Association standards for firefighter safety.

The acquisition is through a Houston-Galveston Area Council (H-GAC) cooperative contract. H-GAC is a regional council of governments operating under the laws of the State of Texas awarding contracts that may be used by municipalities for a more efficient procurement process.

Staff recommends Purchase Order 10028002 to Heat Safety Equipment Inc. of Von Ormy, Texas for \$1,748,670.52.

Fiscal Impact

Purchase Order 10028002 for \$1,748,670.52 is funded in Capital Improvement Project 92868.9226.40000.

Staff/Board Recommending

Richard Stewart, Fire Chief

Attachments

Resolution

Purchase Order

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 10028002, as per Purchasing Co-op Contract No. H-GAC EE11-24, for the purchase of SCBA Air Paks for Lubbock Fire Rescue, by and between the City of Lubbock and Heat Safety Equipment LLC of Von Ormy, Texas, and all related documents. Said Purchase Order is attached hereto and incorporated in this resolution as if fully set forth herein and shall be included in the minutes of the City Council.

Passed by the City Council on _____.

MARK W. MCBRAYER, MAYOR

ATTEST:

Courtney Paz, City Secretary

APPROVED AS TO CONTENT:



Richard Stewart, Fire Rescue Chief

APPROVED AS TO FORM:



Ryan Brooke, Senior Assistant City Attorney

RES.PO 10028002-Heat Safety Equipment LLC
11.18.24



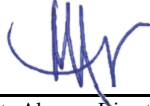
PURCHASE ORDER

Page - 1
Date - 11/14/2024
Order Number 10028002 000 OP
Branch/Plant 5619

TO: HEAT SAFETY EQUIPMENT LLC
5465 CURRAN ROAD
VON ORMY TX 78073

SHIP TO: CITY OF LUBBOCK
CENTRAL FIRE STATION COMPLEX
1515 E URSULINE ST
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 11/12/2024 Freight
Requested 12/31/2024 Taken By Y BUSBY
Delivery PER R SALAZAR REQ 62477 PUR 18472/CONTRACT H-GAC EE11-24

If you have any questions contact Raul Salazar: RSalazar@mylubbock.us Phone 806-775-3176

Description/Supplier Item	Ordered	Unit Cost	UM	Extension	Request Date
X8914025301A03, Air Pak X3	100.000	10,471.6430	EA	1,047,164.30	12/31/2024
X8914025305A04, Air Pak X3	100.000	9,408.4460	EA	940,844.60	12/31/2024
Cyl. & Valv. Assy Carb.	400.000	1,383.0770	EA	553,230.80	12/31/2024
Discount 31.1882889%	1.000	(792,569.1800)	EA	(792,569.18)	12/31/2024
Total Order				1,748,670.52	
Terms NET 30 DAYS					

This purchase order encumbers funds in the amount of \$1,748,670.52 awarded to Heat Safety Equipment LLC of Von Ormy, TX, on _____, 2024. The following is incorporated into and made part of this purchase order by reference: Quote dated October 25, 2024, from Heat Safety Equipment LLC of Von Ormy, TX, and Contract H-GAC EE11-24.

Resolution # _____

CITY OF LUBBOCK:

ATTEST:

Mark McBrayer, Mayor

Courtney Paz, City Secretary

PURCHASE ORDER TERMS AND CONDITIONS STANDARD TERMS AND CONDITIONS

Seller and Buyer agree as follows:

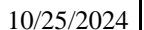
ACCEPTANCE OF THIS PURCHASE ORDER:

CONTRACTOR ACKNOWLEDGES, by supplying any Goods or Services that the Contractor has read, fully understands, and will be in full compliance with all terms and conditions and the descriptive material contained herein and any additional associated documents and Amendments. The City disclaims any terms and conditions provided by the Contractor unless agreed upon in writing by the parties. In the event of conflict between the City's terms and conditions and any terms and conditions provided by the Contractor, the terms and conditions provided herein shall prevail. The terms and conditions provided herein are the final terms agreed upon by the parties, and any prior conflicting terms shall be of no force or effect.

1. **SELLER TO PACKAGE GOODS.** Seller will package goods in accordance with good commercial practice. Each shipping container shall be clearly and permanently marked as follows (a) Seller's name and address, (b) Consignee's name, address and purchase order or purchase release number and the supply agreement number if applicable, (c) Container number and total number of containers, e.g. box 1 of 4 boxes, and (d) the number of the container bearing the packing slip. Seller shall bear cost of packaging unless otherwise provided. Goods shall be suitably packed to secure lowest transportation costs and to conform with requirements of common carriers and any applicable specifications. Buyer's count or weight shall be final and conclusive on shipments not accompanied by packing lists.
2. **SHIPMENT UNDER RESERVATION PROHIBITED.** Seller is not authorized to ship the goods under reservation and no tender of a bill of lading will operate as a tender of goods.
3. **TITLE AND RISK OF LOSS.** The title and risk of loss of the goods shall not pass to Buyer until Buyer actually receives and takes possession of the goods at the point or points of delivery.
4. **NO REPLACEMENT OF DEFECTIVE TENDER.** Every tender of delivery of goods must fully comply with all provisions of this contract as to time of delivery, quality and the like. If a tender is made which does not fully conform, this shall constitute a breach and Seller shall not have the right to substitute a conforming tender, provided, where the time for performance has not yet expired, the Seller may reasonably notify Buyer of his intention to cure and may then make a conforming tender within the contract time but not afterward.
5. **INVOICES & PAYMENTS.** a. Seller shall submit separate invoices, in duplicate, one each purchase order or purchase release after each delivery. Invoices shall indicate the purchase order or purchase release number and the supply agreement number if applicable. Invoices shall be itemized and transportation charges, if any, shall be listed separately. A copy of the bill of lading, and the freight waybill when applicable, should be attached to the invoice. Mail To: Accounts Payable, City of Lubbock, P. O. Box 2000, Lubbock, Texas 79457. Payment shall not be due until the above instruments are submitted after delivery.
6. **GRATUITIES.** The Buyer may, by written notice to the Seller, cancel this contract without liability to Seller if it is determined by Buyer that gratuities, in the form of entertainment, gifts or otherwise, were offered or given by the Seller, or any agent or representative of the Seller, to any officer or employee of the City of Lubbock with a view to securing a contract or securing favorable treatment with respect to the awarding or amending, or the making of any determinations with respect to the performing of such a contract. In the event this contract is canceled by Buyer pursuant to this provision, Buyer shall be entitled, in addition to any other rights and remedies, to recover or withhold the amount of the cost incurred by Seller in providing such gratuities.
7. **SPECIAL TOOLS & TEST EQUIPMENT.** If the price stated on the face hereof includes the cost of any special tooling or special test equipment fabricated or required by Seller for the purpose of filling this order, such special tooling equipment and any process sheets related thereto shall become the property of the Buyer and to the extent feasible shall be identified by the Seller as such.
8. **WARRANTY-PRICE.** a. The price to be paid by the Buyer shall be that contained in Seller's bid which Seller warrants to be no higher than Seller's current process on orders by others for products of the kind and specification covered by this agreement for similar quantities under similar of like conditions and methods of purchase. In the event Seller breaches this warranty, the prices of the items shall be reduced to the Seller's current prices on orders by others, or in the alternative. Buyer may cancel this contract without liability to Seller for breach or Seller's actual expense. b. The Seller warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for commission, percentage, brokerage, or contingent fee excepting bona fide employees of bona fide established commercial or selling agencies maintained by the Seller for the purpose of securing business. For breach of violation of this warranty the Buyer shall have the right in addition to any other right of rights to cancel this contract without liability and to deduct from the contract price, or otherwise recover without liability and to deduct from the contract price, or otherwise recover the full amount of such commission, percentage, brokerage or contingent fee.
9. **WARRANTY-PRODUCT.** Seller shall not limit or exclude any implied warranties and any attempt to do so shall render this contract voidable at the option of the Buyer. Seller warrants that the goods furnished will conform to the specification, drawings, and descriptions listed in the bid invitation, and to the sample(s) furnished by the Seller, if any. In the event of a conflict or between the specifications, drawings, and descriptions, the specifications shall govern. Notwithstanding any provisions contained in the contractual agreement, the Seller represents and warrants fault-free performance and fault-free result in the processing date and date related data (including, but not limited to calculating, comparing and sequencing) of all hardware, software and firmware products delivered and services provided under this Contract, individually or in combination, as the case may be from the effective date of this Contract. The obligations contained herein apply to products and services provided by the Seller, its sub- Seller or any third party involved in the creation or development of the products and services to be delivered to the City of Lubbock under this Contract. Failure to comply with any of the obligations contained herein, may result in the City of Lubbock availing itself of any of its rights under the law and under this Contract including, but not limited to, its right pertaining to termination or default. The warranties contained herein are separate and discrete from any other warranties specified in this Contract, and are not subject to any disclaimer of warranty, implied or expressed, or limitation of the Seller's liability which may be specified in this Contract, its appendices, its schedules, its annexes or any document incorporated in this Contract by reference.
10. **SAFETY WARRANTY.** Seller warrants that the product sold to the Buyer shall conform to the standards promulgated by the U. S. Department of Labor under the Occupational Safety and Health Act of 1970. In the event the product does not conform to OSHA standards, Buyer may return the product for correction or replacement at the Seller's expense. In the event Seller fails to make the appropriate correction within a reasonable time, correction made by Buyer will be at the Seller's expense.
11. **NO WARRANTY BY BUYER AGAINST INFRINGEMENTS.** As part of this contract for sale Seller agrees to ascertain whether goods manufactured in accordance with the specifications attached to this agreement will give rise to the rightful claim of any third person by way of infringement of the like. Buyer makes no warranty that the production of goods according to the specification will not give rise to such a claim, and in no event shall Buyer be liable to Seller for indemnification in the event that Seller is sued on the grounds of infringement of the like. If Seller is of the opinion that an infringement or the like will result, he will notify the Buyer to this effect in writing within two weeks after the signing of this agreement. If Buyer does not receive notice and is subsequently held liable for the infringement or the like, Seller will save Buyer harmless. If Seller in good faith ascertains the production of the goods in accordance with the specifications will result in infringement or the like, the contract shall be null and void.
12. **NON APPROPRIATION.** All funds for payment by the City under this contract are subject to the availability of an annual appropriation for this purpose by the City. In the event of nonappropriation of funds by the City Council of the City of Lubbock for the goods or services provided under the contract, the City will terminate the contract, without termination charge or other liability, on the last day of the then-current fiscal year or when the appropriation made for the then-current year for the goods or services covered by this contract is spent, whichever event occurs first. If at any time funds are not appropriated for the continuance of this contract, cancellation shall be accepted by the Seller on thirty (30) days prior written notice, but failure to give such notice shall be of no effect and the City shall not be obligated under this contract beyond the date of termination.
13. **RIGHT OF INSPECTION.** Buyer shall have the right to inspect the goods at delivery before accepting them.
14. **CANCELLATION.** Buyer shall have the right to cancel for default all or any part of the undelivered portion of this order if Seller breaches any of the terms hereof including warranties of Seller or if the Seller becomes insolvent or commits acts of bankruptcy. Such right of cancellation is in addition to and not in lieu of any other remedies which Buyer may have in law or equity.
15. **TERMINATION.** The performance of work under this order may be terminated in whole, or in part by the Buyer

in accordance with this provision. Termination of work hereunder shall be effected by the delivery of the Seller of a "Notice of Termination" specifying the extent to which performance of work under the order is terminated and the date upon which such termination becomes effective. Such right or termination is in addition to and not in lieu of the rights of Buyer set forth in Clause 14, herein.

16. **FORCE MAJEURE.** Neither party shall be held responsible for losses, resulting if the fulfillment of any terms of provisions of this contract is delayed or prevented by any cause not within the control of the party whose performance is interfered with, and which by the exercise of reasonable diligence said party is unable to prevent.
17. **ASSIGNMENT-DELEGATION.** No right or interest in this contract shall be assigned or delegation of any obligation made by Seller without the written permission of the Buyer. Any attempted assignment or delegation by Seller shall be wholly void and totally ineffective for all purpose unless made in conformity with this paragraph.
18. **WAIVER.** No claim or right arising out of a breach of this contract can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party.
19. **INTERPRETATION-PAROLE EVIDENCE.** This writing, plus any specifications for bids and performance provided by Buyer in its advertisement for bids, and any other documents provided by Seller as part of his bid, is intended by the parties as a final expression of their agreement and intended also as a complete and exclusive statement of the terms of their agreement. Whenever a term defined by the Uniform Commercial Code is used in this agreement, the definition contained in the Code is to control.
20. **APPLICABLE LAW.** This agreement shall be governed by the Uniform Commercial Code. Wherever the term "Uniform Commercial Code" is used, it shall be construed as meaning the Uniform Commercial Code as adopted in the State of Texas as effective and in force on the date of this agreement.
21. **RIGHT TO ASSURANCE.** Whenever one party to this contract in good faith has reason to question the other party's intent to perform he may demand that the other party give written assurance of his intent to perform. In the event that a demand is made and no assurance is given within five (5) days, the demanding party may treat this failure as an anticipatory repudiation of the contract.
22. **INDEMNIFICATION.** Seller shall indemnify, keep and save harmless the Buyer, its agents, officials and employees, against all injuries, deaths, loss, damages, claims, patent claims, suits, liabilities, judgments, costs and expenses, which may in anywise accrue against the Buyer in consequence of the granting of this Contract or which may anywise result therefrom, whether or not it shall be alleged or determined that the act was caused through negligence or omission of the Seller or its employees, or of the subSeller or assignee or its employees, if any, and the Seller shall, at his own expense, appear, defend and pay all charges of attorneys and all costs and other expenses arising therefrom of incurred in connection therewith, and, if any judgment shall be rendered against the Buyer in any such action, the Seller shall, at its own expenses, satisfy and discharge the same Seller expressly understands and agrees that any bond required by this contract, or otherwise provided by Seller, shall in no way limit the responsibility to indemnify, keep and save harmless and defend the Buyer as herein provided.
23. **TIME.** It is hereby expressly agreed and understood that time is of the essence for the performance of this contract, and failure by contract to meet the time specifications of this agreement will cause Seller to be in default of this agreement.
24. **MBE.** The City of Lubbock hereby notifies all bidders that in regard to any contract entered into pursuant to this request, minority and women business enterprises will be afforded equal opportunities to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, sex or natural origin in consideration for an award.
25. **NON-ARBITRATION.** The City reserves the right to exercise any right or remedy to it by law, contract, equity, or otherwise, including without limitation, the right to seek any and all forms of relief in a court of competent jurisdiction. Further, the City shall not be subject to any arbitration process prior to exercising its unrestricted right to seek judicial remedy. The remedies set forth herein are cumulative and not exclusive, and may be exercised concurrently. To the extent of any conflict between this provision and another provision in, or related to, this document, this provision shall control.
26. **RIGHT TO AUDIT.** At any time during the term of the contract, or thereafter, the City, or a duly authorized audit representative of the City or the State of Texas, at its expense and at reasonable times, reserves the right to audit Contractor's records and books relevant to all services provided to the City under this Contract. In the event such an audit by the City reveals any errors or overpayments by the City, Contractor shall refund the City the full amount of such overpayments within thirty (30) days of such audit findings, or the City, at its option, reserves the right to deduct such amounts owing the City from any payments due Contractor.
27. The Contractor shall not assign or sublet the contract, or any portion of the contract, without written consent from the Director of Purchasing and Contract Management.
28. Contracts with Companies Engaged in Business with Iran, Sudan, or Foreign Terrorist Organization Prohibited. Pursuant to Section 2252.152 of the Texas Government Code, prohibits the City from entering into a contract with a vendor that is identified by The Comptroller as a company known to have contracts with or provide supplies or service with Iran, Sudan or a foreign terrorist organization
29. Texas Government Code. Section 2252.908 requires a business entity entering into certain contracts with a governmental entity or state agency to file with the governmental entity or state agency a disclosure of interested parties at the time the business entity submits the signed contract to the governmental entity or state agency. Instructions for completing Form 1295 are available at: <http://www.ci.lubbock.tx.us/departmentsal-websites/departments/purchasing/vendor-information>
30. No Boycott of Israel. Pursuant to Section 2271.002 of the Texas Government Code, Respondent certifies that either (i) it meets an exemption criteria under Section 2271.002; or (ii) it does not boycott Israel and will not boycott Israel during the term of the contract resulting from this solicitation. Respondent shall state any facts that make it exempt from the boycott certification in its Response.
31. No Boycott of Energy Companies. Pursuant to Section 2274 of the Texas Government Code, Respondent certifies that either (i) it meets an exemption criteria under Section 2274.002; or (ii) it does not boycott Energy Companies and will not boycott Energy Companies during the term of the contract resulting from this solicitation. Respondent shall state any facts that make it exempt from the boycott certification in its Response.
32. No Boycott of a Firearm Entity or Firearm Trade Association. Pursuant to Section 2274 of the Texas Government Code, Respondent certifies that either (i) it meets an exemption criteria under Section 2274.002; or (ii) it does not boycott a Firearm Entity or Firearm Trade Association and will not boycott a Firearm Entity or Firearm Trade Association during the term of the contract resulting from this solicitation. Respondent shall state any facts that make it exempt from the boycott certification in its Response.
33. Contracts with Companies Engaged in Business with Iran, Sudan, or Foreign Terrorist Organization Prohibited. Pursuant to Section 2252.152 of the Texas Government Code, prohibits the City from entering into a contract with a vendor that is identified by The Comptroller as a company known to have contracts with or provide supplies or service with Iran, Sudan or a foreign terrorist organization
34. **TEXAS PUBLIC INFORMATION ACT.** The requirements of Subchapter J, Chapter 552, Government Code, may apply to this contract and the contractor or vendor agrees that the contract can be terminated if the contractor or vendor knowingly or intentionally fails to comply with a requirement of that subchapter.
35. Pursuant to Section 552.301(c) of the Texas Government Code, the City of Lubbock has designated the following email address for which public information requests may be made by an emailed request: orr@mylubbock.us. Please send this request to this email address for it to be processed



DISCOUNT 31.1882889%		-792569.18
Subtotal C:		-792569.18
Delivery Date:	D. Total Purchase Price (A+B+C):	1748670.52

Information

Agenda Item

Resolution - City Manager: Consider a resolution authorizing the Mayor to execute the Cemetery Management and Operation Interlocal Cooperation Agreement, between the Texas General Land Office and Veterans Land Board, for the City of Lubbock to be the named provider of management and operations of the West Texas State Veterans Cemetery located at 4614 East 50th Street in Lubbock, Texas.

Item Summary

In April 2022, the Lubbock City Council approved the donation of approximately 100 acres of City-owned land for the purpose of constructing and operating a Texas State Veterans Cemetery. Title to this land will pass to the Texas General Land Office, acting on behalf of the Texas Veterans Land Board, with a reversion clause that returns the property to the City of Lubbock, should it not be used for a Texas State Veterans Cemetery.

On February 24, 2023, the City received notice that the United States Veterans Administration agreed to provide funding to the Texas Veterans Land Board for the construction of the cemetery. Future operations of the cemetery will be funded by the Texas Veterans Land Board through a local partnership agreement, which is the item for consideration today.

On March 7, 2023, the Lubbock City Council approved the Mayor and City Manager to complete the property transfer to the Texas General Land Office and meet the required federal project schedules. Ground-breaking for the West Texas State Veterans Cemetery took place on November 17, 2023, located at 4614 East 50th Street.

This resolution for consideration will authorize the Mayor to execute the Cemetery Management and Operation Interlocal Cooperation Agreement between the Texas General Land Office and Veterans Land Board for the City of Lubbock to be the named the Provider of Management and Operations of the West Texas State Veterans Cemetery located in Lubbock, Texas. The agreement will be effective January 1, 2025, through September 30, 2025.

Pending approval of the Interlocal Cooperation Agreement, the City will establish a West Texas State Veterans Fund and all expenses will be reimbursed to the City by the Texas General Land Office and Veterans Land Board. The Budget Amendment will be presented for consideration at a future City Council meeting.

Fiscal Impact

Pending approval of the Interlocal Cooperation Agreement, the City will establish a West Texas State Veterans Fund, and all expenses will be reimbursed to the City by the Texas General Land Office and Veterans Land Board. The Budget Amendment will be presented for consideration at a future City Council meeting.

Staff/Board Recommending
Brooke Witcher, Assistant City Manager

Attachments

Resolution
Contract

RESOLUTION

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

THAT the Mayor of the City of Lubbock is hereby authorized and directed to execute for and on behalf of the City of Lubbock, a Cemetery Management and Operation Interlocal Cooperation Agreement for the Texas State Veterans Cemetery located in Lubbock, Texas, by and between the City of Lubbock and the Texas General Land Office and Veterans Land Board, and all related documents. Said Interlocal 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 _____.

MARK W. MCBRAYER, MAYOR

ATTEST:

Courtney Paz, City Secretary

APPROVED AS TO CONTENT:



Brooke Witcher, Assistant City Manager

APPROVED AS TO FORM:



Rachael Foster, Assistant City Attorney



CEMETERY MANAGEMENT AND OPERATION

INTERLOCAL COOPERATION AGREEMENT

BETWEEN

THE GENERAL LAND OFFICE AND VETERANS LAND BOARD

AND

THE CITY OF LUBBOCK, TEXAS

GLO CONTRACT NO. 25-016-000-E693

MANAGEMENT AND OPERATIONS INTERLOCAL COOPERATION AGREEMENT FOR THE TEXAS STATE VETERANS CEMETERY IN LUBBOCK, TEXAS

This management and operations interlocal cooperation agreement (the "Contract") is executed between the **TEXAS GENERAL LAND OFFICE** and the **VETERANS LAND BOARD**, each an agency of the State of Texas (collectively "the Board"), and the **CITY OF LUBBOCK, TEXAS** ("Provider"), each a "Party" and collectively as "the Parties," enter into the following agreement for Cemetery Management and Operation services (the "Contract") pursuant to the Interlocal Cooperation Act, Chapter 791 of the Texas Government Code.

RECITALS

WHEREAS, the Board has selected Provider to engage in the Management and Operation services at the Texas State Veterans Cemetery located in Lubbock, Texas (the "Veterans Cemetery");

WHEREAS, the Board desires to engage Provider to perform the Management and Operation services at the Veterans Cemetery on behalf of the Board; and

WHEREAS, subject to the terms and provisions set forth below and for receipt of the consideration provided for in this Contract, Provider desires to assume, and the Board is willing to grant Provider, responsibility for Management and Operation services at the Veterans Cemetery;

NOW, THEREFORE, in consideration of the foregoing promises and the mutual covenants of the Parties set forth in this Contract, the receipt and sufficiency of which are expressly acknowledged by each of Parties, it is hereby agreed as follows:

ARTICLE I. DEFINITIONS AND INTERPRETIVE PROVISIONS

1.01 DEFINITIONS

Unless the context clearly requires otherwise, the capitalized terms defined below shall have the following meanings:

"Administrative and Audit Regulations" means all applicable statutes, regulations, and other laws governing administration or audit of this Contract which may include Title 2 Part 200 and Title 38 Part 39 of the Code of Federal Regulations, Chapters 321 and 691 of the Texas Government Code, and the requirements of **ARTICLE VII** of this Contract.

"Affiliate" means any individual or entity that, directly or indirectly, is in control of, is controlled by, or is under common control with, Provider or the Board. Provider or the Board shall be deemed to control another entity if either possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of the other entity, whether through the ownership of voting securities, membership interests, by contract, or otherwise.

"Applicable Law" means any law, statute, ordinance, rule, regulation, or any recorded covenant or deed restriction applicable to the Veterans Cemetery.

“Attachment” means documents, terms, conditions, or additional information physically added to this Contract following the execution page or included by reference, as if physically, within the body of this Contract.

“Board’s Project Manager” means the designated Board employee who is responsible for the management of the Contract.

“BOSS” means the U.S. Department of Veterans Affairs Burial Operations Support System.

“Capital Equipment” means Equipment excluding Consumables and Information Technology Equipment, the cost of which for a single unit equals or exceeds \$1,000.00 before taxes, if applicable.

“Capital Expenditures” means expenditures for Capital Equipment and/or Capital Improvements.

“Capital Improvement” means any Improvement, the cost of which for a single Improvement is equal to or exceeds \$1,000.00 before taxes, and/or (ii) any Improvement, the cost of which for a single addition or alteration is less than \$1,000.00 but is required in multiples the aggregate cost of which exceeds \$1,000.00, before taxes, if applicable.

“Consumables” means all goods including, without limitation, office supplies, paper products, fertilizer, chemicals, fuels, oils, lubricants, paint, sealant, grass seed, flowers, plants, and any other Non-Capital Expenditures that are routinely used and replenished, as required to operate the Veterans Cemetery. Consumables shall be characterized as an Operating Expense.

“Contract” means this Management and Operations Agreement.

“Date of Separation” means Provider’s last day of physical operation at the Veterans Cemetery under this Contract.

“Equipment” means all items necessary for the operation of the Veterans Cemetery, including tractors, mowers, excavation equipment, hand and machine tools, spare or replacement machine parts or other items necessary for maintenance of buildings and grounds. “Equipment” does not include Consumables or Information Technology Equipment.

“Event of Default” means those events enumerated in **ARTICLE IX** of this Contract.

“Force Majeure” means the occurrence of any of the following for the period of time, if any, that the performance of Provider or the Board’s material obligations under this Contract are actually, materially, and reasonably delayed or prevented thereby:

- (i) acts of God;
- (ii) the enactment, imposition, or modification of any Applicable Law which occurs after the effective date of this Contract and that prohibits or materially impedes the performance of a party’s material obligations under this Contract;
- (iii) the confiscation, seizure, or condemnation of the Veterans Cemetery by any governmental agency;
- (iv) arrests or other restraints of government (civil or military, but excluding restraints on the performance of a party’s material obligations under this Contract occurring

as a result of any violations by the party claiming the right to delay performance of the terms and provisions of this Contract);

- (v) blockades, insurrections, riots, or civil disturbances; epidemics, landslides, lightning, earthquakes, fires, hurricanes, storms, floods, wash-outs, explosions, nuclear reaction, radiation, or radioactive contamination; acts or the failure to act of any governmental agency (exclusive of the Board's actions pursuant to this Contract); or
- (vi) any other causes, whether of the kind herein enumerated or otherwise, which are not reasonably within the control of the party (or any Affiliate actually controlled by such party) claiming the right to delay performance on account of such occurrence and which, in any event, are not foreseeable or a result of the negligence or willful misconduct of, or in the control of, the party (or its Affiliates) claiming the right to delay performance on account of such occurrence.

Force Majeure shall not include:

- (i) increases in costs of materials for operations of the Veterans Cemetery or other costs required to be paid by a Party in the performance of its obligations under this Contract;
- (ii) a Party's financial inability to perform (including when caused by failure of government authority to act); or
- (iii) the impact of weather conditions to the extent normally encountered in the Lubbock, Texas area not listed in (v) of the definition of Force Majeure above.

"GAAP" means "generally accepted accounting principles."

"GASB" means the Governmental Accounting Standards Board.

"HSP" means the HUB Subcontracting Plan as described in Chapter 2161, Subchapter F of the Texas Government Code and related provisions of the Texas Administrative Code.

"HUB" means Historically Underutilized Business, as defined by Chapter 2161 of the Texas Government Code.

"Improvement" means any addition or alteration of the buildings or grounds of the Veterans Cemetery.

"Information Technology Equipment" means all hardware, computers, computer components (monitors, mice, keyboards, memory, storage drive(s), media, etc.) routers, network equipment, transmission equipment, cabling, wiring, and software.

"Insolvency Proceeding" means, with respect to Provider:

- (i) any case, action, or proceeding with respect to Provider before any court or other governmental authority relating to bankruptcy, reorganization, insolvency, liquidation, receivership, dissolution, winding-up, or relief of debtors; or
- (ii) any general assignment for the benefit of creditors, composition, marshalling of assets for creditors, or other similar arrangement with respect to its creditors generally, or any substantial portion of its creditors; undertaken under U.S. Federal, state, or foreign law, including the Bankruptcy Code.

Maintenance means performing all scheduled, routine, and preventive maintenance on all headstones, Equipment, Improvements, and appurtenances thereto, and maintaining them in at least as good a condition as that in which they were delivered, allowing for reasonable wear and tear, but excluding Repairs.

Material Compliance means to comply with any essential element(s) proscribed or directed by any statute, regulation, procedure, and/or standard pertaining to this Contract.

NCA means the National Cemetery Administration of the VA.

Non-Capital Equipment means any Equipment that is not Capital Equipment.

Non-Capital Improvements means any Improvement that is not a Capital Improvement.

OAR means an operator action request that Provider must submit to the Board when requesting approval to undergo construction, purchase Capital Equipment, make Capital Expenditures, purchase Capital Improvements, or for any other purchases or improvements that the Board has agreed to reimburse.

On-Site Representative means the designated Board employee who may maintain an office in the Veterans Cemetery (at the expense of the Board's Administration services provider) to oversee the operations of the Veterans Cemetery on behalf of the Board.

Operating Expenses means all expenses associated with the operation and management of the Veterans Cemetery except Capital Expenditures and depreciation.

Operating Manual means the *Texas Veterans Land Board Cemetery Manual* for the operation of the Veterans Cemetery, delivered to Provider as of the execution of the Contract and as may be amended from time to time, and incorporated herein for all purposes as if physically attached.

Provider means **THE CITY OF LUBBOCK, TEXAS**, the entity contracted to provide Management and Operation services at the Veterans Cemetery, as set forth in this Contract.

Provider's Fee means the monthly fee payable by the Board to Provider.

Regulatory Agency/Agencies means the VA, the NCA, the Texas Health and Human Services Commission ("HHSC"), and any other applicable governmental agency.

Repair means to restore to proper working condition any Equipment or Improvement.

Transition Plan means a comprehensive plan to transition the Management and Operation services at the Veterans Cemetery to a successor vendor upon the expiration or termination of this Contract for any reason, which plan shall cover a period not to exceed one hundred twenty (120) days, unless otherwise provided for in this Contract.

VA means the United States Department of Veterans Affairs.

Utilities means water, wastewater, natural gas, electricity, sewer, fuels (including diesel oil, propane, and gasoline), telephone, cable television or satellite system, and garbage disposal.

Veterans Cemetery means the Texas State Veterans Cemetery located in Lubbock, Texas.

Veterans Cemetery Records means all of the books and records pertaining to the operation of the Veterans Cemetery.

1.02 INTERPRETIVE PROVISIONS

- (a) The meanings of defined terms are equally applicable to the singular and plural forms of the defined terms;
- (b) The words “hereof,” “herein,” “hereunder,” and similar words refer to this Contract as a whole and not to any particular provision section, exhibit, or schedule of this Contract unless otherwise specified;
- (c) The term “including” is not limiting and means “including without limitation” and, unless otherwise expressly provided in this Contract, (i) references to agreements (including this Contract) and other contractual instruments shall be deemed to include all subsequent amendments and other modifications thereto, but only to the extent such amendments and other modifications are not prohibited by the terms of this Contract; 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) The captions and headings of this Contract are for convenience of reference only and shall not affect the interpretation of this Contract;
- (e) All attachments referenced in this Contract are either attached hereto physically or are incorporated by reference, and are considered part of the terms of this Contract;
- (f) This Contract may use several different limitations, regulations, or policies to regulate the same or similar matters. All such limitations, regulations, and policies are cumulative, and each shall be performed in accordance with its terms;
- (g) Unless otherwise expressly provided, any reference to any action of the Board or by the Board by way of consent, approval, or waiver shall be deemed modified by the phrase “in its/their sole discretion.” Notwithstanding the preceding sentence, any approval, consent, or waiver required by or requested of the Board shall not be unreasonably withheld.
- (h) Unless otherwise expressly provided, if any provision under this Contract states that Provider must comply with all requirements of a statute, regulation, Regulatory Agency, or similar standard, such provision shall mean that Provider must be in Material Compliance with such requirements; and
- (i) In the event of conflicts or inconsistencies between this Contract and its attachments, such conflicts or inconsistencies shall be resolved by reference to the Contract and attachments in the following order of priority: the Contract then attachments to the Contract in the following order: ATTACHMENT C, ATTACHMENT A, ATTACHMENT B, ATTACHMENT G, ATTACHMENT D, ATTACHMENT E, ATTACHMENT F, and ATTACHMENT H.

1.03 ACCOUNTING PRINCIPLES

Unless the context otherwise clearly requires, all accounting terms shall be construed, and all financial computations required under this Contract shall be made, in accordance with GAAP or GASB, as applicable, consistently applied.

ARTICLE II. AUTHORITY AND CONDITIONS PRECEDENT

2.01 PROVIDER AS MANAGEMENT AND OPERATIONAL SERVICES VENDOR

The Board hereby engages Provider, and Provider, on behalf of the Board, hereby accepts such engagement and agrees to provide management and operational services at the Veterans Cemetery on the terms and conditions set forth in this Contract and such services shall be payable from current revenues available to the Provider.

2.02 RELATIONSHIP OF THE PARTIES

The relationship of the Parties shall be that of the Board as owner and of Provider as independent contractor. All acts performed by Provider during the term of this Contract shall be deemed to be performed in Provider's capacity as an independent contractor. Nothing contained in this Contract is intended to, or shall be construed to give rise to, the creation of a partnership or joint venture, or to create relationships of an employer-employee or principal-agent, or to otherwise create any liability for the Board whatsoever with respect to the indebtedness, liabilities, and obligations of Provider or any other party.

Provider shall be solely responsible for, and the Board shall have no obligation with respect to:

- (a) Withholding of income taxes, FICA, or any other taxes or fees;
- (b) Industrial or workers' compensation insurance coverage;
- (c) Participation in any group insurance plans available to Provider's employees (including but not limited to group insurance plans that are available to employees of the State of Texas);
- (d) Participation or contributions to Provider's retirement system (including but limited to participation or contributions by the State of Texas to the State Employees Retirement System);
- (e) Accumulation of vacation leave or sick leave; or
- (f) Unemployment compensation coverage (including that which may be provided by the State of Texas).

2.03 RETENTION OF AUTHORITY BY BOARD

Provider shall provide management and operational services at the Veterans Cemetery in the name of, and for the account of, the Board. Notwithstanding any other provision herein, the Board, by entering into this Contract, does not delegate to Provider any powers, duties, or responsibilities that it is prohibited by law from delegating. The Board shall at all times maintain ownership of the Veterans Cemetery assets including, but not limited to, all buildings, real property, Capital Expenditures, and any other piece of equipment or asset the cost of which is borne by the Board, and ultimate control over the operation of the Veterans Cemetery.

2.04 REGULATORY COMPLIANCE

Provider understands that as a material condition of this Contract and for the purposes of **SECTION 8.03** and **ARTICLE IX**, Provider shall comply with all applicable regulatory requirements, including without limitation all VA and NCA requirements, standards, and

guidelines, for the operation of the Veterans Cemetery, including the Board's Operating Manual. Provider will be deemed to have knowledge of these requirements and will be deemed to understand them. To the extent they apply, Provider certifies it has reviewed the General Affirmations in ATTACHMENT C, and that Provider is in compliance with all the requirements contained therein.

2.05 OPERATIONAL POLICIES

Provider shall operate the Veterans Cemetery in accordance with the Board's Operating Manual, incorporated herein for all purposes as if physically attached.

2.06 BOARD'S ON-SITE REPRESENTATIVE

The Board shall designate an On-Site Representative who shall have the right to participate in Provider's staff meetings regarding the operations of the Veterans Cemetery. The On-Site Representative will closely monitor Provider's compliance with this Contract to protect the interests of the Board. Provider shall not interfere with such duties of the On-Site Representative except as may be reasonably required to fulfill its duties to the Board. Except for emergency situations, the On-Site Representative shall not interfere with Provider's employees as they perform the duties of Provider under this Contract. The Board shall receive and consider any complaints or conflicts that Provider has concerning the status of an On-Site Representative. Furthermore, the Board assumes full responsibility for the consequences of any actions taken by the On-Site Representative in the course of his/her duties, and nothing in this Contract shall be construed as establishing an agency relationship between Provider and the Board's On-Site Representative. **NOTHING IN THIS SECTION SHALL BE CONSTRUED AS A WAIVER OF SOVEREIGN IMMUNITY BY THE BOARD.**

2.07 INSURANCE AND BONDS

For the duration of this Contract, Provider shall acquire insurance and/or bonds, with financially sound and reputable independent insurers authorized to operate in the State of Texas in the types and amounts necessary and appropriate for managing and operating the Veterans Cemetery in accordance with ATTACHMENT H. At the request of the Board, Provider shall submit certificates of liability insurance establishing, to the Board's satisfaction, the nature and extent of coverage guaranteed by each policy. Notwithstanding the foregoing, Provider may self-insure if authorized by Chapter 2259 of the Texas Government Code for any of the risks for which coverage is required.

ARTICLE III. REPRESENTATIONS AND WARRANTIES - PROVIDER

3.01 PROVIDER REPRESENTATIONS

To induce the Board to enter into this Contract, Provider hereby represents and warrants to the Board as follows:

(a) Authorization; No Contravention

Provider has taken all necessary action to authorize the execution, delivery, and performance of this Contract. This Contract constitutes the valid and binding obligation and agreement of Provider, enforceable in accordance with its terms. Neither the execution and delivery of this Contract, nor compliance with its terms or provisions will result in any breach of the terms of, conflict with, default

related to, or creation of, any lien, charge, or encumbrance upon any property or assets of Provider pursuant to the terms of any indenture, mortgage, deed of trust, note, evidence of indebtedness, agreement, or other instrument to which Provider may be a party; or by which Provider or any of its properties may be bound; or violate any provision of law, or any applicable order, writ, injunction, judgment, decree of any court, or any order or other public regulation of any governmental commission, bureau, or administrative agency;

(b) Governmental Authorization

No approval, consent, exemption, authorization, or other action by, or notice to, or filing with, any governmental agency is necessary or required in connection with the execution or delivery of, or performance by, or enforcement against Provider as relates to this Contract; and

(c) Standard of Performance

In performing its obligations under this Contract, Provider will use best efforts and will act with professionalism in accordance with acceptable and prevailing industry standards, so that the Veterans Cemetery is operated and maintained as a national shrine and in accordance with all applicable federal, state, and local requirements, and consistent with the terms of this Contract.

3.02 NO DEFAULT

No Default or Event of Default on part of Provider exists under **SECTION 9.02** or would result from the execution of this Contract.

3.03 HISTORICALLY UNDERUTILIZED BUSINESSES (HUBS)

Provider shall make a good faith effort to utilize HUBs as defined in Title 1, Part 5, Chapter 111, Subchapter B, Texas Administrative Code; and report all HUB expenditures relevant to this Contract to the Board on a monthly basis, concurrently with the invoice for Provider's Fee. Provider may submit an HSP for the length of this Contract demonstrating good faith efforts to utilize HUBs.

The Provider shall provide to the Board pertinent details of any participation by a HUB in fulfilling the duties and obligations arising hereunder. The Provider shall submit monthly compliance reports (Prime Contractor Progress Assessment Report) to HUB@glo.texas.gov specifying the use, including expenditures to HUB subcontractors, if applicable. Any modifications to the HSP must be submitted to the Board for prior approval through a HUB Subcontracting Plan Change Order. If the HSP is modified without the Board's prior approval, the Board may initiate remedial action as provided in Chapter 2161 of the Texas Government Code.

3.04 Marketing

Provider shall cooperate with the Board in any marketing plans and procedures the Board implements. Provider shall cooperate with the dissemination of informational materials, media releases, and other related informational materials generated by the Board. Provider shall not present, disseminate, or otherwise release any information for any marketing aspects without prior express written approval of the Board. Provider shall not

issue any media press releases or coordinate press events without prior express written approval of the Board through its Communications department.

ARTICLE IV. REPRESENTATIONS AND WARRANTIES - BOARD

4.01 BOARD REPRESENTATIONS

To induce Provider to enter into this Contract, the Board represents and warrants to Provider as follows:

(a) Payment of Provider's Fee

As complete compensation for the services provided by Provider under this Contract, the Board agrees, in accordance with **ARTICLES VIII AND IX** and **ATTACHMENT D**, to pay Provider's Fee.

(b) Eligibility Rules

The Board shall, in accordance with VA regulations and standards, establish eligibility rules for burial in the Veterans Cemetery.

(c) Utilization

The Board represents that it will use its best efforts to maximize utilization for the Veterans Cemetery. However, the Board does not guarantee that the Veterans Cemetery will operate at any given level of utilization or achieve any rate of burial or interment.

4.02 NO DEFAULT

No Default or Event of Default on the part of the Board exists under **SECTION 9.03** or would result from the execution of this Contract.

4.03 CAPITAL EXPENDITURES

The Board shall contract for and purchase Capital Equipment and make Capital Improvements (collectively "Capital Expenditures") in a manner consistent with state and federal purchasing requirements and with the needs and requirements of the Veterans Cemetery. Provider shall make recommendations to the Board for such Capital Expenditures. The Board shall have the ultimate authority in determining the amount of Capital Expenditures for the Veterans Cemetery, except that the Board shall ensure sufficient Capital Equipment or such Capital Improvements as are necessary to maintain the Veterans Cemetery as a national shrine.

ARTICLE V. ADMINISTRATION AND OPERATION

5.01 ADMINISTRATION AND OPERATION

Provider shall, in consultation with, for, and on behalf of the Board, at Provider's expense, and subject to the provisions of this Contract, manage and supervise all areas of daily operations of the Veterans Cemetery in accordance with the Board's Operating Manual.

5.02 MODIFICATION OF OPERATING MANUAL

The Board may make modifications to the Operating Manual during the contract term. If Provider believes in good faith that such a modification will result in an increase to the Provider's Budget as outlined in **ATTACHMENT E**, the Parties agree to enter into good faith negotiations to determine if such an increase is necessary and is a result of the Operating Manual modification. This Contract may be amended to increase the budget as a result of an Operating Manual modification upon the mutual written agreement of both Parties. However, the Board shall not be obligated to agree to such an increase to the Budget as outlined in **ATTACHMENT E**, if the Board determines that the modification will not result in an increase to the Provider's Operating Expenses and the current budget fairly compensates the Provider in accordance with Subsection 791.011(e) of the Texas Government Code.

To the extent that modifications are made to the Operating Manual, Provider is to be given at least 30-day notice prior to the modifications, and a reasonable amount of time, which shall be mutually agreed to by both parties in writing, to comply with the modifications.

5.03 ADMINISTRATIVE FUNCTIONS

Provider must develop, implement, operate, and maintain all necessary administrative systems including accounting, personnel, reporting, administrative records, purchasing, and information technology systems.

5.04 EMPLOYEE MATTERS

Except for the Board's On-Site Representative, Provider shall (i) recruit, employ, train, promote, direct, discipline, suspend, and discharge all personnel, in compliance with all applicable federal and state employment laws; (ii) establish salary levels, personnel policies, and employee benefits; and (iii) establish employee performance standards as needed during the term of this Contract, to ensure the efficient operation of all departments within, and services offered by, the Veterans Cemetery. The Board shall have the right to review the selection and continued employment of the Veterans Cemetery Director. In the event that the Board has concerns about the selection or continued employment of this individual, the Board shall submit in writing to the Provider objective evidence indicating that such individual has failed to comply with policies or procedures (promulgated either by the Provider or the Board) or that the performance of such individual has not been adequate in accordance with usual and customary standards for such position in the industry. After consultation, Provider shall address such concerns by taking such remedial action as Provider deems appropriate. Nothing contained herein shall in any way be deemed to modify any employee's status as an at will employee of Provider, nor shall any individual fulfilling such position be in any way a third-party beneficiary or receive any other rights or authorities under the terms of this clause. The selection and continued employment of any individual fulfilling this function described above is in the discretion of the Provider.

(a) Background Checks

Prior to employment, all employees shall be subjected to a thorough background investigation in accordance with all applicable federal and state laws and regulations. Background checks shall include criminal history, employment history and, where appropriate, contractor eligibility. In exercising its obligations

hereunder, Provider may obtain information from any third parties in the business of providing such investigations. The results and documentation thereof will be maintained by Provider as part of the employee's personnel file.

(b) Orientation and Training

Provider shall provide all personnel with an employee orientation and training program regarding the Board's Operating Manual, and its own internal policies and procedures. Provider shall retain records for all training required under this paragraph. Such records shall be made available for inspection to the Board or the Board's On-Site Representative during regular business hours.

(c) Emergency Staffing

Provider shall, to the extent reasonably possible, use its best efforts to ensure continued operation and appropriate staffing in the event of a catastrophic event, including natural disasters, epidemic, pandemic, war, labor strike, or dispute. However, where the Board's approval is first obtained, staffing costs which exceed Provider's current prevailing wages or salaries for regular full-time employees, but are required to ensure continuing operation, shall not be an Operating Expense of Provider but, instead, shall be an expense of the Board.

(d) Offer of Employment Upon Termination of Contract

Upon termination of this Contract for any cause, the Board or the successor provider selected by the Board shall have the right (but not the obligation) to offer employment to any or all employees of Provider who are regularly employed in providing services at the Veterans Cemetery, in order to ensure the continuing operation thereof.

(e) Board Investigations or Reviews

Upon request by the Board or its designee, when Provider employees are witnesses to relevant events, Provider shall cooperate with the Board for purposes of investigating any potential legal claims made about a Board employee's performance of his/her job duties. Notwithstanding the preceding sentence, such cooperation shall include, without limitation, interviews by the Board's Human Resources department and/or legal counsel, all of which shall require the approval of the Provider's legal counsel only if such potential legal claim involves or may involve a dispute with Provider. Employees shall be made aware of the Provider's obligations outlined in this Contract, specifically ARTICLE VII.

5.05 DISASTER PREPAREDNESS

Within 30 days from the Effective Date of this Contract, Provider shall submit a disaster preparedness plan which shall include emergency evacuation plans and procedures. The disaster preparedness shall be based on the Board's existing disaster preparedness plan and shall be amended to suit Provider's operations at the Veterans Cemetery. Provider shall submit any proposed amendments to the disaster preparedness plan to the Board. The Board shall review any proposed amendment(s) and shall provide a written response

to Provider, within thirty (30) days of receipt indicating whether Provider's proposed amendment(s) has been rejected and stating the basis for such rejection. Provider's disaster preparedness plan shall be in compliance with all applicable federal, state, and local regulations concerning safety and fire prevention, and all of Provider's employees shall receive regular training in disaster preparedness. The Board is the sole authority the closure of the cemetery. Provider will coordinate any emergency closure with the Board's On-site Representative.

5.06 BUDGET

- (a) The Board shall compensate Provider for each fiscal year as provided for in subsection (b) of this Section and in accordance with **ATTACHMENT D**, in an amount not to exceed **\$509,070.99** for the remainder of the Contract.
- (b) The fiscal year for the Veterans Cemetery will begin on October 1 and end on September 30 of each year, coinciding with Provider's fiscal year. At least ninety (90) days prior to the start of each fiscal year, Provider shall prepare and submit to the Board's Project Manager for review and approval a proposed Operating Expense Budget and a proposed Capital Expenditure Budget for the Veterans Cemetery (the "Budget"). Provider and the Board's Project Manager shall each agree to utilize best efforts to resolve all budgetary issues and to approve the Budget prior to September 1.

Approval of the Budget by the Board's Project Manager will be done in writing. Once the Board's Project Manager approves the Budget, it shall be incorporated into the contract under **ATTACHMENT E** and supplement **ATTACHMENT D**.

- (c) Provider shall notify the Board's Project Manager of the need for the purchase of any Capital Equipment or the addition of any Capital Improvements (collectively "Capital Expenditures") which Provider believes are necessary for the effective management and operation of the Veterans Cemetery under the Contract. The Board's Project Manager shall respond to Provider's recommendation in a timely manner, considering the surrounding circumstances and Provider's request, acknowledging that:
 - i. Provider's recommendation has been rejected and stating the basis for such rejection;
 - ii. Provider's recommendation has been approved and that the Board shall take the appropriate steps to make the recommended Capital Expenditure(s); or
 - iii. The Board's Project Manager has modified Provider's recommendation and shall take appropriate steps to make the Capital Expenditure(s) deemed necessary.

If Provider determines that a surplus will exist in the Operating Expense Budget prior to the end of the fiscal year, Provider may use such surplus funds to make Capital Expenditures in accordance with the terms and conditions outlined in subsection (c) of this Section. Such Capital Expenditures shall be done in accordance with, and subject to, the terms outlined in **Sections 4.03 and 6.05** of the Contract. Provider agrees and understands that legal title to all Capital Equipment and Capital Improvements purchased with funds from any surplus rests with the Board. Provider

shall maintain surplus funds in a separate account and provide expenditure reports semiannually to the Board.

5.07 ACCOUNTING

Provider shall prepare and maintain proper, accurate, and complete books, records, and accounts regarding the operations and financial and other transactions related to the management and operation of the Veterans Cemetery to the extent necessary to enable the Board to verify such transactions. All accounting methods should conform to GAAP or GASB, as applicable, be consistently applied, and shall not materially distort income or loss.

5.08 MISCELLANEOUS SERVICES

Provider may perform other duties in connection with its responsibilities under this **Article V** as the Board from time-to-time may reasonably request. Provider shall prepare a statement of work and obtain the Board's written approval before proceeding with any such requests.

ARTICLE VI. FACILITY MAINTENANCE, CAPITAL ASSETS, PURCHASING, AND SURPLUS PROPERTY

6.01 GENERALLY

Provider shall be responsible for maintaining the building, grounds, headstones, and equipment of the Veterans Cemetery, including performing all routine and preventive Maintenance on all Capital and Non-Capital Equipment and all Capital and Non-Capital Improvements. Except as otherwise noted in this Contract, all Maintenance (but not Repairs) shall be characterized as an Operating Expense and shall be paid for by Provider.

Notwithstanding the foregoing, the Board and Provider hereby acknowledge and agree that the Board exclusively intends to undertake and complete a raise and realignment project of certain headstones currently in place at the Veterans Cemetery (the "Board's Headstone Project"). The Board's Headstone Project may take place during the term of this Contract. However, day-to-day routine and preventative Maintenance of all headstones shall be completed by the Provider as set out in this Contract and. In accordance with any and all applicable VA and NCA guidelines.

Following the Effective Date of this Contract should more than ten (10%) percent of the headstones in any one of section of the Cemetery require raise and re-alignment Maintenance, the Board shall notify the Provider in writing identifying the applicable section and headstones ("Headstone Maintenance Project"). The Board agrees to enter into good faith discussions with Provider to determine a plan of action which, if mutually agreed upon by both Parties, shall include the operational and financial responsibility of each Party with respect to a Headstone Maintenance Project.

However, Provider hereby represents and warrants that it will not knowingly or willfully disregard its day-to-day routine and preventative headstone Maintenance duties such that a Headstone Maintenance Project becomes necessary. To the extent Provider fails to meet such representation and warranty, the Board is under no obligation to enter into the

discussions referenced in this section regarding any Headstone Maintenance Project. Compliance with this representation constitutes a material term of this Contract.

The Board shall include serial numbers and age of Capital and Non-Capital Equipment in the attached exhibits. Board shall deliver the attached items in working condition at the commencement of the Contract.

6.02 LOSS PREVENTION

Within 30 days from the Effective Date of this Contract, Provider shall submit for review by the Board a risk management and loss prevention program designed to prevent the misappropriation, loss, or damage of Capital Equipment and/or Capital Improvements. The Board shall review risk management and loss prevention program plan and shall provide a written response to Provider within thirty (30) days of requesting edits to the plan and stating the basis for such requests. Provider shall reimburse the Board for any Capital Equipment or Capital Improvement damaged, lost, or destroyed as a result of the acts or omissions of Provider and/or its agents, volunteers, and employees. Provider shall be financially responsible to the Board for all losses of Capital Equipment and Capital Improvements that occur due to the negligent or intentional acts of Provider and/or its agents, volunteers, or employees, and not due to reasonable wear and tear.

6.03 FACILITY MAINTENANCE AND REPAIRS

Provider shall be responsible for all Maintenance in the Veterans Cemetery and must maintain in good and working condition, and in sufficient quantity, all Equipment necessary to operate and manage the Veterans Cemetery in a manner consistent with the requirements of this Contract. In addition, Provider shall replace obsolete or run-down Non-Capital Equipment and make Non-Capital Improvements as necessary to maintain a functional and attractive facility. Provider shall make all Repairs on all Equipment and Improvements in the Veterans Cemetery. However,

- (i) if the subject Equipment or Improvement has exceeded its useful life and frequent repairs become necessary;
- (ii) if the need for such Repair results from a manufacturing, design, or construction defect of the Capital Equipment or a Capital Improvement; or
- (iii) if the Repair meets the definition of Capital Equipment or Capital Improvement in **Section 1.01** of this Contract the cost of such repair(s) shall be the responsibility of the Board.

In each instance in which the Board and Provider have a good-faith disagreement regarding the cause of the necessity for Repair or replacement (e.g., whether or not the subject Capital Equipment or Capital Improvement has exceeded its useful life, or whether Provider properly performed its Maintenance obligations with respect thereto, or whether a Repair is necessitated by Provider negligence), Provider shall pay the first \$1,000.00 of the subject Repair or replacement and the Board shall pay the balance. Provider shall notify the Board before performing any Repair for which the Board has the responsibility to pay and may not proceed with such Repair without the express written approval of the Board. Notwithstanding the preceding sentence, Provider shall be responsible for the full cost of any Repair necessitated by the Provider's negligence or intentional failure to perform its maintenance obligations under this Contract. Before

performing any Repair, the cost of which shall be the responsibility of the Board, Provider shall notify the Board (provided that if Provider reasonably believes that such Repair is needed immediately to avoid threatening the safety of the public, Provider shall proceed to make such Repair and shall notify the Board per emergency OAR procedures but shall not proceed with such Repair without the written approval of the Deputy Director of Board's TSVC program.)

(a) Warranty Repairs

Provider shall use its best efforts to obtain all necessary warranty repairs on all Capital and Non-Capital Equipment and Capital and Non-Capital Improvements, ensuring they are completed prior to the expiration of the applicable warranty. In complying with this provision, Provider shall not be obligated to incur any financial obligation, except for damages or liability resulting from negligent or intentional failure, omission, or neglect by Provider.

(b) Scheduled Maintenance and Records

Provider shall perform all scheduled or manufacturer-recommended maintenance on all Capital Equipment. Provider shall keep detailed maintenance records in accordance with the manufacturer's specifications on all Capital Equipment at the Veterans Cemetery. Such records shall be made available for inspection to the Board or the Board's On-Site Representative during regular business hours. Such records shall be the basis for determining reimbursement for Repairs under this section.

(c) Janitorial Services

Provider shall provide full janitorial services including dumpster service, trash and debris removal and legal disposal, extermination, and pest control.

6.04 LANDSCAPE MAINTENANCE

Provider shall maintain the Veterans Cemetery grounds and keep them in an attractive condition, appropriate to the seasonal weather and the location's soil, water, climate, and topography in accordance with the Board's Operating Manual. Provider shall ensure that the grass, trees, bushes, shrubs, flowers, and other plants are mowed, trimmed, clipped, watered, and fertilized as seasonally appropriate. Furthermore, Provider shall sweep and clean all sidewalks and outside concrete or paved areas, keeping them free of trash and debris.

6.05 TITLE TO CAPITAL ASSETS

Legal title to all Capital Equipment and Capital Improvements rests with the Board. The Board and Provider acknowledge and agree that the assets set forth in ATTACHMENT A are the pieces of Capital Equipment present in, or the Capital Improvements made to, the Veterans Cemetery as of the date listed thereon. Furthermore, the Board and Provider agree to review and update ATTACHMENT A no less than annually. Upon expiration or termination of this Contract for any reason, nothing in this Contract shall operate to transfer title to the Board, or limit the right of Provider to remove, items of equipment or other personal property and supplies purchased solely by Provider (and not charged to the Board) for use by its staff, which items are beyond the usual and customary equipment and supplies required to fulfill Provider's duties under this Contract.

6.06 PURCHASING

Provider shall purchase and pay for all Consumables, Non-Capital Improvements, Non-Capital Equipment, Information Technology Equipment (not otherwise provided by the Board), Utilities, and any other supplies or provisions required for operation of the Veterans Cemetery. These expenditures shall be characterized as Operating Expenses. Notwithstanding the preceding sentence, the Board may elect to contract directly with the Texas General Land Office (GLO) or a local utility provider for the electricity and natural gas needs of the Veterans Cemetery.

(a) Capital Expenditures; Prohibited

Provider shall not purchase or otherwise acquire for use at the Veterans Cemetery any Capital Equipment or make any Capital Improvement without written approval from Board.

(b) Emergency Capital Expenditures

In the event that Provider believes that the acquisition of Capital Equipment is needed or any Capital Improvement is required immediately, Provider shall so notify the Board and request, after stating the reasons therefor, an emergency purchase of Capital Equipment and/or Capital Improvement. The Board shall respond promptly, but in no event later than twenty-four (24) hours after receiving such emergency request. If such emergency request is approved, the Board and Provider will coordinate the purchase of the Capital Equipment and/or Capital Improvement in an expedited manner. If Provider must act without approval of the Board in order to prevent an immediate threat, legal title to any Capital Equipment purchased by Provider shall rest with Provider; however, title to any Capital Improvement shall remain the property of the Board. The Board will reimburse Provider for all reasonable emergency Capital Improvement expenditures. In addition, the Board at its option may purchase any Capital Equipment acquired by Provider in an emergency at its fair market value, to be determined at the time the Board exercises its right of purchase.

(c) Third-party Service Contracts

Unless otherwise notified by the Board, Provider shall enter into and pay for all service contracts necessary for the provision of Provider's services at the Veterans Cemetery in a manner consistent with all applicable federal, state, and local laws, regulations, and the terms of this Contract. All contracts between Provider and a third party for such services shall require the third party to allow the assignment, at the Board's direction, of Provider's rights and obligations under such contracts to the Board or to a successor provider chosen by the Board. Provider shall use its good faith efforts to maintain compliance with all contracts. Provider shall execute such contracts in its legal capacity. Prior to engaging any contractor, Provider shall provide a background check, and shall verify the contractor's eligibility for receiving state or federal contracts, using the Texas Comptroller of Public Accounts Vendor Performance Tracking System (<https://comptroller.texas.gov/purchasing/programs/vendor-performance-tracking/>) for suspended and debarred vendors, and the U.S. General Services Administration's System for Award Management (<https://www.sam.gov/>). In the

event that any third-party service contracts are entered into by the Board (rather than Provider) Provider shall have the right to consult with the Board on any such contracts which have an effect on Provider's ability to comply with the terms of this Contract. If at any time during the term of this Contract Provider presents to the Board objective evidence of any non-compliance by any contractor selected by the Board, which non-compliance impairs or affects Provider's ability to effectively perform its functions under this Contract, the Board shall secure corrective action by the contractor in default thereof, up to and including termination.

(d) State and Federal Contracts

The Board at its option may make available to Provider or Provider's subcontractors the ability to purchase goods and services under State Term Contracts (STC) or Federal Supply Schedules (FSS). If Provider engages in such contracts, all purchases must be made for the exclusive use of the Veterans Cemetery and in accordance with the particular terms of the contract.

(e) Information Technology Equipment

The Board shall provide the Information Technology Equipment listed on **ATTACHMENT B** needed for the VA-mandated burial management system "BOSS" and communication with the Board. Any additional Information Technology Equipment needed for the operation of the Cemetery shall be the responsibility of Provider and shall be characterized as an Operating Expense.

6.07 SURPLUS PROPERTY

Provider shall submit to the Board no later than 30 calendar days from the first day of each Fiscal Year, a list of all Equipment (if any) Provider believes is surplus or is beyond repair. Provider shall cooperate with the Board in disposing of such equipment in accordance with applicable state and federal surplus property disposal laws, rules, or regulations.

6.08 MISCELLANEOUS SERVICES

Provider may perform other duties in connection with its responsibilities under this Article as the Board from time to time may reasonably require. Provider will prepare a statement of work and obtain the Board's written approval before proceeding with any such requests.

ARTICLE VII. RECORDS, REPORTS, AND INSPECTION AND AUDIT

7.01 OWNERSHIP OF DOCUMENTS AND WORK PAPERS

To the extent allowed by law, the Board shall own all records, documents, files, reports, work papers, and working documentation created in connection with the Veterans Cemetery, electronic or otherwise, except that Provider's internal administrative files and internal correspondence shall remain the property of Provider. Provider shall be entitled to retain a set of such work papers for its files. Upon termination of this Contract, Provider shall deliver such documents to the Board no later than 30 calendar days after the date of termination.

Provider agrees not to use records, documents, files, reports, work papers, and working documentation created in connection with the Veterans Cemetery, electronic or otherwise, for unrelated commercial purposes, advertising, or advertising-related services, or for any other purpose not explicitly authorized by the Board in this Contract.

7.02 BOARD ACCESS TO RECORDS & PRIVACY

The Board or any duly authorized representative(s) shall have; for the purpose of making audits, examinations, excerpts, and transcriptions; unimpeded, prompt access to any of Provider's books, documents, papers, and/or records that are maintained or produced relevant to this Contract. Provider shall retain all records (not otherwise returned to the Board as per **Section 7.01**) related to this Contract for seven (7) years after final payment is made under this Contract and all pending matters are closed. However, if any audit, litigation, or other action is commenced before the end of the seven (7)-year period, the records shall be retained for one (1) year after all issues arising out of the action are finally resolved or until the end of the seven (7)-year period, whichever is later. Notwithstanding the terms of this provision, however, the retention of any records by Provider shall be in accordance with all state and federal regulations and requirements, as well as the record retention policy promulgated by Provider and approved by the Board.

Provider shall comply with all applicable federal and state privacy data protection laws, as well as other applicable regulations for any data received by or collected on behalf of the Board.

7.03 GOVERNMENT ACCESS TO BOOKS AND RECORDS

Provider shall comply with all applicable federal and state laws and regulations governing the maintenance of documentation to verify the cost of services rendered under this Contract. Provider agrees that all relevant records related to this Contract or any work product under this Contract, including the practices of its subcontractors, shall be subject, at any reasonable time to inspection, examination, review, audit, and copying at any office or location of Provider where such records may be found, with or without notice by the Board, Texas State Auditor's Office, its contracted examiners, or the Texas Attorney General's Office, and with regard to any federal funding, the VA, the Comptroller General, the General Accounting Office, the Office of the Inspector General, or any of their authorized representatives. All subcontracts entered into by Provider shall reflect the requirements of this section.

7.04 REPORTS

Provider shall prepare and provide to the Board any operational information which the Board may request from time to time, including any information needed to assist the Board in complying with any reporting obligations or contractual requirements imposed by the VA or any other regulatory entity. In addition, Provider shall file financial reports in accordance with the following guidelines:

- (a) Within thirty (30) calendar days after the end of each calendar month, Provider shall provide the Board with an unaudited balance sheet and an unaudited statement of income and expenses for such month relating to the operation of the Veterans Cemetery, dated the last day of such month; and

- (b) Within one hundred fifty (150) calendar days after the end of the fiscal year of the Veterans Cemetery, Provider shall provide the Board with combined audited financial statements from an auditor acceptable to Board, including:
- (i) a balance sheet of the Veterans Cemetery dated the last day of said fiscal year;
 - (ii) a statement of income and expense for the year then ended relating to the operation of the Veterans Cemetery;
 - (iii) a statement of cash flows for the year then ended for the Veterans Cemetery; and
 - (iv) audit adjustments reconciling audited annual financial statements to unaudited monthly financial statements previously provided by Provider.

The balance sheet and statement of income and expense shall include columns setting forth the applicable amounts for the prior fiscal year, comparing data reported pursuant to **7.04(b)**, above, to such prior year's data (if applicable) as well as to the budget developed for that same year. In this connection, all such reports shall be prepared on forms reasonably acceptable to the Board and Provider, and all statements and reports shall be prepared on an accrual basis, in accordance with GAAP, consistently applied. As additional support to reporting information required under this Contract, Provider shall, at the Board's request, provide to the Board, within five (5) working days of the Board's request, access to and/or copies of:

- (i) all bank statements and reconciliations;
- (ii) detailed cash receipts and disbursement records;
- (iii) general ledger listing;
- (iv) summaries of adjusting journal entries;
- (v) copies of all paid bills; and
- (vi) any other supporting documentation the Board may reasonably request within such reasonable time as not to impair the performance of Provider's functions under this Contract.

7.05 BOARD AUDIT RIGHTS

Provider and the Board recognize that Provider shall be subject to audits by various state and federal agencies, based on its duties of operating the Veterans Cemetery. Provider shall supply the Board with a copy of all audit reports, regardless of their source. Nothing herein shall limit the right of the Board to demand one (1) annual program and/or fiscal audit in accordance with GAAP of the Veterans Cemetery, using an independent third-party auditor selected by the Provider subject to review and approved by the Board which shall not be unreasonably withheld, the expense of which shall be borne by Provider. In addition, the Board shall have the right to perform an annual program and/or fiscal audit of any aspect of the operation of the Veterans Cemetery, using an auditor of the Board's choice. The costs associated with performing such special or targeted audits shall be the responsibility of the Board. Provider shall maintain such financial records and other records as may be prescribed by the Board or by

applicable federal and state laws, rules, and regulations for a period of seven (7) years after final payment or until they are audited by the Board, whichever event occurs first. The period of retention shall be extended for a period reasonably necessary to complete an audit and/or to complete any administrative proceeding or litigation that may ensue.

ARTICLE VIII. TERM, RENEWAL AND COMPENSATION

8.01 TERM OF CONTRACT

This Contract shall be effective January 1, 2025 (“Effective Date”) and shall continue until September 30, 2025 (the “Initial Term”), subject to the conditions set forth in this Contract.

8.02 MANAGEMENT AND OPERATIONS FEE

As complete consideration for Provider’s services under this Contract, including Provider’s payment of all Operating Expenses, the Board shall, subject in all events to the availability of funds and current revenues as set forth in **SECTIONS 8.04 AND 9.01(a)**, pay Provider’s Fee for the Veterans Cemetery in accordance with **ATTACHMENT D**, attached hereto and incorporated herein for all purposes. Provider’s Fee shall be paid to Provider by the Board on a monthly basis, consistent with the requirements of Chapter 2251 of the Texas Government Code, “The Prompt Pay Act.” For purposes of the Prompt Pay Act, the Board’s payment of the Provider’s Fee is overdue on the thirty-first (31st) day after the date the Board receives a proper invoice for Provider’s services under the Contract. For purposes of determining the relevant time period to calculate the Provider’s fee, “Day One (1)” for the Veterans Cemetery is the Effective Date. In the event that the Veterans Cemetery’s Day One (1) is not on the first (1st) day of a month, the Operations Fee shall be prorated for the days in that month for which Provider provided services in the Veterans Cemetery. In accordance with the Prompt Pay Act, Provider shall pay any subcontractor under this Contract within ten (10) days after receipt of payment from the Board. **Requests for payment must prominently display “GLO Contract No. 25-016-000-E693.” Failure to include this information may result in a significant delay in payment.**

8.03 INSPECTION

The Board’s On-Site Representative shall conduct inspections, which may be announced or unannounced, at least once per quarter or more frequently if determined by the Board. Provider shall be scored in accordance with its compliance with the Board’s Operating Manual and the Cemetery Inspection Checklists, attached hereto and incorporated herein for all purposes as **ATTACHMENT F**. To the extent the Board conducts an inspection within 30 days from a Force Majeure event, the Board shall take into consideration the occurrence of such Force Majeure event in determining Provider’s compliance with the Board’s Operating Manual and Cemetery Inspection Checklists. Provider must maintain a minimally accepted compliance score of eighty percent (80%) or higher for each inspection. In the event that Provider does not achieve such a score, Provider shall be given at least thirty (30) days prior to the following inspection to remedy all cited deficiencies and achieve this score. Provider may request, in writing, a time period longer than thirty (30) days to achieve compliance which shall be subject to the Board or the Board’s designee’s written approval. The Board or the Board’s designee’s approval shall not be unreasonably withheld. If Provider cannot achieve compliance at this

following inspection, the Board may elect to terminate the Contract for cause in accordance with **ARTICLE IX**.

If the Board elects to terminate the Contract for cause in accordance with **ARTICLE IX** for Provider's failure to achieve compliance, Provider shall reimburse the Board the amount of cost to bring the Veteran's Cemetery into compliance no later than the Contract's termination date.

8.04 OPERATIONS FEE ADJUSTMENT PROVISION

The Parties agree that the fees set forth on **ATTACHMENT E** are based in part upon certain estimates relating to costs of operation and projected burial rates, which are difficult to predict accurately over the term of the Contract. If any cost of operation materially changes (which must be objectively demonstrated), or actual burial rates exceed one thousand (1,000) in any rolling one (1) year period, Provider may request a review and adjustment of these fees. The Board shall review Provider's request in good faith; however, notwithstanding the preceding sentence, the Board is not obligated to increase these fees.

8.05 PASS THROUGH EXPENDITURES

The Board and Provider agree that the "pass-through expenditures" listed on **ATTACHMENT D** shall be the responsibility of the Board and not considered part of Provider's normal Operating Expenses. Provider shall promptly present the Board with invoices for all such expenses for reimbursement.

8.06 LIMITED OBLIGATION AGREEMENT

THIS CONTRACT IS A LIMITED OBLIGATION OF THE BOARD, AND ANY PAYMENT REQUIRED BY THE BOARD UNDER THIS CONTRACT SHALL BE LIMITED SOLELY TO THE CURRENT FUNDS RECEIVED BY THE BOARD FOR THE PAYMENT OF EXPENSES OF THE VETERANS CEMETERIES; NEITHER THE FAITH, CREDIT, TAXING POWER OF THE STATE OF TEXAS OR THE UNITED STATES OF AMERICA, NOR THE GENERAL REVENUES OF THE BOARD ARE PLEDGED TO MAKE ANY PAYMENT REQUIRED UNDER THIS CONTRACT.

8.07 MISCELLANEOUS SERVICES FEE

The Board and Provider agree that any "Miscellaneous Services" requested by the Board, as described under **ARTICLES V AND VI**, shall be the responsibility of the Board and are not considered part of Provider's normal Operating Expenses. Provider shall promptly present the Board with invoices for all such expenses for reimbursement. The Board, however, shall not compensate Provider for any expenses exceeding Provider's statement of work as approved by the Board.

ARTICLE IX. TERMINATION AND REMEDIES

9.01 TERMINATION

Either Party may terminate this Contract in the Event of Default by the other Party, or as otherwise specified in this **ARTICLE IX**. In the event of notice of termination or default, Provider will cooperate in the development of a Transition Plan for transitioning all aspects of facility operation from the current Provider to a new provider designated by the Board, with such transition occurring no later than one hundred twenty (120) days

from the date of the receipt of notice. Any outstanding obligations shall be resolved in accordance with **Section 9.06**.

(a) **State Termination for Non-appropriation**

This Contract shall not be construed as creating any debt on behalf of the State in violation of Tex. Const. Art. III § 49. The continuation of this Contract beyond the current biennium may be subject to and contingent upon sufficient funds being appropriated, budgeted, and otherwise made available by the Texas State Legislature, the Board's excess lending profits and/or federal sources.

(b) **Termination Without Cause by Board**

The Board shall have the right to terminate this Contract without cause. Provider shall be provided with written notice no less than one hundred twenty (120) calendar days prior to the Board's termination of this Contract. In the event that the Board exercises its rights to early termination under the provisions of this clause, such early termination shall be subject to the equitable settlement of the respective interests of the Parties, accrued up to the date of termination.

(c) **Termination as Relief for Provider**

Provider shall have the right to petition the Board for the termination of this Contract as relief from an unforeseen catastrophic natural or economic event, arising through no fault of Provider, that impairs the ability of Provider to perform its duties hereunder. Upon a finding that good cause exists for such termination, the Board shall terminate this Contract. Furthermore, if Provider, in fulfilling its obligations under this Contract, can objectively demonstrate to the Board that the Veterans Cemetery is operating at financial loss, Provider shall have the right to terminate this Contract. In the event that this Contract is terminated, such termination shall occur at the earlier of either:

- (i) one hundred and twenty (120) days following Provider's petition to the Board for early termination; or
- (ii) the date upon which any catastrophic natural or economic event causes Provider to be no longer fiscally capable of carrying out the services required under this Contract.

9.02 PROVIDER EVENTS OF DEFAULT

With respect to Provider, it shall be an Event of Default hereunder for any of the following conditions:

(a) **Material Compliance**

If Provider fails to keep, observe, or perform any material agreement, term, or provision of this Contract for a period of thirty (30) calendar days after notice from the Board specifying the event or events of default. However, no Event of Default shall be deemed to exist where the act, event, or condition is one which by its nature or circumstances reasonably requires more than thirty (30) days to cure and Provider, promptly following receipt of the Board's notice, in good faith initiates and diligently pursues measures which, upon their conclusion, may reasonably be expected to cure or eliminate the noticed act, event, or condition;

(b) Failure to Pay Third-party Providers

If Provider fails to make payments or keep any covenants owing to any third party which would cause the Board to lose possession of the Veterans Cemetery or any personal property or service arrangements that are required to operate the Veterans Cemetery in the normal course of business;

(c) Voluntary Insolvency occurs if Provider:

- (i) ceases or fails to be solvent, or generally fails to pay, or admits in writing its inability to pay, its debts as they become due, subject to applicable grace periods, if any, whether at stated maturity or otherwise;
- (ii) voluntarily ceases to conduct its business in the ordinary course;
- (iii) commences any Insolvency Proceeding with respect to itself; or
- (iv) takes any action to effectuate or authorize any of the foregoing;

(d) Involuntary Insolvency occurs if Provider:

- (i) has any involuntary Insolvency Proceeding commenced or filed against it, or if any writ, judgment, warrant of attachment, execution, or similar process is issued or levied against a substantial part of Provider's properties, and any such proceeding or petition is not dismissed; or such writ, judgment, warrant of attachment, execution, or similar process is not released, vacated, or fully bonded within sixty (60) days after commencement, filing, or levy;
- (ii) admits the material allegations of a petition against it in any Insolvency Proceeding, or if an order for relief (or similar order under non-U.S. law) is ordered in any Insolvency Proceeding; or
- (iii) acquiesces in the appointment of a receiver, trustee, custodian, conservator, liquidator, mortgagee in possession (or agent therefor), or other similar person for itself, for a substantial portion of its property or business.

9.03 BOARD EVENTS OF DEFAULT

With respect to the Board, it shall be an Event of Default hereunder if the Board fails to keep, observe, or perform any material agreement, term, or provision of this Contract, including non-payment of Provider's Fee hereunder for any cause not specifically allowed herein, and such default continues for a period of thirty (30) calendar days after notice is provided to the Board by Provider.

9.04 FORCE MAJEURE/NO DEFAULT

Any delays in or failure of performance by either party, except with regard to the obligation of payments under this Contract, shall not constitute an Event of Default hereunder if, and to the extent that, such delays or failure of performance are caused by occurrence(s) beyond the reasonable control of the party affected, and which by the exercise of due diligence such party is unable to prevent Force Majeure. The party claiming Force Majeure shall promptly notify the other party in writing of the Force Majeure event and, if possible, such notice shall set forth the extent and duration thereof. The party claiming Force Majeure shall exercise due diligence to prevent, eliminate, or

overcome such Force Majeure event where it is possible to do so, and shall resume performance at the earliest possible date. However, if non-performance continues for more than thirty (30) days, the other party may terminate this Contract immediately upon written notification to the non-performing party.

9.05 REMEDIES UPON DEFAULT - PROVIDER/BOARD

If any Event of Default by either Party shall occur, either party, in addition to any other remedy at law available to it, may terminate this Contract in accordance with the terms herein, thereby releasing all Parties from any further continuing operational obligations whatsoever hereunder, provided the Parties shall cooperate in development of a Transition Plan. **NOTHING CONTAINED IN ANY PORTION OF THIS CONTRACT SHALL BE CONSTRUED IN ANY WAY TO WAIVE ANY DEFENSES ASSERTIBLE BY EITHER PARTY, INCLUDING SOVEREIGN IMMUNITY BY THE BOARD OR GOVERNMENTAL IMMUNITY BY THE PROVIDER.**

9.06 WINDING UP

In the event of termination of this Contract for any reason, the Parties shall perform the winding up tasks specified in this section. The Parties agree that the provisions of this section shall survive termination of this Contract and agree to undertake the following:

- (a) The Parties shall account for, and properly present to each other, all claims for fees and expenses and pay those which are undisputed and otherwise not subject to set-off under this Contract;
- (b) Provider shall account and present for inspection to the Board, no later than thirty (30) calendar dates from the date of termination, all Capital Equipment and Capital Improvements, and any damaged or missing Capital Equipment and/or Capital Improvements shall be the financial responsibility of Provider unless otherwise provided for herein;
- (c) Provider shall return the Veterans Cemetery to the Board, equipped and in the same condition as it was provided to Provider, to ensure the continued operation of the Veterans Cemetery save and except for any damage that was caused by a natural catastrophic event through no fault of the Provider;
- (d) Provider shall return all keys, access cards, and security codes to the Board;
- (e) Provider shall satisfactorily complete work-in-progress at the contracted rate; and
- (f) Provider shall execute any documents and take any actions necessary to effectuate an assignment of this Contract, if so requested by the Board.

ARTICLE X. MISCELLANEOUS

10.01 CUMULATIVE RIGHTS AND REMEDIES; NO WAIVER

A right or remedy herein conferred upon or reserved to either Party hereto is not intended to be exclusive of any other right or remedy, and each and every right and remedy shall be cumulative and in addition to any other right or remedy given hereunder, or now or hereafter legally existing, upon the occurrence of an Event of Default hereunder. The failure of either party to insist at any time upon the strict observance or performance of any of the provisions of this Contract or to exercise any right or remedy as provided in this Contract shall not impair any such right or remedy or be construed as a waiver or

relinquishment thereof with respect to subsequent defaults. Every right and remedy given by this Contract to the Parties hereof may be exercised from time-to-time and as often as may be deemed expedient by the Parties hereto.

10.02 WAIVER OF PRIVILEGE

The Parties agree that any applicable attorney-client or other legal privilege shall not be deemed waived by this Contract.

10.03 ASSIGNMENT

Provider may not, without the prior written consent of the Board, which consent may be withheld or granted in the Board's sole discretion, assign its obligations as Provider hereunder; or lease, assign, or sub-manage the Veterans Cemetery.

10.04 SEVERABILITY

In case any one or more of the provisions contained in this Contract should be invalid, illegal, or unenforceable in any respect, the validity, legality, or enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby, but this Contract shall be reformed and construed and enforced to the maximum extent permitted by applicable law.

10.05 APPLICABLE LAW

This Contract shall be interpreted, construed, applied, and enforced in accordance with the laws of the State of Texas applicable to contracts between parties that are to be performed entirely within Texas, regardless of:

- (i) where this Contract is executed or delivered;
- (ii) where any payment or other performance required by this Contract is made or required to be made;
- (iii) where any breach of any provision of this Contract occurs, or any cause of action otherwise accrues;
- (iv) where any action or other proceeding is instituted or pending;
- (v) the nationality, citizenship, domicile, principal place of business, jurisdiction of organization, or domestication of any party;
- (vi) whether the laws of the forum jurisdiction otherwise would apply the laws of a jurisdiction other than the State of Texas; or
- (vii) any combination of the foregoing.

NOTHING IN THIS CONTRACT SHALL BE CONSTRUED AS A WAIVER OF SOVEREIGN IMMUNITY BY THE BOARD OR THE STATE OF TEXAS OR GOVERNMENTAL IMMUNITY BY THE PROVIDER.

10.06 DISPUTE RESOLUTION

If a dispute arises that cannot be resolved to the satisfaction of the Parties, either party may notify the other party in writing of the dispute. If the Parties are unable to satisfactorily resolve the dispute within fourteen (14) days of the written notification, either party may require that the issue(s) be mediated. In such event, the requesting party shall notify the other, and a mediator acceptable to the Board and Provider will be

selected. The mediation shall occur within thirty (30) days of the selection of a mediator. Prior to the mediation, each party will provide the mediator with a statement of issues to be mediated, along with any other information/releases required by the mediator. Costs of the mediation shall be borne equally by the Parties. This provision shall not apply to any matter with respect to which the Board may make a decision within its sole and complete discretion. Resolution of a dispute between Provider and any of its subcontractors, suppliers, or employees is the responsibility of Provider.

10.07 CHOICE OF LAW AND VENUE

This Contract 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 brought against the Board arising under this Contract is fixed in any court of competent jurisdiction of Travis County, Texas. Except as otherwise provided by applicable law, the venue of any suit brought against Provider arising under this Contract is fixed in any court of competent jurisdiction in Hidalgo County, Texas. Provider irrevocably waives any objection-including any objection to personal jurisdiction-it has or may have to the bringing of any action or proceeding in accordance with the foregoing, in respect of this Contract or any related document. **NOTHING IN THIS SECTION SHALL BE CONSTRUED AS A WAIVER OF SOVEREIGN IMMUNITY BY THE BOARD OF THE STATE OF TEXAS OR A WAIVER OF GOVERNMENTAL IMMUNITY BY THE PROVIDER.**

10.08 CONFIDENTIALITY & PUBLIC RECORDS

If Provider receives a request or demand to disclose any books, documents, or records relevant to this Contract for the purpose of an audit or investigation, Provider shall, within two (2) business days after receipt of such request or demand, notify the Board in writing of the nature and scope of such request or demand, unless Provider is strictly prohibit from doing so as set forth in the terms of an audit, investigation, or subpoena. Upon written request of the Board, Provider shall make available to the Board all such books, documents, or records.

To the extent permitted by law, Provider and the Board shall keep all information, in whatever form produced, prepared, observed, or received by Provider or the Board, confidential to the extent that such information is: (a) confidential by law; (b) marked or designated "confidential" (or words to that effect) by Provider or the Board; or (c) information that Provider or the Board is otherwise required to keep confidential by this Contract. Provider shall abide by the terms of the Board's Information Security Appendix as outlined in ATTACHMENT G.

The Board shall post this Contract to the GLO's website. Provider understands that the Board will comply with the Texas Public Information Act, Chapter 552 of the Texas Government Code Chapter 552 ("PIA"), as interpreted by judicial rulings and opinions of the Attorney General of the State of Texas (the "Attorney General"). Information, documentation, and other material in connection with this Contract may be subject to public disclosure pursuant to the PIA. In accordance with Section 2252.907 of the Texas Government Code, Provider is required to make any information created or exchanged with the Board or the State of Texas pursuant to the Contract, and not otherwise excepted from disclosure under the PIA, available to the Board in portable document file (".pdf") format or any other format agreed upon between the Parties that is accessible by the public at no additional charge to the Board or the State of Texas. By failing to mark any

information that Provider believes to be excepted from disclosure as “confidential” or a “trade secret,” Provider waives any and all claims it may make against the Board for releasing such information without prior notice to Provider. The Attorney General will ultimately determine whether any information may be withheld from release under the PIA. Provider shall notify the GLO’s Office of General Counsel within twenty-four (24) hours of receipt of any third-party written requests for information and forward a copy of said written requests to PIALegal@glo.texas.gov. If a request for information was not written, Provider shall forward the third party’s contact information to the above-designated email address.

10.09 INDEMNITY

TO THE EXTENT PERMITTED UNDER THE LAW, EXCEPT FOR DAMAGES DIRECTLY OR PROXIMATELY CAUSED BY THE GROSS NEGLIGENCE OF THE BOARD, PROVIDER SHALL INDEMNIFY AND HOLD HARMLESS THE STATE OF TEXAS, THE BOARD, AND THE OFFICERS, REPRESENTATIVES, AGENTS, AND EMPLOYEES OF THE STATE OF TEXAS AND THE BOARD FROM ANY LOSSES, CLAIMS, SUITS, ACTIONS, DAMAGES, OR LIABILITY (INCLUDING ALL COSTS AND EXPENSES OF DEFENDING AGAINST ALL OF THE AFOREMENTIONED) ARISING IN CONNECTION WITH:

- (a) THIS CONTRACT;**
- (b) ANY NEGLIGENCE, ACT, OMISSION, OR MISCONDUCT IN THE PERFORMANCE OF THE SERVICES REFERENCED HEREIN; OR**
- (c) ANY CLAIMS OR AMOUNTS ARISING OR RECOVERABLE UNDER FEDERAL OR RECOVERABLE UNDER FEDERAL OR STATE WORKERS’ COMPENSATION LAWS, THE TEXAS TORT CLAIMS ACT, OR ANY OTHER SUCH LAWS.**

PROVIDER SHALL BE RESPONSIBLE FOR THE SAFETY AND WELL-BEING OF ITS EMPLOYEES, CUSTOMERS, AND INVITEES. THESE REQUIREMENTS SHALL SURVIVE THE TERM OF THIS AGREEMENT UNTIL ALL CLAIMS HAVE BEEN SETTLED OR RESOLVED AND SUITABLE EVIDENCE TO THAT EFFECT HAS BEEN FURNISHED TO THE BOARD. THE PROVISIONS OF THIS SECTION SHALL SURVIVE TERMINATION OF THIS AGREEMENT.

10.10 LEGAL PROCEEDINGS

Provider shall, through its legal counsel, promptly coordinate all pertinent legal matters and proceedings with the Board’s counsel, excluding any proceedings in front of the Equal Employment Opportunity Commission (the “EEOC”). As soon as practicable after Provider obtains actual knowledge thereof, Provider shall notify the Board in writing of all pending or threatened legal proceedings (other than those pending in front of the EEOC) affecting the Veterans Cemetery or the Board.

10.11 NOTICES

All notices required or permitted hereunder shall be given in writing by hand delivery; by registered or certified mail, postage prepaid; or by overnight delivery. Notice shall be delivered or mailed to the Parties at the following addresses or at such other places as either party shall designate in writing:

To Provider:
City Manager
The City of Lubbock, Texas

1314 Avenue K
Lubbock, Texas 79401

To the Board:

Dr. John Kelley, Director
Texas Veterans Land Board
Veterans Cemeteries Program
1700 North Congress
Austin, Texas 78701

With a copy to:

Texas General Land Office
Office of General Counsel
P.O. Box 12873
Austin, Texas 78711-2873

10.12 ENTIRE AGREEMENT

This Contract contains the entire agreement between the Parties and supersedes all prior agreements and understandings, and shall be binding upon, and inure to the benefit of, their successors and assigns. This Contract may not be modified or amended except by written instrument signed by both of the Parties hereto.

10.13 COUNTERPARTS

This Contract may be executed in any number of counterparts, each of which shall be an original, and all such counterparts shall together constitute but one and the same Contract.

SIGNATURE PAGE FOLLOWS

SIGNATURE PAGE FOR GLO CONTRACT NO. 25-016-000-E693

IN WITNESS WHEREOF, the Parties hereby execute this Contract, to be effective as of Effective Date.

**TEXAS GENERAL LAND OFFICE AND
TEXAS VETERANS LAND BOARD**

CITY OF LUBBOCK, TEXAS

Tony Dale, Executive Secretary

Name: Mark W. McBrayer

Title: Mayor

Date of execution: _____

Date of execution: _____

OGC _____

PM _____

OIS _____

DGC _____

GC _____

DCC _____

ATTACHMENTS TO THIS AGREEMENT:

ATTACHMENT A: Capital Assets and Improvements
ATTACHMENT B: Information Technology Equipment
ATTACHMENT C: General Affirmations
ATTACHMENT D: Management and Operations Fee
ATTACHMENT E: Fiscal Year Budget
ATTACHMENT F: Cemetery Inspection Checklists
ATTACHMENT G: Information Security Appendix
ATTACHMENT H: Required Insurance

ATTACHMENT A. CAPITAL ASSETS AND IMPROVEMENTS (TBP)

[illegible]

ATTACHMENT B. INFORMATION TECHNOLOGY EQUIPMENT (TBP)

[illegible]

GENERAL AFFIRMATIONS

TO THE EXTENT APPLICABLE, Provider affirms and agrees to the following, without exception:

1. Provider represents and warrants that, in accordance with Section 2155.005 of the Texas Government Code, neither Provider nor the firm, corporation, partnership, or institution represented by Provider, or anyone acting for such a firm, corporation, partnership, or institution has (1) violated any provision of the Texas Free Enterprise and Antitrust Act of 1983, Chapter 15 of the Texas Business and Commerce Code, or the federal antitrust laws, or (2) communicated directly or indirectly the contents of this Contract or any solicitation response upon which this Contract is based to any competitor or any other person engaged in the same line of business as Provider.*
2. Provider shall not assign its rights under the Contract or delegate the performance of its duties under the Contract without prior written approval from the GLO. Any attempted assignment or delegation in violation of this provision is void and without effect. This provision does not apply to subcontracting.
3. If the Contract is for services, Provider shall 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, but for contracts subject to 2 C.F.R. 200, only to the extent such compliance is consistent with 2 C.F.R. 200.319.
4. Under Section 231.006 of the Family Code, the vendor or applicant [Provider] certifies that the individual or business entity named in this Contract, bid or application is not ineligible to receive the specified grant, loan, or payment and acknowledges that this Contract may be terminated and payment may be withheld if this certification is inaccurate, in addition to other remedies set out in Section 231.006(f) of the Family Code.*
5. A bid or an application for a contract, grant, or loan paid from state funds must include the name and social security number of the individual or sole proprietor and each partner, shareholder, or owner with an ownership interest of at least 25 percent of the business entity submitting the bid or application. Provider certifies it has submitted this information to the GLO.*
6. If the Contract is for a "cloud computing service" as defined by Texas Government Code Section 2157.007, then pursuant to Section 2054.0593(d)-(f) of the Texas Government Code, relating to cloud computing state risk and authorization management program, Provider represents and warrants that it complies with the requirements of the state risk and authorization management program and Provider agrees that throughout the term of the Contract it shall maintain its certifications and comply with the program requirements in the performance of the Contract.
7. If the Contract is for the purchase or lease of computer equipment, as defined by Texas Health and Safety Code Section 361.952(2), Provider 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 Title 30 Texas Administrative Code Chapter 328.
8. If the Contract authorizes Provider to access, transmit, use, or store data for the GLO, then in accordance with Section 2054.138 of the Texas Government Code, Provider certifies that it will comply with the security controls required under this Contract and will maintain

* This section does not apply to a contract with a "governmental entity" as defined in Texas Government Code Chapter 2251.

records and make them available to the GLO as evidence of Provider's compliance with the required controls.

9. Provider represents and warrants that it has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the Contract.
10. Provider agrees that any payments due under the Contract shall be applied towards any debt or delinquency that is owed by Provider to the State of Texas.
11. Upon request of the GLO, Provider shall provide copies of its most recent business continuity and disaster recovery plans.
12. If the Contract is for consulting services governed by Texas Government Code Chapter 2254, Subchapter B, in accordance with Section 2254.033 of the Texas Government Code, relating to consulting services, Provider certifies that it does not employ an individual who has been employed by the GLO or another agency at any time during the two years preceding the Provider's submission of its offer to provide consulting services to the GLO or, in the alternative Provider, in its offer to provide consulting services to the GLO, disclosed the following: (i) the nature of the previous employment with the GLO or other state agency; (ii) the date the employment was terminated; and (iii) the annual rate of compensation for the employment at the time of its termination.*
13. If the Contract is not for architecture, engineering, or construction services, then except as otherwise provided by statute, rule, or regulation, Provider must use the dispute resolution process provided for in Chapter 2260 of the Texas Government Code to attempt to resolve any dispute arising under the Contract. NOTHING IN THIS SECTION SHALL BE CONSTRUED AS A WAIVER OF SOVEREIGN IMMUNITY BY THE GLO OR, IF APPLICABLE, OF GOVERNMENTAL IMMUNITY BY PROVIDER.
14. If the Contract is for architecture, engineering, or construction services, then subject to Texas Government Code Section 2260.002 and Texas Civil Practice and Remedies Code Chapter 114, and except as otherwise provided by statute, rule, or regulation, Provider shall use the dispute resolution process provided for in Chapter 2260 of the Texas Government Code to attempt to resolve all disputes arising under this Contract. Except as otherwise provided by statute, rule, or regulation, in accordance with the Texas Civil Practice and Remedies Code, Section 114.005, claims encompassed by Texas Government Code, Section 2260.002(3) and Texas Civil Practice and Remedies Code Section 114.002 shall be governed by the dispute resolution process set forth below in subsections (a)-(d). NOTHING IN THIS SECTION SHALL BE CONSTRUED AS A WAIVER OF SOVEREIGN IMMUNITY BY THE GLO OR, IF APPLICABLE, OF GOVERNMENTAL IMMUNITY BY PROVIDER.
 - a. Notwithstanding Texas Government Code, Chapter 2260.002(3) and Chapter 114.012 and any other statute or applicable law, if Provider's claim for breach of contract cannot be resolved by the Parties in the ordinary course of business, Provider may make a claim against the GLO for breach of contract and the GLO may assert a counterclaim against Provider as is contemplated by Texas Government Code, Chapter 2260, Subchapter B. In such event, Provider must provide written notice to the GLO of a claim for breach of the Contract not later than the 180th day after the date of the event giving rise to the claim.

* This section does not apply to a contract with a "governmental entity" as defined in Texas Government Code Chapter 2251.

The notice must state with particularity: (1) the nature of the alleged breach; (2) the amount Provider seeks as damages; and (3) the legal theory of recovery.

- b. The chief administrative officer, or if designated in the Contract, another officer of the GLO, shall examine the claim and any counterclaim and negotiate with Provider in an effort to resolve them. The negotiation must begin no later than the 120th day after the date the claim is received, as is contemplated by Texas Government Code, Chapter 2260, Section 2260.052.
 - c. If the negotiation under paragraph (b) above results in the resolution of some disputed issues by agreement or in a settlement, the Parties shall reduce the agreement or settlement to writing and each Party shall sign the agreement or settlement. A partial settlement or resolution of a claim does not waive a Party's rights under this Contract as to the parts of the claim that are not resolved.
 - d. If a claim is not entirely resolved under paragraph (b) above, on or before the 270th day after the date the claim is filed with the GLO, unless the Parties agree in writing to an extension of time, the Parties may agree to mediate a claim made under this dispute resolution procedure. This dispute resolution procedure is Provider's sole and exclusive process for seeking a remedy for an alleged breach of contract by the GLO if the Parties are unable to resolve their disputes as described in this section.
 - e. Nothing in the Contract shall be construed as a waiver of the state's or the GLO's sovereign immunity, or, if applicable, the governmental immunity of Provider. This Contract shall not constitute or be construed as a waiver of any of the privileges, rights, defenses, remedies, or immunities available to the State of Texas or Provider. The failure to enforce, or any delay in the enforcement, of any privileges, rights, defenses, remedies, or immunities available to the State of Texas or, if applicable, of Provider under this Contract 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. The GLO does not waive any privileges, rights, defenses, or immunities available to it by entering into this Contract or by its conduct, or by the conduct of any representative of the GLO, prior to or subsequent to entering into this Contract. Provider does not waive any privileges, rights, defenses, or immunities available to it by entering into this Contract or by its conduct, or by the conduct of any representative of the GLO, prior to or subsequent to entering into this Contract.
 - f. Except as otherwise provided by statute, rule, or regulation, compliance with the dispute resolution process provided for in Texas Government Code, Chapter 2260, subchapter B and incorporated by reference in subsection (a)-(d) above is a condition precedent to the Provider: (1) filing suit pursuant to Chapter 114 of the Civil Practices and Remedies Code; or (2) initiating a contested case hearing pursuant to Subchapter C of Chapter 2260 of the Texas Government Code.
15. If Chapter 2271 of the Texas Government Code applies to this Contract, Provider verifies that it does not boycott Israel and will not boycott Israel during the term of the Contract.*
16. This Contract is contingent upon the continued availability of lawful appropriations by the Texas Legislature. Provider understands that all obligations of the GLO under this Contract are subject to the availability of funds. If such funds are not appropriated or become

* This section does not apply to a contract with a "governmental entity" as defined in Texas Government Code Chapter 2251.

unavailable, the GLO may terminate the Contract. The Contract shall not be construed as creating a debt on behalf of the GLO in violation of Article III, Section 49a of the Texas Constitution.

17. Provider 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.
18. In accordance with Section 669.003 of the Texas Government Code, relating to contracting with the executive head of a state agency, Provider certifies that it is not (1) the executive head of the GLO, (2) a person who at any time during the four years before the effective date of the Contract was the executive head of the GLO, or (3) a person who employs a current or former executive head of the GLO.
19. Provider represents and warrants that all statements and information prepared and submitted in connection with this Contract are current, complete, true, and accurate. Submitting a false statement or making a material misrepresentation during the performance of this Contract is a material breach of contract and may void the Contract or be grounds for its termination.
20. Pursuant to Section 2155.004(a) of the Texas Government Code, Provider certifies that neither Provider nor any person or entity represented by Provider has received compensation from the GLO to participate in the preparation of the specifications or solicitation on which this Contract is based. Under Section 2155.004(b) of the Texas Government Code, Provider certifies that the individual or business entity named in this Contract is not ineligible to receive the specified Contract and acknowledges that the Contract may be terminated and payment withheld if this certification is inaccurate. This Section does not prohibit Provider from providing free technical assistance.*
21. Provider 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.*
22. In accordance with Section 2252.901 of the Texas Government Code, for the categories of contracts listed in that section, Provider represents and warrants that none of its employees including, but not limited to, those authorized to provide services under the contract, were employees of the GLO during the twelve (12) month period immediately prior to the date of execution of the contract. Solely for professional services contracts as described by Chapter 2254 of the Texas Government Code, Provider further represents and warrants that if a former employee of the GLO was employed by Provider within one year of the employee's leaving the GLO, then such employee will not perform services on projects with Provider that the employee worked on while employed by the GLO.*
23. The Contract 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 Contract 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 any Party.
24. IF THE CONTRACT IS NOT FOR ARCHITECTURE OR ENGINEERING SERVICES GOVERNED BY TEXAS GOVERNMENT CODE CHAPTER 2254, PROVIDER, TO THE

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EXTENT ALLOWED BY LAW, SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS THE STATE OF TEXAS AND THE GLO, AND/OR THEIR OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEY FEES, AND EXPENSES ARISING OUT OF, OR RESULTING FROM ANY ACTS OR OMISSIONS OF PROVIDER OR ITS AGENTS, EMPLOYEES, SUBCONTRACTORS, ORDER FULFILLERS, OR SUPPLIERS OF SUBCONTRACTORS IN THE EXECUTION OR PERFORMANCE OF THE CONTRACT AND ANY PURCHASE ORDERS ISSUED UNDER THE CONTRACT. THE DEFENSE SHALL BE COORDINATED BY PROVIDER WITH THE OFFICE OF THE TEXAS ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND PROVIDER MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE TEXAS ATTORNEY GENERAL. PROVIDER AND THE GLO SHALL FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.*

25. IF THE CONTRACT IS FOR ARCHITECTURE OR ENGINEERING SERVICES GOVERNED BY TEXAS GOVERNMENT CODE CHAPTER 2254, PROVIDER, TO THE EXTENT ALLOWED BY LAW, SHALL INDEMNIFY AND HOLD HARMLESS THE STATE OF TEXAS AND THE GLO, 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 DAMAGES, COSTS, ATTORNEY FEES, AND EXPENSES TO THE EXTENT CAUSED BY, ARISING OUT OF, OR RESULTING FROM ANY ACTS OF NEGLIGENCE, INTENTIONAL TORTS, WILLFUL MISCONDUCT, PERSONAL INJURY OR DAMAGE TO PROPERTY, AND/OR OTHERWISE RELATED TO PROVIDER'S PERFORMANCE, AND/OR FAILURES TO PAY A SUBCONTRACTOR OR SUPPLIER BY THE PROVIDER OR ITS AGENTS, EMPLOYEES, SUBCONTRACTORS, ORDER FULFILLERS, CONSULTANTS UNDER CONTRACT TO PROVIDER, OR ANY OTHER ENTITY OVER WHICH PROVIDER EXERCISES CONTROL, OR SUPPLIERS OF SUBCONTRACTORS IN THE EXECUTION OR PERFORMANCE OF THE CONTRACT. THE DEFENSE SHALL BE COORDINATED BY PROVIDER WITH THE OFFICE OF THE TEXAS ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND PROVIDER MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE TEXAS ATTORNEY GENERAL. PROVIDER AND THE GLO SHALL FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.*
26. TO THE EXTENT ALLOWED BY LAW, PROVIDER SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS THE GLO 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: (1) THE PERFORMANCE OR ACTIONS OF PROVIDER PURSUANT TO THIS CONTRACT; (2) ANY DELIVERABLE, WORK PRODUCT,

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CONFIGURED SERVICE OR OTHER SERVICE PROVIDED HEREUNDER; AND/OR (3) THE GLO'S AND/OR PROVIDER'S USE OF OR ACQUISITION OF ANY REQUESTED SERVICES OR OTHER ITEMS PROVIDED TO THE GLO BY PROVIDER OR OTHERWISE TO WHICH THE GLO HAS ACCESS AS A RESULT OF PROVIDER'S PERFORMANCE UNDER THE CONTRACT. PROVIDER AND THE GLO SHALL FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM. PROVIDER SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE, INCLUDING ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY PROVIDER WITH THE OFFICE OF THE TEXAS ATTORNEY GENERAL (OAG) WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND PROVIDER MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM OAG. IN ADDITION, PROVIDER WILL REIMBURSE THE GLO 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 GLO DETERMINES THAT A CONFLICT EXISTS BETWEEN ITS INTERESTS AND THOSE OF PROVIDER OR IF THE GLO IS REQUIRED BY APPLICABLE LAW TO SELECT SEPARATE COUNSEL, THE GLO WILL BE PERMITTED TO SELECT SEPARATE COUNSEL AND PROVIDER WILL PAY ALL REASONABLE COSTS OF THE GLO'S COUNSEL.*

27. Provider has disclosed in writing to the GLO all existing or known potential conflicts of interest relative to the performance of the Contract.
28. Sections 2155.006 and 2261.053 of the Texas Government Code prohibit state agencies from accepting a solicitation response or awarding a contract that includes proposed financial participation by a person who, in the past five years, has been convicted of violating a federal law or assessed a penalty in connection with a contract involving relief for Hurricane Rita, Hurricane Katrina, or any other disaster, as defined by Section 418.004 of the Texas Government Code, occurring after September 24, 2005. Under Sections 2155.006 and 2261.053 of the Texas Government Code, Provider certifies that the individual or business entity named in this Contract is not ineligible to receive the specified Contract and acknowledges that this Contract may be terminated and payment withheld if this certification is inaccurate.*
29. The person executing this Contract certifies that he/she is duly authorized to execute this Contract on his/her own behalf or on behalf of Provider and legally empowered to contractually bind Provider to the terms and conditions of the Contract and related documents.
30. If the Contract is for architectural or engineering services, pursuant to Section 2254.0031 of the Texas Government Code, which incorporates by reference Section 271.904(d) of the Texas Local Government Code, Provider shall perform services (1) with professional skill and care ordinarily provided by competent engineers or architects practicing under the same or similar circumstances and professional license, and (2) as expeditiously as is prudent considering the ordinary professional skill and care of a competent engineer or architect.*
31. The state auditor may conduct an audit or investigation of any entity receiving funds from the state directly under the Contract or indirectly through a subcontract under the Contract. The

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acceptance of funds directly under the Contract or indirectly through a subcontract under the Contract acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. Under the direction of the legislative audit committee, an entity that is the subject of an audit or investigation by the state auditor must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit. Provider shall ensure that this paragraph concerning the authority to audit funds received indirectly by subcontractors through the Contract and the requirement to cooperate is included in any subcontract it awards. The GLO may unilaterally amend the Contract to comply with any rules and procedures of the state auditor in the implementation and enforcement of Section 2262.154 of the Texas Government Code.

32. Provider certifies that neither it nor its principals are debarred, suspended, proposed for debarment, declared ineligible, or otherwise excluded from participation in the Contract by any state or federal agency.
33. If the Contract is for the purchase or lease of covered television equipment, as defined by Section 361.971(3) of the Texas Health and Safety Code, Provider certifies its compliance with Subchapter Z, Chapter 361 of the Texas Health and Safety Code, related to the Television Equipment Recycling Program.
34. Pursuant to Section 572.069 of the Texas Government Code, Provider certifies it has not employed and will not employ a former state officer or employee who participated in a procurement or contract negotiations for the GLO involving Provider within two (2) years after the date that the contract is signed or the procurement is terminated or withdrawn. This certification only applies to former state officers or employees whose state service or employment ceased on or after September 1, 2015.
35. The GLO shall post this Contract to the GLO's website. Provider understands that the GLO will comply with the Texas Public Information Act (Texas Government Code Chapter 552, the "PIA"), as interpreted by judicial rulings and opinions of the Attorney General of the State of Texas (the "Attorney General"). Information, documentation, and other material in connection with this Contract may be subject to public disclosure pursuant to the PIA. In accordance with Section 2252.907 of the Texas Government Code, Provider is required to make any information created or exchanged with the GLO or the State of Texas pursuant to the Contract, and not otherwise excepted from disclosure under the PIA, available to the GLO in portable document file (".pdf") format or any other format agreed upon between the Parties that is accessible by the public at no additional charge to the GLO or the State of Texas. By failing to mark any information that Provider believes to be excepted from disclosure as "confidential" or a "trade secret," Provider waives any and all claims it may make against the GLO for releasing such information without prior notice to Provider. The Attorney General will ultimately determine whether any information may be withheld from release under the PIA. Provider shall notify the GLO's Office of General Counsel within twenty-four (24) hours of receipt of any third-party written requests for information and forward a copy of said written requests to PIALegal@glo.texas.gov. If a request for information was not written, Provider shall forward the third party's contact information to the above-designated e-mail address.

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36. The GLO does not tolerate any type of fraud. GLO policy promotes consistent, legal, and ethical organizational behavior by assigning responsibilities and providing guidelines to enforce controls. Any violations of law, agency policies, or standards of ethical conduct will be investigated, and appropriate actions will be taken. Provider must report any possible fraud, waste, or abuse that occurs in connection with the Contract to the GLO in the manner prescribed by the GLO's website, <http://glo.texas.gov>.
37. If Provider, in its performance of the Contract, has access to a state computer system or database, Provider must complete a cybersecurity training program certified under Texas Government Code Section 2054.519, as selected by the GLO. Provider must complete the cybersecurity training program during the initial term of the Contract and during any renewal period. Provider must verify in writing to the GLO its completion of the cybersecurity training program.
38. Under Section 2155.0061, Texas Government Code, Provider certifies that the entity named in this Contract is not ineligible to receive the specified Contract and acknowledges that this Contract may be terminated and payment withheld if this certification is inaccurate.*
39. Provider 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 Provider's business. Provider acknowledges that such a vaccine or recovery requirement would make Provider ineligible for a state-funded contract.
40. Pursuant to Government Code Section 2275.0102, Provider certifies that neither it nor its parent company, nor any affiliate of Provider 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 2275.0103, or (2) headquartered in any of those countries.*
41. If Provider is required to make a verification pursuant to Section 2276.002 of the Texas Government Code, Provider verifies that Provider does not boycott energy companies and will not boycott energy companies during the term of the Contract. If Provider does not make that verification, Provider must notify the GLO and state why the verification is not required.*
42. If Provider is required to make a verification pursuant to Section 2274.002 of the Texas Government Code, Provider verifies that it (1) does not have a practice, policy, guidance, or directive that discriminates against a "firearm entity" or "firearm trade association" as those terms are defined in Texas Government Code section 2274.001 and (2) will not discriminate during the term of the Contract against a firearm entity or firearm trade association. If Provider does not make that verification, Provider must notify the GLO and state why the verification is not required.*
43. If Provider is a "professional sports team" as defined by Texas Occupations Code Section 2004.002, Provider will play the United States national anthem at the beginning of each team sporting event held at Provider's home venue or other venue controlled by Provider for the event. Failure to comply with this obligation constitutes a default of this Contract, and immediately subjects Provider to the penalties for default, such as repayment of money received or ineligibility for additional money. In addition, Provider may be debarred from

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contracting with the State. The GLO or the Attorney General may strictly enforce this provision.*

44. To the extent Section 552.371 of the Texas Government Code applies to Provider and the Contract, in accordance with Section 552.372 of the Texas Government Code, Provider must (a) preserve all contracting information related to the Contract in accordance with the records retention requirements applicable to the GLO for the duration of the Contract, (b) no later than the tenth business day after the date of the GLO's request, provide to the GLO any contracting information related to the Contract that is in Provider's custody or possession, and (c) on termination or expiration of the Contract, either (i) provide to the GLO at no cost all contracting information related to the Contract that is in Provider's custody or possession or (ii) preserve the contracting information related to the Contract in accordance with the records retention requirements applicable to the GLO. Except as provided by Section 552.374(c) of the Texas Government Code, the requirements of Subchapter J, Chapter 552, Government Code, may apply to the Contract and Provider agrees that the Contract may be terminated if Provider knowingly or intentionally fails to comply with a requirement of that subchapter.*
45. If the Contract is for consulting services governed by Chapter 2254 of the Texas Government Code, Provider, upon completion of the Contract, must give the GLO a compilation, in a digital medium agreed to by the Parties, of all documents, films, recordings, or reports Provider compiled in connection with its performance under the Contract.*
46. If subject to 2 C.F.R. 200.216, Provider shall not obligate or expend funding provided under this Contract to: (a) procure or obtain; (b) extend or renew a contract to procure or obtain; or (c) enter into a contract to procure or obtain covered telecommunications equipment or services, as described in Public Law 115-232, Section 889, including systems that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.
47. To the extent Texas Government Code Chapter 2252, Subchapter G applies to the Contract, any iron or steel product Provider uses in its performance of the Contract that is produced through a manufacturing process, as defined in Section 2252.201(2) of the Texas Government Code, must be produced in the United States.
48. If subject to 2 C.F.R. 200.217, Provider shall not discharge, demote, or otherwise discriminate against an employee as a reprisal for lawfully disclosing information that the employee reasonably believes is evidence of gross mismanagement, waste, abuse of authority, a danger to public health or safety, or a violation of law related to a Federal contract or grant. Provider shall inform its employees in writing of their whistleblower rights and protections under 41 U.S.C. 4712.

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MANAGEMENT AND OPERATIONS FEE

Subject to the provision of **ARTICLES VIII and IX**, and as complete consideration for Provider's services under this Contract, the Board shall pay Provider:

(a) Provider's Fee:

Twelve (12) equal monthly payments in accordance with Provider's current, applicable fiscal year Budget; and

(b) Pass-Through Expenditures:

The following expenses shall be treated as expenditures of the Board and not payable by Provider as an Operating Expense.

- Energy (electric services) provided through an electricity provider selected by the Board. The Board may, at its sole discretion, assign to Provider any contract with an electricity provider in place as of the date of the execution of this Contract;
- Water service provided through a water service provider selected by the Board. The Board may, at its sole discretion, assign to Provider any contract with a water service provider in place as of the date of the execution of this Contract;
- Concrete Grave Liners; and
- Audit Expenditures as defined in **SECTION 7.05**.

**EXPENDITURE REPORT WEST TEXAS STATE VETERANS CEMETERY
ESTIMATE FY 2024-2025**

ACCT NO.	DESCRIPTION	BUDGETED AMT.
8002	PERM FT SALARY	\$ 214,441.07
8003	OTHER SAL MOVE UP	-
8004	PAY - OVERTIME PAY	-
8005	STABILITY	-
8006	PAY - TERMINAL PAY VACA	-
8009	EDUCATION INCENTIVE	240.00
8031	RETIREMENT TMRS	20,180.84
8033	SOCIAL SECURITY	8,491.94
8034	GROUP INS HOSPITAL	71,276.38
8035	WORKERS COMP	9,600.00
8036	UNEMPLOYMENT	-
8037	BASIC LIFE INS	28.67
8038	GROUP INSUR DENTAL	1,612.09
	INDIRECT COSTS*	25,000.00
	PAYROLL SUBTOTALS	350,870.99
SUPPLIES		
8107	OFFICE SUPPLIES	4,400.00
8114	CLEANING SUPPLIES	2,000.00
8118	SUP-BOTANICAL SUPPLIES	50,000.00
8121	SUP- SAFETY SUPPLIES	2,500.00
8124	UNIFORMS	4,000.00
8180	FUEL SUP- UNLEADED	2,000.00
8181	DIESEL FUEL	2,500.00
8202	VEHICLE MAINTENANCE	1,000.00
8207	EQ MAINT- OTHER EQUIP	-
	SUPPLIES SUBTOTAL	68,400.00
SERVICES		
8302	PROFESSIONAL SERVICES	2,000.00
8306	PROF- LAUNDRY & CLEANING SVC	2,000.00
8309	DATA PROCESSING SVC	21,000.00
8313	CONTRACTURAL SERV	30,000.00
8502	FIRE CAS AND BOILER	-
8503	LIABILITY INSURANCE	1,500.00
8704	RENT - RENT LEASE MACH EQU	1,800.00
	SERVICES SUBTOTAL	58,300.00
SPECIAL EVENTS		
8801	SP PROJ-SPECIAL PROJ	15,000.00
	SPECIAL EVENTS SUBTOTAL	15,000.00
POSTAGE/PRINTING/COMMUNICATION		
9101	TELEPHONE	2,500.00
9103	POSTAGE	500.00
9106	EXP ALLOW CAR & OTH	5,000.00
9110	PROFESSIONAL DUES	1,000.00
9111	TRAINING AND TRAVEL	7,500.00
	POST/PRINT/COMM SUBTOTAL	16,500.00
	TOTAL	\$ 509,070.99

CEMETERY INSPECTION CHECKLISTS

VLB Quarterly Site Inspection Checklist #1 Operational Standards and Measures for Texas State Veterans Cemeteries

25 of 100 standards

		2 Blue	Critical Priority, required for all VLB Quarterly Site Inspections			
		10 Red	High Priority, required for all VLB Quarterly Site Inspections			
		13 Yellow	Medium Priority, required for all VLB Quarterly Site Inspections			
Category	Sub-Category	Standard	Measure	Priority Level	Target	Scoring Criteria
1. Customer Satisfaction	1. Survey	Standard 1.1.1: Visually prominent areas , turf, sand, or mineral-based ground cover are maintained in a manner that is appropriate for the medium in place.	Measure 1.1.1: The percent of respondents to the annual Customer Satisfaction Survey who agree or strongly agree that the overall appearance of the cemetery is excellent. (NoK, FD)	Critical	99%	94-100% = Met <94% = Did Not Meet
1. Customer Satisfaction	1. Survey	Standard 1.1.2: Each day's burial/niche sites are covered, initially groomed, marked, and made presentable for visitors before close of business each day.	Measure 1.1.2: The percent of respondents to the annual Customer Satisfaction Survey who agree or strongly agree that the appearance of their loved one's gravesite/columbaria is excellent. (NoK)	Critical	96%	91-100% = Met <91% = Did Not Meet
1. Customer Satisfaction	1. Survey	Standard 1.1.4: Committal services are conducted in clean and orderly shelters that provide for the safety, privacy, and special needs of the family.	Measure 1.1.4: The percent of respondents to the annual Customer Satisfaction Survey who agree or strongly agree that the committal shelter used for the service was private, clean, and free of safety hazards. (NoK, FD)	High	98%	93-100% = Met <93% = Did Not Meet
2. Equipment Maintenance	2. Condition of Equipment and Tools	Standard 2.2.1: Equipment is functional, in good condition, and visibly marked as State or Tribal property.	Measure 2.2.1a: Cemetery Equipment and Vehicles present a clean (generally free of dirt and extraneous matter) and neat appearance at the end of each workday.	High	Yes	Yes = Met No = Did Not Meet
2. Equipment Maintenance	2. Condition of Equipment and Tools	Standard 2.2.1: Equipment is functional, in good condition, and visibly marked as State or Tribal property.	Measure 2.2.1d: Non-functional equipment is identified and removed from visually prominent areas within 90 days.	Medium	Yes	Yes = Met No = Did Not Meet
3. Facilities Maintenance	1. Facilities Management	Standard 3.1.1: Buildings and structures are well-maintained and are acceptable for their functional use.	Measure 3.1.1a: The percent of cemetery buildings that are assessed as acceptable for their function .	High	90%	90-100% = Met <90% = Did Not Meet
3. Facilities Maintenance	1. Facilities Management	Standard 3.1.3: Approved water features are functional and maintained according to their intended purpose.	Measure 3.1.3: The percent of water features (natural or man-made ponds, lakes, fountains, pools, waterfalls) that are assessed as acceptable for their function .	Medium	80%	80-100% = Met <80% = Did Not Meet
3. Facilities Maintenance	1. Facilities Management	Standard 3.1.4: Signage is convenient and helpful.	Measure 3.1.4a: The percent of signage (wayfinding) that are assessed as acceptable for their function .	Medium	80%	80-100% = Met <80% = Did Not Meet
4. Gravesite Assessment Review	1. GAR	Standard 4.1.1: Gravesites and the appropriate Headstone, Marker, or Niche Cover are maintained within the guidelines and limits required to allow for a visually pleasing experience.	Measure 4.1.1a: The percent of headstones, markers, and niche covers that do not show evidence of debris or Objectionable Accumulations .	High	95%	85-100% = Met <85% = Did Not Meet

5. Grounds Maintenance	1. Cemetery Grounds Management	Standard 5.1.1: All maintenance activities are included in a current Cemetery Grounds Management Plan .	Measure 5.1.1: The cemetery has a written, current Cemetery Grounds Management Plan that includes all maintenance activities and schedules and are reviewed and updated on an annual basis.	Medium	Yes	Yes = Met No = Did Not Meet
5. Grounds Maintenance	2. Turf/Mineral-Base	Standard 5.2.1: Visually prominent areas have sand, mineral, or well-established, healthy stand of turf.	Measure 5.2.1: Sand, mineral, or turf in visually prominent areas are generally weed free .	High	Yes	Yes = Met No = Did Not Meet
5. Grounds Maintenance	2. Turf/Mineral-Base	Standard 5.2.2: All sand, mineral, or turf is free of debris, i.e., leaves, fallen branches, and trash.	Measure 5.2.2b: Sand, mineral, or turf areas are cleared of leaves and other natural debris, as needed, or at least weekly.	Medium	Yes	Yes = Met No = Did Not Meet
5. Grounds Maintenance	2. Turf/Mineral-Base	Standard 5.2.3: All sand, mineral, or turf areas are graded to ensure proper drainage and prevent standing or pooling water.	Measure 5.2.3: Sand, mineral, or turf in visually prominent areas do not show evidence of standing or pooling of water.	Medium	Yes	Yes = Met No = Did Not Meet
5. Grounds Maintenance	2. Turf/Mineral-Base	Standard 5.2.4: Visually Prominent Areas have a well-established, healthy stand of turf.	Measure 5.2.4b: Visually Prominent Areas with established turf are maintained within one inch above the range of that which is professionally recommended for that type of turf and geographic region according to the Cemetery Grounds Management Plan .	Medium	Yes	Yes = Met No = Did Not Meet
5. Grounds Maintenance	2. Turf/Mineral-Base	Standard 5.2.5: The turf used is compatible with the geographic region.	Measure 5.2.5: The cemetery is using turf that is compatible with the geographic region.	Medium	Yes	Yes = Met No = Did Not Meet
6. Headstone, Marker and Niche Cover Operations	1. Order	Standard 6.1.1: The request for a headstone, marker, or niche cover is completed within prescribed time frames.	Measure 6.1.1: The percent of headstone, marker, and niche cover requests that are inscription approved (released from the cemetery in BOSS , or ordered and tracked if not using BOSS) within ten calendar days of interment.	High	97%	97-100% = Met <97% = Did Not Meet
6. Headstone, Marker and Niche Cover Operations	1. Order	Standard 6.1.2: Inscription data are accurate and complete.	Measure 6.1.2: The percent of inscriptions ordered by the cemetery that are accurate and complete.	High	99%	99-100% = Met <99% = Did Not Meet
6. Headstone, Marker and Niche Cover Operations	2. Delivery, inspection, and storage	Standard 6.2.2: Headstones, markers, and niche covers are handled and stored to prevent damage prior to setting.	Measure 6.2.2: The percent of headstones, markers, and niche covers received annually that are replaced due to cemetery damage prior to setting.	Medium	Less than 1%	<1% = Met =>1% = Did Not Meet
6. Headstone, Marker and Niche Cover Operations	2. Delivery, inspection, and storage	Standard 6.2.3: Headstones, markers, and niche cover replacement coding is verified for accuracy.	Measure 6.2.3: The percent of replacement orders that are reviewed for accurate replacement reason, error, and expense codes.	Medium	100%	90-100% = Met <90% = Did Not Meet
7. Interment Operations	2. Site Preparation	Standard 7.2.1: Each day's gravesites are properly excavated and present a neat appearance prior to burial.	Measure 7.2.1: Gravesites are excavated properly, at the proper depth, proper position (Left Half, Right Half, Center Line, etc.), spoils or sod appropriately removed or made presentable, and headstones for reopeners appropriately placed and/or protected.	High	Yes	Yes = Met No = Did Not Meet
7. Interment Operations	2. Site Preparation	Standard 7.2.2: Integrity of existing graves around the worksite will be preserved.	Measure 7.2.2: Corrective action to repair damage caused by daily operations is initiated by close of business the same day.	Medium	Yes	Yes = Met No = Did Not Meet
8. Safety	1. Operations	Standard 8.1.2: In accordance to Occupational Safety and Health Administration's (OSHA) Walking Working Surfaces: All areas where cemetery operations have been conducted are neat, clean, and free of debris and equipment at the end of the workday.	Measure 8.1.2a: Roads, sidewalks, paths and parking lots open to the public or for cemetery operations during adverse conditions are safe and accessible (e.g., clear of ice and snow or storm debris).	High	Yes	Yes = Met No = Did Not Meet
8. Safety	1. Operations	Standard 8.1.3: Open graves are identified and protected.	Measure 8.1.3: Open graves are protected by appropriate devices while unattended.	Medium	Yes	Yes = Met No = Did Not Meet
9. VLB Standard	1. Outreach and Support	Standard 9.1.1: Communication with individuals and organizations.	Measure 9.1.1a: Attendance at one community event per month.	Medium	Yes	Yes = Met No = Did Not Meet
9. VLB Standard	1. Outreach and Support	Standard 9.1.1: Communication with individuals and organizations.	Measure 9.1.1b: Promotion of patriotism. Involvement of scouts or schools once per month.	High	Yes	Yes = Met No = Did Not Meet

VLB Quarterly Site Inspection Checklist #2

Operational Standards and Measures for Texas State Veterans Cemeteries

25 of 100 standards

		2 Blue	Critical Priority, required for all VLB Quarterly Site Inspections			
		10 Red	High Priority, required for all VLB Quarterly Site Inspections			
		13 Yellow	Medium Priority, required for all VLB Quarterly Site Inspections			
Category	Sub-Category	Standard	Measure	Priority Level	Target	Scoring Criteria
1. Customer Satisfaction	1. Survey	Standard 1.1.3: Committal services are conducted with dignity and respect for the decedent, and compassion for their loved ones.	Measure 1.1.3: The percent of respondents to the annual Customer Satisfaction Survey who were somewhat or very satisfied with the committal or memorial service. (NoK)	Critical	95%	90 - 100% = Met <90% = Did Not Meet
1. Customer Satisfaction	1. Survey	Standard 1.1.5: Signage is convenient and helpful.	Measure 1.1.5: The percent of respondents to the annual Customer Satisfaction Survey who agree or strongly agree that there are sufficient signs within the cemetery to assist visitors. (NoK, FD)	High	90%	85-100% = Met <85% = Did Not Meet
1. Customer Satisfaction	1. Survey	Standard 1.1.6: Headstones, markers, and niche covers are clean, free of debris and Objectionable Accumulations .	Measure 1.1.6: The percent of respondents to the annual Customer Satisfaction Survey who agree or strongly agree that the upkeep of headstones, markers, and niche covers is excellent. (NoK, FD)	Medium	98%	93-100% = Met <93% = Did Not Meet
2. Equipment Maintenance	2. Condition of Equipment and Tools	Standard 2.2.2: Tools are available, properly maintained, and secure.	Measure 2.2.2: Mechanic and hand tools are cleaned and stored in the proper location at the end of each workday and are stored in a secure location when not in use.	Medium	Yes	Yes = Met No = Did Not Meet
3. Facilities Maintenance	1. Facilities Management	Standard 3.1.1: Buildings and structures are well-maintained and are acceptable for their functional use.	Measure 3.1.1b: The percent of cemetery structures that are assessed as acceptable for their function .	High	90%	90-100% = Met <90% = Did Not Meet
3. Facilities Maintenance	1. Facilities Management	Standard 3.1.4: Signage is convenient and helpful.	Measure 3.1.4b: The cemetery's business hours are posted in a Visually Prominent location (e.g., Entrance, Administration Building, Public Information Center).	Medium	Yes	Yes = Met No = Did Not Meet
3. Facilities Maintenance	1. Facilities Management	Standard 3.1.6: Restrooms are clean, functional, sanitary, and appropriately supplied (e.g., soap, paper towels, hand-dryer, and toilet paper) and are accessible.	Measure 3.1.6c: Cemetery restrooms that do not meet Accessibility Standards are reported in writing by the cemetery to State or Tribal leadership.	Medium	Yes	Yes = Met No = Did Not Meet
3. Facilities Maintenance	1. Facilities Management	Standard 3.1.7: Compliance with Veteran Cemetery Grants Program requirements.	Measure 3.1.7: Current and accurate VA Form 40-0241 annual data report provided timely to the Veteran Cemetery Grants Program.	Critical	Yes	Yes = Met No = Did Not Meet
4. Gravesite Assessment Review	1. GAR	Standard 4.1.1: Gravesites and the appropriate Headstone, Marker, or Niche Cover are maintained within the guidelines and limits required to allow for a visually pleasing experience.	Measure 4.1.1b: The percent of gravesites that have grades which are level and blend with adjacent grade levels.	High	95%	85-100% = Met <85% = Did Not Meet
4. Gravesite Assessment Review	1. GAR	Standard 4.1.2: Proper height, alignment, and plumb of each headstone and marker is maintained.	Measure 4.1.2a: The percent of headstones, markers, and niche covers that are visually aligned horizontally, vertically, and diagonally.	High	90%	80-100% = Met <80% = Did Not Meet
5. Grounds Maintenance	2. Turf/Mineral-Base	Standard 5.2.2: All sand, mineral, or turf is free of debris, i.e., leaves, fallen branches, and trash.	Measure 5.2.2a: Sand, mineral, or turf in visually prominent areas is free of trash.	High	Yes	Yes = Met No = Did Not Meet
5. Grounds Maintenance	2. Turf/Mineral-Base	Standard 5.2.6: Visually Prominent Areas are properly trimmed and edged.	Measure 5.2.6: Other Features (any additional turf areas requiring edging or trimming such as sidewalks, curbs, monuments) are trimmed or edged according to the Cemetery Grounds Management Plan .	Medium	Yes	Yes = Met No = Did Not Meet

5. Grounds Maintenance	2. Turf/Mineral-Base	Standard 5.2.7: Avoid damage and ensure continuation of a well-established, healthy stand of turf during grounds maintenance operations.	Measure 5.2.7: Turf damage due to grounds maintenance tasks is identified and corrective action initiated by close of business the same day.	Medium	Yes	Yes = Met No = Did Not Meet
5. Grounds Maintenance	2. Turf/Mineral-Base	Standard 5.2.8: The grade of every gravesite blends in with adjacent grade levels.	Measure 5.2.8: <u>Sunken graves</u> have been identified and a plan of action developed to re-establish the ground level and cover within 30 calendar days of the date identified.	Medium	Yes	Yes = Met No = Did Not Meet
5. Grounds Maintenance	2. Turf/Mineral-Base	Standard 5.2.9: Gravesite openers and re-openers avoid damage and ensure continuation of a well-established, healthy stand of turf, presenting a <u>disciplined evolution</u> , not a construction site.	Measure 5.2.9a: Interments (first and subsequent) during the growing season that show healthy turf re-established within 60 days of the interment.	Medium	Yes	Yes = Met No = Did Not Meet
5. Grounds Maintenance	2. Turf/Mineral-Base	Standard 5.2.9: Gravesite openers and re-openers avoid damage and ensure continuation of a well-established, healthy stand of turf, presenting a <u>disciplined evolution</u> , not a construction site.	Measure 5.2.9b: Winter grave re-openers that show healthy turf re-established within 60 days of the start of the growing season.	Medium	Yes	Yes = Met No = Did Not Meet
6. Headstone, Marker and Niche Cover Operations	2. Delivery, inspection, and storage	Standard 6.2.1: All headstones, markers, and niche covers are inspected and verified for inscription accuracy and quality.	Measure 6.2.1a: The percent of headstones, markers, and niche covers inspected to ensure the accuracy and quality of the inscription (centered, level, appropriate depth, consistency, etc.).	High	100%	90-100% = Met <90% = Did Not Meet
6. Headstone, Marker and Niche Cover Operations	2. Delivery, inspection, and storage	Standard 6.2.1: All headstones, markers, and niche covers are inspected and verified for inscription accuracy and quality.	Measure 6.2.1b: The percent of headstones, markers and niche covers received damaged, incorrectly inscribed, or of poor quality that are reported and reordered within six calendar days of delivery or inscription on site.	High	100%	90 - 100% = Met <90% = Not Met
6. Headstone, Marker and Niche Cover Operations	3. Installation	Standard 6.3.1: Headstones, markers and niche covers are set in a timely manner after receipt.	Measure 6.3.1a: The percent of headstones, markers, or niche covers set within ten calendar days of receipt.	High	95%	95-100% = Met <95% = Did Not Meet
6. Headstone, Marker and Niche Cover Operations	3. Installation	Standard 6.3.2: Headstones, markers, and niche covers are properly installed.	Measure 6.3.2d: Headstones and Markers set in Existing Sections are installed to be uniform with only minor height deviations to achieve a Pleasing Top Line with like headstones and markers in that section, and/or are set to ensure the inscription is visible.	Medium	Yes	Yes = Met No = Did Not Meet
7. Interment Operations	4. Verification and Handling of Remains	Standard 7.4.1: All caskets and urns are checked and verified to ensure accurate placement and are undamaged by cemetery personnel.	Measure 7.4.1b: The percent of caskets or urns that are undamaged by cemetery staff from receipt through interment operations	High	100%	100% = Met <100% = Did Not Meet
8. Safety	1. Operations	Standard 8.1.4: Cemetery facilities and infrastructures are maintained to avoid safety hazards for visitors and staff.	Measure 8.1.4: The number of accidents or injuries reported due to unsafe conditions in the cemetery as a result of poor maintenance of facilities and infrastructures.	Medium	0	0 = Met >0 = Did Not Meet
8. Safety	1. Operations	Standard 8.1.5: Grounds are maintained in a manner that avoids safety hazards for visitors and staff.	Measure 8.1.5: The number of accidents or reported injury to visitors or cemetery staff due to preventable safety hazards.	Medium	0	0 = Met >0 = Did Not Meet
9. VLB Standard	2. Readiness	Standard 9.2.1: Casket flags.	Measure 9.2.1: U.S. burial flags available for all Veterans' funeral services; including Unaccompanied Veterans.	High	Yes	Yes = Met No = Did Not Meet
9. VLB Standard	1. Outreach and Support	Standard 9.1.2: Volunteer Services.	Measure 9.1.2: Involvement of volunteers in some aspect of operations.	Medium	Yes	Yes = Met No = Did Not Meet

VLB Quarterly Site Inspection Checklist #3

Operational Standards and Measures for Texas State Veterans Cemeteries

25 of 100 standards

		2 Blue	Critical Priority, required for all VLB Quarterly Site Inspections			
		10 Red	High Priority, required for all VLB Quarterly Site Inspections			
		13 Yellow	Medium Priority, required for all VLB Quarterly Site Inspections			
Category	Sub-Category	Standard	Measure	Priority Level	Target	Scoring Criteria
1. Customer Satisfaction	2. Complaints	Standard 1.2.1: Cemeteries must have a complaint or complaint/compliment log.	Measure 1.2.1: The cemetery has a program for capturing complaints (mandatory) and compliments (preferred but optional). A complaint / compliment log is maintained by the cemetery staff and describes how the cemetery addressed and attempted to resolve each complaint.	High	Yes	Yes = Met No = Did Not Meet
1. Customer Satisfaction	2. Complaints	Standard 1.2.3: Integrity of existing graves around the worksite will be preserved.	Measure 1.2.3: The percent of complaints from visitors and family members about the condition of a grave damaged during interment operations that are addressed and attempted to be resolved by the cemetery.	Medium	100%	100% = Met <100% = Did Not Meet
3. Facilities Maintenance	1. Facilities Management	Standard 3.1.2: Access features are well-maintained and are acceptable for their functional use.	Measure 3.1.2a: The percent of access features (roads, parking lots, curb, walk, paths, entry features, perimeter walls/fences, bridges, overpasses, and sidewalks) that are assessed as acceptable for their function .	High	80%	80-100% = Met <80% = Did Not Meet
3. Facilities Maintenance	1. Facilities Management	Standard 3.1.2: Access features are well-maintained and are acceptable for their functional use.	Measure 3.1.2b: Marked parking spaces (where provided) meet handicapped accessibility requirements in public and employee parking lots or areas.	High	Yes	Yes = Met No = Did Not Meet
3. Facilities Maintenance	2. Kiosk/Gravesite Locator	Standard 3.2.1: Kiosk / Gravesite locator is convenient, in good repair, and helpful.	Measure 3.2.1b: Cemeteries provide a current and functional gravesite locator. If gravesite locator is a book then it needs to be current, complete and printed in alphabetical order and accessible to visitors within 90 days of the most recent interment. (For those with less than 10 burials per year , this will be completed at a minimum of twice a year.)	Medium	Yes	Yes = Met No = Did Not Meet
3. Facilities Maintenance	3. Environmental Management	Standard 3.3.2: Spoils areas do not detract from cemetery appearance.	Measure 3.3.2: The cemetery's spoils are located in areas that minimize public visibility.	Medium	Yes	Yes = Met No = Did Not Meet
4. Gravesite Assessment Review	1. GAR	Standard 4.1.1: Gravesites and the appropriate Headstone, Marker, or Niche Cover are maintained within the guidelines and limits required to allow for a visually pleasing experience.	Measure 4.1.1c: Turf around headstones is trimmed to the recommended height according to the Cemetery Grounds Management Plan .	Medium	95%	85-100% = Met <85% = Did Not Meet
4. Gravesite Assessment Review	1. GAR	Standard 4.1.2: Proper height, alignment, and plumb of each headstone and marker is maintained.	Measure 4.1.2b: The percent of headstones and markers that are at the proper height.	High	90%	80-100% = Met <80% = Did Not Meet
5. Grounds Maintenance	2. Turf/Mineral-Base	Standard 5.2.4: Visually Prominent Areas have a well-established, healthy stand of turf.	Measure 5.2.4a: Visually Prominent Areas with established turf are Generally Free of Bare Areas .	High	Yes	Yes = Met No = Did Not Meet
5. Grounds Maintenance	2. Turf/Mineral-Base	Standard 5.2.10: Visually prominent areas in which turf is not a part of the cemetery design are maintained in a manner that is appropriate for the medium in place. (Cemeteries Using Sand or Mineral-Based Ground Cover)	Measure 5.2.10: All Visually Prominent Areas appear raked and groomed and returning the gravesites to their original state within the same workday. (Cemeteries Using Sand or Mineral-Based Ground Cover)	Medium	Yes	Yes = Met No = Did Not Meet

5. Grounds Maintenance	3. Trees and Shrubs	Standard 5.3.1: Trees and shrubs are healthy, and free of pests and disease, and/or are maintained in accordance with the Cemetery Grounds Management Plan .	Measure 5.3.1: Trees and shrubs are healthy and free of pests and disease, and/or are maintained in accordance with the Cemetery Grounds Management Plan .	Medium	Yes	Yes = Met No = Did Not Meet
5. Grounds Maintenance	4. Planting Beds	Standard 5.4.1: Cemetery Planting Beds are well maintained, attractive, and compatible with the geographic region.	Measure 5.4.1b: Plants in planting beds are healthy, free of pests and disease, and are maintained in accordance with the Cemetery Grounds Management Plan .	Medium	Yes	Yes = Met No = Did Not Meet
5. Grounds Maintenance	5. General Maintenance	Standard 5.5.1: All areas where cemetery operations have been conducted are neat, clean, and free of debris and equipment at the end of the workday.	Measure 5.5.1a: Debris, equipment, tools, and supplies are removed at the end of the workday.	Medium	Yes	Yes = Met No = Did Not Meet
6. Headstone, Marker and Niche Cover Operations	3. Installation	Standard 6.3.1: Headstones, markers and niche covers are set in a timely manner after receipt.	Measure 6.3.1b: The percent of graves marked with a permanent headstone, marker, or niche cover and set within 60 calendar days of the interment.	High	95%	95-100% = Met <95% = Did Not Meet
6. Headstone, Marker and Niche Cover Operations	3. Installation	Standard 6.3.2: Headstones, markers, and niche covers are properly installed.	Measure 6.3.2a: Upright headstones in current active burial sections are installed to be uniform in height (24"-26" above ground); horizontally, vertically, and diagonally aligned; and inscription visible. A deviation from the height requirement is acceptable to ensure a Pleasing Top Line is achieved to compensate for ground contours.	High	Yes	Yes = Met No = Did Not Meet
6. Headstone, Marker and Niche Cover Operations	3. Installation	Standard 6.3.2: Headstones, markers, and niche covers are properly installed.	Measure 6.3.2b: Flat markers in Active Burial sections are installed to be uniform in height (parallel with the ground and no more than 1" above ground level) and aligned horizontally, vertically, and diagonally.	High	Yes	Yes = Met No = Did Not Meet
6. Headstone, Marker and Niche Cover Operations	4. Visible and Legible	Standard 6.4.1: Headstones, markers, and niche covers that are no longer useable are disposed of in a manner that prevents reuse.	Measure 6.4.1b: Bronze markers or niche covers are recycled within one year of removal from the grave or niche.	Medium	Yes	Yes = Met No = Did Not Meet
6. Headstone, Marker and Niche Cover Operations	4. Visible and Legible	Standard 6.4.2: Headstones, markers, and niche covers are not damaged by cemetery operations.	Measure 6.4.2: The percent of headstone, marker, and niche cover replacements within the last 12 months due to damage during cemetery operations.	Medium	<0.1%	<0.1% = Met =>0.1% = Did Not Meet
7. Interment Operations	1. Layout of Burial Sections	Standard 7.1.1: Interment sections match Gravesite Layout Plan .	Measure 7.1.1a: Gravesite locations match the current Gravesite Layout Plan and Registry.	Critical	100%	100% = Met <100% = Did Not Meet
7. Interment Operations	2. Site Preparation	Standard 7.2.3: Outer burial receptacles awaiting installation are sufficient for the needs of the cemetery and placed in an orderly manner in an appropriate location.	Measure 7.2.3a: Outer burial receptacles are placed in a manner so they do not obstruct occupied graves or hinder the flow of traffic through the cemetery.	Medium	Yes	Yes = Met No = Did Not Meet
7. Interment Operations	2. Site Preparation	Standard 7.2.3: Outer burial receptacles awaiting installation are sufficient for the needs of the cemetery and placed in an orderly manner in an appropriate location.	Measure 7.2.3b: Outer burial receptacles required for future installation are stored in an appropriate location away from public view.	Medium	Yes	Yes = Met No = Did Not Meet
7. Interment Operations	3. Committal Service	Standard 7.3.1: Veterans receive a committal service or memorial service.	Measure 7.3.1: The cemetery provides a committal service or has a program to memorialize Unaccompanied Veterans .	Medium	Yes	Yes = Met No = Did Not Meet
7. Interment Operations	4. Verification and Handling of Remains	Standard 7.4.1: All caskets and urns are checked and verified to ensure accurate placement and are undamaged by cemetery personnel.	Measure 7.4.1a: Cemetery has a current (reviewed within past 24 months) Accounting for Remains SOP that has been certified by the Cemetery Director and incorporates standard tagging procedures for placing casket or urn into correct gravesite. The cemetery follows the SOP when performing interment operations.	Critical	Yes	Yes = Met No = Did Not Meet
7. Interment Operations	5. Appearance of Gravesite and Active Burial Section	Standard 7.5.1: Each day's burial/niche sites are covered, initially groomed, marked, and made presentable for visitors before close of business each day.	Measure 7.5.1a: Daily interment or inurnment sites are marked with a correct and aligned temporary marker.	High	Yes	Yes = Met No = Did Not Meet
8. Safety	1. Operations	Standard 8.1.2: In accordance to OSHA's Walking Working Surfaces: All areas where cemetery operations have been conducted are neat, clean, and free of debris and equipment at the end of the workday.	Measure 8.1.2b: Safety hazards (holes, hazardous trees and branches, sprinkler heads, etc.) identified and corrective action initiated within the same workday.	High	Yes	Yes = Met No = Did Not Meet

VLB Quarterly Site Inspection Checklist #4

Operational Standards and Measures for Texas State Veterans Cemeteries

25 of 100 standards

		2 Blue	Critical Priority, required for all VLB Quarterly Site Inspections			
		10 Red	High Priority, required for all VLB Quarterly Site Inspections			
		13 Yellow	Medium Priority, required for all VLB Quarterly Site Inspections			
Category	Sub-Category	Standard	Measure	Priority Level	Target	Scoring Criteria
1. Customer Satisfaction	2. Complaints	Standard 1.2.2: Committal services are conducted with dignity and respect for the decedent, and compassion for their loved ones.	Measure 1.2.2: The percent of complaints from visitors and family members about the committal service, when the cemetery is responsible, that are addressed and attempted to be resolved by the cemetery.	High	100%	100% = Met <100% = Did Not Meet
1. Customer Satisfaction	2. Complaints	Standard 1.2.4: Daily maintenance activities do not detract from the dignity and solemnity of the cemetery.	Measure 1.2.4: The percent of complaints received as a result of operations, noise, equipment, etc. intruding on the visitor's experience that are addressed and attempted to be resolved by the cemetery.	Medium	100%	100% = Met <100% = Did Not Meet
3. Facilities Maintenance	1. Facilities Management	Standard 3.1.6: Restrooms are clean, functional, sanitary, and appropriately supplied (e.g., soap, paper towels, hand-dryer, and toilet paper) and are accessible.	Measure 3.1.6a: The percent of all cemetery restrooms that are inspected daily and determined to be clean and supplied in accordance with a Restroom Checklist. Checklists are visibly posted in each restroom. (Excludes, temporary restrooms (i.e., portable toilets for an event or at a construction site)).	High	100%	100% = Met <100% = Did Not Meet
3. Facilities Maintenance	1. Facilities Management	Standard 3.1.6: Restrooms are clean, functional, sanitary, and appropriately supplied (e.g., soap, paper towels, hand-dryer, and toilet paper) and are accessible.	Measure 3.1.6b: For cemeteries with no on-site assigned State or Tribal employees, restrooms are cleaned and supplied as needed at least once a week and inspected at least once every two weeks.	High	100%	100% = Met <100% = Did Not Meet
3. Facilities Maintenance	4. Waste Management	Standard 3.4.1: Trash is collected, disposed of, and does not detract from cemetery appearance.	Measure 3.4.1a: The cemetery's central trash collection points are located in areas that minimize public visibility.	Medium	Yes	Yes = Met No = Did Not Meet
3. Facilities Maintenance	4. Waste Management	Standard 3.4.1: Trash is collected, disposed of, and does not detract from cemetery appearance.	Measure 3.4.1b: Public-use trash receptacles are clearly marked, clean, neat, and in good repair.	Medium	Yes	Yes = Met No = Did Not Meet
4. Gravesite Assessment Review	1. GAR	Standard 4.1.1: Gravesites and the appropriate Headstone, Marker, or Niche Cover are maintained within the guidelines and limits required to allow for a visually pleasing experience.	Measure 4.1.1d: The percent of gravesites where turf around flat markers is edged (not trimmed) according to the Grounds Management Plan and are free of trimming debris.	Medium	95%	85-100% = Met <85% = Did Not Meet
4. Gravesite Assessment Review	1. GAR	Standard 4.1.2: Proper height, alignment, and plumb of each headstone and marker is maintained.	Measure 4.1.2c: The percent of upright headstones that are at correct plumb (no less than 89 degrees).	High	90%	80-100% = Met <80% = Did Not Meet
5. Grounds Maintenance	4. Planting Beds	Standard 5.4.1: Cemetery <u>Planting Beds</u> are well maintained, attractive, and compatible with the geographic region.	Measure 5.4.1a: <u>Planting beds</u> are <u>Generally Weed-Free</u> .	High	Yes	Yes = Met No = Did Not Meet
5. Grounds Maintenance	5. General Maintenance	Standard 5.5.1: All areas where cemetery operations have been conducted are neat, clean, and free of debris and equipment at the end of the workday.	Measure 5.5.1b: Roads, walkways, shelters, and burial sections are free of grounds maintenance debris by the end of the workday.	Medium	Yes	Yes = Met No = Did Not Meet
5. Grounds Maintenance	5. General Maintenance	Standard 5.5.2: The National Cemetery Administration's floral policy is posted where the largest number of visitors will see the information.	Measure 5.5.2: Floral regulations are posted in <u>visually prominent areas</u> .	Medium	Yes	Yes = Met No = Did Not Meet

5. Grounds Maintenance	5. General Maintenance	Standard 5.5.3: Floral vases and its receptacles are well marked and in good condition.	Measure 5.5.3a: Floral vases are clean, free of water and debris, and in good repair.	Medium	Yes	Yes = Met No = Did Not Meet
5. Grounds Maintenance	5. General Maintenance	Standard 5.5.3: Floral vases and its receptacles are well marked and in good condition.	Measure 5.5.3b: Receptacles for floral vases are well marked, clean, neat, and in good repair.	Medium	Yes	Yes = Met No = Did Not Meet
6. Headstone, Marker and Niche Cover Operations	3. Installation	Standard 6.3.2: Headstones, markers, and niche covers are properly installed.	Measure 6.3.2c: Niche covers are installed to be horizontally and vertically aligned. The proper rosette and security screws are used.	High	Yes	Yes = Met No = Did Not Meet
6. Headstone, Marker and Niche Cover Operations	3. Installation	Standard 6.3.2: Headstones, markers, and niche covers are properly installed.	Measure 6.3.2e: Headstones and markers are located on the correct gravesite, consistent with the Gravesite Layout Plan and Registry.	High	Yes	Yes = Met No = Did Not Meet
6. Headstone, Marker and Niche Cover Operations	4. Visible and Legible	Standard 6.4.1: Headstones, markers, and niche covers that are no longer useable are disposed of in a manner that prevents reuse.	Measure 6.4.1a: Headstones, markers, and niche covers that are no longer useable are destroyed in a manner that obliterates the inscription and is dispositioned to prevent reuse; or placed within the existing gravesite for disposal to prevent reuse.	High	Yes	Yes = Met No = Did Not Meet
6. Headstone, Marker and Niche Cover Operations	4. Visible and Legible	Standard 6.4.3: Headstones, markers, or niche covers stolen, vandalized or damaged beyond reasonable repair by actions outside the cemetery's control (e.g., storms, automobile accidents) are repaired or replaced.	Measure 6.4.3: The percent of headstones, markers, or niche covers damaged beyond reasonable repair, stolen or defaced that are repaired or reordered within six calendar days of the date damage is identified.	Medium	100%	90 - 100% = Met <90% = Not Met
6. Headstone, Marker and Niche Cover Operations	4. Visible and Legible	Standard 6.4.4: Headstone, marker and niche cover inscriptions are visible and legible, as appropriate for the age, and Historic Significance of the marker.	Measure 6.4.4: The percent of Historical Headstones, Markers and Niche Covers replaced during the past 12 months that are replaced with a headstone, marker, or niche cover of the same dimensions, material, inscription and features.	Medium	100%	100% = Met <100% = Did Not Meet
7. Interment Operations	5. Appearance of Gravesite and Active Burial Section	Standard 7.5.1: Each day's burial/niche sites are covered, initially groomed, marked, and made presentable for visitors before close of business each day.	Measure 7.5.1b: Daily burials are level with the surrounding terrain, tamped, raked smooth, and made ready for the application of seed or sod.	Medium	Yes	Yes = Met No = Did Not Meet
7. Interment Operations	5. Appearance of Gravesite and Active Burial Section	Standard 7.5.1: Each day's burial/niche sites are covered, initially groomed, marked, and made presentable for visitors before close of business each day.	Measure 7.5.1c: Floral arrangements are neatly placed on correct gravesites by close of business each burial day.	Medium	Yes	Yes = Met No = Did Not Meet
7. Interment Operations	5. Appearance of Gravesite and Active Burial Section	Standard 7.5.2: The active burial section presents a disciplined evolution , not a construction site.	Measure 7.5.2: Subsections show evidence of progress toward completion; grass is being established, headstones and markers delivered are being set, excess dirt, debris, tools and equipment are removed.	Medium	Yes	Yes = Met No = Did Not Meet
8. Safety	2. Personnel	Standard 8.2.1: Necessary personal protective equipment (PPE) and safety measures will be adhered to at all times.	Measure 8.2.1a: Personnel wear appropriate uniform and PPE for assigned tasks.	High	Yes	Yes = Met No = Did Not Meet
8. Safety	2. Personnel	Standard 8.2.1: Necessary personal protective equipment (PPE) and safety measures will be adhered to at all times.	Measure 8.2.1b: The number of accidents that occur as a result of improper use or lack of using PPE or safety measures during cemetery operations .	High	0	0 = Met >0 = Did Not Meet
9. VLB Standard	3. Administration	Standard 9.3.1: Reporting.	Measure 9.3.1: All reports are submitted accurately and on time.	Critical	Yes	Yes = Met No = Did Not Meet
9. VLB Standard	4. Ceremonies and Special Events	Standard 9.4.1: Ceremonies.	Measure 9.4.1: Plan and coordinate one ceremony per year.	Critical	Yes	Yes = Met No = Did Not Meet

Note:

METHODOLOGY

The performance of the cemetery against each of the 9 applicable categories as listed in the checklists above, is evaluated using a combination of the following:

- 1) Documentation review;
- 2) In-person interviews of cemetery staff;
- 3) Visual inspection; and
- 4) Sampling of gravesites.

The VLB Quarterly Site Inspection Checklists will be used to gauge the cemetery's performance in multiple functional areas to provide a comprehensive picture of the cemetery's appearance and overall performance.

DISTRIBUTION

Upon finalizing the inspection results, the VLB Inspector will provide a copy of the scorecard and performance score results to the VLB Veterans Cemeteries Manager and the cemetery Director.

CORRECTIVE ACTION PLAN

A Corrective Action Plan (CAP) is required by VLB for any measure that the cemetery received a "Did Not Meet" on the VLB Quarterly Site Inspection Checklist scorecard.

Within one (1) week of receiving the final inspection results from VLB, the Cemetery Director shall submit a CAP to the VLB Inspector.

The VLB Inspector and Cemeteries Manager will review the CAP to determine if it describes how the cemetery will correct the deficiency and if a reasonable projected completion date was provided.

If the CAP is not approved, then it will be returned to the Cemetery Director to be amended. Once amended, it will be returned to the VLB Inspector for a subsequent review with the VLB Cemeteries Manager.

If the CAP is approved, the VLB Inspector will notify the Cemetery Director to move forward with the plan of action.

Cemetery Directors will provide a monthly status report of all active CAPs to the VLB Cemeteries Manager, VLB Inspector, and any other interested parties (i.e., city or county leadership, etc.) until the deficiency has been corrected.

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GLO Information Security Appendix

1. Definitions

“Breach of Security” or “Breach” means unauthorized acquisition of computerized data that compromises the security, confidentiality, or integrity of sensitive personal information including data that is encrypted if the person accessing the data has the key required to decrypt the data.

“GLO Data” means any data or information owned by the GLO, including PII or SPI as defined below, that Provider creates, obtains, accesses (via records, systems, or otherwise), receives (from the GLO or on behalf of the GLO), or uses in the course of Contract performance.

“Personal Identifying Information” or “PII” means information that alone, or in conjunction with other information, identifies an individual as defined at Tex. Bus. & Com Code 521.002(1).

“Sensitive Personal Information” or “SPI” means the information categories listed at Tex. Bus. & Com Code 521.002(2).

2. Security and Privacy Compliance

- 2.1. Provider shall keep all and GLO Data received under the Contract strictly confidential.
- 2.2. Provider shall comply with all applicable federal and state privacy and data protection laws, as well as all other applicable regulations.
- 2.3. Provider shall implement administrative, physical, and technical safeguards to protect GLO Data that are no less rigorous than accepted industry practices including, without limitation, the NIST Cybersecurity Framework. All such safeguards shall comply with applicable data protection and privacy laws.
- 2.4. Provider will legally bind any subcontractors to the same requirements stated herein and obligations stipulated in Provider's contract with the GLO. Provider shall ensure that the requirements stated herein are imposed on any subcontractor of Provider's subcontractor(s).
- 2.5. Provider will not share GLO Data with any third parties.
- 2.6. Provider will ensure that initial privacy and security training, and annual training thereafter, is completed by its employees or subcontractors that have access to GLO Data or who create, collect, use, process, store, maintain, disseminate, disclose, dispose, or otherwise handle personally handle PII on behalf of the agency. Provider agrees to maintain and, upon request, provide documentation of training completion.
- 2.7. Any GLO Data maintained or stored by Provider or any subcontract must be stored on servers or other hardware located within the physical borders of the United States and shall not be accessed outside of the United States.

3. Data Ownership

- 3.1. GLO shall retain full ownership of all respective data provided to Provider or to which the Provider otherwise gains access by operation of the Contract.

- 3.2. Upon termination of the Contract, Provider shall promptly return to the GLO all GLO Data possessed by Provider and its agents or subcontractors. Provider shall retain no copies or back-up records of GLO Data. If such return is infeasible, as mutually determined by the GLO and Provider, the obligations set forth in this **Attachment**, with respect to GLO Data, shall survive termination of the Contract and Provider shall limit any further use and disclosure of GLO Data to the purposes that make the return of GLO Data infeasible. In lieu of the requirements in this Section 3.2, the GLO may direct Provider to destroy any GLO Data in Provider's possession. Any such destruction shall be verified by Provider and the GLO.

4. Data Mining

- 4.1. Provider agrees not to use GLO Data for unrelated commercial purposes, advertising or advertising-related services, or for any other purpose not explicitly authorized by the GLO in this Contract.
- 4.2. Provider agrees to take all reasonably feasible, physical, technical, administrative, and procedural measures to ensure that no unauthorized use of GLO Data occurs.

5. Breach of Security

- 5.1. Provider agrees to provide the GLO with the name and contact information for an employee of the Provider which shall serve as the GLO's primary security contact.
- 5.2. Upon discovery of a Breach of Security or suspected Breach of Security by the Provider, the Provider agrees to notify the GLO as soon as possible, but in no event longer than 24 hours, upon discovery of the Breach of Security or suspected Breach of Security. Within 72 hours, the Provider agrees to provide, at minimum, a written preliminary report to the GLO with root cause analysis including the total number of records affected.
- 5.3. The initial notification and report shall be submitted to the GLO Information Security Officer at informationsecurity@glo.texas.gov.
- 5.4. Provider agrees to take all reasonable steps to immediately remedy a Breach of Security and prevent any further Breach of Security.
- 5.5. Provider agrees that it shall not inform any third party of any Breach of Security or suspected Breach of Security without first obtaining GLO's prior written consent.
- 5.6. If the Breach of Security includes SPI, including Social Security Numbers, payment card information, or health information, the Provider agrees to provide affected individuals complimentary access for one (1) year of credit monitoring services.

6. Right to Audit

- 6.1. Upon the GLO's request and to confirm Provider's compliance with this **Attachment**, Provider grants the GLO, or a GLO-contracted vendor, permission to perform an assessment, audit, examination, investigation, or review of all controls in the Provider's, or Provider's subcontractor's, physical and/or technical environment in relation to GLO Data. Provider agrees to fully cooperate with such assessment by providing access to knowledgeable personnel, physical premises, documentation, infrastructure and

application software that stores, processes, or transports GLO Data. In lieu of a GLO-conducted assessment, audit, examination, investigation, or review, Provider may supply, upon GLO approval, the following reports: SSAE18, ISO/ICE 27001 Certification, FedRAMP Certification, PCI Compliance Report. Provider shall ensure that this clause concerning the GLO's authority to assess, audit, examine, investigate, or review, is included in any subcontract it awards.

- 6.2. At the GLO's request, Provider agrees to promptly and accurately complete a written information security questionnaire provided by the GLO regarding Provider's business practices and information technology environment in relation to GLO Data.

REQUIRED INSURANCE

GENERALLY. Provider shall, at its sole expense, acquire, maintain, and keep in force for the duration of this Contract, insurance in the amounts attached herein and under the requirements specified herein. Furthermore, unless specified or otherwise agreed to by the GLO, the required insurance shall be in effect prior to the commencement of work by Provider and shall continue in full force until the earlier as appropriate of (i) the expiration of this Contract; or (ii) such time as the GLO notifies Provider that such insurance is no longer required. Any insurance or self-insurance available to the GLO shall be in excess of, and non-contributing with, any insurance required from Provider. Provider's insurance policies shall apply on a primary basis. If, at any time during the Contract, an insurer or surety fails to provide insurance to Provider or otherwise fails to comply with the requirements of this Contract, Provider shall immediately notify the GLO and replace such insurance or bond with an insurer meeting such requirements. General aggregate limits of Provider's Commercial General Liability policy shall apply per project. Provider's auto insurance policy shall apply to "any auto."

Approval. Prior approval of the insurance policies by the GLO shall be a condition precedent to any payment of consideration under this Contract and insurance must be submitted for review and approval by the GLO prior to the commencement of work. Any failure of the GLO to timely approve or failure to disapprove the insurance furnished by Provider shall not relieve Provider of Provider's full responsibility to provide the insurance required by this Contract.

Continuing Coverage. The GLO's approval of any changes to insurance coverage during the course of performance shall constitute an ongoing condition subsequent to this Contract.

Renewal. Provider shall provide the GLO with renewal or replacement certificates no less than thirty (30) days before the expiration or replacement of the required insurance.

Additional Insured Endorsement. The GLO, its officers, employees, and authorized agents shall be named as additional insureds for all liability arising under this Contract except on Workers' Compensation and Professional Liability policies. **An original additional insured endorsement signed by an authorized insurance company representative must be submitted to the GLO to evidence the endorsement of the GLO as an additional insured on all policies, and the certificate(s) must reference the related GLO Contract Number.**

Subrogation. Each liability insurance policy, except Professional Liability, shall provide for a waiver of subrogation as to the State of Texas, the GLO, and their officers, employees, and authorized agents, and shall be issued by insurance companies authorized to do business in the State of Texas, and currently rated by A.M. Best as "A-" or better.

Policy Cancellation Endorsement. Except for ten (10) days' notice for non-payment of premium, each insurance policy shall be endorsed to specify that without 30 days' prior

written notice to the GLO, the policy shall not be canceled, non-renewed, or coverage and/or limits reduced or materially altered, and shall provide that notices required by this paragraph shall be sent by certified mail to the address specified in this Contract. A copy of this signed endorsement must be attached to this Contract.

Alternative Insurability. Notwithstanding the requirements of this Attachment, the GLO reserves the right to consider reasonable alternative methods of insuring the contract in lieu of the insurance policies and/or bonds required. It will be Provider's responsibility to recommend to the GLO alternative methods of insuring the Contract. Any alternatives proposed by Provider should be accompanied by a detailed explanation regarding Provider's inability to obtain insurance coverage as described in this Contract. The GLO shall be the sole and final judge as to the adequacy of any substitute form of insurance coverage.

INSURANCE REQUIRED:

\$1 MILLION COMMERCIAL GENERAL LIABILITY (EACH OCCURRENCE)
\$2 MILLION COMMERCIAL GENERAL LIABILITY (AGGREGATE LIMIT)
\$1 MILLION CSL AUTOMOBILE INSURANCE
\$1 MILLION ERRORS AND OMISSIONS, PER CLAIM
STATUTORY WORKERS' COMPENSATION & EMPLOYERS LIABILITY
 - \$1 MILLION EACH ACCIDENT
 - \$1 MILLION DISEASE EACH EMPLOYEE
 - \$1 MILLION DISEASE POLICY LIMIT

NOTE: Insurance certificates must be in the form approved by the Texas Attorney General, a sample of which follows this page.

Insurance Certificates must:

- (a) be submitted to insurance@GLO.TEXAS.GOV
- (b) **prominently display "GLO Contract No. 25-016-000-E693"** and
- (c) Name the General Land Office as an additional insured.

Failure to submit required insurance forms as instructed may significantly delay the start of work under the Contract.

REQUIRED FORM OF CERTIFICATE FOLLOWS THIS PAGE



Contract No. *****

DATE (MM/DD/YYYY)

CERTIFICATE OF LIABILITY INSURANCE

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an **ADDITIONAL INSURED**, the policy(ies) must be endorsed. If **SUBROGATION IS WAIVED**, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER	CONTACT NAME:	
	PHONE (A/C, No, Ext):	FAX (A/C, No):
INSURED	E-MAIL ADDRESS:	
	INSURER(S) AFFORDING COVERAGE	NAIC #
	INSURER A:	
	INSURER B:	
	INSURER C:	
	INSURER D:	
	INSURER E:	
	INSURER F:	

Required form of Insurance

COVERAGES	CERTIFICATE NUMBER:	REVISION NUMBER:
THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.		

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
	GENERAL LIABILITY						EACH OCCURRENCE
	COMMERCIAL GENERAL LIABILITY						DAMAGE TO RENTED PREMISES (Ea occurrence)
	CLAIMS-MADE OCCUR						MED EXP (Any one person)
							PERSONAL & ADV INJURY
							GENERAL AGGREGATE
	GEN'L AGGREGATE LIMIT APPLIES PER:						PRODUCTS - COMP/OP AGG
	POLICY PRO-JECT LOC						
	AUTOMOBILE LIABILITY						COMBINED SINGLE LIMIT (Ea accident)
	ANY AUTO						BODILY INJURY (Per person)
	ALL OWNED AUTOS						BODILY INJURY (Per accident)
	HIRED AUTOS						PROPERTY DAMAGE (Per accident)
	SCHEDULED AUTOS NON-OWNED AUTOS						
	UMBRELLA LIAB OCCUR						EACH OCCURRENCE
	EXCESS LIAB CLAIMS-MADE						AGGREGATE
	DED RETENTION \$						
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY						WC STATUTORY LIMITS OTH-ER
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICE/MEMBER EXCLUDED? (Mandatory in NH)	Y/N	N/A				E.L. EACH ACCIDENT
	If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. DISEASE - EA EMPLOYEE
							E.L. DISEASE - POLICY LIMIT

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

CERTIFICATE HOLDER	CANCELLATION
	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE

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IN WITNESS HEREOF the parties have executed this Agreement.


For the City of Lubbock, Texas

Attest

Mayor, Mark W. McBrayer

Courtney Paz, City Secretary

Approved as to Content:



Brooke Witcher, Assistant City Manager

Approved as to Form:



Rachael Foster, Assistant City Attorney

Information

Agenda Item

Report - Finance: Presentation of the Final Pricing results of the General Obligation Refunding Bonds and the Water and Wastewater System Revenue Refunding Bonds.

Item Summary

The City of Lubbock Financial Advisors from RBC Capital Markets will present the final pricing results of the recently completed refunding and review the updated ratings from Fitch and S&P.

Fiscal Impact

None

Staff/Board Recommending

W. Jarrett Atkinson, City Manager

Attachments

No file(s) attached.

Information

Agenda Item

Ordinance (Single Reading) - Finance: Consider approval of an ordinance providing for the issuance of City of Lubbock, Texas, Water and Wastewater System Revenue Bonds, in one or more series, in a principal amount not to exceed \$66,000,000, for the following projects: Lake 7 Design and Land Acquisition, West Lubbock Water System Expansion, Pump Station 11B, East 50th Street Water Line Extension, Southwest Lubbock Sanitary Sewer Expansion, and Southeast Water Reclamation Plant #4 Primary Clarifier Rehabilitation; providing for the award of the sale thereof in accordance with specified parameters; approving an official statement; approving execution of a purchase contract; and enacting other provisions relating thereto.

Item Summary

The Water and Wastewater System Revenue Bonds (the "Bonds") are being issued for the following purposes:

1. Paying the costs of acquiring, purchasing, constructing, improving, renovating, enlarging and equipping property, buildings, structures, facilities and related infrastructure for the System;
2. Funding capitalized interest on the Bonds;
3. Funding the reserve fund requirement for the Bonds; and,
4. Paying the costs of issuing the Bonds.

Specifically, the Bonds are designated to fund the following projects:

1. Lake 7 Design and Land Acquisition
2. West Lubbock Water System Expansion
3. Pump Station 11B
4. East 50th Street Water Line Extension
5. Southwest Lubbock Sanitary Sewer Expansion
6. SEWRP Plant #4 Primary Clarifier Rehabilitation

Fiscal Impact

The total amount of the Project costs financed with the Revenue Bonds will not exceed the \$66,000,000 total principal amount of one or more series of Water and Wastewater System Revenue Bonds. The annual debt service payments for the Bonds are budgeted through the annual operating budget process and are included in long-term financial planning and rate models. The annual payments are made from all or part of the net revenues of the City's Water and Wastewater System.

Staff/Board Recommending

Cheryl Brock, Interim Chief Financial Officer

Attachments

Ordinance No. 2024-_____

ORDINANCE

relating to

CITY OF LUBBOCK, TEXAS
WATER AND WASTEWATER SYSTEM
REVENUE BONDS

Adopted: December 3, 2024

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AN ORDINANCE PROVIDING FOR THE ISSUANCE OF CITY OF LUBBOCK, TEXAS, WATER AND WASTEWATER SYSTEM REVENUE BONDS, IN ONE OR MORE SERIES; PROVIDING FOR THE AWARD OF THE SALE THEREOF IN ACCORDANCE WITH SPECIFIED PARAMETERS; APPROVING AN OFFICIAL STATEMENT; AND ENACTING OTHER PROVISIONS RELATING THERETO

WHEREAS, in accordance with the Constitution and laws of the State of Texas, specifically Chapter 1502, Texas Government Code, as amended ("Chapter 1502"), the City Council (the "City Council") of the City of Lubbock, Texas (the "City") has previously determined that it is in the best interest of the City to create and maintain a combined water and wastewater system (the "Water and Wastewater System" or the "System");

WHEREAS, the City Council hereby finds and determines that bonds secured by a first lien on and pledge of the Net Revenues of the Water and Wastewater System should be issued for the purposes hereinafter provided;

WHEREAS, the City is an "Issuer" within the meaning of Chapter 1371, Texas Government Code ("Chapter 1371"), as amended, and the City Council desires to delegate, pursuant to Chapter 1371 and the parameters of this Ordinance, to the Authorized Officer (hereinafter defined), the authority to approve the terms of the bonds authorized hereby and to otherwise take such actions as are necessary and appropriate to effect the sale of such bonds;

WHEREAS, the revenue bonds hereinafter authorized are to be issued and delivered pursuant to Chapters 1371 and 1502 and in accordance with the general laws of the State of Texas; and

WHEREAS, the meeting at which this Ordinance is considered is open to the public as required by law, and the public notice of the time, place and purpose of said meeting was given as required by Chapter 551, Texas Government Code, as amended;

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

ARTICLE I
DEFINITIONS AND OTHER PRELIMINARY MATTERS

Section 1.01 Definitions.

Unless otherwise expressly provided or unless the context clearly requires otherwise in this Ordinance, the following terms shall have the meanings specified below:

"Account" means any account created within a Fund established pursuant to the terms of this Ordinance or an ordinance authorizing the issuance of Parity Obligations.

"Additional Bonds" means the additional parity obligations the City reserves the right to issue in accordance with the terms and conditions prescribed in Section 9.01 hereof.

“Authorized Officer” means each of the Mayor, the City Manager and the Chief Financial Officer, acting individually.

“Bond” means any of the Bonds.

“Bond Date” means the date designated as the initial date of the Bonds by Section 3.02(a) of this Ordinance.

“Bond Fund” has the meaning assigned in Section 7.01 hereof.

“Bonds” means the City’s bonds authorized to be issued by Section 3.01 of this Ordinance.

“Business Day” means any day other than a Saturday, Sunday or legal holiday or other day on which banking institutions in the city where the Designated Payment/Transfer Office of the Paying Agent/Registrar is located are required or authorized by law or executive order to close.

“Chapter 1208” means Chapter 1208, Texas Government Code, as amended.

“Chapter 1371” means Chapter 1371, Texas Government Code, as amended.

“Chapter 1502” means Chapter 1502, Texas Government Code, as amended.

“Chief Financial Officer” means the Chief Financial Officer of the City or such other City official or officer who has assumed the duties of the Chief Financial Officer.

“City” means the City of Lubbock, Texas.

“Closing Date” means the date of the initial delivery of and payment for Bonds.

“Code” means the Internal Revenue Code of 1986, as amended by all legislation, if any, enacted on or before the Issue Date.

“Computation Date” has the meaning stated in Section 1.148-1(b) of the Regulations.

“Covered Parity Bonds” means Parity Bonds (other than TWDB Bonds) designated as Covered Parity Bonds.

“Credit Facility” means an agreement (including a loan agreement, revolving credit agreement, agreement establishing a line of credit, letter of credit, reimbursement agreement, insurance contract, commitment to purchase Parity Bonds, purchase or sale agreement, or commitment or other contract) that is (a) authorized, recognized and approved by the City as a Credit Facility in connection with the authorization, issuance, security, or payment of Parity Bonds or (b) entered into with a financial institution for the purpose of (i) enhancing or supporting the creditworthiness of (A) a series or installment of Parity Bonds or (B) all of the Parity Bonds, (ii) providing a surety policy or other similar instrument in order to fund all or a portion of a Reserve Fund Requirement for one or more series of Parity Bonds, or (iii) providing liquidity with respect to a series or installment of Parity Bonds which by their terms are subject to tender for purchase, and which, by its terms, creates a liability on the part of the City on a parity with the Parity Bonds;

provided that, on the date any such credit facility is issued, any rating agency having an outstanding rating on the Parity Bonds would not lower the rating on the Parity Bonds as confirmed in writing by such rating agency. A determination by the City Council contained in the ordinance authorizing the issuance of Parity Bonds and/or authorizing the execution and delivery of a Credit Facility that such agreement constitutes a Credit Facility under this definition shall be conclusive as against all Owners.

“Debt Service” means, as of any particular date of computation, with respect to any series or installment of obligations and with respect to any period, the aggregate of the amounts to be paid or set aside by the City as of such date or in such period for the payment of the principal of, premium, if any, and interest (to the extent not capitalized) on such obligations; assuming in the case of obligations required to be redeemed or prepaid as to principal prior to maturity, the principal amounts thereof will be redeemed or paid prior to maturity in accordance with the mandatory redemption or prepayment provisions applicable thereto.

“Designated Payment/Transfer Office” means the Designated Payment/Transfer Office, as designated in the Paying Agent/Registrar Agreement, or such other location designated by the Paying Agent/Registrar.

“DTC” means The Depository Trust Company of New York, New York, or any successor securities depository.

“DTC Participant” means brokers and dealers, banks, trust companies, clearing corporations and certain other organizations on whose behalf DTC was created to hold securities to facilitate the clearance and settlement of securities transactions.

“EMMA” means the Electronic Municipal Market Access System.

“Event of Default” means any event of default as described in Section 11.01 of this Ordinance.

“Financial Obligation” means a (a) debt obligation; (b) derivative instrument entered into in connection with, or pledged as security or a source of payment for, an existing or planned debt obligation; or (c) guarantee of a debt obligation or any such derivative instrument; provided that “financial obligation” shall not include municipal securities (as defined in the Securities Exchange Act of 1934, as amended) as to which a final official statement (as defined in the Rule) has been provided to the MSRB consistent with the Rule.

“Fiscal Year” means the twelve (12) month accounting period used by the City in connection with the operations of the System which may be any twelve (12) consecutive month period established by the City.

“Fund” means any of the funds, accounts or a portion of a fund or account, confirmed and/or established pursuant to Article VII hereof.

“General Reserve Fund” has the meaning assigned in Section 7.01 hereof.

“General Reserve Fund Requirement” means an amount equal to the lesser of (i) the maximum annual debt service (calculated on a Fiscal Year basis) for all Outstanding Covered Parity Bonds, as determined on the date of issuance of each series or installment of Additional Bonds issued as Covered Parity Bonds, and annually following each principal payment date or redemption date for the Covered Parity Bonds, as the case may be, or (ii) the maximum amount in a reasonably required reserve fund that can be invested without restriction as to yield pursuant to Subsection (d) of section 148 of the Code and regulations promulgated thereunder.

“Initial Bond” means the initial bond or bonds authorized by Section 3.04 of this Ordinance.

“Interest Payment Date” means the date or dates on which interest on the Bonds is scheduled to be paid until their respective dates of maturity or prior redemption, as set forth in the Pricing Certificate.

“Investment” has the meaning stated in Section 1.148-1(b) of the Regulations.

“Issue Date” for each series of Bonds or other obligations of the City is the respective date on which such series of Bonds or other obligations of the City is delivered against payment therefor.

“MSRB” means the Municipal Securities Rulemaking Board.

“Net Revenues” means all income, revenues and receipts of every nature derived from and received by virtue of the operation of the System including interest income and earnings received from the investment of moneys in the special Funds created by this Ordinance or ordinances authorizing Parity Obligations, after deducting and paying, and making provisions for the payment of, current expenses of maintenance and operation thereof, including all salaries, materials, repairs and extensions necessary to render efficient service; provided, however, only such expenses for repairs and extensions as in the judgment of the City Council reasonably and fairly exercised, are necessary to keep the System in operation and to render adequate service to the City and the inhabitants thereof, or such as might be necessary to meet some physical accident or condition which would otherwise impair any obligations payable from Net Revenues of the System, shall be deducted in determining “Net Revenues”. Contractual payments for the purchase of water or the treatment of sewage shall be a maintenance and operating expense of the System to the extent provided in the contract incurred therefor and as may be authorized by law. Depreciation shall never be considered as an expense of operation and maintenance.

“Non-Recourse Debt” means any debt secured by a lien (other than a lien on Net Revenues), liability for which is effectively limited to the property subject to such lien with no recourse, directly or indirectly, to any other property of the City attributable to the Water and Wastewater System; provided, however, that such debt is being incurred in connection with the acquisition of property only, which property is not, at the time of such occurrence, owned by the City and being used in the operations of the City.

“Official Statement” means a document described in Section 8.01(c) prepared for dissemination to potential investors in connection with the public offering and sale of Bonds.

“Outstanding” when used in this Ordinance with respect to Parity Bonds, means, as of the date of determination, all Parity Bonds theretofore sold, issued and delivered by the City, except:

- (1) those Parity Bonds cancelled or delivered to the transfer agent or registrar for cancellation in connection with the exchange or transfer of such obligations;
- (2) those Parity Bonds paid or deemed to be paid in accordance with the provisions of Section 12.01 of this Ordinance; and
- (3) those Parity Bonds that have been mutilated, destroyed, lost, or stolen and replacement bonds have been registered and delivered in lieu thereof.

“Owner” means the person who is the registered owner of a Bond or Bonds, as shown in the Register.

“Parity Bonds” means any Previously Issued Bonds, the Bonds and Additional Bonds, if any.

“Parity Obligations” means all Parity Bonds, as well as any other obligations issued or incurred by the City that are determined and declared by the City Council of the City to be on a parity with the Parity Bonds, including obligations of the City issued or incurred under the terms of a Credit Facility.

“Paying Agent/Registrar” means the bank or trust company identified in the Paying Agent/Registrar Agreement referred to in Section 5.01 of this Ordinance, or any successor thereto as provided in this Ordinance.

“Preliminary Official Statement” means a document described in Section 8.01(c) prepared for dissemination to potential investors prior to the availability of the final Official Statement.

“Previously Issued Bonds” means Outstanding and unpaid revenue bonds payable from and secured by a first lien on and pledge of the Net Revenues of the System, which consist of the following obligations of the City¹:

- (1) Water and Wastewater System Revenue Bonds, Series 2019;
- (2) Water and Wastewater System Revenue Improvement and Refunding Bonds, Series 2019A;
- (3) Water and Wastewater System Revenue Refunding Bonds, Taxable Series 2019B;

¹ The list of Previously Issued Bonds may be revised at the direction of an Authorized Officer to reflect any changes attributable to the issuance of bonds pursuant to the ordinance adopted by City Council on October 8, 2024, approving the issuance of refunding bonds, to the extent such changes occur prior to the issuance of the Bonds authorized by this Ordinance.

- (4) Water and Wastewater System Revenue Bonds, Series 2020A;
- (5) Water and Wastewater System Revenue Refunding Bonds, Series 2020B;
- (6) Water and Wastewater System Revenue Refunding Bonds, Taxable Series 2020C;
- (7) Water and Wastewater System Revenue Bonds, Series 2021;
- (8) Water and Wastewater System Revenue Bonds, Series 2021A;
- (9) Water and Wastewater System Revenue Bonds, Series 2022; and.
- (10) Water and Wastewater System Revenue Bonds, Series 2023.

“Pricing Certificate” means a certificate or certificates signed by an Authorized Officer establishing the terms and features of each series of Bonds in accordance with Section 8.01 hereof.

“Proceeds” has the meaning stated in Section 1.148-1(b) of the Regulations.

“Purchase Contract” means any contract, agreement or investment letter pursuant to which the Bonds of each series are sold to the Purchaser thereof.

“Purchaser” means the purchaser or purchasers of the Bonds of each series identified in the Pricing Certificate or Purchase Contract.

“Record Date” means the date specified in the Pricing Certificate.

“Register” means the register specified in Section 3.06(a) of this Ordinance.

“Regulations” means the final or temporary Income Tax Regulations applicable to obligations issued pursuant to Sections 141 through 150 of the Code. Any reference to a section of the Regulations shall also refer to any successor provision to such section hereafter promulgated by the Internal Revenue Service pursuant to Sections 141 through 150 of the Code and applicable to the Bonds.

“Representation Letter” means the Blanket Letter of Representations between the City and DTC.

“Reserve Fund Obligations” means cash or investment securities of any of the type or types permitted under Sections 7.04 and 7.09 of this Ordinance (in the case of the General Reserve Fund) or Sections 7.05 and 7.09 of this Ordinance (in the case of the TWDB Reserve Fund).

“Reserve Funds” has the meaning assigned in Section 7.01 hereof.

“Rule” means SEC Rule 15c2-12, as amended from time to time.

“SEC” means the United States Securities and Exchange Commission.

“Special Payment Date” means the special payment date prescribed by Section 3.03(b).

“Special Record Date” means the special record date prescribed by Section 3.03(b).

“Subordinate Obligations” means any debt secured by or payable in whole or in part from revenues of the System or any portion thereof which expressly provides that all payments thereon shall be subordinated to the timely payment of all Parity Obligations then outstanding or subsequently issued.

“System” or “Water and Wastewater System” means the City’s combined water and wastewater system, including all properties and interests in properties (real, personal or mixed and tangible or intangible, including contract rights, water rights and permits) owned, operated, maintained, and vested in, the City for the supply, storage, treatment and distribution of treated water for municipal, domestic, commercial, industrial and other uses and the collection and treatment of watered wastes, together with all future additions, extensions, replacements and improvements thereto; provided that, notwithstanding the foregoing, and to the extent now or hereafter authorized or permitted by law, the term Water and Wastewater System shall not include any water or wastewater facilities that are declared not to be a part of the Water and Wastewater System and are acquired or constructed by the City with the proceeds from the issuance of “Special Facilities Bonds,” which are hereby defined as being special revenue obligations of the City which are not secured by or payable from the Net Revenues as defined herein, but which are secured by and payable solely from special contract revenues or payments received from any other legal entity in connection with such facilities, and thus constitute Non-Recourse Debt; and such revenues or payments shall not be considered as or constitute gross revenues of the Water and Wastewater System, unless and to the extent otherwise provided in the ordinance or ordinances authorizing the issuance of such “Special Facilities Bonds.”

“System Fund” has the meaning assigned in Section 7.01 hereof.

“Taxable Bonds” means any Bonds for which the City does not intend that the interest thereon shall be excludable from gross income of the owners thereof for federal income tax purposes pursuant to Sections 103 and 141 through 150 of the Code, as determined and set forth in the Pricing Certificate therefor.

“Tax-Exempt Bonds” means any Bonds for which the City intends that the interest thereon shall be excludable from gross income of the owners thereof for federal income tax purposes pursuant to Sections 103 and 141 through 150 of the Code, as determined and set forth in the Pricing Certificate therefor.

“Term Bonds” has the meaning set forth in Section 4.02 hereof.

“TWDB” means Texas Water Development Board.

“TWDB Bonds” means Parity Bonds owned by the Texas Water Development Board and designated as TWDB Bonds.

“TWDB Reserve Fund” has the meaning assigned in Section 7.01 hereof.

“TWDB Reserve Fund Requirement” means an amount equal to the lesser of (i) the average annual debt service (calculated on a Fiscal Year basis) for all Outstanding TWDB Bonds, as determined on the date of issuance of each series or installment of Additional Bonds issued as TWDB Bonds, and annually following each principal payment date or redemption date for TWDB Bonds, as the case may be, or (ii) the maximum amount in a reasonably required reserve fund that can be invested without restriction as to yield pursuant to Subsection (d) of section 148 of the Code and regulations promulgated thereunder.

“Unclaimed Payments” mean money deposited with the Paying Agent/Registrar for the payment of principal of, premium, if any, or interest on the Bonds as the same come due and payable and remaining unclaimed by the Owners of such Bonds after the applicable payment or redemption date.

Section 1.02 Findings.

(a) The declarations, determinations and findings declared, made and found in the preamble to this Ordinance are hereby adopted, restated and made a part of the operative provisions hereof.

(b) The Water and Wastewater System shall be maintained in accordance with this Ordinance as long as the Bonds remain Outstanding.

(c) The Bonds are payable from and secured by a first lien on and pledge of the Net Revenues of the Water and Wastewater System.

(d) All conditions precedent to the issuance of the Bonds have been or will be satisfied prior to delivery of the Bonds to the Purchasers.

(e) Each of the Bonds shall be deemed and construed to be a “Security”, and as such a negotiable instrument, within the meaning of Article 8 of the Texas Uniform Commercial Code.

(f) The provisions of this Ordinance shall constitute a contract between the City and the holder or holders from time to time of the Bonds and no change, variation or alteration of any kind of the provisions of this Ordinance may be made, unless as herein otherwise provided, until all of the Bonds shall have been paid as to both principal and interest.

Section 1.03 Table of Contents, Titles and Headings.

The table of contents, titles and headings of the Articles and Sections of this Ordinance have been inserted for convenience of reference only and are not to be considered a part hereof and shall not in any way modify or restrict any of the terms or provisions hereof and shall never be considered or given any effect in construing this Ordinance or any provision hereof or in ascertaining intent, if any question of intent should arise.

Section 1.04 Interpretation.

(a) Unless the context requires otherwise, words of the masculine gender shall be construed to include correlative words of the feminine and neuter genders and vice versa, and

words of the singular number shall be construed to include correlative words of the plural number and vice versa.

(b) Any action required to be taken on a date which is not a Business Day shall be done on the next succeeding Business Day and have the same effect as if done on the date so required.

(c) Any duty, responsibility, privilege, power or authority conferred by this Ordinance upon an officer shall extend to an individual who occupies such office in an interim, acting or provisional capacity.

(d) This Ordinance and all the terms and provisions hereof shall be liberally construed to effectuate the purposes set forth herein.

ARTICLE II SECURITY FOR THE BONDS

Section 2.01 Pledge of Security.

The Bonds are and shall be equally and ratably secured by and payable from a first lien on and pledge of the Net Revenues.

The City hereby covenants and agrees that all of the Net Revenues derived from the operation of the System, with the exception of Net Revenues in excess of the amounts required to establish and maintain the special Funds created for the payment and security of the Parity Obligations, are hereby irrevocably pledged for the payment of the Parity Obligations (including the Bonds) and the interest thereon, and it is hereby ordained that the Parity Obligations (including the Bonds) and the interest thereon, shall constitute a first lien on the Net Revenues of the System and be valid and binding without any physical delivery thereof or further act by the City as provided in Chapter 1208, Texas Government Code, as amended.

Section 2.02 Limited Obligations.

(a) The Bonds are special obligations of the City, payable solely from the pledged Net Revenues, and do not constitute a prohibited indebtedness of the City, and the Bonds shall never be payable out of funds raised or to be raised by taxation.

(b) The Net Revenues shall not in any manner be pledged to the payment of any debt or obligation of the City or the System, other than Parity Obligations, except on a subordinate lien basis.

Section 2.03 Security Interest.

Chapter 1208 applies to the issuance of the Bonds and the pledge of the Net Revenues granted by the City under Section 2.01 hereof, and such pledge is therefore valid, effective, and perfected. If Texas law is amended at any time while the Bonds are outstanding and unpaid such that the pledge of the Net Revenues granted by the City is to be subject to the filing requirements of Chapter 9, Texas Business & Commerce Code, then in order to preserve to the registered owners of the Bonds the perfection of the security interest in said pledge, the City agrees to take such

measures as it determines are reasonable and necessary under Texas law to comply with the applicable provisions of Chapter 9, Texas Business & Commerce Code, and enable a filing to perfect the security interest in said pledge to occur.

ARTICLE III AUTHORIZATION; GENERAL TERMS AND PROVISIONS REGARDING THE BONDS

Section 3.01 Authorization.

The Bonds are hereby authorized to be issued and delivered in accordance with the Constitution and laws of the State of Texas, including specifically Chapter 1371, Chapter 1502, and Article VIII of the Charter of the City. The Bonds shall bear the title or designation set forth in the Pricing Certificate therefor and be issued as Covered Parity Bonds in one or more series, from time to time, on the dates and in the principal amount designated in the Pricing Certificate therefor, such aggregate principal amount not to exceed \$66,000,000 for the purposes of (i) paying the costs of acquiring, purchasing, constructing, improving, renovating, enlarging and equipping property, buildings, structures, facilities and related infrastructure for the System, (ii) funding capitalized interest for the Bonds, if necessary, (iii) funding the reserve fund requirement for the Bonds, if necessary, and (iv) paying the costs of issuing the Bonds.

If the Bonds are issued in more than one series, the provisions of this Ordinance shall apply to each such series in the manner, to the extent and subject to such terms and conditions as shall be specified in the Pricing Certificate therefor.

Section 3.02 Date, Denomination, Maturities and Interest.

(a) The Bonds shall be dated the Bond Date set forth in the Pricing Certificate. The Bonds shall be issued in fully registered form, without coupons, in the denomination of \$5,000 or any integral multiple thereof and shall be numbered separately from one upward or such other designation acceptable to the City and the Paying Agent/Registrar, except the Initial Bond, which shall be numbered T-1, or in such other manner provided in the Pricing Certificate.

The Bonds shall mature on the date or dates, in the years and in the principal amounts set forth in the Pricing Certificate; provided, that the maximum maturity for the Bonds shall not exceed the number of years set forth in Exhibit B.

(b) Interest shall accrue and be paid on each Bond respectively until its maturity or prior redemption, from the later of the date set forth in the Pricing Certificate or the most recent Interest Payment Date to which interest has been paid or provided for at the rates per annum for each respective maturity specified in the Pricing Certificate. Such interest shall be payable on each Interest Payment Date until maturity or prior redemption. Interest on the Bonds shall be calculated on the basis of a three hundred sixty (360) day year composed of twelve (12) months of thirty (30) days each, or on such other basis as set forth in the Pricing Certificate.

Section 3.03 Medium, Method and Place of Payment.

(a) The principal of, premium, if any, and interest on the Bonds shall be paid in lawful money of the United States of America.

(b) Interest on the Bonds shall be payable to each Owner as shown in the Register at the close of business on the Record Date; provided, however, in the event of nonpayment of interest on a scheduled Interest Payment Date and for 30 days thereafter, a new record date for such interest payment (a "Special Record Date") shall be established by the Paying Agent/Registrar, if and when funds for the payment of such interest have been received from the City. Notice of the Special Record Date and of the scheduled payment date of the past due interest (the "Special Payment Date," which shall be 15 days after the Special Record Date) shall be sent at least five Business Days prior to the Special Record Date by first-class United States mail, postage prepaid, to the address of each Owner of a Bond appearing on the Register at the close of business on the last Business Day next preceding the date of mailing of such notice.

(c) Interest shall be paid by check, dated as of the Interest Payment Date, and sent by the Paying Agent/Registrar to each Owner by United States mail, first class postage prepaid, to the address of each Owner as it appears in the Register, or by such other customary banking arrangement acceptable to the Paying Agent/Registrar and the Owner; provided, however, the Owner shall bear all risk and expense of such other banking arrangement. At the option of an Owner of at least \$1,000,000 principal amount of the Bonds, interest may be paid by wire transfer to the bank account of such Owner on file with the Paying Agent/Registrar.

(d) The principal of each Bond shall be paid to the Owner thereof on the due date (whether at the maturity date or the date of prior redemption thereof) upon presentation and surrender of such Bond at the Designated Payment/Transfer Office.

(e) If the date for the payment of the principal of, premium, if any, or interest on the Bonds is not a Business Day, then the date for such payment shall be the next succeeding day that is a Business Day, and payment on such date shall have the same force and effect as if made on the original date payment was due and no additional interest shall be due by reason of nonpayment on the date on which such payment is otherwise stated to be due and payable.

(f) Unclaimed Payments shall be segregated in a special escrow account and held in trust, uninvested by the Paying Agent/Registrar, for the accounts of the Owners of the Bonds to which the Unclaimed Payments pertain. Subject to Title 6 of the Texas Property Code, Unclaimed Payments remaining unclaimed by the Owners entitled thereto for three years after the applicable payment or redemption date shall be applied to the next payment or payments on the Bonds thereafter coming due and, to the extent any such money remains three (3) years after the retirement of all outstanding Bonds, shall be paid to the City to be used for any lawful purpose. Thereafter, neither the City, the Paying Agent/Registrar nor any other person shall be liable or responsible to any owners of such Bonds for any further payment of such unclaimed monies or on account of any such Bonds, subject to Title 6 of the Texas Property Code.

Section 3.04 Execution and Registration of Bonds.

(a) The Bonds shall be executed on behalf of the City by the Mayor and the City Secretary, by their manual or facsimile signatures, and the official seal of the City shall be impressed or placed in facsimile thereon. Such facsimile signatures on the Bonds shall have the same effect as if each of the Bonds had been signed manually and in person by each of said officers, and such facsimile seal on the Bonds shall have the same effect as if the official seal of the City had been manually impressed upon each of the Bonds.

(b) In the event that any officer of the City whose manual or facsimile signature appears on the Bonds ceases to be such officer before the authentication of such Bonds or before the delivery thereof, such manual or facsimile signature nevertheless shall be valid and sufficient for all purposes as if such officer had remained in such office.

(c) Except as provided below, no Bond shall be valid or obligatory for any purpose or be entitled to any security or benefit of this Ordinance unless and until there appears thereon the Certificate of Paying Agent/Registrar substantially in the form provided in the form of bond attached hereto as Exhibit C, duly authenticated by execution by an officer or duly authorized signatory of the Paying Agent/Registrar. It shall not be required that the same officer or authorized signatory of the Paying Agent/Registrar sign the Certificate of Paying Agent/Registrar on all of the Bonds. In lieu of the executed Certificate of Paying Agent/Registrar described above, the Initial Bond delivered at the Closing Date shall have attached thereto the Comptroller's Registration Certificate substantially in the form provided in the form of bond attached hereto as Exhibit C, manually executed by (or, to the extent allowed by law, bearing a facsimile signature of) the Comptroller of Public Accounts of the State of Texas, or by his duly authorized agent, which Certificate shall be evidence that the Bond has been duly approved by the Attorney General of the State of Texas, that it is a valid and binding obligation of the City and that it has been registered by the Comptroller of Public Accounts of the State of Texas.

(d) On the Closing Date, one Initial Bond of each series reflecting the terms set forth in the Pricing Certificate and representing the entire principal amount of all Bonds of such series, payable in stated installments to the Purchaser, or its designee, executed by the Mayor and City Secretary of the City by their manual or facsimile signatures, approved by the Attorney General, and registered and manually signed by (or, to the extent allowed by law, bearing a facsimile signature of) the Comptroller of Public Accounts, will be delivered to the Purchaser or its designee. Upon payment for the Initial Bond, the Paying Agent/Registrar shall cancel the Initial Bond and deliver a single registered, definitive Bond for each maturity, in the aggregate principal amount thereof, to DTC on behalf of the Purchaser.

Section 3.05 Ownership.

(a) The City, the Paying Agent/Registrar and any other person may treat the person in whose name any Bond is registered as the absolute owner of such Bond for the purpose of making and receiving payment as provided herein (except interest shall be paid to the person in whose name such Bond is registered on the Record Date or Special Record Date, as applicable), and for all other purposes, whether or not such Bond is overdue, and neither the City nor the Paying Agent/Registrar shall be bound by any notice or knowledge to the contrary.

(b) All payments made to the Owner of a Bond shall be valid and effectual and shall discharge the liability of the City and the Paying Agent/Registrar upon such Bond to the extent of the sums paid.

Section 3.06 Registration, Transfer and Exchange.

(a) So long as any Bond remains outstanding, the City shall cause the Paying Agent/Registrar to keep at the Designated Payment/Transfer Office a register (the "Register") in which, subject to such reasonable regulations as it may prescribe, the Paying Agent/Registrar shall provide for the registration and transfer of Bonds in accordance with this Ordinance.

(b) The ownership of a Bond may be transferred only upon the presentation and surrender of the Bond at the Designated Payment/Transfer Office of the Paying Agent/Registrar with such endorsement or other evidence of transfer as is acceptable to the Paying Agent/Registrar. No transfer of any Bond shall be effective until entered in the Register.

(c) The Bonds shall be exchangeable upon the presentation and surrender thereof at the Designated Payment/Transfer Office of the Paying Agent/Registrar for a Bond or Bonds of the same series, maturity and interest rate and in any denomination or denominations of any integral multiple of \$5,000 and in an aggregate principal amount equal to the unpaid principal amount of the Bonds presented for exchange. The Paying Agent/Registrar is hereby authorized to authenticate and deliver Bonds exchanged for other Bonds in accordance with this Section.

(d) Each exchange Bond delivered by the Paying Agent/ Registrar in accordance with this Section shall constitute an original contractual obligation of the City and shall be entitled to the benefits and security of this Ordinance to the same extent as the Bond or Bonds in lieu of which such exchange Bond is delivered.

(e) No service charge shall be made to the Owner for the initial registration, subsequent transfer, or exchange for any different denomination of any of the Bonds. The Paying Agent/Registrar, however, may require the Owner to pay a sum sufficient to cover any tax or other governmental charge that is authorized to be imposed in connection with the registration, transfer or exchange of a Bond.

(f) Neither the City nor the Paying Agent/Registrar shall be required to issue, transfer, or exchange any Bond called for redemption, in whole or in part, where such redemption is scheduled to occur within forty-five (45) calendar days after the transfer or exchange date; provided, however, such limitation shall not be applicable to an exchange by the Owner of the uncalled principal balance of a Bond.

Section 3.07 Cancellation.

All Bonds paid or redeemed before scheduled maturity in accordance with this Ordinance, and all Bonds in lieu of which exchange Bonds or replacement Bonds are authenticated and delivered in accordance with this Ordinance, shall be cancelled and proper records shall be made regarding such payment, redemption, exchange or replacement. The Paying Agent/Registrar shall then return such cancelled Bonds to the City or may in accordance with law destroy such cancelled Bonds and periodically furnish the City with certificates of destruction of such Bonds.

Section 3.08 Temporary Bonds.

(a) Following the delivery and registration of the Initial Bond and pending the preparation of definitive Bonds, the proper officers of the City may execute and, upon the City's request, the Paying Agent/Registrar shall authenticate and deliver, one or more temporary Bonds that are printed, lithographed, typewritten, mimeographed or otherwise produced, in any denomination, substantially of the tenor of the definitive Bonds in lieu of which they are delivered, without coupons, and with such appropriate insertions, omissions, substitutions and other variations as the officers of the City executing such temporary Bonds may determine, as evidenced by their signing of such temporary Bonds.

(b) Until exchanged for Bonds in definitive form, such Bonds in temporary form shall be entitled to the benefit and security of this Ordinance.

(c) The City, without unreasonable delay, shall prepare, execute and deliver to the Paying Agent/Registrar the Bonds in definitive form; thereupon, upon the presentation and surrender of the Bonds in temporary form to the Paying Agent/Registrar, the Paying Agent/Registrar shall cancel the Bonds in temporary form and shall authenticate and deliver in exchange therefor Bonds of the same maturity and series, in definitive form, in the authorized denomination, and in the same aggregate principal amount, as the Bonds in temporary form surrendered. Such exchange shall be made without the making of any charge therefor to any Owner.

Section 3.09 Replacement Bonds.

(a) Upon the presentation and surrender to the Paying Agent/Registrar of a mutilated Bond, the Paying Agent/Registrar shall authenticate and deliver in exchange therefor a replacement Bond of the same series and of like tenor and principal amount, bearing a number not contemporaneously outstanding. The City or the Paying Agent/Registrar may require the Owner of such Bond to pay a sum sufficient to cover any tax or other governmental charge that is authorized to be imposed in connection therewith and any other expenses connected therewith.

(b) In the event that any Bond is lost, apparently destroyed or wrongfully taken, the Paying Agent/Registrar, pursuant to the applicable laws of the State of Texas and in the absence of notice or knowledge that such Bond has been acquired by a bona fide purchaser, shall authenticate and deliver a replacement Bond of the same series and of like tenor and principal amount, bearing a number not contemporaneously outstanding, provided that the Owner first:

(i) furnishes to the Paying Agent/Registrar satisfactory evidence of his or her ownership of and the circumstances of the loss, destruction or theft of such Bond;

(ii) furnishes such security or indemnity as may be required by the Paying Agent/Registrar to save it and the City harmless;

(iii) pays all expenses and charges in connection therewith, including, but not limited to, printing costs, legal fees, fees of the Paying Agent/Registrar and any tax or other governmental charge that is authorized to be imposed; and

(iv) satisfies any other reasonable requirements imposed by the City and the Paying Agent/Registrar.

(c) If, after the delivery of such replacement Bond, a bona fide purchaser of the original Bond in lieu of which such replacement Bond was issued presents for payment such original Bond, the City and the Paying Agent/Registrar shall be entitled to recover such replacement Bond from the person to whom it was delivered or any person taking therefrom, except a bona fide purchaser, and shall be entitled to recover upon the security or indemnity provided therefor to the extent of any loss, damage, cost or expense incurred by the City or the Paying Agent/Registrar in connection therewith.

(d) In the event that any such mutilated, lost, apparently destroyed or wrongfully taken Bond has become or is about to become due and payable, the Paying Agent/Registrar, in its discretion, instead of issuing a replacement Bond, may pay such Bond if it has become due and payable or may pay such Bond when it becomes due and payable.

(e) Each replacement Bond delivered in accordance with this Section shall constitute an original additional contractual obligation of the City and shall be entitled to the benefits and security of this Ordinance to the same extent as the Bond or Bonds in lieu of which such replacement Bond is delivered.

Section 3.10 Book-Entry Only System.

(a) Notwithstanding any other provision hereof, upon initial issuance of the Bonds, the ownership of the Bonds shall be registered in the name of Cede & Co., as nominee of DTC. The definitive Bonds shall be initially issued in the form of a single separate fully registered certificate for each of the maturities thereof.

(b) With respect to Bonds registered in the name of Cede & Co., as nominee of DTC, the City and the Paying Agent/Registrar shall have no responsibility or obligation to any DTC Participant or to any person on behalf of whom such a DTC Participant holds an interest in the Bonds. Without limiting the immediately preceding sentence, the City and the Paying Agent/Registrar shall have no responsibility or obligation with respect to (i) the accuracy of the records of DTC, Cede & Co. or any DTC Participant with respect to any ownership interest in the Bonds, (ii) the delivery to any DTC Participant or any other person, other than an Owner, as shown on the Register, of any notice with respect to the Bonds, including any notice of redemption, or (iii) the payment to any DTC Participant or any other person, other than a Bondholder, as shown in the Register of any amount with respect to principal of, premium, if any, or interest on the Bonds. Notwithstanding any other provision of this Ordinance to the contrary, the City and the Paying Agent/Registrar shall be entitled to treat and consider the person in whose name each Bond is registered in the Register as the absolute owner of such Bond for the purpose of payment of principal of, premium, if any, and interest on such Bonds, for the purpose of giving notices of redemption and other matters with respect to such Bond, for the purpose of registering transfer with respect to such Bond, and for all other purposes whatsoever. The Paying Agent/Registrar shall pay all principal of, premium, if any, and interest on the Bonds only to or upon the order of the respective owners, as shown in the Register as provided in this Ordinance, or their respective attorneys duly authorized in writing, and all such payments shall be valid and effective to fully

satisfy and discharge the City's obligations with respect to payment of principal of, premium, if any, and interest on the Bonds to the extent of the sum or sums so paid. No person other than an Owner, as shown in the Register, shall receive a certificate evidencing the obligation of the City to make payments of amounts due pursuant to this Ordinance. Upon delivery by DTC to the Paying Agent/Registrar of written notice to the effect that DTC has determined to substitute a new nominee in place of Cede & Co., the word "Cede & Co." in this Ordinance shall refer to such new nominee of DTC.

(c) An Authorized Officer is authorized and directed to execute and deliver the Representation Letter applicable to the City's obligations (including the Bonds) delivered in book-entry only form to DTC as securities depository for the Bonds.

Section 3.11 Successor Securities Depository; Transfer Outside Book-Entry Only System.

In the event that the City or the Paying Agent/Registrar determines that DTC is incapable of discharging its responsibilities described herein and in the Representation Letter of the City to DTC, or in the event DTC discontinues the services described herein, the City or the Paying Agent/Registrar shall (i) appoint a successor securities depository, qualified to act as such under Section 17(a) of the Securities and Exchange Act of 1934, as amended, notify DTC and DTC Participants of the appointment of such successor securities depository and transfer one or more separate Bonds to such successor securities depository or (ii) notify DTC and DTC Participants of the availability through DTC of Bonds and transfer one or more separate Bonds to DTC Participants having Bonds credited to their DTC accounts. In such event, the Bonds shall no longer be restricted to being registered in the Register in the name of Cede & Co., as nominee of DTC, but may be registered in the name of the successor securities depository, or its nominee, or in whatever name or names Owners transferring or exchanging Bonds shall designate, in accordance with the provisions of this Ordinance.

Section 3.12 Payments to Cede & Co.

Notwithstanding any other provision of this Ordinance to the contrary, so long as any Bonds are registered in the name of Cede & Co., as nominee of DTC, all payments with respect to principal of, premium, if any, and interest on such Bonds, and all notices with respect to such Bonds, shall be made and given, respectively, in the manner provided in the Representation Letter.

ARTICLE IV
REDEMPTION OF BONDS BEFORE MATURITY

Section 4.01 Limitation on Redemption.

The Bonds shall be subject to redemption before scheduled maturity only as provided in this Article IV and in the Pricing Certificate.

Section 4.02 Mandatory Sinking Fund Redemption.

Bonds designated as "Term Bonds," if any, in the Pricing Certificate are subject to scheduled mandatory redemption and will be redeemed by the City at the price(s), on the date(s),

and in the respective principal amounts set forth in the Pricing Certificate out of moneys available for such purpose in the Bond Fund, in the manner provided in the Form of Bond attached hereto as Exhibit C, with such changes as are required by the Pricing Certificate.

Section 4.03 Optional Redemption.

(a) The City reserves the option to redeem Bonds on the terms and in the manner provided in the Form of Bond attached hereto as Exhibit C, with such changes as are required by the Pricing Certificate.

(b) Except as otherwise provided in a Pricing Certificate, if less than all of the Bonds are to be redeemed pursuant to an optional redemption, the City shall determine the maturity or maturities and the amounts thereof to be redeemed and shall direct the Paying Agent/Registrar to call by lot, or by any other customary method that results in a random selection, the Bonds, or portions thereof, within such maturity or maturities and in such principal amounts for redemption.

(c) The City, at least forty-five (45) days before the redemption date, unless a shorter period shall be satisfactory to the Paying Agent/Registrar, shall notify the Paying Agent/Registrar of such redemption date and of the principal amount of Bonds to be redeemed.

Section 4.04 Partial Redemption.

(a) Except as otherwise provided in a Pricing Certificate, a portion of a single Bond of a denomination greater than \$5,000 may be redeemed, but only in a principal amount equal to \$5,000 or any integral multiple thereof. If such a Bond is to be partially redeemed, the Paying Agent/Registrar shall treat each \$5,000 portion of the Bond as though it were a single Bond for purposes of selection for redemption.

(b) Upon surrender of any Bond for redemption in part, the Paying Agent/Registrar, in accordance with Section 3.06 of this Ordinance, shall authenticate and deliver an exchange Bond or Bonds in an aggregate principal amount equal to the unredeemed portion of the Bond so surrendered, such exchange being without charge.

(c) The Paying Agent/Registrar shall promptly notify the City in writing of the principal amount to be redeemed of any Bond as to which only a portion thereof is to be redeemed.

Section 4.05 Notice of Redemption to Owners.

(a) The Paying Agent/Registrar shall give notice of any redemption of Bonds by sending notice by United States mail, first class postage prepaid, not less than thirty (30) days before the date fixed for redemption, to the Owner of each Bond (or part thereof) to be redeemed, at the address shown on the Register at the close of business on the Business Day next preceding the date of mailing such notice.

(b) The notice shall state the redemption date, the redemption price, the place at which the Bonds are to be surrendered for payment, and, if less than all the Bonds outstanding are to be redeemed, an identification of the Bonds or portions thereof to be redeemed.

(c) The City reserves the right to give notice of its election or direction to redeem Bonds under Section 4.03 conditioned upon the occurrence of subsequent events. Such notice may state (i) that the redemption is conditioned upon the deposit of moneys and/or authorized securities, in an amount equal to the amount necessary to effect the redemption, with the Paying Agent/Registrar, or such other entity as may be authorized by law, no later than the redemption date or (ii) that the City retains the right to rescind such notice at any time prior to the scheduled redemption date if the City delivers a certificate of the City to the Paying Agent/Registrar instructing the Paying Agent/Registrar to rescind the redemption notice, and such notice and redemption shall be of no effect if such moneys and/or authorized securities are not so deposited or if the notice is rescinded. The Paying Agent/Registrar shall give prompt notice of any such rescission of a conditional notice of redemption to the affected Owners. Any Bonds subject to conditional redemption where redemption has been rescinded shall remain Outstanding, and the rescission shall not constitute an event of default. Further, in the case of a conditional redemption, the failure of the City to make moneys and/or authorized securities available in part or in whole on or before the redemption date shall not constitute an event of default.

(d) Any notice given as provided in this Section shall be conclusively presumed to have been duly given, whether or not the Owner receives such notice.

Section 4.06 Payment Upon Redemption.

(a) Before or on each redemption date, the City shall deposit with the Paying Agent/Registrar money sufficient to pay all amounts due on the redemption date and the Paying Agent/Registrar shall make provision for the payment of the Bonds to be redeemed on such date by setting aside and holding in trust such amounts as are received by the Paying Agent/Registrar from the City and shall use such funds solely for the purpose of paying the principal of and accrued interest on the Bonds being redeemed.

(b) Upon presentation and surrender of any Bond called for redemption at the Designated Payment/Transfer Office on or after the date fixed for redemption, the Paying Agent/Registrar shall pay the principal of and accrued interest on such Bond to the date of redemption from the money set aside for such purpose.

Section 4.07 Effect of Redemption.

(a) Notice of redemption having been given as provided in Section 4.05 of this Ordinance and subject to any conditions or rights reserved by the City under Section 4.05(c), the Bonds or portions thereof called for redemption shall become due and payable on the date fixed for redemption and, unless the City defaults in its obligation to make provision for the payment of the principal thereof, or accrued interest thereon, such Bonds or portions thereof shall cease to bear interest from and after the date fixed for redemption, whether or not such Bonds are presented and surrendered for payment on such date.

(b) If the City shall fail to make provision for payment of all sums due on a redemption date, then any Bond or portion thereof called for redemption shall remain Outstanding and continue to bear interest at the rate stated on the Bond until due provision is made for the payment of same by the City.

Section 4.08 Lapse of Payment.

Money set aside for the redemption of Bonds and remaining unclaimed by the Owners of such Bonds shall be subject to the provisions of Section 3.03(f) hereof.

ARTICLE V
PAYING AGENT/REGISTRAR

Section 5.01 Appointment of Paying Agent/Registrar.

The form of Paying Agent/Registrar Agreement presented at the meeting at which this Ordinance was approved and the appointment of the Paying Agent/Registrar identified therein are hereby approved.

The Mayor is hereby authorized and directed to execute the Paying Agent/Registrar Agreement with the Paying Agent/Registrar, specifying the duties and responsibilities of the City and the Paying Agent/Registrar, in substantially the form presented at the meeting at which this Ordinance was approved with such changes as may be approved by an Authorized Officer. The signature of the Mayor shall be attested by the City Secretary.

Section 5.02 Qualifications.

Each Paying Agent/Registrar shall be a commercial bank, a trust company organized under the laws of the State of Texas, or any other entity duly qualified and legally authorized to serve as and perform the duties and services of paying agent and registrar for the Bonds.

Section 5.03 Maintaining Paying Agent/Registrar.

(a) At all times while any Bonds are Outstanding, the City will maintain a Paying Agent/Registrar that is qualified under Section 5.02 of this Ordinance.

(b) If the Paying Agent/Registrar resigns or otherwise ceases to serve as such, the City will promptly appoint a replacement.

Section 5.04 Termination.

The City, upon not less than sixty (60) days' notice, reserves the right to terminate the appointment of any Paying Agent/Registrar by delivering to the entity whose appointment is to be terminated written notice of such termination.

Section 5.05 Notice of Change to Owners.

Promptly upon each change in the entity serving as Paying Agent/Registrar, the City will cause notice of the change to be sent to each Owner by United States mail, first class postage prepaid, at the address in the Register thereof, stating the effective date of the change and the name and mailing address of the replacement Paying Agent/Registrar.

Section 5.06 Agreement to Perform Duties and Functions.

By accepting the appointment as Paying Agent/Registrar and executing the Paying Agent/Registrar Agreement, the Paying Agent/Registrar is deemed to have agreed to the provisions of this Ordinance and that it will perform the duties and functions of Paying Agent/Registrar prescribed thereby.

Section 5.07 Delivery of Records to Successor.

If a Paying Agent/Registrar is replaced, such Paying Agent/Registrar, promptly upon the appointment of the successor, will deliver the Register (or a copy thereof) and all other pertinent books and records relating to the Bonds to the successor Paying Agent/Registrar.

ARTICLE VI
FORM OF THE BONDS

Section 6.01 Form Generally.

(a) The Bonds, including the Registration Certificate of the Comptroller of Public Accounts of the State of Texas, the Certificate of the Paying Agent/Registrar, and the Assignment form to appear on each of the Bonds, (i) shall be generally in the form set forth in Exhibit C hereto, with such appropriate insertions, omissions, substitutions, and other variations as are permitted or required by this Ordinance and the Pricing Certificate, and (ii) may have such letters, numbers, or other marks of identification (including identifying numbers and letters of the Committee on Uniform Securities Identification Procedures of the American Bankers Association, referred to herein as "CUSIP numbers") and such legends and endorsements (including any reproduction of an opinion of counsel) thereon as, consistently herewith, may be determined by the City or by the officers executing such Bonds, as evidenced by their execution thereof.

(b) Any portion of the text of any Bonds may be set forth on the reverse side thereof, with an appropriate reference thereto on the face of the Bonds.

(c) The definitive Bonds shall be typewritten, photocopied, printed, lithographed, or engraved, and may be produced by any combination of these methods or produced in any other similar manner, all as determined by the officers executing such Bonds, as evidenced by their execution thereof.

(d) The Initial Bond submitted to the Attorney General of the State of Texas may be typewritten and photocopied or otherwise reproduced.

Section 6.02 CUSIP Registration.

The City or the Purchaser may secure CUSIP numbers or other identification numbers for the Bonds, and may authorize the printing of such numbers on the face of the Bonds. It is expressly provided, however, that the presence or absence of identification numbers on the Bonds shall be of no significance or effect regarding the legality thereof and neither the City nor the attorneys approving said Bonds as to legality are to be held responsible for identification numbers incorrectly printed on the Bonds.

Section 6.03 Legal Opinion.

The approving legal opinion of Orrick, Herrington & Sutcliffe LLP, Austin, Texas, Bond Counsel to the City ("Bond Counsel"), may be attached to or printed on the reverse side of each Bond over the certification of the City Secretary of the City, which may be executed in facsimile.

Section 6.04 Statement of Insurance.

A statement relating to a municipal bond insurance policy, if any, issued for any Bond or Bonds may be printed on or attached to each such Bond.

ARTICLE VII
FUNDS AND ACCOUNTS

Section 7.01 Segregation of Revenues/Fund Designations.

All receipts, revenues and income derived from the operation and ownership of the System shall be kept separate from other funds of the City and deposited within twenty-four (24) hours after collection into the "Water and Wastewater System Fund" (hereinafter referred to as the "System Fund") which has been created and established on the books of the City. The System Fund shall continue to be kept and maintained at an official depository bank of the City while the Parity Obligations (including the Bonds) remain Outstanding. Furthermore, the City affirms that the following special funds have been created and established and such funds shall continue to be maintained by the City while any Parity Obligations (including the Bonds) remain Outstanding: the "Special Water and Wastewater System Revenue Bond Fund" (hereinafter referred to as the "Bond Fund"), the "Special Water and Wastewater System Revenue Bond General Reserve Fund" (hereinafter referred to as the "General Reserve Fund") and the "Special Water and Wastewater System Revenue Bond TWDB Reserve Fund" (herein after referred to as the "TWDB Reserve Fund" and, together with the General Reserve Fund, the "Reserve Funds"). The Bond Fund, the General Reserve Fund and the TWDB Reserve Fund shall continue to be kept and maintained at the City's official depository bank, and moneys deposited therein shall be used for no purpose other than for the payment, redemption and retirement of Parity Obligations, as herein provided. The City may provide for the creation of any special Accounts deemed necessary or appropriate for the efficient administration of the System and payment of Parity Obligations.

Section 7.02 System Fund.

The City hereby covenants and agrees with the owners of the Bonds that the moneys deposited in the System Fund shall be used first for the payment of the reasonable and proper expenses of operating and maintaining the System. All moneys deposited in the System Fund in excess of the amounts required to pay operating and maintenance expenses of the System shall be applied and appropriated, to the extent required and in the order of priority prescribed, as follows:

First: To the payment of the amounts required to be deposited in the Bond Fund for the payment of Parity Obligations, including the principal of and interest on the Parity Bonds as the same become due and payable;

Second: To the payment, equally and ratably, of the amounts required to be deposited in the Reserve Funds to accumulate, restore and maintain the amounts required to be deposited therein;

Third: To the payment of Subordinate Obligations, including the payment of amounts required to maintain any special funds created to secure payment of Subordinate Obligations; and

Fourth: For any other purpose of the City now or hereafter permitted by law.

Section 7.03 Bond Fund.

The City hereby agrees and covenants to deposit to the Bond Fund an amount equal to one hundred percent (100%) of the amount required to fully pay all Parity Obligations as such payments mature and become due, including the amount required to pay the principal of and interest on the Bonds on or before each maturity date and Interest Payment Date therefor, such payments to be made in substantially equal monthly installments on or before the first day of each month beginning on or before the first day of the month next following the month the Bonds are delivered to the Purchasers. The required monthly deposits to the Bond Fund for the payment of principal of and interest on the Bonds shall continue to be made as hereinabove provided until such time as (i) the total amount on deposit in the Bond Fund, together with the amount deposited in the Reserve Funds, is equal to the amount required to fully pay and discharge all Outstanding Parity Obligations, including Parity Bonds (principal and interest), or (ii) the Bonds are no longer Outstanding. Accrued interest, if any, received from the purchasers of the Bonds shall be deposited in the Bond Fund, and shall be taken into consideration and reduce the amount of the monthly deposits hereinabove required which would otherwise be required to be deposited in the Bond Fund from the Net Revenues of the System.

Section 7.04 General Reserve Fund.

(a) The City covenants and agrees to accumulate and maintain Reserve Fund Obligations in the General Reserve Fund equal to not less than the General Reserve Fund Requirement which shall be calculated and predetermined at the time of issuance of each series or installment of Covered Parity Bonds. Upon issuance of Additional Bonds designated as Covered Parity Bonds, the General Reserve Fund Requirement shall be increased, if required, to an amount equal to the General Reserve Fund Requirement after taking into account such Additional Bonds. The General Reserve Fund shall be made available for and reasonably employed to pay principal of and interest on Covered Parity Bonds in the event that amounts in the Bond Fund are insufficient for such purpose. If any amount of the General Reserve Fund is employed to pay principal of or interest on Covered Parity Bonds and, after disbursement of such amounts for such purpose, the amount on deposit in the General Reserve Fund is less than the General Reserve Fund Requirement, or if an event of default under any Credit Facility held in the General Reserve Fund has occurred and is continuing, the General Reserve Fund Requirement shall be restored from Net Revenues in twenty-four (24) approximately equal monthly payments from the first available Net Revenues in the System Fund, subject only to (and in accordance with) the priority of payments hereinabove prescribed in Section 7.02.

(b) The City may, at its option, withdraw all surplus on deposit in the General Reserve Fund over the General Reserve Fund Requirement and deposit the same in the System Fund; provided, however, that to the extent such surplus monies constitute bond proceeds, including interest and income derived therefrom, such amounts shall not be deposited to the System Fund and shall only be used for the purposes for which bond proceeds may be used.

(c) For the purpose of determining compliance with the requirements of subsections (a) and (b) of this Section 7.04, Reserve Fund Obligations shall be valued each year as of the last day of the Fiscal Year at their market value, except that any direct obligations of the United States (State and Local Government Series) held for the benefit of the Reserve Fund in book-entry form shall be continuously valued at their par value or face principal amount.

(d) To the extent permitted by and in accordance with applicable law, the City may replace or substitute a Credit Facility for cash or investment securities on deposit in the General Reserve Fund or in substitution or replacement of any existing Credit Facility. Upon such replacement or substitution, cash or investment securities of any of the types permitted by Section 7.09 hereof on deposit in the General Reserve Fund, which (taken together with the face amount of any existing Credit Facilities) are in excess of the General Reserve Fund Requirement may be withdrawn by the City, at its option, and transferred to the System Fund; provided that the face amount of any Credit Facility may be reduced at the option of the City in lieu of such transfer. However, to the extent such surplus monies constitute bond proceeds, including interest and income derived therefrom, such amounts shall not be deposited to the System Fund and shall only be used for the purposes for which bond proceeds may be used.

(e) If the City is required to make a withdrawal from the General Reserve Fund, the City shall promptly notify the issuer of any Credit Facility of the necessity for a withdrawal from the General Reserve Fund, and shall make such withdrawal first from available moneys or investment securities then on deposit in the General Reserve Fund, and next from a drawing under any Credit Facility to the extent of such deficiency.

(f) In the event of a deficiency in the General Reserve Fund (including a deficiency resulting in whole or in part from termination or expiration of a Credit Facility or an event of default under a Credit Facility), the City shall restore such deficiency from the first available Net Revenues of the System in the System Fund, subject only to (and in accordance with) the priority of payments hereinabove prescribed in Section 7.02, in twenty-four (24) approximately equal monthly payments.

(g) In the event of the redemption or defeasance of any of the Outstanding Covered Parity Bonds, any Reserve Fund Obligations on deposit in the General Reserve Fund in excess of the General Reserve Fund Requirement may be withdrawn and transferred, at the option of the City and subject to the last sentence of this subparagraph (g), to the System Fund, as a result of (i) the redemption of the Outstanding Covered Parity Bonds, or (ii) funds for the payment of the Outstanding Covered Parity Bonds having been deposited irrevocably with the paying agent or place of payment therefor in the manner described in this Ordinance, the result of such deposit being that such Covered Parity Bonds no longer are deemed to be Outstanding under the terms of this Ordinance. However, to the extent such surplus monies constitute bond proceeds, including

interest and income derived therefrom, such amounts shall not be deposited to the System Fund and shall only be used for the purposes for which bond proceeds may be used.

(h) In the event there is a draw upon a Credit Facility, the City shall reimburse the issuer of such Credit Facility for such draw in accordance with the terms of any agreement pursuant to which the Credit Facility is issued from Net Revenues; however, such reimbursement from Net Revenues shall be (i) subject to the provisions of subparagraph (f) hereof, and (ii) subordinate and junior in right of payment to the payment of principal of and premium, if any, and interest on the Parity Bonds. Any interest due on any reimbursement obligation under the Credit Facility shall not exceed the highest lawful rate of interest which may be paid by the City.

(i) Notwithstanding anything to the contrary contained in this Ordinance, the requirement set forth above in this Section 7.04 to maintain the General Reserve Fund shall be suspended for such time as the Net Revenues for each Fiscal Year are equal to at least 1.25 times the maximum annual debt service requirements of all Outstanding Parity Bonds. In the event that the Net Revenues for any Fiscal Year are less than 1.25 times the maximum annual debt service requirements of all Outstanding Parity Bonds, the City will be required to commence making deposits to the General Reserve Fund, as provided in subsection (f) above, and to continue such deposits until the earlier of (i) such time as the General Reserve Fund contains the General Reserve Fund Requirement or (ii) the end of any period of two consecutive Fiscal Years during which Net Revenues were equal to not less than 1.25 times the maximum annual debt service requirements of all Outstanding Parity Bonds.

During such time as the obligation to maintain the General Reserve Fund Requirement in the General Reserve Fund has been suspended pursuant to this subsection (i), the City may, at its option, withdraw all monies from the General Reserve Fund and deposit such surplus in the System Fund; provided, however, to the extent such monies constitute bond proceeds, including interest and income derived therefrom, such amounts shall not be deposited to the System Fund and shall only be used for the purposes for which bond proceeds may be used.

Section 7.05 TWDB Reserve Fund.

(a) The City covenants and agrees to accumulate and maintain Reserve Fund Obligations in the TWDB Reserve Fund equal to not less than the TWDB Reserve Fund Requirement which shall be calculated and predetermined at the time of issuance of each series or installment of TWDB Bonds. The City covenants and agrees that the TWDB Reserve Fund Requirement in connection with the issuance of each series of TWDB Bonds shall be accumulated in equal monthly installments over the initial sixty (60) months following the initial delivery of such series of TWDB Bonds. Upon issuance of Additional Bonds designated as TWDB Bonds, the TWDB Reserve Fund Requirement shall be increased, if required, to an amount equal to the TWDB Reserve Fund Requirement after taking into account such Additional Bonds. The TWDB Reserve Fund shall be made available for and reasonably employed to pay principal of and interest on TWDB Bonds in the event that amounts in the Bond Fund are insufficient for such purpose. If any amount of the TWDB Reserve Fund is employed to pay principal of or interest on TWDB Bonds and, after disbursement of such amounts for such purpose, the amount on deposit in the TWDB Reserve Fund is less than the TWDB Reserve Fund Requirement, or if an event of default under any Credit Facility held in the TWDB Reserve Fund has occurred and is continuing, the

TWDB Reserve Fund Requirement shall be restored from Net Revenues in twenty-four (24) approximately equal monthly payments from the first available Net Revenues in the System Fund, subject only to (and in accordance with) the priority of payments hereinabove prescribed in Section 7.02.

(b) The City may, at its option, withdraw all surplus on deposit in the TWDB Reserve Fund over the TWDB Reserve Fund Requirement and deposit the same in the System Fund; provided, however, that to the extent such surplus monies constitute bond proceeds, including interest and income derived therefrom, such amounts shall not be deposited to the System Fund and shall only be used for the purposes for which bond proceeds may be used.

(c) For the purpose of determining compliance with the requirements of subsections (a) and (b) of this Section 7.05, Reserve Fund Obligations shall be valued each year as of the last day of the Fiscal Year at their market value, except that any direct obligations of the United States (State and Local Government Series) held for the benefit of the Reserve Fund in book-entry form shall be continuously valued at their par value or face principal amount.

(d) To the extent permitted by and in accordance with applicable law, the City may replace or substitute a Credit Facility for cash or investment securities on deposit in the TWDB Reserve Fund or in substitution or replacement of any existing Credit Facility. Upon such replacement or substitution, cash or investment securities of any of the types permitted by Section 7.09 hereof on deposit in the TWDB Reserve Fund, which (taken together with the face amount of any existing Credit Facilities) are in excess of the TWDB Reserve Fund Requirement may be withdrawn by the City, at its option, and transferred to the System Fund; provided that the face amount of any Credit Facility may be reduced at the option of the City in lieu of such transfer. However, to the extent such surplus monies constitute bond proceeds, including interest and income derived therefrom, such amounts shall not be deposited to the System Fund and shall only be used for the purposes for which bond proceeds may be used.

(e) If the City is required to make a withdrawal from the TWDB Reserve Fund, the City shall promptly notify the issuer of any Credit Facility of the necessity for a withdrawal from the TWDB Reserve Fund, and shall make such withdrawal first from available moneys or investment securities then on deposit in the TWDB Reserve Fund, and next from a drawing under any Credit Facility to the extent of such deficiency.

(f) In the event of a deficiency in the TWDB Reserve Fund (including a deficiency resulting in whole or in part from termination or expiration of a Credit Facility or an event of default under a Credit Facility), the City shall restore such deficiency from the first available Net Revenues of the System in the System Fund, subject only to (and in accordance with) the priority of payments hereinabove prescribed in Section 7.02, in twenty-four (24) approximately equal monthly payments.

(g) In the event of the redemption or defeasance of any of the Outstanding TWDB Bonds, any Reserve Fund Obligations on deposit in the TWDB Reserve Fund in excess of the TWDB Reserve Fund Requirement may be withdrawn and transferred, at the option of the City and subject to the last sentence of this subparagraph (g), to the System Fund, as a result of (i) the redemption of the Outstanding TWDB Bonds, or (ii) funds for the payment of the Outstanding

TWDB Bonds having been deposited irrevocably with the paying agent or place of payment therefor in the manner described in this Ordinance, the result of such deposit being that such TWDB Bonds no longer are deemed to be Outstanding under the terms of this Ordinance. However, to the extent such surplus monies constitute bond proceeds, including interest and income derived therefrom, such amounts shall not be deposited to the System Fund and shall only be used for the purposes for which bond proceeds may be used.

(h) In the event there is a draw upon a Credit Facility, the City shall reimburse the issuer of such Credit Facility for such draw in accordance with the terms of any agreement pursuant to which the Credit Facility is issued from Net Revenues; however, such reimbursement from Net Revenues shall be (i) subject to the provisions of subparagraph (f) hereof, and (ii) subordinate and junior in right of payment to the payment of principal of and premium, if any, and interest on the Parity Bonds. Any interest due on any reimbursement obligation under the Credit Facility shall not exceed the highest lawful rate of interest which may be paid by the City.

Section 7.06 Construction Fund.

There is hereby created and there shall be established and maintained on the books of the City, and accounted for separate and apart from all other funds of the City, a separate fund designated as the "City of Lubbock, Texas, Water and Wastewater System Revenue Bonds Series 2025 Construction Fund" (hereinafter called the "Construction Fund"). A portion of the proceeds from the sale of the Bonds in the amount prescribed in the Pricing Certificate shall be deposited to the credit of the Construction Fund for use by the City for payment of all lawful costs associated with acquiring, purchasing, constructing, improving, renovating, enlarging and equipping property, buildings, structures, facilities and related infrastructure for the System, as provided herein.

Section 7.07 Payment of Bonds.

While any of the Bonds are Outstanding, the proper officers of the City are hereby authorized to transfer or cause to be transferred to the Paying Agent/Registrar, from funds on deposit in the Bond Fund and, if necessary, the Reserve Fund amounts sufficient to fully pay and discharge promptly each installment of interest and principal on the Bonds as such installments mature and come due; such transfer of funds to be made in such manner as will cause immediately available funds to be deposited with the Paying Agent/Registrar for the Bonds at the close of the Business Day next preceding the date of payment for the Bonds.

Section 7.08 Deficiencies in Funds.

If in any month the City shall, for any reason, fail to pay into any Fund the full amounts above stipulated, amounts equivalent to such deficiencies shall be set apart and paid into such Fund from the first available and unallocated Net Revenues of the System, subject to the priority of payments prescribed in Section 7.02, in the following month or months and such payments shall be in addition to the amounts hereinabove provided to be otherwise paid into such Fund during such month or months.

Section 7.09 Security and Investment of Funds.

(a) All Funds and Accounts shall be secured in the manner and to the fullest extent required by law for the security of public funds, including Chapter 2257, Texas Government Code, as amended, and the funds created by the Ordinance shall be used only for the purposes therein specified.

(b) Money in any Fund or Account established or affirmed pursuant to this Ordinance or any ordinance authorizing the issuance of Parity Obligations, may, at the option of the City, be invested in time deposits or certificates of deposit secured in the manner required by law for public funds, or be invested in direct obligations of, including obligations the principal and interest on which are unconditionally guaranteed by, the United States of America, in obligations of any agencies or instrumentalities thereof, or in such other investments as are permitted under the Public Funds Investment Act, Chapter 2256, Texas Government Code, as amended, or any successor law, as in effect from time to time, consistent with the City's investment policy; provided that all such deposits and investments shall be made in such manner (which may include repurchase agreements for such investment with any primary dealer of such agreements) that the money required to be expended from any such Fund will be available at the proper time or times. Such investments shall be valued each year in terms of current market value as of the last day of the Fiscal Year. For purposes of maximizing investment returns, to the extent permitted by law, money in such Funds may be invested in common investments of the kind described above, or in a common pool of such investment which shall be kept and held at an official depository bank, which shall not be deemed to be or constitute a commingling of such money or funds provided that safekeeping receipts or certificates of participation clearly evidencing the investment or investment pool in which such money is invested and the share thereof purchased with such money or owned by such fund are held by or on behalf of each such Fund. If necessary, such investments shall be promptly sold to prevent any default. Any investment made with money deposited to the credit of a Reserve Fund shall not have a maturity in excess of five (5) years.

Section 7.10 Excess Revenues.

All revenues of the System in excess of those required to establish and maintain the Bond Fund and the Reserve Funds as required herein may be used for any proper City purpose now or hereafter permitted by law including, without limitation, pledging any excess revenues in support of Subordinate Obligations.

ARTICLE VIII SALE AND DELIVERY OF BONDS; DEPOSIT OF PROCEEDS

Section 8.01 Sale of Bonds; Official Statement.

(a) The Bonds shall be sold in accordance with the terms of this Ordinance, including this Section 8.01(a) and Exhibit B hereto, provided that all of the conditions set forth in Exhibit B can be satisfied. As authorized by Chapter 1371, the Authorized Officer is authorized to act on behalf of the City, upon determining that the conditions set forth in Exhibit B can be satisfied, in selling and delivering each series of Bonds and carrying out the other procedures specified in this Ordinance, including determining (i) the manner of sale (which may be by private placement,

public, private, negotiated or competitive sale, limited or public offering or any combination thereof), (ii) the total aggregate principal amount and the number of series of the Bonds, (iii) the date(s) on which the Bonds of each series will be sold and delivered, (iv) whether to acquire bond insurance for each series of Bonds, (v) the amount of capitalized interest, if any, (vi) the amount and manner of funding the reserve fund, if necessary, (vii) the price at which the Bonds of each series will be sold, (viii) the title, designation and/or number for each series of Bonds to be issued, (ix) whether particular Bonds will be issued as Tax-Exempt Bonds or Taxable Bonds, (x) the form in which the Bonds of each series shall be issued, (xi) the dates on which the Bonds of each series will mature, the principal amount to mature in each year, the rate of interest to be borne by each such maturity, the interest payment dates, and the initial date from which interest will accrue, (xii) the dates, prices and other terms upon and at which the Bonds of each series shall be subject to redemption or tender prior to maturity (including terms for optional and mandatory sinking fund redemption), and (xiii) all other terms and provisions of the Bonds and all other matters relating to the issuance, sale and delivery thereof, all of which shall be specified in the Pricing Certificate for each series of Bonds.

The Authorized Officer may approve modifications to this Ordinance to conform to the terms of the Bonds, as approved by the Authorized Officer, and execute any instruments, agreements and other documents as the Authorized Officer shall deem necessary or appropriate in connection with the issuance, sale and delivery of Bonds pursuant to this Ordinance.

The authority granted to the Authorized Officer under this Section 8.01(a) shall expire at 11:59 p.m. on the first anniversary of the date of adoption of this Ordinance (the "Expiration Date"), unless otherwise extended by the City Council by separate action. Bonds sold pursuant to a Purchase Contract (in the case of a private placement or negotiated sale) or winning bid (in the case of a competitive offering) executed on or before the Expiration Date may be delivered after such date.

In satisfaction of Section 1201.022(a)(3), Texas Government Code, the City Council hereby determines that the delegation of the authority to the Authorized Officer to approve the final terms and conditions of each series of the Bonds as set forth in this Ordinance is, and the decisions made by the Authorized Officer pursuant to such delegated authority and incorporated in a Pricing Certificate will be, in the best interests of the City and shall have the same force and effect as if such determination were made by the City Council, and the Authorized Officer is hereby authorized to make and include in a Pricing Certificate an appropriate finding to that effect. Any finding or determination made by the Authorized Officer relating to the issuance and sale of the Bonds and the execution of the Purchase Contract in connection therewith shall have the same force and effect as a finding or determination made by the City Council.

(b) An Authorized Officer is hereby authorized and directed to execute and deliver the Purchase Contract (in the case of a private placement or negotiated sale) or the winning bid (in the case of a competitive offering) in the form and on the terms approved by the Authorized Officer, and all other officers, agents and representatives of the City are hereby authorized to do any and all things necessary or desirable to satisfy the conditions set out therein and to provide for the issuance and delivery of the Bonds.

(c) The form and substance of a Preliminary Official Statement, and any addenda, supplement or amendment thereto, prepared for use in connection with the public offering and sale of each series of Bonds is hereby approved, with such appropriate variations in the form of any Preliminary Official Statement previously prepared, as shall be approved by the Authorized Officer, and such Preliminary Official Statement is hereby deemed final as of its date within the meaning and for the purposes of paragraph (b)(1) of Rule 15c2-12 under the Securities Exchange Act of 1934, as amended. The Authorized Officer is hereby authorized and directed to cause to be prepared a final Official Statement (the "Official Statement") incorporating applicable pricing information and other terms pertaining to each series of Bonds, and to execute the same by manual or facsimile signature and deliver appropriate numbers of executed copies thereof to the Purchasers. The Official Statement as thus approved, executed and delivered, with such appropriate variations as shall be approved by the Authorized Officer and the Purchasers, may be used by the Purchasers in the public offering and sale of the Bonds. The use and distribution of the Preliminary Official Statement, and the preliminary public offering of the Bonds by the Purchasers, is hereby approved and confirmed. In the event the Bonds are sold pursuant to a competitive sale, the Authorized Officer is hereby authorized to approve the preparation and distribution of a notice of sale.

(d) All officers of the City are authorized to execute such documents, certificates, receipts and other instruments as they may deem appropriate in order to consummate the delivery of the Bonds in accordance with the terms of sale therefor including, without limitation, the Purchase Contract.

The obligation of the Purchasers to accept delivery of the Bonds is subject to the closing conditions set forth in the Purchase Contract, including specifically the Purchasers being furnished with the final, approving opinion of Bond Counsel, which opinion shall be dated as of and delivered on the Closing Date.

Section 8.02 Control and Delivery of Bonds.

(a) An Authorized Officer of the City is hereby authorized to have control of the Initial Bond and all necessary records and proceedings pertaining thereto pending investigation, examination, and approval of the Attorney General of the State of Texas, registration by the Comptroller of Public Accounts of the State of Texas and registration with, and initial exchange or transfer by, the Paying Agent/Registrar.

(b) After registration by the Comptroller of Public Accounts, delivery of the Bonds shall be made to the Purchasers under and subject to the general supervision and direction of the Authorized Officer, against receipt by the City of all amounts due to the City under the terms of sale.

(c) In the event the Mayor or City Secretary is absent or otherwise unable to execute any document or take any action authorized herein, the Mayor Pro Tem and the Assistant City Secretary, respectively, shall be authorized to execute such documents and take such actions, and the performance of such duties by the Mayor Pro Tem and the Assistant City Secretary shall for the purposes of this Ordinance have the same force and effect as if such duties were performed by the Mayor and City Secretary, respectively.

Section 8.03 Deposit of Proceeds.

Proceeds from the sale of the Bonds shall be applied in accordance with the provisions set forth in the Pricing Certificate for such Bonds, which may provide for the creation of any special accounts deemed necessary or appropriate by the Authorized Officer. In addition, in furtherance of the authority conferred by this Ordinance, any Authorized Officer may direct that lawfully available funds of the City be applied (in such amounts as the Authorized Officer shall direct), deposited and invested to effect the purposes of the Bonds and this Ordinance.

ARTICLE IX
ADDITIONAL BONDS

Section 9.01 Issuance of Additional Bonds.

(a) In addition to the right to issue obligations of inferior lien as authorized by the laws of the State of Texas, the City hereby reserves the right to issue Additional Bonds which, when duly authorized and issued in compliance with the terms and conditions hereinafter appearing, shall be on a parity with the Parity Obligations herein authorized (including the Bonds), payable from and equally and ratably secured by a first lien on and pledge of the Net Revenues of the System. The Additional Bonds may be issued in one or more series or installments, provided, however, that none shall be issued unless and until the following conditions have been met:

(i) The City is not then in default as to any covenant, condition or obligation prescribed by any ordinance authorizing the issuance of Parity Obligations then Outstanding;

(ii) Each of the special Funds created for the payment and security of the Parity Obligations contains the amount of money and investments then required to be on deposit therein;

(iii) With respect to Covered Parity Bonds, the General Reserve Fund Requirement shall be accumulated and supplemented as necessary to maintain therein the General Reserve Fund Requirement (unless the obligation to maintain the General Reserve Fund Requirement is suspended pursuant to subsection 7.04(i)) and, with respect to TWDB Bonds, the TWDB Reserve Fund Requirement shall be accumulated and supplemented as necessary to maintain therein the TWDB Reserve Fund Requirement; the ordinance authorizing the issuance of the Additional Bonds shall provide for any required increase in the General Reserve Fund or the TWDB Reserve Fund, as applicable, and (if supplementation is necessary to meet all conditions of said Reserve Funds) said ordinance shall make provision that same be supplemented by the required amounts in equal monthly installments from the date of delivery of such Additional Bonds, as provided by this Ordinance;

(iv) The Chief Financial Officer shall provide a certificate to the effect that, according to the books and records of the City, during the last completed Fiscal Year, or during any consecutive twelve (12) month period of the last fifteen (15) months next preceding the date of delivery of the Additional Bonds, the Net Revenues of the System were equal to at least 1.25 times the maximum annual debt service requirements of the

Parity Bonds which will be outstanding upon the issuance of the Additional Bonds. In making a determination of the Net Revenues, the Chief Financial Officer may take into consideration a change in the charges for services afforded by the System that became effective at least 60 days prior to the last day of the period for which Revenues are determined and, for purposes of satisfying the above Net Revenues test, make a pro-forma determination of the Net Revenues of the System for the period of time covered by the certificate based on such change in charges being in effect for the entire period covered by the certificate of the Chief Financial Officer.

When thus issued, such Additional Bonds may be secured by a pledge of the Net Revenues of the System on a parity in all things with the pledge securing the Parity Bonds.

(b) Wherever, in this Ordinance, the City reserves the right to issue Additional Bonds, such term shall also include, mean and refer to any other forms or types of obligations which may be made lawfully payable from and secured by the same source of revenues of the City.

(c) If Additional Bonds are being issued for the purpose of refunding less than all outstanding Parity Bonds, the certification described in subsection (a)(iv) of this Section is not required so long as the aggregate debt service requirements of such refunding Parity Bonds (or Parity Obligations) will not exceed the aggregate debt service requirements of the Parity Bonds being refunded.

Section 9.02 Credit Facilities.

Payments to be made under a Credit Facility may be treated as Parity Obligations if the governing body of the City makes a finding in the ordinance authorizing the execution and delivery of such Credit Facility that the obligations of the City incurred under the Credit Facility shall be treated as a Parity Obligation and that, based upon the findings contained in a certificate executed and delivered by the Chief Financial Officer, the City will have sufficient funds to meet the financial obligations of the System, including sufficient Net Revenues to satisfy the annual debt service requirements of the System and the financial obligations of the City relating to the System after giving effect to the treatment of the Credit Facility as a Parity Obligation.

Section 9.03 Separately Financed Projects.

The City expressly retains the right to issue or incur bonds, notes, or other obligations or evidences of indebtedness, other than Parity Obligations, for any project or purpose for goods or services other than the supply, storage, treatment and distribution of treated water for municipal, domestic, commercial, industrial and other uses and the collection and treatment of watered wastes, which presently are or hereafter may be authorized or permitted to be provided or maintained by water and wastewater systems generally or the City specifically under the laws of the State of Texas, federal law or the City's home rule charter; provided, that the bonds, notes or other obligations issued or incurred for any such separately financed project are payable from and secured by other available funds derived from the ownership or operation thereof or excess Net Revenues remaining after satisfying, or making provision for the satisfaction of, the priority of claims identified on such Net Revenues in Section 7.02 hereof and separate books and records for such separately financed project or activity are maintained by the City.

ARTICLE X
PARTICULAR REPRESENTATIONS AND COVENANTS

Section 10.01 Rates and Charges.

The City shall, at all times while any of the Parity Obligations are outstanding and unpaid, maintain rates and collect charges for the facilities and services afforded by the Water and Wastewater System, as required by Section 1502.057, Texas Government Code, which will provide revenues sufficient at all times to:

(a) pay all maintenance, operation, debt service, depreciation, replacement and betterment charges of the Water and Wastewater System;

(b) pay the amounts required to be deposited to the Bond Fund to pay the principal of and interest on the Parity Bonds as the same becomes due and payable, to accumulate and maintain the reserve amount, if any, required to be deposited in the Reserve Fund, and to pay any other costs of Parity Obligations as the same becomes due and payable;

(c) produce Net Revenues each year in an amount reasonably estimated to be not less than 1.25 times the maximum annual debt service requirements of the Parity Bonds from time to time outstanding; and

(d) pay any other legally incurred indebtedness payable from the revenues of the System and/or secured by a lien on the System or the revenues thereof.

Section 10.02 Maintenance and Operation; Insurance.

The City shall maintain the Water and Wastewater System in good condition and operate the same in an efficient manner and at reasonable cost. So long as any Parity Bonds are outstanding, the City agrees to carry and maintain liability and property damage insurance of the kind and in the amounts customarily carried by municipal corporations in Texas on such kind of properties; provided, however, the City, in lieu of and/or in combination with carrying such insurance, may self-insure against all perils and risks by establishing self-insurance reserves.

Section 10.03 Records, Accounts, Accounting Reports.

The City hereby covenants and agrees while any of the Bonds or any interest thereon remain Outstanding and unpaid, it will keep and maintain a proper and complete system of records and accounts pertaining to the operation of the System separate and apart from all other records and accounts of the City in accordance with generally accepted accounting principles prescribed for municipal corporations, and complete and correct entries shall be made of all transactions relating to said System, as provided by applicable law. The Owner of any Bonds, or any duly authorized agent or agents of such Owner, shall have the right at all reasonable times to inspect all such records, accounts and data relating thereto and to inspect the System and all properties comprising the same. The City further agrees that as soon as possible following the close of each Fiscal Year, it will cause an audit of such books and accounts to be made by an independent firm of certified public accountants. Each such audit, in addition to whatever other matters may be thought proper by the certified public accountant, shall particularly include the following:

- (a) A detailed statement of the income and expenditures of the System for such Fiscal Year;
- (b) A balance sheet as of the end of such Fiscal Year;
- (c) The comments of such accountant regarding the manner in which the City has complied with the covenants and requirements of this Ordinance and his recommendations for any changes or improvements in the operation, records and accounts of the System;
- (d) A list of the insurance policies in force at the end of the Fiscal Year on the System properties, setting out as to each policy the amount thereof, the risk covered, the name of the insurer, and the policy's expiration date.

Expenses incurred in making the audits above referred to are to be regarded as maintenance and operating expenses of the System and paid as such. Copies of the aforesaid annual audit shall be furnished upon written request to the original purchasers and any subsequent Owners of the Bonds.

Section 10.04 Further Covenants.

The City hereby further covenants and agrees as follows:

- (a) That it has the lawful power to pledge the Net Revenues to the payment of the Bonds and has lawfully exercised said power under the Constitution and laws of the State of Texas; that the Bonds, when issued, shall be equally and ratably secured by a first lien on and pledge of the Net Revenues *pari passu* with the lien securing payment of all other Parity Obligations in such manner that no Parity Obligation shall have preference or priority over the Bonds.
- (b) That, other than for the payment of Parity Obligations, the Net Revenues are and shall not in any manner be pledged to the payment of any debt or obligation of the City or of the System on a parity with the Bonds.
- (c) So far as it legally may, the City covenants and agrees, for the protection and security of the Parity Bonds and the holders thereof from time to time, that it will not grant a franchise for the operation of any competing system in the City until all Parity Bonds shall have been retired.
- (d) That, for so long as any of the Bonds or any interest thereon remain Outstanding, the City will not sell, lease or encumber the System or any substantial part thereof; provided, however, this covenant shall not be construed to prohibit the sale of such machinery, or other properties or equipment which has become obsolete or otherwise unsuited to the efficient operation of the System when other property of equal value has been substituted therefor, and, also, with the exception of the Additional Bonds expressly permitted by this Ordinance to be issued, it will not encumber the Net Revenues unless such encumbrance is made junior and subordinate to all of the provisions of this Ordinance. In the event the City sells the System, the City will use proceeds of such sale to provide for final payment of the Parity Obligations and any Additional Bonds.

(e) That, it will cause to be rendered monthly to each customer receiving water and wastewater services a statement therefor and will not accept payment of less than all of any statement so rendered, using its power under existing ordinances and under all such ordinances to become effective in the future to enforce payment, to withhold service from such delinquent customers and to enforce and authorize reconnection charges.

(f) That it will faithfully and punctually perform all duties with respect to the System required by the Constitution and laws of the State of Texas, including the making and collecting of reasonable and sufficient rates for services supplied by the System, and the segregation and application of the revenues of the System as required by the provisions of this Ordinance.

(g) That no free service shall be provided by the System and to the extent the City or its departments or agencies utilize the services provided by the System, payment shall be made therefor at rates charged to others for similar service.

(h) That it will faithfully perform at all times any and all covenants, undertakings, stipulations, and provisions contained in this Ordinance; the City will promptly pay or cause to be paid the principal of, premium, if any, and interest on each Bond on the dates and at the places and manner prescribed in such Bond; and the City will, at the times and in the manner prescribed by this Ordinance, deposit or cause to be deposited the amounts of money specified by this Ordinance.

Section 10.05 Covenants to Maintain Tax Exempt Status.

(a) The City intends that the interest on the Tax-Exempt Bonds shall be excludable from gross income of the owners thereof for federal income tax purposes pursuant to Sections 103 and 141 through 150 of the Internal Revenue Code of 1986, as amended (the "Code"), and all applicable temporary, proposed and final regulations (the "Regulations") and procedures promulgated thereunder and applicable to the Tax-Exempt Bonds: For this purpose, the City covenants that it will monitor and control the receipt, investment, expenditure and use of all gross proceeds of the Tax-Exempt Bonds (including all property the acquisition, construction or improvement of which is to be financed or refinanced directly or indirectly with the proceeds of the Tax-Exempt Bonds) and take or omit to take such other and further actions as may be required by Sections 103 and 141 through 150 of the Code and the Regulations to cause interest on the Tax-Exempt Bonds to be and remain excludable from the gross income, as defined in Section 61 of the Code, of the owners of the Tax-Exempt Bonds for federal income tax purposes. Without limiting the generality of the foregoing, the City shall comply with each of the following covenants:

(i) The City will use all of the proceeds of the Tax-Exempt Bonds to (i) provide funds for the purposes described in Section 3.01 hereof, and (ii) to pay the costs of issuing the Tax-Exempt Bonds. The City will not use any portion of the proceeds of the Tax-Exempt Bonds to pay the principal of or interest or redemption premium on, any other obligation of the City or a related person.

(ii) All property financed or refinanced with the proceeds of the Tax-Exempt Bonds will be owned and operated by the City. The City will not directly or indirectly take any action, or omit to take any action, which action or omission would cause the Tax-

Exempt Bonds to constitute “private activity bonds” within the meaning of Section 141(a) of the Code.

(iii) Principal of and interest on the Tax-Exempt Bonds will be paid solely from a first lien on and pledge of the Net Revenues.

(iv) Based upon all facts and estimates now known or reasonably expected to be in existence on the date the Tax-Exempt Bonds are delivered, the City reasonably expects that the proceeds of the Tax-Exempt Bonds will not be used in a manner that would cause the Tax-Exempt Bonds or any portion thereof to be an “arbitrage bond” within the meaning of Section 148 of the Code.

(v) At all times while the Tax-Exempt Bonds are outstanding, the City will identify and properly account for all amounts constituting gross proceeds of the Tax-Exempt Bonds in accordance with the Regulations. The City will monitor the yield on the investments of the proceeds of the Tax-Exempt Bonds and, to the extent required by the Code and the Regulations, will restrict the yield on such investments to a yield which is not materially higher than the yield on the Tax-Exempt Bonds. To the extent necessary to prevent the Tax-Exempt Bonds from constituting “arbitrage bonds,” the City will make such payments as are necessary to cause the yield on all yield restricted nonpurpose investments allocable to the Tax-Exempt Bonds to be less than the yield that is materially higher than the yield on the Tax-Exempt Bonds.

(vi) The City will not take any action or knowingly omit to take any action that, if taken or omitted, would cause the Tax-Exempt Bonds to be treated as “federally guaranteed” obligations for purposes of Section 149(b) of the Code.

(vii) The City represents that not more than fifty percent (50%) of the proceeds of the Tax-Exempt Bonds will be invested in nonpurpose investments (as defined in Section 148(f)(6)(A) of the Code) having a substantially guaranteed yield for four years or more within the meaning of Section 149(g)(3)(A)(ii) of the Code, and the City reasonably expects that at least eighty-five percent (85%) of the spendable proceeds of the Tax-Exempt Bonds will be used to carry out the governmental purpose of the Tax-Exempt Bonds within the three-year period beginning on the issue date of Tax-Exempt Bonds.

(viii) The City will take all necessary steps to comply with the requirement that certain amounts earned by the City on the investment of the gross proceeds of the Tax-Exempt Bonds, if any, be rebated to the federal government. Specifically, the City will (i) maintain records regarding the receipt, investment, and expenditure of the gross proceeds of the Tax-Exempt Bonds as may be required to calculate such excess arbitrage profits separately from records of amounts on deposit in the funds and accounts of the City allocable to other obligations of the City or moneys which do not represent gross proceeds of any obligations of the City and retain such records for at least six years after the day on which the last outstanding Tax-Exempt Bond is discharged, (ii) account for all gross proceeds under a reasonable, consistently applied method of accounting, not employed as an artifice or device to avoid in whole or in part, the requirements of Section 148 of the Code, including any specified method of accounting required by applicable Regulations to

be used for all or a portion of any gross proceeds, (iii) calculate, at such times as are required by applicable Regulations, the amount of excess arbitrage profits, if any, earned from the investment of the gross proceeds of the Tax-Exempt Bonds and (iv) timely pay, as required by applicable Regulations, all amounts required to be rebated to the federal government. In addition, the City will exercise reasonable diligence to assure that no errors are made in the calculations required by the preceding sentence and, if such an error is made, to discover and promptly correct such error within a reasonable amount of time thereafter, including payment to the federal government of any delinquent amounts owed to it, interest thereon and any penalty.

(ix) The City will not directly or indirectly pay any amount otherwise payable to the federal government pursuant to the foregoing requirements to any person other than the federal government by entering into any investment arrangement with respect to the gross proceeds of the Tax-Exempt Bonds that might result in a reduction in the amount required to be paid to the federal government because such arrangement results in a smaller profit or a larger loss than would have resulted if such arrangement had been at arm's length and had the yield on the Tax-Exempt Bonds not been relevant to either party.

(x) The City will timely file or cause to be filed with the Secretary of the Treasury of the United States the information required by Section 149(e) of the Code with respect to the Tax-Exempt Bonds on such form and in such place as the Secretary may prescribe.

(xi) The City will not issue or use the Tax-Exempt Bonds as part of an "abusive arbitrage device" (as defined in Section 1.148-10(a) of the Regulations). Without limiting the foregoing, the Tax-Exempt Bonds are not and will not be a part of a transaction or series of transactions that attempts to circumvent the provisions of Section 148 of the Code and the Regulations, by (i) enabling the City to exploit the difference between tax-exempt and taxable interest rates to gain a material financial advantage, or (ii) increasing the burden on the market for tax-exempt obligations.

(xii) Proper officers of the City charged with the responsibility for issuing the Tax-Exempt Bonds are hereby directed to make, execute and deliver certifications as to facts, estimates or circumstances in existence as of the date of issuance of the Tax-Exempt Bonds and stating whether there are facts, estimates or circumstances that would materially change the City's expectations. On or after the date of issuance of the Tax-Exempt Bonds, the City will take such actions as are necessary and appropriate to assure the continuous accuracy of the representations contained in such certificates.

(xiii) The covenants and representations made or required by this Section are for the benefit of the Tax-Exempt Bond holders and any subsequent Tax-Exempt Bond holder, and may be relied upon by the Tax-Exempt Bond holders and any subsequent Tax-Exempt Bond holder and bond counsel to the City.

(b) In complying with the foregoing covenants, the City may rely upon an unqualified opinion issued to the City by nationally recognized bond counsel that any action by the City or reliance upon any interpretation of the Code or Regulations contained in such opinion will not

cause interest on the Tax-Exempt Bonds to be includable in gross income for federal income tax purposes under existing law.

(c) Notwithstanding any other provision of this Ordinance, the City's representations and obligations under the covenants and provisions of this Section shall survive the defeasance and discharge of the Tax-Exempt Bonds for as long as such matters are relevant to the exclusion of interest on the Tax-Exempt Bonds from the gross income of the owners for federal income tax purposes.

Section 10.06 Disposition of Project.

The City covenants that the property financed or refinanced with the proceeds of the Tax-Exempt Bonds will not be sold or otherwise disposed in a transaction resulting in the receipt by the City of cash or other compensation, unless the City obtains an opinion of a nationally-recognized bond counsel substantially to the effect that such sale or other disposition will not adversely affect the tax-exempt status of the Tax-Exempt Bonds. For purposes of this Section, the portion of the property comprising personal property and disposed of in the ordinary course of business shall not be treated as a transaction resulting in the receipt of cash or other compensation. For purposes of this Section, the City shall not be obligated to comply with this covenant if it obtains an opinion of a nationally-recognized bond counsel to the effect that such failure to comply will not adversely affect the excludability for federal income tax purposes from gross income of the interest.

ARTICLE XI DEFAULT AND REMEDIES

Section 11.01 Events of Default.

Each of the following occurrences or events for the purpose of this Ordinance is hereby declared to be an Event of Default:

- (a) defaults in payments to be made to the Bond Fund as required by this Ordinance;
- (b) defaults in the observance or performance of any other of the covenants, conditions or obligations set forth in this Ordinance.

Section 11.02 Remedies for Default.

(a) Upon the happening of any Event of Default, then any Owner or an authorized representative thereof, including but not limited to, a trustee or trustees therefor, may proceed against the City for the purpose of protecting and enforcing the rights of the Owners under this Ordinance and shall be entitled to a writ of mandamus issued by a court of proper jurisdiction compelling and requiring the City Council and other officers of the City to observe and perform any covenant, condition or obligation prescribed in this Ordinance.

(b) It is provided that all such proceedings shall be instituted and maintained for the equal benefit of all Owners of Bonds then Outstanding.

Section 11.03 Remedies Not Exclusive.

(a) No remedy herein conferred or reserved is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or under the Bonds or now or hereafter existing at law or in equity; provided, however, that notwithstanding any other provision of this Ordinance, the right to accelerate the debt evidenced by the Bonds shall not be available as a remedy under this Ordinance.

(b) The exercise of any remedy herein conferred or reserved shall not be deemed a waiver of any other available remedy.

No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power, or shall be construed to be a waiver of any such default or acquiescence therein, and every such right or power may be exercised from time to time and as often as may be deemed expedient.

ARTICLE XII DISCHARGE

Section 12.01 Discharge.

Except as otherwise provided in the Pricing Certificate, the Bonds may be defeased, discharged or refunded in any manner permitted by applicable law.

ARTICLE XIII CONTINUING DISCLOSURE UNDERTAKING

Section 13.01 Annual Reports.

(a) The City shall provide annually to the MSRB, (1) within six (6) months after the end of each fiscal year of the City, financial information and operating data with respect to the City of the general type included in the final Official Statement authorized by Section 8.01 of this Ordinance, being information of the type described in Exhibit A hereto, including financial statements of the City if audited financial statements of the City are then available, and (2) if not provided as part such financial information and operating data, audited financial statements of the City, when and if available. Any financial statements to be provided shall be (i) prepared in accordance with the accounting principles described in Exhibit A, or such other accounting principles as the City may be required to employ from time to time pursuant to state law or regulation, and (ii) audited, if the City commissions an audit of such financial statements and the audit is completed within the period during which they must be provided. If the audit of such financial statements is not complete within twelve (12) months after any such fiscal year end, then the City shall file unaudited financial statements within such 12-month period and audited financial statements for the applicable fiscal year, when and if the audit report on such statements becomes available.

(b) If the City changes its fiscal year, it will notify the MSRB of the change (and of the date of the new fiscal year end) prior to the next date by which the City otherwise would be required to provide financial information and operating data pursuant to this Section.

(c) The financial information and operating data to be provided pursuant to this Section may be set forth in full in one or more documents or may be included by specific reference to any document (including an official statement or other offering document, if it is available from the MSRB) that theretofore has been provided to the MSRB or filed with the SEC.

(d) An Authorized Officer is authorized to establish and implement written procedures to ensure compliance with the reporting requirements imposed by this Section. Such procedures may be modified and amended by the Authorized Officer from time to time to the extent the modification or amendment of such procedures are deemed necessary, useful or appropriate.

Section 13.02 Event Notices.

(a) The City shall notify the MSRB, in a timely manner (not in excess of ten (10) business days after the occurrence of an event), of any of the following events with respect to the Bonds:

- (i) principal and interest payment delinquencies;
- (ii) nonpayment related defaults, if material;
- (iii) unscheduled draws on debt service reserves reflecting financial difficulties;
- (iv) unscheduled draws on credit enhancements reflecting financial difficulties;
- (v) substitution of credit or liquidity providers, or their failure to perform;
- (vi) adverse tax opinions, the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB) or other material notices or determinations with respect to the tax status of the Bonds, or other material events affecting the tax status of the Bonds;
- (vii) modifications to rights of Owners, if material;
- (viii) redemption calls, if material, and tender offers;
- (ix) defeasances;
- (x) release, substitution, or sale of property securing repayment of the Bonds, if material;
- (xi) rating changes;
- (xii) bankruptcy, insolvency, receivership or similar event of the City;

(xiii) the consummation of a merger, consolidation, or acquisition involving the City or the sale of all or substantially all of the assets of the City, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material;

(xiv) appointment of a successor trustee or change in the name of the trustee, if material;

(xv) incurrence of a Financial Obligation of the City, if material, or agreement to covenants, events of default, remedies, priority rights, or other similar terms of a Financial Obligation of the City, any of which affect security holders, if material; and

(xvi) default, event of acceleration, termination event, modification of terms, or other similar events under the terms of a Financial Obligation of the City, any of which reflect financial difficulties.

For these purposes, (a) any event described in the immediately preceding paragraph (xii) is considered to occur when any of the following occur: the appointment of a receiver, fiscal agent, or similar officer for the City in a proceeding under the United States Bankruptcy Code or in any other proceeding under state or federal law in which a court or governmental authority has assumed jurisdiction over substantially all of the assets or business of the City, or if such jurisdiction has been assumed by leaving the existing governing body and officials or officers of the City in possession but subject to the supervision and orders of a court or governmental authority, or the entry of an order confirming a plan of reorganization, arrangement, or liquidation by a court or governmental authority having supervision or jurisdiction over substantially all of the assets or business of the City, and (b) the City intends the words used in the immediately preceding paragraphs (xv) and (xvi) and the definition of Financial Obligation in this Ordinance to have the same meanings as when they are used in the Rule, as evidenced by SEC Release No. 34-83885, dated August 20, 2018.

(b) The City shall notify the MSRB, in a timely manner, of any failure by the City to provide financial information or operating data in accordance with Section 13.01 of this Ordinance by the time required by such Section.

Section 13.03 Identifying Information.

All documents provided to the MSRB pursuant to this Article shall be provided in an electronic format and be accompanied by identifying information as prescribed by the MSRB.

Section 13.04 Limitations, Disclaimers and Amendments.

(a) The City shall be obligated to observe and perform the covenants specified in this Article for so long as, but only for so long as, the City remains an “obligated person” with respect to the Bonds within the meaning of the Rule, except that the City in any event will give notice of any Bond calls and any defeasances that cause the City to be no longer an “obligated person.”

(b) The provisions of this Article are for the sole benefit of the Owners and beneficial owners of the Bonds, and nothing in this Article, express or implied, shall give any benefit or any legal or equitable right, remedy, or claim hereunder to any other person. The City undertakes to provide only the financial information, operating data, financial statements, and notices which it has expressly agreed to provide pursuant to this Article and does not hereby undertake to provide any other information that may be relevant or material to a complete presentation of the City's financial results, condition, or prospects or hereby undertake to update any information provided in accordance with this Article or otherwise, except as expressly provided herein. The City does not make any representation or warranty concerning such information or its usefulness to a decision to invest in or sell Bonds at any future date.

UNDER NO CIRCUMSTANCES SHALL THE CITY BE LIABLE TO THE OWNER OR BENEFICIAL OWNER OF ANY BOND OR ANY OTHER PERSON, IN CONTRACT OR TORT, FOR DAMAGES RESULTING IN WHOLE OR IN PART FROM ANY BREACH BY THE CITY, WHETHER NEGLIGENT OR WITHOUT FAULT ON ITS PART, OF ANY COVENANT SPECIFIED IN THIS ARTICLE, BUT EVERY RIGHT AND REMEDY OF ANY SUCH PERSON, IN CONTRACT OR TORT, FOR OR ON ACCOUNT OF ANY SUCH BREACH SHALL BE LIMITED TO AN ACTION FOR MANDAMUS OR SPECIFIC PERFORMANCE.

(c) No default by the City in observing or performing its obligations under this Article shall constitute a breach of or default under the Ordinance for purposes of any other provisions of this Ordinance.

(d) Nothing in this Article is intended or shall act to disclaim, waive, or otherwise limit the duties of the City under federal and state securities laws.

(e) The provisions of this Article may be amended by the City from time to time to adapt to changed circumstances that arise from a change in legal requirements, a change in law, or a change in the identity, nature, status, or type of operations of the City, but only if (i) the provisions of this Article, as so amended, would have permitted an underwriter to purchase or sell Bonds in the primary offering of the Bonds in compliance with the Rule, taking into account any amendments or interpretations of the Rule to the date of such amendment, as well as such changed circumstances, and (ii) either (A) the Owners of a majority in aggregate principal amount (or any greater amount required by any other provisions of this Ordinance that authorizes such an amendment) of the Outstanding Bonds consent to such amendment or (B) an entity or individual person that is unaffiliated with the City (such as nationally recognized bond counsel) determines that such amendment will not materially impair the interests of the Owners and beneficial owners of the Bonds. If the City so amends the provisions of this Article, it shall include with any amended financial information or operating data next provided in accordance with Section 12.01 an explanation, in narrative form, of the reasons for the amendment and of the impact of any change in type of financial information or operating data so provided.

ARTICLE XIV
AMENDMENT OF ORDINANCE

Section 14.01 Amendment of Ordinance.

(a) That the holders of the Parity Bonds aggregating a majority in principal amount of then outstanding Parity Bonds shall have the right from time to time to approve any amendment to this Ordinance which may be deemed necessary or desirable by the City; provided, however, that without the consent of the holders of all of the Parity Bonds at the time outstanding, nothing herein contained shall permit or be construed to permit the amendment of the terms and conditions in this Ordinance or in the Bonds so as to: (i) make any change in the maturity of the outstanding Bonds; (ii) reduce the rate of interest borne by any of the outstanding Bonds; (iii) reduce the amount of the principal payable on the outstanding Bonds; (iv) modify the terms of payment of principal of or interest on the outstanding Bonds or impose any conditions with respect to such payment; (v) affect the rights of the holders of less than all of the Bonds then outstanding; or (vi) change the minimum percentage of the principal amount of Bonds necessary for consent to such amendment.

(b) That if at any time the City shall desire to amend the Ordinance under this Section, the City shall cause notice of the proposed amendment to be (i) posted on the MSRB's EMMA system or (ii) published in a financial newspaper or journal published in The City of New York, New York, once during each calendar week for at least two (2) successive calendar weeks; provided, however, that the publication of such notice shall not constitute a condition precedent to the adoption of such amendatory ordinance and the failure to post or publish such notice shall not adversely affect the implementation of such amendment as adopted pursuant to such amendatory ordinance. Such notice shall briefly set forth the nature of the proposed amendment and shall state that a copy thereof is on file at the principal office of the Paying Agent/Registrar for inspection by all holders of Bonds. Such publication is not required, however, if notice in writing is given to each holder of Bonds.

(c) That whenever at any time not less than thirty (30) days, and within one year, from the date of the first posting or publication of said notice or other service of written notice the City shall receive an instrument or instruments executed by the holders of at least a majority in aggregate principal amount of all Bonds then outstanding, which instrument or instruments shall refer to the proposed amendment described in said notice and which specifically consent to and approve such amendment in substantially the form of the copy thereof on file with the Paying Agent/Registrar, the City Council may pass the amendatory ordinance in substantially the same form.

(d) That upon the passage of any amendatory ordinance pursuant to the provisions of this Section, this Ordinance shall be deemed to be amended in accordance with such amendatory ordinance, and the respective rights, duties and obligations under this Ordinance of the City and all the holders of then outstanding Bonds shall thereafter be determined, exercised and enforced hereunder, subject in all respects to such amendments.

(e) That any consent given by the holder of a Bond pursuant to the provisions of this Section shall be irrevocable for a period of six (6) months from the date of the first publication of

the notice provided for in this Section, and shall be conclusive and binding upon all future holders of the same Bond during such period. Such consent may be revoked at any time after six (6) months from the date of the first publication of such notice by the holder who gave such consent, or by a successor in title, by filing notice thereof with the Paying Agent/Registrar therefor and the City, but such revocation shall not be effective if the holders of a majority in aggregate principal amount of the then outstanding Bonds as in this Section defined have, prior to the attempted revocation, consented to and approve the amendment.

(f) For the purposes of this Section, the ownership and other matters relating to all Bonds registered as to ownership shall be determined from the registration books kept by the registrar therefor. The Paying Agent/Registrar may conclusively assume that such ownership continues until written notice to the contrary is served upon the Paying Agent/Registrar.

(g) The foregoing provisions of this Section notwithstanding, the City by action of the City Council may amend this Ordinance for any one or more of the following purposes:

(i) To add to the covenants and agreements of the City in this Ordinance contained, other covenants and agreements thereafter to be observed, grant additional rights or remedies to bondholders or to surrender, restrict or limit any right or power herein reserved to or conferred upon the City;

(ii) To make such provisions for the purpose of clarifying matters or questions arising under this Ordinance, as are required by the Attorney General of Texas to obtain the Attorney General's approval of the issuance of the Bonds or required by the Purchaser before their issuance or for the purpose of curing any ambiguity, or curing, correcting or supplementing any defective provision contained in this Ordinance, or at any time before or after issuance, including, without limitation, those matters described in Section 13.04 hereof, as are necessary or desirable and not contrary to or inconsistent with this Ordinance, and in all events which shall not adversely affect the interests of the owners of the Bonds;

(iii) To modify any of the provisions of this Ordinance in any other respect whatsoever, provided that such modification shall be, and be expressed to be, effective only after all previously issued Parity Bonds outstanding at the date of the adoption of such modification shall cease to be outstanding;

(iv) To make such amendments to this Ordinance as may be required, in the opinion of Bond Counsel, to ensure compliance with sections 103 and 141 through 150 of the Code and the regulations promulgated thereunder and applicable thereto.

Notice of any such amendment may be posted or published by the City in the manner described in clause (b) of this Section; provided, however, that the publication of such notice shall not constitute a condition precedent to the adoption of such amendatory ordinance and the failure to post or publish such notice shall not adversely affect the implementation of such amendment as adopted pursuant to such amendatory ordinance.

(h) If any Section, paragraph, clause or provision of this Ordinance shall for any reason be held to be invalid, null, void, of no force and effect, then such provisions shall be construed as

severable from the reminder of this Ordinance and shall not affect the validity of all other provision of this Ordinance which shall remain in full force and effect.

ARTICLE XV
EFFECTIVE IMMEDIATELY

Section 15.01 Effective Immediately.

Notwithstanding the provisions of the City Charter, this Ordinance shall become effective immediately upon its adoption at this meeting pursuant to Section 1201.028, Texas Government Code.

[Signature Page Follows.]

PRESENTED, FINALLY PASSED AND APPROVED, AND EFFECTIVE on the 3rd day of December, 2024, at a regular meeting of the City Council of the City of Lubbock, Texas.

MARK MCBRAYER, Mayor

ATTEST:

COURTNEY PAZ, City Secretary

[SEAL]

APPROVED AS TO CONTENT:

By: 

CHERYL BROCK, Interim Chief Financial Officer

APPROVED AS TO FORM:

By: 

JERRY V. KYLE, JR., Bond Counsel

Signature Page for Ordinance

EXHIBIT A

DESCRIPTION OF ANNUAL DISCLOSURE OF FINANCIAL INFORMATION*

The following information is referred to in Article XIII of this Ordinance.

Annual Financial Statements and Operating Data

The financial information and operating data with respect to the City to be provided annually in accordance with such Section are as specified (and included in the Appendix or other headings of the Official Statement referred to) below:

1. Statistical and financial data set forth in the Official Statement in Tables 1-15 of APPENDIX A.
2. The portions of the financial statements of the City appended to the Official Statement as APPENDIX B, but for the most recently concluded fiscal year.

Accounting Principles

The accounting principles referred to in such Article XIII are the accounting principles described in the notes to the respective financial statements appended to the Official Statement.

*Subject to any changes prescribed by the Pricing Certificate.

EXHIBIT B

SALE PARAMETERS

In accordance with Section 8.01 of the Ordinance, the following conditions with respect to the Bonds of each series must be satisfied in order for the Authorized Officer to act on behalf of the City in selling and delivering the Bonds to the Purchasers:

- (a) the price to be paid for the Bonds shall be not less than 90% of the aggregate principal amount of the Bonds;
- (b) the Bonds of any series shall not bear interest at a rate greater than the maximum rate allowed by Chapter 1204, Texas Government Code, as amended;
- (c) no Bond shall mature later than twenty-one (21) years after the date of its delivery;
- (d) the principal amount of the Bonds of each series shall produce proceeds in an amount sufficient, as determined by the Authorized Officer, to fund the purpose(s) identified in Section 3.01 being financed by the issuance of the Bonds of such series and such principal amount (when combined with the aggregate principal amount of any other series of Bonds issued pursuant to this Ordinance) shall not exceed the maximum amount authorized by Section 3.01 of this Ordinance; and
- (e) the Bonds to be issued, prior to delivery, must have been rated by a nationally recognized rating agency for municipal securities in one of the four highest rating categories for long term obligations.

EXHIBIT C

FORM OF THE BONDS

The form of the Bonds shall be generally in the form set forth below, including the form of the Registration Certificate of the Comptroller of Public Accounts of the State of Texas to accompany the initially delivered Bonds, the form of Certificate of the Paying Agent/Registrar and the form of Assignment appearing on the Bonds shall be substantially as follows, provided however, that the substantially final form of the Bonds shall be set forth in or attached to the Pricing Certificate and shall incorporate and reflect the final terms of the Bonds set forth in the Pricing Certificate:

(a) Form of Bond.

REGISTERED
No. _____

REGISTERED
\$ _____

United States of America
State of Texas
County of Lubbock
CITY OF LUBBOCK, TEXAS
WATER AND WASTEWATER SYSTEM REVENUE BOND,
[TAXABLE] SERIES 20__

INTEREST RATE: _____% MATURITY DATE: _____, _____ BOND DATE: _____, _____² CUSIP NUMBER: _____

The City of Lubbock (the "City"), in the County of Lubbock, State of Texas, for value received, hereby promises to pay to

or registered assigns, but solely from the sources and in the manner hereinafter provided, on the Maturity Date specified above, the sum of

_____ DOLLARS

unless this Bond shall have been sooner called for redemption and the payment of the principal hereof shall have been paid or provided for, and to pay interest on such principal amount from the later of _____¹ or the most recent interest payment date to which interest has been paid or provided for until payment of such principal amount has been paid or provided for, at the per annum rate of interest specified above, computed on the basis of a 360-day year of twelve 30-day

² Information to be inserted from Pricing Certificate.

months, such interest to be paid semiannually on _____ and _____ of each year, commencing _____, 20__.³ All capitalized terms used herein but not defined shall have the meaning assigned to them in the Ordinance (defined below).

The principal of this Bond shall be payable without exchange or collection charges in lawful money of the United States of America upon presentation and surrender of this Bond at the corporate office in Dallas, Texas (the "Designated Payment/Transfer Office"), of BOKF, NA, the initial Paying Agent/Registrar, or, with respect to a successor Paying Agent/Registrar, at the Designated Payment/Transfer Office of such successor. Interest on this Bond is payable by check dated as of the interest payment date, and mailed by the Paying Agent/Registrar to the registered owner at the address shown on the Register kept by the Paying Agent/Registrar, or by such other customary banking arrangements acceptable to the Paying Agent/Registrar and the registered owner; provided, however, such registered owner shall bear all risk and expense of such other banking arrangement. For the purpose of the payment of interest on this Bond, the registered owner shall be the person in whose name this Bond is registered at the close of business on the "Record Date," which shall be the [last/fifteenth] Business Day of the month next preceding an Interest Payment Date.

If the date for the payment of the principal of or interest on this Bond shall be a Saturday, Sunday, legal holiday or day on which banking institutions in the city where the Paying Agent/Registrar is located are required or authorized by law or executive order to close, the date for such payment shall be the next succeeding day that is not a Saturday, Sunday, legal holiday or day on which banking institutions are required or authorized to close and payment on such date shall for all purposes be deemed to have been made on the original date payment was due.

This Bond is one of a series of fully registered bonds specified in the title hereof issued in the aggregate principal amount of \$ _____⁴ (herein referred to as the "Bonds"), issued pursuant to the authority provided by Chapters 1371 and 1502, Texas Government Code, as amended, and a certain ordinance of the City (the "Ordinance"), for the purposes described in the Ordinance.

The Bonds are secured by and payable solely from a first lien on and pledge of the Net Revenues of the System, as provided or incorporated by reference in the Ordinance. The Bonds constitute special obligations of the City payable solely from the sources and in the manner set forth herein and in the Ordinance and not from any other revenues, funds or assets of the City.

The City has reserved the right, subject to the restrictions stated or incorporated by reference in the Ordinance, to issue additional parity revenue bonds that may be secured in the same manner and on a parity with the Bonds and the Previously Issued Bonds.

[The City has reserved the option to redeem the Bonds maturing on or after _____, 20__, before their respective scheduled maturities in whole or in part on _____, 20__, or on any date thereafter, at a price equal to the principal amount of the Bonds so called for redemption

3 Information to be inserted from Pricing Certificate.

4 Information to be inserted from Pricing Certificate.

plus accrued interest to the date fixed for redemption. If less than all of the Bonds are to be redeemed, the City shall determine the maturity or maturities and the amounts thereof to be redeemed and shall direct the Paying Agent/Registrar to call by lot the Bonds, or portion thereof, within such maturity and in such principal amounts, for redemption.]⁵

[Bonds maturing on _____, 20__ (the "Term Bonds") are subject to mandatory sinking fund redemption prior to their scheduled maturity, and will be redeemed by the City, in part at a redemption price equal to the principal amount thereof, without premium, plus interest accrued to the redemption date, on the dates and in the principal amounts shown in the following schedule:

Term Bonds Maturing _____, 20__

<u>Redemption Date</u>	<u>Principal Amount</u>
------------------------	-------------------------

_____, 20__	
_____, 20__	
_____, 20__ (maturity)	

The Paying Agent/Registrar will select by lot or by any other customary method that results in a random selection the specific Term Bonds (or with respect to Term Bonds having a denomination in excess of \$5,000, each \$5,000 portion thereof) to be redeemed by mandatory redemption. The principal amount of Term Bonds required to be redeemed on any redemption date pursuant to the foregoing mandatory sinking fund redemption provisions hereof shall be reduced, at the option of the City, by the principal amount of any Term Bonds which, at least 45 days prior to the mandatory sinking fund redemption date (i) shall have been acquired by the City at a price not exceeding the principal amount of such Term Bonds plus accrued interest to the date of purchase thereof, and delivered to the Paying Agent/Registrar for cancellation, or (ii) shall have been redeemed pursuant to the optional redemption provisions hereof and not previously credited to a mandatory sinking fund redemption.]⁶

Notice of such redemption or redemptions shall be given by first class mail, postage prepaid, not less than 30 days before the date fixed for redemption, to the registered owner of each of the Bonds to be redeemed in whole or in part. Subject to the right of the City to give a conditional notice of redemption with respect to an optional redemption, as described below, notice having been so given, the Bonds or portions thereof designated for redemption shall become due and payable on the redemption date specified in such notice; from and after such date, notwithstanding that any of the Bonds or portions thereof so called for redemption shall not have been surrendered for payment, interest on such Bonds or portions thereof shall cease to accrue.

Notice of such redemption or redemptions shall be given by first class mail, postage prepaid, not less than thirty (30) days before the date fixed for redemption, to the registered owner of each of the Bonds to be redeemed in whole or in part. In the Ordinance, the City reserves the

⁵ Insert optional redemption provisions, if any, and revise to conform to the Pricing Certificate.

⁶ Insert mandatory sinking fund redemption provisions, if any, and revise as necessary to conform to the Pricing Certificate.

right in the case of an optional redemption to give notice of its election or direction to redeem Bonds conditioned upon the occurrence of subsequent events. Such notice may state (i) that the redemption is conditioned upon the deposit of moneys and/or authorized securities, in an amount equal to the amount necessary to effect the redemption, with the Paying Agent/Registrar, or such other entity as may be authorized by law, no later than the redemption date or (ii) that the City retains the right to rescind such notice at any time prior to the scheduled redemption date if the City delivers a certificate of the City to the Paying Agent/Registrar instructing the Paying Agent/Registrar to rescind the redemption notice, and such notice and redemption shall be of no effect if such moneys and/or authorized securities are not so deposited or if the notice is rescinded. The Paying Agent/Registrar shall give prompt notice of any such rescission of a conditional notice of redemption to the affected owners. Any Bonds subject to conditional redemption where redemption has been rescinded shall remain Outstanding, and the rescission shall not constitute an event of default. Further, in the case of a conditional redemption, the failure of the City to make moneys and/or authorized securities available in part or in whole on or before the redemption date shall not constitute an event of default.

As provided in the Ordinance and subject to certain limitations therein set forth, this Bond is transferable upon surrender of this Bond for transfer at the Designated Payment/Transfer Office of the Paying Agent/Registrar with such endorsement or other evidence of transfer as is acceptable to the Paying Agent/Registrar; thereupon, one or more new fully registered Bonds of the same stated maturity, of authorized denominations, bearing the same rate of interest, and for the same aggregate principal amount will be issued to the designated transferee or transferees.

Neither the City nor the Paying Agent/Registrar shall be required to issue, transfer or exchange any Bond called for redemption where such redemption is scheduled to occur within 45 calendar days of the transfer or exchange date; provided, however, such limitation shall not be applicable to an exchange by the registered owner of the uncalled principal balance of a Bond.

The City, the Paying Agent/Registrar, and any other person may treat the person in whose name this Bond is registered as the owner hereof for the purpose of receiving payment as herein provided (except interest shall be paid to the person in whose name this Bond is registered on the Record Date) and for all other purposes, whether or not this Bond be overdue, and neither the City nor the Paying Agent/Registrar, nor any such agent shall be affected by notice to the contrary.

IT IS HEREBY CERTIFIED AND RECITED that this Bond has been duly and validly issued and delivered; that all acts, conditions, and things required or proper to be performed, exist, and be done precedent to or in the issuance and delivery of this Bond have been performed, existed, and been done in accordance with law; that the Bonds do not exceed any constitutional or statutory limitation; and that provision has been made for the payment of the principal of and interest on the Bonds by irrevocably pledging the net revenues of the System, as hereinabove recited.

The registered owner hereof shall never have the right to demand payment of this Bond out of any funds raised or to be raised by taxation.

IN WITNESS WHEREOF, the City has caused this Bond to be executed in its name by the manual or facsimile signature of the Mayor of the City and countersigned by the manual or facsimile signature of the City Secretary, and the official seal of the City has been duly impressed or placed in facsimile on this Bond.

Mayor, City of Lubbock, Texas

City Secretary, City of Lubbock, Texas

[SEAL]

(b) Form of Comptroller's Registration Certificate.

The following Comptroller's Registration Certificate may be deleted from the definitive Bonds if such Certificate on the initial Bond is fully executed.

OFFICE OF THE COMPTROLLER	§	
OF PUBLIC ACCOUNTS	§	REGISTER NO. _____
OF THE STATE OF TEXAS	§	

I hereby certify that there is on file and of record in my office a certificate of the Attorney General of the State of Texas to the effect that this Bond has been examined by him as required by law, that he finds that it has been issued in conformity with the Constitution and laws of the State of Texas, and that it is a valid and binding special obligation of the City of Lubbock, Texas, payable from the revenues pledged to its payment by and in the ordinance authorizing same and that said bond has this day been registered by me.

Witness my hand and seal of office at Austin, Texas, _____.

Comptroller of Public Accounts
of the State of Texas

[SEAL]

(c) Form of Certificate of Paying Agent/Registrar.

The following Certificate of Paying Agent/Registrar may be deleted from the Initial Bond if the Comptroller's Registration Certificate appears thereon.

CERTIFICATE OF PAYING AGENT/REGISTRAR

It is hereby certified that this Bond has been issued under the provisions of the Ordinance described on this Bond; and that this Bond has been issued in conversion of and exchange for or replacement of a bond, bonds, or portion of a bond or bonds of an issue which was originally approved by the Attorney General of the State of Texas and registered by the Comptroller of Public Accounts of the State of Texas as shown in the records kept by the undersigned.

BOKF, NA,
as Paying Agent/Registrar

Dated: _____ By: _____
Authorized Representative

(d) Form of Assignment.

ASSIGNMENT

FOR VALUE RECEIVED, the undersigned hereby sells, assigns, and transfers unto (print or typewrite name, address and Zip Code of transferee): _____

(Social Security or other identifying number: _____) the within Bond and all rights hereunder and hereby irrevocably constitutes and appoints _____ attorney to transfer the within Bond on the books kept for registration hereof, with full power of substitution in the premises.

Dated: _____

Signature Guaranteed By:

Authorized Signatory

NOTICE: The signature on this Assignment must correspond with the name of the registered owner as it appears on the face of the within Bond in every particular and must be guaranteed in a manner acceptable to the Paying Agent/Registrar.

(e) The Initial Bond shall be in the form set forth in subsections (a), (b) and (d) of this Section, except for the following alterations:

(i) immediately under the name of the Bond (which name shall be set forth in the Pricing Certificate), the headings “INTEREST RATE” and “MATURITY DATE” shall be completed with the words “As shown below”;

(ii) in the first paragraph of the Bond, the words “on the Maturity Date specified above” shall be deleted and the following will be inserted: “on February 15 in each of the years, in the principal installments and bearing interest at the per annum rates in accordance with the following schedule:

Year	Principal Installment	Interest Rate
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(Information to be inserted from the Pricing Certificate)

(iii) the Initial Bond shall be numbered T-1.



AI# 13052

Regular City Council Meeting

12/03/2024:

7.3.

Information

Agenda Item

Budget Ordinance Amendment 1st Reading - Finance: Consider Budget Ordinance Amendment 6, amending the FY 2024-25 Capital Program to create and appropriate the 2024 Street Bond Capital Projects approved by the voters.

Item Summary

On November 5, 2024, Proposition A - \$103.4 million bonds for streets projects was on the voting ballot. This streets bond initiative was approved by the voters.

There are a total of seven projects that were approved. This budget amendment will establish all seven of the projects. However, only five of these projects are scheduled to receive funding at this time. The total amount to be appropriated for the current fiscal year is \$19.4 million.

The schedule found below is the plan for the next five years. The \$10 million inflation amount will be appropriated by the City Council to the specific projects as needed over the next five years.

	FY25	FY26	FY27	FY28	FY29	Total
Broadway, Avenue Q to Avenue E	\$ 2,800,000	13,200,000	-	-	-	\$ 16,000,000
University, 50th Street to Loop 289	7,100,000	0	-	-	-	7,100,000
Avenue P, 130th Street to 146th Street	2,400,000	8,800,000	-	-	-	11,200,000
Upland Avenue, 98th Street to 114th Street	-	-	15,600,000	-	-	15,600,000
146th Street, University Avenue to Avenue P	3,600,000	-	11,000,000	-	-	14,600,000
146th Street, Slide Road to Quaker Avenue	3,500,000	-	-	11,800,000	-	15,300,000
34th Street, Upland Avenue to Alcove Avenue	-	1,700,000	-	-	11,900,000	13,600,000
Annual Total	\$19,400,000	23,700,000	26,600,000	11,800,000	11,900,000	\$ 93,400,000
Inflation (\$10,000,000 was earmarked for inflation over the life of the bond)						\$ 10,000,000
Bond Total						\$ 103,400,000

Fiscal Impact

The City Council will appropriate this voter-approved bond funding initiative of \$103.4 million over the next five years.
The amount to be appropriated at this time is \$19.4 million.

Staff/Board Recommending
Cheryl Brock, Interim Chief Financial Officer

Attachments	
Ordinance	

ORDINANCE NO. _____

AN ORDINANCE AMENDING THE FY 2024-25 BUDGET FOR MUNICIPAL PURPOSES RESPECTING THE STREETS CAPITAL PROJECT FUND TO ESTABLISH APPROVED PROJECTS FROM THE 2024 STREET BOND ELECTION; 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 2024-25 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 2024-25 (Budget Amendment #6) for municipal purposes, as follows:

- I. Establish Capital Improvement Project 92896, Broadway: Ave Q to Ave E – 24B, and appropriate funding in the amount of \$2,800,000 for the design of the project. This is an approved project from the 2024 Street Bond Election and the funding source is 2025 General Obligation Bonds.
- II. Establish Capital Improvement Project 92897, University: 50th Street to Loop 289 – 24B, and appropriate funding in the amount of \$7,100,000 for the construction of the project. This is an approved project from the 2024 Street Bond Election and the funding source is 2025 General Obligation Bonds.
- III. Establish Capital Improvement Project 92898, Avenue P: 130th to 146th – 24B, and appropriate funding in the amount of \$2,400,000 for the design of the project. This is an approved project from the 2024 Street Bond Election and the funding source is 2025 General Obligation Bonds.
- IV. Establish Capital Improvement Project 92899, Upland: 98th to 114th Street – 24B. This is an approved project from the 2024 Street Bond election and appropriation of funding will occur in a future year.
- V. Establish Capital Improvement Project 92900, 146th Street: University to Ave P – 24B, and appropriate funding in the amount of \$3,600,000 for the design of the project. This is an approved project from the 2024 Street Bond Election and the funding source is 2025 General Obligation Bonds.

- VI. Establish Capital Improvement Project 92901, 146th Street: Slide to Quaker – 24B, and appropriate funding in the amount of \$3,500,000 for the design of the project. This is an approved project from the 2024 Street Bond Election and the funding source is 2025 General Obligation Bonds.
- VII. Establish Capital Improvement Project 92902, 34th Street, Upland to Alcove – 24B. This is an approved project from the 2024 Street Bond election and appropriation of funding will occur in a future year.

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 _____.

MARK W. MCBRAYER, MAYOR

ATTEST:

Courtney Paz
City Secretary

APPROVED AS TO CONTENT:



Cheryl Brock
Interim Chief Financial Officer

APPROVED AS TO FORM:



Amy Sims
Deputy City Attorney

Information

Agenda Item

Budget Ordinance Amendment 1st Reading - Finance: Consider Budget Ordinance Amendment 8, amending the FY 2024-25 Budget for municipal purposes respecting the General Fund Capital, Water/Wastewater Fund Capital, and ARPA; providing for filing; and providing for a savings clause.

Item Summary

This item is amending a portion of the ARPA funded projects to redistribute ARPA funding to projects that the funding can be committed according to the State and Local Fiscal Recovery Funds (SLFRF) rules to meet the December 31, 2024 deadline and can be expended by December 31, 2026.

- Amend Capital Improvement Project (CIP) Cybersecurity Infrastructure -ARPA, by decreasing the ARPA funding and appropriation by \$127,996.
- Amend CIP 8669 Job Training – ARPA, by reducing the ARPA funding and appropriation by \$34,504.
- Amend CIP 92759, Public Safety Improvement - ARPA decreasing the ARPA funding and appropriation by \$812,918.
- Amend CIP 8675, Employee Assistance Program -ARPA, by decreasing the ARPA funding and appropriation by \$112,507.
- Amend CIP 92761, Parks Walking Trails – ARPA, by decreasing the ARPA funding and appropriation \$724,740.
- Amend 92764, Parks Cattail Removal/Dredging – ARPA, by decreasing the ARPA funding and appropriation by \$458,951.
- Amend CIP 92766, Parks Simmons Parking Lot/Lake 6 Restroom, by decreasing the ARPA funding and appropriation by \$58,452.
- Amend CIP 92779, Parks Aquatic Facilities – ARPA, by decreasing the ARPA funding and appropriation by \$498,626.
- Amend CIP 8690, Locate and Repair Water Valves FY 2023-24, by decreasing the ARPA funding and appropriation by \$17,747.

- Amend CIP 92768, Restroom Replacement/Renovation – ARPA, by increasing the ARPA funding and appropriation by \$61,535.
- Amend CIP 92617, Lake 7 Design and Land Acquisition, by increasing the ARPA funding and appropriation by \$4,038,836, This amount includes \$1,253,930 of unappropriated ARPA funding, and \$2,784,906 from the above projects.

Fiscal Impact

None

Staff/Board Recommending

Attachments

Budget Amendment #8

ORDINANCE NO. _____

AN ORDINANCE AMENDING THE FY 2024-25 BUDGET FOR MUNICIPAL PURPOSES RESPECTING THE GENERAL FUND CAPITAL PROJECT FUND AND THE WATER CAPITAL PROJECT FUND; 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 2024-25 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 2024-25 (Budget Amendment #8) for municipal purposes, as follows:

- I. Amend Capital Improvement Project (CIP) Cybersecurity Infrastructure -ARPA, by decreasing the ARPA funding and appropriation by \$127,996.
- II. Amend CIP 8669 Job Training – ARPA, by reducing the ARPA funding and appropriation by \$34,504.
- III. Amend CIP 92759, Public Safety Improvement - ARPA decreasing the ARPA funding and appropriation by \$812,918.
- IV. Amend CIP 8675, Employee Assistance Program -ARPA, by decreasing the ARPA funding and appropriation by \$112,507.
- V. Amend CIP 92761, Parks Walking Trails – ARPA, by decreasing the ARPA funding and appropriation \$724,740.
- VI. Amend CIP 92768, Restroom Replacement/Renovation – ARPA, by increasing the ARPA funding and appropriation by 61,535.
- VII. Amend 92764, Parks Cattail Removal/Dredging – ARPA, by decreasing the ARPA funding and appropriation by \$458,951.
- VIII. Amend CIP 92766, Parks Simmons Parking Lot/Lake 6 Restroom, by decreasing the ARPA funding and appropriation by \$58,452.
- IX. Amend CIP 92779, Parks Aquatic Facilities – ARPA, by decreasing the ARPA funding and appropriation by \$498,626.
- X. Amend CIP 8690, Locate and Repair Water Valves FY 2023-24, by decreasing the ARPA funding and appropriation by 17,747.
- XI. Amend CIP 92617, Lake 7 Design and Land Acquisition, by increasing the ARPA funding and appropriation by \$4,038,836, This amount includes 1,253,930 of unappropriated ARPA funding, and 2,784,906 from the above projects.

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 _____.

MARK W. MCBRAYER, MAYOR

ATTEST:

Courtney Paz
City Secretary

APPROVED AS TO CONTENT:



Cheryl Brock
Interim Chief Financial Officer

APPROVED AS TO FORM:



Amy Sims
Deputy City Attorney

Information

Agenda Item

Resolution - City Secretary: Consider a resolution acting in response to a petition for recognition, received on November 7, 2024, on behalf of the Lubbock Professional Police Association, to be the sole bargaining agent for the Lubbock Police Department police officers, in accordance with the provisions of the meet and confer statute, as set forth in Texas Local Government Code, Chapter 142.

Item Summary

A petition for recognition was submitted on November 7, 2024, on behalf of the Lubbock Professional Police Association to be the sole bargaining agent for the Lubbock Police Department police officers, in accordance with the provisions of Texas Local Government Code, Chapter 142. The petition was reviewed by the Human Resources Department and was signed by 81.9% of the current members of the Lubbock Police Department (excluding the Chief and Assistant Chiefs).

In accordance with Chapter 142 of the Texas Local Government Code, the City Council must take one of the following actions no later than the 30th day after receipt of the petition:

- Grant recognition of the association as requested in the petition and determine by majority vote that a public employer may meet and confer under this subchapter without conducting an election by the voters in the municipality under Section 142.055;
- Defer granting recognition of the association and order an election by the voters in the municipality under Section 142.055 regarding whether a public employer may meet and confer under this subchapter; or
- Order a certification election under Section 142.054 to determine whether the association represents a majority of the affected police officers.

If the City Council orders a certification election and the association named in the petition is certified to represent a majority of the affected police officers of the municipality, the governing body shall, not later than the 30th day after the date that results of that election are certified:

- Grant recognition of the association as requested in the petition for recognition and determine by majority vote that a public employer may meet and confer under this subchapter without conducting an election by the voters in the municipality under Section 142.055; or
- Defer granting recognition of the association and order an election by the voters in the municipality under Section 142.055 regarding whether a public employer may meet and confer under this subchapter.

Fiscal Impact

None

Staff/Board Recommending

Courtney Paz, City Secretary

Attachments

Resolution - Police

RESOLUTION

WHEREAS, Texas Local Government Code Chapter 142 permits a police officers association to submit a petition, signed by the majority of all police officers, excluding the head of the department and employees exempt under Section 142.058(b), to the city requesting that the city recognize the police officers association as the sole and exclusive bargaining agent for covered police officers, for purposes of engaging in the meet and confer process; and

WHEREAS, on November 7, 2024, the City Secretary received a petition from requesting the Lubbock Professional Police Association to be the sole bargaining agent for the Lubbock Police Department police officers, in accordance with the provisions of Texas Local Government Code, Chapter 142 that was signed by 81.9% of the current members of the Lubbock Police Department, a clear majority; and

WHEREAS, Texas Local Government Code Section 142.053(a) requires that a governing body take action no later than the 30th day after the date a city receives a petition under Texas Local Government Code § 142.053 to (1) vote whether to recognize the association for meet and confer purposes without going to a general election of the voters; (2) defer recognition and order a general election; or (3) order a certification election under § 142.054 to determine whether the association represents a majority of the firefighters; and

WHEREAS, the City Council recognizes that the aforementioned petition was signed by a majority of all police officers of the Lubbock Police Department covered by Texas Local Government Code Chapter 142, Subchapter B, excluding the head of the police department and exempt employees under Texas Local Government Code Section 142.058(b); and

WHEREAS, City Council has determined that it is in the best interest of the residents of the City of Lubbock, to grant recognition of the Lubbock Professional Police Association as the sole and exclusive bargaining agent for the covered police officers of the Lubbock Police Department, for purposes of engaging in the meet and confer process, pursuant to Texas Local Government Code Chapter 142, Subchapter B; **NOW THEREFORE**,

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

1. The recitals and findings outlined above are found to be true and correct and are hereby incorporated herein as though set forth fully herein.
2. The signatories to the petition submitted requesting the Lubbock Professional Police Association represent 81.9% of the eligible police officers of the City of Lubbock Police Department, a majority of all police officers of the Lubbock Police Department covered by Texas Local Government Code Chapter 142, Subchapter B.
3. The City Council, pursuant to Texas Local Government Code § 142.053(a)(1), hereby grants recognition of the Lubbock Professional Police Association as the sole and exclusive bargaining agent for all the police officers employed by the City of Lubbock, excluding the Chief of Police and exempt employees under Texas Local Government Code Section 142.058(b), without conducting a general election or a certification election.
4. *Repeal.* All resolutions or part of resolutions, if any, in conflict herewith, shall be and are hereby expressly repealed to the extent of such conflict only.

5. *Severability.* If any provision, section, subsection, sentence, clause or the application of same to any person or set of circumstances for any reason is held to be unconstitutional, void or invalid or for any reason unenforceable, the validity of the remaining portions of this resolution or the application thereby shall remain in effect, it being the intent of the City Council of the City of Lubbock, Texas in adopting this resolution, that no portion thereof or provision contained herein shall become inoperative or fail by any reasons of unconstitutionality of any other portion or provision.

Passed by the City Council on _____.

MARK W. MCBRAYER, MAYOR

ATTEST:

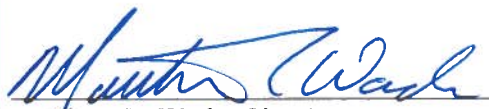
Courtney Paz, City Secretary

APPROVED AS TO CONTENT:



W. Jarrett Atkinson, City Manager

APPROVED AS TO FORM:



Matthew L. Wade, City Attorney

Information

Agenda Item

Resolution - City Secretary: Consider a resolution acting in response to a petition for recognition, received on November 25, 2024, on behalf of the Lubbock Professional Firefighters Association, to be the sole bargaining agent for Lubbock Fire Rescue firefighters, in accordance with the provisions of the meet and confer statute as set forth in Texas Local Government Code, Chapter 142.

Item Summary

A petition for recognition was submitted on November 25, 2024, on behalf of the Lubbock Professional Firefighters Association to be the sole bargaining agent for Lubbock Fire Rescue firefighters. in accordance with the provisions of Texas Local Government Code, Chapter 142. The petition was reviewed by the Human Resources Department and was signed by 76.75% of the current members of Lubbock Fire Rescue (excluding the Chief and Deputy/Assistant Chiefs).

In accordance with Chapter 142 of the Texas Local Government Code, the City Council must take one of the following actions no later than the 30th day after receipt of the petition:

- Grant recognition of the association as requested in the petition and determine by majority vote regarding whether a public employer may meet and confer under this subchapter without conducting an election by the voters in the municipality under Section 142.105;
- Defer granting recognition of the association and order an election by the voters in the municipality under Section 142.105 regarding whether a public employer may meet and confer under this subchapter; or
- order a certification election under Section 142.104 to determine whether the association represents a majority of the affected firefighters.

If the governing body of a municipality orders a certification election under Subsection (a)(3) and the association named in the petition is certified to represent a majority of the affected firefighters of the municipality, the governing body shall, not later than the 30th day after the date that results of that election are certified:

- Grant recognition of the association as requested in the petition for recognition and determine by majority vote that a public employer may meet and confer under this subchapter without conducting an election by the voters in the municipality under Section 142.105; or
- Defer granting recognition of the association and order an election by the voters in the municipality under Section 142.105 regarding whether a public employer may meet and confer under this subchapter.

Fiscal Impact

None

Staff/Board Recommending

Attachments

Resolution - Fire

RESOLUTION

WHEREAS, Texas Local Government Code Chapter 142 permits a firefighters association to submit a petition, signed by the majority of all firefighters, excluding the head of the department and employees exempt under Section 142.108(b), to the city requesting that the city recognize the firefighters association as the sole and exclusive bargaining agent for covered firefighters, for purposes of engaging in the meet and confer process; and

WHEREAS, on November 25, 2024, the City Secretary received a petition from requesting the Lubbock Professional Firefighters Association to be the sole bargaining agent for the Lubbock Fire Department firefighters, in accordance with the provisions of Texas Local Government Code, Chapter 142 that was signed by 76.8% of the current members of the Lubbock Fire Department, a clear majority; and

WHEREAS, Texas Local Government Code Section 142.103(a) requires that a governing body take action no later than the 30th day after the date a city receives a petition under Texas Local Government Code § 142.103 to (1) vote whether to recognize the association for meet and confer purposes without going to a general election of the voters; (2) defer recognition and order a general election; or (3) order a certification election under § 142.104 to determine whether the association represents a majority of the firefighters; and

WHEREAS, the City Council recognizes that the aforementioned petition was signed by a majority of all firefighters of the Lubbock Fire Department covered by Texas Local Government Code Chapter 142, Subchapter C, excluding the head of the fire department and exempt employees under Texas Local Government Code Section 142.108(b); and

WHEREAS, City Council has determined that it is in the best interest of the residents of the City of Lubbock, to grant recognition of the Lubbock Professional Firefighters Association as the sole and exclusive bargaining agent for the covered firefighters of the Lubbock Fire Department, for purposes of engaging in the meet and confer process, pursuant to Texas Local Government Code Chapter 142, Subchapter C; **NOW THEREFORE**,

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

1. The recitals and findings outlined above are found to be true and correct and are hereby incorporated herein as though set forth fully herein.
2. The signatories to the petition submitted requesting the Lubbock Professional Firefighters Association represent 76.8% of the eligible firefighters of the City of Lubbock Fire Department, a majority of all firefighters of the Lubbock Fire Department covered by Texas Local Government Code Chapter 142, Subchapter C.
3. The City Council, pursuant to Texas Local Government Code § 142.103(a)(1), hereby grants recognition of the Lubbock Professional Firefighters Association as the sole and exclusive bargaining agent for all the firefighters employed by the City of Lubbock, excluding the Chief of Fire and exempt employees under Texas Local Government Code Section 142.108(b), without conducting a general election or a certification election.
4. *Repeal.* All resolutions or part of resolutions, if any, in conflict herewith, shall be and are hereby expressly repealed to the extent of such conflict only.

5. *Severability.* If any provision, section, subsection, sentence, clause or the application of same to any person or set of circumstances for any reason is held to be unconstitutional, void or invalid or for any reason unenforceable, the validity of the remaining portions of this resolution or the application thereby shall remain in effect, it being the intent of the City Council of the City of Lubbock, Texas in adopting this resolution, that no portion thereof or provision contained herein shall become inoperative or fail by any reasons of unconstitutionality of any other portion or provision.

Passed by the City Council on _____.

MARK W. MCBRAYER, MAYOR

ATTEST:


Courtney Paz, City Secretary

APPROVED AS TO CONTENT:



W. Jarrett Atkinson, City Manager

APPROVED AS TO FORM:



Matthew L. Wade, City Attorney

Information

Agenda Item

Board Appointment - City Secretary: Consider the appointment of the Chairperson of the Central Business District Tax Increment Financing Reinvestment Zone Board of Directors, for the 2025 calendar year, with the term ending on December 31, 2025.

Item Summary

Per Section 311.009(f) of the Tax Increment Financing Act, the governing body of the municipality that created the Tax Increment Financing Reinvestment Zone (TIF) shall appoint one member of the board to serve as chair for a term of one year beginning January 1 of the following year. Dan Williams is the current chairperson of the Central Business District TIF Board of Directors and has served as chair since 2021.

Per the City Council Policy and Procedure for Boards, Commissions and Committees: “The Chair and Vice-Chair shall not serve more than two (2) consecutive one-year terms. The Council shall reserve the right, as deemed necessary in individual instances, to allow more than two (2) consecutive one-year terms.”

Fiscal Impact

None

Staff/Board Recommending

Courtney Paz, City Secretary

Attachments

No file(s) attached.

Information

Agenda Item

Board Appointment - City Secretary: Consider the appointment of the Chairperson of the Lubbock Business Park Tax Increment Financing Reinvestment Zone Board of Directors, for the 2025 Calendar Year, with the term ending on December 31, 2025.

Item Summary

Per Section 311.009(f) of the Tax Increment Financing Act, the governing body of the municipality that created the Tax Increment Financing Reinvestment Zone (TIF), shall appoint one member of the board to serve as chair for a term of one year beginning January 1 of the following year. Cassandra (Sandy) Henry is the current chairperson of the Lubbock Business Park TIF Board of Directors and has served as chair since 2010.

Per the City Council Policy and Procedure for Boards, Commissions and Committees: “The Chair and Vice-Chair shall not serve more than two (2) consecutive one-year terms. The Council shall reserve the right, as deemed necessary in individual instances, to allow more than two (2) consecutive one-year terms.”

Fiscal Impact

None

Staff/Board Recommending

Courtney Paz, City Secretary

Attachments

No file(s) attached.

Information

Agenda Item

Board Appointment - City Secretary: Consider the appointment of the Chairperson of the North Overton Tax Increment Financing Reinvestment Zone Board of Directors, for the 2025 Calendar Year, with the term ending on December 31, 2025.

Item Summary

Per Section 311.009(f) of the Tax Increment Financing Act, the governing body of the municipality that created the Tax Increment Financing Reinvestment Zone (TIF), shall appoint one member of the board to serve as chair for a term of one year beginning January 1 of the following year. Jeff Dane is the current chairperson of the North Overton TIF Reinvestment Zone Board of Directors and has served as chair since 2018.

Per the City Council Policy and Procedure for Boards, Commissions and Committees: “The Chair and Vice-Chair shall not serve more than two (2) consecutive one-year terms. The Council shall reserve the right, as deemed necessary in individual instances, to allow more than two (2) consecutive one-year terms.”

Fiscal Impact

None

Staff/Board Recommending

Courtney Paz, City Secretary

Attachments

No file(s) attached.

Information

Agenda Item

Public Hearing - Planning: Hold a public hearing in accordance with Section 43.0697(c)(2) of the Texas Local Government Code, regarding the City of Lubbock's intent to annex an area of land consisting of approximately 374.74 acres of real property commonly known as the Highland Oaks Subdivision, located within an area located south of 146th Street (F.M. 7500), east of Frankford Avenue, north of Woodrow Road (F.M. 7600), and west of Slide Road (F.M. Road 1730), into Lubbock's corporate limits.

Item Summary

On November 15, 2024, in accordance with Section 43.0697(a) of the Texas Local Government Code, a notice was sent to all property owners within the proposed annexation area. The notice contained the results of the election, information regarding the two post-election public hearings on December 3, 2024 and January 14, 2025, and information regarding the Council dates for consideration of the ordinance to annex the area on January 28, 2025 and February 11, 2025.

On November 14, 2024, City Council canvassed the results of the election. The proposal to annex the subject area was approved by a vote of 345 (69.3%) to 153 (30.7%) of the registered voters in the area proposed for annexation.

On August 13, 2024, City Council approved the second reading of the ordinance to order the election for November 5, 2024.

On July 23, 2024, City Council held the second required public hearing and approved the first reading of the ordinance to order the election for November 5, 2024.

On July 9, 2024, City Council held the first required public hearing.

On June 11, 2024, City Council adopted Resolution No. 2024-R0291, indicating their intent to annex an area of land generally described as 374.74 acres south of 146th Street and east of Frankford Avenue, into Lubbock's corporate limits, and execute a Municipal Services Agreement with the Highland Oaks Homeowner's Association, for the requested annexation.

In accordance with Section 43.0693 of the Texas Local Government Code, a notice was sent to all property owners within the proposed annexation area on June 17, 2024. The notice contained information regarding two public hearings on July 9, 2024 and July 23, 2024, an election on the question of annexing the area on November 5, 2024, and a copy of the Municipal Services Agreement. A metes and bounds description of the area and a map were included with the notice.

Fiscal Impact

None

Staff/Board Recommending

Erik Rejino, Assistant City Manager

Kristen Sager, Director of Planning

Attachments

Highland Oaks - Resolution of Intent to Annex

Highland Oaks - Municipal Services Agreement

Highland Oaks - Annexation Map

Highland Oaks - Metes and Bounds Description

RESOLUTION

WHEREAS, the City of Lubbock, Texas (the “City”) is a home-rule municipality with authority under state law and its charter to annex real property into its corporate limits; and

WHEREAS, representatives of the owners of certain developed real property (hereinafter defined and referenced as the “Subject Area”) outside the corporate limits of the City (the “Highland Oaks Homeowner’s Association” or “Highland Oaks HOA”), with widespread and persistent water shortages, have expressed a desire to have the Subject Area annexed by the City; and

WHEREAS, pursuant to Chapter 43 of Texas Local Government Code, Subchapter C-5, the Highland Oaks HOA has further petitioned the City to hold an election on the question of annexation of the Subject Area; and

WHEREAS, pursuant to Chapter 43 of the Texas Local Government Code, the City is required to establish a municipal services plan outlining the municipal services to be provided to the Subject Area in the event the question of annexation of the Subject Area is answered in the affirmative; and

WHEREAS, one critical component relating the provision of municipal services to be provided to the Subject Area would be the provision of water utility services and the party responsible for providing the necessary financial support for the water utility services; and

WHEREAS, in anticipation of a finally approved annexation of the Subject Area, but as a precondition thereto, the Highland Oaks HOA has proposed that the City of Lubbock create a Public Improvement District (“PID”), with identical boundaries as the Subject Area, for the purposes of levying an assessment on all the properties located therein, in amounts sufficient to service and retire all bonded indebtedness incurred by the PID to finance the construction of infrastructure necessary to provide water service to any property annexed; and

WHEREAS, the City Council finds that the City presently has no existing legal obligation to provide water or other governmental services to the Subject Area, nor would any of the activities undertaken by the City in anticipation of the requested annexation create such legal obligation for the purposes of Texas Local Government Code, Section 43.0699;

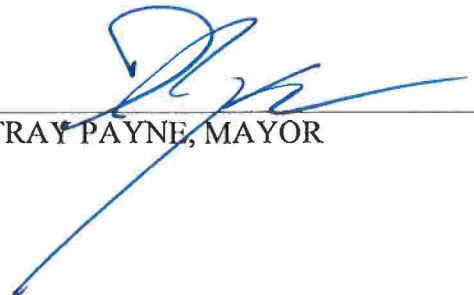
WHEREAS, the City Council believes it to be in the best interest of the City of Lubbock to approve the municipal services plan attached hereto including the preconditions relating to the financing of the construction and development of the water utility system to the Subject Area.

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

THAT the City Council of the City of Lubbock, pursuant to Texas Local Government Code, Section 43.0692, hereby expresses an intent to annex into Lubbock’s corporate limits

certain real property described below, provided certain conditions as described in the attached Municipal Services Agreement ("MSA") are met, and further authorizes and directs the Mayor of the City of Lubbock to execute for and on behalf of the City of Lubbock said MSA in connection with the annexation of real property generally described as 374.74 acres located south of 146th Street and east of Frankford Avenue, and more particularly described by metes and bounds in Exhibit "A" attached thereto, by and between the City of Lubbock, Texas and the Highland Oaks Homeowner's Association, 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 June 11, 2024.



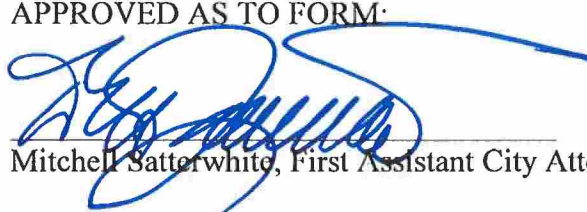
TRAY PAYNE, MAYOR

ATTEST:


Courtney Paz, City Secretary

APPROVED AS TO CONTENT:


Erik Rejino, Assistant City Manager

APPROVED AS TO FORM:


Mitchell Satterwhite, First Assistant City Attorney

Municipal Services Agreement

Subject to the preconditions set forth herein, 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. In this Agreement, the term “Applicant” shall mean the property owners within Highland Oaks

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 20 at 3210 142nd Street when construction is completed in early 2025. Fire Station 20 is approximately 2.85 miles to the center of the annexed area. Until that time, primary fire response will be provided by Fire Station 16 located at 4030 114th Street, Fire Station 19 located at 5826 98th Street, and Fire Station 15 located at 8002 Venita Avenue. Fire Prevention activities will be provided by the Fire Marshal's office as needed.

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. 20, located at 3210 142nd Street when construction is completed in early 2025. Fire Station 20 is approximately 2.85 miles to the center of the annexed area. Until that time, BLS First Responder emergency medical response will be provided by Fire Station 16 located at 4030 114th Street, Fire Station 19 located at 5826 98th Street, and Fire Station 15 located at 8002 Venita Avenue. Emergency medical transport is provided by the Lubbock County Hospital District.

iii. Police Services

a. *Existing Services:* None

b. *Services to be Provided:* The Lubbock Police Department has jurisdictional law enforcement responsibility and first responder designation. Calls for police services will be provided by the South Patrol Division, with secondary services provided by the North Patrol Division and tertiary services provided by the East Patrol Division. Law enforcement services can be provided to the annexed area within current appropriation, however with the increase in land mass and population, an appreciable yet modest increase in call response times, crimes rate, crimes per thousand population, and traffic related calls should be expected and anticipated. Expansions of authorized police staffing and support services need to be considered for this and future annexations, including an analysis of the ratio of officers per population.

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 Applicant, 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 Applicant. Water lines must be installed by the Applicant within 4-1/2 years at no expense to the City. Construction of additional water mains outside of the annexation area may be required in order to meet pressure and flow requirements for the annexation area and will be at the expense of the Applicant. All applicable plan review and construction testing and inspection fees will apply to utility extensions done for this area.

Installation of municipal water and sewer infrastructure by the City shall commence only upon the occurrence of the following:

1. the passage of a resolution by the City Council of the City of Lubbock expressing an "Intent to Annex" the subject area pursuant to Texas Local Government Code, Section 43.0691 et seq.;
2. the affirmative vote of the property owners as provided in Texas Local Government Code, Section 43.0691 et seq, as applicable;
3. the creation of a Public Improvement District by the City of Lubbock encompassing the area proposed to be annexed, and the securing by said PID of funding from the proceeds of bond sales in an amount equal to or greater than the cost of installation and connection of infrastructure necessary to the annexation;
4. the levy of an assessment by the PID against all properties in the subject area of a tax in an amount sufficient, when collected, to service and repay the debt incurred by the PID in connection with the bond issuance; and
5. completion of all other obligations by the Applicant set forth herein.

City agrees, and Applicant understands and agrees, that City shall have no obligation to commence or complete installation of infrastructure necessary to annexation under this Service Agreement unless and until the conditions set forth above are completed to the sole satisfaction of the City. In the event all the conditions set forth above are not satisfied, no action on the part of the City shall have established a legal obligation to provide services to the subject area under Texas Local Government Code, Section 42.0699.

Sewer extensions may be made by the annexation requestee, but will not be required. Existing sanitary septic systems may continue to be used. The City will not install sanitary sewer infrastructure to service this area. If the area ever requires municipal sanitary sewer service, the required infrastructure will be installed at no expense to the City.

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.
- c. Both Water and Sewer will require a study in order to assure services to the voluntary annexation. The voluntary annexation area is outside of our current Water and Sewer Models and Master Plan for potential Capital Projects.
 - d. Water will be required to be looped appropriately to ensure appropriate fire flows as well as assuring no dead-end water mains are left within the system once developed. The water lines may be installed in phases, as long as all dead-end lines are looped within three (3) years of installation of a dead-end water main.
 - e. If the annexation area requires 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.

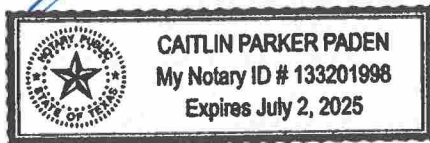
xvi. Solid Waste Services

- 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. An additional operator, truck and dumpsters will be required at annexation. 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:* Solid waste collection will be provided using dumpsters from the alleys.
- 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.

EXECUTED as of the Effective Date hereof.

CITY OF LUBBOCK

TRAY PAYNE, MAYOR



HIGHLAND OAKS HOMEOWNERS ASSOCIATION
BOARD MEMBERS

Betsey Timmons

Betsey Timmons, President

SUBSCRIBED AND SWORN TO BEFORE ME on the
day of 9th day of June, 2024 to certify which
witness my hand and official seal.

[Seal] [Signature] Caitlin Paden

[Printed name] Caitlin Paden

Notary Public in and for the State of Texas

ATTEST:

Courtney Paz

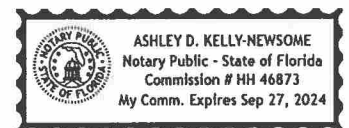
Courtney Paz, City Secretary

Robin Sefcik

Robin Sefcik, Vice President

State of Florida County of Seminole
Signed and sworn to or affirmed and subscribed before me by means of
online notarization on 06/09/2024 (date) by Robin
Sefcik (signer), who presented a Texas DL as
identification.

Ashley D. Kelly-Newsome
(Signature of Notary Public)
Ashley D. Kelly-Newsome
(Name of Notary Typed, Printed or Stamped)
My Commission Expires: 09/27/2024
(Seal)



APPROVED AS TO CONTENT:

Kristen Sager

Kristen Sager, Director of Planning

Tim Goebel

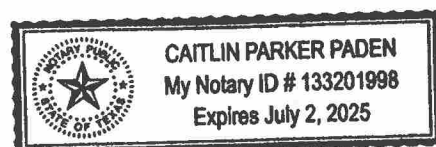
Tim Goebel, Secretary

SUBSCRIBED AND SWORN TO BEFORE ME on the
day of 9th day of June, 2024 to certify which
witness my hand and official seal.

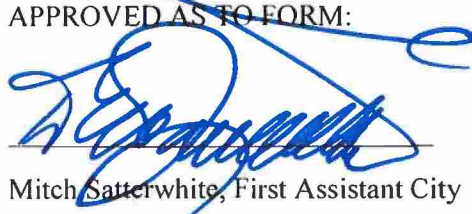
[Seal] [Signature] Caitlin Paden

[Printed name] Caitlin Paden

Notary Public in and for the State of Texas

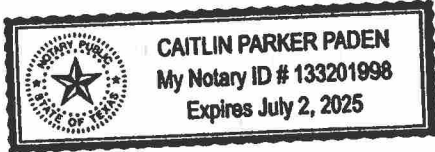


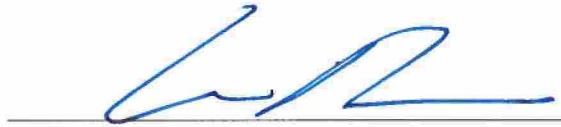
APPROVED AS TO FORM:



Mitch Satterwhite, First Assistant City

Attorney





Colby Norris, Treasurer

SUBSCRIBED AND SWORN TO BEFORE ME on the day of 9th day of June, 2024 to certify which witness my hand and official seal.

[Seal] [Signature]



[Printed name]

Caitlin Paden

Notary Public in and for the State of Texas



Michelle Newman, Board Member

SUBSCRIBED AND SWORN TO BEFORE ME on the day of 9th day of June, 2024 to certify which witness my hand and official seal.

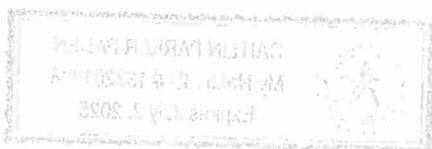
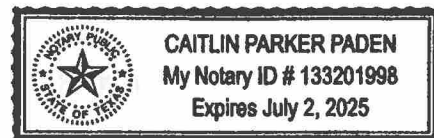
[Seal] [Signature]



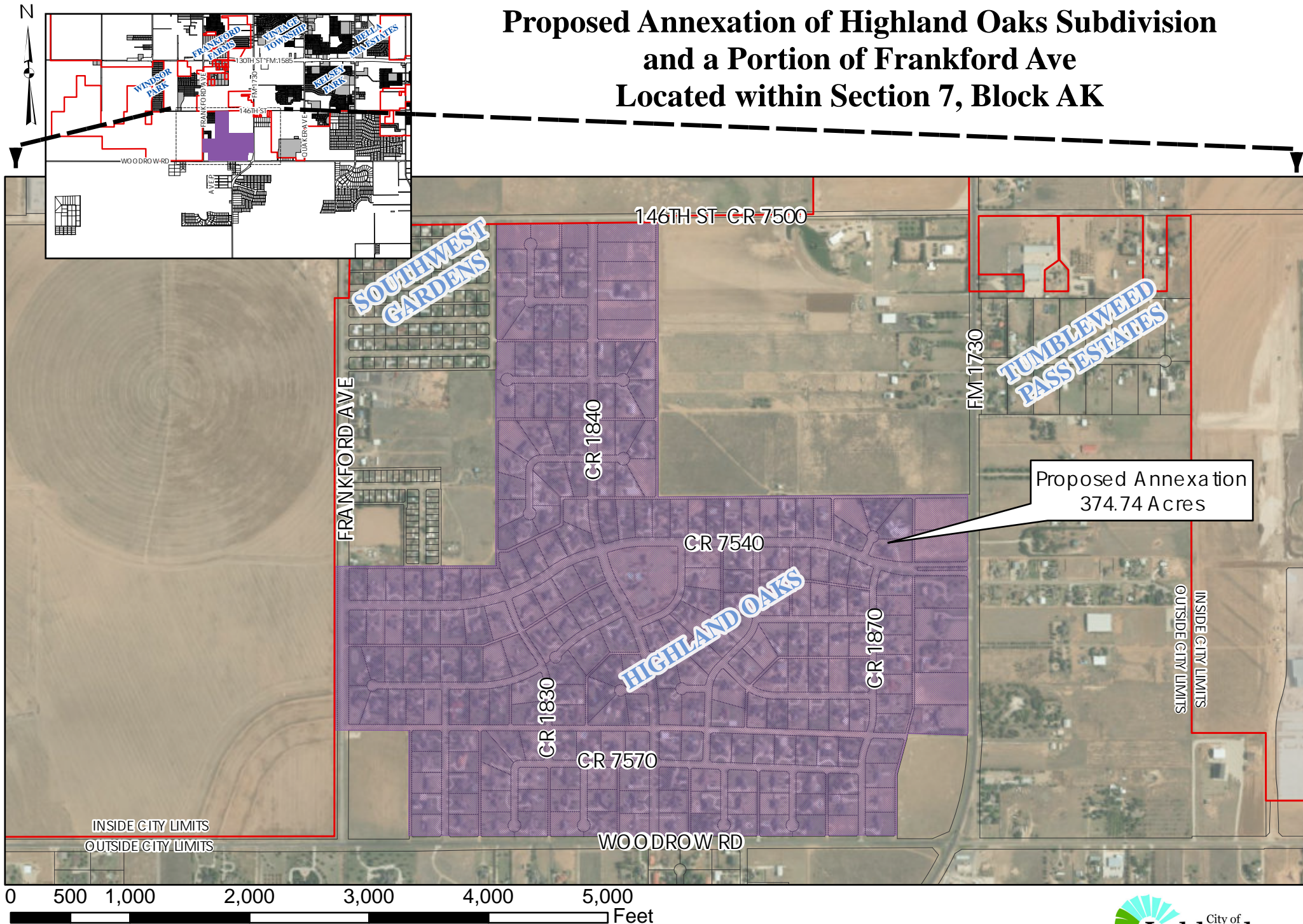
[Printed name]

Caitlin Paden

Notary Public in and for the State of Texas



Proposed Annexation of Highland Oaks Subdivision and a Portion of Frankford Ave Located within Section 7, Block AK



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.

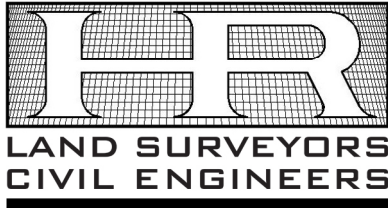


EXHIBIT "A"

METES AND BOUNDS DESCRIPTION of a 374.74-acre tract located in Sections 7 and 10, Block AK, Lubbock County, Texas, being further described as follows:

BEGINNING at a point for the most Easterly Southeast corner of Lot 7, Highland Oaks, a subdivision located in Section 7, Block AK, Lubbock County, Texas, according to the instrument recorded in Volume 6743, Page 85, Official Real Property Records of Lubbock County, Texas, and the most Easterly Southeast corner of this tract, said point also being in the West right-of-way line of Slide Road (F.M. Road 1730), as dedicated by said Highland Oaks, which bears N. 01°43'10" E. a distance of 922.63 feet and N. 88°16'50" W. a distance of 55.00 feet from the Southeast corner of said Section 7, Block AK, Lubbock County, Texas;

THENCE N. 88°16'50" W., along the West right-of-way line of said Slide Road (F.M. Road 1730) and the Eastern boundary of said Lot 7, a distance of 5.00 feet to a point of intersection;

THENCE Southwesterly, along said West right-of-way line and the Eastern boundary of said Lot 7, along a curve to the right, said curve having a radius of 2231.83 feet, a central angle of 00°28'41", a chord bearing of S. 01°57'31" W., a chord distance of 18.62 feet to a point for the most Southerly Southeast corner of said Lot 7, said point also being in the Southern boundary of the plat limits of said Highland Oaks;

THENCE N. 86°15'43" W., continuing along the Southern boundary of said Lot 7 and along a Southern boundary of said plat limits, a distance of 498.91 feet to a point for the Southwest corner of said Lot 7;

THENCE S. 16°53'17" W., along an Eastern boundary of said plat limits, at 51.35 feet pass the Northeast corner of the plat limits of Lots 193-255, Highland Oaks, a subdivision located in Section 7, Block AK, Lubbock County, Texas, continuing along the Eastern boundary of said plat limits a total distance of 355.37 feet to a point;

THENCE S. 01°53'17" W., continuing along the Eastern boundary of said plat limits, a distance of 508.26 feet to a point 70 feet North of the South line of said Section 7 for the most Southerly Southeast corner of this tract;

THENCE N. 88°15'04" W., along a line 70 feet North of and parallel to the South line of said Section 7, crossing various lots and street and alley rights-of-way dedicated by said Highland Oaks, a distance of 4086.01 feet to a point in the Western boundary of said plat limits, for the most Southerly Southwest corner of this tract;

THENCE N. 01°53'17" E. a distance of 879.99 feet to a point for the Northwest corner of said plat limits, said point also being in the Southern boundary of the plat limits of Lots 81-138, Highland Oaks, a subdivision in Section 7, Block AK, Lubbock County, Texas, according to the instrument recorded in Volume 7699, Page 311, Official Public Records of Lubbock County, Texas (OPRLCT);

THENCE N. 88°00'43" W., along the Southern boundary of said plat limits, at 564.12 feet pass the West line of said Section 7, the East line of said Section 10 and the Southwest corner of said plat limits, continuing for a total distance of 614.12 feet to a point in the West right-of-way line of County Road 1800, as granted by easement recorded in Volume 1277, Page 683, Deed Records of Lubbock County, Texas, for the most Westerly Southwest corner of this tract;

THENCE. N. 01°52'42" E., along a line 50 feet West of and parallel to the West line of said Section 7 and the East line of said Section 10, and along the West right-of-way line of said County Road 1800, a distance of 1372.57 feet to a point for the most Westerly Northwest corner of this tract;

THENCE S. 88°20'51" E., at 50.00 feet pass the West line of said Section 7, the East line of said Section 10, and the Northwest corner of the plat limits of said Lots 81-138, Highland Oaks, continuing along the Northern boundary of said plat limits for a total distance of 1338.39 feet to a point;

THENCE N. 01°52'42" E., at 135.94 feet pass an "ell" corner of said plat limits of Lots 81-138, Highland Oaks, and the Southwest corner of Lots 139-192, Highland Oaks, an addition located in Section 7, Block AK, Lubbock County, Texas, according to the instrument recorded in Volume 10199, Page 204, OPRLECT, continuing along the Western boundary of said plat limits, for a total distance of 1641.93 feet to a point;

THENCE S. 88°07'18" E. a distance of 10.00 feet to a point;

THENCE N. 01°52'42" E., along a line 10 feet East of and parallel to the Western boundary of the plat limits of said Lots 139-192, Highland Oaks, crossing various lots and alley rights-of-way dedicated by said Highland Oaks, a distance of 1222.68 feet to a point in the present city limits as established by City of Lubbock Ordinance Number 2016-O0054 and the South right-of-way line of 146th Street, dedicated by said Highland Oaks, for the most Northerly Northwest corner of Lot 168, said Highland Oaks, and the most Northerly Northwest corner of this tract;

THENCE S. 88°46'30" E., along said present city limits and the South right-of-way line of said 146th Street, a distance of 1346.16 feet to a point in the Eastern boundary of the plat limits of said Lots 139-192, Highland Oaks, for the most Northerly Northeast corner of this tract;

THENCE S. 01°47'37" W., along the Eastern boundary of said plat limits, a distance of 2300.78 feet to a point for the Southeast corner of said plat limits, said point also being in the Northern boundary of the plat limits of Lots 1-80 and Tracts A & B, said Highland Oaks, for an "ell" corner of this tract;

THENCE S. 88°36'30" E., along the Northern boundary of said plat limits, a distance of 2592.46 feet to a point in the West right-of-way line of said Slide Road (F.M. Road 1730), for the most Easterly Northeast corner of this tract;

THENCE S. 01°43'10" W., along the West right-of-way line of said Slide Road (F.M. Road 1730), a distance of 1997.04 feet to the Point of Beginning.

Contains: 374.74 acres

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

Prepared: June 4, 2024



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

Public Hearing - Planning (District 4): Consider a request for Zone Case 3257-Q, a request of AMD Engineering, LLC for 1585 Development, LLC, for a zone change from Low Density Single-Family District (SF-2) to Medium Density Residential District (MDR), generally located west of Elgin Avenue and north of 137th Street on approximately 34.61 acres of unplatted land out of Block AK, Section 1, 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 November 7, 2024, and recommended approval of the request by a unanimous vote of 8-0-0.

Fiscal Impact

None

Staff/Board Recommending

Erik Rejino, Assistant City Manager
Kristen Sager, Director of Planning
Planning and Zoning Commission

Attachments

Ordinance 3257-Q
Staff Report 3257-Q
Documentation 3257-Q

ORDINANCE NO. _____

AN ORDINANCE AMENDING ZONING ORDINANCE NO. 2023-00054 AND THE OFFICIAL MAP OF THE CITY OF LUBBOCK MAKING THE FOLLOWING CHANGES: ZONE CASE NO. 3257-Q; A ZONING CHANGE FROM SF-2 TO MDR ZONING DISTRICT GENERALLY LOCATED WEST OF ELGIN AVENUE AND NORTH OF 137TH STREET ON APPROXIMATELY 34.61 ACRES OF UNPLATTED LAND OUT OF BLOCK AK, SECTION 1, 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 39.07.007 of the Unified Development Code, 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. 3257-Q

SECTION 1. THAT Ordinance No. 2023-O0054 and the Official Zoning Map are amended as follows:

A change of zoning under the provisions of Section 39.07.032 of the Unified Development Code of the City of Lubbock from **SF-2** to **MDR** zoning district **generally located west of Elgin Avenue and north of 137th Street on approximately 34.61 acres of unplatted land out of Block AK, Section 1, 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 39.09.004 of the Unified Development Code 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 _____.

MARK W. MCBRAYER, 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/ZC3257-Q
November 7, 2024



DESCRIPTION FOR A ZONING CHANGE REQUEST IN
SECTION 1, BLOCK AK,
LUBBOCK COUNTY, TEXAS

(Sheet 1 of 2, Sketch of tract attached as Sheet 2)

METES AND BOUNDS DESCRIPTION of a 34.61-acre tract of land located in Section 1, Block AK, Lubbock County, Texas, prepared for Zone Change Purposes only and being further described as follows:

BEGINNING at a point that is the most northeasterly corner of Viridian Estates, Tract L (P&D 2019007222)

THENCE S $88^{\circ} 02' 16''$ E an approximate distance of 1244.68 feet;

THENCE S $01^{\circ} 48' 03''$ W an approximate distance of 1328.64 feet;

THENCE S $46^{\circ} 54' 46''$ W an approximate distance of 21.23 feet;

THENCE N $88^{\circ} 07' 56''$ W an approximate distance of 603.37 feet;

THENCE Northwesterly along a curve to the left having a radius of 200.05 feet, an arc length of 173.83 feet, a central angle of $49^{\circ} 47' 13''$, a chord distance of 168.42 feet and a chord bearing of N $63^{\circ} 14' 21''$ W to a point of intersection along the southwestern property line of this tract;

THENCE N $38^{\circ} 20' 44''$ W an approximate distance of 500.94 feet;

THENCE Northwesterly along a curve to the left having a radius of 364.33 feet, an arc length of 185.86 feet, a central angle of $29^{\circ} 13' 42''$, a chord distance of 183.85 feet and a chord bearing of N $52^{\circ} 57' 35''$ W to a point of intersection along the southwestern property line of this tract;

THENCE N $01^{\circ} 46' 06''$ E an approximate distance of 786.36 feet to the point of beginning and containing approximately 34.61 acres.

This description was prepared for the purposes of a zoning request and does not represent a survey made upon the ground.

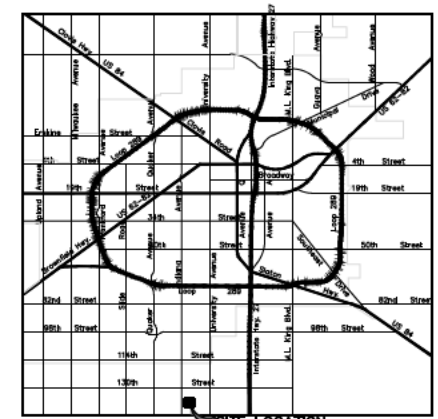
Prepared for: 1585 Development, LLC
August 28, 2024

ZONE CHANGE APPLICATION EXHIBIT

A 34.61 ACRE TRACT OF LAND
LOCATED IN SECTION 1, BLOCK AK,
LUBBOCK COUNTY, TEXAS

NOTES:
SCALE: 1" = 200'

 - ZONING REQUEST SF-2 FROM MDR



VICINITY MAP
NOT TO SCALE

SCALE: 1" = 200'



AMD
CIVIL ENGINEERING
LAND SURVEYING
AMD Engineering, LLC
6515 68th Street, Suite 300
Lubbock, TX 79424
Phone: 806-771-6978
Fax: 806-771-7625
TBPE Reg. # F-4197
Accuracy • Efficiency • Integrity

NOT PLATTED
REMAINDER OF 106.669 ACRE TRACT
OWNER: 1585 DEVELOPMENT, L.L.C.
(CCFN 2014024569)

NOT PLATTED
REMAINDER OF 86.761 ACRE TRACT
OWNER: 1585 DEVELOPMENT, L.L.C.
(P&D 2016023825)

P.O.B.
THE NORTHEASTERLY CORNER OF
VIRIDIAN ESTATES, TRACT L
(P&D 2019007222)

VIRIDIAN ESTATES,
TRACT L
(P&D 2019007222)

135TH STREET

R=364.33'
L=185.86'
Δ=29°13'42"
CH=183.85'
CB=N52°57'35"W

NOT PLATTED
REMAINDER OF 106.669 ACRE TRACT
OWNER: 1585 DEVELOPMENT, L.L.C.
(CCFN 2014024569)

R=200.05'
L=173.83'
Δ=49°47'13"
CH=168.42'
CB=N63°14'21"W

VIRIDIAN, LOTS 541-591
(CCFN: 2024024318)

NOT PLATTED
REMAINDER OF 86.761
ACRE TRACT
OWNER: 1585
DEVELOPMENT, L.L.C.
(CCFN 2016023825)

S88°02'16"E 1244.68'

N: 7235723.34
E: 938288.85

ELGIN AVENUE

S1°48'03"W 1328.64'

ELGIN AVENUE

N: 7234395.35
E: 938247.09

137TH STREET

S46°54'46"W 21.23'

137TH STREET N88°07'56"W 603.37'

Staff Report		Zone Case 3257-Q
City Council Meeting		December 3, 2024

<u>Applicant</u>	AMD Engineering, LLC
<u>Property Owner</u>	1585 Development, LLC
<u>Council District</u>	4

Recommendations

- Staff recommends approval of this request.

Prior Board or Council Action

- December 18, 2014, Ordinance No. 2014-00148: The subject property was annexed into city limits and zoned Transition District (T).
- July 9, 2015, Zone Case 3257-A, Ordinance No. 2015-00069: The northwestern corner of the subject property was rezoned from T to Two-Family District (R-2).
- July 9, 2015, Zone Case 3257-A, Ordinance No. 2015-00069: The remainder of the subject property was rezoned from T to Single-Family District (R-1) Specific Use for reduced setbacks.
- October 13, 2016, Zone Case 3257-B, Ordinance No. 2016-00147: The subject property was rezoned from R-2 and R-1 Specific Use for reduced setbacks to R-1 Specific Use for reduced setbacks.
- May 9, 2023, Ordinance No. 2023-00054 (effective October 1, 2023): The subject property was rezoned from R-1 Specific Use for reduced setbacks to Low Density Single-Family District (SF-2) with the adoption of the Unified Development Code.
- October 3, 2024, Zone Case 3257-Q: The Planning and Zoning Commission voted to postpone consideration of the request for a zone change from SF-2 to Medium Density Residential District (MDR) by a vote of 5-0-0.
- November 7, 2024 Zone Case 3257-Q: The Planning and Zoning Commission recommended approval of a request for a zone change from SF-2 to MDR by a vote of 8-0-0.

Notification Summary

- Notifications Sent: 72
- Received In Favor: 0
- Received In Opposition: 22 (7 from outside the notification boundary)

Site Conditions and History

The subject property consists of 34.61 acres of unplatted land out of Block AK, Section 1.

Adjacent Property Development

The property to the west is zoned High Density Residential District (HDR) and is developed with apartment buildings. The properties to the north, east, and south are zoned SF-2, including both existing and ongoing development of single-family homes.

Zoning Request and Analysis

Item Summary

The subject property is generally located west of Elgin Avenue and north of 137th Street, on approximately 34.61 acres of unplatted land out of Block AK, Section 1. The applicant is requesting a zone change from Low Density Single-Family District (SF-2) to Medium Density Residential District (MDR).

Current zoning: Low Density Single-Family District (SF-2)

Requested zoning: Medium Density Residential District (MDR)

Intent Statements

The purpose of the Low Density Single-Family (SF-2) district is to provide for two types of residential subdivisions:

- A. Conventional. Smaller to moderately-sized lots for dwellings on public utilities. Any open space is located on private lots.
- B. Cluster. Clustering of smaller-sized lots for dwellings with in increased percentage of common open space compared to cluster developments in the SF-1 district to maintain the intended character of the district while providing for buffering between lower and higher density adjacent neighborhoods, as well as for recreational amenities and resources protection.

The intent of the proposed MDR District is “...to provide for a village neighborhood environment of smaller-sized lots, to include dwellings such as duplexes, townhouses, and multiplexes.”

Traffic Network/Infrastructure Impacts

The location is along 137th Street and Elgin Avenue which are designated as collector streets by the Master Thoroughfare Plan, 2018. Collectors provide access and movement within residential, commercial, and industrial areas.

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 Residential Low Density land uses. While this request is a minor deviation from this designation, it is appropriate in this location, adjacent to other multi-family uses and residential zoning districts. This request is in conformance with the Comprehensive Plan principles.

Conformance with Zoning Ordinance

The proposed zone change is in conformance with the zoning ordinance. The property is located adjacent to other apartment complexes.

Suitability of Property for Allowed Uses

The property is suitable for the land uses within the MDR district. It may need additional public improvements to support the intensity of uses described in this district, as the property is unplatted.

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

Cassie Bermea
Planner
Planning Department
806-775-2096
cassiebermea@mylubbock.us

Victor Escamilla
Planning and Zoning Manager
Planning Department
806-775-3029
vescamilla@mylubbock.us

Case Information: Zone Case 3257-Q



Allowable Uses: [Medium Density Residential District \(MDR\)](#)

Transportation: The proposed development has points of access from 137th Street and Elgin Avenue.

Thoroughfare	Existing	Per Thoroughfare Development Plan
137 th Street, <i>Collector Street</i>	R.O.W. 64 feet, two-lane, undivided, paved	R.O.W. 64 feet, four-lane, undivided, paved
Elgin Avenue <i>Collector Street</i>	R.O.W. 64 feet, two-lane, undivided, paved	R.O.W. 64 feet, four-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

3.1 **Zone Case 3257-Q:** AMD Engineering, LLC for 1585 Development, LLC, request for a zone change from Low Density Single-Family District (SF-2) to Medium Density Residential District (MDR), at:

- Generally located west of Elgin Avenue and north of 137th Street on approximately 34.61 acres of unplatted land out of Block AK, Section 1.

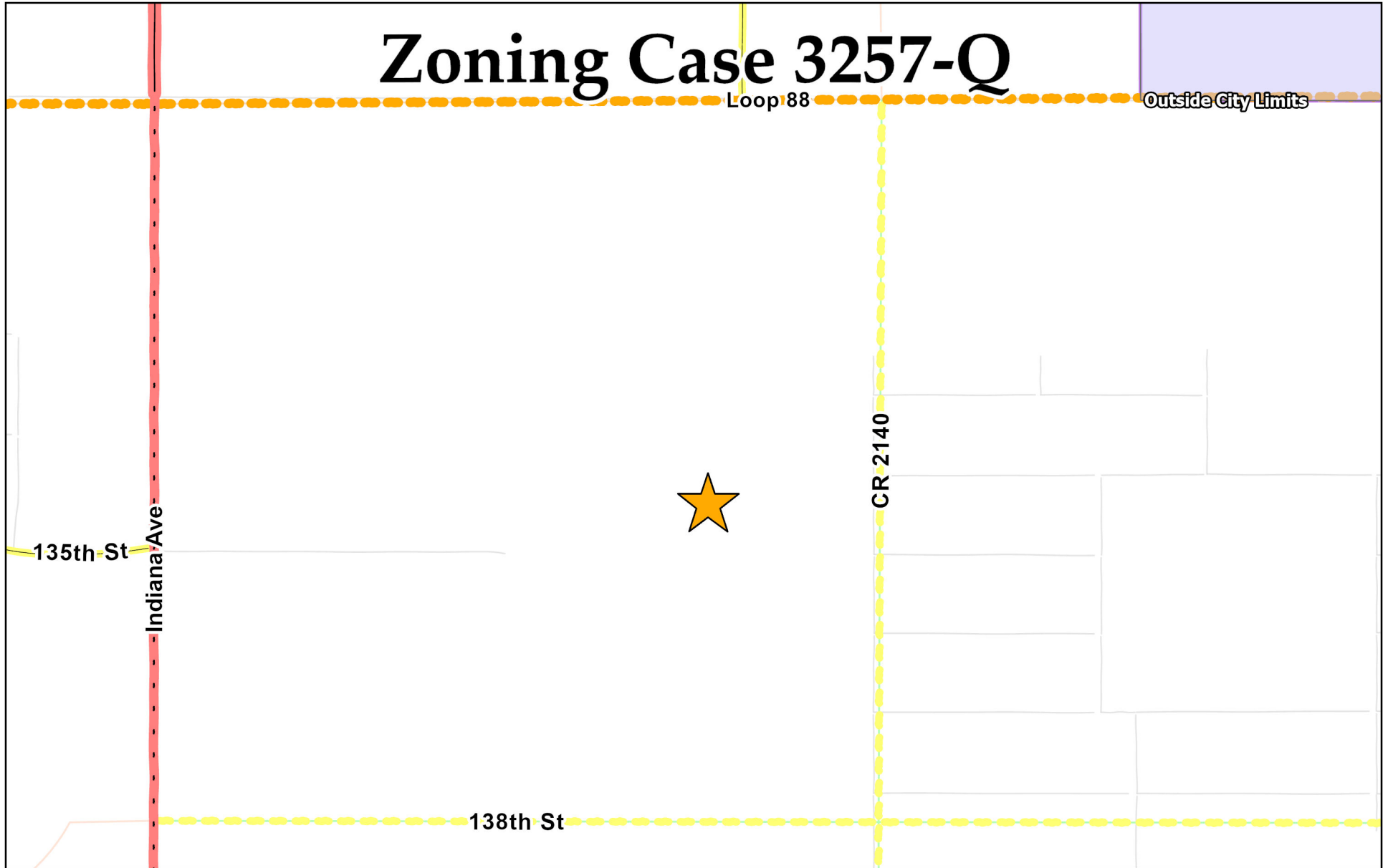
PLANNER CASSIE BERMEA gave a presentation and answered questions from the Commission. Staff recommended approval of the request.

APPLICANT CORY DULIN, AMD Engineering, 6515 68th Street, gave comments about the request and answered questions from the Commission.




No one appeared to speak in favor or in opposition.

In the matter of **Zone Case 3257-Q**, a motion was made by **SUSAN TOMLINSON** and seconded by **ZACH SAWYER** to approve the request as presented. The Commission voted 8 (in favor) to 0 (in opposition) to approve the motion. The case will be forwarded to City Council for consideration.




Zoning Case 3257-Q





Collector

-  Completed
-  Partial
-  Future

Minor Arterial

-  Completed
-  Partial
-  Future




Modified Arterial

-  Partial
-  Future

Principal Arterial

-  Completed
-  Partial
-  Future

Freeway

-  Completed
-  Partial
-  Proposed Outer Loop



Date Exported: September 2024

PZC Mailout Notifications Received



Legend

◆ LocatorPnt3257_Q

□ <all other values>

Notification Result

□ In Favor

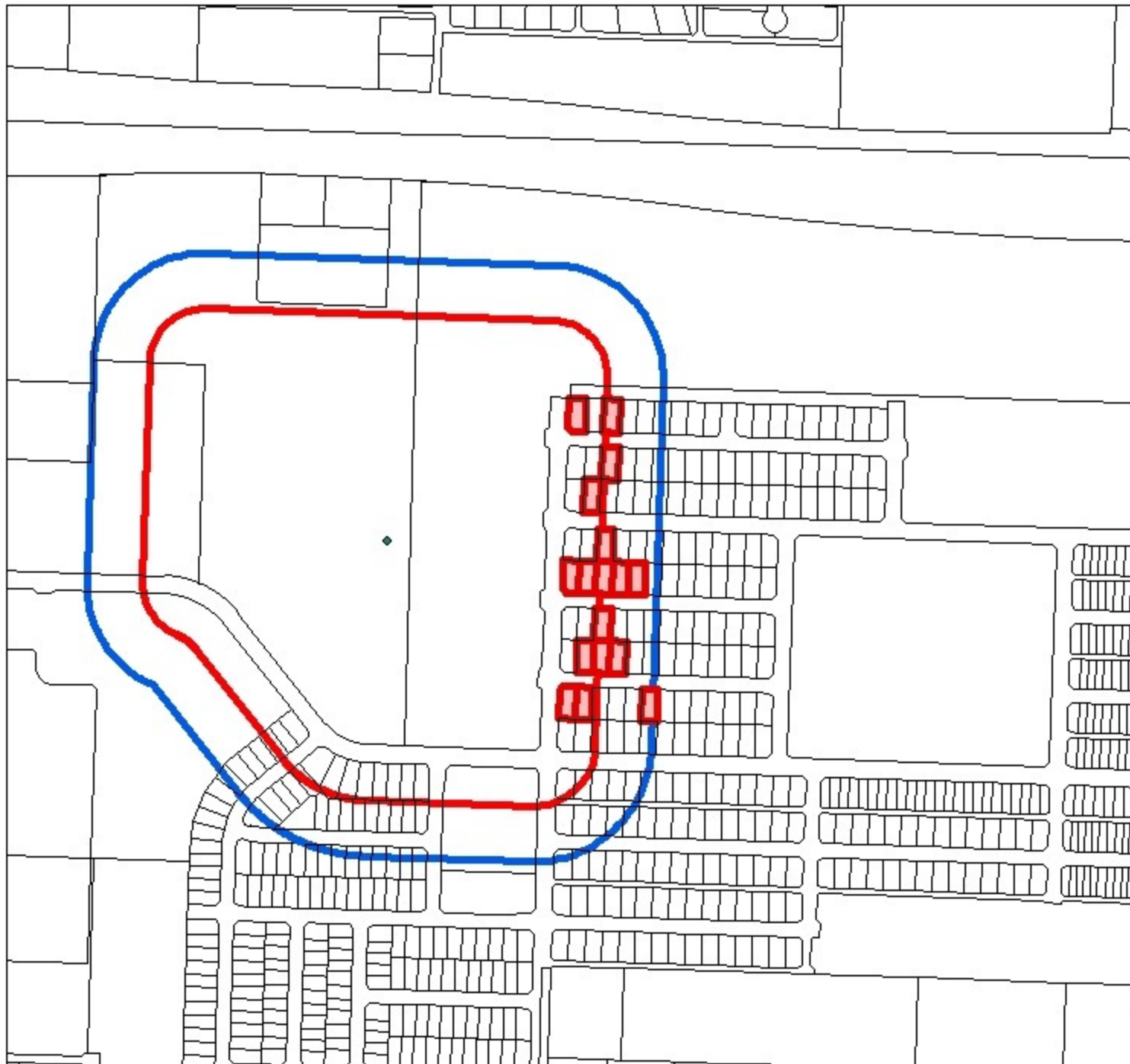
□ No Feedback

□ Opposed

□ MailoutBuffer3257_Q_400ft

□ MailoutBuffer3257_Q_200ft

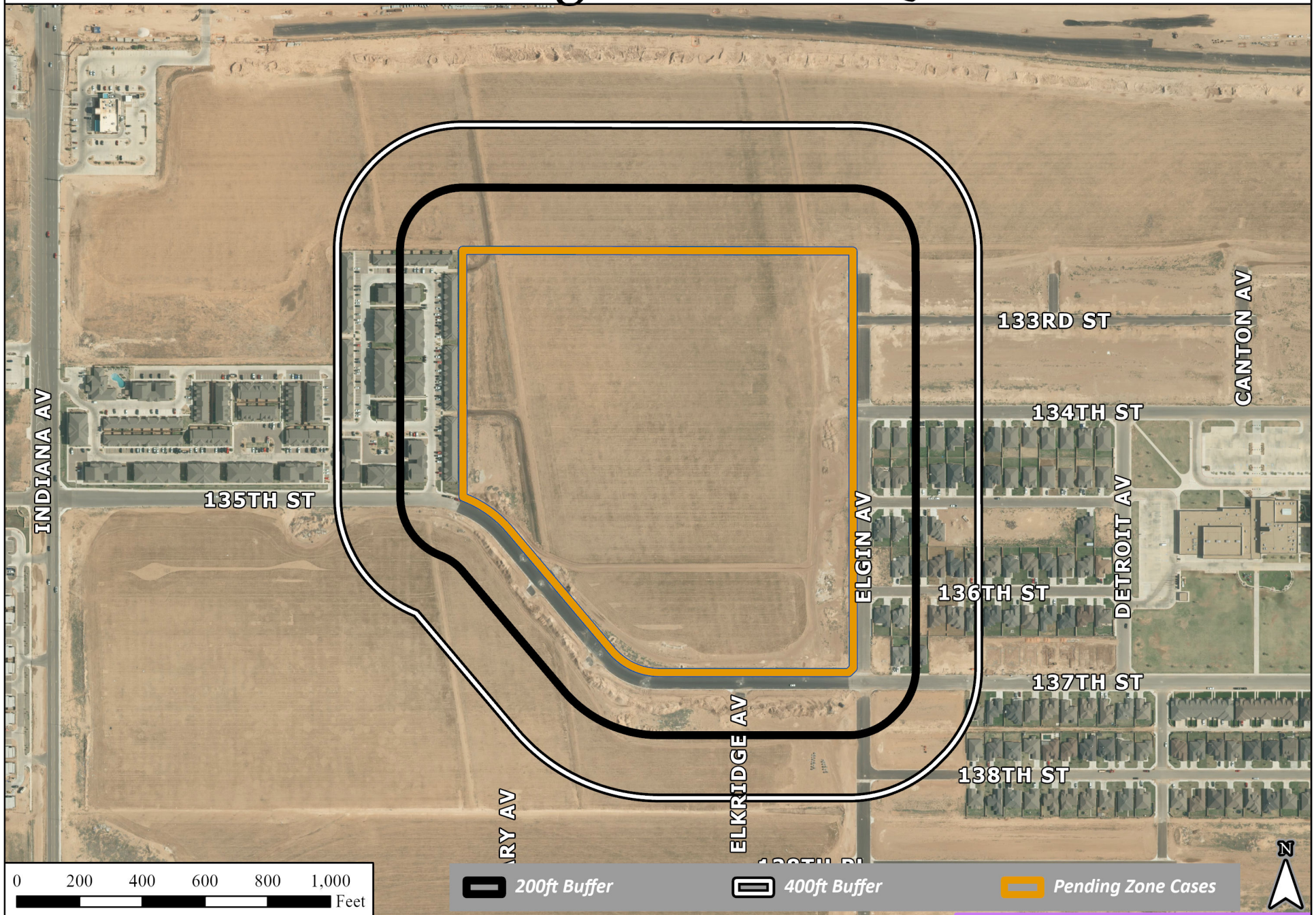
□ LCAD.DBO.TaxParcel

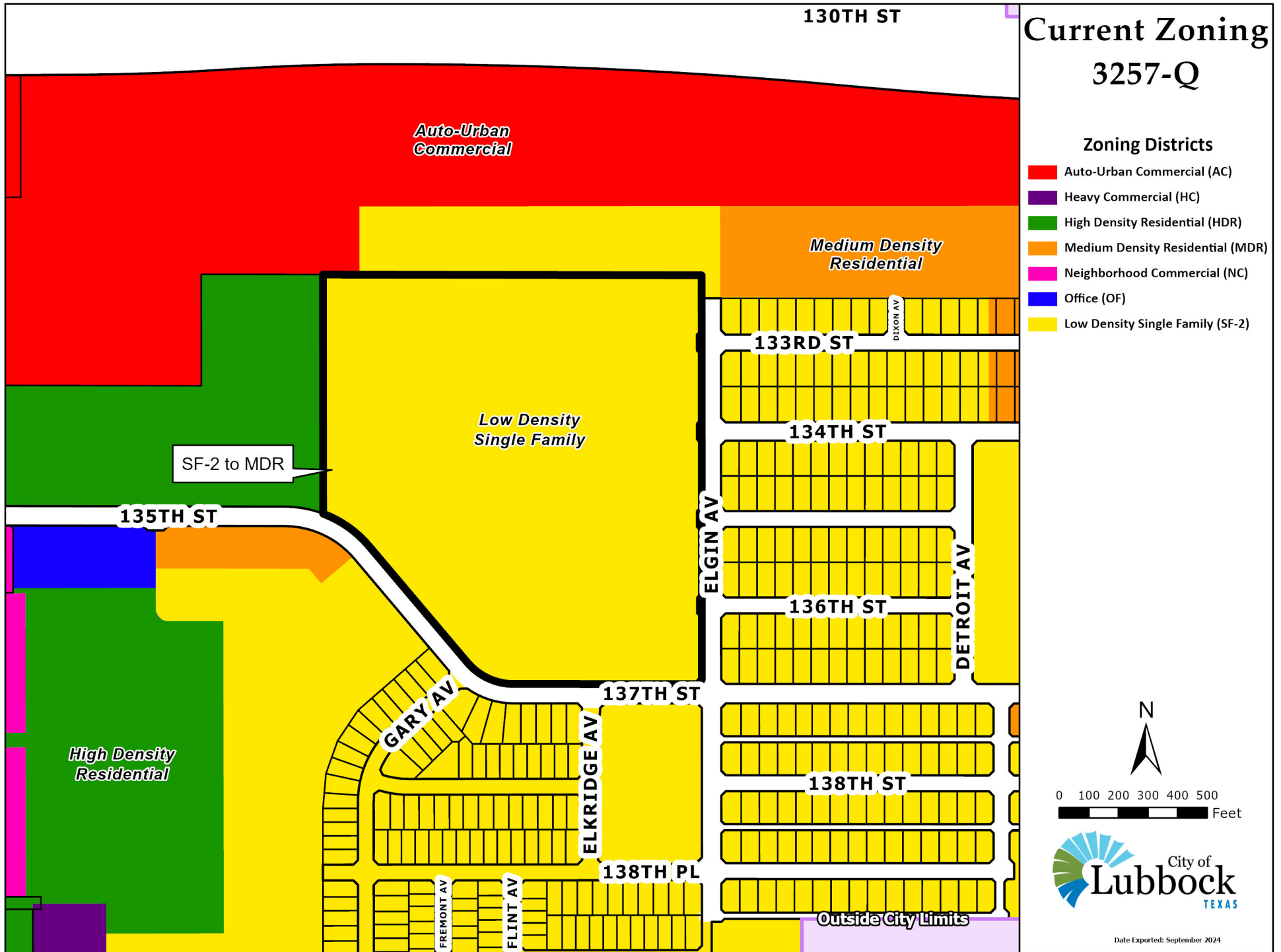


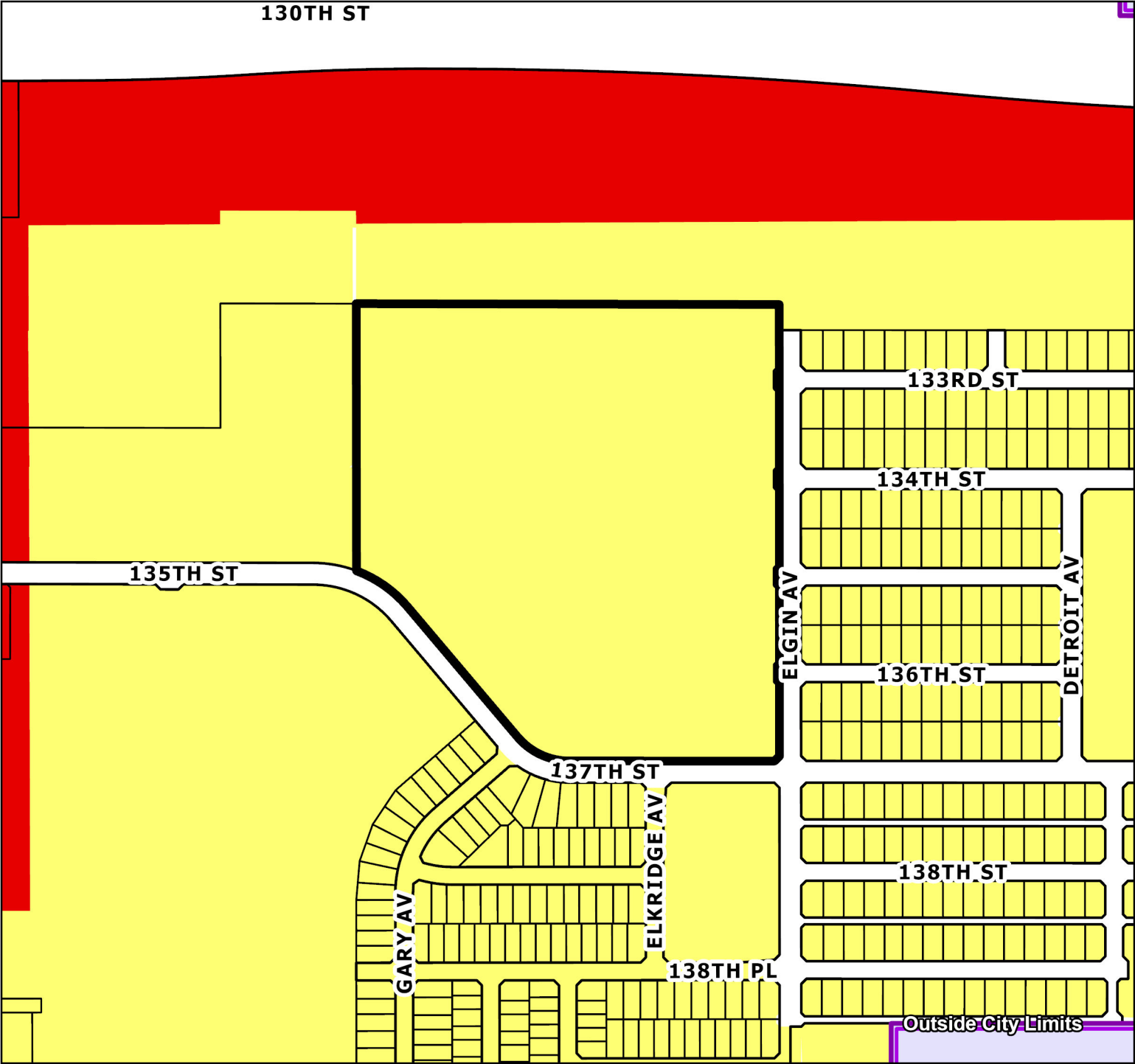
0 315 630 1,260 Feet

Created by Planning Department
Date: 11/13/2024

Zoning Case 3257-Q







Future Land Use Plan
Case 3257-Q

- Commercial
- Residential Low Density



0 100 200 300 400 500
Feet





West View.



East View.



North View.



South View –Subject Property

3257-Q



Lubbock Planning Department
PO Box 2000 / 1314 Avenue K
Lubbock, TX 79457
APPLICATION FOR ZONING CHANGE

Project Information

Location or Address: NW Corner of 137th Street and Elgin Avenue
Lots/Tracts: _____
Survey & Abstract: Section 1, Block AK
Metes and Bounds Attached: Yes ☒ No ☐ Total Acreage of Request: 34.61
Existing Land Use: Undeveloped Existing Zoning: SF-2
Requested Zoning: Medium Density Residential (MDR)
If property is not subdivided, will a preliminary plat be submitted? Yes ☒ No ☐

Representative/Agent Information (if different from owner)

Firm Name: AMD Engineering, LLC
Name: Will Stephens
Address: 6515 68th Street, Suite 300 City: Lubbock State: TX
ZIP Code: 79424 Telephone: 806-771-5976 Email: wstephens@amdeng.com
Applicant's Signature: [Signature]
Date: 08/27/2024 Printed Name: Will Stephens

Owner Information

Firm Name: 1585 Development, LLC
Owner: same
Address: PO Box 6466 City: Lubbock State: TX
ZIP Code: 79464 Telephone: 806-543-6667 Email: tpayne3@gmail.com
Property Owner's Signature: [Signature]
Date: 8-27-24 Printed Name: Thomas Payne

Preparer Information

Preparer's Signature: [Signature]
Date: 08/27/2024 Printed Name: Will Stephens

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.



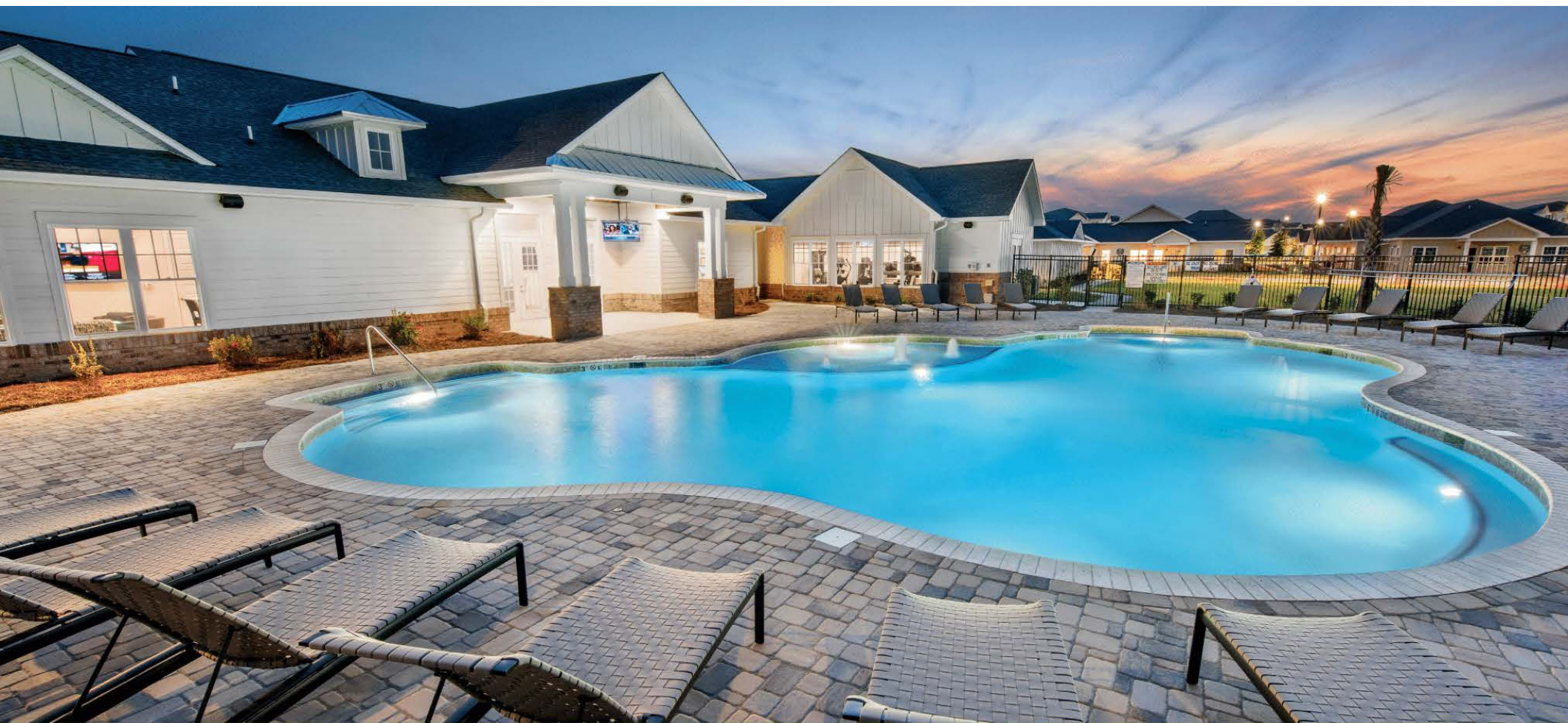


4201

4200
4201-4204















City of Lubbock, TX
Planning Department
Planning and Zoning Commission
Reply Form

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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.: **3257-0**

In Favor

Opposed



Reasons and/or Comments:

Print Name

Signature:

Address:

Address of Property Owned:

Phone Number:

Email:

Sarah Klassen

2914 133rd St
2914 133rd St
432-209-8169
s.klassen1619@gmail.com

Zone Case Number: **3257-Q**

R339916

Recipient 4 of 72

KLASSEN SARAH & ABRAHAM

2914 133RD ST

LUBBOCK TX 79423

RECEIVED
SEP 24 2024
BY: _____

City of Lubbock, TX
Planning Department
Planning and Zoning Commission
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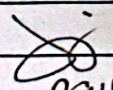
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Please check one of the following to indicate if you are in favor of, or opposed to, the zone change requested by: P&Z Case No.: **3257-0**

In Favor

Opposed

Reasons and/or Comments:

Print Name JILL POGOY
Signature: 
Address: 2915 136TH ST. LUBBOCK TX 79423
Address of Property Owned: 2915 136TH ST. LUBBOCK TX 79423
Phone Number: _____
Email: jill_uy-pogoy@yahoo.com.ph
Zone Case Number: **3257-Q** R339879 Recipient 17 of 72
POGOY, JILL UY
2915 136TH ST
LUBBOCK TX 79423

City of Lubbock, TX
Planning Department
Planning and Zoning Commission
Reply Form

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In Favor

Opposed

Reasons and/or Comments:

We believe our single-family homes will be significantly affected in home values going downward. Also the land marked off for the zone change includes the area we were told would be our community pool and walking trails. If the zone change passes, it will destroy one of the main reasons we purchased our home here! We would be left with nothing & that's not fair to the 100's of homeowners that have already purchased our homes.

Print Name

ROBERT & Toi Forswall

Signature:

Toi Forswall

Address:

2920 136th Street Lubbock 79423

Address of Property Owned:

2920 136th Street

Phone Number:

214-914-5584

682-265-7361

Email:

toiforswall@gmail.com

rforswall@gmail.com

Zone Case Number: **3257-Q**

R339870

Recipient 20 of 72

FORSWALL ROBERT G & TOI B

2920 136TH ST

LUBBOCK

TX 79423

City of Lubbock, TX
Planning Department
Planning and Zoning Commission
Reply Form

P&Z Case No.: 3257-0

In favor

Opposed X

Reasons and/or comments:

- lower home value
- Increased traffic in already congested area
- takeaway promised HOA amenities
- Less safe for families

Name: Courtney Stanley

Signature: Courtney Stanley

Address: 2705 138th ST. Lubbock, TX 79423

Address of property owned: [↑] same

Phone: 714-313-9937

email: c-stanley55@yahoo.com

City of Lubbock, TX
Planning Department
Planning and Zoning Commission
Reply Form

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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.: **3257-0**

In Favor

Opposed

X

Reasons and/or Comments:

#1- Opposed due to decreased property values

#2- bought and built in this subdivision as the developer plans showed all single family homes + amenities

#3- ↑ traffic with delays to get out of neighborhood as it is.

Print Name

Kayla Crowell

Signature:

KCrowell

Address:

2921 135th St. Lubbock 79423

Address of Property Owned:

Owned by Kayla + Colten Crowell

Phone Number:

480-414-5541

Email:

KaylaJoe3@live.com

2921 135th St, Lubbock, 79423

Owned by Kayla + Colten Crowell
+ occupied

City of Lubbock, TX
Planning Department
Planning and Zoning Commission
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In Favor ☐

Opposed ☒

Reasons and/or Comments:

Print Name

Kevin Cortez

Signature:



Address:

2914 135th Lubbock, TX 7943

Address of Property Owned:

" "

Phone Number:

806-543-3255

Email:

kevinasc1234@yahoo.com

City of Lubbock, TX
Planning Department
Planning and Zoning Commission
Reply Form

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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.: **3257-0**

In Favor

Opposed



Reasons and/or Comments:

Print Name Brittney Rubio
Signature: BRubio
Address: 2922 135th St.
Address of Property Owned: _____
Phone Number: 806-401-2632
Email: fordbrittney09@hotmail.com

Zone Case Number: **3257-Q**

R339845

Recipient 56 of 72

RUBIO MICHAEL A & BRITTNEY A

2922 135TH ST

LUBBOCK TX 79423

City of Lubbock, TX
Planning Department
Planning and Zoning Commission
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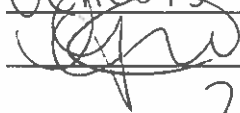
Please check one of the following to indicate if you are in favor of, or opposed to, the zone change requested by: P&Z Case No.: **3257-O**

In Favor ☐

Opposed ☒

Reasons and/or Comments:

There is insufficient traffic development, causing unsafe conditions. Additionally, when the developer sold the properties the development was claimed to be ~~re~~ low-density residential.

Print Name Genesis Crowe
Signature: 
Address: 2719 138th St, Lubbock, Tx 79423
Address of Property Owned: 2719 138th St Lubbock, Tx 79423
Phone Number: 254-537-3764
Email: genesis27000@gmail.com

I am opposed to P+Z Case No:
3257-0

I do not want to see a multifamily property in place in this neighborhood. I would like to see the development complete as it was shown in February 2023 when I purchased my home.

Gretchen Koen

Gretchen Koen

2918 135th Street Lubbock, TX 79423

2918 135th Street Lubbock, TX 79423

(806) 790-3237

gquebe24@yahoo.com

City of Lubbock, TX
Planning Department
Planning and Zoning Commission
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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.: **3257-0**

In Favor

Opposed

X

* why wasn't this notice mailed to everyone in the neighborhood *

Reasons and/or Comments:

We bought in this area after we were shown the developer plans of single family homes. This proposal will bring down the value of our properties; it will decrease the appeal of our community. As it is today, it can take anywhere from 20-30 minutes to turn out of our neighborhood; get across 130th via Indiana or University. A complex of this size will only worsen what is already unsafe.

Print Name

Josh / Shannon Gannon

Signature:

Josh Gannon Shannon A Gannon

Address:

2920 135th St. Lubbock 79423

Address of Property Owned:

Owned 2920 135th St. 79423

Phone Number:

970-218-9857

Email:

Swagner.rn@gmail.com

Zone Case Number: **3257-Q**

R339844

Recipient 7 of 72

GANNON SHANNON A & JOSHUA M

2920 135TH ST

LUBBOCK

TX 79423

City of Lubbock, TX
Planning Department
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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.: **3257-0**

In Favor

Opposed

Reasons and/or Comments:

- #1- Opposed to decreased property values
- #2- bought in this subdivision as developer plans showed all single family homes surrounding our lot. No Alleys, cleaner community appearance w/ amenities
- #3 traffic is horrible as it is, large resident building will only worsen the situation

Print Name

Signature:

Address:

Address of Property Owned:

Phone Number:

Email:

Zone Case Number: **3257-Q**

R339847

Recipient 26 of 72

WAGNER MARK & BRENDA TRUST

MARK A & BRENDA L WAGNE 2926 135TH ST

LUBBOCK TX 79423

City of Lubbock, TX
Planning Department
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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.: **3257-0**

In Favor

Opposed



Reasons and/or Comments:

Deminish Property Value
More traffic
Safety concerns due to more traffic
Not what was communicated by the developer
and HWA. ~~communication~~ original plans are what
sold most of the residents on Viridian.

Print Name

Kelsey Wagner

Signature:

Kelsey Wagner

Address:

2925 136th St.

Address of Property Owned:

2925 136th St.

Phone Number:

303 908 6443

Email:

Kelwag24@gmail.com

Zone Case Number: **3257-Q**

R339874

Recipient 29 of 72

WAGNER, KELSEY

2925 136TH ST

LUBBOCK TX 79423

City of Lubbock, TX
Planning Department
Planning and Zoning Commission
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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.: **3257-0**

In Favor _____

Opposed ☒

Reasons and/or Comments:

- Diminish of property value
- Not what promised from HOA
- More traffic

Print Name Andrew & Monica Guerra
Signature: Monica Guerra
Address: 2923 136th St.
Address of Property Owned: 2923 136th St.
Phone Number: 806 891-7545
Email: monica.guerra305@gmail.com

Zone Case Number: **3257-Q**
GUERRA ANDREW R & MONICA M
2923 136TH ST
LUBBOCK TX 79423

R339875

Recipient 22 of 72

City of Lubbock, TX
Planning Department
Planning and Zoning Commission
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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.: **3257-0**

In Favor

Opposed



Reasons and/or Comments:

- 1) This is where the amenities are to be for our neighborhood. why do we pay an HOA if these would possibly go away? We chose this neighborhood because of the amenities that would eventually come.
- 2) As a real estate agent, this would drastically affect our property values in a negative way.
- 3) Traffic is currently awful in this neighborhood when trying to leave. Having more housing than what it's meant for will only increase the problem rather than helping with the issue.

Print Name

RYAN BRAQUET

Signature:

Ryan Braquet

Address:

2913 135th St. LUBBOCK, TX 79423

Address of Property Owned:

2913 135th St. LUBBOCK, TX 79423

Phone Number:

806-470-2176

Email:

ryan.braquet@gmail.com

City of Lubbock, TX
Planning Department
Planning and Zoning Commission
Reply Form

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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.: **3257-0**

In Favor ☐

Opposed ☒

Reasons and/or Comments:

One reason for us choosing this HOA Community was for the attractive Park and Swimming Pool Parks.

Print Name Wendy A. Perez
Signature: Wendy A. Perez
Address: 2902 137th St. Lubbock, TX 79423
Address of Property Owned: 2902 137th St Lubbock, TX 79423
Phone Number: 875-317-4756
Email: heartwendy1@hotmail.com

City of Lubbock, TX
Planning Department
Planning and Zoning Commission
Reply Form

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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.: **3257-0**

In Favor

☐

Opposed

☒

Reasons and/or Comments:

Print Name Alexis Favela
Signature: *AJ F*
Address: 2903 134th St. Lubbock, TX 79423
Address of Property Owned: 2903 134th St. Lubbock, TX 79423
Phone Number: 915-316-5642
Email: ajfavela21@yahoo.com

City of Lubbock, TX
Planning Department
Planning and Zoning Commission
Reply Form

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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.: **3257-0**

In Favor ☐

Opposed ☒

Reasons and/or Comments:

Print Name Logan Shoemaker
Signature: [Signature]
Address: 2921 134th St Lubbock, TX 79422
Address of Property Owned: 2921 134th St
Phone Number: (208) 860-3242
Email: logan.shoemaker.15@gmail.com

Zone Case Number: **3257-Q** R339824 Recipient 1 of 72
STRICKLAND COREY & SHOEMAKER LOGAN
2921 134TH ST
LUBBOCK TX 79423

City of Lubbock, TX
Planning Department
Planning and Zoning Commission
Reply Form

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In Favor ☐

Opposed ☒

Reasons and/or Comments:

We didn't buy our home to have apartments across the street. Where is the pool & hiking trails. What is our HOA money going for. We have been sold out by the planner. Very upset!

Print Name

KERRY ANN CONRAD

Signature:

Kerry Ann Conrad

Address:

12924 136th St.

Address of Property Owned:

Same as above

Phone Number:

(806) 281-2600

Email:

kconrad38@yahoo.com

City of Lubbock, TX
Planning Department
Planning and Zoning Commission
Reply Form

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In Favor ☐

Opposed ☒

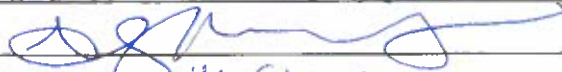
Reasons and/or Comments:

False claims were made by the HOA Hawkize Property Management. We will not be given our HOA promised amenities.

Print Name

Amanda Nauerf

Signature:



Address:

2924 135th Street

Address of Property Owned:

same

Phone Number:

806-781-9390

Email:

ajgranger21@gmail.com

City of Lubbock, TX
Planning Department
Planning and Zoning Commission
Reply Form

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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.: **3257-0**

In Favor ☐

Opposed ☒

Reasons and/or Comments:

Print Name

Sherri Faulkner

Signature:

Sherri Faulkner

Address:

2718 138th Street
11

Address of Property Owned:

Phone Number:

804 205 2013

Email:

She sfaulkner2240@gmail.com

City of Lubbock, TX
Planning Department
Planning and Zoning Commission
Reply Form

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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.: **3257-0**

In Favor

Opposed

Reasons and/or Comments:

my property - "Single family - House 2918 133rd"
was sold to me to be a single housing
community
it needs to be for single family Houses!
No Medium Density Residential District!!

Print Name

Signature:

Address:

Address of Property Owned:

Phone Number:

Email:

Terry L. Robert O. & Jennifer Hamilton
Terry L. Weaver
2918 133rd St (and 3015 31st St Lubbock 79410)
2918 133rd St 79423
806 252-0537
tweaver@yahoo.com

Zone Case Number: **3257-Q**

R339914

Recipient 13 of 72

WEAVER TERRY L & ROBERT O &

JENNIFER HAMILTON

3015 31ST ST

LUBBOCK

TX

79410



City of Lubbock, TX
Planning Department
Planning and Zoning Commission
Reply Form

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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.: **3257-0**

In Favor

Opposed

X

Reasons and/or Comments:

Traffic is already too high for infrastructure.
This neighborhood is full of young children, and the increased population poses a safety risk. This would also devalue the property within jurisdiction.

Print Name

Jeremy Hobbs

Signature:

Jeremy Hobbs

Address:

2913 133rd St

Address of Property Owned:

2913 133rd Street

Phone Number:

806-367-3371

Email:

jdobbs93@gmail.com

Zone Case Number: **3257-Q**

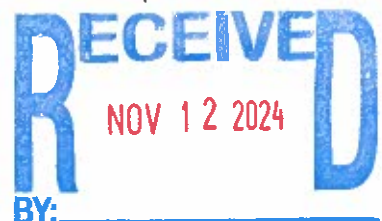
R339948

HOBBS JEREMY & EVELYN

2913 133RD ST

LUBBOCK TX 79423

Recipient 5 of 72



Information

Agenda Item

Public Hearing - Planning (District 4): Consider a request for Zone Case 3511, a request of AMD Engineering, LLC for BARCCC Ventures, LLC – Series C, and Crowtracks, LLC, for a zone change from Low Density Single-Family District (SF-2) to Heavy Commercial District (HC), at 3201 116th Street, located south of 116th Street and east of Indiana Avenue, on 29.61 acres of unplatted land out of Block E-2, Section 21, 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 November 7, 2024, and recommended approval of the request by a unanimous vote of 8-0-0.

Fiscal Impact

None

Staff/Board Recommending

Erik Rejino, Assistant City Manager
Kristen Sager, Director of Planning
Planning and Zoning Commission

Attachments

Ordinance 3511
Staff Report 3511
Documentation 3511

ORDINANCE NO. _____

AN ORDINANCE AMENDING ZONING ORDINANCE NO. 2023-00054 AND THE OFFICIAL MAP OF THE CITY OF LUBBOCK MAKING THE FOLLOWING CHANGES: ZONE CASE NO. 3511; A ZONING CHANGE FROM SF-2 TO HC ZONING DISTRICT AT 3201 116TH STREET, LOCATED SOUTH OF 116TH STREET AND EAST OF INDIANA AVENUE, ON 29.61 ACRES OF UNPLATTED LAND OUT OF BLOCK E-2, SECTION 21, 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 39.07.007 of the Unified Development Code, 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. 3511

SECTION 1. THAT Ordinance No. 2023-O0054 and the Official Zoning Map are amended as follows:

A change of zoning under the provisions of Section 39.07.032 of the Unified Development Code of the City of Lubbock from **SF-2** to **HC** zoning district at **3201 116th Street, located south of 116th Street and east of Indiana Avenue, on 29.61 acres of unplatted land out of Block E-2, Section 21, 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 39.09.004 of the Unified Development Code 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 _____.

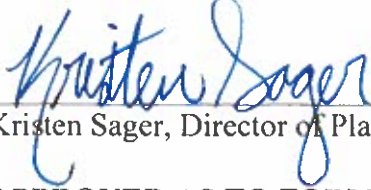
Passed by the City Council on second reading on _____.

MARK W. MCBRAYER, 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/ZC3511
November 7, 2024



Exhibit "A"

AMD ENGINEERING, LLC

DESCRIPTION FOR A ZONING CHANGE REQUEST IN
SECTION 21, BLOCK E2,
LUBBOCK COUNTY, TEXAS

(Sheet 1 of 2, Sketch of tract attached as Sheet 2)

METES AND BOUNDS DESCRIPTION of a 29.61-acre tract of land located in Section 21, Block E2, Lubbock County, Texas, prepared for Zone Change Purposes only and being further described as follows:

BEGINNING at a point that is the northwest corner of Section 21, Block E-2 bears N. $01^{\circ}49'52''$ E. a distance of 689.27' and N. $88^{\circ}10'08''$ W. a distance of 1420.00'.

THENCE S $88^{\circ}12'35''$ E an approximate distance of 643.11 feet;

THENCE N $01^{\circ}46'41''$ E an approximate distance of 30.00 feet;

THENCE S $88^{\circ}13'52''$ E an approximate distance of 351.34 feet;

THENCE S $01^{\circ}44'30''$ W an approximate distance of 1320.32 feet;

THENCE N $88^{\circ}12'24''$ W an approximate distance of 660.03 feet;

THENCE N $01^{\circ}09'02''$ E an approximate distance of 224.98 feet;

THENCE N $39^{\circ}25'07''$ W an approximate distance of 852.94 feet;

THENCE N $01^{\circ}47'19''$ E an approximate distance of 423.51 feet to the point of beginning and containing approximately 29.61 acres.

This description was prepared for the purposes of a zoning request and does not represent a survey made upon the ground.

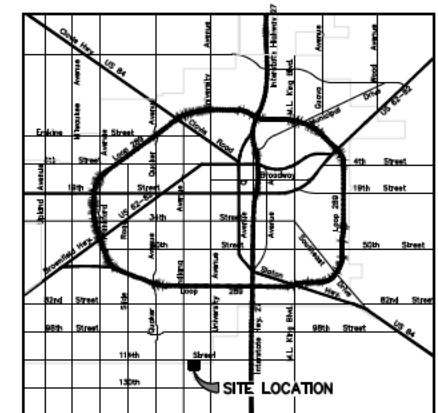
Prepared for: CROWTRACKS, LLC
October 23, 2024

ZONE CHANGE APPLICATION EXHIBIT

A 29.61 ACRE TRACT OF LAND
LOCATED IN SECTION 21, BLOCK E2,
LUBBOCK COUNTY, TEXAS

NOTES:
SCALE: 1" = 200'

 - ZONING REQUEST HEAVY COMMERCIAL FROM SF-2



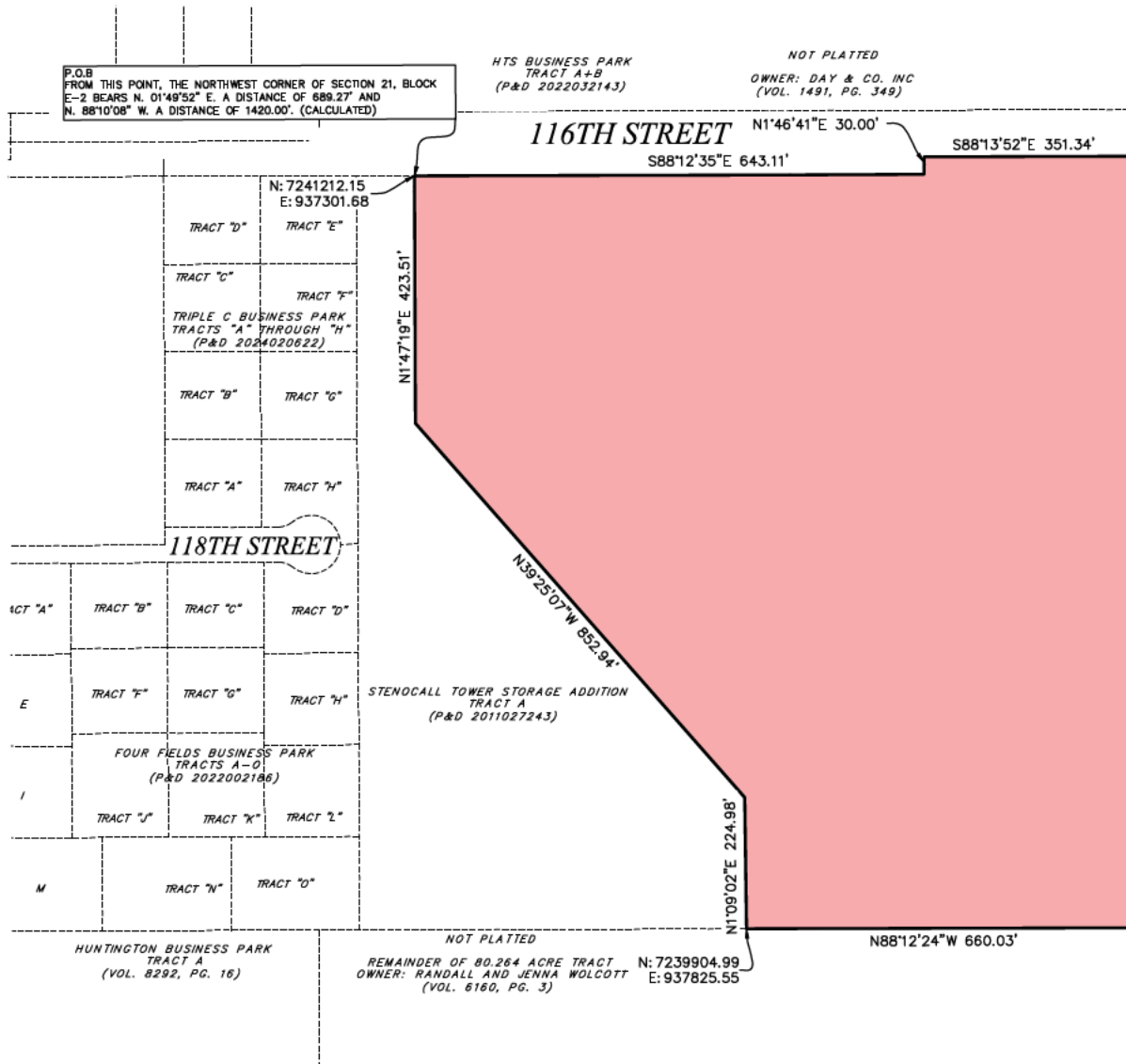
VICINITY MAP
NOT TO SCALE



SCALE: 1" = 200'



AMD CIVIL ENGINEER/IN
LAND SURVEYOR
AMD Engineering, LLC Phone: 806-771-59
6515 68th Street, Suite 300 Fax: 806-771-76
Lubbock, TX 79424 TBPE Reg. # F-91
Accuracy • Efficiency • Integrity



Staff Report		Zone Case 3511
City Council Meeting		December 3, 2024

Applicant AMD Engineering, LLC

Property Owner BARCCC Ventures, LLC - Series C and Crowtracks, LLC

Council District 4

Recommendations

- Staff recommends approval of the request.

Prior Board or Council Action

- December 7, 2006, Ordinance No. 2006-00121: The subject property was annexed into city limits and zoned Transition District (T).
- May 9, 2023, Ordinance No. 2023-00054 (effective October 1, 2023): The subject property was rezoned from T to Low Density Single-Family District (SF-2) with the adoption of the Unified Development Code (UDC).
- November 7, 2024, Zone Case 3511: The Planning and Zoning Commission recommended approval of a request for a zone change from SF-2 to Heavy Commercial District (HC) by a vote of 8-0-0.

Notification Summary

- Notifications Sent: 17
- Received In Favor: 3
- Received In Opposition: 0

Site Conditions and History

The subject property is currently unplatted. Previously, a golf facility was constructed on the property, with several small structures remaining.

Adjacent Property Development

The surrounding properties are zoned HC to the west and south, and SF-2 to the north. The subject property is bordered by the city limits to the east. Mini-warehouses are developed on property to the west, with vacant land to the north and south. A contractor yard is located to the east, outside of city limits.

Zoning Request and Analysis

Item Summary

The subject property is addressed as 3201 116th Street, located south of 116th Street and east of Indiana Avenue, on 29.61 acres of unplatted land out of Block E-2, Section 21. The applicant is requesting a zone change from SF-2 to HC.

Current zoning: Low Density Single-Family District (SF-2)

Requested zoning: Heavy Commercial District (HC)

Intent Statements

The intent of the Low Density Single-Family (SF-2) district is to provide two types of residential subdivisions:

- A. Conventional. Smaller to moderately-sized lots for dwellings on public utilities. Any open space is located on private lots.

- B. Cluster. Clustering of smaller-sized lots for dwellings with an increased percentage of common open space compared to cluster developments in the SF-1 district to maintain the intended character of the district while providing for buffering between lower and higher density adjacent neighborhoods, as well as for recreational amenities and resource protection.

The intent of the proposed Heavy Commercial District (HC) is to provide “for development of heavy vehicle repair, wholesale trade, and warehousing and freight movement uses that typically are characterized by outside storage of materials or merchandise. The district should be located away from residential areas or, if unavoidable, should be heavily buffered.”

Traffic Network/Infrastructure Impacts

The location is along 116th Street which is designated as a Local Street, by the Master Thoroughfare Plan, 2018. Local Streets provide access to smaller, destination oriented areas, such as neighborhoods, subdivisions or local business districts.

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 Low Density Residential land uses. While this request does not conform to this designation, it would be appropriate considering the existing adjacent zoning districts and land uses. Therefore, this request is in moderate conformance with the Comprehensive Plan principles.

Conformance with Zoning Ordinance

The proposed zone change is in conformance with the zoning ordinance.

Suitability of Property for Allowed Uses

The property may be suitable for the proposed use.

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

Shane Spencer
Planner
Planning Department
806-775-2103
sspencer@mylubbock.us

Victor Escamilla
Planning and Zoning Manager
Planning Department
806-775-3029
vescamilla@mylubbock.us

Case Information: Zone Case 3511



Allowable Uses: [Heavy Commercial District \(HC\)](#)

Transportation: The proposed development has a point of access from 116th Street.

Thoroughfare	Existing	Per Thoroughfare Development Plan
116 th Street, Local Street, Complete	R.O.W. 60 feet, 2 lane, undivided, paved.	R.O.W. 60 feet, 2 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

3.2 **Zone Case 3511:** AMD Engineering, LLC for BARCCC Ventures, LLC – Series C and Crowtracks, LLC, request for a zone change from Low Density Single-Family District (SF-2) to Heavy Commercial District (HC), at:

- 3201 116th Street, located south of 116th Street and east of Indiana Avenue, on 29.61 acres of unplatted land out of Block E-2, Section 21.

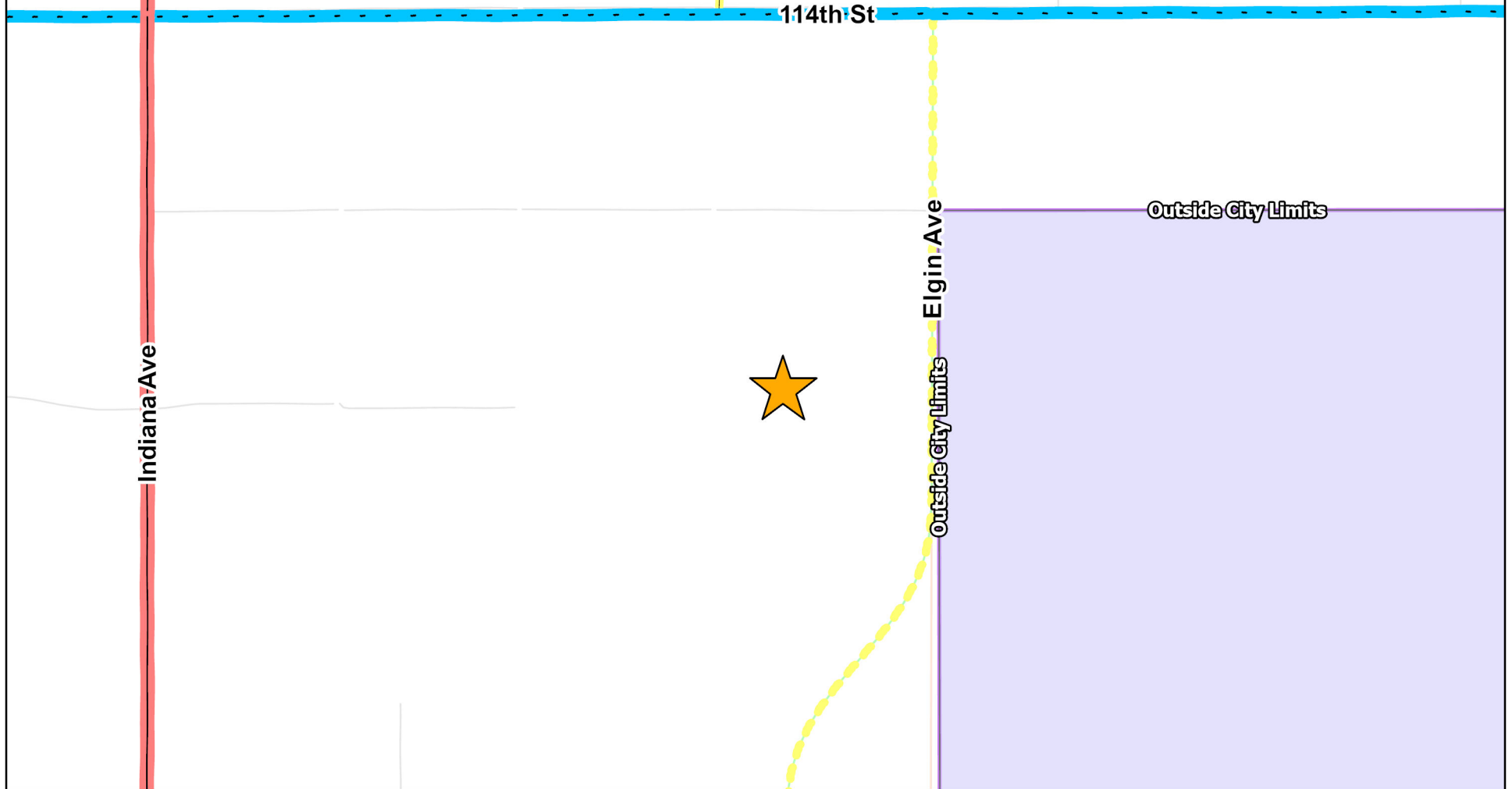
PLANNER SHANE SPENCER gave a presentation and answered questions from the Commission. Staff recommended approval of the request.

APPLICANT CORY DULIN, AMD Engineering, 6515 68th Street, gave comments about the request and answered questions from the Commission.




No one appeared to speak in favor or in opposition.

In the matter of **Zone Case 3511**, a motion was made **BRANDON HARDAWAY** and seconded by **TANNER NOBLE** to approve the request as presented. The Commission voted 8 (in favor) to 0 (in opposition) to approve the motion. The case will be forwarded to City Council for consideration.




Zoning Case 3511





Collector

-  Completed
-  Partial
-  Future

Minor Arterial

-  Completed
-  Partial
-  Future




Modified Arterial

-  Partial
-  Future

Principal Arterial

-  Completed
-  Partial
-  Future

Freeway

-  Completed
-  Partial
-  Proposed Outer Loop







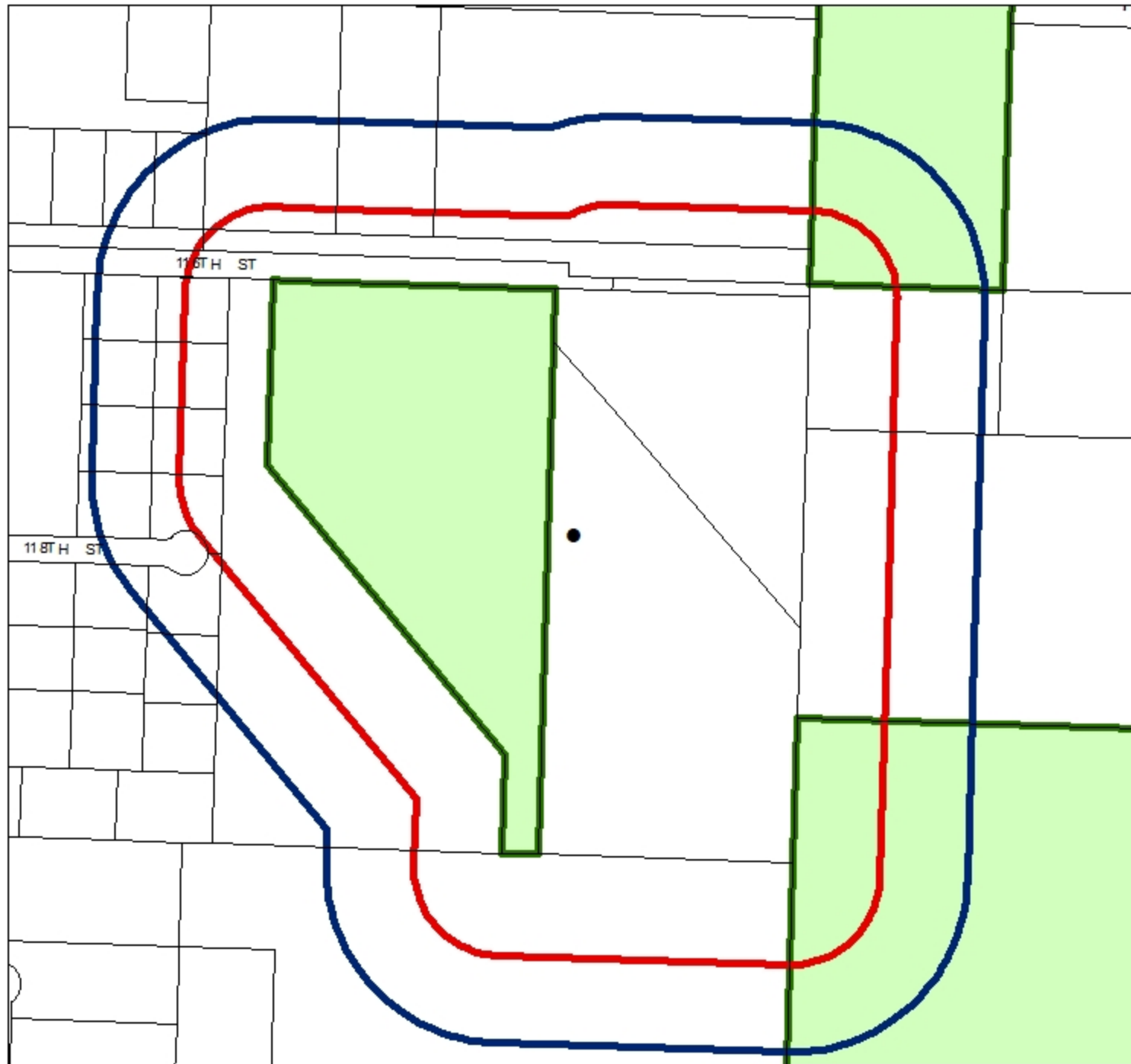
Date Exported: October 2024

PZC Mailout Notifications Received



Legend

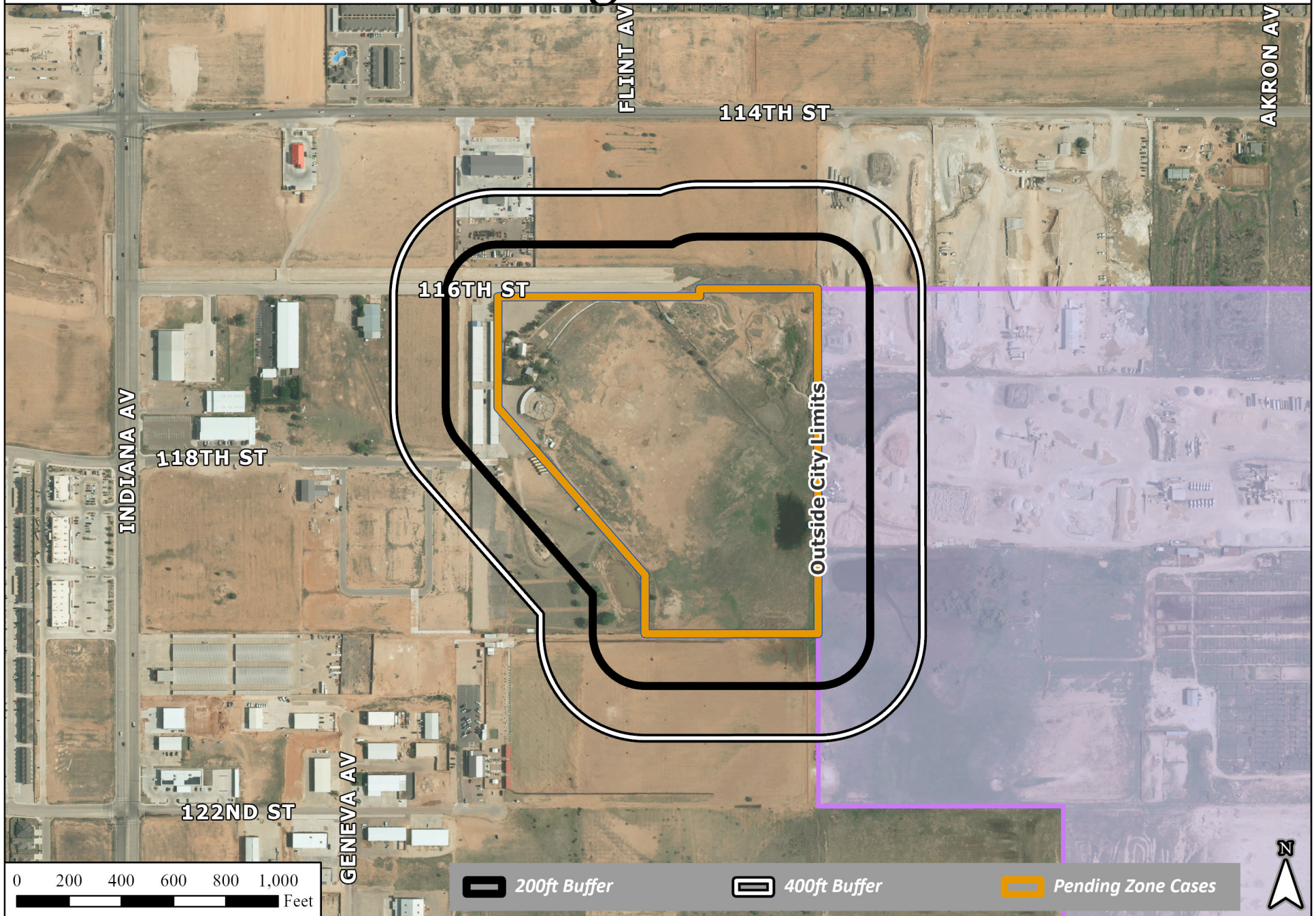
- LocatorPnt3511
-  MailoutBuffer3511_200ft
-  MailoutBuffer3511_400ft
- Notification Result**
 -  In Favor
 -  Opposed

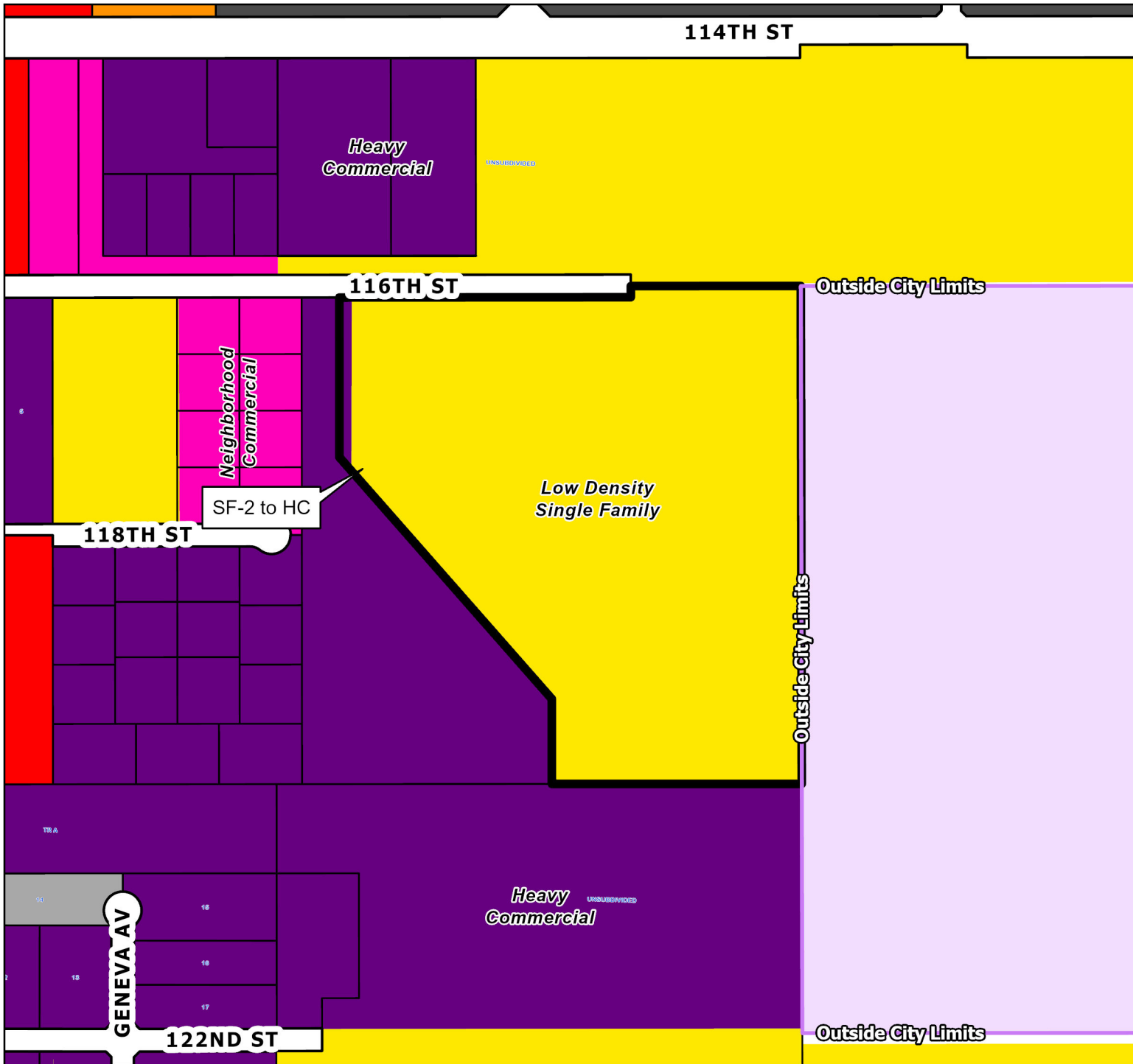


0 205 410 820 Feet

Created by Planning Department
Date: 11/5/2024

Zoning Case 3511





Current Zoning 3511

Zoning Districts

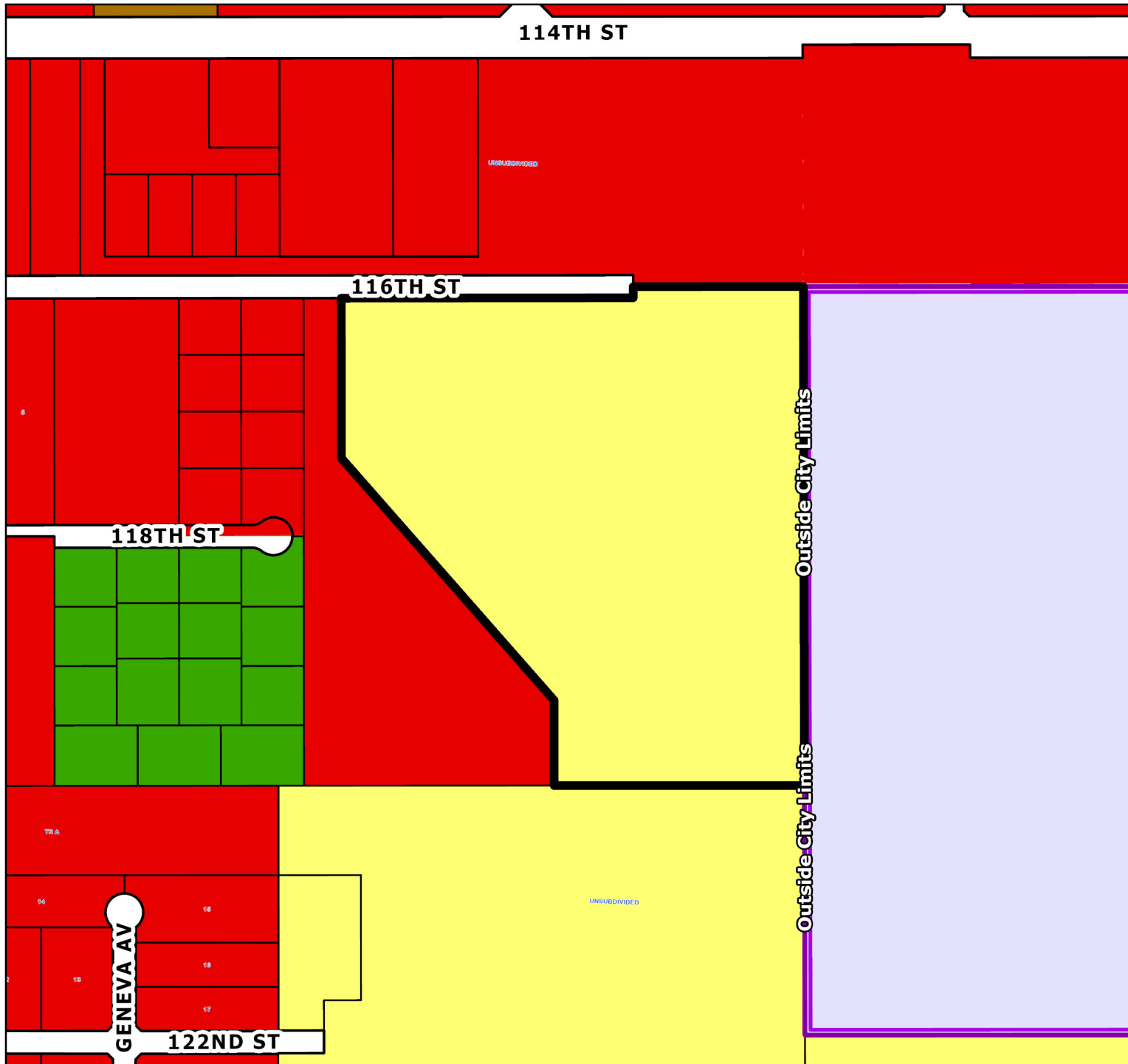
- Auto-Urban Commercial (AC)
- Heavy Commercial (HC)
- Industrial Park (IP)
- Light Industrial (LI)
- Medium Density Residential (MDR)
- Neighborhood Commercial (NC)
- Low Density Single Family (SF-2)



0 100 200 300 400 500
Feet



Date Exported: October 2024



Future Land Use Plan Case 3511

- Commercial
- Parks
- Residential Low Density
- Residential High Density



0 100 200 300 400 500
Feet



Date Exported: October 2024

3511



View south. Subject property.



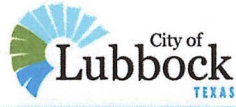
View north.



View east.



View west.



PLANNING

Lubbock Planning Department
PO Box 2000 / 1314 Avenue K
Lubbock, TX 79457

APPLICATION FOR ZONING CHANGE

Project Information

Location or Address: 3201 116th Street
 Lots/Tracts: Unplatted-BLK E2 SEC 21 AB 270 TR A1B
 Survey & Abstract: _____
 Metes and Bounds Attached: Yes ☒ No ☐ Total Acreage of Request: 29.61
 Existing Land Use: _____ Existing Zoning: SF-2
 Requested Zoning: HC
 If property is not subdivided, will a preliminary plat be submitted? Yes ☒ No ☐

Representative/Agent Information (if different from owner)

Firm Name: AMD Engineering, LLC
 Name: Will Stephens
 Address: 6515 68th St. Suite 300 City: Lubbock State: Tx
 ZIP Code: 79424 Telephone: 806-771-5976 Email: wstephens@amdeng.com
 Applicant's Signature: [Signature]
 Date: 09/27/2024 Printed Name: Will Stephens

Owner Information

Firm Name: Barccc Ventures, LLC - Series C
 Owner: Clay Cash
 Address: 7717 Milwaukee Ave STE 500-402 City: Lubbock State: Tx
 ZIP Code: 79424 Telephone: +1 (806) 548-1881 Email: _____
 Property Owner's Signature: Clay Cash
 Date: 10/1/2024 Printed Name: 10/1/2024

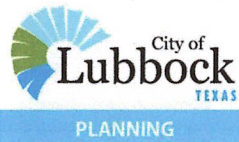
Preparer Information

Preparer's Signature: [Signature]
 Date: 09/27/2024 Printed Name: Alice Melendez

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.



Lubbock Planning Department
PO Box 2000 / 1314 Avenue K
Lubbock, TX 79457
APPLICATION FOR ZONING CHANGE

Project Information

Location or Address: 3201 116th Street
Lots/Tracts: Unplatted-BLK E2 SEC 21 AB 270 TR A1B
Survey & Abstract: _____
Metes and Bounds Attached: Yes ☒ No ☐ Total Acreage of Request: 29.61
Existing Land Use: _____ Existing Zoning: SF-2
Requested Zoning: HC
If property is not subdivided, will a preliminary plat be submitted? Yes ☒ No ☐

Representative/Agent Information (if different from owner)

Firm Name: AMD Engineering, LLC
Name: Will Stephens
Address: 6515 68th St. Suite 300 City: Lubbock State: Tx
ZIP Code: 79424 Telephone: 806-771-5976 Email: wstephens@amdeng.com
Applicant's Signature: [Signature]
Date: 09/27/2024 Printed Name: Will Stephens

Owner Information

Firm Name: CROWTRACKS LLC
Owner: Greg Reynolds
Address: 7306 Ave X Lubbock, TX 79423 City: Lubbock State: TX
ZIP Code: 79423 Telephone: 806-577-0187 Email: _____
Property Owner's Signature: Greg Reynolds 10/01/24
Date: 10/01/24 Printed Name: Greg Reynolds

Preparer Information

Preparer's Signature: [Signature]
Date: 09/27/2024 Printed Name: Alice Melendez

For City Use Only

Zone Case No: _____ Planning and Zoning Commission Date: _____
Request for zoning change from: _____ To: _____
Lots: _____ Blocks: _____
Addition: _____

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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.:** **3511**

In Favor ☒

Opposed ☐

Reasons and/or Comments:

Print Name Clay C. Cash

Signature: 

Address: 7717 Milwaukee Ave Ste 500-403 Lubbock 79424

Address of Property Owned: 3201 116th St.

Phone Number: (806) 548-1881

Email: clay@barccc.com

Zone Case Number: **3511** R321291 Recipient 17 of 17
BARCCC VENTURES LLC - SERIES C
7717 MILWAUKEE AVE STE 500-402
LUBBOCK TX 79424

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.: **3511**

In Favor ☒

Opposed ☐

Reasons and/or Comments:

Print Name

DAVID PORTAR

Signature:



Address:

10805 mi Ami Ave

Address of Property Owned:

12016 University Ave

Phone Number:

806-789-6072

Email:

GAR@lelaine@yahoo.com

Zone Case Number: **3511**

R97679

Recipient 11 of 17

STORAGE X WAREHOUSES & RV - STOCKYARDS LL

5625 COUNTY ROAD 7410

LUBBOCK TX 79424

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.:** **3511**

In Favor



Opposed



Reasons and/or Comments:

Print Name

Steve Turner

Signature:

Steve Turner

Address:

Address of Property Owned:

11820 Univ & 3001-114th

Phone Number:

806 548 3721

Email:

lonestarstoneve@nts-online.net

Zone Case Number: **3511**

R84015

Recipient 10 of 17

TURNER STEVE & WESLEY SANDERS

11820 UNIVERSITY AVE

LUBBOCK TX 79423



Information

Agenda Item

Public Hearing - Planning (District 5): Consider a request for Zone Case 3510, a request of Danny J. Everson, for a zone change from Low Density Single-Family District (SF-2) to Neighborhood Commercial District (NC), at 7508 66th Street, located north of 66th Street and west of Wausau Avenue, on approximately 3.593 acres of unplatted land out of Block AK, Section 34, 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 November 7, 2024, and recommended denial of the request by a vote of 2-6-0.

Fiscal Impact

None

Staff/Board Recommending

Erik Rejino, Assistant City Manager
Kristen Sager, Director of Planning
Planning and Zoning Commission

Attachments

Ordinance 3510
Staff Report 3510
Documentation 3510

ORDINANCE NO. _____

AN ORDINANCE AMENDING ZONING ORDINANCE NO. 2023-00054 AND THE OFFICIAL MAP OF THE CITY OF LUBBOCK MAKING THE FOLLOWING CHANGES: ZONE CASE NO. 3510; A ZONING CHANGE FROM SF-2 TO NC ZONING DISTRICT AT 7508 66TH STREET, LOCATED NORTH OF 66TH STREET AND WEST OF WAUSAU AVENUE, ON APPROXIMATELY 3.593 ACRES OF UNPLATTED LAND OUT OF BLOCK AK, SECTION 34, 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, with the Commission recommending denial of the proposed changes in zones 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 the 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 39.07.007 of the Unified Development Code, 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. 3510

SECTION 1. THAT Ordinance No. 2023-O0054 and the Official Zoning Map are amended as follows:

A change of zoning under the provisions of Section 39.07.032 of the Unified Development Code of the City of Lubbock from **SF-2** to **NC** zoning district at **7508 66th Street, located north of 66th Street and west of Wausau Avenue, on approximately 3.593 acres of unplatted land out of Block AK, Section 34, 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 39.09.004 of the Unified Development Code 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 _____.

MARK W. MCBRAYER, 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

Exhibit "A"

Parcel R107681

Legal Land Description

Beginning at Latitude 33 North Longitude 101 East;
Thence North a distance of 1,028.21 feet;
Thence East a distance of 154.33 feet;
Thence South a distance of 942.15 feet;
Thence Southwest a distance of 42.43 feet;
Thence South a distance of 55 feet;
Thence West a distance of 124.34 feet, to
the point of beginning;
Containing 3.59 acres.



This legal description was compiled
using publicly available information
and free plotting software found on
the web

Staff Report		Zone Case 3510
City Council Meeting		December 3, 2024

Applicant Danny J Everson

Property Owner Danny J Everson

Council District 5

Recommendations

- Staff recommends approval of the request.

Prior Board or Council Action

- April 26, 2018, Ordinance No. 2018-00049: The subject property was annexed into city limits and zoned Transition District (T).
- May 9, 2023, Ordinance No. 2023-00054 (effective October 1, 2023): The subject property was rezoned from T to Low Density Single-Family District (SF-2) with the adoption of the Unified Development Code (UDC).
- November 7, 2024, Zone Case 3510: The Planning and Zoning Commission recommended denial of a request for a zone change from SF-2 to Neighborhood Commercial District (NC) by a vote of 2-6-0.

Notification Summary

- Notifications Sent: 16
- Received In Favor: 0
- Received In Opposition: 1

Site Conditions and History

The subject property is addressed as 7508 66th Street and consists of approximately 3.593 acres of unplatted land out of Block AK, Section 34. The property was developed with a single-family house, built in December 1983.

Adjacent Property Development

The property to the north is developed as Alcove Trail Middle School, zoned SF-2. The properties to the east and west are developed as single-family houses, zoned SF-2. The property to the south is developed as an athletic club, zoned SF-2.

Zoning Request and Analysis

Item Summary

The subject property is addressed as 7508 66th Street, located north of 66th Street and west of Wausau Avenue on approximately 3.593 acres of unplatted land out of Block AK, Section 34. The applicant requests a zone change from Low Density Single-Family District (SF-2) to Neighborhood Commercial District (NC).

Current zoning: Low Density Single-Family District (SF-2)

Requested zoning: Neighborhood Commercial District (NC)

Intent Statements

The purpose of the current SF-2 zoning is to provide for two residential subdivision types:

- A. Conventional. Smaller to moderately sized lots for dwellings on public utilities. Any open space is located on private lots.

- B. Cluster. Clustering of smaller-sized lots for dwellings with an increased percentage of common open space compared to cluster developments in the SF-1 district to maintain the intended character of the district while providing for buffering between lower and higher density adjacent neighborhoods, as well as for recreational amenities and resource protection.

The intent of the requested NC zoning is “to provide for small-scale retail and moderate density residential uses located away from major intersections (nodes), with building and site design standards that are compatible and have adjacent residential uses.”

Traffic Network/Infrastructure Impacts

The property is located north of 66th Street, which is designated as a Principal Arterial (Modified) and west of Wausau Avenue, which is designated as a Future Collector by the Master Thoroughfare Plan, 2018. Principal Arterials (Modified) provide connectivity across the transportation network serving high volume needs of local and regional traffic. Collectors provide access and movement within residential, commercial, and industrial areas.

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 Residential Low Density land uses. While this request does not conform to this designation, it would be appropriate as a buffer for the existing single-family homes from Wausau Avenue and along the corner of this intersection of Collector and Principal Arterial (Modified) Streets.

Conformance with Zoning Ordinance

The proposed zone change is in conformance with the Zoning Ordinance and will be appropriate at the proposed location.

Suitability of Property for Allowed Uses

The property is suitable for the proposed district, as it would not change the characteristics of the existing neighborhood.

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

Victoria Lewelling
Planner
Planning Department
806-775-2021
vwelling@mylubbock.us

Victor Escamilla
Planning and Zoning Manager
Planning Department
806-775-3029
vescamilla@mylubbock.us

Case Information: Zone Case 3510



Allowable Uses: [Neighborhood Commercial District \(NC\)](#)

Transportation: The proposed development has points of access from Wausau Avenue and 66th Street.

Thoroughfare	Existing	Per Thoroughfare Development Plan
66 th Street, Principal Arterial (Modified), Future	R.O.W. 50 feet, 2 lane, un-divided, paved.	R.O.W. 110 feet, 5 lane, divided, paved.
Wausau Avenue, Collector, Future	R.O.W. 60 feet, 2 lane, un-divided, paved.	R.O.W. 64 feet, 4 lane, divided, 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 5

3.3 **Zone Case 3510:** Danny J Everson, request for a zone change from Low Density Single-Family District (SF-2) to Neighborhood Commercial District (NC), at:

- 7508 66th Street, located north of 66th Street and west of Wausau Avenue, on approximately 3.593 acres of unplatted land out of Block AK, Section 34.

PLANNER VICTORIA LEWELLING gave a presentation and answered questions from the Commission. Staff recommended approval of the request.

APPLICANT DANNY J. EVERSON, 7508 66th Street, discussed the request to sell the property to developers and answered questions from the Commission.

IN OPPOSITION TROY BROOKS, 7450 66th Street, expressed concerns of decreased property values and discussed flooding and traffic issues.

IN OPPOSITION BONNIE BROOKS, 7450 66th Street, discussed traffic congestion, noise and safety issues regarding the streets abutting the subject property.

No one appeared to speak in favor of the request.

SCOTT GLOYNA raised concerns in regards to required bufferyards and access issues in regards to Wausau Avenue.

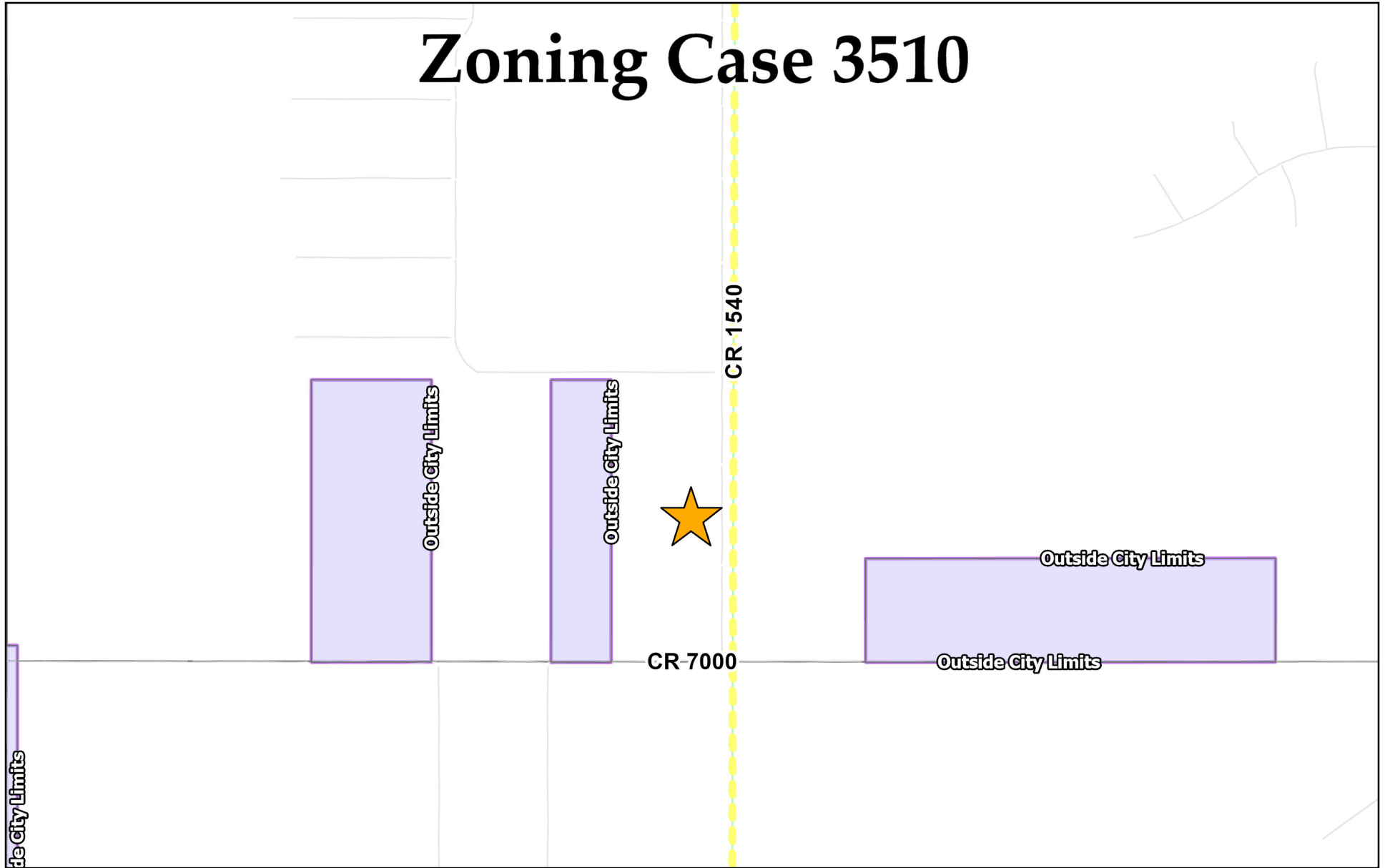
Zone Case 3510

ZACH SAWYER noted that future commercial development would be limited on the subject property due to size and location.

In the matter of **Zone Case 3510**, a motion was made by **JORDAN WHEATLEY** and seconded by **ZACH SAWYER** to approve the request as presented. The Commission voted 2 (in favor) to 6 (in opposition) to approve the motion. The Commission recommended denial of the case. The case will be forwarded to City Council for consideration.

ZACH SAWYER and **BRANDON HARDAWAY** cast the votes in favor.

Zoning Case 3510



Collector

- Completed
- Partial
- Future

Minor Arterial

- Completed
- Partial
- Future

Modified Arterial

- Partial
- Future

Principal Arterial

- Completed
- Partial
- Future

Freeway

- Completed
- Partial
- Proposed Outer Loop








Date Exported: October 2024

PZC Mailout Notifications Received

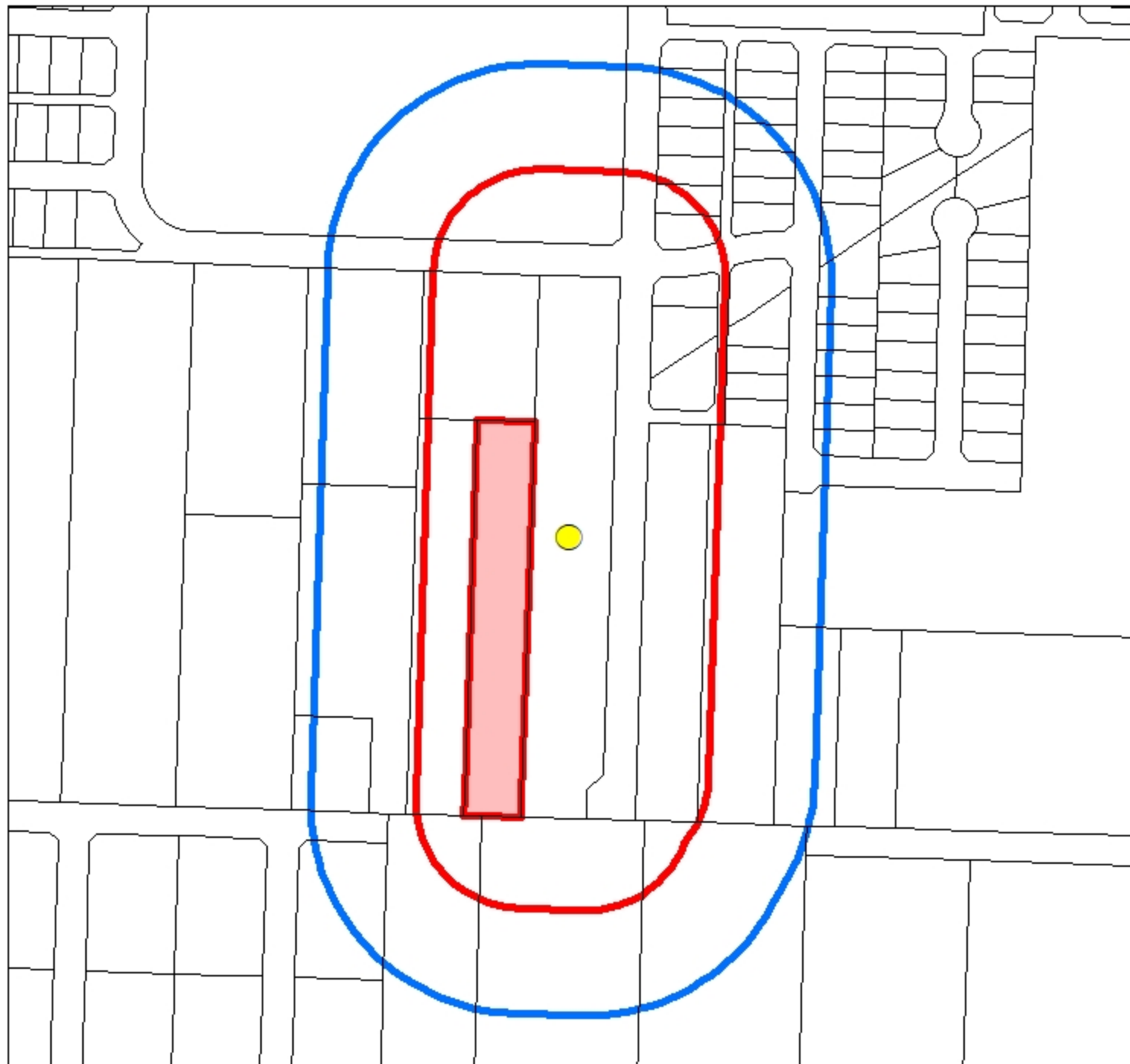


Legend

-  LCAD.DBO.TaxParcel
-  LocatorPnt3510
-  MailoutBuffer3510_200ft
-  MailoutBuffer3510_400ft
-  <all other values>

Notification Result

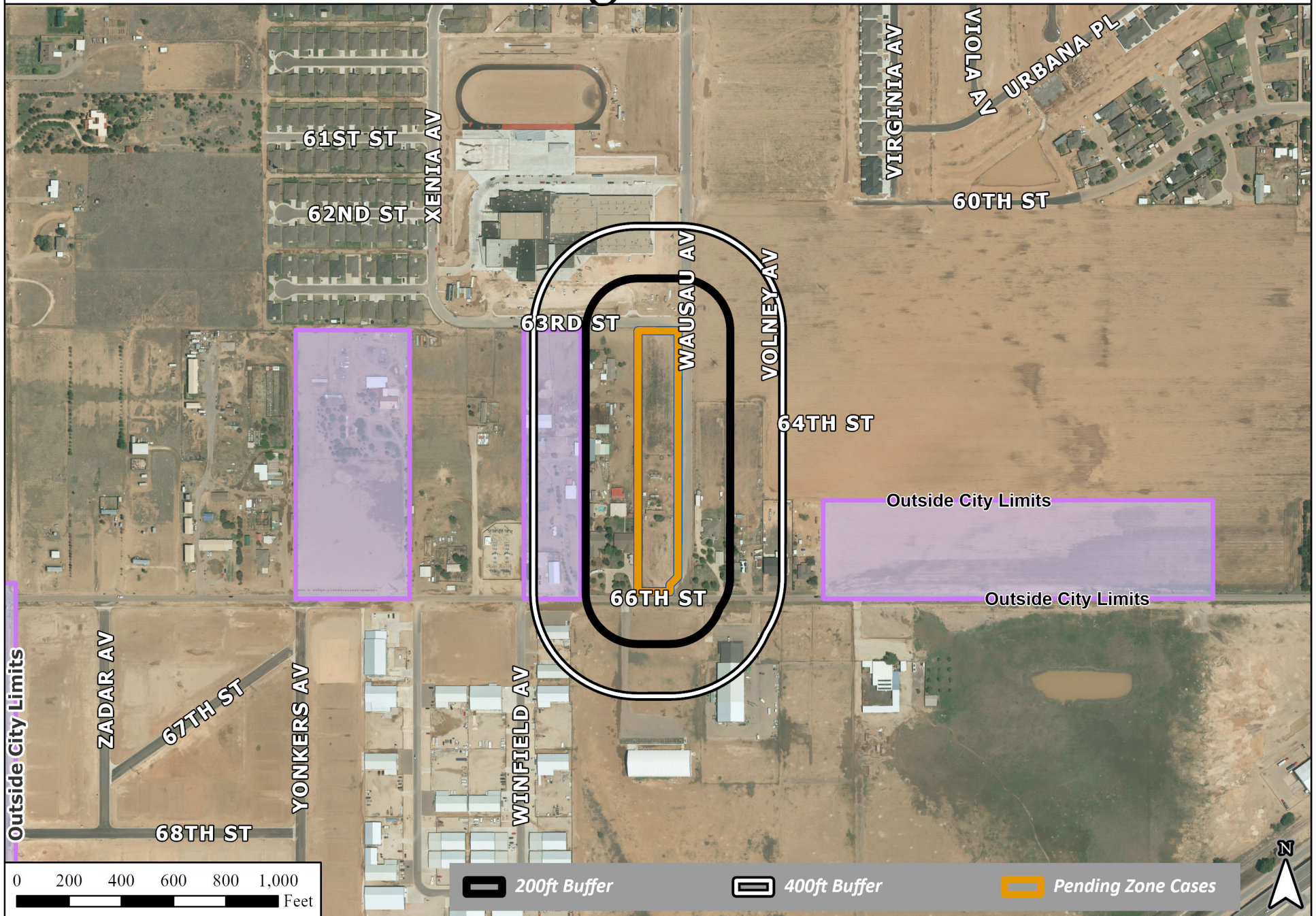
-  In Favor
-  No Feedback
-  Opposed

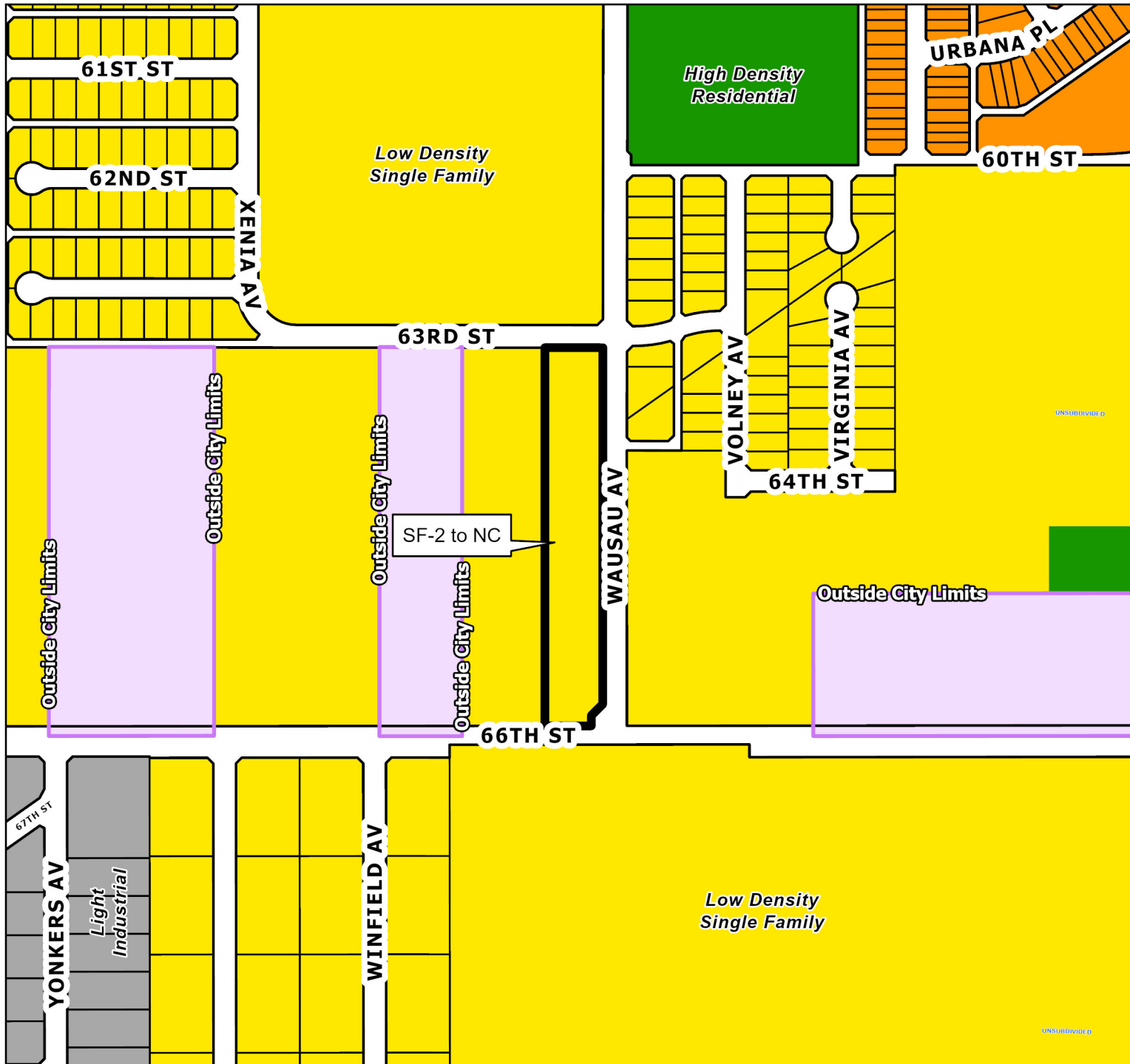


0 170 340 680 Feet

Created by Planning Department
Date: 11/7/2024

Zoning Case 3510





Current Zoning 3510

Zoning Districts

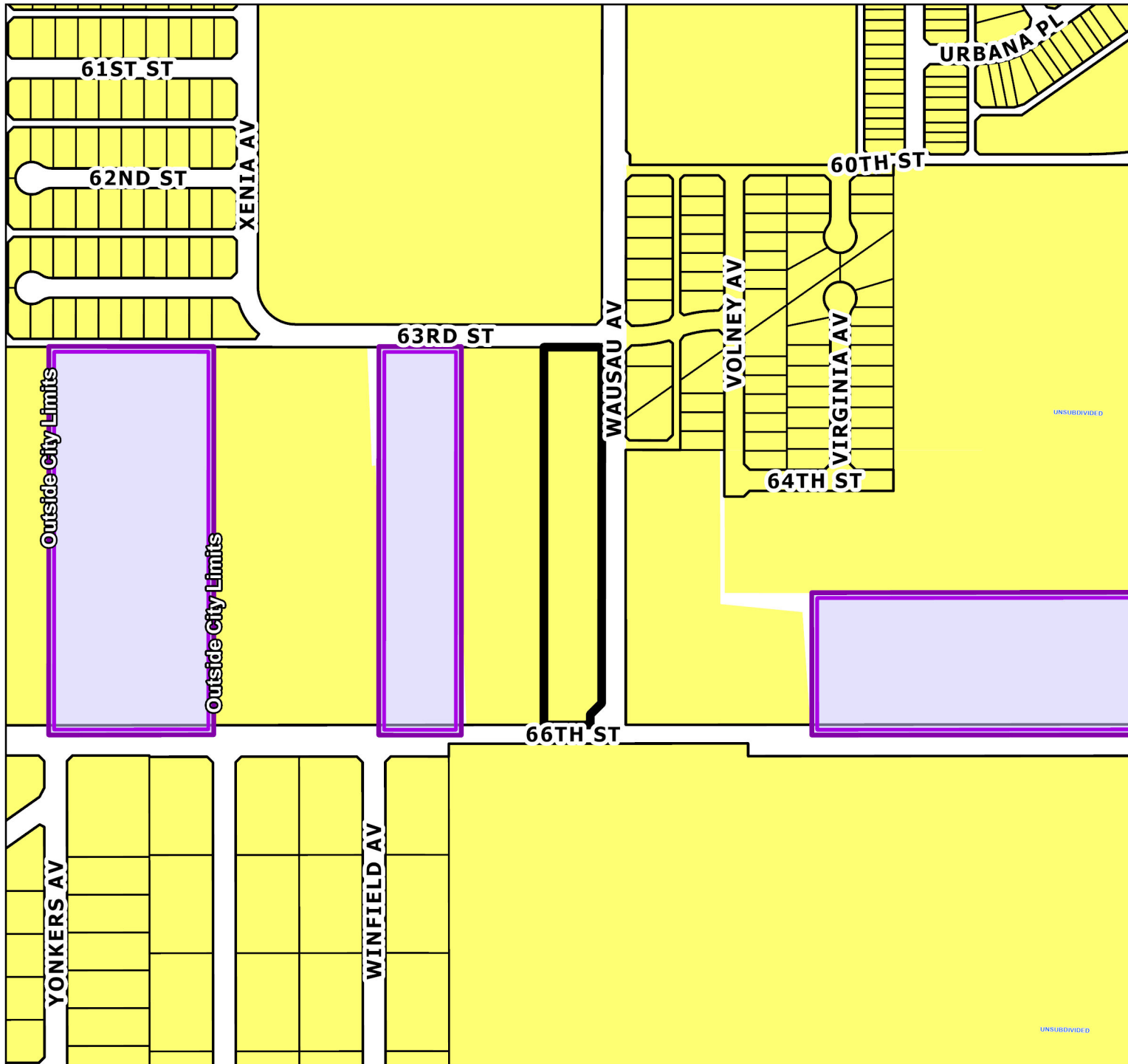
- High Density Residential (HDR)
- Light Industrial (LI)
- Medium Density Residential (MDR)
- Low Density Single Family (SF-2)



0 100 200 300 400 500
Feet




Date Exported: October 2024



Future Land Use Plan Case 3510

 Residential Low Density



0 100 200 300 400 500
 Feet



Date Exported: October 2024

3510



View west. Subject property.



View north.



View east.



View south.



Lubbock Planning Department
PO Box 2000 / 1314 Avenue K
Lubbock, TX 79457

APPLICATION FOR ZONING CHANGE

Project Information

Location or Address: _____

Lots/Tracts: _____

Survey & Abstract: _____

Metes and Bounds Attached: Yes ☐ No ☐ Total Acreage of Request: _____

Existing Land Use: _____ Existing Zoning: _____

Requested Zoning: _____

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: _____

Owner: _____

Address: _____ City: _____ State: _____

ZIP Code: _____ Telephone: _____ Email: _____

Property Owner's Signature: Danny Everson

Date: _____ Printed Name: _____

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.

7508 66th St - Rezoning Request - Written Explanation

Request for Rezoning of 3.6 Acres to Neighborhood Commercial Zoning

I am requesting the rezoning of my 3.59-acre property to Neighborhood Commercial zoning to better serve the growing community surrounding this area. This land is strategically located near a newly developed residential neighborhood and a school, where the need for nearby shopping, dining, and essential services is expected to increase. Currently, residents must either drive a significant distance or access these services via the highway, which presents an inconvenience and limits the local community's ability to shop and support businesses closer to home.

Investing in this property over the years, I believe this rezoning is both timely and beneficial for several reasons:

1. **Increased Community Convenience:** Rezoning would provide nearby access to essential services like grocery stores, gas stations, and other retail opportunities, improving quality of life for residents in the surrounding areas.
2. **Strategic Location and Infrastructure:** The property sits on a prime corner lot that is poised to see a steady increase in traffic due to the ongoing road construction and expansions. These improvements will enhance accessibility and visibility for any future neighborhood commercial developments.
3. **Economic Growth:** Rezoning this land would stimulate local economic development by attracting businesses that can serve the growing population. This, in turn, will contribute to the city's tax base and offer employment opportunities.
4. **Long-Term Investment:** Having invested heavily in this land, I am committed to ensuring its future development aligns with the needs of the community. Rezoning this property will allow me to sell it to a buyer who will develop it in ways that benefit both residents and the city.

I appreciate your consideration of this rezoning request and look forward to assisting in the process as much as possible.

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.: **3510**

In Favor _____

Opposed ✓

Reasons and/or Comments:

■ We believe it should remain residential because it isn't very far to large shopping areas & new homes are being built all around us & I think other residential homes would be nice.

Print Name Carol & Roland Davis
Signature: Carol Davis Roland J Davis
Address: 7514 66th St Lubbock TX 79407
Address of Property Owned: same as above
Phone Number: 515-104-9264
Email: caroldavis1949@gmail.com

Zone Case Number: **3510**

R311553

Recipient 13 of 16

DAVIS ROLAND J & CAROL J

7514 ~~7512~~ 66TH ST

LUBBOCK TX 79407-5402

Information

Agenda Item

Public Hearing - Planning (District 6): Consider a request for Zone Case 3207-A, a request of Hugo Reed and Associates, Inc. for West End Hotels, LLC, for a zone change from Low Density Single-Family District (SF-2) and Heavy Commercial District (HC) to Heavy Commercial District (HC), at 2909 Iola Avenue, located at the intersection of 29th Street and Iola Avenue, West End Addition, Tract K, 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 November 7, 2024, and recommended approval of the request by a unanimous vote of 8-0-0.

Fiscal Impact

None

Staff/Board Recommending

Erik Rejino, Assistant City Manager
Kristen Sager, Director of Planning
Planning and Zoning Commission

Attachments

Ordinance 3207-A
Staff Report 3207-A
Documentation 3207-A

ORDINANCE NO. _____

AN ORDINANCE AMENDING ZONING ORDINANCE NO. 2023-00054 AND THE OFFICIAL MAP OF THE CITY OF LUBBOCK MAKING THE FOLLOWING CHANGES: ZONE CASE NO. 3207-A; A ZONING CHANGE FROM SF-2 AND HC TO HC ZONING DISTRICT AT 2909 IOLA AVENUE, LOCATED AT THE INTERSECTION OF 29TH STREET AND IOLA AVENUE, WEST END ADDITION, TRACT K, 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 39.07.007 of the Unified Development Code, 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. 3207-A

SECTION 1. THAT Ordinance No. 2023-00054 and the Official Zoning Map are amended as follows:

A change of zoning under the provisions of Section 39.07.032 of the Unified Development Code of the City of Lubbock from **SF-2 and HC** to **HC** zoning district at **2909 Iola Avenue, located at the intersection of 29th Street and Iola Avenue, West End Addition, Tract K, 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 39.09.004 of the Unified Development Code 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 _____.

MARK W. MCBRAYER, 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/ZC3207-A
November 7, 2024

Staff Report		Zone Case 3207-A
City Council Meeting		December 3, 2024

Applicant Hugo Reed and Associates, Inc.

Property Owner West End Hotels, LLC

Council District 6

Recommendations

- Staff recommends approval of the request.

Prior Board or Council Action

- September 11, 1958, Ordinance No. 2535: The subject property was annexed into city limits and zoned Single-Family District (R-1).
- July 11, 2013, Zone Case: 3207, Ordinance No. 2013-00063: The eastern portion of the subject property was rezoned from R-1 to Interstate Highway Commercial District (IHC).
- May 9, 2023, Ordinance No. 2023-00054 (effective October 1, 2023): The subject property was rezoned from R-1 and IHC to Low Density Single-Family District (SF-2) and Heavy Commercial District (HC) with the adoption of the Unified Development Code (UDC).
- November 7, 2024, Zone Case 3207-A: The Planning and Zoning Commission recommended approval of a request for a zone change from SF-2 and HC to HC by a vote of 8-0-0.

Notification Summary

- Notifications Sent: 9
- Received In Favor: 1
- Received In Opposition: 0

Site Conditions and History

The subject property was originally platted as West End Addition, Tract K on October 17, 2017. The property is currently developed with a hotel.

Adjacent Property Development

To the north is undeveloped land, zoned High Density Residential District (HDR). To the east, there is HC zoning developed as the West End Shopping Center. To the west, the land remains undeveloped and is zoned Auto-Urban Commercial District (AC). To the south is vacant land zoned HC.

Zoning Request and Analysis

Item Summary

The subject property is addressed as 2909 lola Avenue, located at the intersection of 29th Street and lola Avenue. The applicant requests a zone change from Low Density Single-Family District (SF-2) and Heavy Commercial District (HC) to Heavy Commercial District (HC).

Current zoning: Low Density Single-Family District (SF-2) and Heavy Commercial District (HC)

Requested zoning: Heavy Commercial District (HC)

Intent Statements

The purpose of the Low Density Single-Family (SF-2) District is to provide for two types of residential subdivisions:

- A. Conventional. Smaller to moderately sized lots for dwellings on public utilities. Any open space is located on private lots.
- B. Cluster. Clustering of smaller-sized lots for dwellings with an increased percentage of common open space compared to cluster developments in the SF-1 district to maintain the intended character of the district while providing for buffering between lower and higher density adjacent neighborhoods, as well as for recreational amenities and resource protection.

The purpose of the Heavy Commercial (HC) District is “to provide for development of heavy vehicle repair, wholesale trade, and warehousing and freight movement uses that typically are characterized by outside storage of materials or merchandise. The district should be located away from residential areas or, if unavoidable, should be heavily buffered.”

Traffic Network/Infrastructure Impacts

The proposed rezoning location will be located at the intersection of 29th Street and Iola Avenue. The Master Thoroughfare Plan, 2018, designates Iola Avenue as a Collector. Collector streets are designed for medium volumes of vehicles operating at lower speeds (i.e. 30-35mph).

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 property for commercial land uses. The proposed zone change to HC would be in conformance with the Future Land Use Plan and the Comprehensive Plan Principles.

Conformance with Zoning Ordinance

The proposed zone change is in conformance with the zoning ordinance and will be appropriate at the proposed location.

Suitability of Property for Allowed Uses

The property is suitable for the proposed zoning of HC, and will not need any additional public improvements.

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

Cassie Bermea
Planner
Planning Department
806-775-2096
cassiebermea@mylubbock.us

Victor Escamilla
Planning and Zoning Manager
Planning Department
806-775-3029
vescamilla@mylubbock.us

Case Information: Zone Case 3207-A



Allowable Uses: [Heavy Commercial District \(HC\)](#)

Transportation: The proposed development has a point of access from Iola Avenue.

Thoroughfare	Existing	Per Thoroughfare Development Plan
Iola Avenue, <i>Collector Street</i>	R.O.W. 60 feet, two-lane, undivided, paved	R.O.W. 64 feet, four-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

3.5 **Zone Case 3207-A:** Hugo Reed and Associates, Inc. for West End Hotels, LLC, request for a zone change from Low Density Single-Family District (SF-2) and Heavy Commercial District (HC) to Heavy Commercial District (HC), at:

- 2909 Iola Avenue, located at the intersection of 29th Street and Iola Avenue, West End Addition, Tract K.

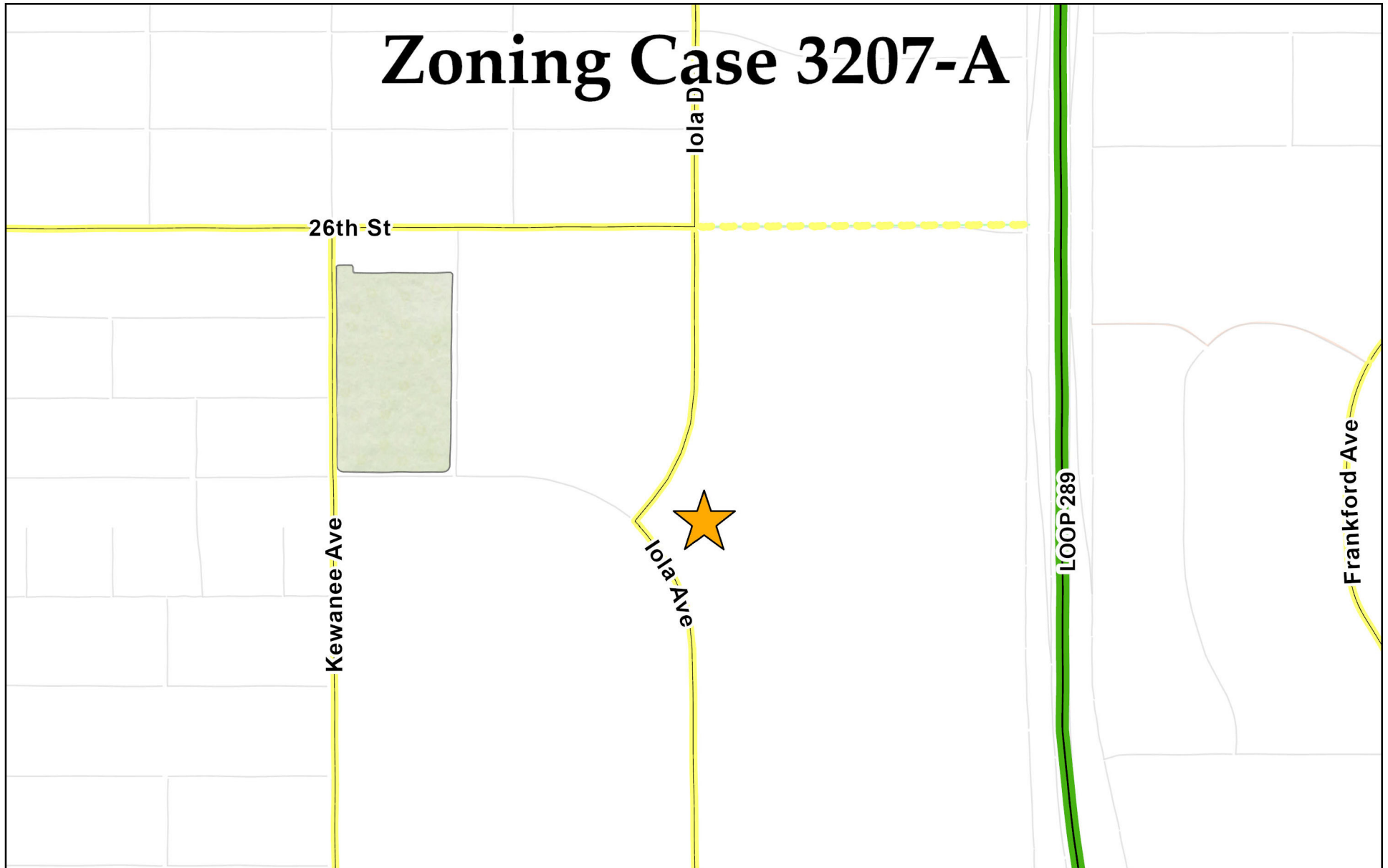
PLANNER CASSIE BERMEA gave a presentation and answered questions from the Commission. Staff recommended approval of the request.

APPLICANT TERRY HOLEMAN, Hugo Reed and Associates, Inc., 1601 Avenue N, gave comments about the request and answered questions from the Commission.

No one appeared to speak in favor or in opposition.

In the matter of **Zone Case 3207-A**, a motion was made by **JORDAN WHEATLEY** and seconded by **BRANDON HARDAWAY** to approve the request as presented. The Commission voted 8 (in favor) to 0 (in opposition) to approve the motion. The case will be forwarded to City Council for consideration.

Zoning Case 3207-A



Collector

- Completed
- - Partial
- · Future

Minor Arterial

- Completed
- - Partial
- · Future

Modified Arterial

- - Partial
- · Future

Principal Arterial

- Completed
- - Partial
- · Future

Freeway

- Completed
- - Partial
- · Proposed Outer Loop



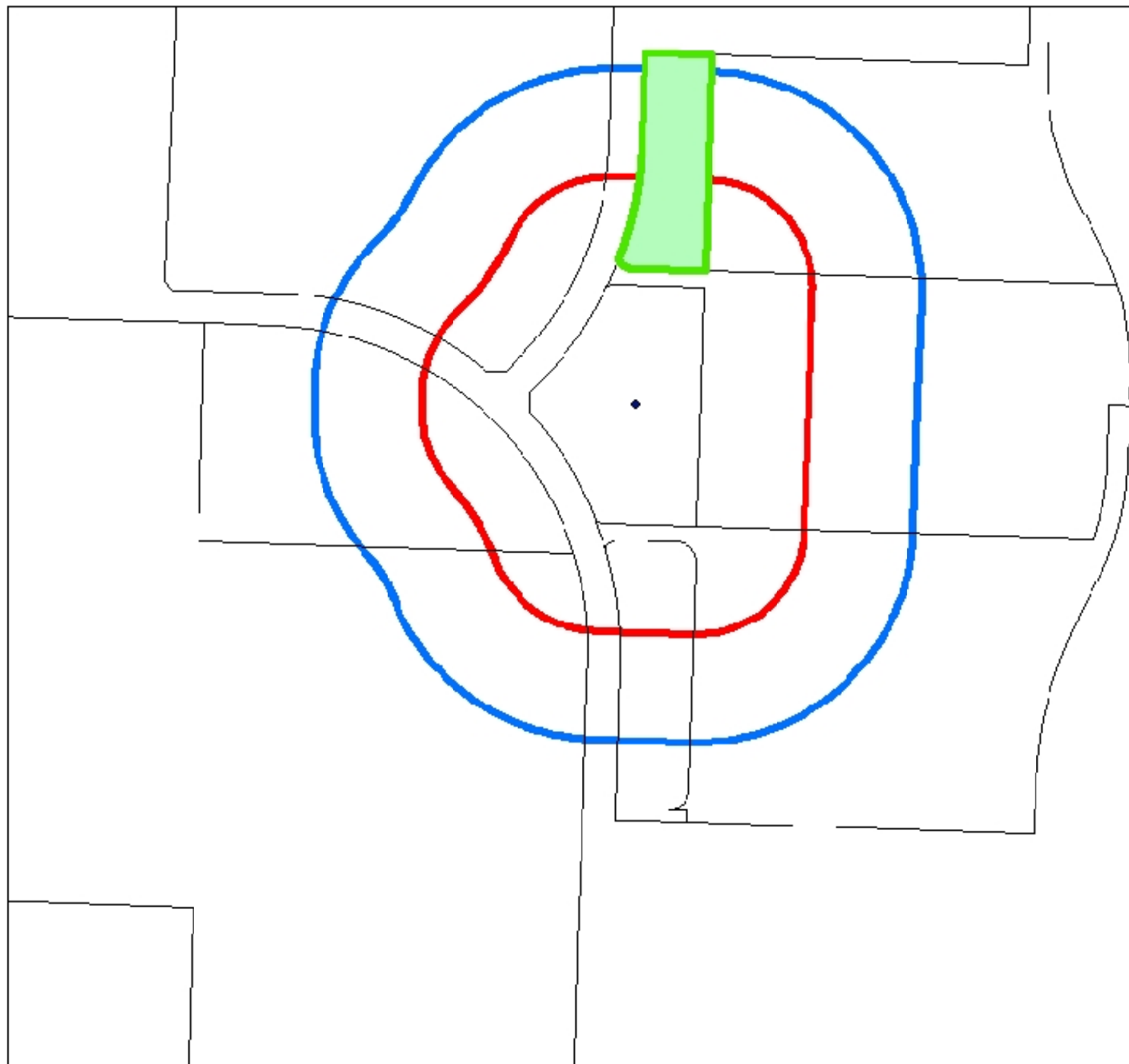
Date Exported: October 2024

PZC Mailout Notifications Received



Legend

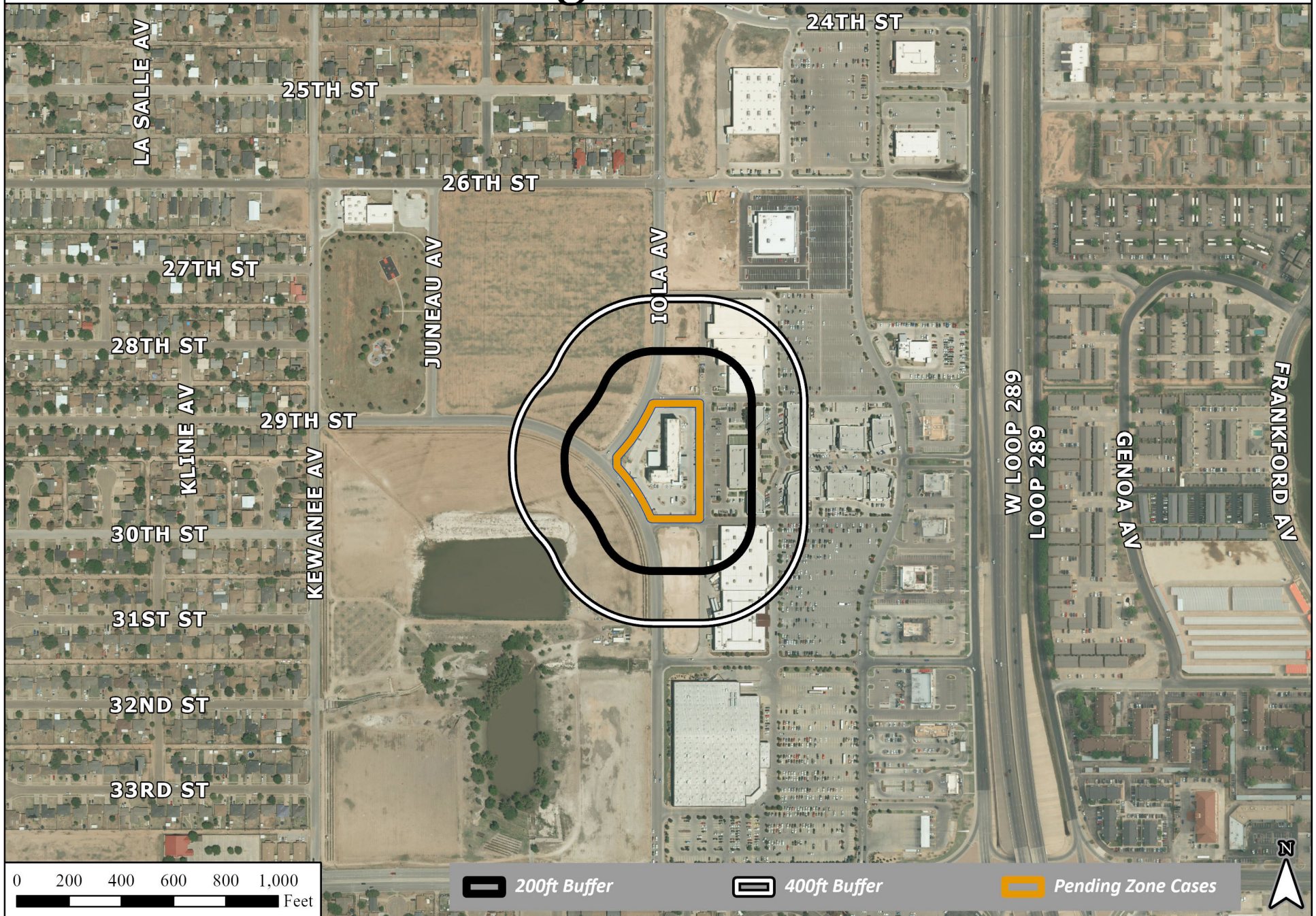
- ◆ LocatorPnt3207A
- <all other values>
- Notification Result**
 - In Favor
 - No Feedback
 - Opposed
 - MailoutBuffer3207A_200ft
 - MailoutBuffer3207A_400ft
 - LCAD.DBO.LaxParcel



0 165 330 660 Feet

Created by Planning Department
Date: 11/11/2024

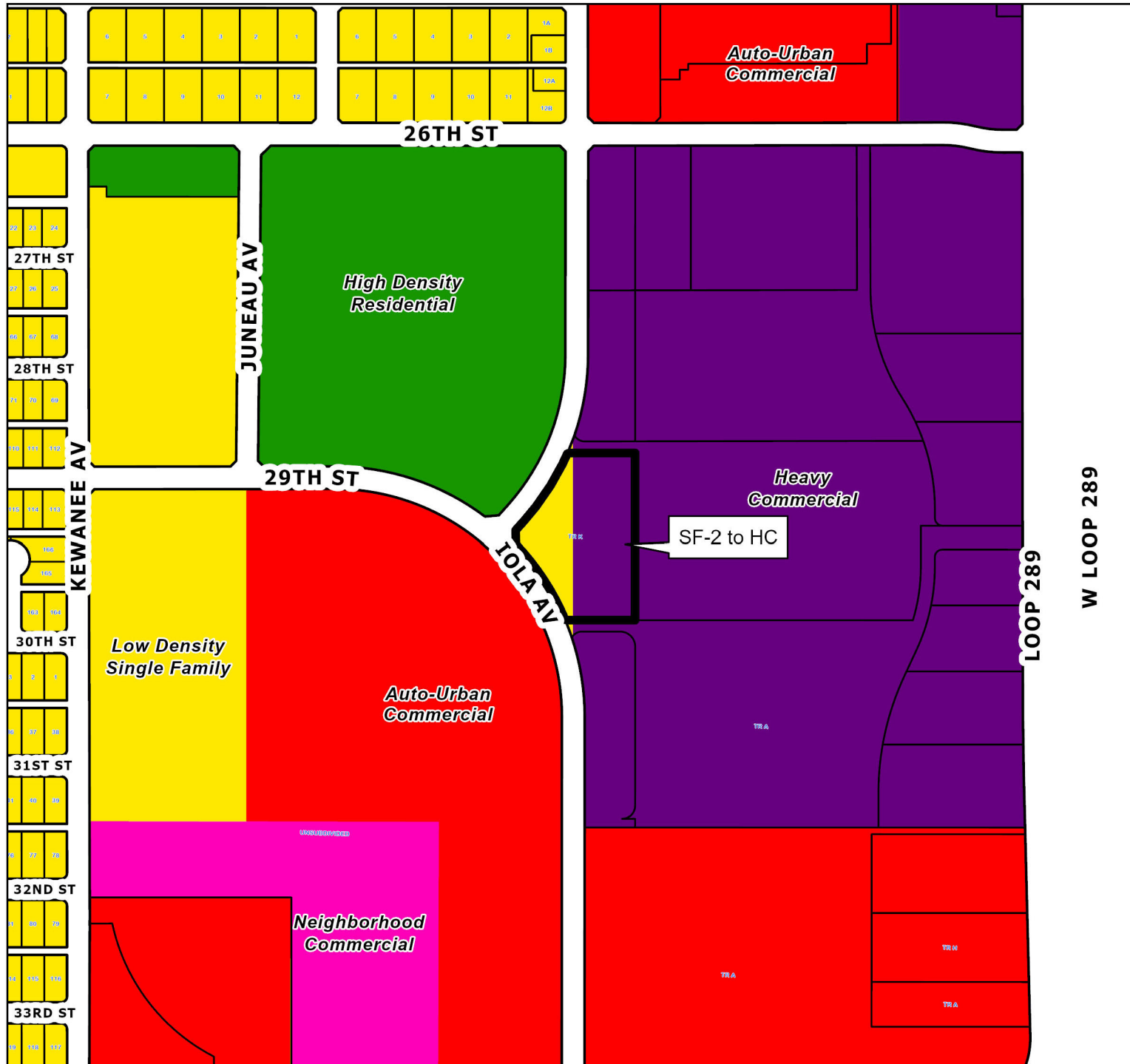
Zoning Case 3207-A



Current Zoning 3207-A

Zoning Districts

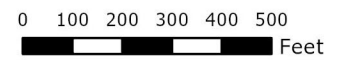
- Auto-Urban Commercial (AC)
- Heavy Commercial (HC)
- High Density Residential (HDR)
- Medium Density Residential (MDR)
- Neighborhood Commercial (NC)
- Office (OF)
- Low Density Single Family (SF-2)

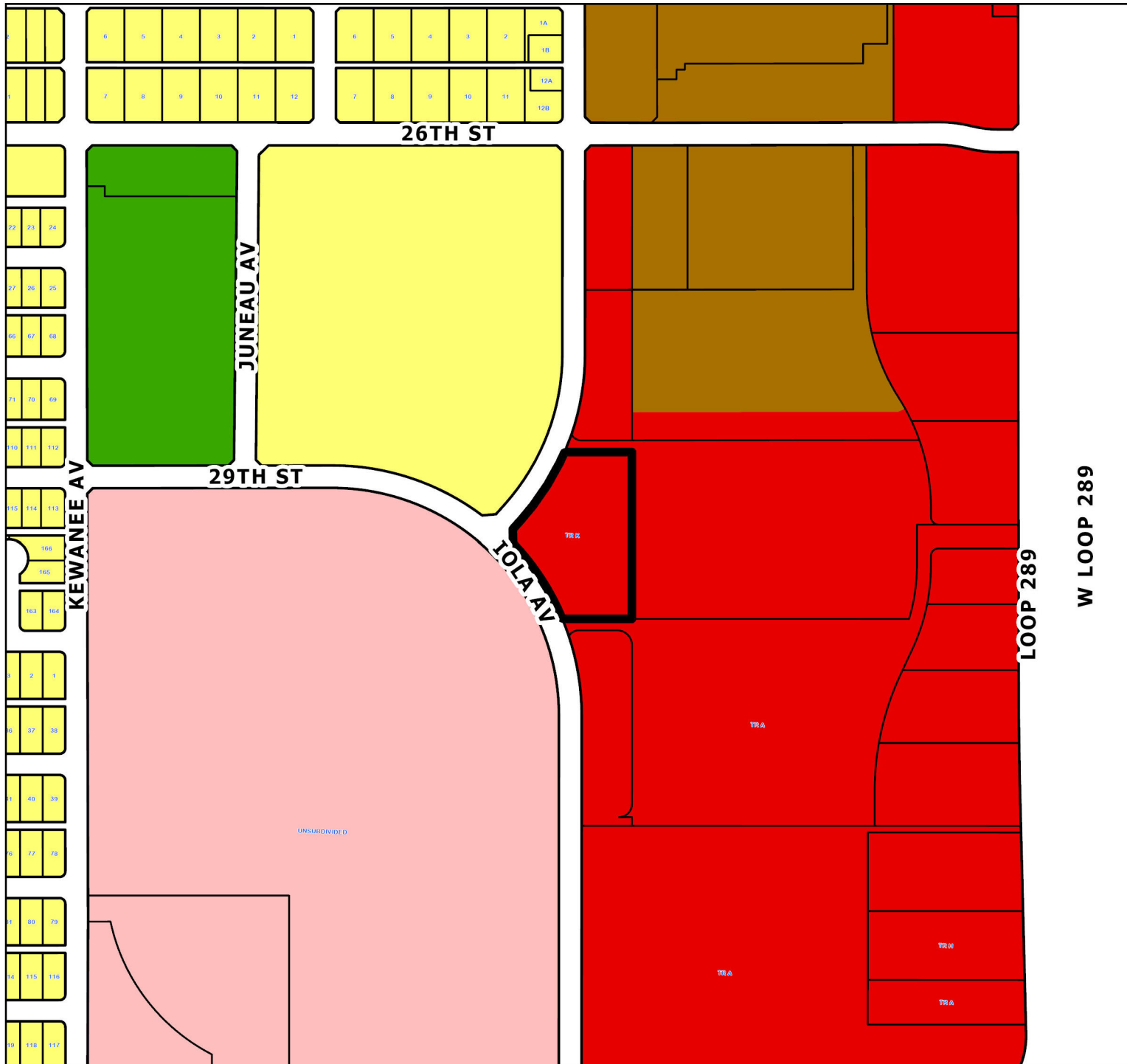


W LOOP 289

LOOP 289

SF-2 to HC





Future Land Use Plan Case 3207-A

- Commercial
- Office
- Parks
- Residential Low Density
- Residential High Density



0 100 200 300 400 500
Feet



Date Exported: October 2024



East View —Subject Property



South View



West View.



North View.—Subject Property

Notes:

Scale: 1" = 50'

Heavy lines indicate plot limits.

All streets, alleys and easements within plot limits are herein dedicated.

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

All electrical service shall be in accordance with the Underground Utilities Policy Statement by the Planning and Zoning Commission of the City of Lubbock, Texas.

Any relocation or revision of existing facilities shall be at the developer's expense. Compensation shall be made prior to the recording of any portion of this final plat.

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

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

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

No portion of this surveyed property lies within a "Special Flood Hazard Boundary." These boundaries are established by the Federal Emergency Management Agency, not this surveyor. Flood hazard maps are on file at City Hall, Public Works Engineering, Lubbock, Texas and are open for public inspection.

The survey information shown hereon was prepared from the result of an on the ground survey of the property shown hereon, and has been completed substantially in compliance with the Professional and Technical Standards promulgated by the Texas Board of Professional Land Surveying Practices Act, Section 663.13.

Only those copies which bear an original ink impression seal or embossed seal will be considered a "valid" copy. AMD Engineering, LLC, will not be responsible for the content of anything other than a valid copy of this survey.

Tract "K" contains 2.48 acres (108,235 sq. ft.) within the plot limits.

Bearings and Coordinates are based on the Texas North Central Zone Coordinate System. (NAD 83)

Blanket underground utility, transformer pad, and switching enclosure easement as required for service within the plot limits is herein granted to Lubbock Power and Light Company. No other property, beyond the plot limits, will be entitled to use any portion of the property described herein for connection to or transmission of any utility service under the terms of this blanket easement.

Blanket underground utility easement as required of service within the plot limits is herein granted to SPEC, AT&T, Atmos Energy, NTS, West Texas Gas, and Suddenlink Communications. No other property, beyond the plot limits, will be entitled to use any portion of the property described herein for connection to or transmission of any utility service under the terms of this blanket easement.

Blanket garbage collection easement as required for service within the plot limits is herein granted.

10' UUE-SWB (V. 1819, P. 69) has been closed per Document Number 2016043361.

Mets and Bounds Description on a 2.48 acre (108,235 sq. ft.) tract of land out of Section 44, Block AK, Lubbock County, Texas, and being more particularly described as follows:

Beginning at an "x" chiseled in concrete, found in the North line of Tract A, West End, an Addition to the City of Lubbock, Lubbock County, Texas, recorded in County Clerk File Number 2013037855, Official Public Records of Lubbock County, Texas, for the Southeast and beginning corner of this tract, whence the Southeast corner of Section 44, Block AK bears S88°08'27"E, a distance of 2493.17 feet and S01°51'35"W, a distance of 1379.93 feet;

Thence N88°06'33"W, continuing along the North line of said Tract A, West End, an Addition, a distance of 174.58 feet to a 1/2" iron rod with cap, found for the most Southerly Southwest corner of this tract;

Thence Northwestwesterly, continuing along the North line of said Tract A, West End, an Addition and along the arc of a curve to the right, an arc distance of 11.02 feet to a 1/2" iron rod with cap, found in the East Right of Way line of Iola Avenue described in County Clerk File Number 2014055711, Official Public Records of Lubbock County, Texas, for the end of said curve to the right and for the most Westerly Northwest corner of this tract; said curve having a radius of 23.79 feet, a central angle of 26°32'21", a chord that bears N31°20'49"W, and a chord distance of 236.17 feet;

Thence Northwestwesterly, continuing along the East Right of Way line of Iola Avenue and along the arc of a curve to the left, an arc distance of 237.45 feet to a 1/2" iron rod, found for the end of said curve to the left and for a corner of this tract; said curve having a radius of 660.00 feet, a central angle of 20°36'49", a chord that bears N31°20'49"W, and a chord distance of 236.17 feet;

Thence N00°25'30"E, continuing along the East Right of Way line of Iola Avenue, a distance of 36.47 feet to a 1/2" iron rod with cap, set for a corner of this tract;

Thence N43°34'17"E, continuing along the East Right of Way line of Iola Avenue, a distance of 35.90 feet to a 1/2" iron rod, found for a corner of this tract;

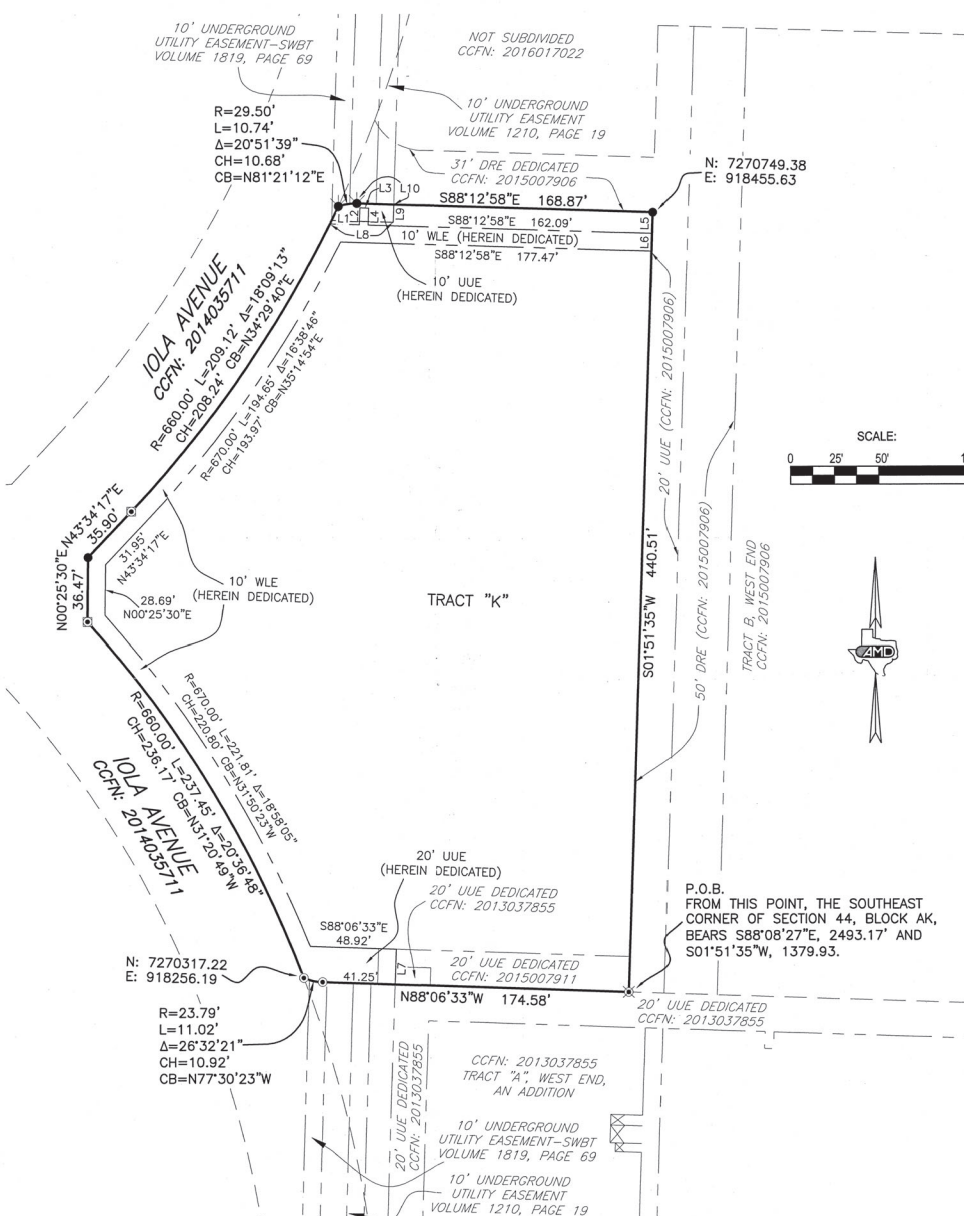
Thence Northeastwesterly, continuing along the East Right of Way line of Iola Avenue and along the arc of a curve to the left, an arc distance of 209.12 feet to a crow's foot chiseled in concrete, set in the Plot Limits of Tract B, West End, an Addition to the City of Lubbock, Lubbock County, Texas, recorded in County Clerk File Number 2015007906, Official Public Records of Lubbock County, Texas, for the end of said curve to the left and for the most Westerly Northwest corner of this tract; said curve having a radius of 660.00 feet, a central angle of 18°09'13", a chord that bears N34°29'40"E, and a chord distance of 208.24 feet;

Thence Northeastwesterly, continuing along the Plot Limits of said Tract B, West End, an Addition, an arc distance of 10.74 feet to a crow's foot chiseled in concrete, set for a corner of this tract; said curve having a radius of 29.50 feet, a central angle of 20°51'39", a chord that bears N81°21'12"E, and a chord distance of 10.68 feet;

Thence S88°12'58"E, continuing along the Plot Limits of said Tract B, West End, an Addition, a distance of 168.87 feet to a 1/2" iron rod with cap, set for the Northeast corner of this tract;

Thence S01°51'35"W, continuing along the Plot Limits of said Tract B, West End, an Addition, a distance of 440.51 feet to the Point of Beginning.

Containing 2.48 acres of land (108,235 sq. ft.)

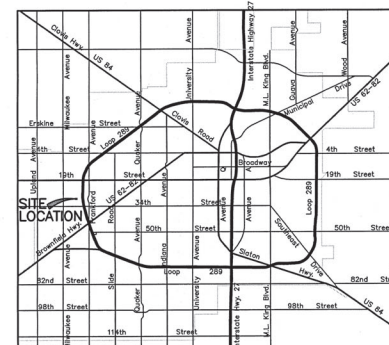


TRACT "K", WEST END, An Addition to the City of Lubbock, Lubbock County, Texas

1874.10
P&D 2017037439

LINE TABLE		
LINE	LENGTH	BEARING
L1	16.78'	S88°12'58"E
L2	9.50'	N01°47'02"E
L3	5.00'	S88°12'58"E
L4	9.50'	S01°47'02"W
L5	12.00'	S01°51'35"W
L6	10.00'	S01°51'35"W
L7	20.00'	S01°53'27"W
L8	35.06'	S88°12'58"E
L9	10.00'	N01°45'00"E
L10	20.95'	S88°12'58"E

- 1/2" IRON ROD WITH CAP, SET
- ⬤ CROW'S FOOT CHISELED IN CONCRETE, SET
- ⬤ 1/2" IRON ROD WITH CAP, FD....CM
- ⬤ 1/2" IRON ROD, FD....CM
- ⊗ "X" CHISELED IN CONCRETE, FD....CM
- P.O.B. POINT OF BEGINNING
- CM CONTROLLING MONUMENT
- CCFN COUNTY CLERK FILE NUMBER
- UUE UNDERGROUND UTILITY EASEMENT
- DRE DRAINAGE EASEMENT



VICINITY MAP
NOT TO SCALE

KNOW ALL MEN BY THESE PRESENTS:

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

Charles Lynn Sawyer
Registered Professional Land Surveyor, No. 5806
Survey Date: November 30, 2016
Job No. 15229



AMD Engineering, LLC
2807 74th Street, Suite 8
Lubbock, TX 79423

CIVIL ENGINEERING
LAND SURVEYING

Phone: 806-771-5976
Fax: 806-771-7625
TX Lic. Surv. Firm # 101785-00

Accuracy - Efficiency - Integrity



Lubbock Planning Department
PO Box 2000 / 1314 Avenue K
Lubbock, TX 79457
APPLICATION FOR ZONING CHANGE

Project Information

Location or Address: 2909 Iola Avenue
Lots/Tracts: Tract "K", West End
Survey & Abstract: Section 44, Block AK
Metes and Bounds Attached: Yes ☐ No ☒ Total Acreage of Request: 2.48
Existing Land Use: Hotel Existing Zoning: SF-2 and HC
Requested Zoning: HC
If property is not subdivided, will a preliminary plat be submitted? Yes ☐ No ☒

Representative/Agent Information (if different from owner)

Firm Name: Hugo Reed and Associates, Inc.
Name: Terry Holeman
Address: 1601 Avenue N City: Lubbock State: TX
ZIP Code: 79401 Telephone: 806-763-5642 Email: tholeman@hugoreed.com
Applicant's Signature: Terry Holeman
Date: October 2, 2024 Printed Name: Terry Holeman

Owner Information

Firm Name: _____
Owner: West End Hotels, LLC
Address: PO Box 3007 City: Lubbock State: TX
ZIP Code: 79452-3007 Telephone: 806-438-6252 Email: henry@pn3t.com
Property Owner's Signature: _____
Date: October 2, 2024 Printed Name: Henry Patel

Preparer Information

Preparer's Signature: [Signature]
Date: 10-2-2024 Printed Name: Henry Patel

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.

Received

NOV 07 2024

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.: **3207-A**

In Favor



Opposed



Reasons and/or Comments:

Print Name

Tyler Parr

Signature:



Address:

4010 42nd St. Lubbock, TX 79424

Address of Property Owned:

2631 W Loop 289 Lubbock, TX 79407

Phone Number:

806-789-9740

Email:

tyler@GRACO.DEV

Zone Case Number: **3207-A**

R343844

Recipient 9 of 9

PAGOSA IOLA LTD

5307 W LOOP 289

SUITE 302

LUBBOCK

TX 79414

Information

Agenda Item

Resolution - City Manager: Consider a resolution authorizing the Mayor to execute Contract 18128, for lobbying consultant services.

Item Summary

A Request for Proposal (RFP) was published in order to select a lobbyist to represent the interests of the City of Lubbock to the legislators in Austin and in Washington, D.C.

In response to RFP 24-18128-MA, three firms responded and were evaluated by the Selection Committee who reviewed and rated the qualifications and preliminary proposals based on the following criteria.

Qualifications and Experience - 30%;
Rates and Expenses - 30%;
Methodology - 25%; and
References - 15%.

The Selection Committee evaluated the proposals and arrived at the following scores.

Firm	Points
Blackridge, Austin, Texas	90.75
Hance Scarborough, LLP, Austin, Texas	89.6
GAP - Government Affairs Professional of Texas, Austin, Texas	81.6

The committee recommends the highest ranked proposer, Blackridge of Austin, Texas, with compensation of \$138,000 per year, plus itemized and approved expenses.

The compensation is to be paid in monthly installments of \$11,500, and the term of the contract is one year, with 4 optional, one-year extensions.

Fiscal Impact

Contract 18128 with Blackridge, for \$138,000 per year, is to be paid in monthly installments of \$11,500, plus itemized and approved expenses, and is funded in the Operating Budget.

Staff/Board Recommending

W. Jarrett Atkinson, City Manager

Attachments

Resolution - Blackridge Contract

Contract - Blackridge
Project Summary - Lobbying Consultant 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, Service Contract No. 18128 for Lobbying Consultant Services, by and between the City of Lubbock and Blackridge, 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 _____.

MARK W. MCBRAYER, MAYOR

ATTEST:

Courtney Paz, City Secretary

APPROVED AS TO CONTENT:



Bill Howerton, Deputy City Manager

APPROVED AS TO FORM:



Mitchell Satterwhite, First Assistant City Attorney

ccdocs II/RES.Contract-Blackridge
November 25, 2024

**City of Lubbock, TX
Lobbying Consultant Services
Agreement**

This Service Agreement (this "Agreement") is entered into as of the ___ day of _____ 2024 ("Effective Date") by and between **Blackridge** (the Contractor), and the City of Lubbock (the "City").

RECITALS

WHEREAS, the City has issued a Request for Proposals 18-18128-MA, Lobbying Consultant Services.

WHEREAS, the proposal submitted by the Contractor has been selected as the proposal which best meets the needs of the City for this service; and

WHEREAS, Contractor desires to perform as an independent contractor to provide Lobbying Consultant Services, upon terms and conditions maintained in this Agreement; and

NOW THEREFORE, for and in consideration of the mutual promises contained herein, the City and Contractor agree as follows:

City and Contractor acknowledge the Agreement consists of the following exhibits which are attached hereto and incorporated herein by reference, listed in their order of priority in the event of inconsistent or contradictory provisions:

1. This Agreement
2. Exhibit A – General Requirements
3. Exhibit B – Proposal
4. Exhibit C – Best and Final Offer

Scope of Work

Contractor shall provide the services that are specified in Exhibit A. The Contractor shall comply with all the applicable requirements set forth in Exhibits B, and C attached hereto.

Article 1 Services

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

- 1.1 Either party may at any time during the life of this contract, or any extensions thereof, terminate this contract by giving a 90-day notice in writing to the other party of its intention to cancel. During the term
- 1.2 of this contract, or any extensions thereof, the City may remove a specific service location from this contract by giving a 30 day notice in writing. Remaining Service location rates will not be altered by a specific service location being removed from the contract.
- 1.2 The Contractor shall not assign any interest in this Agreement and shall not transfer any interest in the Agreement, whatsoever, without prior consent of the City.
- 1.3 All funds for payment by the City under this Agreement are subject to the availability of an annual appropriation for this purpose by the City. In the event of non-appropriation of funds by the City Council of the City of Lubbock for the goods or services provided under the Agreement, the City will terminate the Agreement, without termination charge or other liability, on the last day of the then-current fiscal year or when the appropriation made for the then-current year for the goods or services covered by this Agreement is spent, whichever event occurs first. If at any time funds are not appropriated for the continuance of this Agreement, cancellation shall be accepted by the contractor on 30 days prior written notice, but failure to give such notice shall be of no effect and the City shall not be obligated under this Agreement beyond the date of termination.

Article 2 Miscellaneous.

- 2.1 This Agreement is made in the State of Texas and shall for all purposes be construed in accordance with the laws of said State, without reference to choose of law provisions.
- 2.2 This Agreement is performable in, and venue of any action related or pertaining to this Agreement shall lie in, Lubbock, Texas.
- 2.3 This Agreement and its Exhibits contains the entire agreement between the City and Contractor and supersedes any and all previous agreements, written or oral, between the parties relating to the subject matter hereof. No amendment or modification of the terms of this Agreement shall be binding upon the parties unless reduced to writing and signed by both parties.
- 2.4 This Agreement may be executed in counterparts, each of which shall be deemed an original.
- 2.5 In the event any provision of this Agreement is held illegal or invalid, the remaining provisions of this Agreement shall not be affected thereby.
- 2.6 The waiver of a breach of any provision of this Agreement by any parties or the failure of any parties otherwise to insist upon strict performance of any provision hereof shall not constitute a waiver of any subsequent breach or of any subsequent failure to perform.
- 2.7 This Agreement shall be binding upon and inure to the benefit of the parties and their respective heirs, representatives and successors and may be assigned by Contractor or the City to any successor only on the written approval of the other party.
- 2.8 All claims, disputes, and other matters in question between the Parties arising out of or relating to this Agreement or the breach thereof, shall be formally discussed and negotiated

between the Parties for resolution. In the event that the Parties are unable to resolve the claims, disputes, or other matters in question within 30 days of written notification from the aggrieved Party to the other Party, the aggrieved Party shall be free to pursue all remedies available at law or in equity.

- 2.9 At any time during the term of the contract, or thereafter, the City, or a duly authorized audit representative of the City or the State of Texas, at its expense and at reasonable times, reserves the right to audit Contractor's records and books relevant to all services provided to the City under this Contract. In the event such an audit by the City reveals any errors or overpayments by the City, Contractor shall refund the City the full amount of such overpayments within 30 days of such audit findings, or the City, at its option, reserves the right to deduct such amounts owing the City from any payments due Contractor.
- 2.10 The City reserves the right to exercise any right or remedy to it by law, contract, equity, or otherwise, including without limitation, the right to seek any and all forms of relief in a court of competent jurisdiction. Further, the City shall not be subject to any arbitration process prior to exercising its unrestricted right to seek judicial remedy. The remedies set forth herein are cumulative and not exclusive, and may be exercised concurrently. To the extent of any conflict between this provision and another provision in, or related to, this do.
- 2.11 The contractor shall not assign or sublet the contract, or any portion of the contract, without written consent from the Director of Purchasing and Contract Management. Should consent be given, the Contractor shall insure the Subcontractor or shall provide proof of insurance from the Subcontractor that complies with all contract Insurance requirements document, this provision shall control.

IN WITNESS WHEREOF, this Agreement is executed as of the Effective Date.

CITY OF LUBBOCK, TX:

Mark McBrayer, MAYOR

ATTEST:

Courtney Paz, City Secretary

Consultant:

Blackridge

Printed Name

Title

APPROVED AS TO CONTENT:

Bill Howerton, Deputy Assistant City Manager

APPROVED AS TO FORM:

Amy Sims, Deputy City Attorney

**City of Lubbock, TX
RFP 24-18128-MA
Lobbying Consultant Services**

II. GENERAL REQUIREMENTS

1 INTENT

- a) The City of Lubbock (hereinafter called "City") is soliciting Proposal(s) (RFP's) from firms who are interested and qualified to provide Lobbying Consultant Services.
- b) It is the intent of the City of Lubbock to select a single consultant to accomplish all the services outlined in this Request for Proposal.

2 PURPOSE

- a) The City of Lubbock invites all interested, qualified firms with municipal experience to submit a proposal to provide professional consulting services to represent;[the City of Lubbock on legislative matters at the State level for projects identified by Council. The lobbying services shall include, but not be limited to: scheduled, extended, or special legislative sessions and meetings; state administrative and agency hearings, meetings, or rule making proceedings; all in accordance with the terms, conditions, and scope of work identified in this Request for Proposal (RFP).

3 SCOPE OF WORK – To assisting with the evaluation of Legislation and Proposing Legislation

- a) To assist with evaluating legislative issues. The successful firm will have municipal experience in providing lobbying services at the State level to assist the City of Lubbock in developing an legislative agenda and securing funding, if appropriated. This agenda will include areas of general municipal government, including but not limited to: telecommunications, sanitation waste disposal, parks and recreational services, economic development, streets and transportation, sanitary sewer, storm water, infrastructure, health, animal control, police and fire services, homeland security, grants, legislative issues that restrict the powers of local government such as eminent domain and annexation, and other issues affecting municipalities as more fully described in this RFP.
- b) The successful firm must agree to be available upon reasonable request to meet with City Council, City staff and others as specified in order to perform the responsibilities assigned; and to attend meetings, represent the interest of the City, and act as liaison between the City and all branches, departments, and agencies of the State government. It is expected that the successful firm will review and understand the agendas of the House and Senate leaders at the State level in order to assist the City.
- c) The City expects that the successful proposer shall refrain from undertaking any representation of other parties concerning any Legislative Matter whose interests are adverse to the interests of the City. The City reserves the right to determine in its sole discretion the existence of a conflict of interest or a potential conflict of interest.
- d) The successful firm will work collaboratively with the City of Lubbock City Council, City Manager and designated staff to develop the City's State program and represent the City's interests in Austin, Texas.

The successful firm will handle a range of activities including, but not limited to:

1. Work closely with the City Council, City Manager, and key staff to develop a detailed strategic plan, to be referred to as the City of Lubbock State Legislative Program.
2. A minimum of two (2) meetings will be required in the City of Lubbock to assist in the development of the City's State Legislative Program. Status updates will be presented to the City Council on an as-needed or required throughout the term of the Contract.
3. Identify State grant opportunities; assist with funding/grant applications in collaboration with the City, which addresses specific funding needs of the City; monitor and facilitate the progress of funding/grant applications through appropriate state agencies on behalf of the City, when requested.
4. Assist the City in the preparation of appropriations requests and required sub-committee forms.
5. Identify and aggressively act to obtain funding for the City of Lubbock projects.
6. Review on a continuing basis all existing and proposed State policies, programs, and legislation. Identify those issues that may affect the City or its citizens, and regularly inform the City on these matters. Provide legal and legislative expertise and consulting services.
7. Review the legislative policy statements adopted by the Texas Municipal League and other local governments and lobbying groups for the purpose of identifying issues which may either positively or negatively affect the City.
8. Identify other state legislation of interest to the City, monitor action on these initiatives, and advocate the City's interest when appropriate.
9. Monitor State legislative committee meetings, agency hearings and meetings prior to and during the regular and special legislative session(s) at which specific issues with the City's adopted Legislative Program are considered, as well as other issues that may arise that affect the City.
10. Work with the City Council, City Manager and designated staff to develop special or general legislation in keeping with, or supportive of, the City adopted Legislative Program.
11. Develop and evaluate strategy for the support, opposition, or amendment of pending legislation.
12. Testify and lobby before State legislative and appropriations committees as necessary on behalf of the City, during the annual legislative session, extended, or special session(s) and at legislative committee meetings. Assist City Mayor, Council Members and Staff when testifying.
13. Appear and testify before agency hearings, rulemaking proceedings and other administrative agency or legislative meetings, as required, to promote, oppose, and seek passage of legislation affecting the City or its citizens, and specific legislation contained in the City's Legislative Program.
14. Coordinate appointments or meetings between the City Council, other designated individuals, and Congressional leaders.
15. Assist the City in drafting any needed letters to State Congressional leaders regarding issues of interest and concern to the City of Lubbock.
16. Provide written monthly updates and quarterly status reports on the firm's achievements as they relate to the goals and objectives set forth in the City's Legislative Program.

17. Other required reports may include, but not necessarily be limited to, personal briefings and information bulletins pertinent to any legislation, rules, or regulations and other State policies or programs that affect the City and its citizens either directly or indirectly.
18. While the Legislature is in Session, a written summary report shall be submitted at the end of each week detailing legislative action taken during the week, status of legislative issues, anticipated action for the upcoming week, and suggestion action that City staff or elected officials may implement.
19. A written report that summarizes the status of the City's Legislative Program shall be provided within one (1) week of the closing of the session and a more detailed final written report on specific legislation and new requirements affecting the City shall be provided within a reasonable time period, not to exceed thirty (30) days from the close of session.
20. When the Legislature is not in Session, the successful firm shall provide periodic reports (at least monthly) on issues of interest or concern to the City. Such information may include, but not necessarily limited to: action taken at interim committee meetings, rulemaking hearings, status of studies underway, and advance notice of legislation being proposed.

4 EVALUATION CRITERIA

The following criteria will be used to evaluate and rank submittals:

- a) Qualifications and Experience – 30 Points
- b) Rates and Expenses - 30 Points
- c) Methodology including technical approach and understanding of the scope of the project - 30 Points
- d) References 10 - Points

5 PROPOSAL FORMAT

- The City of Lubbock requires comprehensive responses to every section within this RFP. To facilitate the review of the responses, Firms shall follow the described proposal format. The intent of the proposal format requirements is to expedite review and evaluation. It is not the intent to constrain Firms with regard to content, but to assure that the specific requirements set forth in this RFP are addressed in a uniform manner amenable to review and evaluation.
- Cover letter addressed to the Honorable Mayor and City Council that states the Offeror's understanding of the services to be provided. Include any additional information believed necessary that is not requested elsewhere in the RFP.
- The following must be uploaded under "Required Documents," section in Bonfire.

A) Qualifications and Experience:

1. Briefly introduce your firm, providing a summary of the administration, organization and staffing of your firm, including multiple offices, if applicable. Provide an organizational chart indicating the positions and names of the core management team which will undertake this engagement.

2. Identify the project manager and each individual who will work as part of this engagement. Include resumes for each person to be assigned. Include any professional designations and affiliations, certifications and licenses, etc.
3. Describe the experience of the firm in the last thirty-six (36) months in performing consulting services in similar size and scope.
4. The same information must be provided for any associate firm or sub-consultant.
5. Describe five (5) instances in which your firm was successful in obtaining funding for a municipality similar in size to the City of Lubbock in the following areas: transportation, economic development, affordable housing, environmental mitigation, homeland security, and infrastructure improvements.
6. Specify the firm's particular area of expertise and how those strengths will benefit the City of Lubbock.
7. Specify what unique characteristics set the firm apart from others who perform the same or similar functions.

B) Rates and Expenses:

1. Provide a detailed fee schedule. Express your administrative fee in a lump sum not-to-exceed maximum amount and separate price for travel and related expenses (if applicable). An itemized bill with receipts must be included with request for payment. Travel expense may not exceed the maximum per diem rates specified in the Government travel regulations,
2. Firm shall incur no travel or related expenses chargeable to the City without prior approval by an authorized City representative.
3. Consultants may submit proposals based on a lump sum basis payable monthly over the course of the year or on an hourly fee basis. All proposals must include a maximum not-to-exceed amount. Expenses not specifically listed will not be considered.
4. The actual contract amount will be negotiated after the consultant has been selected and the scope of work finalized.
5. Provide an hourly rate for lobbyist activities to be utilized on an "as need basis."

C) Methodology:

1. Proposals must include a narrative description of the Firms' plan for accomplishing the work and services to be provided to the City.
2. Proposals must indicate a clear understanding of the scope of work, including a detailed project plan for this engagement outlining major tasks and responsibilities, time frames, and staff assigned for each category of the scope of work identified above.
3. Proposals shall identify progress reports that will be made available during the process and key decision points.
4. Proposals shall clearly distinguish the Firms' duties and responsibilities and those of the City. Absence of this distinction shall mean the Firm is assuming full responsibility for all tasks.

D) References:

1. Provide references for similarly successful projects from five current governmental agencies, including the name of the agency, contact name, telephone, fax and email address.

5.1. principals are suspended or debarred by a Federal agency.

6. INSURANCE REQUIREMENTS

- 6.1. Prior to the approval of this contract by the City, the Contractor shall furnish a completed Insurance Certificate to the City, which shall be completed by an agent authorized to bind the named underwriter(s) to the coverages, limits, and termination provisions shown thereon, and which shall furnish and contain all required information referenced or indicated thereon. THE CITY SHALL HAVE NO DUTY TO PAY OR PERFORM UNDER THIS CONTRACT UNTIL SUCH CERTIFICATE SHALL HAVE BEEN DELIVERED TO THE CITY.
- 6.2. The City reserves the right to review the insurance requirements of this section during the effective period of the contract and to require adjustment of insurance coverages and their limits when deemed necessary and prudent by the City based upon changes in statutory law, court decisions, or the claims history of the industry as well as the Contractor.
- 6.3. Subject to the Contractor's right to maintain reasonable deductibles in such amounts as are approved by the City, the Contractor shall obtain and maintain in full force and effect for the duration of this contract, and any extension hereof, at Contractor's sole expense, insurance coverage written by companies approved by the State of Texas and acceptable to the City, in the following type(s) and amount(s):
- 6.4. 32.3 Complete and sign the CITY OF LUBBOCK INSURANCE REQUIREMENT AFFIDAVIT. This is to acknowledge that if you are awarded this contract by the City of Lubbock, you will be able to, within ten (10) business days after being notified of such, furnish an insurance certificate and endorsements to the City meeting all of the requirements defined below. Please note the City of Lubbock shall be named as an additional insured on a primary and non-contributory basis.

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):

Commercial General Liability Requirements: \$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).

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.

Cyber Liability Requirements: \$1M of coverage is needed or Cyber Liability

Technology Errors and Omissions Requirements: \$1M per claim

* 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 **all endorsements** thereto and may make any reasonable request for deletion, revision, or modification of particular policy terms, conditions, limitations, or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any of such policies). Upon such request by the City, the Contractor shall exercise reasonable efforts to accomplish such changes in policy coverages, and shall pay the cost thereof. Any costs will be paid by the Contractor.

REQUIRED PROVISIONS

The Contractor agrees that with respect to the above required insurance, all insurance contracts and



Rusty Kelley

Carol McGarah

Sara Sachde

Susan Nold

June 6, 2024

Dear the Honorable Mayor and City Council Members:

Blackridge is honored to respond to the City of Lubbock's RFP. We value and appreciate the relationships we have established and that we continue to build with Lubbock. Lubbock continues to grow and flourish, and we are honored to be a small part of the team that is supporting your great city.

We understand the needs and challenges facing Lubbock as well as the opportunities. We sincerely hope we can continue to represent Lubbock and build upon the work we've done during the past few years.

Sincerely,

Carol McGarah
CEO

Qualifications and Experience

Rusty Kelley, Carol McGarah, Sara Sachde, Susan Nold, and Emily Donaldson form a strong and successful team of dedicated legislative consultants who are known for achieving their clients' goals. Respected for being highly effective, knowledgeable, and trustworthy, the Blackridge team is known for their relationships, strong work ethic, and results. The team has an in-depth understanding of Texas' political and public-policy processes.

Blackridge was formed in April 2007, but the practice builds on work started in 1981 when Kelley began lobbying after serving as Executive Assistant to Speaker Billy Clayton. In 2000, Kelley entered into a partnership with Public Strategies that lasted until April 2007 when Blackridge was formed. Carol McGarah, CEO, joined the practice in 2001 and expanded the team's scope through her environmental expertise and experience. The team was further strengthened with the 2005 addition of Sara Sachde, COO; the 2023 addition of Susan Nold, VP of Government Relations; and the 2024 addition of Emily Donaldson, Research Director.

The lobby team is supported by staff who assist with core functions such as administrative services, research and project management, event planning, hearing monitoring, and messaging and outreach.

Blackridge is currently comprised of six dedicated individuals, most of whom have worked in state government and know the system at almost every level. Through the years the team has gained extensive knowledge in all aspects of public policy.

The four-member lobby team, Rusty Kelley, Carol McGarah, Sara Sachde, and Susan Nold, is supported by the following individuals who ensure a smooth, accurate, and enjoyable work process.

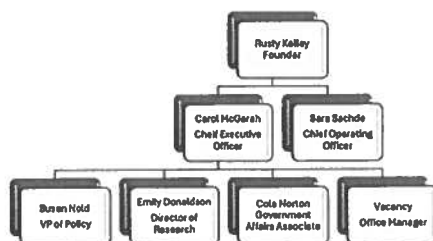
- o Emily Donaldson serves as Research Director, and
- o Cole Norton provides legislative research and administrative support.

Our core management team is comprised of our Founder, CEO, COO, and VP of Government Relations,: Rusty Kelley, Carol McGarah, Sara Sachde, and Susan Nold.

Blackridge is conveniently located one block away from the Texas Capitol. We have an open office space, which allows for City of Lubbock personnel access to convenient office space when needed while in Austin.

919 N. Congress, Suite 800, Austin, Texas 78701
512.480.8444 (main)
www.blackridgetx.com

BLACKRIDGE



Blackridge CEO Carol McGarah will continue to serve as project manager for this project. She will be supported by Founder/Owner, Rusty Kelley; COO, Sara Sachde; VP of Government Relations, Susan Nold; and Director of Research, Emily Donaldson.

Project Manager: Carol McGarah

Blackridge uses a team approach with all clients. We have found the best way to assist a client in meeting their objectives is to be knowledgeable, prepared, skilled, efficient, and responsive. Having experienced individuals participating on a project multiplies the opportunities to gather and disseminate information, interject ideas and propose strategies, as well as respond quickly to legislative issues during the legislative session.

We typically establish a team lead for each client and all information and assignments funnel through that person. We propose that Carol McGarah continue to serve as the lead for Lubbock projects. Carol has vast experience leading the team on projects for several clients over the last 15 years, including: Aqua Water Supply, Ash Grove Cement Company, City of Amarillo, City of Waco, Dallas Regional Chamber, Dell, Inc., EMC Corporation, Fort Worth Chamber, HoltCat Texas, and the Lower Colorado River Authority.

Additionally, Carol gained invaluable experience while working to pass groundbreaking air quality and water legislation during her tenure as the Director of the Senate Natural Resources Committee. She worked with more than 70 groups to work through issues and develop compromises, as well as educate stakeholders with opposing viewpoints to pass SB 1 in 1997, the state's first major water management legislation. Additionally, in 2001 she developed the concept of a multi-component air quality improvement incentive program and worked with local, state, and federal agencies as well as multiple individual and company stakeholders to write and pass the Texas Emission Reduction Plan which became model legislation that was duplicated in many states across the country.

ACTIVITIES & CERTIFICATIONS

ITIL 4 Foundation Certification

2021

Sigma Phi Epsilon Fraternity

2012-2016

Describe the experience of the firm in the last thirty-six (36) months in performing consulting services in similar size and scope.

During the past several years we have worked on multiple projects in support of Lubbock and other similarly positioned cities. The following list outlines a sampling of relevant examples:

- Coordinated with the state Legislature on the recreation of the statewide economic development program (previously commonly referred to as “313” program and now referred to as the “JETI” program). The previous program expired in 2022 and had to be recreated in the last Legislative Session.
- Worked in concert with authors of the broadband funding legislation for rural areas of Texas - \$1.5 billion
- Worked on the creation and continued support of the Texas Tech School for Veterinary Medicine.
- Coordinated with local Chambers of Commerce on Economic Development

Describe five (5) instances in which your firm was successful in obtaining funding for a municipality similar in size to the City of Lubbock in the following areas: transportation, economic development, affordable housing, environmental mitigation, homeland security, and infrastructure improvements.

The information detailed below outlines a wide variety of legislative successes. While some of these instances do not completely align with the narrative of the RFP, we believe that they are illustrative examples of the breadth and depth of our work.

**Amarillo/Waco
Opportunity Zone**

In 2018, Governor Abbott issued the state’s Opportunity Zone designations to the U.S. Treasury Department. The program was created by the 2017 federal Tax Cuts and Jobs Act and is intended to foster investment and business development in low-income communities. These Opportunity Zones are major prospects for economic growth for designated cities in Texas. Blackridge was instrumental in securing five tracts for the City of Waco and one tract for the City of Amarillo.

**Amarillo/Waco
Grants or Other Funding:**

Amarillo received a \$12.5 million loan from the Clean Water State Revolving Fund administered by the Texas Water Development Board (TWDB) to install a new lift station and make other wastewater system improvements. The City will save around \$1.6 million over the life of the loan by using this Fund.

Waco received \$12 million in 2016 from the State Water Implementation Fund for Texas (SWIFT) for a meter replacement project.

Houston/Rockport

Hurricane/Disaster Relief

During the devastation of Hurricane Harvey, Blackridge personnel teamed up with the Governor's office, legislative offices, and private industry to distribute bottled water and other key supplies to municipalities.

After the water subsided, Blackridge also helped with rebuilding efforts. The team was retained to obtain funding to help clean up and restore storm-ravaged Rockport. This work included facilitating debris removal and coordinating housing from FEMA. In addition, we worked with the Texas Education Agency to suspend the recapture provisions of the school finance system so affected school districts would not have to send their excess tax money back to the state, allowing them to use that funding to rebuild their educational infrastructure.

Fort Worth**Facebook/Alliance Airport**

Blackridge was instrumental in bringing Facebook to Fort Worth in 2015. Working closely with the Economic Development office of the Governor's Office we, along with our partners, drafted and passed financial incentives in the 2015 Legislative Session (HB 2712) to win the bid to bring Facebook to Fort Worth and Alliance Airport. In a continuing effort, Facebook incentivized to colocate even more data centers at the same site to the benefit of the city, the county, and the school district.

Specify the firm's particular area of expertise and how those strengths will benefit the City of Lubbock.

Blackridge has extensive expertise in representing cities of similar sizes and attributes as the City of Lubbock. Our firm is also substantive in nature, and we have extensive expertise and breadth of relationships in many other policy areas, which complements the unique needs of local government. Often there are synergies between what a city needs and what might already be happening in another policy area, and we are able to identify those synergies and make the appropriate connections. Also, working in other policy areas allows us to readily see opportunities for cities to engage in the process, furthering their position both from an economic standpoint and at the Legislature.

Most importantly, Blackridge has experience representing the Lubbock and already has a solid understanding of the issues most impactful to the city and the surrounding region.

Specify what unique characteristics set the firm apart from others who perform the same or similar functions.

Our firm is small by design so that each team member can add their individual experience to a particular project but also for ease of integration into the businesses of the clients we serve. As mentioned above, Blackridge is substantive in nature. The more we can learn from our clients about an issue, the better advocate we will be. We

also believe that character matters. Our goal is to be an extension of our clients advocating before the Legislature with the utmost integrity and knowledge of the issues. Further, we are an extremely resourceful firm. Our collective experiences afford us the ability to have a wide network of resources both in and out of state government. We pride ourselves on being collaborative, both directly with the client and with third parties. Building relationships for our clients has proven to be almost as valuable as being successful at the Legislature and within state agencies. Additionally, all team members are principals. The structure of Blackridge is designed where client engagement and services are performed by those principals and not by inexperienced associates.

Timeline

The following outline represents a broad overview of future projected work with the City:

June-August

- Continue to monitor and report on Sunset and Interim Legislative hearings of interest
- Collaborate with the City of Lubbock on the State Legislative Program for the Legislative Session

September-December

- Identify core external issues and stakeholders
- Assist the City in preparing any potential legislative bill drafts
- Continue to monitor and advise on state agency rulemaking
- Inform city of impactful pre-filed legislation

January-May:

- Monitor hearings, bills of interest, and issues of interest to the City
- Provide detailed updates to the City on Capitol-related activity
- Advocate on behalf of the City as appropriate

Methodology

We understand that the City needs to continue to grow to serve the needs of its residents, while also maintaining a defensive posture that protects Lubbock from unfunded mandates at the state level.

Blackridge has the benefit of an established relationship with the City of Lubbock. We understand the key players, the history surrounding certain issues, and the goals of the City. This deep connection to the city and the surrounding area helps us continue to serve as an informed and trusted extension of the city.

For our relationship to continue successfully, coordination and collaboration is key. We view this relationship as a partnership, with information flowing seamlessly between our organization and the City. We feel our existing practice of sharing information is working well. We will continue to work in open and continuous dialogue with Lubbock.

We also understand that the City continues to need an Austin presence -- a team that can serve as your eyes and ears while you are taking care of your City. The scope of our partnership is broad and encompasses a wide variety of critical activities. Our Austin presence allows us to attend committee hearings, legislative stakeholder groups, one-on-one visits with legislators, etc. We will continue to serve as a reporting agency that keeps you informed of key activity and will advise you on appropriate responses.

This reporting function is a critical component to remaining engaged. During the Legislative Session, Blackridge will distribute weekly reports that highlight the bills of interest and will also highlight the broader workings of the Capitol as well. We will also distribute a comprehensive report following the end of the veto period of the regular session. Throughout the Interim, we will communicate however best suits the needs of the City. Please expect to receive regular communication such as emails with articles of interest, upcoming rulemaking updates or hearings, and any funding opportunities. We also review the Texas Register weekly, advise on Rules of interest that have been proposed and adopted, and review Attorney General Opinion Requests and Attorney General Opinions and will notify or advise the City when appropriate.

The next Legislative session will likely bring continued pressures on local municipalities. While Lubbock will often have lots of cities that are in alignment on core issues, there are also likely several issues that are of particular and unique interest to Lubbock. We can help advise Lubbock on key messaging, alliances, and stakeholders to incorporate when working on local issues.



Rusty Kelley ♦ Carol McGarah ♦ Sara Sachde ♦ Susan Nold

September 30, 2024

Marta Alvarez
Director of Purchasing and Contract Management
City of Lubbock

Re: BAFO for RFP 24-18128-MA

Dear Ms. Alvarez,

Thank you for your consideration of the Blackridge response to the above referenced RFP. As requested, Blackridge is submitting as it's Best and Final Offer a retainer amount of \$138,000 per year, to be paid in monthly installments of \$11,500.

Many thanks for this opportunity to respond.

Carol McGarah
CEO
Blackridge





Purchasing and Contract Management

Project Summary

RFP 24-18128-MA Lobbying Consulting Services

Notice was published in the Lubbock Avalanche Journal on May 19 & May 26, 2024 27, 2022.

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 17, 2024 to June 6, 2024.

23 vendors downloaded the documents using Bonfire.com.

3 vendors were notified separately.

3 vendors submitted proposals.