

Mitchell W. Jordan, Mayor
Sean Conner, Council District #1
Ava Harmon, Council District #2
James Smith, Council District #3
Kenneth Davidson, Council District #4
Krissy Clark, Council District #5
Christopher Gibbs, Council District #6



Teresa Herrera, City Manager
April Jackson, City Secretary
Rezzin Pullum, City Attorney

**NOTICE OF MEETING
CITY COUNCIL AGENDA
April 8, 2024
Work Session at 4:00 p.m.
Regular Meeting at 5:30 p.m.
City Council Chambers
504 N. Queen Street
Palestine, Texas**

Zoom Link:

<https://us02web.zoom.us/j/81881153732?pwd=QU9QYTZtOWtIVlU1bWZmM2J3WjA3QT09>

Meeting ID: 818 8115 3732
Passcode: 104448

One tap mobile
+13462487799,,81881153732#,,, *104448# US

Note: when you are joining a Zoom meeting by phone, you can use your phone's dial pad to enter the commands *6 for toggling mute/unmute and *9 to "raise your hand." [Learn more here.](#)

Follow us live at: [facebook.com/palestinetc](https://www.facebook.com/palestinetc)

WORK SESSION

1. Overview of the State Hotel Occupancy Tax Code. Garrett Coppedge, Texas Hotel and Lodging Association
2. Discuss sales tax revenue rebate to Texas State Railroad Authority for improvements on the park grounds. Mitchell Jordan, Mayor
3. Discuss building standards and ordinances pertaining to the downtown area and downtown revitalization. Krissy Clark, Mayor Pro Tem
4. Discuss Illinois Street from N. Jackson Street to Durham Street with emphasis being between N. Esplanade to N. Howard Streets needing relief. James Smith, Council Member
5. Discuss the proposed budget calendar for Fiscal Year 2024-2025. Andrew Sibai, Finance Director
6. Discuss the selection of E. Lacy at Wells Creek Bridge for the TxDOT Highway Bridge Program. Kevin Olson, PW Director

REGULAR MEETING

- A. **CALL TO ORDER**
- B. **INVOCATION AND PLEDGE OF ALLEGIANCE**
- C. **PROPOSED CHANGES OF AGENDA ITEMS**

D. PUBLIC RECOGNITION, PUBLIC COMMENTS, AND ANNOUNCEMENTS

Any citizen wishing to speak during public comments regarding an item on or off the agenda may do so after completing the required Request to Speak form. All comments must be no more than five minutes in length. Any comments regarding items not on the posted agenda may not be discussed or responded to by the City Council. Members of the public may join via Zoom or in person.

It is not the intention of the City of Palestine to provide a public forum for the embarrassment or demeaning of an individual or group. Neither is it the intention of the Council to allow a member of the public to slur the performance, honesty, and/or integrity of any person or threaten any person. Accordingly, profane, insulting, or threatening language will not be read aloud at the meeting.

1. Recognition of newly hired Police Officer Mitchell Peterson. Mark Harcrow, Police Chief
2. National Library Week Proclamation
3. Medical Laboratory Professionals Week Proclamation

E. CONFLICT OF INTEREST DISCLOSURES

F. CITY MANAGER'S REPORT

1. February 2024 Tourism Monthly Report
2. March 2024 Development Services Monthly Report
3. March 2024 Fire Monthly Report
4. March 2024 Library Monthly Report
5. March 2024 Municipal Court Monthly Report
6. March 2024 Parks and Recreation/Facility Maintenance Monthly Report
7. March 2024 Public Works Monthly Report

G. CONSENT AGENDA

The following items may be acted upon in one motion. No separate discussion or action is necessary unless requested by the Mayor or a Council Member, in which event those items will be pulled for separate consideration. Approval of the consent agenda authorizes the City Manager to implement each item in accordance with staff recommendations.

1. Consider approval of minutes of the Work Session and Regular Agenda of March 25, 2024. April Jackson, City Secretary
2. Consider approval of a resolution appointing election workers for the May 4, 2024, General Election and declaring compliance with the Help America Vote Act (HAVA). April Jackson, City Secretary
3. Consider approval of a resolution amending Resolution No. R-18-24, appointing members to the Charter Review Committee. Teresa Herrera, City Manager
4. Consider approval of a Professional Services Agreement with Hayter Engineering, Inc. for services related to the East Lacy Street Sewer Line Replacement Project. Teresa Herrera, City Manager
5. Consider authorizing the City Manager to seek sealed bids for the official depository for the City of Palestine. Andrew Sibai, Finance Director
6. Consider approval of expenditures over \$25,000.00. Andrew Sibai, Finance Director
7. Consider approval of a Transportation Services Interlocal Agreement between GoBus Transit and the City of Palestine Visitor Center for the annual Shuttle Service in 2024. Cassie Boyd, Tourism Marketing Manager

8. Consider approval of the Hotel Occupancy Tax Grant Application and Post-Event Report. Cassie Boyd, Tourism Marketing Manager
9. Consider approval of an ordinance amending Chapter 18, "Aviation," Chapter 34, "Cemeteries," Chapter 70, "Library," and Chapter 98, "Utilities" of the Code of Ordinances. Kevin Olson, PW Director
10. Consider authorizing the City Manager to accept the purchase of 2 Yaskawa Model Z1B1361PMBRTL 300 HP, 480V, 361A for the Raw Water Pump Station in the amount of \$85,380.00 from Trane Technologies. Kevin Olson, PW Director
11. Consider authorizing the City Manager to purchase meters from Core & Main in the amount of \$86,588.97. Kevin Olson, PW Director
12. Consider authorizing the City Manager to negotiate the sale of a 2007 Caterpillar front-end loader model 938G to ANRA (Angelina Neches River Authority) for their compost site. Kevin Olson, PW Director

H. **REGULAR AGENDA**

1. Discussion and possible action regarding a Specific Use Permit for the sale of alcoholic beverages for off-premises consumption by Ordonez Groceries located at 712 N. Cottage Avenue. Susan Davis, Planning Tech
2. Discussion and possible action regarding the condition of Eilenstein Street between Variah and Douglas Street. James Smith, Council Member
3. Discussion and possible action regarding authorizing the City Manager to execute a Professional Engineering Services Agreement with Birkhoff, Hendricks, and Carter L.L.P. for design services to replace the Bassett Road culvert in the amount of \$89,900.00. Kevin Olson, PW Director
4. Discussion and possible action regarding sales tax revenue rebate to Texas State Railroad Authority for improvements on the park grounds. Mitchell Jordan, Mayor

I. **MAYOR'S REPORT**

J. **ITEMS FROM COUNCIL**

K. **CLOSED SESSION**

Council will go into Closed Session pursuant to Texas Government Code, Chapter 551, Subchapter D.

1. Section 551.087 deliberation regarding Economic Development negotiations:
 - a. Prospect #1061
 - b. TVCC/TDCJ
2. Section 551.074 personnel matters: to discuss certain concerns reference personnel duties and responsibilities and conduct.

L. **RECONVENE IN REGULAR SESSION**

1. Take any action necessary regarding Economic Development negotiations:
 - a. Prospect #1061
 - b. TVCC/TDCJ
2. Take any action necessary regarding personnel matters: to discuss certain concerns reference personnel duties and responsibilities and conduct.

M. **ADJOURNMENT**

The Palestine City Council reserves the right to adjourn into executive session at any time during the course of this meeting to discuss any of the matters listed above, as authorized by Texas Government Code Sections 551.071 (Consultation with Attorney), 551.072 (Deliberations about Real Property), 551.073 (Deliberations about Gifts and Donations), 551.074 (Personnel Matters), 551.076 (Deliberations about Security Devices), and 551.087 (Economic Development), and §551.086 (Competitive Matters regarding Electric Utility).

I certify that the above Notice of Meeting was posted on the outdoor bulletin board at the main entrance to City Hall, 504 N. Queen Street, Palestine, Texas, in compliance with Chapter 551 of the Texas Government Code on **Friday, April 5, 2024, at 3:55 p.m.**



April Jackson, City Secretary

IN ACCORDANCE WITH THE PROVISIONS OF THE AMERICANS WITH DISABILITIES ACT (ADA) PERSONS IN NEED OF SPECIAL ACCOMMODATION TO PARTICIPATE IN THIS PROCEEDING SHALL, CONTACT THE CITY SECRETARY'S OFFICE VIA EMAIL AT citysecretary@palestine-tx.org or 903-731-8414.



Agenda Date: April 8, 2024

To: City Council

From: Cassie Boyd, Tourism Marketing Manager

Agenda Item: Overview of State Hotel Occupancy Tax Code by Associate General Counsel with the THLA, Garrett Coppedge

Date Submitted: 04/03/2024

SUMMARY:

Garrett Coppedge, Associate General Counsel with the Texas Hotel and Lodging Association will provide a high-level overview of the Texas Hotel Occupancy Tax Code.

RECOMMENDED ACTION:

No action is required.

CITY MANAGER APPROVAL:



Agenda Date: April 8, 2024
To: City Council
From: Teresa Herrera, City Manager
Agenda Item: Texas State Railroad Authority
Date Submitted:

SUMMARY:

Sec. 4501.153. GRANTS FROM OTHER TAXING AUTHORITY; CONTRACT.

Authorizes a taxing authority in Anderson [County] or Cherokee County to grant certain tax revenues to the authority. Provides that the grant must serve a public purpose of the taxing authority making the grant.

We have included a copy of Bill Analysis S.B. 1659 from 2007.

RECOMMENDED ACTION:

Provide staff with clear and actionable guidance.

CITY MANAGER APPROVAL:

Attachments

SB 1659

BILL ANALYSIS

Senate Research Center
80R10342 MXM-D

S.B. 1659
By: Nichols
Natural Resources
3/30/2007
As Filed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The Texas State Railroad (railroad) is a steam powered tourist excursion train operated by the Texas Parks and Wildlife Department (TPWD). The railroad dates back to the late 1800s when the Texas prison system opened the East Texas Penitentiary in Rusk, Texas.

The railroad was turned over to TPWD in 1972, and inmates from the Texas Department of Corrections set to work clearing brush, replacing cross ties, and repairing bridges. Park employees traveled over much of the United States to obtain vintage rail cars and steam locomotives for use in the park and Victorian-style depots were constructed at both ends of the line to provide passenger comfort and interpretive exhibits. After years of hard work, the Texas State Railroad Park opened in 1976 to provide children of all ages with the thrill and romance of steam powered railroading. TPWD can no longer afford to keep the train running and TPWD is proposing to make the train a static display.

As proposed, S.B. 1659 creates the Texas State Railroad Authority (authority) and directs TPWD to transfer the train and its assets to the authority. The authority will be a quasi-governmental entity reflecting a partnership between the communities of Rusk and Palestine. The authority will be able to partner with a private operator to run and manage the train. The authority will have the ability to lease all or part of the railroad and its facilities to a private operator for future operations. S.B. 1659 creates a local public-private partnership which will ensure that the railroad continues to be a focal point for tourism and economic development in East Texas.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to any state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Title 4, Special District Local Laws Code, by adding Subtitle D, as follows:

SUBTITLE D. PARKS AND RECREATION

CHAPTER 4501. TEXAS STATE RAILROAD AUTHORITY

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 4501.001. DEFINITIONS. Defines "authority," "board," and "director."

Sec. 4501.002. CREATION AND NATURE OF AUTHORITY. Provides that the Texas State Railroad Authority (authority) is a special district created under Section 59, Article XVI, Texas Constitution, for the development of parks and recreational facilities.

Sec. 4501.003. PURPOSES OF AUTHORITY. Provides that the authority is created to achieve certain functions. Provides that the creation of this authority is necessary to promote, develop, encourage, and maintain employment, commerce, transportation, tourism, recreation, the arts, entertainment, economic development, and public welfare in Anderson and Cherokee counties.

Sec. 4501.004. FINDINGS OF BENEFIT AND PUBLIC PURPOSE. (a) Provides that the authority is created to serve a public use and benefit.

(b) Provides that all residents of this state will benefit from the works and projects provided by the authority.

(c) Sets forth that the creation of the authority is in the public interest and is essential to meet certain goals.

(d) Sets forth certain actions the authority will undertake.

(e) Prohibits the authority from acting as the agent or instrumentality of any private interest, even though the authority will incidentally benefit many private interests in addition to the paramount public interest.

Sec. 4501.005. LIBERAL CONSTRUCTION OF CHAPTER. Requires that this chapter be liberally construed in conformity with the findings and purposes stated in this chapter.

Sec. 4501.006. GENERAL WATER DISTRICT LAW NOT APPLICABLE. Provides that Chapter 49 (Provisions Applicable to All Districts), Water Code, does not apply to the authority.

[Reserves Sections 4501.007–4501.050 for expansion.]

SUBCHAPTER B. BOARD OF DIRECTORS

Sec. 4501.051. GOVERNING BODY; TERMS. Provides that the authority is governed by a board of seven voting directors appointed under Section 4501.053, except as provided by Section 4501.058. Provides for the composition and terms of the board.

Sec. 4501.052. ELIGIBILITY. Provides that a person must be at least 21 years of age to be qualified to serve as a director. Prohibits a voting director from serving more than three consecutive terms. Provides that at least two of the three directors appointed by the City of Palestine must reside in Anderson County and that two of the three directors appointed by the City of Rusk must reside in Cherokee County.

Sec. 4501.053. APPOINTMENT OF DIRECTORS. Requires the city council of the City of Palestine to appoint as a voting director one person proposed by the mayor of Palestine, by majority vote, not later than August 31 of each year. Requires the city council of the City of Rusk to appoint as a voting director one person proposed by the mayor of Rusk, by majority vote, not later than August 31 of each year. Requires the directors appointed by Subsection (a) to appoint a seventh director, by majority vote, not later than September 30 of every third year.

Sec. 4501.054. NONVOTING DIRECTORS. Sets forth certain persons who are to serve as nonvoting directors. Provides that a nonvoting director is not counted in determining the board quorum.

Sec. 4501.055. VACANCIES. Provides that a board vacancy is filled in the same manner as the original appointment.

Sec. 4501.056. VOTING AUTHORITY OF PRESIDENT. Provides that the board president is a voting member but is only authorized to vote to break a tie. Entitles all other voting directors to one vote on any issue before the board.

Sec. 4501.057. OFFICERS. Requires the board to elect from among the voting directors officers for the authority, including a president, a vice president, a secretary, and a treasurer, each year. Prohibits the president and vice president from being directors appointed by the same city.

Sec. 4501.058. **EXPANSION OF BOARD.** Authorizes the board to increase the number of voting directors by authorizing the governing body of any political subdivision in this state other than the cities of Palestine and Rusk to appoint one or more voting directors by resolution adopted by a two-thirds majority vote. Requires the resolution to establish certain criteria.

[Reserves Sections 4501.059-4501.100 for expansion.]

SUBCHAPTER C. POWERS AND DUTIES

Sec. 4501.101. **GENERAL POWERS.** Provides that the authority has the powers necessary to accomplish any authority purpose, including the purposes specified in Section 4501.003.

Sec. 4501.102. **CONTRACT TO MANAGE OR OPERATE AUTHORITY PROPERTY.** Authorizes the authority to contract with any person to manage or operate all or part of authority property.

Sec. 4501.103. **COMPETITIVE BIDDING.** (a) Provides that except as provided by Subsection (b), the competitive bidding requirements for a municipality under Chapter 252 (Purchasing and Contracting Authority of Municipalities), Local Government Code, applies to the authority.

(b) Provides that a contract with a private person under Section 4501.102 or 4501.104(2) is exempt from the competitive bidding requirements of Chapter 252 (Purchasing and Contracting Authority of Municipalities), Local Government Code, or any other statute.

Sec. 4501.104. **GENERAL PROPERTY POWERS.** Authorizes the authority to acquire, own, lease, operate, construct, maintain, repair, improve, or extend improvements, equipment, or any other property necessary to accomplish an authority purpose or to lease or otherwise convey authority property to private parties for an authority purpose.

Sec. 4501.105. **DISPOSITION OF PUBLIC PARKS AND RECREATIONAL LANDS; EXEMPTION FROM APPLICABILITY OF OTHER LAW.** Provides that Chapter 26 (Protection of Public Parks and Recreational Lands), Parks and Wildlife Code, does not apply to the use, transfer, or other disposition of property by certain methods.

Sec. 4501.106. **NONPROFIT CORPORATION.** Authorizes the board to authorize the creation of a nonprofit corporation to assist the authority in implementing a project or providing a service authorized by this chapter by resolution. Authorizes the nonprofit corporation to implement any project and provide any service authorized by this chapter. Requires the board to appoint the board of directors of the nonprofit corporation.

Sec. 4501.107. **AUTHORITY TO SUE AND BE SUED; IMMUNITY.** Authorizes the authority to sue and be sued in this state. Provides that this section does not waive any governmental immunity that would otherwise apply to the authority.

[Reserves Sections 4501.108-4501.150 for expansion.]

SUBCHAPTER D. GENERAL FINANCIAL PROVISIONS

Sec. 4501.151. **AD VALOREM TAXES PROHIBITED.** Prohibits the authority from imposing an ad valorem tax.

Sec. 4501.152. **GRANTS; DONATIONS.** Authorizes the authority to accept grants and donations, including property, for any authority purpose.

Sec. 4501.153. **GRANTS FROM OTHER TAXING AUTHORITY; CONTRACT.** Authorizes a taxing authority in Anderson [County] or Cherokee County to grant certain

tax revenues to the authority. Provides that the grant must serve a public purpose of the taxing authority making the grant.

[Reserves Sections 4501.154-4501.200 for expansion.]

SUBCHAPTER E. BONDS

Sec. 4501.201. DEFINITION. Defines "bond."

Sec. 4501.202. POWER TO ISSUE BONDS. Authorizes the authority to issue bonds to carry out any power conferred by this chapter. Provides that the bonds must be authorized by a board resolution.

Sec. 4501.203. MATURITY. Provides that authority bonds must mature not later than 40 years after their date of issuance.

Sec. 4501.204. BONDS PAYABLE FROM REVENUE. Authorizes bonds issued under this subchapter to be secured under board resolution by a pledge of certain revenues. Authorizes the board to undertake certain actions in the resolution authorizing the bonds. Authorizes the board to adopt and execute any other proceeding or instrument necessary or convenient in the issuance of the bonds.

Sec. 4501.205. ADDITIONAL SECURITY. (a) Authorizes bonds to be additionally secured, at the discretion of the board, by a deed of trust or mortgage lien on physical property of the authority, franchises, easements, water rights and appropriations permits, leases, contracts, and all rights appurtenant to the property, vesting in the trustee the power to take certain actions.

(b) Provides that a purchaser under a sale under the deed of trust lien, if one is given, is the absolute owner of property and rights purchased and is entitled to maintain and operate the property and rights.

(c) Authorizes a trust indenture to provide for certain things, regardless of the existence of the deed of trust or mortgage lien on the property.

Sec. 4501.206. BONDS EXEMPT FROM TAXATION. Provides that a bond issued under this subchapter, the transfer of the bond, and income from the bond, including profits made on the sale of the bond, are exempt from taxation in this state.

[Reserves Sections 4501.207-4501.250 for expansion.]

SUBCHAPTER F. DISSOLUTION

Sec. 4501.251. DISSOLUTION OF AUTHORITY; OUTSTANDING DEBT. Authorizes the board to dissolve the authority regardless of whether the authority has debt. Requires the authority to remain in existence solely for the purpose of discharging its debts if the authority has debt when it is dissolved. Provides that the dissolution is effective when all debts have been discharged.

SECTION 2. Repealer: Section 22.182 (Texas State Railroad), Parks and Wildlife Code.

SECTION 3. (a) Requires the city council of the City of Palestine and the city council of the City of Rusk to appoint three voting directors from three persons proposed by the mayor of Palestine or Rusk, as applicable, to serve as directors under Subchapter B, Chapter 4501, Special District Local Laws Code, as added by this Act, not later than September 1, 2007.

(b) Requires the directors appointed under this section to represent each city to draw lots to determine which director from each city serves a term expiring on certain dates.

(c) Requires the directors appointed under Subsection (a) of this section to meet in open session and appoint a seventh director not later than September 30, 2007. Requires the seventh director to serve a term expiring October 1, 2010.

SECTION 4. (a) Provides that not earlier than September 1, 2007, and on execution of the requirements of Section 5 of this Act, certain properties, obligations and liabilities, and files and records, are transferred to the authority.

(b) Authorizes the Texas Parks and Wildlife Department (TPWD) to agree with the authority to transfer any property of TPWD to the authority to implement the transfer required by this Act before September 1, 2007.

(c) Requires TPWD to continue to perform functions and activities under Section 22.182 (Texas State Railroad), Parks and Wildlife Code, in the period beginning on the effective date of this Act and ending on execution of the requirements of Section 5 of this Act, as if that section had not been repealed by this Act, and continues the former law in effect for that purpose.

SECTION 5. (a) Requires TPWD to transfer to the authority the property described by Subsection (d) of this section, for the consideration described by Subsection (b) of this section, not later than October 1, 2007.

(b) Provides that consideration for the transfer authorized by Subsection (a) of this section is an agreement between the parties that requires the authority to use the property in a manner that primarily promotes a state public purpose by using the property to operate the Texas State Railroad (railroad). Provides that if the authority does not use the property transferred under this Act in a manner that primarily promotes a state public interest by using the property to operate the railroad, ownership of the property automatically reverts to TPWD.

(c) Requires TPWD to transfer the property by an appropriate instrument of transfer. Provides that the instrument of transfer must include certain provisions.

(d) Provides that the property to which Subsection (a) of this section refers is all real and personal property associated with the railroad owned by the State of Texas, including certain properties.

SECTION 6. Sets forth certain legislative findings.

SECTION 7. Effective date: upon passage or September 1, 2007.



Agenda Date: April 8, 2024
To: City Council
From: April Jackson, City Secretary
Agenda Item: Discuss the Proposed Budget Calendar for Fiscal Year 2024-2025
Date Submitted: 04/04/2024

SUMMARY:

This item requests input from City Council on the proposed budget calendar for Fiscal Year 2024-2025 and makes any necessary adjustments for scheduling.

RECOMMENDED ACTION:

The City Council should review the calendar and request any necessary changes to adjust the budget process into their schedules.

CITY MANAGER APPROVAL:

Attachments

Proposed Budget Calendar FY 2024-2025



Fiscal Year 2024 - 2025

Budget Calendar

April 5, 2024	Budget Kickoff, Department's Budget
May 3, 2024	Budget Entry Complete (first draft)
May 14-24, 2024	Departmental Budget Review with City Manager
June 10, 2024	Budget Work Session
July 8, 2024	Set Dates for Public Hearings on the Budget and Tax Rate
July 25, 2024	Chief Appraiser Delivers Certified Estimate of Taxable Value No-New-Revenue and Voter-Approval Tax Rates are Calculated.
August 5-6, 2024	Budget Town Hall
August 9, 2024	Last Day to File Proposed Budget with City Secretary Publish Notice of Budget Hearing (18 point font) Post the Proposed Budget on the City's Website Publish Notice of Tax Rate Hearing (18 point font) Post the Notice Prominently on the Home Page of The City's Website from the Date the Notice is First Published until the Public Hearing is Concluded
August 12-13, 2024	Budget Work Session No-New-Revenue and Voter-Approval Tax Rates Submitted to the City Council (by August 12) Post the Calculated No-New-Revenue and Voter-Approval Tax Rates, Along with Certain Debt Information, on the Home Page of the City's Website (by August 14)
August 12, 2024	Tax Rate Record Vote (sets tax rate ceiling)
August 26, 2024	1 st Public Hearing on Budget & 1 st Public Hearing on Tax Rate
September 2-9, 2024	Continuous Internet and T.V. Notice of Tax Rate Public Hearing, if Applicable, and if the Proposed Tax Rate Will Exceed the No-New-Revenue Rate
September 2, 2024	2 nd Public Hearing on Tax Rate
September 9, 2024	2 nd Public Hearing on Budget & Final Budget Adoption Ratification of Property Tax Revenue Increase Tax Rate Adoption



Agenda Date: April 8, 2024
To: City Council
From: Kimberly Beckman, Public Works Admin
Agenda Item: TXDOT Highway Bridge Program
Date Submitted: 04/03/2024

SUMMARY:

TXDOT Highway Bridge Program

The bridge/culvert at E Lacy at Wells Creek is scheduled to be designed and replaced by TXDOT.

RECOMMENDED ACTION:

No required action.

CITY MANAGER APPROVAL:

Attachments

Bridge inspection report
Email

Bridge Inspection Report

100010B00880002

E LACY (OLD US84)

over

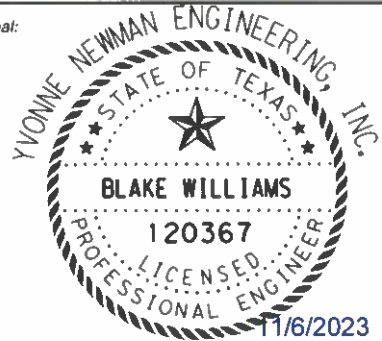
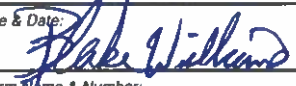
WELLS CREEK



Inspection Date: 09/15/2023

Inspected By: Blake Williams

Inspection Type(s): Routine

Seal:	
Signature & Date:	
Prime Firm Name & Number:	Srinteg Corp. [F-20066]
Sub Firm Name & Number:	Yvonne Newman Engineering, Inc. [F-101]

Inspector: Williams,Blake

Inspection Date: 09/15/2023

Parent Contract: 88-2IDP5044- Srinteg Corporation-
RT

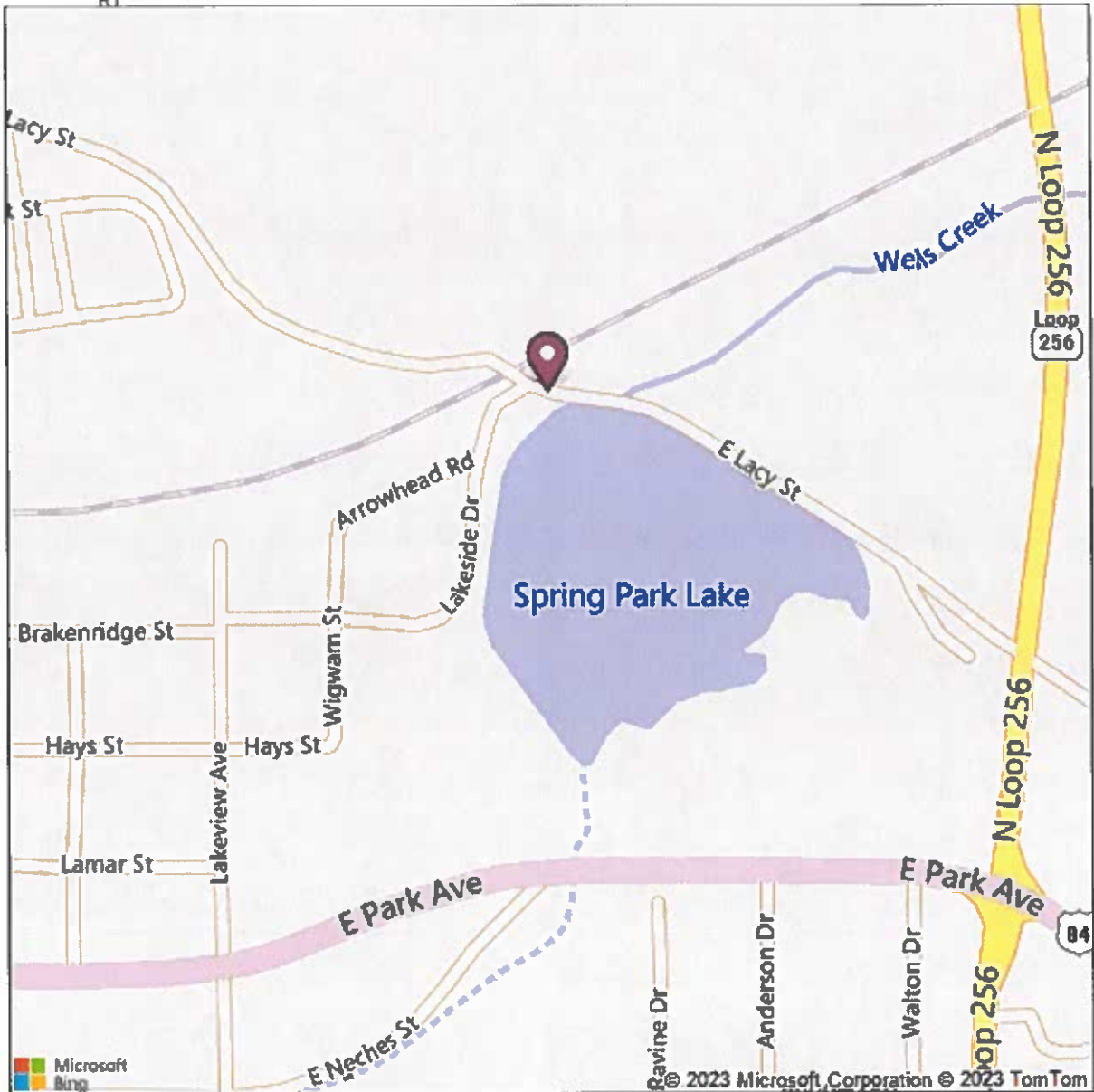


Bridge Inspection Report

Structure Number: 100010B00880002

Facility Carried: E LACY (OLD US84)

Features Intersected: WELLS CREEK



Latitude: 31.76252741

Longitude: -95.61100762

Inspector: Tyler Crow

Structure Number:

100010B00880002

Inspection Date:

Facility Carried:

Bridge Inspection Report

Pictures



PHOTO 2

Description 10-001-B008-80-002 VIEW 9 - DISPLACEMENT OF DOWNSTREAM RUBBLE RIPRAP.

Inspector: Tyler Crow

Structure Number: 100010B00880002

Inspection Date:

Facility Carried:

Bridge Inspection Report

Pictures



PHOTO 6

Description 10-001-B008-80-002 VIEW 12 - NORTHEAST WINGWALL ROTATING TOWARD CHANNEL AND STEEL STRAPS HAVE FAILED.

Kevin Olson

From: Mitch Bodiford <[REDACTED]>
Sent: Monday, March 25, 2024 10:07 AM
To: CityManager; Kevin Olson
Cc: Rolando Mendez; Andy Martinez; Clint Naismith
Subject: E Lacy at Wells Creek _ NBI - 100010B00880002

Teresa,

I wanted to reach out to notify you of our selection of E Lacy (Old US 84) at Wells Creek for the HBP (Highway Bridge Program). We can discuss today during our meeting.

As a reminder: FHWA funds 80% of the program costs and requires a 20% match. In 1995, the Texas Transportation Commission began providing half of the match amount, so the current funding responsibility is: FHWA 80%, TxDOT 10%, and the local government provides the remaining 10%.

There are additional programs designed to ease the financial burden on qualifying local governments as discussed:

- 1) The Participation Waived Project / Equivalent Match Program (PWP/EMP) – The local government completes structure improvement work on other deficient bridges or cross-drainage structures in a dollar amount equal to their 10% match. (A completed Advance Funding Agreement must be executed before any Equivalent Match project work is started for a local entity to be credited the work.)
- 2) The Economically Disadvantaged Counties (EDC) Program – Established in 1998, the EDC program adjusts the local participation amount requirements based on the qualifying county's ability to provide matching funds.
- 3) The State Infrastructure Bank (SIB) – a revolving account in the State Highway Fund from which loans may be made to local governments for funding critical projects like bridges.

If the County elects to take advantage of the EMP, projects will need to be identified that meet the requirements of the program. Once EMP work has been selected, we will package it into the necessary documents to advance the AFA process.

For the equivalent-match project(s), that the local government will:

- Assume the costs of the work.
- Assume responsibility for complying with all applicable federal, state and environmental regulations and permitting requirements.
- Assume responsibility for the engineering and construction necessary completion of the work.

The local government will be allowed 3 years after the contract award of the participation-waived project to complete structural improvements on the equivalent-match project(s). No later than 30 days after completion, documentation of completion of the equivalent-match project(s) is required to be

submitted by the local government to the district engineer. If the local government fails to adequately complete the equivalent-match project(s), it will be excluded from future such waivers for a minimum of 5 years.

If the district has not been notified by the local government that the equivalent-match work has been completed within the specified 3-year period, the district should inquire as to the status of the work. If it is determined that the work has not been accomplished and no significant progress has or is being made toward such accomplishment, then the 5-year period for exclusion of the local government from such waivers may be invoked.

Additional Information and Requirements can be found at:

<https://link.edgepilot.com/s/9f03382c/RCWXeaS9OU2dzCek9m-rQ?u=https://www.txdot.gov/inside-txdot/division/bridge/programs.html>

For more information on the HBP, see the links provided below.

Highway Bridge Program

<https://link.edgepilot.com/s/ea52b27b/uxrvrIYk3kgHpENxf-L9fw?u=https://www.txdot.gov/government/programs/programs.html>

- [Project Development Manual](#)
- [Highway Bridge Program Brochure](#)
- [Highway Bridge Program Video](#)

OTHER USEFUL INFORMATION:

Friendly reminder, State law requires any government entity to report their bridge openings/repairs/rehabilitations/widenings to TxDOT, and provide TxDOT with construction drawings, before the 31st day after the date of construction is complete.

From the Texas Transportation Code (Added by Acts 1999, 76th Leg., Section 201.804):

Section 201.804 Submission of Bridge Design Plans to Department

(a) This section applies to any governmental entity of this state that is authorized by law to construct or maintain a public road and that:

- (1) Constructs or rehabilitates a bridge;
- (2) Proposes to assume responsibility for a bridge constructed or rehabilitated by another person; or

- (3) Issues a permit for the construction or rehabilitation of a bridge by another person.

(b) Before the 31st day after the date the construction or rehabilitation of the bridge is completed, the governmental entity shall submit to the department a copy of the final structural design plans for the bridge.

(c) The department shall use information submitted under Subsection (b) as necessary in seeking to comply with 23 C.F.R. Part 650, Subpart C.

Added by Acts 1999, 76th Leg., ch. 831, § 1, eff. June 18, 1999

The Local Government Projects Program

To help guide local government projects deal with both onsite inspection and compliance as well as the offsite manufactures materials TxDOT has expanded **The Local Government Projects Program** which provides guidance and training for local governments, including municipalities, counties or regional mobility authorities in the development of transportation projects under TxDOT oversight. The program addresses both federal and state requirements, but does not address public transportation, aviation or turnpike projects. Local governments are responsible to ensure all project requirements are met and, if federal funding is involved, advance funding agreement provisions are met. These projects allow local governments to administer a project and minimize the use of TxDOT resources.

There has been a website setup that has a lot of useful information including guidance documents, programs manuals, and toolkits to help those local governments through the process. The local government would have to address the material oversight when developing their Quality Assurance Plan (QAP).

<https://link.edgepilot.com/s/b35cde31/Oms6WjUnEuG2uM6tVg9AA?u=https://www.txdot.gov/government/processes-procedures/lgp-toolkit/initiation/overview.html>

<https://link.edgepilot.com/s/b885a4c5/Jx5dWTyMVEOuKfRa-09tBg?u=https://www.txdot.gov/government/programs/local-government-projects.html>

Thanks,

Mitch Bodiford, PE

Tyler District

Phone: [REDACTED]





Agenda Date: April 8, 2024
To: City Council
From: Mark Harcrow, Chief of Police
Agenda Item: Recognition of New Police Officer Mitchell Peterson
Date Submitted: 04/03/2024

SUMMARY:

Recognition of newly hired Police Officer Mitchell Peterson.

RECOMMENDED ACTION:

Recognition only.

CITY MANAGER APPROVAL:



Agenda Date: April 8, 2024
To: City Council
From: Ana Sanchez, Library Director
Agenda Item: Proclamation -National Library Week
Date Submitted: 04/03/2024

SUMMARY:

National Library Week is an annual celebration highlighting the valuable role libraries, librarians, and library workers play in transforming lives and strengthening our communities. This year, it's held from April 7 to 14. The 2024 theme, "Ready, Set, Library!," promotes the idea that in our always-online world, libraries give us a green light to something truly special: a place to connect with others, learn new skills, and focus on what matters most.

RECOMMENDED ACTION:

National Library Week is an annual celebration highlighting the valuable role libraries, librarians, and library workers play in transforming lives and strengthening our communities. This year, it's held from April 7 to 14. The 2024 theme, "Ready, Set, Library!," promotes the idea that in our always-online world, libraries give us a green light to something truly special: a place to connect with others, learn new skills, and focus on what matters most.

CITY MANAGER APPROVAL:



Agenda Date: April 8, 2024
To: City Council
From: Cassie Boyd, Tourism Marketing Manager
Agenda Item: February 2024 Tourism Report
Date Submitted: 04/03/2024

SUMMARY:

Tourism Manager's report for the month of February, 2024.

RECOMMENDED ACTION:

No action is required.

CITY MANAGER APPROVAL:

Attachments

February 2024 Tourism Report

Contact: Cassie Boyd
 City of Palestine
 Phone: (903) 723-3014
 Direct: (903) 723-3053

825 W. Spring St.
 Palestine, TX 75801
tourism@palestine-tx.org



TOURISM REPORT – FEBRUARY 2024

Hotel Occupancy Income Tax Collected/STR Reporting

	February 2024	February 2023	+/- to Last Year	Year-to-Date
Occupancy	60.7%	48.4%	+25.5%	+26.2%
Average Daily Rate (ADR)	\$84.43	\$85.01	-0.7%	+1.1%
Revenue Per Avail. Room (RevPAR)	\$51.28	\$41.13	+24.7%	+27.6%
Revenue	\$1,016,540	\$815,432	+24.7%	+27.6%

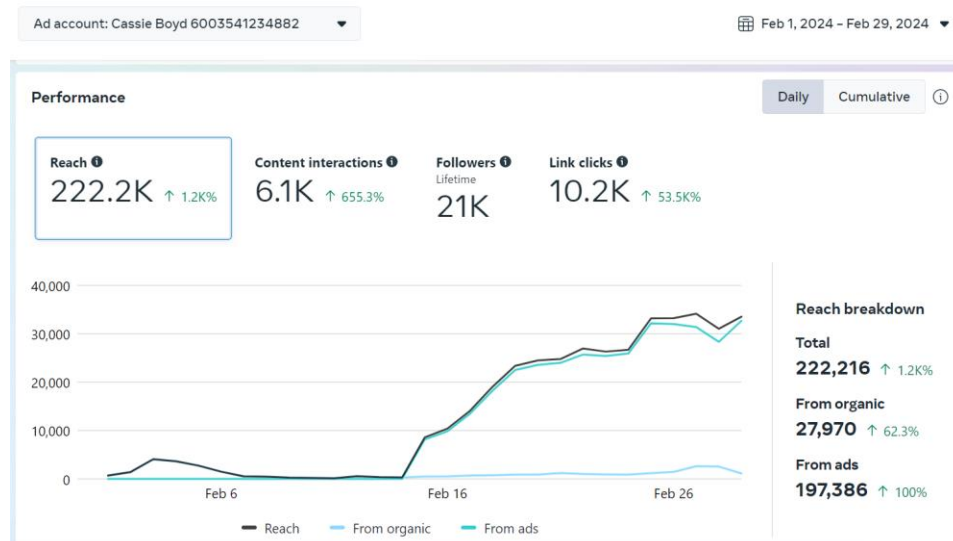
*Census includes 8 hotels, 708 rooms. (8 of 11 hotels reporting)

Accomplishments, Activities & Successes

- **Attended Houston Home & Garden Show to advertise Palestine, TX**
- **Revised placement plan and layouts for wayfinding signage project**
- **Board training on Hotel Occupancy Tax administration**

Marketing:

- Advertisements/articles submitted to be published with: Tour Texas, Meetings + Events, Meet in Texas, StatePoint Media (syndicates to multiple news media outlets), Dallas Drive Guide, etc.
- Social media stats are on the rise, across the board:



- Developing comprehensive social media organic posting calendar/schedule
- Developing marketing plan for 2024-25 to include in-state and out-of-state channels

Main Street

- Continued work with businesses dealing with challenges from the Downtown Revitalization project
- Work continues with Railroad Heritage Center
- Working on developing their fundraiser ideas for the year, as well as planning a board retreat in March

Visitor Center:

- More than 128 visitors to the Visitor Center
- Reordered stock of several visitor information guides
- Provided visitor welcome bags for 75 guests to events in Palestine at the request of event coordinators



Agenda Date: April 8, 2024
To: City Council
From: Susan Davis, Planning Technician
Agenda Item: Development Services Report March 2024
Date Submitted: 04/03/2024

SUMMARY:

March 2024 Development Services Report.

RECOMMENDED ACTION:

No action required.

CITY MANAGER APPROVAL:

Attachments

Department Report



DEVELOPMENT SERVICES DEPARTMENT
ACTIVITIES REPORT
March 1-31, 2024

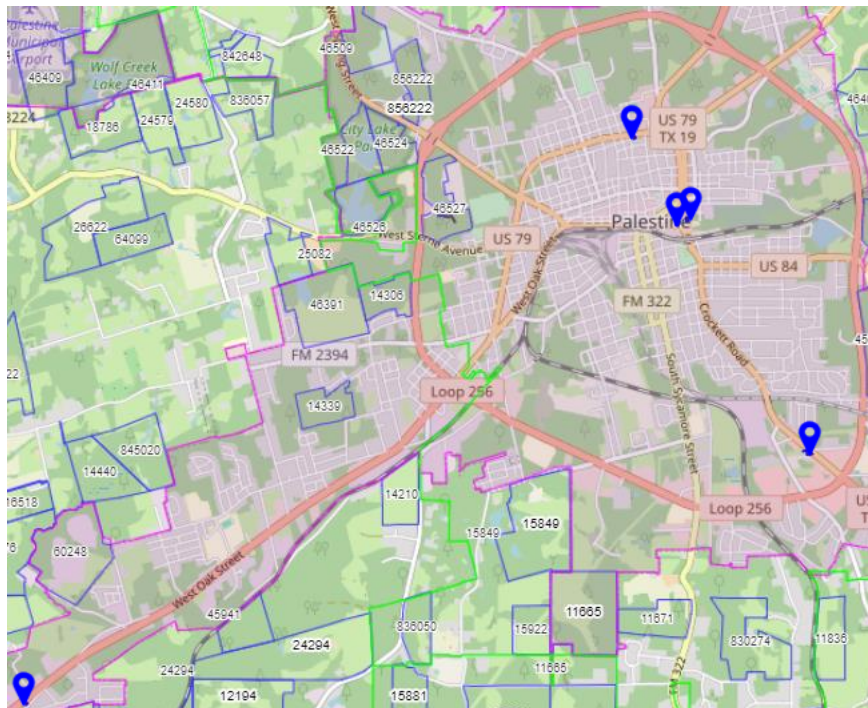
PERMITTING TOTALS

BUILDING and LICENSE PERMITS

Permit Type	March Permit Count	March Permit Fees	Permit Count / Fiscal Year	Permit Fees / Fiscal Year
BUILDING PERMIT	18	\$9,735	73	\$111,465
CERTIFICATE OF OCCUPANCY	5	\$280	33	\$2,280
DRIVEWAY	1	\$50	4	\$200
FENCE	2	\$100	15	\$750
ROOFING	3	\$102.50	22	\$577.50
DEMOLITION	3	\$200	11	\$680
GRADING	0	\$0	13	\$5,100
COMMERCIAL ELECTRICAL	2	\$210	27	\$1,930
RESIDENTIAL ELECTRICAL	7	\$525	72	\$5,455
MECHANICAL	1	\$105	12	\$1,000
GAS TEST	9	\$945	58	\$3,108
PLUMBING	9	\$630	55	\$3,157
SIGN	2	\$250	15	\$1,475
SPECIFIC USE	1	\$125	6	\$750
CONTRACTOR LICENSE	14	\$1,750	65	\$8,176
HEALTH PERMITS	20	\$3,600	177	\$34,000
Totals:	138	\$18,607.50	680	\$180,103.50

CERTIFICATES OF OCCUPANCY ISSUED

Name	Address	Description
RODRIGUEZ AUTOMOTIVE	102 E PALESTINE AVE	AUTO REPAIR SHOP
KIM'S CONVENIENCE STORES	1929 CROCKETT RD STE 2	EQUIPMENT STORAGE
JOHN WILBANKS	105 CROCKETT RD	CLEAN AND SHOW ONLY
TERESA CORPUS	204 N CHURCH ST	CLEAN AND SHOW ONLY
HAILEY PROPERTY INVESTMENTS	5424 W OAK ST.	CLEAN AND SHOW ONLY

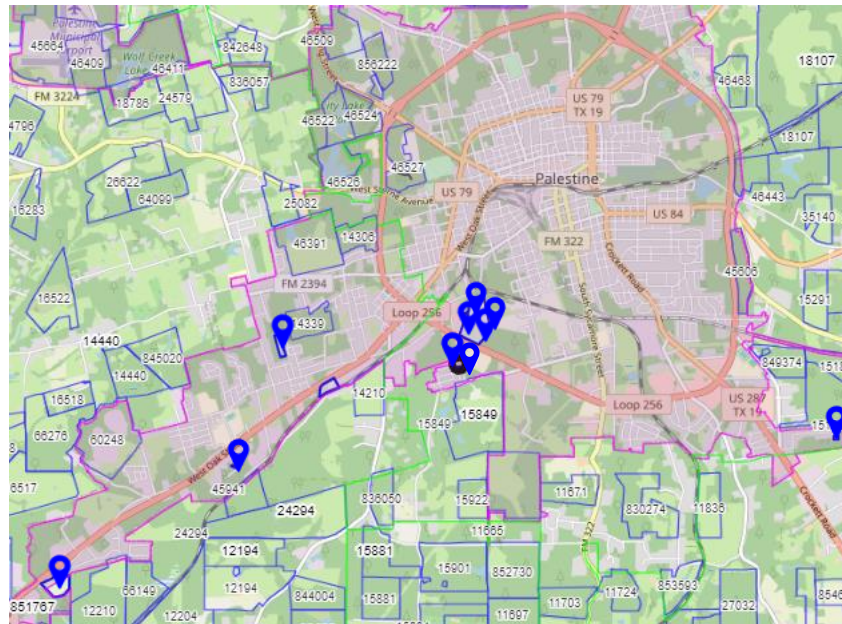


PERMITTING PROJECTS / NEW BUSINESS OCCUPANCIES

RESIDENTIAL CONSTRUCTION IN PROGRESS

Address	Square Feet	Estimated Value
710 Old Tucker Trl	5,000	\$124,000
300 Cartmell Lakes	5434	\$399,000
108 Elmwood Cir.	3295	\$225,000
110 Elmwood Cir.	3295	\$225,000
126 Cartmell Lakes	2355	\$210,000
315 Cedarvale St	1190	\$110,000
105 Cartmell Lakes	2355	\$210,000

101 Holly Tree	3970	\$475,000
128 Cartmell	1607	\$170,000
129 Cartmell	1607	\$170,000
305 Lone Oak Dr	600	\$30,000
Total		\$1,978,000



COMMERCIAL CONSTRUCTION UNDER REVIEW

Name	Address	Description
CALLIZO AROMAS	2220 W REAGAN ST	FRAGRANCE MANUFACTURER
RED OAK APARTMENTS II	GARDNER DR	INTERIOR REMODEL OF APARTMENTS
TEXAS FUTURA	707 WILLOWCREEK PKWY	LUBRICANT FACILITY
MEDI-SPA	2232 S SYCAMORE ST	REJUVENATION SPA
J'ADORE NAIL	2807 W OAK ST STE C	NAIL SALON

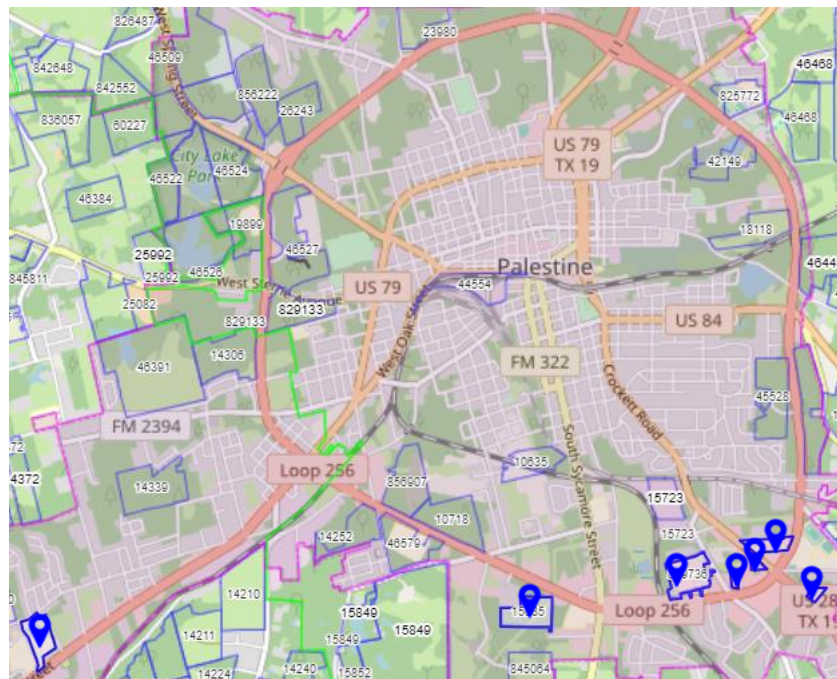
BUREAU VERITAS SUBMISSIONS

Project	Status
THE RESERVE AT PALESTINE	REVISIONS SUBMITTED FOR REVIEW
OAKWOOD STORAGE	SUBMITTED TO BUREAU VERITAS FOR REVIEW
128 CARTMELL DR	1607 SQ FT SINGLE FAMILY RESIDENCE

129 CARTMELL DR	1607 SQ FT SINGLE FAMILY RESIDENCE
131 CARTMELL DR	1607 SQ FT SINGLE FAMILY RESIDENCE
132 CARTMELL DR	1607 SQ FT SINGLE FAMILY RESIDENCE
MEDI-SPA	SUBMITTED TO BUREAU VERITAS FOR REVIEW
J'ADORE NAIL	SUBMITTED TO BUREAU VERITAS FOR REVIEW

COMMERCIAL CONSTRUCTION IN PROGRESS

Name	Address	Description	Valuation
ALDI	2117 S. Loop 256	Grocery Store	\$2,300,043
PALESTINE MASSAGE	2029 Crockett Rd	Spa	\$20,000
WESTWOOD JR HIGH	1801 Panther Blvd	School Building	\$31,760,946
THE RESERVE AT PALESTINE	3308 S Loop 256	Senior Apartments	\$12,300,000
PALESTINE DENTAL CLINIC	2014 Crockett Rd	Dental Office Expansion	\$ 46,000
WALMART RECYCLING CENTER	2223 S Loop 256	Recycling Drop Box	\$16,000
J & G FISHMORE PROPERTIES	2212 CROCKET RD	SMOOTHIE KING AND RETAIL SPACES	\$1,000000
TOTAL:			\$47,442,989





Agenda Date: April 8, 2024
To: City Council
From: Shannon Davis, Fire Department Chief
Agenda Item: Fire Chief
Date Submitted: 04/02/2024

SUMMARY:

Monthly Fire Report March 2024

RECOMMENDED ACTION:

No action required

CITY MANAGER APPROVAL:

Attachments

Fire Report
Fire Report

PALESTINE FD

03/01/2024 - 03/31/2024 (31 Days)

Breakdown by Incident Category

Incident Category	# Incidents	% of Total
Medical	124	59.04%
Accident	34	16.19%
Alarm	21	10%
Public Service	6	2.85%
Utility Problem	6	2.85%
Canceled	4	1.9%
Fire	4	1.9%
Agency Assist	2	0.95%
Unauthorized burning	2	0.95%
Rescue	2	0.95%
Smoke Investigation	1	0.47%
Other	1	0.47%
Bomb/Arson Threat	1	0.47%
HazMat	1	0.47%
Explosion	1	0.47%
Total	210	100%

Detailed Breakdown by Incident Type

Incident Type	# Incidents	% of Total
Accident, potential accident, other	2	0.95%
Alarm system activation, no fire - unintentional	5	2.38%
Arcing, shorted electrical equipment	1	0.47%
Assist police or other governmental agency	2	0.95%
Attempted burning, illegal action, other	1	0.47%
Building fire	1	0.47%
Cooking fire, confined to container	1	0.47%
Dispatched & canceled en route	4	1.9%
Emergency medical service incident, other	8	3.8%

Incident Type	# Incidents	% of Total
Excessive heat, scorch burns with no ignition	1	0.47%
False alarm or false call, other	16	7.61%
Fire, other	2	0.95%
HazMat release investigation w/no HazMat	1	0.47%
Lock-in (if lock out, use 511)	1	0.47%
Medical assist, assist EMS crew	116	55.23%
Motor vehicle accident with injuries	6	2.85%
Motor vehicle accident with no injuries	25	11.9%
Motor vehicle/pedestrian accident (MV Ped)	1	0.47%
Power line down	5	2.38%
Public service	3	1.42%
Public service assistance, other	3	1.42%
Removal of victim(s) from stalled elevator	1	0.47%
Smoke scare, odor of smoke	1	0.47%
Special type of incident, other	1	0.47%
Unauthorized burning	2	0.95%
Total	210	100%

PALESTINE FD

03/01/2024 - 03/31/2024 (31 Days)

Breakdown by Incident Type per Zone

Incident Category	# Incidents	% of Total
Station 1		
111	1	0.47%
311	33	15.71%
320	5	2.38%
322	1	0.47%
324	11	5.23%
331	1	0.47%
444	1	0.47%
445	1	0.47%
551	2	0.95%
553	2	0.95%
561	2	0.95%
651	1	0.47%
700	4	1.9%
745	4	1.9%
Total incidents within Station 1	69	32.85%
Station 2		
100	1	0.47%
251	1	0.47%
311	39	18.57%

Incident Category	# Incidents	% of Total
320	1	0.47%
322	2	0.95%
323	1	0.47%
324	4	1.9%
444	3	1.42%
550	1	0.47%
611	3	1.42%
671	1	0.47%
700	6	2.85%
Total incidents within Station 2	63	30%
Station 3		
100	1	0.47%
113	1	0.47%
311	42	20%
322	3	1.42%
324	10	4.76%
353	1	0.47%
444	1	0.47%
460	2	0.95%
550	2	0.95%
553	1	0.47%
611	1	0.47%
700	6	2.85%
745	1	0.47%
900	1	0.47%
Total incidents within Station 3	73	34.76%
No Zone Set		
311	2	0.95%
320	2	0.95%
480	1	0.47%
Total incidents without zone set	5	2.38%
Overall Total	210	100%





Agenda Date: April 8, 2024
To: City Council
From: Ana Sanchez, Library Director
Agenda Item: March 2024-Library Report
Date Submitted: 04/03/2024

SUMMARY:

Review the Library Director's report, including statistics and charts usage report for March 2024, including the April 2024 calendar of programs and events. April 7-14 is National Library Week. Library staff will be visiting community events in April and May promoting Summer Reading Club Registration begins May 1. Summer Reading Club 2024 runs for six weeks, June 1-July 12.

RECOMMENDED ACTION:

Review the Library Director's report, including statistics and charts usage report for March 2024, including the April 2024 calendar of programs and events. April 7-14 is National Library Week. Library staff will be visiting community events in April and May promoting Summer Reading Club Registration begins May 1. Summer Reading Club 2024 runs for six weeks, June 1-July 12.

CITY MANAGER APPROVAL:

Attachments

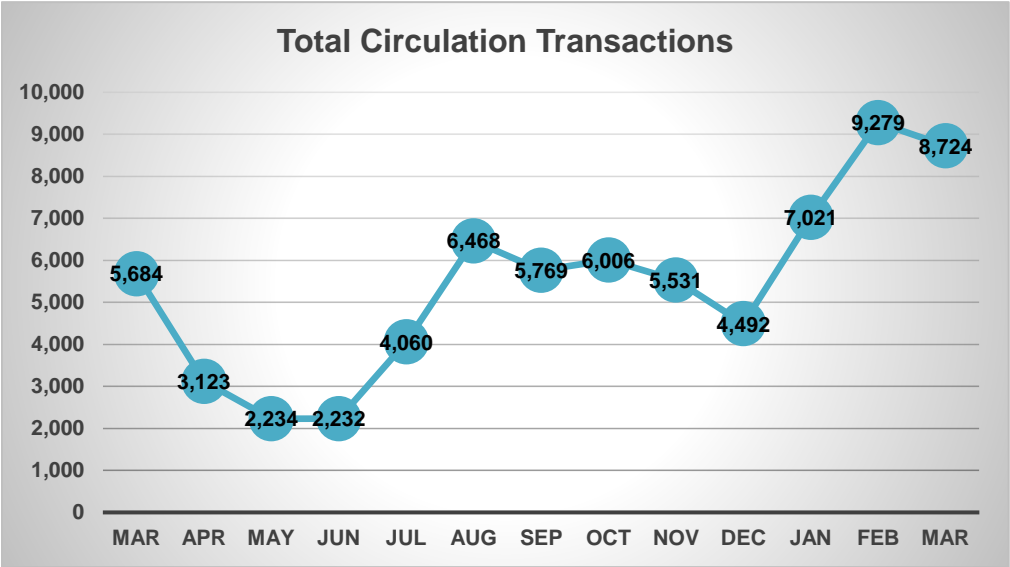
MAR24ST
MAR24CH
AP24CAL
SRC24REG

Library Usage Report

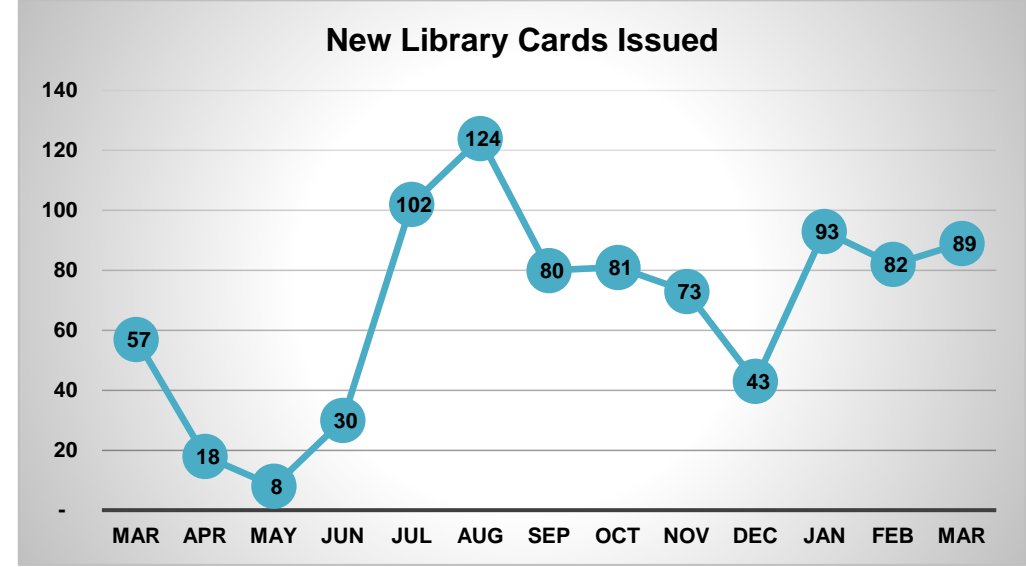
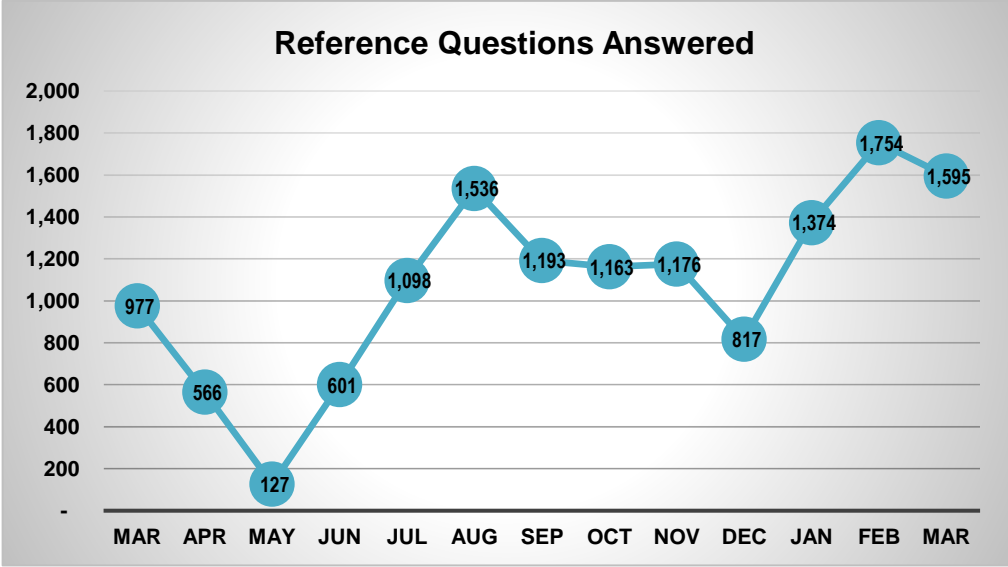
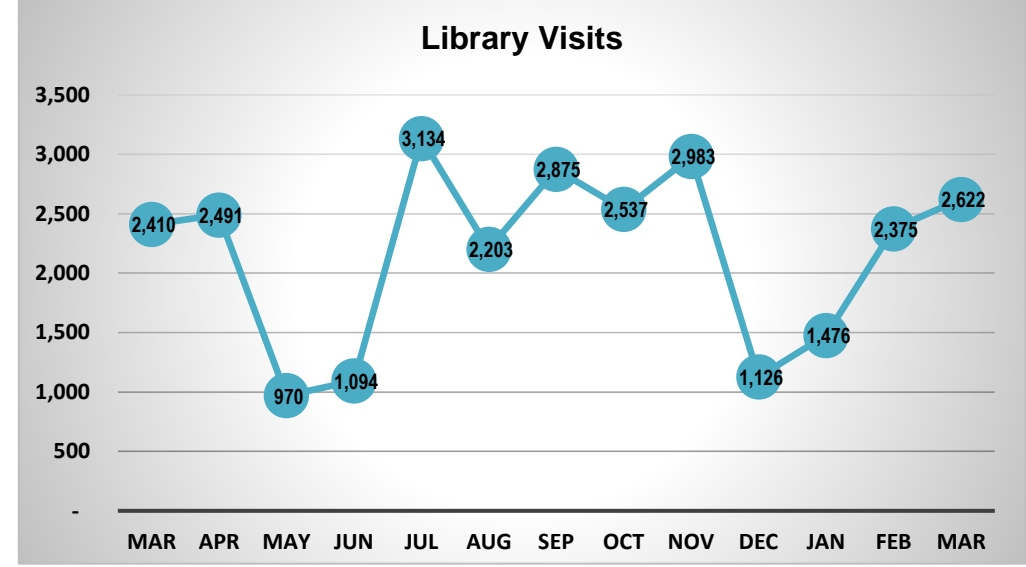
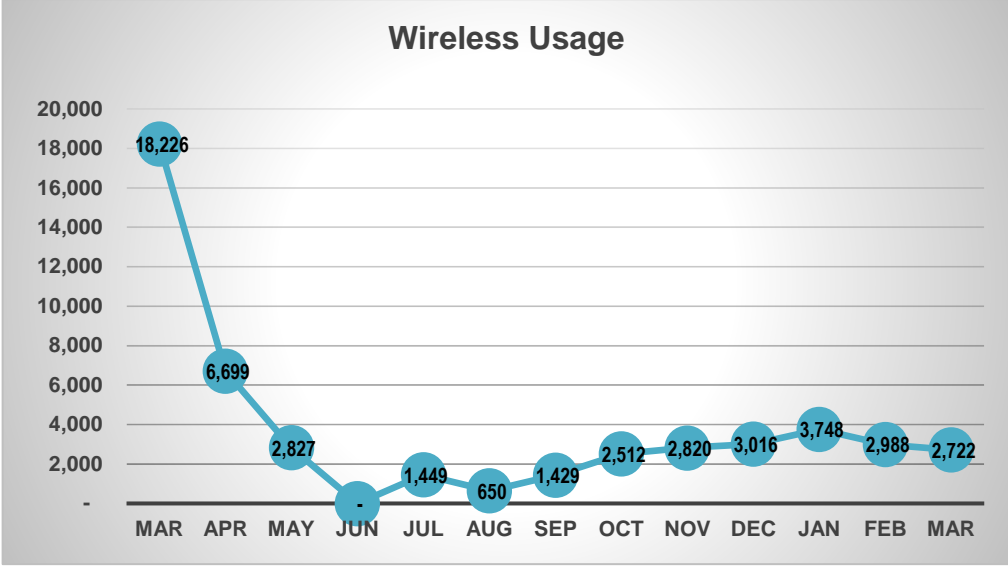
	2023										2024		
Operating Statistics	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	JAN	FEB	MAR
Items circulated-Physical Materials (includes check out, check in, renewals, in-house)	4,740	2,753	1,390	1,148	2,952	5,315	4,650	4,866	4,348	3,399	5,750	6,186	5,391
Print	3,912	1,858	1,101	1,005	2,517	4,714	4,150	4,257	3,807	2,962	4,750	5,116	4,462
Audio	203	134	76	65	194	203	173	182	146	140	317	294	190
Video	625	203	86	78	241	398	327	427	395	297	683	776	739
Downloadable audio/ebook usage	944	928	971	1,084	1,108	1,153	1,119	1,140	1,183	1,093	1,271	3,093	3,333
Total Circulation Transactions	5,684	3,123	2,234	2,232	4,060	6,468	5,769	6,006	5,531	4,492	7,021	9,279	8,724
Downloadable checkouts as % of total checkouts	16.61%	29.72%	43.46%	48.57%	27.29%	17.83%	19.40%	18.98%	21.39%	24.33%	18.10%	33.33%	38.20%
In-House Use	260	150	7	25	296	296	486	551	362	301	355	501	414
Holds placed on items	94	17	2	4	21	32	58	44	34	26	38	50	19
Fines paid	\$ 545.49	\$ 532.41	\$ 30.99	\$ 89.45	\$ 174.22	\$ 355.37	\$ 335.09	\$ 354.15	\$521.77	\$268.85	\$708.08	\$774.30	\$523.99
Overdue notices sent	140	81	-	-	-	-	148	302	228	133	172	194	125
Items added	116	34	39	68	80	151	109	56	64	116	70	242	89
Items deleted	2,245	14,054	14,041	133	236	149	211	113	205	65	111	350	378
New library cards issued	57	18	8	30	102	124	80	81	73	43	93	82	89
Reference questions answered	977	566	127	601	1,098	1,536	1,193	1,163	1,176	817	1,374	1,754	1,595
Interlibrary Loan Borrow/Loan	34	-	-	-	-	6	7	11	11	3	18	17	9
Library visits	2,410	2,491	970	1,094	3,134	2,203	2,875	2,537	2,983	1,126	1,476	2,375	2,622
Youth programs attendance	182	70	-	846	343	32	192	226	300	72	69	174	290
Adult programs attendance	42	21	-	37	40	56	31	33	46	80	62	47	67
Computer usage	543	188	-	-	62	311	308	303	243	199	391	368	519
Wireless usage	18,226	6,699	2,827	-	1,449	650	1,429	2,512	2,820	3,016	3,748	2,988	2,722

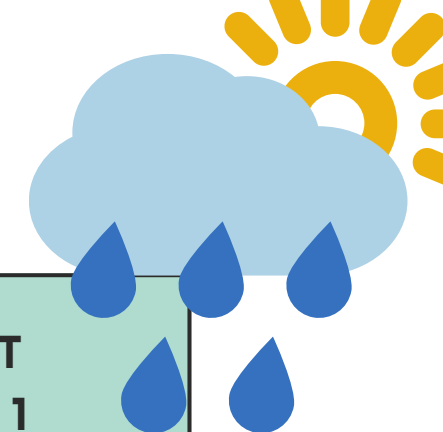
Program Attendance		*Library closed -April 17 in preparation for move to Carnegie
Youth-Passive	99	Library opened June 12, 2023 at 502 N. Queen Street
Youth -Active	290	Library Grand Opening July 26-all services available
Total	389	Library Visit count: Carnegie 1669 and Mall 1465
Adult-Passive	0	
Adult Active	67	
Total	67	
Teen-Passive	0	
Teen Active	24	
Total	24	

2023-2024 USAGE REPORT



LIBRARY Closed April 17, 2023-to move to Carnegie
LIBRARY Opened June 12, 2023 at 502 Carnegie
LIBRARY Grand Opening July 26 -all services available





PaperCrafts 101
Saturday 10:30-11:30am
March 20-April 24
For Adults
All materials will be provided
Limited space: Call Library to register

SUN CLOSED	MON 10 - 6	TUE 10 - 6	WED 10 - 6	THU 10 - 7	FRI 10 - 6	SAT 10 - 1	
	1 4:30 Lego Meet Up	2 10-Stitched W Love Redlands Annex	3 10:30 Storytime 4:15 Advanced Crochet for kids	4 5:30-7 Teen Night Game Night	5 10-11 Device Advice	6 10-Tai Chi 10-1 United Way Literacy Festival on the Library Lawn	
7	8 Library Closed 1-3 pm  4:30 Chess Meet Up	9 10-Stitched W Love Redlands Annex	10 10:30 Storytime 4:15 Advanced Crochet for kids	11 5:30-7 Teen Night D&D	12 10-11 Device Advice	13 10-Tai Chi	
14	15	16 10-Stitched W Love Redlands Annex	17 10:30 Storytime 4:15 Advanced Crochet for kids	18 5:30-6:30 Teen Night Art Journaling	19 10-11 Device Advice	20 10-Tai Chi 10:30 Paper Crafts 101	
21	22	23 10-Stitched W Love Redlands Annex	24 10:30 Storytime 4:15 Advanced Crochet for kids	25 5:30-7 Teen Night D&D 6-Book Discussion	26 10-11 Device Advice	27 10-Tai Chi 11-12-Coding Hour	
28 	29	30 10-Stitched W Love Redlands Annex	MAY 1-SUMMER READING CLUB REGISTRATION BEGINS www.readerzone.com READERZONE CODE: b5d8d				

Book Discussion April Selection:



The Lost Bookshop by Evie Woods



ADVENTURE — BEGINS AT — YOUR LIBRARY™

Palestine Public Library

2024 Summer Reading Program

June 1–July 12, 2024

Sign up at the library starting on May 1, 2024

In Person or on ReaderZone: Code # b5d8d

Log in your reading time starting June 1



Palestine
Library
established 1882

502 N. Queen St
903-729-4121



Agenda Date: April 8, 2024
To: City Council
From: Courtney Acklin, Court Administrator
Agenda Item: Municipal Court Report for March 2024
Date Submitted: 04/03/2024

SUMMARY:

A monthly detailed report is attached which provides the types of citations, dispositions, and total fines/fees collected. Brief highlights for the month are listed below.

- March's case volume (charges filed) and revenue increased from the previous month, as shown in the attached activity graphs.
- 64 warrants were issued.
- 127 warrants were cleared.
- 1 trial was conducted.

RECOMMENDED ACTION:

None.

CITY MANAGER APPROVAL:

Attachments

Municipal Court Report for March 2024

City of Palestine Municipal Court Activity Report - FY 2023 - 2024

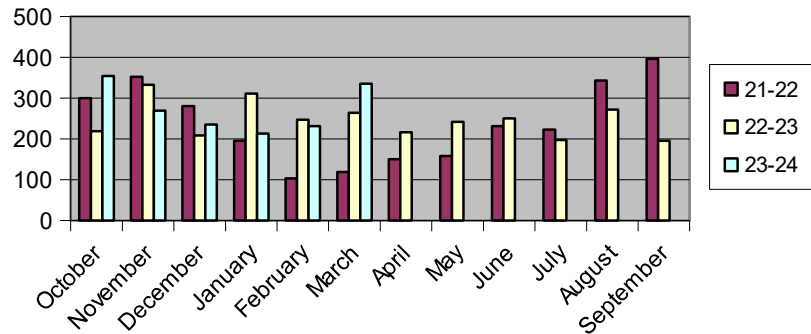
Charges Filed All Tickets and Other Complaints

	21-22	22-23	23-24
October	300	219	354
November	352	333	269
December	280	208	235
January	195	311	213
February	103	247	231
March	119	264	335
April	150	216	
May	158	242	
June	231	250	
July	223	197	
August	343	272	
September	396	195	
Total	2850	2954	1637

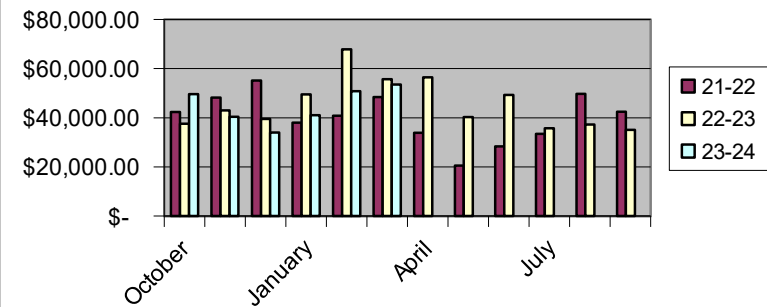
Revenue

	21-22	22-23	23-24
October	\$42,354.77	\$37,620.46	\$49,619.84
November	\$48,254.04	\$43,003.81	\$40,377.93
December	\$55,144.50	\$39,549.76	\$34,022.00
January	\$38,074.21	\$49,458.48	\$41,034.04
February	\$40,777.61	\$67,843.30	\$50,782.19
March	\$48,410.01	\$55,648.71	\$53,497.58
April	\$33,879.43	\$56,502.49	
May	\$20,524.01	\$40,308.43	
June	\$28,370.83	\$49,331.30	
July	\$33,493.63	\$35,699.02	
August	\$49,749.95	\$37,304.07	
September	\$42,451.20	\$35,107.46	
Total	\$481,484.19	\$547,377.29	\$269,333.58

Charges Filed in Municipal Court



Revenue By Month





Agenda Date: April 8, 2024
To: City Council
From: Patsy Smith, Parks and Recreation Director
Agenda Item: Monthly Report
Date Submitted: 04/03/2024

SUMMARY:

Monthly Report Parks and Recreation Department and Facilities Maintenance

RECOMMENDED ACTION:

No Action Required

CITY MANAGER APPROVAL:

Attachments

March 2024 Monthly

Parks and Recreation Department

MARCH 2024

Overview

The Parks and Recreation Department incorporates the following divisions.

Parks
Cemeteries
Lakes
Facilities Maintenance

The department includes 8 full time employees. The division oversees 38 individual locations totaling 400 acres that are mowed and weedeated. We also clean 12 park restrooms (This includes toilets and sinks in all locations) daily M-F and handle all trash detail in the parks, cemeteries and Lakes including downtown.

Administration

- Prepared timesheets and turned in invoices for month
- Turned in numerous invoices through out the month of March
- Met with Bailey Bark at Willie Myers park for delivery of fall surface
- Met with Bailey Bark at Reagan Park for delivery of two truck loads of fall surface
- Met with Aqua Rec at pool to discuss plumbing and doing pressure test on pipes to find where leak is located and discuss possible options for fixing
- Met with Ben Campbell at Museum to see about securing two doors on basement floor when cabin is moved
- Met with Raymond from MoCrete at Green's Park for concrete pour
- Met with Jacob Wheeler about having a MOU done between the city and school for working on complex project
- Called PD to come out to Willie Myers Park due to individual sitting under pavilion smoking marijuana and refusing to leave. Officer Humber arrived at location and did make an arrest
- Met with Raymond from MoCrete on pouring concrete in planters on westside of building
- Met with Kat Powers on KYYK to bring everyone up on projects within the parks
- Completed agendas for upcoming council meeting for 4-11
- Had a morning meeting with parks guys at Willie Myers Park
- Had report of massive bee's nest in porta john at Green's Park, found a baby's nest which was destroyed
- Took oscillating fans to council chambers to try and cool room off for a class PEDC was hosting
- Met with chamber regarding dogwood festival
- Met with Palestine Heat and Air about getting bid for replacing large unit for council chambers

- Met with Raymond from MoCrete on getting bid for concrete work at pool for deck and poly tank
- Asst. Director met with Moses on fixing issue with basketball goal at Larry Park
- Met with contractor at pool and found that one of the skimmers had not been properly plumbed and issue was being fixed
- Attended council meeting on 3-12-24
- Attended meeting with L&M Cleaning and City Manager
- Met with Keys and Locks out of Athens on having lock cylinder changed on rollup door out back
- Met with Neches plumbing at Reagan Park at upper restroom in mens due to drain being clogged
- Asst. Director met with Xerox company to have new printer installed at warehouse
- Met with contractor at pool to watch pressure test being done on pipes. All pipes passed pressure test and leak was found in main drain close to YMCA parking lot. Contractor used an industrial plaster to fix hole in drain.
- Went to Veteran's Park to try and see if there is a good location to place a life size Huey Helicopter
- Met with Susan Davis on getting a 911 address for Green's Park restrooms
- Asst. Director met with Chris Holman at complex to give him two new flags
- Began putting together a spreadsheet for auction for finance
- Met with contractor at pool to do final walk through of new pipes and to begin filling pool
- Met with facilities to fill drain that has busted pipe, filled with concrete
- Met with Ernie from Aqua Rec on getting two temporary pumps up and running in pool
- Picked up a 50 lb bucket of shock and did a shock treatment on pool till new pump motor could be installed
- Met with facilities and Quality Air at PD to discuss split unit in CID and ventilation system in pd evidence room
- Met with Mike Searcy at Museum so he could pickup couple more items
- Ordered paper products from Sierra Packaging
- Asst. Director mowed Willie Myers Park and Mitchell Campbell Ball field
- Met with city secretary about bounce houses being used in parks
- Began doing research on bounce houses to provide to council
- Met with Ernie for second time to get pumps started, he brought a new 3 horsepower pump that work perfectly and pumps began running
- Met with Angela from Chamber regarding spigots downtown not functioning or that are broken
- Asst. Director took self propelled mower to fleet to have maintenance
- Attended council meeting on Monday 3-25-24
- Attended staff meeting on 3-26-24
- Met facilities at Reagan Park to show him how to start up the splash pad
- Met with Ana at Library on getting help to find information on parks for presentation at chamber in April

- Asst. Director met with Calvary at gateway at 79 and loop to look at replacement bricks
- Asst. Director and Director had 3 interviews for Parks on Tuesday 3-26-24
- Met with brick layer at Easthill Cemetery to check on progress of walls being repaired
- Went to aquatic center to check on pumps to make sure did not need backwashed
- Asst. Director went and purchased 4 new weed eaters for parks guys
- Met with Asst. Chief of PD Richard Johnson on looking to get a road base for impound lot
- Began putting together slide show for Chamber presentation on parks
- Assisted parks guys with mowing city cemetery

Goals: To place ADA equipment in all major parks.

Parks

- **PUT IN FALL SURFACE NEW EQUIPMENT CALHOUN PARK**
- **PUT IN FALL/NEW EQUIPMENT GREEN'S PARK**
- **REPLACE BROKEN BORDERS WILLIE MYERS PARK**
- **REINSTALL ADA SWING REAGAN PARK**
- **INSTALL NEW REPLACEMENT PARTS SWING REAGAN PARK**

Lakes

- Clear trail at Upper Lake Rotary Club Project 2023/2024
- Mow and weed eat all areas of dams
- Have dead trees removed from forestry area at Upper and Lower
- Remove excess vegetation from all lakes
- Clear banks along Upper Lake to allow for fishing benches to be installed by Rotary Downtown

Cemeteries

- Get brick walls repaired due to damage over years
- Make signs for sections of cemeteries to make it easier for families to find loved ones: **(LONG TERM GOAL)**.
- Cut down all dead trees and trim other up
- See about having creek area cleared with large equipment

Parks, Cemeteries, Lakes

- Future Projects:
- Put up solar powered outdoor lights at Basketball court Greens Park (Will look at 2024)
- Restripe lines on Basketball court Green's Park and Steven Bennett (SHORT TERM GOAL)
- Tear out drive area at Willie Meyers Parks by pavilion and put-up ballers around park area (WINTER 2024)
- Repair fence for Green's Park basketball court

PARKS MONTHLY REPORT FEBRUARY 2024

LOCATIONS MOWED

Calhoun Park x	Greens Park x
Crestline x 1	Fitzhugh Park x 1
Reagan Park x 1	Gateways x 1
Farmers Market x	Wall of Honor x
Spring Street x 1	Visitor Center x 1
Library x 1	Larry Street Park x
Mitchell Campbell x 1	Willie Myers x 1
Lorraine x 1	Phillips Park x 1
Inwood x	Veterans Park x 1
City Hall/PD x	TDCJ Monument x 1
Blue Lake x	Upper Lake x
Wolf Creek Lake x	Lower Lake
Statue Park x 1	Memorial Cemetery x 1
Easthill Cemetery x 1	City Cemetery x 1
Athletic Complex x 1	Steven Bennett x 1
PD Impound Yard x	City Barn x
Fire Station 4 x 1	Two Lots Between City/Easthill x

PARKS PROJECTS COMPLETED MARCH 2024

Parks guys cleared out grass growing in Willie Myers playground area	Parks guys began putting in fall surface at Willie Myers Park
Parks guys took 15 tables to city hall for PEDC class	Parks guys began putting in fall surface at Reagan Park
Parks guys moved remaining fall surface to warehouse	1 Parks guy worked a fairy garden workshop
2 parks guys delivered 10 cases of bags to city hall customer service	2 parks guys cleaned out leaves and muck from pool area so contractor could fill in leak
1 parks guy and facilities went to call center and removed a temp wall for PEDC	Parks guys began putting out barricades for Dogwood Festival

Parks guys put out trash cans downtown for Dogwood Festival	Parks guys delivered 50 chairs to railroad museum
Parks guys delivered a podium to Mary Ann at Visitor Center	Parks guys delivered 100 buckets with concrete and poles to downtown area
Parks guys delivered crowd panels and class 3 barricades to downtown area	1 parks guy and facilities met at Dogwood Garden square to place sign
2 parks guys put up temporary t posts at railroad museum to block drop off	2 parks guys weeded the flower bed out back of city hall
Parks guys picked up all barricades from festival	Parks guys picked up trash cans from festival

MAJOR ISSUES WHERE CONTRACTORS USED

J&K replaced electrical plugs in aquatic center in pump room	Neches Plumbing to repair pex pipe Willie Myers Park
Quality Air to fix ac unit customer service	Carroll's Plumbing repair shower knobs Fire Station 1
Neches Plumbing to install new toilet fleet	Neches Plumbing to fix toilet Calhoun Park

SAFETY ISSUES

NONE	
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Rentals and Special Events

Rentals:

Facilities	Number of Rentals
Pavilion Rentals	16
Pavilion Non-Payment/Cancelled	
Athletic Fields (Mitchell Campbell/Calhoun)	12
Total Rentals Paid	13
Refunds Given	0
Total Revenue Collected	\$510.00

Activities:

Special Events: NONE

Facility Maintenance Projects Completed MARCH 2024

- Took off Friday, Monday and Tuesday for long weekend
- Received bid from Quality Air for fixing ac unit Fire Station 1
- Met with Tabitha Enge at museum so she could begin moving the Black History memorabilia
- Called Light Foot Heat and Air, Palestine Heat and Air and Quality Air to get bids on large unit city hall that controls council chambers
- Called Quality Air to come check out ac unit in finance
- Met with Billie Glenn at museum so he could begin numbers logs on log cabin
- Met with Quality Air to get bid for installing split air in CID on pd side
- Met with Judge Davis at museum so he could get some of Bently's collection
- Called Fire to come check third floor of museum for possible electrical smell
- Met with Director at pool to cement drain in pool deck
- Assisted parks guys on finishing outside of fleet building and painting
- Met with Nelson Garcia at PD/Code Building to get bid on wall
- Met with Calvary Construction at PD/Code Building for bid on wall repair
- Changed filter on water fountain on pd side, alarm still flashing called Neches Plumbing to come fix had to replace sensor board
- Delivered 10 cases of trash bags to customer service
- Delivered 4 cases of water customer service
- Delivered 2 cases of water to visitor center
- Delivered box of goody bags to visitor center
- Called Neches plumbing to fix women's toilet at Calhoun Park
- Called Palestine Heat and Air to fix ac unit at PEDC

- Called Palestine Heat and Air to come check out unit in council chambers found out of freon had to recharge
- Assisted parks guy with removing a picnic table from Reagan Park due to damage on both brackets
- Went to complex to repair door knob on mens restroom and to deliver some barricades
- Met with both directors to block roadway for delivery of fall surface at Reagan Park
- Assisted parks guys in delivering 15 tables to council chambers
- Met with Director and Aqua Rec to learn how to backwash pumps and watch startup of two temp pumps
- Met with Director Mary Ann and Mike Searcy at museum so they could pickup some items
- Called Neches Plumbing to come fix pipe at Willie Myers Restroom
- Took barricades to Balloon Store on Palestine Ave for grand opening
- Took cleaning and sanitizing supplies to city hall for Tracy
- Assisted parks guy with removing a temp wall at call center for PEDC
- Assisted parks guy with installing dogwood garden club sign in triangle by jailhouse
- Put up supplies in warehouse from Sierra Packaging
- Met with PEDC at call center to replace some lights
- Met Bently's family at museum so they could move more items out
- Assisted Director in moving out Christmas angel and trees from Museum that Ben advised we could take
- Delivered self propel mower to Fire Station 2
- Went to PEDC to fix toilet in men's restroom that had one bolt loose
- Met with Director to begin budget process
- Met Tracy at warehouse and provided supplies to her for city hall
- Had conversation with Bonnie Wolverton regarding museum and who all is getting access advised Director
- Met Tabitha Enge again at museum so she could remove rest of Black History Room
- Picked up Toro push mower from Fire Station 2 and brought back to fleet to repair
- Met with Fire Marshal to discuss having exit and emergency lights replaced city hall and PD
- Met with J&K Electrical to get bid for exit and emergency lights replaced

Green's Park Restroom pad site before concrete



Green's Park Concrete Pad



Green's Park Restroom Building going up



Aquatic Center new Pipes



Drain where leak found Pool



Pump Room Before Setup



Pump Room After Temporary Setup



Fall Surface Willie Myers Park



Fall Surface Reagan Park



Dogwood Garden Sign



Sink Hole Reagan Park





Agenda Date: April 8, 2024
To: City Council
From: Kimberly Beckman, Public Works Admin
Agenda Item: Public Works March 2024 Monthly Report
Date Submitted: 04/03/2024

SUMMARY:

Public Works March 2024 Monthly Report

RECOMMENDED ACTION:

No required action.

CITY MANAGER APPROVAL:

Attachments

PW March Monthly Report



PUBLIC WORKS AIRPORT MONTHLY REPORT – March 2024

Airport Manager – Jeff Jeffcoat

473 Total Flights

314 Single Engine

51 Single Engine Turbine

12 Multi Engine

5 Multi Engine Turbine

8 Business Jet

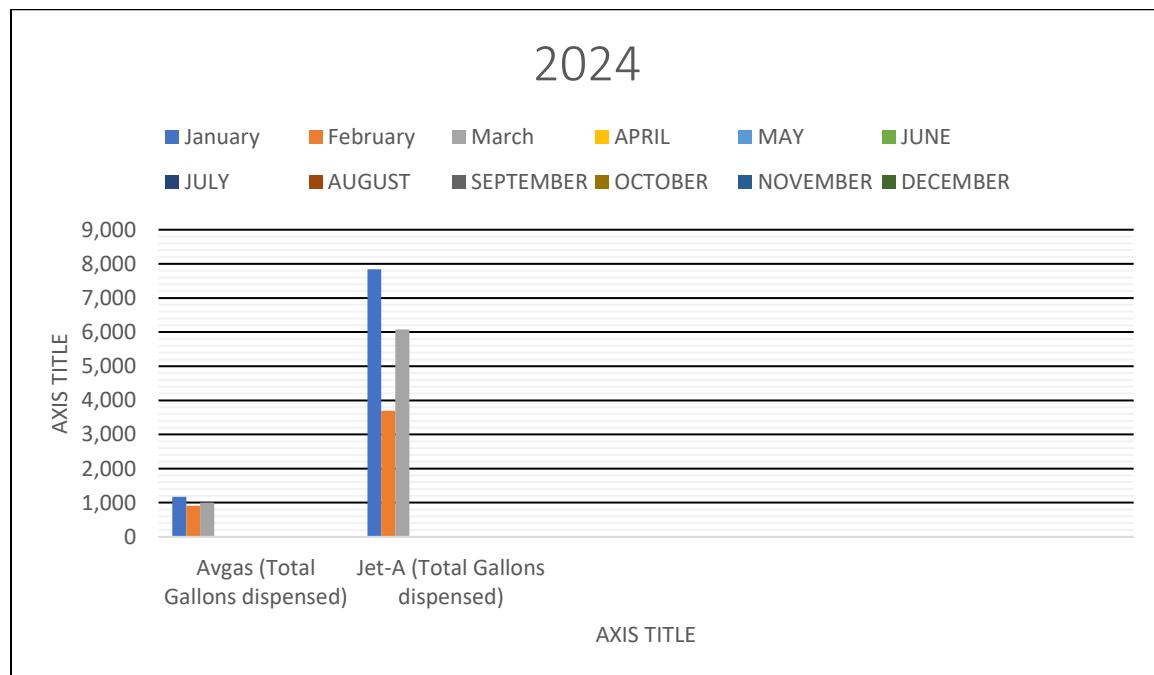
79 Helicopter

2 Light Sport Aircraft

2 Other

Avgas: 29,623 (1,009 total gallons dispensed)

Jet-A: 1,077,249.1 (6,076.8 total gallons dispensed)



Utilities Monthly Report

March 2024

Water Distribution	
Call Outs:	21
Taps Made:	1
Taps Repaired:	2
Feet of Lines Placed:	
Water Leaks Repaired:	4
Fire Hydrants Flushed / Gal. ; Water Loss:	75,500 gal
Fire Hydrants Repaired / Installed:	1
Valve box located:	1
Valve box installed:	1
Incerta Valve installed:	1
Gate Valve replaced / Installed:	1
Meters	
Meter Valves replaced / Installed:	
Meter box Replaced / Installed:	
On Call Meters turned off:	4
On Call Meters turned on:	7
Meters Located:	
Meters Installed:	
3/4"	
1"	
1 1/2"	
2"	4
Bigger than 2"	
Wastewater Collection	
Sewer Basin's Cleaned:	
Sewer lines camera:	7
Trouble spots ran:	1
Sewer Mains Repaired:	
Manhole Installed:	1
Manholes Changed/Repaired:	1
Sewer Stoppage City:	8
Sewer Stoppage Private:	8
New Sewer Tap Installed:	3
Sewer Services Repaired:	2
Sewer pipe installed (ft):	
Haul Dirt / Concrete Rip Rap:	15
ROW Mowed / Cleared:	
On Call Trees:	

Vegetation Management:	
Engineering:	
Line Locates (ft):	7,000 feet
Tap application:	5

STREETS MONTHLY REPORT March 2024

Asphalt	
Square feet of Asphalt Laid	0
Utility Cuts	6
Potholes filled	507
Square Feet of Chipseal Laid	0
Right of Way's	
Feet mowed of Street Right of Way	4,850' / ¾ miles
Utility Right of Ways mowed / cleared	1
Trees removed from road / Right of Way	4
Compost Sight	
Number of Customers	485
Number of loads of Concrete Hauled	33
Number of loads of Illegal dumping Hauled	0
Number of loads of Dirt Hauled	4
Drainage	
Feet of drainage repaired	0
Feet of Drainage Installed	0
Feet of ditches dug out	20'
Sweeping	
Feet of Street's Swept	81,601 / 15.5 miles
Day's assisting other Departments	
Utilities	1
Parks	0
Water Treatment Plant	0
Wastewater Treatment Plant	0
Code Enforcement	0



Agenda Date: April 8, 2024

To: City Council

From: April Jackson, City Secretary

Agenda Item: Consider approval of minutes of the Work Session and Regular Agenda of March 25, 2024

Date Submitted: 04/05/2024

SUMMARY:

Consider approval of minutes of the Work Session and Regular Agenda of March 25, 2024.

RECOMMENDED ACTION:

Staff recommends approval of minutes of the Work Session and Regular Agenda of March 25, 2024.

CITY MANAGER APPROVAL:

Attachments

March 25, 2024, Minutes

DRAFT



MINUTES

The City Council of the City of Palestine convened for a regular meeting on March 25, 2024, at 3:30 p.m. for the Work Session and at 5:30 p.m. for the Regular Meeting in the Council Chambers at City Hall, 504 N. Queen Street, Palestine, Texas with the following members present:

Present: Mitchell Jordan, Mayor; Krissy Clark, Mayor Pro Tem; Ava Harmon, Council Member; James Smith, Council Member; Kenneth Davidson, Council Member; Christopher Gibbs, Council Member

Absent: Sean Conner, Council Member

Also Present: Teresa Herrera, City Manager; Rezzin Pullum, City Attorney; April Jackson, City

Secretary; Christophe Trahan, EDC Director; Andrew Sibai, Finance Director; Shannon Davis, Fire Chief; Lisa Cariker, Human Resource Director; Ana Sanchez, Library Director; Patsy Smith, Parks & Recreation Director; Susan Davis, Planning Tech; Mark Harcrow, Police Chief; Kevin Olson, PW Director; Jason Shelton, Utilities Supervisor; Cassie Boyd, Tourism Marketing Manager

WORK SESSION

With a quorum present, Mayor Jordan called the Work Session to order at 3:31 p.m.

1. Discussion regarding the purchase of a replacement apparatus for the Fire Department. Shannon Davis, Fire Chief

Fire Chief Shannon Davis explained that Engines 2 and 4 frequently experience mechanical and electrical issues. Because of this, staff has had to respond to emergencies using utility trucks. NFPA 1901 recommends that an apparatus be put in reserve status at 15 years and retired at 20 years. Chief Davis informed Council that both engines are close to 20 years old, with Engine 2 being a 2004 and Engine 4 being a 2001. He requested approval to purchase a demo pumper to replace Engine 4, which can be put into service as soon as May 2024.

2. Discussion regarding sign ordinance within the downtown district. Mary Ann Admire, Main Street Coordinator

Main Street Coordinator Mary Ann Admire made herself available to Council for questions regarding restrictions in the Main Street Sign Ordinance. Ms. Admire informed Council that the Ordinance was revised in 2011 and 2021. Council directed Ms. Admire to work with the Main Street Advisory Board to make any recommended revisions and return them to City Council for review and approval.

3. Discussion regarding the condition of Eilenstein Street between Variah and Douglas Street. James Smith, Council Member

Council Member Smith asked for a moment of silence to observe the one-year anniversary of the passing of Vickey L. Chivers and remember her service to the City of Palestine.

Council Member Smith discussed the need to repair Eilenstein Street for a safer commute for citizens.

Public comments were received concerning the conditions of Eilenstein Street from Violet Selman and Mattie Jackson.

City Manager Herrera reported that staff had placed signs notifying of limited visibility and created work orders for pavement and pothole repairs. Ms. Herrera also reported that 80% of the streets in Palestine do not have a curb, gutter, or sidewalks and recommended addressing this problem not only on Eisenstein Street but throughout the city. She proposed addressing the matter as a capital improvement project for the budget.

4. Discussion regarding Pavilion and Field Rentals Rules and Regulations. Patsy Smith, Parks and Recreation Director

Parks and Recreation Director Patsy Smith informed Council that the Parks Advisory Board approved not allowing bounce houses in city-owned parks in April 2021. Staff advised that the City would be held liable, according to the Texas Municipal League (TML), for any injuries or incidents in our parks. TML does not recommend allowing bounce houses in city-owned parks. Ms. Herrera requested a directive from Council regarding the use of bounce houses. City Attorney Rezzin Pullum recommended that if bounce houses were allowed, the citizens requesting to use bounce houses are required to add the City of Palestine as an additional insured under the insurance policy and indemnification for the City of Palestine. The insurance information would need to be provided to staff before the event. Council proposed specifying which parks allow the use of bounce houses.

5. Discussion regarding residential recycling services and the transfer station disposal program. James Smith, Council Member

James Pryor discussed the discontinued recycling program in the City of Palestine.

Chris Bankhead of Waste Connections addressed James Pryor's concerns. He discussed the lack of education concerning recycling, which results in rejected loads, and the increased cost associated with recycling. Mr. Bankhead stated that additional signage regarding acceptable recyclable items would be added at the waste station. Council proposed adding a Closed Session item to discuss Waste Connections contract negotiations.

6. Discussion regarding the City-Wide Street Maintenance Program. Kevin Olson, PW Director

PW Director Kevin Olson reported that the current City-Wide Street Maintenance Program is nearing its end. Staff provided the council with a list of streets for each district, including their length and width, whether there is a curb or gutter, drainage, and work completed in previous years. City Council requested that when an issue is reported to the Public Works Department, Council be given a follow-up concerning the matter.

With no other business to come before Council, the Work Session was adjourned at 5:18 p.m.

REGULAR MEETING

A. CALL TO ORDER

Mayor Jordan called the Regular Meeting to order at 5:31 p.m.

B. INVOCATION AND PLEDGE OF ALLEGIANCE

The invocation was given by Brad Perry of Livings Springs Church and was followed by the Pledge of Allegiance.

C. PROPOSED CHANGES OF AGENDA ITEMS

There were no proposed changes to agenda items.

D. PUBLIC RECOGNITION, PUBLIC COMMENTS, AND ANNOUNCEMENTS

Violet Selman spoke regarding the condition of Eilenstein, Douglas, Variah, Joe Louis, Larry, and Victory Street and requested sidewalk installation and street sweeping services within her neighborhood.

Mattie Jackson discussed Eilenstein Street's condition and one-way traffic violations at the back of Washington Early Childhood Center on Hamlett Street. Ms. Jackson recommended adding school zone signs near the Washington Early Childhood Center.

Mattie Asberry reported that the fire hydrant adjacent to her property had not been inspected in years and discussed improvements needed on Eilenstein Street.

1. Certificate of Appreciation to Ben Campbell. Christopher Gibbs, Council Member

Council Member Gibbs recognized and presented a Certificate of Appreciation to Ben Campbell.

E. CONFLICT OF INTEREST DISCLOSURES

No action was taken.

Council Member Smith expressed concern that the item regarding the condition of Eilenstein Street between Variah and Douglas Street was not on the Regular Agenda. Staff confirmed that the item would be added to the next City Council meeting.

F. PUBLIC HEARINGS

1. Public hearing regarding the Forest Management Proposal & Agreement for the City of Palestine Community Forest. Teresa Herrera, City Manager and Patsy Smith, Parks and Recreation Director

Parks and Recreation Director Patsy Smith gave a presentation on the Forest Management Proposal and Agreement for implementing a selective timber harvest in the Community Forest.

Mayor Jordan opened the public hearing at 5:55 p.m. Mark Cline and Ben Campbell

spoke in favor, and the hearing closed at 5:59 p.m.

2. Public hearing regarding a Specific Use Permit for the sale of alcoholic beverages for off-premises consumption by Ordonez Groceries located at 712 N. Cottage Avenue. Susan Davis, Planning Tech

Planning Tech Susan Davis explained that the City Council denied the applicant's request for a Specific Use Permit in October 2021. After the denial, the applicant waited the required time to request a Specific Use Permit again. Twelve notices were sent to property owners within a 200-mile radius of the requested location for a Specific Use Permit. One survey was returned in favor, and one was returned in opposition. On March 7, 2024, the Planning and Zoning Commission unanimously denied the request by a vote of 5-0. The grocery store is currently zoned Mixed Use Neighborhood (MUN), which requires a Specific Use Permit to allow the sale of alcohol.

Mayor Jordan opened the public hearing at 6:02 p.m.

Applicant Gorgonio Ordonez, Jr., spoke in favor of the request, and Police Chief Mark Harcrow spoke in opposition from a public safety perspective. Chief Harcrow reported that the Police Department had regularly responded to various issues in the area.

Mayor Jordan closed the public hearing at 6:05 p.m.

3. Public hearing regarding a Specific Use Permit for placement of a manufactured home at 210 W. Kentucky Street. Susan Davis, Planning Tech

Planning Tech Susan Davis informed the Council that twelve notices were sent to property owners within a 200-mile radius of the request to place a manufactured home at 210 W. Kentucky Street. The applicant had met all zoning and development requirements for the placement of a manufactured home. Three surveys were returned in favor of the request, and one was returned in opposition. On March 7, 2024, the Planning and Zoning Commission unanimously approved the Specific Use Permit request by a vote of 5-0. Ms. Davis reported that the applicant had replatted the property, and there are multiple lots at the location.

Mayor Jordan opened the public hearing at 6:08 p.m. Applicants David and Kimberly Hively spoke in favor of the request, and no one spoke in opposition. The hearing closed at 6:10 p.m.

G. CITY MANAGER'S REPORT

City Manager Herrera reported on the Solar Eclipse Viewing Event, the opening day of the Palestine Farmers Market, Municipal Court Warrant Reduction Month, the closure of City Offices in observance of Good Friday, and employment opportunities for the City of Palestine.

City Manager Herrera informed that department directors were present to address questions from the Council regarding reports.

Police Chief Mark Harcrow addressed questions from Mayor Pro Tem Clark concerning the February 2024 Police Monthly Report.

The following departmental reports were provided:

1. February 2024 Financial Statement
2. February 2024 Police Monthly Report
3. February 2024 Utility Billing Monthly Report
4. February/March 2024 Economic Development Monthly Report

H. **CONSENT AGENDA**

The following items may be acted upon in one motion. No separate discussion or action is necessary unless requested by the Mayor or a Council Member, in which event those items will be pulled for separate consideration. Approval of the consent agenda authorizes the City Manager to implement each item in accordance with staff recommendations.

1. Consider approval of minutes of the Work Session and Regular Agenda of March 12, 2024. April Jackson, City Secretary
2. Consider approving a resolution authorizing the Palestine Police Department to apply for a Body-Worn Camera Grant through the Office of the Governor of the State of Texas Public Safety Office. Mark Harcrow, Police Chief **(Resolution No. R-14-24)**
3. Consider approving a resolution authorizing the Palestine Police Department to apply for a Bullet-Resistant Shield Grant through the Office of the Governor of the State of Texas Public Safety Office. Mark Harcrow, Police Chief **(Resolution No. R-15-24)**
4. Consider approval of a resolution authorizing the Palestine Police Department to apply for a Rifle-Resistant Body Armor Grant through the Office of the Governor of the State of Texas Public Safety Office. Mark Harcrow, Police Chief **(Resolution No. R-16-24)**
5. Consider approving a resolution authorizing the Palestine Police Department to apply for a Criminal Justice Grant through the Office of the Governor of the State of Texas Public Safety Office. Mark Harcrow, Police Chief **(Resolution No. R-17-24)**
6. Consider approval of expenditures over \$25,000.00. Andrew Sibai, Finance Director
7. Consider approval of a purchase order for consultant services from Bureau Veritas North America, Inc. in the amount of \$75,000.00. Andrew Sibai, Finance Director

Motion by Council Member Ava Harmon, seconded by Council Member Kenneth Davidson to approve the Consent Agenda as presented, adopting **Resolution No. R-14-24, Resolution No. R-15-24, Resolution No. R-16-24, and Resolution No. R-17-24.**

Vote: 6 - 0 - Unanimously

I. **REGULAR AGENDA**

1. Discussion and possible action regarding a Specific Use Permit for the sale of alcoholic beverages for off-premises consumption by Ordonez Groceries located at 712 N. Cottage Avenue. Susan Davis, Planning Tech

Police Chief Mark Harcrow addressed concerns that the store was located in a residential neighborhood and explained to Council that he did not see a benefit to allowing the sale of alcohol at the store due to the high crime in the area.

Discussion was held on whether to approve or deny the request. Council acknowledged the potential risk to public safety because the store is located in a residential neighborhood and that the applicant is rightfully allowed to request a Specific Use Permit because the store is located in an area that is zoned Mixed Use Neighborhood (MUN), which allows the sale of alcoholic beverages by Specific Use Permit.

City Manager Herrera and City Attorney Pullum advised City Council to overturn the

Planning and Zoning Commission's vote to deny the request that a supermajority vote would be required from Council.

City Attorney Pullum informed Council that they were allowed to assign reasonable conditions upon the Specific Use Permit if approved.

Motion by Mayor Mitchell Jordan, seconded by Council Member James Smith to approve the item as presented.

Mayor Jordan withdrew his motion to approve the item as presented. Mr. Smith withdrew his second to Mayor Jordan's motion.

Motion by Mayor Mitchell Jordan, seconded by Council Member Ava Harmon to table the item to the next City Council meeting.

Vote: 6 - 0 - Unanimously

2. Discussion and possible action regarding a Specific Use Permit for placement of a manufactured home at 210 W. Kentucky Street. Susan Davis, Planning Tech

Motion by Council Member Ava Harmon, seconded by Council Member James Smith to approve the item as presented.

Vote: 6 - 0 - Unanimously

3. Discussion and possible action regarding a Downtown Grant Agreement between the Palestine Economic Development Corporation and Mabrico Phil Johnson in an amount not to exceed \$46,583.25. Christophe Trahan, EDC Director

EDC Director Christophe Trahan summarized the Downtown Grant Agreement between Palestine Economic Development Corporation and Mabrico Phil Johnson for improvements at 404 W. Oak Street in an amount not to exceed \$46,583.25. The applicant proposed a complete roof replacement, replacement of an HVAC system, and plumbing upgrades at Dogwood Embroidery's business property.

Motion by Mayor Pro Tem Krissy Clark, seconded by Council Member Christopher Gibbs to approve the item as presented.

Vote: 6 - 0 - Unanimously

4. Discussion and possible action regarding the purchase of a replacement apparatus for the Fire Department. Shannon Davis, Fire Chief (This item was included in the Work Session for discussion.)

Fire Chief Shannon Davis requested approval to purchase a replacement apparatus from Lonestar Emergency Group for \$640,400.00. City Council directed Finance Director Andrew Sibai to use ARPA Funding to purchase the replacement apparatus. Mr. Sibai informed Council that staff planned to complete the equipment replacement schedule before the budget season.

The terms of the warranty would include a 7-year bumper-to-bumper warranty and preventative maintenance service for an additional \$75,500.00. This service would consist

of all preventative maintenance for the unit and pump testing to meet NFPA certifications for seven years. Lonestar Emergency Group would maintain all maintenance records and NFPA Testing Records. Lonestar Emergency Group stated that onsite infield service would be performed for regular preventative maintenance service and pumping testing to reduce the apparatus's out-of-service time. If the unit must be taken to a service facility, Lonestar Emergency Group will provide transportation to and from the facility.

Motion by Mayor Mitchell Jordan, seconded by Council Member Kenneth Davidson to approve the purchase of a replacement apparatus for the Fire Department from Lonestar Emergency Group in the amount \$640,400.00.

Vote: 6 - 0 - Unanimously

Motion by Council Member Christopher Gibbs, to amend the previous motion to extend the approval amount up to \$715,900.00, subject to the City Manager and Fire Chief verifying and choosing Lonestar Emergency Group's seven-year warranty.

Vote: 6 - 0 - Unanimously

5. Discussion and possible action regarding Pavilion and Field Rentals Rules and Regulations. Patsy Smith, Parks and Recreation Director (This item was included in the Work Session for discussion.)

Motion by Mayor Pro Tem Krissy Clark, seconded by Council Member Ava Harmon to amend the Pavilion and Field Rental Rules and Regulations regarding the use of bounce houses to require that applicants add the City of Palestine as an insured and indemnify the City of Palestine on insurance, with the applicant providing insurance information to City Staff one week before the event; and for the Parks and Recreation Director to designate specific areas in city-owned parks for the safe use of bounce houses.

Vote: 6 - 0 - Unanimously

6. Discussion and possible action regarding the Forest Management Proposal and Agreement from Cline & Barnett Consulting Foresters LLC for the City of Palestine Community Forest. Teresa Herrera, City Manager and Patsy Smith, Parks and Recreation Director

City Manager Herrera requested approval of Cline & Barnett Consulting Foresters LLC's proposal to implement a selective timber harvest of the community forest to improve forest health and growth and to clear-cut areas near the Athletic Complex at the direction of the City of Palestine.

Motion by Council Member Ava Harmon, seconded by Council Member Christopher Gibbs to approve the item as presented.

Vote: 6 - 0 - Unanimously

7. Discussion and possible action regarding awarding bid RFP 2024-006 - Purchase of City-Owned Real Property to Ernie Williams in the amount of \$1,500.00. Teresa Herrera, City Manager

On February 12, 2024, City Council authorized the City Manager to seek sealed bids for the sale of city-owned property located on South Jackson Street between W. Reagan Street and West Dye Street. The property consists of one vacant lot, approximately 1.2450 acres. The property is zoned Mixed Residential (MR), and the Anderson County Appraisal District's total market value is \$27,116.00. City Manager Herrera informed Council that the notice for the sale of city-owned property was published on the City's website and in the Palestine Herald Press on Saturday, March 2, 2024, and March 9, 2024. Sealed bids were received on March 18, 2024, and staff received a sole bid from Ernie Williams for \$1,500.00. Ms. Herrera reported that the property has right-of-way access to Van Fleet Street, but the street is not developed. The property has access to sewer service but no access to water service. She explained that if the bid were awarded to Ernie Williams, he would be responsible for extending the street and the water lines.

Motion by Council Member Ava Harmon, seconded by Council Member Christopher Gibbs to approve the item as presented.

Vote: 6 - 0 - Unanimously

8. Discussion and possible action regarding a resolution appointing members to the Citizens Charter Review Committee. Teresa Herrera, City Manager

On March 12, 2024, Council adopted Resolution No. R-13-24, establishing a Citizens Charter Review Committee consisting of six members appointed by each council member, one member appointed by the mayor, and one alternate chosen at large by the mayor. City Manager Herrera asked for approval of a resolution appointing the following members to the Charter Committee: Jessie Sweet for Place 1, Tracy Torma for Place 2, Richard Jackson for Place 3, Edwina Miller for Place 4, Jodi Davis for Place 5, Dan Bochsler for Place 6, and Cotrina Davis for Place 7. Mayor Jordan requested that Mark Owens be appointed to the Committee, but he was not appointed to the board because he was not a business owner in Palestine. Mayor Jordan will provide an alternate member for the Committee at the next City Council meeting.

Motion by Mayor Pro Tem Krissy Clark, seconded by Council Member Kenneth Davidson to approve a resolution appointing the following members to the Charter Review Committee: Jessie Sweet, Tracy Torma, Richard Jackson, Edwina Miller, Jodi Davis, Dan Bochsler, and Cotrina Davis.

Vote: 6 - 0 - Unanimously

9. Discussion and possible action regarding an ordinance amending Chapter 18, "Aviation," Chapter 34, "Cemeteries," Chapter 70, "Library," and Chapter 98, "Utilities" of the Code of Ordinances. Kevin Olson, PW Director

Some members of Council could not download and review the ordinance prior to approval, so the item was recommended to be tabled until the next City Council meeting.

Motion by Mayor Pro Tem Krissy Clark, seconded by Council Member Kenneth Davidson to table the item until the next City Council meeting.

Vote: 6 - 0 - Unanimously

J. MAYOR'S REPORT

Mayor Jordan thanked the individuals who volunteered to assist the LEAD team with the City-Wide Cleanup and apologized for being unable to meet due to the weather. Mr. Jordan also spoke regarding the following: City Offices' closure due to Good Friday, the Easter holiday, the LEAD and Dogwood Sport's Soap Box Derby, the Dogwood Festival, and the He Has Risen Annual Easter Egg Hunt.

Mayor Jordan announced that he would have a list of individuals who support and have donated towards the project to renovate the donated helicopter for the display to honor Veterans at an upcoming City Council meeting.

K. ITEMS FROM COUNCIL

Council Member Gibbs spoke about the City-Wide Cleanup and the upcoming Texas Theatre showing of Sister Act. He wished everyone a happy Easter.

Council Member Smith discussed the Palestine Herald Press article "Westwood baseball invests in chasing dreams," published on March 23, 2024, and the Dogwood Festival.

Council Member Harmon recognized Parks and Recreation Director Patsy Smith and the Parks Department for placing the Dogwood Garden Club sign. She also recognized the Dogwood Arts Council for their event held during the Dogwood Festival and City Manager Herrera for assisting the community with the City-Wide Cleanup.

Mayor Pro Tem Clark acknowledged the Parks and Recreation Department for their work during rainy weather to assist with the Dogwood Festival's preparations. Ms. Clark spoke about the Dogwood Fairy Gardens and a visit to a Business English class at Westwood High School to discuss the importance of city government. She requested that Council consider the possibility of creating a Tax Increment Reinvestment Zone during budget season discussions.

L. CLOSED SESSION

Mayor Jordan announced that the Council would go into Closed Session pursuant to Texas Government Code, Chapter 551, Subchapter D. The time was 7:25 p.m.

1. Section 551.071 consultation with attorney: pending or contemplated litigation or a settlement offer: Palestine Municipal Airport, Union Pacific Railroad, Laza, Humber, and any other possible claim

M. RECONVENE IN REGULAR SESSION

Mayor Jordan reconvened the Council into open session at 8:05 p.m.

1. Take any action necessary regarding pending or contemplated litigation or a settlement offer: Palestine Municipal Airport, Union Pacific Railroad, Laza, Humber, and any other possible claim.

No action was taken.

N. **ADJOURNMENT**

With no other business to come before the Council, the meeting was adjourned at 8:05 p.m.

PASSED AND APPROVED THIS 8TH DAY OF APRIL 2024.

Mitchell Jordan, Mayor

ATTEST:

April Jackson, City Secretary



Agenda Date: April 8, 2024
To: City Council
From: April Jackson, City Secretary
Agenda Item: Consider Approval of a Resolution Appointing Election Workers for May 4, 2024, General Election
Date Submitted: 04/03/2024

SUMMARY:

The Texas Election Code requires the City Council to appoint a Presiding and Alternate Judge for each voting district. It also requires the Council to appoint an Early Voting Ballot Board Judge and for the City to utilize ADA-approved voting equipment. The attached resolution includes provisions for all three of these requirements.

RECOMMENDED ACTION:

Staff recommends approval of a resolution appointing election workers for the May 4, 2024, General Election and declaring compliance with the Help America Vote Act (HAVA).

CITY MANAGER APPROVAL:

Attachments

Resolution

RESOLUTION NO. R- -24

A RESOLUTION APPOINTING ELECTION WORKERS FOR THE MAY 4, 2024, GENERAL ELECTION AND DECLARING COMPLIANCE WITH THE HELP AMERICA VOTE ACT (HAVA).

WHEREAS, the City Council of the City of Palestine, Texas, has ordered a General Election be held on May 4, 2024, for the purpose of electing one Council Member from District #1, one Council Member from District #3, and one Council Member from District #5; and

WHEREAS, On February 26, 2024, the City Council adopted Ordinance No. O-07-24, cancelling the May 4, 2024, General Election in District #1 and District #3 and declaring the unopposed candidates elected to office; and

WHEREAS, Early Voting by Personal Appearance will be conducted each weekday at City Hall, 504 N. Queen Street, Palestine, Texas, between the hours of 8:00 a.m. and 5:00 p.m. beginning on April 22, 2024, and ending on April 30, 2024, with extended hours between 7:00 a.m. and 7:00 p.m. on Tuesday, April 29, 2024, and Tuesday, April 30, 2024; and

WHEREAS, the Texas Election Code requires that a Presiding Judge and an Alternate Judge be appointed by the City Council for each voting district, with the Presiding Judge having the authority to appoint the necessary clerks, which shall not exceed four (4); and

WHEREAS, the Texas Election Code requires that one Early Voting Ballot Board Judge be appointed, with said Judge having the authority to appoint up to four clerks to assist in the counting of ballots voted early by personal appearance and by mail; and

WHEREAS, the Help America Vote Act (HAVA) requires cities to utilize ADA-approved voting equipment.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Palestine, Texas, that the following persons are hereby appointed to serve as election workers in the City of Palestine General Election to be held on May 4, 2024:

Election Day Polling Location:	Palestine I.S.D. Administrative Offices 504 N. Queen Street Palestine, TX 75801
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Presiding Judge:	Dorothy Jackson
Alternate Judge:	Marilyn Ester-Barnes

Early Voting Ballot Board Judge:	Marilyn Ester-Barnes
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BE IT FURTHER RESOLVED that:

1. Presiding Judges shall be compensated at a rate of \$12.00 per hour, Alternate Judges shall be compensated at a rate of \$12.00 per hour, and clerks shall be compensated at a rate of \$10.00 per hour; and
2. The City Council hereby adopts for use in early and Election Day voting the ES&S ExpressVote Voter Assist Terminal as approved by the Secretary of State to comply with HAVA requirements.

PASSED, APPROVED, and ADOPTED by the City Council of the City of Palestine, Texas, this the 8th day of April 2024.

MITCHELL JORDAN
MAYOR

ATTEST:

APPROVED AS TO FORM:

APRIL JACKSON
CITY SECRETARY

REZZIN PULLUM
CITY ATTORNEY



Agenda Date: April 8, 2024
To: City Council
From: April Jackson, City Secretary
Agenda Item: Resolution Amending Resolution No. R-18-24, Appointments to the Charter Review Committee
Date Submitted: 04/03/2024

SUMMARY:

On March 25, 2024, City Council approved Resolution No. R-18-24, appointing members to the Charter Review Committee. Seven individuals were appointed to serve on the Committee: Jessie Sweet to Place 1, Tracy Torma to Place 2, Richard Jackson to Place 3, Edwina Miller to Place 4, Jodi Davis to Place 5, Dan Bochsler to Place 6, and Cotrina Davis to Place 7.

This amendment will replace Richard Jackson with Mattie Jackson in Place 3, appoint Marilyn Ester-Barnes to Place 7, and move Cotrina Davis to Place 8.

RECOMMENDED ACTION:

Staff recommends approval of a resolution amending Resolution No. R-18-24, appointing members to the Charter Review Committee.

CITY MANAGER APPROVAL:

Attachments

Resolution

RESOLUTION NO. R--24

A RESOLUTION AMENDING RESOLUTION NO. R-18-24, APPOINTING MEMBERS TO THE CHARTER REVIEW COMMITTEE.

WHEREAS, the City Council of the City of Palestine, Texas, by Resolution No. R-13-24 established a Citizens Charter Review Committee consisting of six members appointed by each council member and one member appointed by the mayor, along with one alternate chosen at-large by the mayor. Each member shall be a resident of the city; provided, however, that up to three members (business owners within the city of Palestine) may reside outside the city limits, within Anderson County; and

WHEREAS, members of the Charter Review Committee will convene to review the City Charter for the purpose of making recommendations to the City Council for appropriate amendments to the City Charter to be approved by the voters at an election to be called for May 3, 2025, for such purpose; and

WHEREAS, the City Council of the City of Palestine, Texas, by Resolution No. R-18-24 appointed the following members of the Charter Review Committee: Jessie Sweet to Place 1, Tracy Torma to Place 2, Richard Jackson to Place 3, Edwina Miller to Place 4, Jodi Davis to Place 5, Dan Bochsler to Place 6, and Cotrina Davis to Place 7.

WHEREAS, the City Council desires to amend the members appointed to the Charter Review Committee.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF PALESTINE, TEXAS, AS FOLLOWS:

SECTION 1. That the City Council does hereby appoint the following individuals to serve on the Citizens Charter Review Committee:

Place	Appointee	Appointed by
1	Jessie Sweet	Council Member Sean Conner
2	Tracy Torma	Council Member Ava Harmon
3	Richard Jackson Mattie Sweet	Council Member James Smith
4	Edwina Miller	Council Member Kenneth Davidson
5	Jodi Davis	Mayor Pro Tem Krissy Clark
6	Dan Bochsler	Council Member Christopher Gibbs
7	Cotrina Davis Marilyn Ester-Barnes	Mayor Mitchell Jordan
8	Cotrina Davis	Mayor Mitchell Jordan

SECTION 2. Upon the submission of the Final Report (or any other report or information) by the Committee to the City Council, the City Council may take action or no action regarding the same. The City Council may, on its own motion and in its sole discretion, choose to submit to the city's qualified voters, for their consideration of approval at an election, none, some, or all of the recommended changes to the Charter submitted by the Committee. The City

Council may, on its own motion and in its sole discretion, choose to modify any of such recommended changes or choose to propose other changes to the Charter and to submit the same to the City's qualified voters for their consideration of approval at an election.

SECTION 3.

The Committee may be terminated or discontinued by the City Council at any time and for any reason or for no reason, at which time the membership of each then current committee member shall terminate. The termination, discontinuation, or extension of the Committee by the City Council, and the appointment or removal of a member of the Committee by the City Council, may be by motion or other action duly adopted by the City Council. In any event, unless extended by the City Council, the Committee shall be terminated and discontinued upon the submission of the Final Report to the City Council.

If any member of the Committee misses three (3) meetings, the member shall be deemed to have automatically resigned and vacated the member's position on the Committee, and the member of the City Council who appointed such member may appoint a new member to the Committee. Members of the Committee shall receive no compensation for their service.

SECTION 4.

This Resolution shall become effective immediately upon its passage.

PASSED, APPROVED, and ADOPTED by the City Council of the City of Palestine, Texas, on this the 8th day of April 2024.

MITCHELL JORDAN
MAYOR

ATTEST:

APPROVED AS TO FORM:

APRIL JACKSON
CITY SECRETARY

REZZIN PULLUM
CITY ATTORNEY



Agenda Date: April 8, 2024
To: City Council
From: April Jackson, City Secretary
Agenda Item: TDA CDV23-0354 Professional Services Agreement with Hayter Engineering, Inc.
Date Submitted: 03/25/2024

SUMMARY:

Consider approving a Professional Services Agreement with Hayter Engineering, Inc. for services related to the East Lacy Street Sewer Line Replacement Project. The project will be conducted under the general direction of the Texas Community Development Block Grant (TxCDBG) Program of the Texas Department of Agriculture (TDA).

On December 12, 2022, City Council approved Resolution No. R-44-22, awarding Hayter Engineering a contract to provide TxCDBG application and project-related professional engineering services for the 2023/2024 Texas Department of Agriculture - TxCDBG project.

RECOMMENDED ACTION:

Staff recommends approval of a Professional Services Agreement with Hayter Engineering, Inc. for services related to the East Lacy Street Sewer Line Replacement Project.

CITY MANAGER APPROVAL:

Attachments

Professional Services Agreement

ENGINEERING/SURVEYOR SERVICES

PART I AGREEMENT

THIS AGREEMENT, entered into this 11th day of March, 2024, by and between the CITY OF PALESTINE, TEXAS, hereinafter called the "City", acting herein by its Mayor hereunto duly authorized, and Hayter Engineering, Inc. hereinafter called "Firm," acting herein through a duly authorized officer.

WITNESSETH THAT:

WHEREAS, the City of Palestine desires to construct the following:

East Lacy Street Sewer Line Replacement Project

These activities will take place under the general direction of the Texas Community Development Block Grant (hereinafter called "TxCDBG") Program of the Texas Department of Agriculture (TDA); and Whereas the City desires to engage Hayter Engineering, Inc. to render certain engineering/surveyor services in connection with the TxCDBG Project, Contract Number CDV23-0354.

NOW THEREFORE, the parties do mutually agree as follows:

Definitions:

Throughout this document:

- a. "Agreement" refers to this contract between the City and the Firm to assist with the surveying, and/or engineering of all or any portion of a community development block grant from the Texas Department of Agriculture.
 - b. "Firm" refers to the professional services provider engaged to assist the City with the surveying, and/or engineering of all or a portion of a community development block grant from the Texas Department of Agriculture.
 - c. "Parties" refer to the Firm and the City.
1. Scope of Services - The Firm will perform the services set out in Part II, Scope of Services.
 2. Time of Performance - The services of the Firm shall commence on 3/11/2024. In any event, all of the services required and performed hereunder shall be completed no later than 1/31/2026.
 3. Local Program Liaison - For purposes of this Agreement, the Mayor or equivalent authorized person will serve as the Local Program Liaison and primary point of contact for the Firm. All required progress reports and communication regarding the project shall be directed to this liaison and other local personnel as appropriate.
 4. Access to Records - The U.S. Department of Housing and Urban Development (HUD), Inspectors General, the Comptroller General of the United States, the Texas Department of Agriculture (TDA), and the City/County, or any of their authorized representatives, shall have access to any documents, papers, or other records of the Firm which are pertinent to the TxCDBG award, in order to make audits, examinations, excerpts, and transcripts, and to closeout the City/County's TxCDBG contract with TDA.
 5. Retention of Records - The Firm shall retain all required records for three years after the City/County makes its final payment and all pending matters are closed.
 6. Compensation and Method of Payment - The maximum amount of compensation and reimbursement to be paid hereunder shall not exceed \$75,000.00. Payment to the Firm shall be based on satisfactory completion of identified milestones in Part III- Payment Schedule of this Agreement.

7. Indemnification – The Firm shall comply with the requirements of all applicable laws, rules and regulations, and shall exonerate, indemnify, and hold harmless the City and its agency members from and against any and all claims, costs, suits, and damages, including attorney's fees, arising out of the Firm's negligent performance or nonperformance of the activities, services or subject matter called for in this Agreement, and shall assume full responsibility for payments of Federal, State and local taxes on contributions imposed or required under the Social Security, worker's compensation and income tax law.
8. Miscellaneous Provisions
- a. This Agreement shall be construed under and in accord with the laws of the State of Texas, and all obligations of the Parties created hereunder are performable in Lamar County, Texas.
 - b. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors and assigns where permitted by this Agreement.
 - c. In any case one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.
 - d. If any action at law or in equity is necessary to enforce or interpret the terms of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees, costs, and necessary disbursements in addition to any other relief to which such party may be entitled.
 - e. This Agreement may be amended by mutual agreement of the parties hereto and in writing to be attached to and incorporated into this Agreement.
9. Extent of Agreement - This Agreement, which includes Parts I-V, including the following exhibits/attachments represents the entire and integrated agreement between the City and the Firm and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by authorized representatives of both City and the Firm.

IN WITNESS WHEREOF, the parties have executed this Agreement by causing the same to be signed on the day and year first above written.

BY: _____
Signature

Teresa Herrera
Name (Printed)

City Manager / City of Palestine
Title / City Name

BY: 
Signature

Michael N. Tibbets
Name (Printed)

President
Hayter Engineering

PART II SCOPE OF SERVICES

The Firm shall render the following professional services necessary for the development of the project:

SCOPE OF SERVICES

1. Attend preliminary conferences with the City regarding the requirements of the project.
2. Determine necessity for acquisition of any additional real property/easements/right-of-ways (ROWs) for the TxCDBG project and, if applicable, furnish to the City:
 - a. Name and address of property owners;
 - b. Legal description of parcels to be acquired; and
 - c. Map showing entire tract with designation of part to be acquired.
3. Make any necessary surveys of existing rights-of-way, topography, utilities, or other field data required for proper design of the project. Provide consultation and advice as to the necessity of the City providing or obtaining other services such as auger borings, core borings, soil tests, or other subsurface explorations; laboratory testing and inspecting of samples or materials; other special consultations. The Firm will review any tests required and act as the City's representative in connection with any such services.
4. Prepare railroad/highway permits.
5. If applicable, prepare a preliminary engineering/architectural study and report on the project in sufficient detail to indicate clearly the problems involved and the alternate solutions available to the City, to include preliminary layouts, sketches and cost estimates for the project, and to set forth clearly the Firm's recommendations.
6. Furnish the City copies of the preliminary report, if applicable (additional copies will be furnished to the City at direct cost of reproduction).
7. Submit detailed drawings and plans/specifications to appropriate regulatory agency(ies) and obtain clearance.
8. Make periodic visits, no less than every 30 days during the construction period, to the construction site to observe the progress and quality of the work, to ensure that the work conforms with the approved plans and specifications, and to determine if the work is proceeding in accordance with the Agreement.
9. Prepare bid packet/contract documents/advertisement for bids. At the time the bid packet is completed, the Firm shall also furnish to the City an updated written Opinion of Probable Project Costs.
10. Make 10-day call to confirm prevailing wage decision.
11. Incorporate any and all wage rate modifications or supersedes via bid addendum (if applicable).
12. Conduct bid opening and prepare minutes.
13. Tabulate, analyze, and review bids for completeness and accuracy.
14. Accomplish construction contractor's registration and eligibility verification through www.SAM.gov.
15. Conduct pre-construction conference and prepare copy of minutes.
16. Issue Notice to Proceed to construction contractor.
17. Provide in all proposed construction contracts deductive alternatives where feasible, so that should the lowest responsive base bid for construction exceed the funds available, deductive alternatives can be taken to reduce the bid price.
18. Design for access by persons with disabilities for those facilities to be used by the public in accordance with Public Law 504.
19. Use TDA-approved forms for instructions to bidders, general conditions, contract, bid bond, performance bond, and payment bond.
20. Consult with and advise the City during construction; issue to contractors all instructions requested by the City; and prepare routine change orders if required, at no charge for engineering services to the City/County when the change order is required to correct errors or omissions by the Firm; provide price analysis for change orders; process change orders approved by City and the Firm and submit to TDA for approval prior to execution with the construction contractor.

21. Review shop and working drawings furnished by contractors for compliance with design concept and with information given in contract documents (contractors will be responsible for dimensions to be confirmed and correlated at job site).
22. Respond to all payment requests within 14 days of receipt of signed pay request from the construction contractor.
23. Based on the Firm's on-site observations and review of the contractor's applications for payment, determine the amount owed to the contractor in such amounts; such approvals of payment to constitute a representation to the City, based on such observations and review, that the work has progressed to the point indicated and that the quality of work is in accordance with the plans, specifications and contract documents.
24. Recommend that a 5% retainage is withheld from all payments on construction contracts until final acceptance by the City and approval by TDA, unless State or local law provides otherwise.
25. Prepare Certificate of Construction Completion and Clean Lien Certificate. A Clean Lien Certificate may be prepared for each of the Prime Contractor(s) and each of the subcontractor(s).
26. Conduct interim/final inspections.
27. Revise contract drawings to show the work as actually constructed, and furnish the City with a set of "record drawings" plans.
28. The Firm will provide a copy of the final project record drawing(s) engineering schematic(s), as constructed using funds under this contract. These maps shall be provided in digital format containing the source map data (original vector data) and the graphic data in files on machine readable media, such as compact disc (CD), which are compatible with computer systems owned or readily available to the owner. The digital copy provided shall not include a digital representation of the engineer's seal but the accompanying documentation from the Firm shall include a signed statement of when the map was authorized, that the digital map is a true representation of the original sealed document, and that a printed version with the seal has been provided to the City. In addition, complete documentation as to the content and layout of the data files and the name of the software package(s) used to generate the data and maps shall be provided to the owner in written form.
29. **Limitation of Liability.** In recognition of the relative risks and benefits of the project to both the OWNER and the ENGINEER, the risks have been allocated such that the OWNER agrees, to the fullest extent permitted by law, to limit the liability of the ENGINEER and his subcontractors on the project for any and all claims, losses, costs, damages of any nature whatsoever or claims expenses from any cause or causes, so that the total aggregate liability of the ENGINEER and his or her sub-consultants to all those named shall not exceed \$100,000 or the ENGINEER'S total fee for services rendered on this project, whichever is greater. Such claims and causes include, but are not limited to, negligence, professional errors or omissions, strict liability, and breach of contract.
30. Basic services during the construction period, if any such services are included in this AGREEMENT, are understood to be for the time of completion initially specified in the corresponding construction contract, and services beyond that time, including services as expert witness or assisting in litigation, or services due to failure of the CONTRACTOR to complete on time, will be deemed additional services.

SUBCONTRACTS

1. No work under this Agreement shall be subcontracted by the Firm without prior approval from the City.
2. The Firm shall, prior to proceeding with the work, notify the City of the name of any subcontractors proposed for the work, including the extent and character of the work to be done by each.
3. If any time during progress of the work, the City determines that any subcontractor is incompetent or undesirable, the City/County will notify the Firm who shall take reasonable and immediate steps to satisfactorily cure the problem, substitute performance, or cancel such subcontract. Subletting by subcontractors shall be subject to the same regulations. Nothing contained in this Agreement shall create any contractual relation between any subcontractor and the City.
4. The Firm will include in all contracts and subcontracts in excess of \$150,000 a provision which requires compliance with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251-1387). The provisions shall require reporting of violations to TDA and to the Regional Office of the Environmental Protection Agency (EPA).

5. The Firm will include in all contracts and subcontracts in excess of \$150,000 provisions or conditions which will allow for administrative, contractual or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate.
6. The Firm will include in all contracts and subcontracts in excess of \$10,000 provisions addressing termination for cause and for convenience by the City including the manner by which it will be effected and the basis for settlement.
7. The Firm will include in all contracts and subcontracts provisions requiring compliance with the following, if applicable:
 - a. Prime construction contracts in excess of \$2,000, compliance with the Davis-Bacon Act, as amended (40 U.S.C. 3141-3144, 3146-3148) as supplemented by Department of Labor regulations (29 CFR part 5);
 - b. Prime construction contracts in excess of \$2,000, compliance with the Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulation (29 CFR part 3);
 - c. Contracts greater than \$10,000, the inclusion of the Equal Opportunity clause provided under 41 CFR 60-1.4(b) (Executive Order 11246);
 - d. Section 3 of the Housing and Urban Development Act of 1969;
 - e. Contracts exceeding \$100,000, compliance with the Byrd Anti-Lobbying Amendment (31 U.S.C. 1352);
 - f. For contracts in excess of \$100,000 that involve the employment of mechanics or laborers, compliance with the Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708), including work week requirements and safety conditions for workers, as supplemented by Department of Labor regulations (29 CFR Part 5); and
 - g. For procurement of recovered materials where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000, compliance with 2 CFR 200.322 and section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, which requires procuring only items designated in guidelines of the EPA at 40 CFR part 247 that contain the highest percentage of recovered materials practicable.
8. The Firm will include in all negotiated contracts and subcontracts a provision which indicates that funds will not be awarded under this contract to any party which is debarred, suspended, or otherwise excluded from or ineligible for participation in federal assistance programs under Executive Order 12549 and 2 CFR Part 2424. A certification shall be provided and received from each proposed subcontractor under this contract and its principals.
9. The Firm will include in all negotiated contracts and subcontracts a provision to the effect that the City, TDA, the Texas Comptroller of Public Accounts, the Comptroller General of the United States, the U.S. Department of Housing and Urban Development (HUD), or any of their duly authorized representatives, shall have access to any books, documents, papers and records of the contractor which are directly pertinent to that specific contract, for the purpose of making audit, examination, excerpts, and transcriptions.
10. Firm will include in all contracts and subcontracts a requirement that the contractor maintain all relevant project records for three (3) years after the City has made final payment to the contractor and all other pending matters are closed.

STANDARD OF PERFORMANCE AND DEFICIENCIES

1. All services of the Firm and its independent professional associates, consultants and subcontractors will be performed in a professional, reasonable and prudent manner in accordance with generally accepted professional practice. The Firm represents that it has the required skills and capacity to perform work and services to be provided under this Agreement.
2. The Firm represents that services provided under this Agreement shall be performed within the limits prescribed by the City in a manner consistent with that level of care and skill ordinarily exercised by other professional consultants under similar circumstances.
3. Any deficiency in Firm's work and services performed under this contract shall be subject to the provisions of applicable state and federal law. Any deficiency discovered shall be corrected upon notice from City and at the Firm's expense if the deficiency is due to Firm's negligence. The City shall notify the Firm in writing of any such deficiency and provide an opportunity for mutual investigation and resolution of the problem prior to pursuit of any judicial remedy. In any case, this provision shall in no way limit the judicial remedies available to the City under applicable state or federal law.

4. The Firm agrees to and shall hold harmless the City, its officers, employees, and agents from all claims and liability of whatsoever kind or character due to or arising solely out of the negligent acts or omissions of the Firm, its officers, agents, employees, subcontractors, and others acting for or under the direction of the Firm doing the work herein contracted for or by or in consequence of any negligence in the performance of this Agreement, or by or on account of any omission in the performance of this Agreement.

PART III-
PAYMENT SCHEDULE

City shall reimburse the Firm for professional services provided upon completion of the following project milestones per the following percentages of the maximum contract amount:

Milestone	% of Contract
• Completion of Topographic Surveys	10%
• Progress payments on Plans and Specifications	30%
• Completion of bid advertisement and contract award	10%
• Progress payments as construction occurs	30%
• Completion of Final Closeout Assessment and submittal of As Builts to City/County	15%
• Completion of final inspection and acceptance by the City	5%
TOTAL	<hr/> 100%

PART IV

TERMS AND CONDITIONS

1. Termination of Agreement for Cause. If the Firm fails to fulfill in a timely and proper manner its obligations under this Agreement, or if the Firm violates any of the covenants, conditions, agreements, or stipulations of this Agreement, the City shall have the right to terminate this Agreement by giving written notice to the Firm of such termination and specifying the effective date thereof, which shall be at least five days before the effective date of such termination. In the event of termination for cause, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs and reports prepared by the Firm pursuant to this Agreement shall, at the option of the City, be turned over to the City/County and become the property of the City/County. In the event of termination for cause, the Firm shall be entitled to receive reasonable compensation for any necessary services actually and satisfactorily performed prior to the date of termination.

Notwithstanding the above, the Firm shall not be relieved of liability to the City for damages sustained by the City by virtue of any breach of the Agreement by the Firm, and the City may set-off the damages it incurred as a result of the Firm's breach of the contract from any amounts it might otherwise owe the Firm.

2. Termination for Convenience of the City/County.

City/County may at any time and for any reason terminate Contractor's services and work at City/County's convenience upon providing written notice to the Contractor specifying the extent of termination and the effective date. Upon receipt of such notice, Contractor shall, unless the notice directs otherwise, immediately discontinue the work and placing of orders for materials, facilities and supplies in connection with the performance of this Agreement.

Upon such termination, Contractor shall be entitled to payment only as follows: (1) the actual cost of the work completed in conformity with this Agreement plus (2) such other costs actually incurred by Firm as are permitted by the prime contract and approved by City/County. There shall be deducted from such sums as provided in this subparagraph the amount of any payments made to Firm prior to the date of the termination of this Agreement. Firm shall not be entitled to any claim or claim of lien against City/County for any additional compensation or damages in the event of such termination and payment.

3. Changes. The City may, from time to time, request changes in the services the Firm will perform under this Agreement. Such changes, including any increase or decrease in the amount of the Firm's compensation, must be agreed to by all parties and finalized through a signed, written amendment to this Agreement.
4. Resolution of Program Non-Compliance and Disallowed Costs. In the event of any dispute, claim, question, or disagreement arising from or relating to this Agreement, or the breach thereof, including determination of responsibility for any costs disallowed as a result of non-compliance with federal, state or TxCDBG program requirements, the parties hereto shall use their best efforts to settle the dispute, claim, question or disagreement. To this effect, the parties shall consult and negotiate with each other in good faith within 30 days of receipt of a written notice of the dispute or invitation to negotiate, and attempt to reach a just and equitable solution satisfactory to both parties. If the matter is not resolved by negotiation within 30 days of receipt of written notice or invitation to negotiate, the parties agree first to try in good faith to settle the matter by mediation administered by the American Arbitration Association under its Commercial Mediation Procedures before resorting to arbitration, litigation, or some other dispute resolution procedure. The parties may enter into a written amendment to this Amendment and choose a mediator that is not affiliated with the American Arbitration Association. The parties shall bear the costs of such mediation equally. If the matter is not resolved through such mediation within 60 days of the initiation of that procedure, either party may proceed to file suit.
5. Personnel.
 - a. The Firm represents that it has, or will secure at its own expense, all personnel required in performing the services under this Agreement. Such personnel shall not be employees of or have any contractual relationship with the City.
 - b. All of the services required hereunder will be performed by the Firm or under its supervision and all personnel engaged in the work shall be fully qualified and shall be authorized or permitted under State and Local law to perform such services.
 - c. None of the work or services covered by this Agreement shall be subcontracted without the prior written approval of the City. Any work or services subcontracted hereunder shall be specified by written contract or agreement and shall be subject to each provision of this Agreement.
6. Assignability. The Firm shall not assign any interest on this Agreement, and shall not transfer any interest in the same

(whether by assignment or novation), without the prior written consent of the City thereto; Provided, however, that claims for money by the Firm from the City under this Agreement may be assigned to a bank, trust company, or other financial institution without such approval. Written notice of any such assignment or transfer shall be furnished promptly to the City.

7. Reports and Information. The Firm, at such times and in such forms as the City may require, shall furnish the City such periodic reports as it may request pertaining to the work or services undertaken pursuant to this Agreement, the costs and obligations incurred or to be incurred in connection therewith, and any other matters covered by this Agreement.
8. Records and Audits. The Firm shall insure that the City maintains fiscal records and supporting documentation for all expenditures of funds made under this contract in a manner that conforms to 2 CFR 200.300-.309, 24 CFR 570.490, and this Agreement. Such records must include data on the racial, ethnic, and gender characteristics of persons who are applicants for, participants in, or beneficiaries of the funds provided under this Agreement. The Firm and the City shall retain such records, and any supporting documentation, for the greater of three years from closeout of the Agreement or the period required by other applicable laws and regulations.
9. Findings Confidential. All of the reports, information, data, etc., prepared or assembled by the Firm under this contract are confidential and the Firm agrees that they shall not be made available to any individual or organization without the prior written approval of the City.
10. Copyright. No report, maps, or other documents produced in whole or in part under this Agreement shall be the subject of an application for copyright by or on behalf of the Firm.
11. Compliance with Local Laws. The Firm shall comply with all applicable laws, ordinances and codes of the State and local governments, and the Firm shall save the City harmless with respect to any damages arising from any tort done in performing any of the work embraced by this Agreement.
12. Conflicts of interest.
 - a. Governing Body. No member of the governing body of the City and no other officer, employee, or agent of the City, who exercises any functions or responsibilities in connection with administration, construction, engineering, or implementation of TxCDBG award between TDA and the City/County, shall have any personal financial interest, direct or indirect, in the Firm or this Agreement; and the Firm shall take appropriate steps to assure compliance.
 - b. Other Local Public Officials. No other public official, who exercises any functions or responsibilities in connection with the planning and carrying out of administration, construction, engineering or implementation of the TxCDBG award between TDA and the City, shall have any personal financial interest, direct or indirect, in the Firm or this Agreement; and the Firm shall take appropriate steps to assure compliance.
 - c. The Firm and Employees. The Firm warrants and represents that it has no conflict of interest associated with the TxCDBG award between TDA and the City or this Agreement. The Firm further warrants and represents that it shall not acquire an interest, direct or indirect, in any geographic area that may benefit from the TxCDBG award between TDA and the City or in any business, entity, organization or person that may benefit from the award. The Firm further agrees that it will not employ an individual with a conflict of interest as described herein.
13. Conflicts Disclosure Statement (Sec. 176.003 in Chapter 176 of the Local Government Code)
 - a. A local government officer shall file a conflicts disclosure statement with respect to a vendor if:
 - 1) the vendor enters into a contract with the local governmental entity or the local governmental entity is considering entering into a contract with the vendor; and
 - 2) the vendor:
 - (A) has an employment or other business relationship with the local government officer or a family member of the officer that results in the officer or family member receiving taxable income, other than investment income, that exceeds \$2,500 during the 12-month period preceding the date that the officer becomes aware that (i) a contract between the local governmental entity and vendor has been executed; or (ii) the local governmental entity is considering entering into a contract with the vendor;
 - (B) has given to the local government officer or a family member of the officer one or more gifts that have an aggregate value of more than \$100 in the 12-month period preceding the date the officer becomes aware that: (i) a contract between the local governmental entity and vendor has been executed; or (ii) the local governmental entity is considering entering into a contract with the vendor; or has a family relationship with the local government officer.

(a-1). A local government officer is not required to file a conflicts disclosure statement in relation to a gift accepted by the officer or a family member of the officer if the gift is: (1) a political contribution as defined by Title 15, Election Code; or a (2) food accepted as a guest.

(a-2). A local government officer is not required to file a conflicts disclosure statement under Subsection (a) if the local governmental entity or vendor described by that subsection is an administrative agency created under Section 791.013, Government Code.

b. A local government officer shall file the conflicts disclosure statement with the records administrator of the local governmental entity not later than 5 p.m. on the seventh business day after the date on which the officer becomes aware of the facts that require the filing of the statement under Subsection (a).

14. Debarment and Suspension (Executive Orders 12549 and 12689)

The Firm certifies, by entering into this Agreement, that neither it nor its principals are presently debarred, suspended, or otherwise excluded from or ineligible for participation in federally-assisted programs under Executive Orders 12549 (3 CFR Part 1986 Comp., p. 189) and 12689 (3 CFR Part 1989 Comp., p. 235). The term "principal" for purposes of this Agreement is defined as an officer, director, owner, partner, key employee, or other person with primary management or supervisory responsibilities, or a person who has a critical influence on or substantive control over the operations of the Firm. The Firm understands that it must not make any award or permit any award (or contract) at any tier to any party which is debarred or suspended or is otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549, "Debarment and Suspension."

Federal Civil Rights Compliance.

15. Equal Opportunity Clause (applicable to contracts and subcontracts over \$10,000).

During the performance of this contract, the Firm agrees as follows:

- a. The Firm will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Firm will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Firm agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
- b. The Firm will, in all solicitations or advertisements for employees placed by or on behalf of the Firm, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- c. The Firm will not discourage or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's duty to furnish information.
- d. The Firm will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Firm's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- e. The Firm will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

- f. The Firm will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
 - g. In the event of the Firm's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the Firm may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
 - h. The Firm will include the portion of the sentence immediately preceding paragraph (a) and the provisions of paragraphs (a) through (h) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Firm will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, That in the event a Firm becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency the Firm may request the United States to enter into such litigation to protect the interests of the United States.
16. Civil Rights Act of 1964. Under Title VI of the Civil Rights Act of 1964, no person shall, on the grounds of race, color, religion, sex, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.
17. Section 109 of the Housing and Community Development Act of 1974. The Firm shall comply with the provisions of Section 109 of the Housing and Community Development Act of 1974. No person in the United States shall on the ground of race, color, national origin, religion, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds made available under this title.
18. Section 504 of the Rehabilitation Act of 1973, as amended. The Firm agrees that no otherwise qualified individual with disabilities shall, solely by reason of his/her disability, be denied the benefits of, or be subjected to discrimination, including discrimination in employment, under any program or activity receiving federal financial assistance.
19. Age Discrimination Act of 1975. The Firm shall comply with the Age Discrimination Act of 1975 which provides that no person in the United States shall on the basis of age be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.
20. Byrd Anti-Lobbying Amendment (31 U.S.C. 1352) (if contract greater than or equal to \$100,000)

The Firm certifies that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining this contract. The Firm shall disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award.

[If this Contract is greater than \$100,000, include the following Section 3 language:]

21. Economic Opportunities for Section 3 Residents and Section 3 Business Concerns.
- a. The work to be performed under this contract is subject to the requirements of section 3 of the housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (section 3). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted project covered by section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

- b. The parties to this Agreement agree to comply with HUD's regulations in 24 CFR part 135, which implement section 3. As evidence by their execution of this contract, the parties to this Agreement certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.
- c. The Firm agrees to send to each labor organization or representative of workers with which the Firm has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the Firm's commitments under this section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the section 3 preference, shall set for minimum number and job title subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.
- d. The Firm agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor where the Firm has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR part 135.
- e. The Firm will certify that any vacant employment positions, including training positions, that are filled (1) after the Firm is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the Firm's obligations under 24 CFR part 135.
- f. Noncompliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this Agreement for default, and debarment or suspension from future HUD assisted contracts.
- g. With respect to work performed in connection with section 3 covered Indian housing assistance, section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this Agreement. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of section e and section 7(b) agree to comply with section 3 to the maximum extent feasible, but not in derogation of compliance with section 7(b).
22. Patent Rights and Inventions – The Firm shall comply with the requirements and regulations pertaining to patent rights with respect to any discovery or invention which arises or is develop in the course of or under such contract (2 CFR 200 Appendix II (f) and Right to Inventions in 37 CFR Part 401).
- Rights to Inventions Made Under a Contract or Agreement – If the Federal award meets the definition of "funding agreement" under 37 CFR §401.2 (a) and the Subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the Subrecipient must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency. (2 CFR 200 Appendix II (f), Rights to Inventions).
23. Energy Efficiency – The Firm shall comply with the mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94A 163, 89 Stat. 871. (24 CRF 85.26 (i) (13)).
24. Verification No Boycott Israel. As required by Chapter 2270, Government Code, the Firm hereby verifies that it does not boycott Israel and will not boycott Israel through the term of this Agreement. For purposes of this verification, "boycott Israel" means refusing to deal with, terminating business, activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a

person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes.

25. Foreign Terrorist Organizations. Pursuant to Chapter 2252, Texas Government Code, the Firm represents and certifies that, at the time of execution of this Agreement neither the Firm, nor any wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of the same (i) engages in business with Iran, Sudan, or any foreign terrorist organization as described in Chapter 806 or 807 of the Texas Government Code, or Subchapter F of Chapter 2252 of the Texas Government Code, or (ii) is a company listed by the Texas Comptroller of Public Accounts under Sections 806.051, 807.051, or 2252.153 of the Texas Government Code. The term "foreign terrorist organization" in this paragraph has the meaning assigned to such term in Section 2252.151 of the Texas Government Code.

PROJECT TIME SCHEDULE ENGINEERING/SURVEYOR PROFESSIONAL SERVICES

It is understood that the TDA grant agreement beginning date is 2/1/2024. All time outlined below are based on this beginning date.

- | | |
|---|-----------------------------|
| 1. Complete plans & specifications | No more than six months. |
| 2. Complete bid, award and construction contract execution. | No more than nine months. |
| 3. Complete construction phase engineering. | No more than twenty months. |



Agenda Date: April 8, 2024

To: City Council

From: Andrew Sibai, Finance Director

Agenda Item: Consider approval for the City Manager to seek sealed bids for the official depository for the City of Palestine

Date Submitted: 04/03/2024

SUMMARY:

Consider authorizing the City Manager to seek sealed bids for the official depository for the City of Palestine. The current depository contract with Prosperity Bank will expire in May 2024, so this service must be solicited again for another 3-year term.

RECOMMENDED ACTION:

Staff recommends approval.

CITY MANAGER APPROVAL:

Attachments

Banking RFP



This notice is published in the Palestine Herald Press on Saturday, April 13, 2024, and Saturday, April 20, 2024.

**CITY OF PALESTINE
REQUEST FOR PROPOSALS (RFP)
RFP 2024-007 – BANK DEPOSITORY SERVICES**

Sealed Proposals Due Date: April 29, 2024

The City of Palestine is requesting applications in the form of proposals from eligible and qualified financial institutions for bank depository services. The services being requested under this RFP include full-service basic banking services, including but not limited to receiving deposits, wire transfers (in and out), and stop payments.

The following schedule shall govern your proposal:

Monday, April 15, 2024, at 5:00 p.m., Central Standard Time (CST)

Deadline for inquiries, questions, or requests for information regarding this request for proposals. All questions and correspondence should be directed to Andrew Sibai, Finance Director, at asibai@palestine-tx.org.

Monday, April 29, 2024, at 1:00 p.m., Central Standard Time (CST)

Sealed proposals are due in the City Secretary's Office. The date and time received shall be noted on the envelope or box and initialed. Proposals cannot be altered or amended after the submission deadline. Any interlineations, alterations, or erasures made before the proposal opening must be initialed by the signor of the proposal, guaranteeing authenticity. Proposals received after the published deadline shall remain unopened and be returned.

Monday, April 29, 2024, at 1:30 p.m., Central Standard Time (CST)

Sealed proposals will be opened and publicly read aloud in the City Hall Conference Room at 504 N. Queen Street, Palestine, Texas. Unmarked proposals received shall be opened for identification purposes only and resealed. The envelope or box shall be marked accordingly.

Your proposal must meet the qualifications and satisfy the requirements outlined in this RFP to be considered for this engagement.

Mailing Address and Hand Delivery Address:

City of Palestine
Attn: April Jackson, City Secretary
504 N. Queen Street
Palestine, TX 75801

Please include proposed fees for all three (3) years in your proposal: a clear price proposal for the first three years and proposed pricing for additional extensions.

One original proposal and two copies should be returned in a sealed envelope bearing the respondent's name and address and **“RFP 2024-007 – BANK DEPOSITORY SERVICES.”**

**CITY OF PALESTINE
REQUEST FOR PROPOSALS
RFP 2024-007 – DEPOSITORY BANK SERVICES**

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**CITY OF PALESTINE
REQUEST FOR PROPOSALS
RFP 2024-007 – DEPOSITORY AND BANKING SERVICES**

I. INTRODUCTION

City Description. The City of Palestine is a political subdivision of the State of Texas (State), established in 1846. The County Seat and the largest city in Anderson County, Palestine, provides a full range of municipal services, including general government, economic development, cemetery, public safety (police and fire), parks and recreation, streets, community development, planning and zoning, code enforcement, public library, and municipal services such as water treatment, wastewater and engineering. The corporate limits of the city encompass approximately 19.5 square miles with a 1-mile extraterritorial jurisdiction. The U.S. Census Bureau 2019 estimated population was 17,730. The city operates as a Home Rule City under a Council-Manager form of government. The City Council comprises the Mayor and six Council Members. The City Manager is the chief executive officer of the City of Palestine.

City Departmental Organization. The City of Palestine provides all municipal services within city limits with the following structure:

- General Fund - City Manager, City Secretary, Legal, Human Resources, Finance, Municipal Court, Information Systems, Police, Fire, Emergency Management, Public Works, Street Maintenance, Fleet Maintenance, Airport, Parks, Cemetery, Library, and Development Services
- Enterprise Funds - Water / Wastewater / Utility Billing, Sanitation / Solid Waste
- Palestine Economic Development Corporation - Economic Development / Marketing, Main Street

Finance Operations. Finance is comprised of Accounting and Utility Billing.

- Accounts Payable generates approximately 350-400 checks per month. Check registers are posted on the City website's transparency page.
- Payroll generates approximately 200 paychecks per bi-weekly pay period, most of which are auto-deposit.
- Utility Billing generates approximately 6,500 residential utility bills each month.

The City's primary banking relationship is currently maintained at Prosperity Bank. Given the ongoing changes occurring within the banking industry and evolving technologies, it is the City's practice to review and evaluate its banking services periodically. The City wishes to create efficiencies, make improvements where possible, and take advantage of new, applicable technologies. It is the City's intent to maintain all commercial banking services with one financial institution to maximize cash flow and minimize administrative costs. Depository Bank Services Proposals must include services for the entire scope of the relationship outlined.

A. REQUEST FOR PROPOSAL

The City of Palestine is requesting applications in the form of proposals from eligible and qualified financial institutions for depository and banking services. Depository and banking services being requested under this RFP include full-service basic banking services, including but not limited to receiving deposits, wire transfers (in and out), and stop payments. This agreement will not cover any investment transaction activities other than safekeeping services, including receiving and

delivering securities, coupon collections, and maturity collections. The City plans to manage its own investment portfolio.

The City will endeavor to administer the proposal process according to the terms and dates outlined in this RFP. However, the City reserves the right to modify the activities, timeline, or any other aspect of the process. By requesting proposals, the City is in no way obligated to award a contract or pay the expenses of the proposing banks in connection with preparing or submitting a proposal.

B. MINIMUM QUALIFICATIONS

To ensure a close working relationship to facilitate available services (e.g., daily deposits and change orders), the City will consider banks with full-service capabilities within the City limits. Any required statement regarding equal opportunity and affirmative action should be included if required/desired. The proposal submitted will become part of the final contract.

C. TERM OF CONTRACT

The contract period will be three (3) years with one (1) three-year extension option, beginning May 21, 2024, and ending May 21, 2027. The depository contract shall provide that the City reserves the right to cancel any agreement, at any time, upon sixty (60) days prior written notice of its intent to terminate any agreement.

D. OBJECTIVES OF THE PROPOSAL

At the outset, the City wishes to communicate the primary objectives of the depository RFP, an important component of the overall treasury program of the City of Palestine:

The objective of the request for depository bank services is to solicit comparable market charges for services to be provided and to pay for all services provided by the bank. The City desires to enter into a contract that will minimize the City's costs and provide mutual benefit for the City and the bank.

This Request for Proposal, "RFP," is intended to serve as the bid form for the depository agreement. Several questions have been requested to be answered. The resulting depository contract is expected to contain a scope of work agreeing to RFP responses. To be considered for evaluation, the bidder should incorporate all points outlined and requested materials into their reply. Attachments will be appropriate to answer some of the questions.

II. CALENDAR OF EVENTS

Target Date Description of Events

City distributes the RFP document to local banks.

April 15, 2024 The deadline for questions regarding this RFP. Responses to all material questions will be communicated to all known proposers.

Bids are to be received Monday, April 29, 2024, at 1:00 p.m., Central Standard Time (CST) at the City Secretary's Office at Palestine City Hall.

Bids to be opened Monday, April 29, 2024, at 1:30 p.m., Central Standard Time (CST) by the City Staff.

City will award a contract for the City Depository on Monday, May 13, 2024.

III. CRITERIA FOR EVALUATION

Award recommendations will be based on the bid determined to be best on behalf of the City and taxpayers using the following general criteria as a basis for evaluation:

1. Cost of the proposed banking services, conversion, and implementation net of earnings.
2. Responsiveness, ability to provide requested services, ease of use of services, including electronic access.
3. Municipal references, experience, and continuity of local bank management
4. Ability to meet the legal qualifications and the terms and conditions specified.
5. Creditworthiness, ability to provide collateralization.

IV. CITY ACCOUNT INFORMATION

The City uses the following bank accounts. Other accounts may be set up as needed during the contract's term.

1. OPERATING ACCOUNT (ACCOUNTS PAYABLE ACCOUNT). The Operating Account will constitute almost all of the City's banking business. Intra-bank transfers to reimburse money to other City accounts, and most wire transactions will occur in this account. Positive Pay will be required on this account. Target balance: \$750,000 - \$1,000,000.
2. PAYROLL ACCOUNT Pass-through account, minimal balance. Positive pay is required on this account.
3. CIP FUND - restricted fund account
4. ECONOMIC DEVELOPMENT FUND - restricted fund, target balance \$1,500,000
5. UTILITY CIP FUND- restricted fund account

V. CITY'S BANKING SERVICES REQUIREMENTS

A. GENERAL DESCRIPTION OF SERVICES

The banking services to be provided are listed on the Bid Form; *see the attached estimated monthly volumes*. The following identifies and discusses the services to be provided and the requirements to be met. Please attach copies of reports and separate agreements that apply to each service, if applicable.

1. Controlled disbursement.
2. On-line reporting system which will provide the daily ending ledger, debit and credit detail, and collected balances from the prior day. Ability to customize multiple users' account access, functions, and dollar limits by City staff administrator.
3. Processing of all deposited items of checks and cash to include encoding services, credit and

debit advice given to the City within three business days of the debit or credit, clearing returned items twice, and return of stamped duplicated deposit slips to the City within one business day of the deposit.

4. General ACH services
5. General wire transfer services including on-line initiation of repetitive wire transfers with two-person initiate/approve controls.
6. Account reconciliation services
7. The City will require calendar-month-end monthly bank statements. Bank statements on all accounts shall be rendered within five (5) working days after the close of the cut-off date. Statements shall include transaction activity made on the last day of the period. The accompanying checks and deposit slips shall be arranged in numerical order for the operating account and payroll account. All other account statements should include debit/credit advices.

Positive pay services for the primary operating account.

8. Account analysis each month with all accounts grouped to obtain maximum credit for balances which shall clearly show volume counts, fees charged, and total prices for servicing the accounts. The account analysis shall also show average ledger balances, average collected balances, interest rates, and earnings credit calculations. Fees charged to the City directly by the bank are not subject to change for the length of this contract. If the City renews the contract under the two-year renewal option, prices may be negotiated at that time.
9. Local physical branch with merchant services, coin, and currency change fund.

B. COLLATERAL REQUIREMENTS

1. Securities Pledged

As security for the deposits of the City, the bank shall pledge to the City securities in compliance with the City of Palestine's Investment Policy and State of Texas' Government Code Title 10. F Chapter 2257 "Collateral for Public Funds. The securities comprising the pledge shall be valued at market.

2. Reporting Requirements

The bank shall provide the City a report of securities pledged at the end of each month or at any time requested. This report should reflect the following information at the end of each month:

Total pledged securities itemized by:

A. Issuer

- B. Type/description CUSIP number.
- C. Par value.
- D. Market value at month-end
- E. Maturity date
- F. Moody's or Standard and Poor's rating

Safekeeping of Collateral

The securities pledged shall be held in safekeeping under the name of the depository bank and pledged to the City of Palestine.

A copy of all security receipts shall be filed with the Finance Director of the City of Palestine on a monthly basis.

Please submit a copy of the safekeeping agreement with the Federal Reserve Bank to be used in the event you are awarded the depository bank contract.

The safekeeping agreement shall have signatories from the Federal Reserve Bank as trustee, the depository bank, and the City of Palestine.

3. Substitutions

Any substitutions of the securities or reductions in the total amount pledged shall be made only by and with the proper written authorization approved by the Finance Director or a designated representative. All securities to be pledged are subject to approval by the City.

C. DEMAND DEPOSIT ACCOUNTS

Please provide responses regarding demand deposit services:

1. Does the bank offer immediate (same day) credit for deposit items received during the regular scheduled banking hours? Are same-day credit deposit items "available" for same-day use by the City?
2. Does the bank offer Electronic Bank Statements, whereby the City can receive its bank statement electronically?
3. How many days after month-end will the City receive its bank account and analysis statements?

D. DIRECT FEES FOR SERVICES PROVIDED

The City desires an equitable reimbursement arrangement for the banking services provided. A direct fee basis for services provided by the bank with an offsetting earning credit for available balances is the method preferred by the City. This process requires the monthly calculation of a net banking service cost. The bank will calculate the total monthly service costs for all accounts and the total monthly earnings credit for all accounts on the account analysis statement. The net of

total service costs and total earnings credits equals net banking service costs for the month. Credit should be given the City for all account balances grouped together and not just single account balances. The City requires the ability to change from compensating balances to fees or reverse on thirty (30) days written notice (corresponding to a reporting period) throughout the contract period.

E. FUNDS TRANSFER REQUIREMENTS

Repetitive and non-repetitive wire transfers occur on a regular basis. The depository shall give both ledger and collected credit the day of the wire receipt. Credit to City accounts for incoming wire transfers should be immediate.

The City may actively invest in marketable securities. An outgoing wire transfer will be made in the morning for the reinvestment of funds expected by an incoming wire transfer. The depository shall allow the City to reinvest and to wire funds out in anticipation of an incoming wire transfer later in the day.

Notification to the City of incoming wire transfer or problems with outgoing wire transfers shall be made within one hour of the transaction. The City requires a wire process such that two authorized employees to initiate repetitive and non-repetitive wire transfers. All authorized employees shall be issued a personal identification number in order to initiate wire transactions. (Please attach a sample funds transfer agreement.)

F. OVERDRAFTS

In the event a check or checks presented for payment on any City account where there exists insufficient funds available for payment, the City will require the depository bank to outline a process to pay said checks and promptly notify the Finance Director or said designated representative of the existence of the overdraft situation. With notification, the City can wire same-day prior to 4:00 pm from one of two Government Pools: TexStar or TexPool.

Define in the bid form whether the bank would consider an overdraft to be a negative balance in any individual City account or a negative balance in all the City's accounts collectively. The City would expect the depository to view all City accounts together for purposes of any charges on overdrawn collected balances.

G. DIRECT DEPOSIT OF PAYROLL:

Direct Deposit of Payroll is currently utilized, with the majority of the City's employees participating. The biweekly payroll files are transmitted via the Internet for paydays that occur every other week, currently uploading on Wednesday, and paid on Thursday.

1. Please describe the bank's ACH and Direct Deposit service in detail.
2. What are the different ACH file transmission options available to the City?
3. What are the transmission deadlines for Direct Deposit ACH files? When (day and time) does the bank need the file from the City, and when specifically are funds debited from the City's

account?

4. Please detail the bank's back-up plans for data transmissions. The City requires immediate notification of any changes or problems and the ability to re-send a file or to delete a file.
5. What screening measures does the bank use to minimize errors on files sent to you i.e., pre-notes, ABA screening, etc.?

H. MERCHANT BANK CARD

The City currently contracts with Global Payment also known as Open Edge to accept Visa, MasterCard, and Discover payments or debit transactions primarily at one location for on-line utility bill payments.

1. Are settlement amounts listed separately on the bank statement?
2. Are settlement amounts listed separately by merchant location?

I. ELECTRONIC DIRECT PAYMENT SERVICES

The City currently offers utility billing customers (approximately 6,500, split into four weekly zones, for water, wastewater and sanitation) automatic bill payment and transmits billing files four times a month (plus occasional supplemental) requesting a debit of the customer's checking account. The City utilizes automatic draft but could consider offering an ACH Direct Debit option.

1. Please describe the bank's electronic bill payment, EFT and ACH services. Does the bank offer both ACH debit and credit programs as part of this service?
2. What hardware, software, and special programming are required for the implementation of an ACH credit program for payments to City vendors?
3. Please detail all costs associated with ACH for a vendor payment program.
4. Please detail all costs associated with your automatic bill payment program.

J. IMPLEMENTATION PLAN AND COSTS

The City requires a smooth and low-cost transition to a new bank or to enhanced services with its existing bank.

1. Please describe in detail, the bank's plan to implement the proposed services and to ensure a smooth, error-free conversion.
2. Please detail all costs and the responsible party (bank or City) associated with the conversion of all new services.

3. What conversion allowance will the bank provide to the City? Please state a specific dollar amount or identify those supplies, products or services included.
4. Will the bank provide on-site training for City personnel for all of the services selected? How is this typically structured?
5. Describe in detail how the bank handles problem resolution, customer service, day-to-day contact, and ongoing maintenance for governmental clients. Please be specific about exactly whom the City will be calling and working with for the above-described situations and for the implementation of new services. Also, describe the bank's organizational structure as it relates to governmental clients and any other information that will be helpful in understanding the bank's internal relationships.

K. OTHER STIPULATIONS

1. The successful bidder shall notify the City in writing within ten (10) days of any changes in federal or state regulations or laws that would thereafter affect the depository agreement. The bank shall also notify the City of any services which become available to the City throughout the contract period.
2. The City expressly reserves the right and privilege to cancel the RFP and rebid the depository services.
3. All checks deposited by the City which do not clear the first time, should be submitted a second time before returning them to the City.
4. The bank's records relating to the City of Palestine accounts shall be open to review by either City council, staff or City-appointed independent auditors during normal business hours.
5. The proposing bank shall submit a copy of the last financial statements along with the last two quarterly FDIC CALL reports. The successful bidder shall provide to the City each quarterly CALL report as well as any public information concerning changes in the ownership, management or financial position of the bank or its parent.
6. The beginning date of the bank depository contract will be after City Council approves the awarding of the contract to be effective for a period of two years. If mutually agreed upon by the City and the bank, the contract may be extended two additional years. The contract should have provision to be automatically extended absent termination.
7. The resulting contract is governed by the laws of the State of Texas. Venue shall be in Anderson County coinciding with the location of both the city and the depository bank.
8. The City shall require a review meeting process at least once every six months to evaluate processes between the City and the depository bank and to identify, address, and resolve issues.

VI. SUBMISSION CHECKLIST

- A. Description of controls and safeguards including built-in or required customer-side controls.
- B. Sample statements
- C. Sample partial account reconciliation statement
- D. Availability of funds schedule with a clear explanation of deadlines
- E. Sample monthly pledged collateral report
- F. Sample safekeeping agreement for collateral
- G. Sample controlled disbursement agreement
- H. Sample funds transfer and ACH transaction agreements
- I. Sample stop payment agreement
- J. Annual financial statement of bank along with the last two quarterly FDIC CALL reports
- K. Proposed depository contract
- L. Proposed pricing schedules
- M. Cover letter signed by representative authorized to execute contract

Required Supplemental Information

Bank Profile: Please include the following information in proposal response:

Bank Overview - General overview of bank, customer service philosophy, and identification of any staff other than the primary office or branch that the City is located in and where the City will conduct its in-person banking business.

Municipal Experience – Describe the bank’s direct experience in servicing **public sector clients**. Please include: the number of public agency clients, the dollar amount of public funds on deposit, and bank’s knowledge of and adherence to the Texas Government Code including the Texas Public Funds Investment Act §2256 et al, Texas Public Funds Collateral Act §2287 et al, and other applicable laws.

Relationship Management – Identify the size and scope of your local banking unit, bank officers and staff responsible for the City’s accounts, what each person’s role and responsibilities will be, and the relevant credentials and experience of each person on the relationship management team.

Technical Support – Identify the bank's technical support capabilities, hours of availability, methods of contact, contact phone numbers and email addresses, and guidelines for use.

References: Please provide three (3) references that are of similar size and scope of service utilization as the City, preferably cities or public agencies. Include the following information for each reference:

- Contact Name & Title
- Name of Customer
- Address
- Telephone Number
- Number of Years as Customer
- Services Utilized

STANDARD TERMS AND CONDITIONS

CITY OF PALESTINE

Bidders are expected to examine the terms and conditions, specifications, drawings, instructions, and other relevant documents. Failure to do so will be at the bidder's risk.

Any request for explanations regarding this bid request for proposal or any request to modify specifications must be received by the City Secretary by stated deadline. Verbal explanations or instructions will not be binding. Any modification or explanation given to a prospective bidder will be furnished to all prospective bidders as an “*addendum*”, if such information is necessary to bidders in submitting bids or if the lack of such information would be prejudicial to uninformed bidders.

Specifications

Any reference to specific brand name or manufacture is intended to indicate the type and grade required. Bid on items if “*equal quality or better*” will be considered.

When possible, bids must be accompanied by samples, brochures, drawings, or printed specifications. There shall be no charge for samples. Final determination that items meet specifications rest with the City of Palestine.

The City of Palestine may inspect and/or test all material received. In the event the material fails to meet specifications as bid, the City reserves the right to void any contract or agreement in reference to this bid and reject all material. Awardee may be required to pick up all material at no cost to the City of Palestine. The awardee may also be liable for related laboratory and testing fees incurred by the City of Palestine.

Bids

Bid prices must be clearly printed or typed.

City of Palestine reserves the right to award each item separately, being independent of other items, unless otherwise stated by either party.

Quantities are estimated, base on projected use. It is specifically understood and agreed that these quantities are approximate, and any additional quantities will be paid for at the quoted price. It is further understood that the supplier shall not have a claim against the City of Palestine for quantities less than the estimated amount.

Submitting a Bid

Bids must be submitted in a sealed envelope at or before closing date and time. Facsimile bids will not be accepted. Bids received after the closing date and time will not be considered.

Modification: Bids may be modified by submitting a new bid. Envelopes should be marked clearly as a replacement bid with the date of the modification. Previous bids are considered void. Withdrawn bids must give written notice of withdrawal by the bid closing date and time, signed by an authorized representative.

Evaluation

The City may consider a bid non-responsive for the following reasons: poor service and/or product performance history regarding similar items; lack of financial stability, experience, resources, ability, capacity, skill, or organization to perform as bid, as defined by the City of Palestine; the City has a substantial reason to believe that bidder may not perform as bid; bidder does not have the ability to perform continued service and/or warranty work as required; other similar factors of concern.

The City will award the bid to the *lowest responsible bidder or to the bidder who provides goods or services at the best value for the municipality* and may consider the following factors: Bid or proposal prices, storage and/or transportation requirements; life expectancy; maintenance and operation cost; operating efficiency; training requirements; disposal value; product or service warranty; proposed delivery schedules; any factors that may cause the City to incur additional direct or indirect expenses for any reason; plus any other factors deemed relevant by the City of Palestine.

The City of Palestine reserves the right to: Waive as an informality, minor deviations from specifications at a lower price that the low bid meeting all aspects of the specifications and consider it, if it is determined that the total cost is lower than the overall function is improved or not impaired, waive any defect, irregularity or informality in any bid, or bidding procedure; reject or cancel any and all bids, reissue a bid invitation; extend the bid opening time and date; procure any item by other means; and consider and accept an alternate bid as provided herein when most advantageous to the City.

Contract

The anticipated contract is effective for a period of three years from the day the City Council votes to accept the bid, unless a different time period is identified in the bid sheet or specifications. All pricing will be held firm during the three-year contract period.

At the end of the three year contract period, the City desires to offer an option to renew the contract for an additional three year period with the same terms, conditions, and prices as the original contract. The city anticipates contract language to terminate the contract with no less than 60 days' written notice.

Dispute Resolution

Pursuant to the provisions of Section 271.154 of the Local Government Code, the following procedures must be followed to present a claim under the contract:

- Notice of the grounds for a claim shall be provided in writing to the City Manager. Notice shall be given no less than 30 days prior to a Request for Mediation.
- If the bidder is dissatisfied with the response of the City to its notice, the bidder may submit a Request for Mediation to the City Manager. The bidder and the City shall, within 15 days of the submission of the request, agree on a mediator or request that a mediator be designated by the American Arbitration Association.
- No suit may be brought by a bidder to enforce its rights under the contract unless notice has been given, and unless the dispute has been mediated by both parties. The City may, however, waive the requirement that the dispute be mediated before suit may be filed.

By these provisions, the City does not waive immunity from suit or liability that has not been waived by the Texas Legislature.

Conflicts of Interest

It shall be a conflict of interest for any employee of the City of Palestine to initiate directly or indirectly procurement when the employee or any member of the employee's immediate family has a financial interest pertaining to the procurement.

Insurance Requirements

Except as otherwise specified in the contract, the contractor and his subcontractors of any tier will be required at their own expense, to maintain in effect at all times during the performance of the work, insurance coverage with limits not less than those set forth below, with insurers and under forms of policies satisfactory to the City of Palestine. It shall be the responsibility of the contractor and subcontractors to maintain adequate insurance coverage and to assure that all subcontractors are adequately insured at all times. Failure of the contractor and his subcontractors to maintain adequate coverage shall not relieve him of any contractual responsibility or obligation. Deductibles, of any type, are the responsibility of the vendor/contractor.

Certificates of Insurance

At the time of the execution of the contract and each subcontract, but in any event prior to commencing work at the job site, the contractor and his subcontractors shall furnish the City with certificates of insurance as evidence that the policies providing the required coverage and limits of insurance are in full force and effect. The certificates of insurance shall state the City of Palestine as Additional Insured where applicable. The certificates of insurance provide that have company issuing an insurance policy for the work under the contract shall provide not less than 30 days advance notice in writing of cancellation, non-renewable, or material change in the policy of insurance. In addition, the contractor shall provide written notice to the City of Palestine upon receipt of notice of cancellation of any insurance policy. All certificates of insurance shall clearly state that all applicable requirements have been satisfied including certification that the policies are the "occurrence" type. Certificates of insurance for contractor and subcontractor, terminations, or alteration of such policies shall be mailed to City of Palestine, Attn: Tom Frank, Administrative Assistant Finance, 504 North Queen Street, Palestine, Texas 75801.

Comprehensive General Liability

This insurance shall be an occurrence type policy written comprehensive form and shall protect the contractor and his subcontractors and the Additional Insured against all claims arising from bodily injury, sickness, disease, or death of any person other than the contractor's employees or damage to property of the City of Palestine or others arising out of the act or omission of the contractor or his subcontractors or their agents, employees, or subcontractors. This policy shall also include protection against claims insured by usual personal injury liability coverage, a (protective liability) endorsed to insure the contractual liability assumed by the contractor or his subcontractors under the article entitle indemnification and completed operation, products liability, contractual liability, broad form property coverage, premises/operations, and independent contractors.

Bodily injury and Property Damage - \$500,000 per person
\$1,000,000 per occurrence

Workers' Compensation and Employers' Liability

The contractor shall protect himself and his subcontractors by carrying statutory worker's compensation insurance.

Indemnification

For consideration included in the BID price, contractor and his subcontractors shall pay, indemnify, and hold harmless, the City of Palestine, its agents, guests, consultants, invites, and employees, from all suits, actions, claims, demands, losses, expenses, including attorney's fees, costs and judgments of every kind and description to which the City of Palestine, its agents, guest, consultants, invites, or employees may be subjected to by reason of injury to persons or death or property damage, resulting from or growing out of any act of commission, omission, negligence, or fault of the contractor and his subcontractors, their agents or employees, committed in connection with the contract, contractor's performance hereof, or of any work performed hereunder.

The Contractor agrees to and shall indemnify and hold harmless the City of Palestine against any and all liens and encumbrances for all labor, goods and services which may be provided under the City's request, by seller or seller's vendor (s), and if the City requests, a proper release of all liens or satisfactory evidence of freedom from liens shall be delivered to the City.

Contractor and his subcontractors shall indemnify and hold harmless the City of Palestine, its agents, or employees and consultants from and against all claims, demands, actions, suits, damages, losses. Expenses, costs including attorney's fees, and judgments of every kind and description arising from, based upon, or growing out of the violation of any Federal, state, county, or city law, bylaw, ordinance, or regulation by the contractor, its agents, trainees, invites, servants, and employees.

Waiver of Subrogation

The contractor and his subcontractors shall require their insurance carrier, with respect to all insurance policies, to waive all rights of subrogation against the City of Palestine, its commissioners, partners, officials, agents, and employees and against all other contractors and subcontractors.

The undersigned affirms that they are duly authorized to execute this contract, that this company, corporation, firms, partnership or individual has not prepared this bid in collusion with any other Bidder, and that the contents of this bid as to prices, terms or conditions of said bid have not been communicated by the undersigned nor by any employer or agent to any other person engaged in this type of business prior to the official opening of this bid.

Vendor: _____

Address: _____

City, State, Zip: _____

Signature of company official
authorizing this bid: _____

Printed Name: _____

Title: _____

**Request for Taxpayer
Identification Number and Certification**

Go to www.irs.gov/FormW9 for instructions and the latest information.

**Give form to the
requester. Do not
send to the IRS.**

Before you begin. For guidance related to the purpose of Form W-9, see *Purpose of Form*, below.

Print or type. See Specific Instructions on page 3.	1 Name of entity/individual. An entry is required. (For a sole proprietor or disregarded entity, enter the owner's name on line 1, and enter the business/disregarded entity's name on line 2.)	
	2 Business name/disregarded entity name, if different from above.	
	3a Check the appropriate box for federal tax classification of the entity/individual whose name is entered on line 1. Check only one of the following seven boxes. <input type="checkbox"/> Individual/sole proprietor <input type="checkbox"/> C corporation <input type="checkbox"/> S corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Trust/estate <input type="checkbox"/> LLC. Enter the tax classification (C = C corporation, S = S corporation, P = Partnership) Note: Check the "LLC" box above and, in the entry space, enter the appropriate code (C, S, or P) for the tax classification of the LLC, unless it is a disregarded entity. A disregarded entity should instead check the appropriate box for the tax classification of its owner. <input type="checkbox"/> Other (see instructions)	4 Exemptions (codes apply only to certain entities, not individuals; see instructions on page 3): Exempt payee code (if any) _____ Exemption from Foreign Account Tax Compliance Act (FATCA) reporting code (if any) _____ (Applies to accounts maintained outside the United States.)
	3b If on line 3a you checked "Partnership" or "Trust/estate," or checked "LLC" and entered "P" as its tax classification, and you are providing this form to a partnership, trust, or estate in which you have an ownership interest, check this box if you have any foreign partners, owners, or beneficiaries. See instructions <input type="checkbox"/>	
	5 Address (number, street, and apt. or suite no.). See instructions.	Requester's name and address (optional)
	6 City, state, and ZIP code	
	7 List account number(s) here (optional)	

Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on line 1 to avoid backup withholding. For individuals, this is generally your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the instructions for Part I, later. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN*, later.

Note: If the account is in more than one name, see the instructions for line 1. See also *What Name and Number To Give the Requester* for guidelines on whose number to enter.

Social security number
<div></div> <div></div> <div></div> - <div></div> <div></div> - <div></div> <div></div> <div></div> <div></div> <div></div> <div></div>
or
Employer identification number
<div></div> <div></div> - <div></div> <div></div> <div></div> <div></div> <div></div> <div></div> <div></div> <div></div>

Part II Certification

Under penalties of perjury, I certify that:

1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me); and
2. I am not subject to backup withholding because (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding; and
3. I am a U.S. citizen or other U.S. person (defined below); and
4. The FATCA code(s) entered on this form (if any) indicating that I am exempt from FATCA reporting is correct.

Certification instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and, generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions for Part II, later.

Sign Here	Signature of U.S. person	Date
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General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

Future developments. For the latest information about developments related to Form W-9 and its instructions, such as legislation enacted after they were published, go to www.irs.gov/FormW9.

What's New

Line 3a has been modified to clarify how a disregarded entity completes this line. An LLC that is a disregarded entity should check the appropriate box for the tax classification of its owner. Otherwise, it should check the "LLC" box and enter its appropriate tax classification.

New line 3b has been added to this form. A flow-through entity is required to complete this line to indicate that it has direct or indirect foreign partners, owners, or beneficiaries when it provides the Form W-9 to another flow-through entity in which it has an ownership interest. This change is intended to provide a flow-through entity with information regarding the status of its indirect foreign partners, owners, or beneficiaries, so that it can satisfy any applicable reporting requirements. For example, a partnership that has any indirect foreign partners may be required to complete Schedules K-2 and K-3. See the Partnership Instructions for Schedules K-2 and K-3 (Form 1065).

Purpose of Form

An individual or entity (Form W-9 requester) who is required to file an information return with the IRS is giving you this form because they

**STATE OF TEXAS – FORM CIQ
CONFLICT OF INTEREST QUESTIONNAIRE**

For A Vendor or Other Person Doing Business with the City of Palestine

Effective January 1, 2006, Chapter 176 of the Texas Local Government Code requires that any vendor or person considering doing business with a local government entity disclose on this form the vendor name, person's affiliation or business relationship that might cause a conflict of interest with a local government entity. By law, the questionnaire must be filed with the Purchasing Agent of the City of Palestine not later than the 7th business day after the date the person becomes aware of the facts that require the statement to be filed.

Please return the completed form to City of Palestine, Attn: Finance, 504 N. Queen St., Palestine, TX 75801.

See Section 176.006 of the Local Government Code for further details. Note: A person commits an offense (Class C misdemeanor) if the person violates Section 176.006.

A City of Palestine employee or officer is defined as a member of the Palestine City Council, Palestine Economic Development Corporation Board of Directors, and any employee of the City that makes purchasing decisions or recommendations regarding the use of funds of the City or said corporations.

1. Please provide the following information:

Company Name:	
Representative Name:	
Address / Phone:	

2. Check this box if you are filing an update to a previously filed questionnaire.
3. Name of each employee, official, or contractor of the City of Palestine who makes purchasing decisions or recommendations regarding the use of funds of the City or corporations listed above and describe the affiliation or business relationship with your firm.

Name	Affiliation or Business Relationship

State of Texas-Conflict of Interest Form (CIQ)
Continued
Page 2

Complete item 4 below only if you have listed someone in item 3 on the previous page. This section must be completed for each officer with whom the vendor/business (filer) has an affiliation or other relationship. Attach additional pages, if necessary.

4. Name of City of Palestine officer with whom the vendor/business has affiliation or business relationship.

A	Is the City of Palestine employee or officer named in this section receiving or likely to receive taxable income from the filer of the questionnaire?	YES	NO
B	Is the filer of the questionnaire receiving or likely to receive taxable income from or at the direction of the City of Palestine officer named in this section and the taxable income is not from the City of Palestine?	YES	NO
C	Is the filer of this questionnaire affiliated with a corporation or other business entity that the City of Palestine employee or officer serves as an officer or director, or hold an ownership of 10 percent or more?	YES	NO
D	Describe each affiliation or business relationship.		

5. Signature

Signature of person doing business with the City of Palestine (filer)

Date



Agenda Date: April 8, 2024
To: City Council
From: Deborah Williamson, Senior Accountant
Agenda Item: Approval of invoices over 25K
Date Submitted: 04/01/2024

SUMMARY:

The current purchasing policy requires City Council approval for expenditures over \$25,000. The following expenditures have been reviewed and approved by Department Head(s) and City Manager:

- McGuffy Asphalt, Paving & Dirt Construction, Inc. \$131,300.00
- Schaumburg & Polk Inc. \$26,200.00
- Tegrity Contractors, Inc. \$372,613.61
- McGuffy Asphalt, Paving & Dirt Construction, Inc. \$63,540.00
- Waste Connections of TX, Inc. \$46,524.00

RECOMMENDED ACTION:

Review and approve invoices as presented.

CITY MANAGER APPROVAL:


Attachments

25K Checks

CITY OF PALESTINE				207027
VENDOR: 0105085 MCGUFFY ASPHALT, PAVING & DIRT CONSTRUCTION,INC				03/21/2024
DATE	INVOICE #	PO #	DESCRIPTION	AMOUNT
3/21/2024	5610	23-4719	Asphalt Replacement on 12 Streets	71,590.00
3/21/2024	5611	23-4719	Asphalt Replacement on 12 Streets	59,740.00

CHECK TOTAL 131,330.00

THE FACE OF THIS DOCUMENT HAS A COLORED BACKGROUND ON WHITE PAPER



City of Palestine
504 Queen St
Palestine, TX 75801
General Operating Account

PROSPERITY BANK
1015 North Church Street
Palestine, Texas 75801

CHECK DATE
03/21/2024

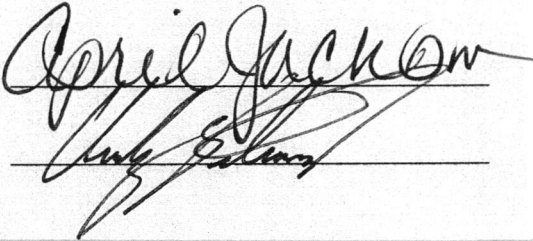
CHECK # **207027**
113122655

PAY THIS AMOUNT
\$131,330.00


Void after 90 days

PAY ---One Hundred Thirty One Thousand Three Hundred Thirty Dollars and 00/100 Cents---

TO THE ORDER OF MCGUFFY ASPHALT, PAVING & DIRT CONSTRUCTION,INC
PO BOX 1104
FRANKSTON, TX 75763



APRIL JACKSON



YOUR RED IMAGE
GROWS WITH HERE

CITY OF PALESTINE				207027
VENDOR: 0105085 MCGUFFY ASPHALT, PAVING & DIRT CONSTRUCTION,INC				03/21/2024
DATE	INVOICE #	PO #	DESCRIPTION	AMOUNT
3/21/2024	5610	23-4719	Asphalt Replacement on 12 Streets	71,590.00
3/21/2024	5611	23-4719	Asphalt Replacement on 12 Streets	59,740.00
CHECK TOTAL				131,330.00

McGuffey Contracting Inc.
10887 FM 19 / PO Box 1104
Frankston, TX 75763
903-922-2886

Invoice: 5610

133 Street

3/8/2024

To: City of Palestine

Services Completed:

Re-Surfacing: W Regan St from Magnolia to Angle

- Removed old asphalt and oil sand.
- Repaired areas where base failures had occurred.
- Over laid with 2.5 inches of type d hot-mix compacted to 2 inches.

Total for all labor and materials

\$71,590.00

Please make checks payable to McGuffey Contracting Inc. & mail to

PO Box 1104

Frankston, TX 75763

PAYMENT AUTHORIZATION	
PO # <u>23-4719</u>	Partial <input type="checkbox"/> Complete <input checked="" type="checkbox"/>
Acct #: <u>010-520-54020</u>	\$ <u>71,590.00</u>
Acct #:	\$
Acct #:	\$
Describe: <u>Repair W. Regan St. / Magnolia to Angle St.</u>	
WT DIR: <u>[Signature]</u>	<input type="checkbox"/> : <u>3-13-24</u>
INC DIR:	<input type="checkbox"/> :
CITY MNR:	<input type="checkbox"/> :

ful

McGuffey Contracting Inc.
10887 FM 19 / PO Box 1104
Frankston, TX 75763
903-922-2886

Invoice: 5611

3/8/2024

To: City of Palestine

179 street

Services Completed:

Re-Surfacing: N Tennessee from Coronaca to Cherokee

- Removed old asphalt and oil sand.
- Repaired areas where base failures had occurred.
- Over laid with 2.5 inches of type d hot-mix compacted to 2 inches.

Total for all labor and materials

\$59,740.00

Please make checks payable to McGuffey Contracting Inc. & mail to

PO Box 1104

Frankston, TX 75763

PAYMENT AUTHORIZATION	
PO # 23-4719	Partial <input checked="" type="checkbox"/> Complete <input type="checkbox"/>
Acct #: 010-520-54020	\$ 59,740.00
	\$
	\$
	\$
Repair Tennessee St.	
	<input type="checkbox"/> 3-13-24
	<input type="checkbox"/>
CITY MNR:	<input type="checkbox"/>



CITY OF PALESTINE
504 North Queen Street
Palestine, TX 75801

PURCHASE ORDER

PO Number: 23-4719

Date: 09/15/2023

Requisition #: 23-4816

Vendor #: 0105085

ISSUED TO: MCGUFFY ASPHALT, PAVING & DIRT CONSTRUCTION, INC
PO BOX 1104
FRANKSTON, TX 75763

SHIP TO: PUBLIC WORKS
KIMBERLY BECKMAN
Palestine, TX 75801

ITEM	UNITS DESCRIPTION	GL ACCT #	PROJ ACCT #	PRICE	AMOUNT
1	0 Colley from Link to Dead	010-520-54020	171-STREET	0.00	34,620.00
2	0 Armory from Athletic Complex to 287	010-520-54020	176-STREET	0.00	101,280.00
3	0 Howard from Palestine Ave. to Brooklyn	010-520-54020	177-STREET	0.00	54,730.00
4	0 Coronaca from Howard to Cedar	010-520-54020	178-STREET	0.00	156,870.00
5	0 Tennessee from Coronaca to Cherokee	010-520-54020	179-STREET	0.00	59,740.00
6	0 Fulton from Burkitt to Cook	010-520-54020	180-STREET	0.00	45,080.00
7	0 Swantz from S. Jackson to Grove	010-520-54020	181-STREET	0.00	62,130.00
8	0 Fannin from Terry to Murchison	010-520-54020	182-STREET	0.00	57,190.00
9	0 Magnolia from Cook To Colorado	010-520-54020	183-STREET	0.00	63,650.00
10	0 Neches from May to Magnolia	010-520-54020	184-STREET	0.00	16,860.00
11	0 Reagan from Magnolia to Angle	010-520-54020	133-STREET	0.00	75,090.00
12	0 Murchison from Fannin to Moody	010-520-54020	185-STREET	0.00	84,670.00

City Manager

Finance Director

Purchasing Agent

SUBTOTAL:	811,910.00
TOTAL TAX:	0.00
SHIPPING:	0.00
TOTAL	811,910.00


1. Original invoice with remittance slip must be sent to: City of Palestine, 504 North Queen Street, Palestine, TX 75801.
2. Payment may be expected within 30 days of receipt of goods and invoice.
3. C.O.D. shipment will not be accepted.
4. Purchase Order numbers must appear on all shipping containers, packing slips and invoices. Failure to comply with the above request may delay payment.
5. All goods are to be shipped F.O.B. Destination unless otherwise stated.
6. All materials and services are subject to approval based on the description on the face of the purchase order or appendages thereof. Substitutions are not permitted without approval of the Requesting Department. Material not approved will be returned at no cost to the City.
7. All goods and equipment must meet or exceed all necessary city, state and federal standards and regulations.
8. Vendor or manufacturer bears risk of loss or damage until property received and/or installed.
9. Seller acknowledges that the buyer is an equal opportunity employer. Seller will comply with all equal opportunity laws and regulations that are applicable to it as a supplier of the buyer.
10. The City is exempt from all federal excise and state tax - ID# 75-6000632

Purchasing Department (903) 731-8404 Fax (903) 731-8413

CITY OF PALESTINE				207028
VENDOR: 0103921 SCHAUMBURG & POLK INC.				03/21/2024
DATE	INVOICE #	PO #	DESCRIPTION	AMOUNT
3/12/2024	0000951018.00-23	22-04449	DOWNTOWN REVITALIZATION	21,600.00
3/12/2024	0000951019.00-4	23-4827	DOWNTOWN REVITALIZATION PROJECT FOR SIDEWALKS	4,600.00

CHECK TOTAL 26,200.00

THE FACE OF THIS DOCUMENT HAS A COLORED BACKGROUND ON WHITE PAPER

 **City of Palestine**
504 Queen St
Palestine, TX 75801
General Operating Account

PROSPERITY BANK
1015 North Church Street
Palestine, Texas 75801

CHECK # **207028**
113122655

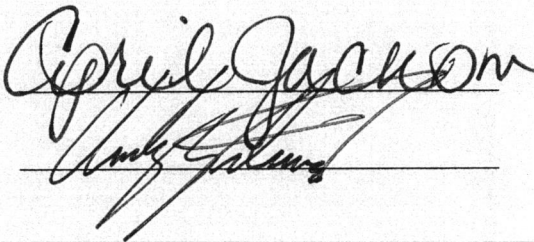
CHECK DATE
03/21/2024

PAY THIS AMOUNT
\$26,200.00

Void after 90 days

PAY ---Twenty Six Thousand Two Hundred Dollars and 00/100 Cents---

TO THE ORDER OF
SCHAUMBURG & POLK INC.
8865 COLLEGE ST
BEAUMONT, TX 77707





CITY OF PALESTINE				207028
VENDOR: 0103921 SCHAUMBURG & POLK INC.				03/21/2024
DATE	INVOICE #	PO #	DESCRIPTION	AMOUNT
3/12/2024	0000951018.00-23	22-04449	DOWNTOWN REVITALIZATION	21,600.00
3/12/2024	0000951019.00-4	23-4827	DOWNTOWN REVITALIZATION PROJECT FOR SIDEWALKS	4,600.00

CHECK TOTAL 26,200.00

Invoice

March 12, 2024

Invoice No: 0000951018.00 - 23

CITY OF PALESTINE
ATTN: KEVIN OLSON
504 NORTH QUEEN STREET
PALESTINE, TX 75801

Project 0000951018.00 DOWNTOWN REVITALIZATION
PALESTINE DOWNTOWN REVITALIZATION

via email:
pwdirector@palestine-tx.org
pwadmin@palestine-tx.org

Professional Services from January 29, 2024 to March 3, 2024

Fee

Total Fee	1,800,000.00		
Percent Complete	29.40	Total Earned	529,200.00
		Previous Fee Billing	507,600.00
		Current Fee Billing	21,600.00
		Total Fee	21,600.00
		Total this Invoice	\$21,600.00

Billings to Date

	Current	Prior	Total
Fee	21,600.00	507,600.00	529,200.00
Totals	21,600.00	507,600.00	529,200.00

PAYMENT AUTHORIZATION	
PO # <u>22-04449</u>	Partial <input checked="" type="checkbox"/> Complete <input type="checkbox"/>
Acct #: _____	\$ <u>21,600.00</u>
Acct #: _____	\$ _____
Acct #: _____	\$ _____
Describe: <u>Downtown Revitalization</u>	
DPT DIR: <u>KRE</u>	<input checked="" type="checkbox"/> : <u>3-20-24</u>
FINC DIR: _____	<input type="checkbox"/> : _____
CTY MNR: _____	<input type="checkbox"/> : _____



City of Palestine
504 North Queen Street
Palestine TX 75801

PURCHASE ORDER


PO Number: 22-04449

Date: 06/17/2022

Request #: 22-04528 Vendor #: 01-03921

ISSUED TO: SCHAUMBURG & POLK INC.
8865 COLLEGE ST
BEAUMONT, TX 77707

SHIP TO: STREET DEPT
201 EAST CORONACA STREET
PALESTINE, TX 75801
ATTN: CR

ITEM	UNITS	DESCRIPTION	G/L ACCOUNT	PROJ	PRICE	AMOUNT
1	0.00	DOWNTOWN REVITALIZATION DOWNTOWN REVITALIZATION PROJECT.	673-5-110-7403	039	0.00	1,800,000.00
						
TOTAL						1,800,000.00

[Signature]
Purchasing Agent

City Manager

[Signature]
Finance Director

Finance Director

1. Original invoice plus one copy must be sent to: City of Palestine, Accounts Payable Dept, 504 N Queen St, Palestine TX 75801-2733.
2. Payment may be expected within 30 days of receipt of goods, unless otherwise stated.
3. C.O.D. shipment will not be accepted.
4. Purchase Order numbers must appear on all shipping containers, packing slips and invoices. Failure to comply with the above request may delay payment.
5. All goods are to be shipped F.O.B. Destination unless otherwise stated.
6. All materials and services are subject to approval based on the description on the face of the purchase order or appendages thereof. Substitutions are not permitted without approval of the Requesting Department. Material not approved will be returned at no cost to the City.
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9. Seller acknowledges that buyer is an equal opportunity employer. Seller will comply with all equal opportunity laws and regulations that are applicable to it as a supplier of the buyer.
10. The City is exempt from all federal excise and state tax - ID# 75-6000632

Purchasing Dept. (903) 731-8441 Fax (903) 731-8486

Invoice

March 12, 2024

Invoice No: 0000951019.00 - 4

CITY OF PALESTINE
ATTN: KEVIN OLSON
504 NORTH QUEEN STREET
PALESTINE, TX 75801

Project 0000951019.00 CDM22-0147 DRP SIDEWALK IMPROVEMENTS
DOWNTOWN SIDEWALK IMPROVEMENTS
PWDIRECTOR@PALESTINE-TX.ORG

Professional Services from January 29, 2024 to March 3, 2024

Fee

Total Fee	92,000.00		
Percent Complete	41.00	Total Earned	37,720.00
		Previous Fee Billing	33,120.00
		Current Fee Billing	4,600.00
		Total Fee	4,600.00
		Total this Invoice	\$4,600.00

Billings to Date

	Current	Prior	Total
Fee	4,600.00	33,120.00	37,720.00
Totals	4,600.00	33,120.00	37,720.00

PAYMENT AUTHORIZATION	
PO # _____	Partial <input checked="" type="checkbox"/> Complete <input type="checkbox"/>
Acct #: 23-4827	\$ 4600.00
Acct #: _____	\$ _____
Acct #: _____	\$ _____
Describe: Downtown Sidewalk Improvements	
DPT DIR: KRO	<input checked="" type="checkbox"/> 3-20-24
FINC DIR: _____	<input type="checkbox"/> _____
CITY MNR: _____	<input type="checkbox"/> _____



CITY OF PALESTINE
504 North Queen Street
Palestine, TX 75801

PURCHASE ORDER

PO Number: 23-4827

Date: 01/03/2024

Requisition #: 23-4965

Vendor #: 0103921

ISSUED TO: SCHAUMBURG & POLK INC.
8865 COLLEGE ST
BEAUMONT, TX 77707

SHIP TO: STREET DEPT
Attn:ATTN: JOHN ELROD
201 EAST CORONACA STREET
Palestine, TX 75801

ITEM	UNITS DESCRIPTION	GL ACCT #	PROJ ACCT #	PRICE	AMOUNT
1	0 DOWNTOWN REVITALIZATION PROJECT FOR SIDEWALKS	400-100-57402	189ENG-EXP	0.00	92,000.00

City Manager

Finance Director

Purchasing Agent

SUBTOTAL:	92,000.00
TOTAL TAX:	0.00
SHIPPING:	0.00
TOTAL	92,000.00


1. Original invoice with remittance slip must be sent to: City of Palestine, 504 North Queen Street, Palestine, TX 75801.
2. Payment may be expected within 30 days of receipt of goods and invoice.
3. C.O.D. shipment will not be accepted.
4. Purchase Order numbers must appear on all shipping containers, packing slips and invoices. Failure to comply with the above request may delay payment.
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10. The City is exempt from all federal excise and state tax – ID# 75-6000632

Purchasing Department (903) 731-8404 Fax (903) 731-8413

CITY OF PALESTINE				207029
VENDOR: 05848 TEGRITY CONTRACTORS, INC.				03/21/2024
DATE	INVOICE #	PO #	DESCRIPTION	AMOUNT
2/29/2024	1	24-4853	DOWNTOWN REVITALIZATION PART 1	372,613.61

CHECK TOTAL 372,613.61

THE FACE OF THIS DOCUMENT HAS A COLORED BACKGROUND ON WHITE PAPER

**City of Palestine**
504 Queen St
Palestine, TX 75801
General Operating Account

PROSPERITY BANK
1015 North Church Street
Palestine, Texas 75801

CHECK # **207029**
113122655

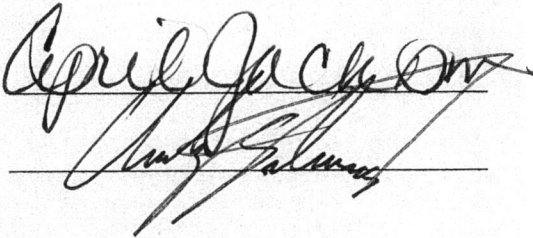
CHECK DATE
03/21/2024

PAY THIS AMOUNT
\$372,613.61

Void after 90 days

PAY ---Three Hundred Seventy Two Thousand Six Hundred Thirteen Dollars and 61/100 Cents---

TO THE ORDER OF
TEGRITY CONTRACTORS, INC.
202 N ALLEN DR
SUITE E
ALLEN, TX 75013



CITY OF PALESTINE				207029
VENDOR: 05848 TEGRITY CONTRACTORS, INC.				03/21/2024
DATE	INVOICE #	PO #	DESCRIPTION	AMOUNT
2/29/2024	1	24-4853	DOWNTOWN REVITALIZATION PART 1	372,613.61

CHECK TOTAL 372,613.61

TO OWNER/CLIENT:

City of Palestine
Palestine Tx,

PROJECT:

23-103 Palestine Downtown
504 N. Queen St
Palestine, Texas 75801

APPLICATION NO: 1

INVOICE NO: 1

PERIOD: 02/01/24 - 02/29/24

PROJECT NO: 23-103

CONTRACT DATE:

FROM CONTRACTOR:

Tegrity Contractors, Inc.
202 N. Allen Drive, Suite E
Allen, Texas 75013

VIA ARCHITECT/ENGINEER:

CONTRACT FOR: 23-103

CONTRACTOR'S APPLICATION FOR PAYMENT

Application is made for payment, as shown below, in connection with the Contract. Continuation Sheet is attached.

1. Original Contract Sum	\$6,407,777.00
2. Net change by change orders	\$0.00
3. Contract Sum to date (Line 1 ± 2)	\$6,407,777.00
4. Total completed and stored to date (Column G on detail sheet)	\$392,224.85
5. Retainage:	
a. 5.00% of completed work	\$19,611.24
b. 0.00% of stored material	\$0.00
Total retainage (Line 5a + 5b or total in column I of detail sheet)	\$19,611.24
6. Total earned less retainage (Line 4 less Line 5 Total)	\$372,613.61
7. Less previous certificates for payment (Line 6 from prior certificate)	\$0.00
8. Current payment due:	\$372,613.61
9. Balance to finish, including retainage (Line 3 less Line 6)	\$6,035,163.39

CHANGE ORDER SUMMARY	ADDITIONS	DEDUCTIONS
Total changes approved in previous months by Owner/Client:	\$0.00	\$0.00
Total approved this month:	\$0.00	\$0.00
Totals:	\$0.00	\$0.00
Net change by change orders:	\$0.00	

The undersigned certifies that to the best of the Contractor's knowledge, information and belief, the Work covered by this Application for Payment has been completed in accordance with the Contract Documents, that all amounts have been paid by the Contractor for Work which previous Certificates for payment were issued and payments received from the Owner/Client, and that current payments shown herein is now due.

CONTRACTOR: Tegrity Contractors, Inc.

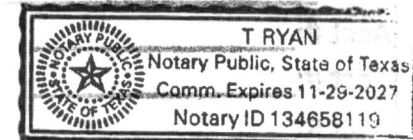
By: Chris Hooten Date: 2-29-24

State of: TexasCounty of: Anderson

Subscribed and sworn to before

me this 29th day of February

Notary Public:

My commission expires: 11/29/2027

ARCHITECT'S/ENGINEER'S CERTIFICATE FOR PAYMENT

In accordance with the Contract Documents, based on the on-site observations and the data comprising this application, the Architect/Engineer certifies to the Owner/Client that to the best of the Architect's/Engineer's knowledge, information and belief that Work is in accordance with the Contract Documents, and the Contractor is entitled to payment of the AMOUNT CERTIFIED.

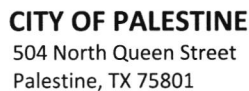
AMOUNT CERTIFIED: \$372,613.61

(Attach explanation if amount certified differs from the amount applied for. Initial all figures on this Application and on the Continuation Sheet that are changed to confirm the amount certified.)

ARCHITECT/ENGINEER:

By: Jeffrey C. Simmons Date: 2-29-24

This certificate is not negotiable. The amount certified is payable only to the Contractor named herein. Issuance, payment and acceptance of payment are without prejudice to the rights of the Owner/Client or Contractor under this Contract.



Vendor #: 05848

ISSUED TO: TEGRITY CONTRACTORS, INC.
202 N ALLEN DR
SUITE E
ALLEN, TX 75013-

SHIP TO: CITY OF PALESTINE
504 NORTH QUEEN STREET
Palestine, TX 75801

1. Original invoice with remittance slip must be sent to: City of Palestine, 504 North Queen Street, Palestine, TX 75801.
2. Payment may be expected within 30 days of receipt of goods and invoice.
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Purchasing Department (903) 731-8404 Fax (903) 731-8413

207133

03/28/2024

DATE	INVOICE #	PO #	DESCRIPTION	AMOUNT
3/21/2024	5618	23-4720	Asphalt Replacement on 14 Streets	38,610.00
3/21/2024	5619	23-4720	Asphalt Replacement on 14 Streets	24,930.00

CHECK TOTAL	63,540.00
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THE FACE OF THIS DOCUMENT HAS A COLORED BACKGROUND ON WHITE PAPER



504 Queen St
Palestine, TX 75801
General Operating Account

1015 North Church Street
Palestine, Texas 75801

113122655

CHECK DATE

03/28/2024

PAY THIS AMOUNT

\$63,540.00

Void after 90 days

PAY ---Sixty Three Thousand Five Hundred Forty Dollars and 00/100 Cents---

TO THE MCGUFFY ASPHALT, PAVING & DIRT CONSTRUCTION, INC
ORDER PO BOX 1104
OF FRANKSTON, TX 75763

Arise, Alexander
 [Signature]



McGuffey Contracting Inc.

10887 FM 19 / PO Box 1104

Frankston, TX 75763

903-922-2886

Invoice: 5618

3/21/2024

To: City of Palestine

Services Completed:

Re-Surfacing: All of Belfast St.

- Removed old asphalt and oil sand.
- Repaired areas where base failures had occurred.
- Over laid with 2.5 inches of type d hot-mix compacted to 2 inches.

Total for all labor and materials

\$38,610.00

Please make checks payable to McGuffey Contracting Inc. & mail to

PO Box 1104

Frankston, TX 75763

PAYMENT AUTHORIZATION	
PO # <u>23-4720</u>	Partial <input checked="" type="checkbox"/> Complete <input type="checkbox"/>
Acct # <u>010-520-54020</u>	\$ <u>38,610.00</u>
Acct # _____	\$ _____
Acct # _____	\$ _____
Describe: <u>Repare Belfast St.</u>	
DPT DIR: <u>[Signature]</u>	<input type="checkbox"/> 3-21-24
FINC DIR: _____	<input type="checkbox"/> _____
CTY MNR: _____	<input type="checkbox"/> _____

[Handwritten signature]

McGuffey Contracting Inc.
10887 FM 19 / PO Box 1104
Frankston, TX 75763
903-922-2886

Invoice: 5619

3/21/2024

To: City of Palestine

Services Completed:

Re-Surfacing: All of Kent Ave

- Removed old asphalt and oil sand.
- Repaired areas where base failures had occurred.
- Over laid with 2.5 inches of type d hot-mix compacted to 2 inches.

Total for all labor and materials **\$24,930.00**

Please make checks payable to McGuffey Contracting Inc. & mail to

PO Box 1104

Frankston, TX 75763

PAYMENT AUTHORIZATION	
PO # <u>23-4720</u>	Partial <input checked="" type="checkbox"/> Complete <input type="checkbox"/>
Acct # <u>010-520-54070</u>	\$ <u>24,930.00</u>
Acct # _____	\$ _____
Acct # _____	\$ _____
Description <u>Repare Kent Ave.</u>	
DPT DIR <u>[Signature]</u>	<input checked="" type="checkbox"/> <u>3-21-24</u>
FINC DIR _____	<input type="checkbox"/> _____
CTY MGR _____	<input type="checkbox"/> _____



CITY OF PALESTINE
504 North Queen Street
Palestine, TX 75801

PURCHASE ORDER

PO Number: 23-4720

Date: 09/15/2023

Requisition #: 23-4818

Vendor #: 0105085

ISSUED TO: MCGUFFY ASPHALT, PAVING & DIRT CONSTRUCTION, INC
PO BOX 1104
FRANKSTON, TX 75763

SHIP TO: PUBLIC WORKS
KIMBERLY BECKMAN
Palestine, TX 75801

ITEM	UNITS DESCRIPTION	GL ACCT #	PROJ ACCT #	PRICE	AMOUNT
1	0 CALLIER ST FROM COURT DR TO LARRY ST	010-520-54020	158-STREET	0.00	34,300.00
2	0 AVE B FROM 5TH ST TO 7TH ST	010-520-54020	159-STREET	0.00	28,620.00
3	0 W.KOLSTAD ST FROM N. FORT ST TO N COTTAGE AVE	010-520-54020	160-STREET	0.00	19,450.00
4	0 N. SPENCER ST FROM W. KOLSTAD ST TO CONVERT ST	010-520-52040	161-STREET	0.00	17,090.00
5	0 N. COTTAGE AVE FROM W. PALESTINE AVE TO W. SPRING	010-520-54020	162-STREET	0.00	137,370.00
6	0 ALL OF 7TH ST & LIPSEY AVE FROM 7TH ST TO US HW 79	010-520-54020	163-STREET	0.00	65,850.00
7	0 AVE B FROM 1ST ST TO 2ND ST	010-520-54020	159-STREET	0.00	17,820.00
8	0 SHAMROCK DR FROM W OAK ST TO W POINT TAP RD	010-520-54020	164-STREET	0.00	169,240.00
9	0 ALL OF SPRINGDALE	010-520-54020	165-STREET	0.00	56,660.00
10	0 ALL OF BELFAST ST	010-520-54020	166-STREET	0.00	38,610.00
11	0 ALL OF MIDDLETON ST	010-520-54020		0.00	73,935.00
12	0 ALL OF KENT AVE	010-520-54020	168-STREET	0.00	24,930.00
13	0 ALL OF SURREY CIRCLE	010-520-54020	169-STREET	0.00	21,940.00
14	0 TILE FACTORY RD FROM W OAK TO W POINT TAP RD	010-520-54020	170-STREET	0.00	70,350.00

City Manager

Finance Director

Purchasing Agent

SUBTOTAL: 776,165.00

TOTAL TAX: 0.00

SHIPPING: 0.00

TOTAL 776,165.00

1. Original invoice with remittance slip must be sent to: City of Palestine, 504 North Queen Street, Palestine, TX 75801.
2. Payment may be expected within 30 days of receipt of goods and invoice.
3. C.O.D. shipment will not be accepted.
4. Purchase Order numbers must appear on all shipping containers, packing slips and invoices. Failure to comply with the above request may delay payment.
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10. The City is exempt from all federal excise and state tax - ID# 75-6000632

Purchasing Department (903) 731-8404 Fax (903) 731-8413

CITY OF PALESTINE

VENDOR: 0103350 WASTE CONNECTIONS OF TX, INC.

207135

03/28/2024

DATE	INVOICE #	PO #	DESCRIPTION	AMOUNT
3/20/2024	7256124D176		CITY-WIDE CLEAN UP	46,524.00

CHECK TOTAL 46,524.00

THE FACE OF THIS DOCUMENT HAS A COLORED BACKGROUND ON WHITE PAPER



City of Palestine

504 Queen St
Palestine, TX 75801
General Operating Account

PROSPERITY BANK
1015 North Church Street
Palestine, Texas 75801

CHECK # 207135
113122655

CHECK DATE
03/28/2024

PAY THIS AMOUNT
\$46,524.00

Void after 90 days

PAY ---Forty Six Thousand Five Hundred Twenty Four Dollars and 00/100 Cents---

TO THE ORDER OF
WASTE CONNECTIONS OF TX, INC.
EAST TEXAS DISTRICT
2107 STATE HWY 135 N
KILGORE, TX 75662

[Handwritten Signature]





WASTE CONNECTIONS

WASTE CONNECTIONS LONE STAR, INC
2107 State Highway 135 N
KILGORE, TX, 75662-8933
DISTRICT NO. 5176

ACCOUNT NO. 5176-015181862
 INVOICE NO. 7256124D176
 STATEMENT DATE 3/20/2024
 DUE DATE
 BILLING PERIOD -
 FOR ASSISTANCE CALL
 CUSTOMER SERVICE 903-986-1959
 FAX 903-986-9019
 ONE TIME PAYMENTS 800-457-1379

CITY OF PALESTINE - CLEAN UP
504 N QUEEN ST
PALESTINE, TX 75801-2733

INVOICE STATEMENT

Date	Description	Amount
	Previous Balance	\$0.00
	Total Payments	\$0.00
	Service Location	
	Acct #5176-015181862	
	CITY OF PALESTINE - CLEAN UP	
	504 N QUEEN ST	
3/20/2024	ADJUSTMENT SERVICE - RES RECLINERS (31.0000 @ \$5.50)	\$170.50
3/20/2024	ADJUSTMENT SERVICE - RES COUCHES (42.0000 @ \$5.50)	\$231.00
3/20/2024	ADJUSTMENT SERVICE - RES MATTRESSES (115.0000 @ \$5.00)	\$575.00
3/20/2024	ADJUSTMENT SERVICE - RES COMPACTED YARDS (210.0000 @ \$16.00)	\$3360.00
3/20/2024	ADJUSTMENT SERVICE - RES LOOSE YARDS (1875.0000 @ \$22.50)	\$42187.50
	5176-015181862 Charges and Fees	\$46524.00
	Current Charges and Fees	\$46524.00
	Total Due:	\$46524.00

PAYMENT AUTHORIZATION	
Due Date: _____	Vendor # _____
PO # _____	Partial <input type="checkbox"/> Complete <input type="checkbox"/>
Acct #: <u>620-550-8508</u>	\$ <u>46,524.00</u>
Acct #: _____	\$ _____
Description: <u>City-wide Clean up</u>	
DPT DIR: _____	D: _____
FINC DIR: <u>[Signature]</u>	D: <u>03/20/2024</u>
CTY MNR: <u>24</u>	D: <u>03/25/24</u>

Please remit to the address below and return your remit stub with your payment

WASTE CONNECTIONS LONE STAR, INC
 2107 State Highway 135 N
 KILGORE, TX, 75662-8933

ACCOUNT NO. 5176-015181862
 INVOICE NO. 7256124D176
 STATEMENT DATE 3/20/2024
 DUE DATE

PAY THIS AMOUNT \$46524.00

WRITE AMOUNT PAID	\$
-------------------------	----

CITY OF PALESTINE - CLEAN UP
 504 N QUEEN ST
 PALESTINE, TX 75801-2733

MAIL PAYMENTS TO:
WASTE CONNECTIONS LONE STAR, INC
 2107 State Highway 135 N
 KILGORE, TX, 75662-8933



Agenda Date: April 8, 2024

To: City Council

From: Cassie Boyd, Tourism Marketing Manager

Agenda Item: Consider authorizing City Manager to execute an interlocal agreement with GoBus Transit for the 2024 Shuttle Service for an amount of \$16,000.00.

Date Submitted: 03/26/2024

SUMMARY:

Each year, the Tourism Marketing Department partners with ETCOG for GoBus Transit Services to provide free shuttle service from area hotels for five events throughout the year, including the Polar Express Experience at the Texas State Railroad. This year, the contract price for services is \$16,000.00, which is an allowable expense for using Hotel Occupancy Tax receipts.

RECOMMENDED ACTION:

Consider authorizing the City Manager to enter into an agreement with ETCOG for GoBus Transit for the annual Shuttle Service in 2024.

CITY MANAGER APPROVAL:

Attachments

GoBus & COP Agreement 2024

**TRANSPORTATION SERVICES INTERLOCAL AGREEMENT BETWEEN
GOBUS TRANSIT AND THE CITY OF PALESTINE VISITOR CENTER**

THIS INTERLOCAL AGREEMENT, effective January 1, 2024 by and between the **GoBus Transit** acting by and through the Executive Director, hereafter referred to as “**GoBus**” and the **City of Palestine Visitor Center**, hereinafter referred to as “**Palestine.**”

RECITALS

WHEREAS, this Agreement is an interlocal agreement authorized and governed by the Interlocal Cooperation Act, Chapter 791 of the Texas Government Code; and

WHEREAS, GoBus and Palestine are entities with authority to enter into this Agreement, and have each entered into this Agreement by the action of their respective governing bodies in the appropriate manner prescribed by law; and

WHEREAS, Palestine desires to engage GoBus to perform transportation services as needed to benefit and meet the needs of the attendees of events held by the City of Palestine Visitor Center; and

WHEREAS, GoBus and Palestine have determined that it is in their mutual best interest and in the best interest of the public for the parties to provide certain public transportation services under this Agreement, and further find that this Agreement will increase the efficiency and effectiveness of the parties’ provision of such public transportation services; and

WHEREAS, GoBus and Palestine are authorized to individually perform the governmental functions and services provided for by this Agreement; and

WHEREAS, GoBus and Palestine desire to participate in the funding for and provision of those certain public transportation services as set forth in this Agreement.

NOW, THEREFORE, Palestine and GoBus do mutually agree as follows:

1. **Recitals Incorporated.** The recitals set forth above and herein are true and correct, and such recitals are incorporated herein for all purposes.
2. **Employment of GoBus.** Palestine hereby agrees to engage GoBus and GoBus hereby agrees to provide transportation for events held by the City of Palestine Visitor Center.

3. **Compliance with Laws.** GoBus shall perform all necessary actions provided under this Agreement in connection with the provision of transportation services for Palestine. GoBus shall perform all obligations and services pursuant to this Agreement in compliance with all applicable local, state, and federal laws, statutes, regulations, and ordinances.
4. **Scope of Service.** GoBus agrees to provide public transportation services to Palestine to benefit and meet the needs of attendees of Palestine events. GoBus shall provide transportation services for the following:
 - a. Palestine Seasonal Services: A six-week period starting mid-November through December for seasonal transportation services providing deviated fixed route services throughout the city targeting hotels and tourist attractions.
 - b. Four (4) additional events to include up to three (3) vehicles where as GoBus will provide services within the city of Palestine. These events are as follows:
 - i. Dogwood Blooms Tour
 - ii. Solar Eclipse Event
 - iii. Wiggy Thump Festival
 - iv. Main Street Fundraiser – Date and event TBD

GoBus shall work with members of Palestine's personnel to coordinate the services for the events. All requests for services to be performed during normal operating hours must be requested at least one (1) week in advance. Service requests to be performed after hours require notice of at least fourteen (14) business days and are subject to approval and availability. GoBus' operating hours are Monday-Friday 6:30am-5:30pm. GoBus may operate during special events outside of the aforementioned service hours when available. GoBus is not permitted to cross state lines.

5. **Personnel.** GoBus has, or will secure, all administration, supervision, personnel, labor, materials, vehicles, fuel, maintenance and storage facilities, equipment, materials, and supplies necessary to perform the services under this Agreement in compliance with applicable laws and regulations. All vehicle operators associated with this project will be direct employees of East Texas Council of Governments' (ETCOG) transportation department. All personnel will be duly authorized, licensed to perform services, and in good standing with any and all regulations related to performing services under this Agreement.
6. **Effective Date.** This Agreement will be effective on the latest date of execution by the parties hereto ("Effective Date").
7. **Term.** This Agreement shall commence on the Effective Date and shall continue through December 31, 2024 ("Term") unless terminated earlier in accordance with applicable provisions herein. Upon expiration of the Term, the parties may continue this Agreement

in full force and effect on a month-to-month basis, on the same terms and conditions as are set forth herein, only upon the express written mutual agreement of the parties.

8. **Compensation.** Palestine agrees to pay GoBus the total amount of \$16,000 for the events mentioned in the Scope of Service section of this Agreement. For additional transportation services, the pricing will be determined by the GoBus Pricing Table. The GoBus Pricing Table lists four reimbursement prices. The pricing table is based on a tier system.
- a. **Trips that are 15 miles or less are Tier 1**
 - b. **Trips that are between 15 miles up to 40 miles are Tier 2**
 - c. **Trips that are more than 40 miles are Tier 3**
 - d. **Trolley Special Event/Request are Tier 4**

GoBus Pricing Table		
Tier 1 – In Town 0-15 one-way miles	\$19.00	Per Trip
Tier 2 – Within Region 10-40 one-way miles	\$55.00	Per Trip
Tier 3 – Hourly Rate	\$100.00	Per Hour
Tier 4 – Trolley Special Event/Request	\$150.00	Per Hour

Payments to GoBus will not fluctuate according to, or in response to, distance, or required accommodation, client (or attendant). GoBus will invoice Palestine and provide supporting documentation. Reimbursement may also be paid via in-kind services. The cost of in-kind services will be based on open market pricing of the same or similar goods or services. All in-kind services must be agreed upon by both parties and will be deducted from the total price of the monthly invoice.

9. **Termination.** Either party retains the right to terminate this Agreement for any reason at any time by giving written notice, by regular mail, email, or facsimile to the other party of such termination and specifying the effective date thereof at least thirty (30) days before the effective date of such termination. Upon termination of this Agreement, all obligations of the parties under this Agreement shall cease and Palestine shall only be required to pay for those services provided by GoBus up to the date of such termination.
10. **Changes.** GoBus may, from time to time, require changes in the scope of the services to be performed hereunder. Any changes to this Agreement and the services offered hereunder shall be in writing and shall be mutually agreed upon and consented to by both parties.

11. **Interest of Members of GoBus and Others.** No officer, member, employee, or delegate of GoBus and no member of its governing body, and no other public official of the governing body of the locality or localities in which the project is situated or being carried out who exercises any functions or responsibilities in the review of approval of the undertaking or carrying out of this project shall participate in any personal or pecuniary interest, direct or indirect, in this Agreement or the proceeds thereof.
12. **Insurance.** GoBus shall ensure that any party operating any asset belonging to GoBus shall be fully licensed and competent to operate the bus. In addition, GoBus shall acquire and maintain during the term of this Agreement all appropriate insurance coverage, including but not limited to, commercial liability insurance, workers compensation insurance; auto insurance; and any other insurance a prudent owner and operator of a bus used for public transportation would maintain. The City of Palestine and the City of Palestine Visitor Center shall be named as additional insureds under the insurance policy. GoBus shall furnish written certificates of such coverage to Palestine upon request.
13. **Entire Agreement.** This Agreement, and all appended documents, constitutes the entire agreement between the parties hereto regarding the subject matter hereof and supersedes any prior written or oral agreements between the parties regarding the subject matter hereof.
14. **Assignment.** All provisions of this Agreement shall be binding upon the parties and each of their respective successors and assigns. Neither party shall assign its rights and obligations under this Agreement to any other party without the express prior written consent of the other party.
15. **Severability.** The provisions of this Agreement are severable and, if any provision of this Agreement is held to be invalid for any reason by a court or agency of competent jurisdiction, the remainder of this Agreement will not be affected, and this Agreement will be construed as if the invalid portion had never been contained herein.
16. **Parties As Independent Contractors.** Palestine and GoBus are independent contractors. No partnership or joint venture is intended to be created by this Agreement, nor any principal-agent or employer-employee relationship. Except to the extent expressly provided herein, neither party has and neither party shall attempt to assert the authority to make commitments for or to bind the other party to any obligation.
17. **Applicable Law and Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of Texas. Venue for any action to enforce this Agreement shall be in any court of competent jurisdiction in Anderson County, Texas.

18. **Authority of Parties Executing Agreement.** By their execution hereof, each of the undersigned Parties represents and warrants to the Parties to this document that the governing body of each Party has authorized its undersigned representative to execute the Agreement on behalf of the Party in the capacity shown below.

19. **Execution in Counterparts.** This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall be considered fully executed as of Effective Date, when all parties have executed an identical counterpart, notwithstanding that all signatures may not appear on the same counterpart.

IN WITNESS WHEREOF GoBus and Palestine have executed this agreement as of **XXX, 2024.**

ETCOG GoBus Transit

**David A Cleveland
Executive Director**

Signature _____

Date _____

City of Palestine

**Teresa Herrera
City Manager**

Signature _____

Date _____



Agenda Date: April 8, 2024

To: City Council

From: Cassie Boyd, Tourism Marketing Manager

Agenda Item: Discussion and possible action regarding HOT Grant Application and Post Event Report

Date Submitted: 04/03/2024

SUMMARY:

Beginning in February 2024, the Grant Committee of the Tourism Advisory Board and the Tourism Marketing Manager, Cassie Boyd, worked with Shane Wilhelm from the Texas Travel Alliance to revise the Hotel Occupancy Grant Application to better align with the Texas Hotel Occupancy Tax Code Chapter 351, Subchapter B - The Use and Allocation of Hotel Occupancy Tax Revenue. The attached HOT Grant Application and Post Event Report were drafted and approved by the Tourism Advisory Board by a unanimous vote on March 26, 2024. The current grant application (FY23-24) does not differentiate between events, arts and cultural enhancement projects, and historic preservation and restoration. It is the hope of the Tourism Advisory Board that those projects will be considered individually on a case-by-case basis separately from events, and that the attached application and post-report will be used only for events seeking grant funding.

RECOMMENDED ACTION:

Consider approving the Hotel Occupancy Grant Application and Post-Event Report as presented. They were previously approved by unanimous vote by the Tourism Advisory Board on March 26, 2024.

CITY MANAGER APPROVAL:

Attachments

HOT Grant Application 2024

HOT Grant Post-Report 2024



Hotel Occupancy Tax Funding Application 2024

Introduction

The City of Palestine Convention and Visitors Bureau (City of Palestine CVB) is responsible for promoting tourism and the hotel industry in compliance with the State of Texas Hotel Occupancy Tax Code; Chapter 351, Subchapter B – Use and Allocation of Revenue. To comply with this statute, the City of Palestine CVB has the authority to use several methods, including the funding of certain activities of local businesses and organizations. The following information will explain the areas available for funding and the process for requesting those funds.

General Criteria for Use of Hotel Occupancy Tax Funds

By law of the State of Texas, the City of Palestine collects a Hotel Occupancy Tax (HOT) from hotels. Under state law, the revenue from the HOT may be used only to directly promote tourism and the hotel and convention industry. Chapter 351 of the Tax Code states that the use of HOT funds is limited to:

- a) Registration of Convention Delegates.
- b) Advertising, Solicitations and Promotions that Directly Promote Tourism and the Hotel and Convention Industry.
- c) Promotions of the Arts that Directly Promote Tourism and the Hotel and Convention Industry.
- d) Historical Restoration and Preservation Activities that Directly Promote Tourism and the Hotel and Convention Industry.
- e) Sporting Event Expenses that Substantially Increase Economic Activity at Hotels.
- f) Funding transportation systems for transporting tourists from hotels to and near the city to any of the following destinations.
- g) Signage directing tourists to sights and attractions that are visited frequently by hotel guests in the municipality.

City Policy:

The City of Palestine accepts applications from groups and businesses whose event fits into one or more of the above categories.

Eligibility for Hotel Tax Funds:

A business or organization seeking funds for an event must be able to prove their event produced overnight hotel stays (“heads in beds”). Events can prove the potential to generate overnight visitors by:

- a) Historic information on the number of room nights used during previous years of the same events;
- b) Current information on the size of a room block that has been reserved at area hotels to accommodate anticipated overnight guests attending the funded event;
- c) Historical information on the number of guests at hotel or other lodging facilities that attended the funded event through surveys, guest directories, or other sources; and/or
- d) Examples of the planned marketing of the programs and activities that will likely generate overnight visitors to local lodging properties from this event.

The limit on the number of years for which the applicant has received funding for the same event is not to exceed three (3) years beginning in Fiscal Year 24-25. Prior grants made for the same event/applicant do not count toward this limit.

Requirements of the Applicant:

1. The applicant or another representative of the entity must attend a grant workshop hosted by the City of Palestine CVB. Among other things, this workshop will provide useful information on how to complete the application, report back after the event and appropriate/legal uses of Hotel Occupancy Tax funds. An annual list of grant application and process updates will be provided if applicable. This should be acknowledged by the applicant if he/she has already attended a grant workshop.
2. The event must be located in the City’s corporate limits, extraterritorial jurisdiction, or in sufficiently close proximity as to reasonably attract tourists to the City of Palestine.
3. The applicant must demonstrate that the disbursement will directly enhance and promote the tourism, convention, and hotel industry by attracting visitors from outside of Palestine into the City or its vicinity.
4. The applicant must work with the Palestine CVB to secure hotel room blocks or establish a booking code with area



Hotel Occupancy Tax Funding Application 2024

hotels to provide necessary reporting information after the completion of the event.

5. The applicant must be a legal entity with legal capacity and authority to enter into contracts.
6. The applicant must demonstrate that the programs or events are open and appropriate for the general public.
7. The applicant must demonstrate that it is in good financial standing with the City, and that financial safeguards are in place to protect public funds.

Application Process:

This application applies to events that occur during the City of Palestine's upcoming Fiscal Year:

October 1, 2024-September 30, 2025

April 9, 2024	Applications available online
April 12, 2024 9:00-11:00 am	Hotel Occupancy Grant Workshop <i>(recorded and posted on the website with the application)</i>
May 15, 2024 5 pm	Deadline for completed Grant Funding applications to be submitted.
May 28, 2024 4 pm*	Formal Presentation by grant applicants to the Tourism Advisory Board <i>Applicants may have 1-2 minutes to present their grant proposal.</i>
May 30, 2024 4 pm*	Special Tourism Advisory Board meeting to vote on grant proposals.
June 10, 2024 4 pm*	Staff recommendation for approved grant applications based on Tourism Advisory Board decisions presented to City Council during work session for funding. <i>Applicant may be present to answer any questions about their proposal.</i>
June 10, 2024 5 pm*	City Council Decision during regular session
June 15, 2024	City of Palestine CVB sends formal agreement to successful applicants
September 15, 2024	Contract signatures executed by City of Palestine and vendor documents are completed

* Tentative dates may be subject to change. Watch the [City of Palestine website](#) for additional information.

In order to submit a completed grant funding application, you must provide:

1. A **typed** application (documents must be single sided and unbound)
2. List of current Board of Directors and staff (if applicable)
3. Proof of Insurance – level of insurance depends upon event
4. Confirmation of grant workshop attendance

Reporting and Reimbursement:

Grant Funding will be provided based on the number of hotel stays ("heads in beds") an event generates in the form of a tax rebate on the hotel occupancy tax generated in the following amounts:

- 100% of tax revenue generated by your event in year 1
- 75% of tax revenue generated by your event in year 2
- 50% of tax revenue generated by your event in year 3
- Up to 50% of tax revenue generated for every year after, at the discretion of the Tourism Advisory Board and with the approval of City Council.

Hotel occupancy tax calculated at a rate of 7% of every dollar spent at a hotel in Palestine. Palestine only collects Hotel Occupancy Tax on traditional hotels currently. Short-term rentals, AirBNBs, VRBO rentals, Bed and Breakfasts, and other short-term rentals are not currently taxed on the municipal level. Therefore, overnight stays at one of these types of rentals will not count toward your rebate total.

The organization is responsible for completing the Post Event Report Form within forty-five (45) days of the event. **If your post-event report not received within 45 days after the event is completed, reimbursement will not be paid.**



Hotel Occupancy Tax Funding Application 2024

Should you need additional space to respond to any item, please attach an additional **typed** sheet of paper.

Applicant/Organization Information

Name of Applicant/Organization		
Address		
City/State/Zip		
Contact Person		
Contact Phone Number	Cell	Work/Home
Email		
Website		
Non Profit? Yes No	Federal Tax I.D.#	
Write a short description about your organization's purpose		

Proposal Information

Name of the Event/Project and a short description:		
Primary Location of event/project:		
Has this event been held in the past?	Yes No	If yes, how many years/times?
How many times have you received HOT funds for this event?		
Duration of Event: Dates for use of funding must fall within October 1, 2024 and September 30, 2025		
Start Date	End Date	
Number of hotel room nights you anticipate your event generating (heads in beds)		
What were the 3 keywords given during the Grant Workshop?		



Hotel Occupancy Tax Funding Application 2024

Answer the following questions if applicable. If there is not enough space provided, you may attach additional pages to the back. Please indicate which question you are answering.

What outside marketing is going to be conducted?

What type of information and graphics will you provide to the Palestine CVB for assistance with advertising your event?

I have read and agree to comply with the terms outlined in the Hotel Tax Funding Policy and draft Hotel Tax Funding Agreement

I certify that the information contained in this application is correct to the best of my knowledge and that I am authorized to make this application on behalf of the organization herein described for the purpose of receiving City of Palestine H.O.T. funds.

By submitting this Hotel Occupancy Tax Funding Application, the Applicant agrees to comply with all local, state and federal laws applicable or otherwise implicated by Applicant's receipt of a Hotel Occupancy Tax Funding Grant, which includes but is not limited to Applicant's compliance with Title VII, Civil Rights Act of 1964, as amended, the Texas Labor Code, the Drug Free Workplace Act of 1988, and the Americans with Disabilities Act, as well as Applicant's refraining from discrimination of persons based on race, color, religion, sex (including pregnancy, childbirth, and related medical conditions; sexual orientation), national origin, disability, age, citizenship status, genetic information, political affiliation or participation in civil rights activities. Furthermore, while the City of Palestine fully supports the exercise of freedom of speech, the City of Palestine will not financially support or fund projects that incorporate or promote ideas of hate or which are intended to vilify, humiliate, or incite hatred against a group or a class of persons on the basis of race, religion, skin color, sexual identity, gender identity, ethnicity, disability or national origin.

Signature: _____

Date: _____

Printed Name: _____ Title: _____

Attachments: (check all)

- ☐ A **typed** application (documents must be single sided and unbound)
- ☐ List of current Board of Directors and staff (if applicable)
- ☐ Proof of Insurance – level of insurance depends upon event
- ☐ Confirmation of grant workshop attendance

SUBMIT TO: Cassie Boyd at 825 W. Spring Street, Palestine, Texas 75801

Questions, please email: tourism@palestine-tx.org or call 903-723-3014



Hotel Occupancy Tax Grant Post Event Report Form

Must be submitted no later than 45 days following event completion

All entities that are approved for Hotel Occupancy Tax Grant funds must submit a Post Event Report Form within 45 days of each funded event. The report will be reviewed by City staff to determine how well the entity met its goals and be used in consideration of future hotel occupancy tax funding requests. An entity will only receive funding for each event for a maximum of 3 years.

Organization Information

Name of Organization		
Address		
City/State/Zip		
Contact Person		
Contact Phone Number	Cell	Work/Home
Email		
Website		
Non Profit? Yes No	Federal Tax I.D.#	

Event Information

Name of Event
Date of Event
Number of Attendees

Hotel Occupancy Information

Did you partner with the Palestine CVB to set up room blocks for your event?	Yes	No
Which hotels did you partner with for your event?		
How many room nights were generated in the Palestine hotels by attendees of this event or project?		
If this Event has been funded by hotel occupancy tax in the last three years, how many room nights were generated in Palestine hotels by attendees of this event/project?		
Last Year		Two Years Ago
According to your hotel reports for the number of rooms picked up, how much should your reimbursement of Hotel Occupancy Tax funds be? (100% of HOT Funds generated in Year 1 of funding, 75% of HOT Funds generated in year 2, and 50% of HOT Funds generated in year 3)		



Hotel Occupancy Tax Grant Post Event Report Form

Must be submitted no later than 45 days following event completion

Event Promotion Information: Marketing Breakdown

Newspapers	Posters
Radio	Web
Flyers	Brochures
Social Media	Other
# of Press Releases to Media	# of Direct Mailings out of town
Other Promotions	

Please attach a sample of each form of printed advertising material to the back of this form that was used to show how your event represented The City of Palestine.

Please attach at least one sample of all forms of advertising/promoting used in your campaign. If the sample itself does not indicate the medium (radio, TV, print, or mail) used or where the advertising took place (e.g. a city's newspaper, or a radio spot that does not indicate the city where the spot was played), please include other information that would show location of the advertising and medium utilized.

The City of Palestine Convention and Visitors Bureau (City of Palestine CVB) is responsible for promoting tourism and the hotel industry in compliance with the State of Texas Hotel Occupancy Tax Code; Chapter 351, Subchapter B – Use and Allocation of Revenue. To comply with this statute, the City of Palestine CVB has the authority to use several methods, including the funding of certain activities of local businesses and organizations. The following information will explain the areas available for funding and the process for requesting those funds.

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- Historical Restoration and Preservation Activities that Directly Promote Tourism and the Hotel and Convention Industry.
- Sporting Event Expenses that Substantially Increase Economic Activity at Hotels.
- Funding transportation systems for transporting tourists from hotels to and near the city to any of the following destinations.
- Signage directing tourists to sights and attractions that are visited frequently by hotel guests in the municipality.

I certify that the information contained in this application is correct to the best of my knowledge and that I am authorized to complete this Post Event Form on behalf of the organization herein described for the purpose of receiving City of Palestine H.O.T. Grant Funds.

Signature: _____ **Printed Name:** _____

Date: _____

SUBMIT TO:

Cassie Boyd, Tourism Marketing Manager | 825 W Spring Street, Palestine, Texas 75801 | 903-723-3014



Agenda Date: April 8, 2024
To: City Council
From: April Jackson, City Secretary
Agenda Item: Amendment to Code of Ordinances Chapter 18-Aviation, Chapter 34-Cemeteries, Chapter 70-Library, and Chapter 98-Utilites
Date Submitted: 04/04/2024

SUMMARY:

Consider approval of an ordinance amending Chapter 18, "Aviation," Chapter 34, "Cemeteries," Chapter 70, "Library," and Chapter 98, "Utilities" of the Code of Ordinances. These amendments are for minor corrections and updates to these chapters. They will also reference the Appendix B Fee Schedule and move any fees in the chapter to the fee schedule.

RECOMMENDED ACTION:

Staff recommends that an ordinance be approved amending Chapter 18, "Aviation," Chapter 34, "Cemeteries," Chapter 70, "Library," and Chapter 98, "Utilities" of the Code of Ordinances.

CITY MANAGER APPROVAL:

Attachments

Ordinance

ORDINANCE NO. O- -24

AN ORDINANCE AMENDING THE CODE OF ORDINANCES OF THE CITY OF PALESTINE, TEXAS, CHAPTER 18, "AVIATION," CHAPTER 34, "CEMETERIES," CHAPTER 70, "LIBRARY," AND CHAPTER 98, "UTILITIES"; PROVIDING FOR A SEVERABILITY, OPEN MEETINGS, AND REPEALING CLAUSE; AND PROVIDING FOR CODIFICATION AND AN EFFECTIVE DATE.

WHEREAS, pursuant to Texas Local Government Code Section 51.001, the City of Palestine has general authority to adopt an ordinance or police regulation that is for the good government, peace, or order of the City and is necessary or proper for carrying out a power granted by law to the City; and

WHEREAS, the City Council finds certain amendments to the aforementioned code are necessary to meet changing conditions and are in the best interest of the City; and

WHEREAS, the City Council finds the amendments to be reasonable and necessary.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PALESTINE, TEXAS:

SECTION 1. The foregoing recitals are hereby found to be true and correct and are hereby adopted by the City Council and made a part hereof for all purposes as findings of fact.

SECTION 2. That Chapter 18, "Aviation," Chapter 34, "Cemeteries," Chapter 70, "Library," and Chapter 98, "Utilities" of the Code of Ordinances of the City of Palestine, Texas, shall be amended as set forth in Exhibit "A," attached hereto and incorporated herein for all purposes.

SECTION 3 If any provision of the Ordinance or the application of any provision to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications hereof which can be given effect without the invalid provision or application, and to this end, the provisions of this Ordinance are declared to be severable.

SECTION 4 That it is hereby officially found and determined that the meeting at which this Ordinance is passed was open to the public as required and that public notice of the time, place, and purpose of said meeting was given as required by the Open Meetings Act, Chapter 551, Texas Local Government Code.

SECTION 5 To the extent reasonably possible, ordinances are to be read together in harmony. However, all ordinances, or parts thereof, that are in conflict or inconsistent with any provision of this Ordinance are hereby repealed to the extent of such conflict, and the provisions of this Ordinance shall be and remain controlling as to the matters regulated, herein.

SECTION 6 The City Secretary is hereby directed to record and publish the attached rules, regulations and policies in the City's Code of Ordinances as authorized by Section 52.001 of the Texas Local Government Code.

SECTION 7

This Ordinance shall be effective immediately upon passage and publication as provided for by law.

PASSED AND APPROVED, by the City Council of the City of Palestine, Texas, at a regular meeting held on the 8th day of April, 2024.

MITCHELL JORDAN
MAYOR

ATTEST:

APPROVED AS TO FORM:

APRIL JACKSON
CITY SECRETARY

REZZIN PULLUM
CITY ATTORNEY

Chapter 18 AVIATION¹

ARTICLE I. IN GENERAL²

Sec. 18-1. Use of airport restricted.

No person, firm, association, corporation or entity, incorporated or otherwise, shall use the airport for any commercial activity, unless approved by a written permit from the city council or its duly authorized agent.

(Ord. No. O-5-01, Exh. A, 3-12-2001; Ord. No. O-87-08, 11-24-2008)

Sec. 18-2. General rules and regulations.

The following rules and regulations shall be observed in the use, operation and conduct of the airport:

- (1) *Rule 1. Federal air traffic rules* of the Federal Aviation Administration for aircraft operated anywhere in the United States, and presently or hereafter effective, are hereby referred to, adopted and made a part hereof as though fully set forth and incorporated herein.
- (2) *Rule 2. Safeguard of persons and property.* The airport manager shall at all times have authority to take necessary and legal actions to safeguard any person, aircraft, equipment or property at the airport.
- (3) *Rule 3. Lease of space in hangars.* Hangars owned by the city may be rented to private individuals, companies or corporations on a monthly or yearly basis. Hangars may be used only for the storage of aircraft, ancillary aircraft equipment, and nonhazardous personal property associated with the operation of aircraft. Terms of the lease shall be as established in the rental agreement, and shall include a requirement that the lessee provide proof of liability insurance. The amount of rent will be according to the duly adopted Schedule of Fees.
- (4) *Rule 4. Lease of airport property.* The city may lease property within the building area or other portions of the airport for the construction of hangars, buildings, aprons, taxiways and auto parking lots in accordance with the approved airport master

¹Cross reference(s)—Possession of open containers of alcoholic beverages in public places, § 10-4.

State law reference(s)—Airport zoning regulations, V.T.C.A., Local Government Code § 241.001 et seq.; aircraft, Vernon's Ann. Civ. St. art. 46e-1 et seq.

²Editor's note(s)—Ord. No. O-5-01, Exh. A, adopted Mar. 12, 2001, did not specify manner of codification, hence; inclusion of these provisions as §§ 18-1—18-10 was at the discretion of the editor.

plan/airport layout plan. All leased property and all buildings or structures erected on the leased property may only be used for aviation-related activity unless the city council authorizes other uses deemed compatible with airport operation. Storage of hazardous material in a private hangar is prohibited.

- a. The city council encourages the construction of structures that are subject to ad valorem taxation. Property lease income is, therefore, reduced to a nominal cost to encourage commercial aeronautical activity. The **City Manager**/airport manager will negotiate the particulars of a lease on an individual basis.
- b. Terms of the lease shall be as established in the rental agreement. The amount of rent will be according to the duly adopted fees. **See Appendix B- Fee Schedule.** The lease shall include requirements for liability insurance in amounts determined by the **City Attorney**/airport manager.
- c. Ground leases, under which lessee builds or erects a hanger on a location leased from the city, shall have a term sufficient to permit recovery of construction costs, but in no event shall extend longer than 40 years. A ground lease may be renewed after completion of the initial terms under standard terms for hangar leases.
- d. A hangar or other structure under a ground lease which is not used, available for rent, or subleased for aviation purposes, available for rent for aviation purposes, for three consecutive months must be removed, unless so authorized by the airport manager. If, after due notice in writing, the hangar or other structure is not removed, the city will consider such structures abandoned and title will pass to the city.
- e. Leased land from which any building, hangar, or structure is removed by the lessee will be cleaned and put back in its original condition, with the exception of the foundation, which will not be removed.
- f. Leased property on the airport may be subleased by the lessee only with approval of the city **council**.
- g. No structures may be erected beyond the building restriction line or in conflict with the approved airport layout plan.
- h. All construction must be authorized by the airport manager in accordance with city council policy and must be of a compatible standard capable of withstanding winds of 85 mph with doors open or closed. Furthermore, all structures must comply with the Palestine City Building Codes and airport zoning and land use ordinances.
- i. At the expiration of the final lease period, title to all permanent improvements erected on airport property will vest in the City of Palestine.
- j. Ground leases will include the following square footage calculations: The actual area of the hangar plus any improvement outside the hangar footprint. Examples include septic systems, patios, fuel tanks, satellite dishes, and rolling door structural supports. The additional parking area would include for a commercial

aviation-type business (flight school, avionics repair shop, A&P mechanics shop, etc.).

- (5) *Rule 5. Commercial operating fees.* Any person wishing to conduct a commercial concession on airport property shall do so only pursuant to a written agreement negotiated with the airport manager and approved by the city council.
- (6) *Rule 6. Fuel flowage fees.* All fuel dispensing activities by an F.B.O. must be authorized by the city council and assessed either a flowage fee or a fixed amount stated in the lease agreement negotiated with the city.
- (7) *Rule 7. Lien for charges.* To enforce the payment of any charge by the city made for the repair, improvement, storage, or care of any personal property, in connection with the operation of the airport, the city shall have a lien upon such personal property, which shall be enforceable as provided by law.
- (8) *Rule 8. Lien possessory right.* To enforce the payment of any such charge, the airport manager may retain possession of such personal property until all compensation shall have been paid in full.
- (9) *Rule 9. Unauthorized structures.* No signs, nonaeronautical equipment, portable buildings, or house trailers may be erected or installed on the airport property except as may be specifically authorized by the airport manager.
- (10) *Rule 10. Surreptitious activities.* Any person observing suspicious, unauthorized or criminal activities should report such activities immediately to the airport manager, police, or officers of the department of public safety, or other peace officer.
- (11) *Rule 11. Wrecked aircraft.* Every aircraft owner, his pilot and agents, shall be responsible for notifying FAA and for the prompt removal from the operational areas of the airport, under the direction of the airport manager, of disabled or wrecked aircraft.
- (12) *Rule 12. Repairs to aircraft.* No aircraft shall be repaired on any part of the landing or take-off area, and all outside repairs shall be made at the places designated by the airport manager for such purpose.
- (13) *Rule 13. Agricultural spraying operations.* All requests for agricultural spraying operations must be negotiated with the airport manager and approved by the city council.
- (14) *Rule 14. Damage to airport.* Any person, corporate or individual, and the owner of any aircraft causing damage of any kind to the airport, whether through violation of any of these rules or through vandalism or any act of negligence, shall be liable therefore to said.
- (15) *Rule 15. Injury to person.* Persons entering upon airport grounds do so at their own risk and with no liability incurring to the city/sponsor for any injury or damage to person or property. Further, any person desiring to use the airport shall observe and obey all valid laws, resolutions, orders, rules, and regulations promulgated and enforced by the

city or by any other authority having jurisdiction over the conduct and operation of the airport including the FAA.

- (16) *Rule 16. Licensed pilots.* Only properly registered aircraft and persons holding current airman and medical certificates issued by the FAA shall be authorized to operate aircraft upon the airport except as provided in this article. This limitation shall not apply to students in training under licensed instructors nor to public aircraft of the federal government or of a state, territory or political subdivision thereof, or to aircraft licensed by a foreign government with which the United States has a reciprocal agreement covering the operation of such licensed aircraft. NOTE: Use of the airport by ultralight vehicles shall be subject to approval by the airport manager and shall be in accordance with FAR Part 103 and any other rules set by the city or by any other authority having jurisdiction over airport operations.
- (17) *Rule 17. Registration.* Every person owning an aircraft based at the airport, employed, or receiving instructions at the airport shall register at the office of the airport manager, with name, address, and telephone number.
- (18) *Rule 18. Intoxicants and narcotics prohibited.* No person under the influence of an intoxicant or narcotic shall operate or fly in any aircraft upon or over the airport; provided however, such prohibition shall not apply to a passenger when accompanied by a nurse or caretaker in an aircraft apart from the pilot.
- (19) *Rule 19. Foreign object.* No foreign objects, including bottles, cans, scrap or any object that may cause damage to an aircraft shall be left upon the floor of any building or upon any part of the surface area of the airport.

(Ord. No. O-5-01, Exh. A, 3-12-2001; Ord. No. O-87-08, 11-24-2008; Ord. No. O-11-23 , § II, 6-12-2023)

Sec. 18-3. Ground operations.

- (a) *Rule 20. Air and ground traffic-vehicular traffic.* All vehicular traffic shall be confined to avenues of passage designated and provided for that purpose by the airport manager, and shall not be operated at a speed in excess of ten miles per hour.
- (b) *Rule 21. Fueling of aircraft.*
 - (1) Aircraft shall not be fueled while the engine is running or while in a hangar or other enclosed place, except that an agricultural spray aircraft on a fast-turn-around may be fueled and loaded with chemicals with the aircraft engine idling if the airport manager has provided written authority to the agricultural operator and if the wheels are chocked and there are at least two 20B fire extinguishers within 50 feet and a qualified ground crew member is present during the fueling operation.
 - (2) All aircraft will be positively grounded when being serviced with fuel. Aircraft being serviced by a fuel truck will be grounded to the fuel truck and the fuel truck will be positively grounded.
 - (3) All aircraft shall be fueled clear of all hangars and other buildings.

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- (4) Aircraft fuel trucks will be equipped, operated and maintained in accordance with National Fire Protection Association, Incorporated, NFPA Manual 407 "Standard for Aircraft Fuel Servicing", most recent edition.
 - (5) Aviation businesses wishing to supply and dispense aviation fuel for their private use must first obtain written permission from the city. Unless specifically waived in writing by the city, all fuel dispensed on the airport property shall be purchased from the municipal airport. Private fueling facilities must be located on leased property and the fueling system installed and fuel dispensed in accordance with aircraft fueling rules and directives. Liability insurance, in an amount approved in writing by the city shall be maintained by all dispensers of aviation fuel.
 - (6) Public sale of automobile gas for use in aircraft will not be permitted on the airport without approval of the city. Aircraft authorized by the FAA to use auto gas may be privately fueled by their owner only after compliance with established rules adopted by the city council.
 - (7) Aviation or auto fuels will not be stored within a hangar.
- (c) *Rule 22. Tiedown of aircraft.*
- (1) All aircraft not hangared shall be tied down or secured at night and during inclement weather.
 - (2) All aircraft owners or their agents are responsible for the tiedown or security of their aircraft at all times and particularly during inclement weather.
 - (3) Nonhangared aircraft parked for less than ~~three~~ **seven** days ~~but more than two days~~ on the transient apron shall not pay a fee if the aircraft owner purchases fuel from the airport. Aircraft based at the airport or parked at the airport for a period of time greater than ~~three~~ **seven** days shall pay to the airport a fee as defined in the duly adopted **APPENDIX B- Fee Schedule of Fees.**
- (d) *Rule 23. Running aircraft engines.*
- (1) On aircraft not equipped with adequate brakes, the engine shall not be started until and unless the wheels have been set with blocks attached to ropes or other suitable means for removing them.
 - (2) No airplane will be propped, started or left running without qualified personnel at the controls.
 - (3) No engine shall be started or run inside any building.
 - (4) No engine shall be started, run or warmed up until and unless the aircraft is in such position that the propeller stream or jet blast will clear all buildings and groups of people in the observation areas.
- (e) *Rule 24. Damage to runway lights.* Any person damaging any field light or fixture by operation of an aircraft or otherwise shall immediately report such damage to the airport manager. Persons causing damage to runway and taxiway lights, as a result of negligent

operation of an aircraft or willful acts will be liable for replacement cost of the light(s) and/or fixtures.

(f) *Rule 25. Taxiing aircraft.*

- (1) No person shall taxi an aircraft until he has ascertained there will be no danger of collision with any person or object in the immediate area.
- (2) Aircraft will be taxied at a safe and prudent speed, and in such manner as to be at all times under the control of the pilot.
- (3) Aircraft not equipped with adequate brakes will not be taxied near buildings or parked aircraft unless an attendant is at a wing of the aircraft to assist the pilot.
- (4) Aircraft shall not taxi onto the runway from the ramp and taxiway area if there is an aircraft approaching to land, or on the ground in take-off position.
- (5) There shall be no taxiing of aircraft by engine power into or out of hangars.

(g) *Rule 26. Parking aircraft.*

- (1) Unoccupied aircraft shall not be parked or tied down within 120 feet of the centerline of a VFR basic utility runway, 250 feet of the centerline of a general utility nonprecision runway or 300 feet of the centerline of a precision runway; and all unhoused aircraft shall be parked in the areas designated by the airport manager for that purpose.
- (2) Aircraft will not be parked within 50 feet of an aircraft fuel pump.
- (3) Aircraft will not be parked in such a manner as to hinder the normal movement of other aircraft and traffic unless specifically authorized by the airport manager as an emergency measure.
- (4) It is the responsibility of the pilot when leaving a parked aircraft unattended to see that the brakes are set or that the plane is properly chocked and/or tied down.

(h) *Rule 27. Loading/unloading aircraft.* Pilots are prohibited from loading or unloading aircraft with the engine running.

(Ord. No. O-5-01, Exh. A, 3-12-2001; Ord. No. O-87-08, 11-24-2008)

Sec. 18-4. Landing and take-off rules.

- (a) *Rule 28. Authority to suspend operations.* The airport manager may suspend or restrict any or all operations whenever such action is deemed necessary in the interest of safety, provided operations under IFR conditions may be continued by properly rated pilots following appropriate flight rules.
- (b) *Rule 29. Clearing street.* No aircraft shall land or take off in such a manner as to clear any public street or highway at an altitude of less than 15 feet or 17 feet over an interstate highway or 23 feet over a railroad track nor land or take off on the taxiway or over hangars or other structures, automobile parking areas or groups of spectators.

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- (c) *Rule 30. Unicom.* All pilots, operating an aircraft which is radio equipped, are required to call on the local unicom frequency to determine the active runway and to announce their position and intentions for take-off and landing.
 - (d) *Rule 31. Take-offs on apron, etc.* No take-offs or landings shall be made on the apron, parking ramp or taxiway except by special permission of the airport manager.
 - (e) *Rule 32. Take-offs allowed.* Touch and go landings may be made at the discretion of the pilot. All aircraft shall clear for landing and take-off traffic before taxiing into take-off position.
 - (f) *Rule 33. Traffic altitude.* Traffic pattern elevation is 1,500 (suggested altitude) feet above mean sea level (MSL).
 - (g) *Rule 34. Common courtesy.* Aircraft entering the traffic pattern shall exercise caution and practice courtesy so as not to cause aircraft already in the pattern to deviate from their course.
 - (h) *Rule 35. Traffic flow.* All aircraft taking off or landing at the Municipal Airport shall fly a left hand traffic pattern. Pattern entry is recommended to be made at an angle of 45 degrees to the active runway at all times.
 - (i) *Rule 36. Noise of engines.* Aircraft engines shall not be accelerated nor decelerated while over the city in such manner as to distract, excite or disturb persons on the ground, regardless of altitude.
 - (j) *Rule 37. Student training and practice flying.*
 - (1) Instructors in flying shall inform students and shall inform themselves on all rules and regulations in effect at the airport.
 - (2) By notices posted in his or her office, the airport manager may designate limited areas of the airport for practice flying and training of students.
 - (3) Aircraft shall not be permitted to remain on the landing or take-off areas for the purpose of instructing students.
 - (k) *Rule 38. Special procedures.* The airport manager may, in the interest of safety, designate special traffic procedures for certain operations, such as air shows, agricultural operations, lighter than air operations, ultra-lights, etc.
 - (l) *Rule 39. Ultralight aircraft.* All ultra-light aircraft are required to use only runways eight and 26 for takeoff and landing.

(Ord. No. O-5-01, Exh. A, 3-12-2001; Ord. No. O-87-08, 11-24-2008)

Sec. 18-5. Fire regulations.

- (a) *Rule 40. Fire regulations.*
 - (1) Every person going upon or using the airport or its facilities in any manner, shall exercise the greatest care and caution to avoid and prevent fire.

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- (2) Smoking or open flame within 50 feet of any aircraft or fuel truck is prohibited.
 - (3) Compressed flammable gas shall not be kept or stored upon the airport, except at such place as may be designated by the airport manager.
 - (4) No flammable substance shall be used in cleaning motors or other parts of an aircraft inside a hangar or other building.
 - (5) No one shall smoke, ignite a match or lighter in any building.
 - (6) Hangar entrances shall be kept clear at all times.
 - (7) The floors in all buildings shall be kept clean and free from oil. Volatile, flammable substances shall not be used for cleaning the floors.
 - (8) No boxes, crates, cans, bottles, paper, tall grass/weeds or other litter shall be permitted to accumulate in or about a hangar.
 - (9) Prior to being fueled all aircraft will be positively grounded by a grounding cable which is connected to a copper, copper clad, galvanized or other approved ground rod $\frac{5}{8}$ -inch or greater in diameter buried to a sufficient depth to reach permanent subsoil moisture. The resistance of the ground rod should not exceed 10,000 ohms. The bonding/ground cable shall be of flexible, durable material. The grounding clip on the end of the grounding cable should be connected to bare, unpainted metal on the aircraft, however, the grounding clip should not be attached to the aircraft's propeller, landing gear or radio antennas.
 - (10) Where aircraft fueling is performed by a fuel truck, an adequate number of suitable grounding connections shall be provided on the aircraft apron or servicing ramp.
 - (11) At least two 20B portable fire extinguishers will be available within 50 feet of the fuel pumps where the open hose discharge capacity of the fuel pump is not more than 200 gallons per minute; at least one wheeled 80B fire extinguisher where the open hose discharge capacity is more than 200 gallons per minute, but not more than 350 gallons per minute; at least two wheeled 80B fire extinguishers where the open hose discharge capacity is greater than 350 gallons per minute.
 - (12) All aviation fuel nozzles will have "dead man" controls which will shut off the fuel flow when the nozzle hand control is released. Automatic fuel cut-off nozzles will not be permitted for fueling aircraft.
 - (13) The pilot and passengers will exit the aircraft and the aircraft will be unoccupied during fueling operations.
 - (14) In all matters related to aircraft fueling safety the provisions of NFPA Manual 407 "Standard for Aircraft Fuel Servicing, most recent edition, published and available from the National Fire Protection Association, Incorporated, 470 Atlantic Avenue, Boston, Massachusetts 02210, shall prevail.

(Ord. No. O-5-01, Exh. A, 3-12-2001; Ord. No. O-87-08, 11-24-2008)

Sec. 18-6. Knowledge of rules implied.

By publication of this ordinance as required by law, all persons will be deemed to have knowledge of its contents. However, the airport manager is directed to have copies of the ordinance printed and posted where appropriate. Copies will be available at all times in the manager's office, and copies will be furnished to owners and operators of aircraft based on the airport.

(Ord. No. O-5-01, Exh. A, 3-12-2001; Ord. No. O-87-08, 11-24-2008)

Sec. 18-7. Conflict in rules.

If and where there is conflict in these and the Federal Aviation Rules (FARs) the latter shall prevail.

(Ord. No. O-5-01, Exh. A, 3-12-2001; Ord. No. O-87-08, 11-24-2008)

Sec. 18-8. Penalty for violation.

- (a) Any person operating or handling an aircraft in violation of any of these rules or refusing to comply therewith, may, at once, be ejected from the airport, or may for any period of time, not exceeding 15 days, be denied use of the airport by the **City Manager**/airport manager, and, upon hearing by the city council, may be deprived of the further use of the airport and its facilities for such period of time as may appear necessary for the protection of life and property.
- (b) Any violation of the ordinance shall be a misdemeanor, punishable by fine in any sum not exceeding \$500.00. This section is cumulative of all other penalties for violation of federal, state and local laws, rules regulations and ordinances.

(Ord. No. O-5-01, Exh. A, 3-12-2001; Ord. No. O-87-08, 11-24-2008)

Sec. 18-9. Saving clause.

Should any part of this article be held invalid or unconstitutional, no other part shall necessarily be affected thereby.

(Ord. No. O-5-01, Exh. A, 3-12-2001; Ord. No. O-87-08, 11-24-2008)

Sec. 18-10. Customer service evaluation form.

The airport manager shall make available, at all times, both inside and outside of the terminal area, a supply of customer service evaluation forms which will be designed and provided by the airport manager.

(Ord. No. O-5-01, Exh. A, 3-12-2001; Ord. No. O-87-08, 11-24-2008)

Secs. 18-11—18-25. Reserved.

ARTICLE II. AIRPORT ADVISORY BOARD³

Sec. 18-26. Creation; composition; appointment of members.

- (a) There is created and established an airport advisory board which shall consist of seven members with demonstrated experience or knowledge in aviation matters who shall be selected as provided in section 6.6 of the City Charter. Each member shall be a resident of the city; provided, however, that up to two members may reside outside the city limits where the mayor, with approval of the city council, determines it is in the best interest of the city to appoint a non-resident. Members of the board shall serve without compensation but may be reimbursed for expenses if approved in advance by the city manager.
- (b) The members of the board shall be identified by place numbers (1) through (7). All members shall serve two-year terms. The terms for places (1), (2), (3), and (4) shall end on September 30 of odd-numbered years, and the terms for places (5), (6), and (7) shall end on September 30 of even-numbered years. Members shall continue to act after the end of his or her term until a successor is appointed and confirmed.
- (c) A member of the board shall be eligible for reappointment; provided, however, that a member may not be appointed for more than two consecutive terms unless approved by a majority vote of the city council.
- (d) A member of the board may be removed from his position at any time by the mayor, subject to the approval of the city council.
- (e) The city manager or his designated representative shall serve as ex officio (non-voting) secretary to the board and shall keep minutes, books, files and other duties as are incidental to the office.

(Ord. No. O-20-05, § 1, 7-18-2005)

Sec. 18-27. Officers and quorum.

The airport advisory board shall organize by electing from its membership a chairperson and a vice-chairperson at the first regularly scheduled meeting after October 1 of each year. All members, including the chairperson, shall vote in matters considered by the board. A majority of the members of the airport advisory board shall constitute a quorum for the transaction of business.

³Editor's note(s)—Ord. No. O-20-05, § 1, adopted July 18, 2005, repealed Art. II in its entirety and enacted a new Art. II to read as set out herein. Former Art. II, §§ 18-26—18-34, pertained to similar subject matter and derived from Code 1968, § 4-41—4-49.

Cross reference(s)—Boards, committees, commissions, § 2-86 et seq.

(Ord. No. O-20-05, § 1, 7-18-2005)

Sec. 18-28. Attendance.

Any member who fails to attend at least 75 percent of all regular meetings of the board within any 12-month period shall be automatically removed from the board, unless such failure to attend was the result of illness or other acceptable excuse as determined by city council.

(Ord. No. O-20-05, § 1, 7-18-2005)

Sec. 18-29. Rules of procedure and bylaws.

The airport advisory board may adopt rules of procedure for the conduct of its business. Such rules shall include, among other items, provisions for:

- (1) Regular and special meetings open to the public;
- (2) Records of its proceedings, to be open for inspection by the public; and
- (3) Report to the city council annually or more frequently as requested by council.
- (4) Minimum requirements for member training and education.

(Ord. No. O-20-05, § 1, 7-18-2005)

Sec. 18-30. Purposes of board.

The airport advisory board shall make recommendations to the city manager and city council regarding policy matters pertaining to the airport and aviation-related activities of the city. The airport advisory board shall have the following specific purposes:

- (1) Develop, recommend for city council approval, and update an airport master plan for the city.
- (2) Advise the city in all matters pertaining to the airport and aviation in the city and county.
- (3) Serve as the airport zoning board.

(Ord. No. O-20-05, § 1, 7-18-2005)

Sec. 18-31. Scope of power.

The airport advisory board shall have no right, power or authority to obligate or bind the city in any manner whatsoever.

(Ord. No. O-20-05, § 1, 7-18-2005)

Secs. 18-32—18-55. Reserved.

ARTICLE III. AIRPORT ZONING⁴

Sec. 18-56. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Airport means the Palestine Municipal Airport.

Airport elevation means the established elevation of the highest point on the usable landing area measured in feet from mean sea level.

Airport hazard means any structure or tree or use of land which:

- (1) Obstructs the airspace required for the flight of aircraft or which obstructs or interferes with the control, tracking or data acquisition in the landing, taking off or flight at an airport or at any installation or facility relating to flight and tracking or data acquisition of the flight craft;
- (2) Is hazardous, interferes with or obstructs such landing, taking off or flight of aircraft; or
- (3) Is hazardous to or interferes with the tracking or data acquisition pertaining to flight and flight vehicles.

Airport hazard area means any area of land or water upon which an airport hazard might be established if not prevented as provided in this article.

Airport reference point means the point established as the approximate geographic center of the airport landing area and that is so designated.

Approach surface means a surface longitudinally centered on the extended runway centerline, extending outward and upward from the end of the primary surface and at the same slope as the approach zone height limitation slope set forth in section 18-61. In plan the perimeter of the approach surface coincides with the perimeter of the approach zone.

Approach, transitional, horizontal, and conical zones means the zones that are set forth in section 18-60.

Centerline means a line extending through the midpoint of each end of a runway.

Conical surface means a surface extending outward and upward from the periphery of the horizontal surface at a slope of 20:1 for a horizontal distance of 4,000 feet.

⁴State law reference(s)—Airport zoning, V.T.C.A., Local Government Code § 241.001 et seq.

Hazard to air navigation means an obstruction determined to have a substantial adverse effect on the safe and efficient utilization of the navigable airspace.

Height. The height limits in all zones set forth in this article and shown on the zoning map which is on file in the city secretary's office, shall be determined by the datum of mean sea level elevation, unless otherwise specified.

Horizontal surface means a horizontal plane 150 feet above the established airport elevation, the perimeter of which in plan coincides with the perimeter of the horizontal zone.

Instrument runway means a runway of at least 4,000 feet for which there is or is planned to be an instrument landing procedure published by a defense agency of the federal government or by the Federal Aviation Administration. Runways 18/36 are instrument runways at the airport.

Landing area means the surface area of the airport used for landing, takeoffs or taxiing of aircraft.

Nonconforming use means any preexisting structure, object of natural growth or use of land which is inconsistent with this article.

Nonprecision instrument runway means a runway having an instrument approach procedure utilizing air navigation facilities with only horizontal guidance or area-type navigation equipment for which a straight-in nonprecision instrument approach procedure has been approved or planned.

Obstruction means any structure, growth or other object, including a mobile object, which exceeds a limiting height set forth in section 18-61.

Precision instrument runway means a runway having an instrument approach procedure utilizing an instrument landing system (ILS) or a precision approach radar (PAR). It also means a runway for which a precision approach system is planned and is so indicated on an approved airport layout plan or any other planning document.

Primary runway means a paved runway, as shown in the official airport layout plan (ALP), of at least 5,000 feet on which a majority of the approaches to and departures from the airport occur. Runways 18/36 are primary runways at the airport.

Primary surface means a surface longitudinally centered on a runway. When the runway has a specially prepared hard surface, the primary surface extends 200 feet beyond each end of that runway; but when the runway has no specially prepared hard surface or planned hard surface, the primary surface ends at each end of that runway. The width of the primary surface of a runway will be that width prescribed in federal aviation regulations (FAR) part 77, for the most precise approach for either end of that runway. The elevation of any point on the primary surface is the same as the elevation of the nearest point on the runway centerline. The width of a primary surface is as follows:

- (1) For utility runways having only visual approaches, 250 feet.
- (2) For utility runways having nonprecision instrument approaches, 500 feet.
- (3) For other than utility runways the width is as follows:
 - a. For visual runways having only visual approaches, 500 feet.

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- b. For nonprecision instrument runways having visibility minimums greater than three-fourths statute mile, 500 feet.
 - c. For nonprecision instrument runways having a nonprecision instrument approach with visibility minimums as low as three-fourths statute mile and for precision instrument runways, 1,000 feet.

Runway means a defined area on an airport prepared for landing and takeoff of aircraft along its length.

Structure means an object, including a mobile object, constructed or installed by man, including but not limited to buildings, towers, cranes, smokestacks, earth formations and overhead transmission lines.

Transitional surfaces means the surfaces that extend outward at 90-degree angles to the runway centerline and the runway centerline extended at a slope of seven feet horizontally for each foot vertically from the sides of the primary and approach surfaces to where they intersect the horizontal and conical surfaces. Transitional surfaces for those portions of the precision approach surfaces, which project through and beyond limits of the conical surface, extend a distance of 5,000 feet measured horizontally from the edge of the approach surface and at 90-degree angles to the extended runway centerline.

Tree means any object of natural growth.

Utility runway means a runway that is constructed for and intended to be used by a propeller-driven aircraft that is 12,500 pounds maximum gross weight.

Visual runway means a runway intended solely for the operation of aircraft using visual approach procedures.

(Code 1968, § 4-22)

Cross reference(s)—Definitions generally, § 1-2.

State law reference(s)—Definitions, V.T.C.A., Local Government Code § 241.003.

Sec. 18-57. Enforcement.

The joint airport zoning board shall administer and enforce this article. An application for a permit shall be made to the joint airport zoning board upon a form published for that purpose. Applications required by this article to be submitted to the joint airport zoning board shall be promptly considered and granted or denied. Applications for variance shall be made to the board of adjustment by first filing the application for variance with the joint airport zoning board who shall forthwith transmit the application to the board of adjustment for determination.

(Code 1968, § 4-29)

Cross reference(s)—Permits, § 18-59.

Sec. 18-58. Reserved.

Editor's note(s)—Ord. No. O-20-05, § 1, adopted July 18, 2005, repealed § 18-58 in its entirety, which pertained to joint airport zoning board and derived from the Code 1968, §§ 4-1—4-3; Ord. No. O-14-94, §§ 1, 2, adopted May 23, 1994.

Sec. 18-59. Permits.

- (a) *Future uses.* Except as specifically provided in subsections (a)(1), (2) and (3) of this section, no material change shall be made in the use of land, no structure shall be erected or otherwise established and no tree shall be planted in any zone created by this article unless a permit shall have been applied for and granted. Each application for a permit shall indicate the purpose for which the permit is desired, with sufficient particularity to determine whether the resulting use, structure or tree would conform to this article. If such determination is in the affirmative, the permit shall be granted. No permit for a use inconsistent with this article shall be approved in accordance with section 18-57. Nothing contained in any of the following exceptions shall be construed as permitting or intending to permit any construction or alteration of any structure or growth of any tree in excess of any of the height limits established by this article except as set forth in subsection 18-61(b):
- (1) In the area lying within the limits of the horizontal zone and conical zone, no permit shall be required for any tree or structure less than 75 feet of vertical height above the ground, except when, because of terrain, land contour or topographic features, such tree or structure would extend above the height limits prescribed for such zones.
 - (2) In areas lying within the limits of the approach zones, but at a horizontal distance of not less than 4,200 feet from each end of the runway, no permit shall be required for any tree or structure less than 75 feet of vertical height above the ground, except when such tree or structure would extend above the height limit prescribed for such approach zones.
 - (3) In the areas lying within the limits of the transitional zones beyond the perimeter of the horizontal zone, no permit shall be required for any tree or structure less than 75 feet of vertical height above the ground, except when such tree or structure, because of terrain, land contour or topographic features, would extend above the height limit prescribed for such transitional zones.
- (b) *Existing uses.* No permit shall be granted that would allow the establishment or creation of any airport hazard or permit a nonconforming use, structure or tree to be made or become higher or become a greater hazard to air navigation than it was on the effective date of the ordinance from which this section derives or any amendments to this article or than it is when the application for a permit is made. Except as indicated, all applications for such a permit shall be granted.
- (c) *Nonconforming uses abandoned or destroyed.* Whenever the joint airport zoning board determines that a nonconforming structure or tree has been abandoned or more than 80 percent torn down, physically deteriorated or decayed, no permit shall be granted that would

allow such structure or tree to exceed the applicable height limit or otherwise deviate from the established zoning regulations.

- (d) *Variances.* Any person desiring to erect or increase the height of any structure or permit the growth of any tree or use his property in violation of this article may apply to the board of adjustment for a variance from this article. The application for a variance shall be accompanied by a determination from the Federal Aviation Administration as to the effect of the proposal on the operation of air navigation facilities and the safe, efficient use of navigable airspace. Such variance shall be allowed when it is duly found that a literal application or enforcement of this article will result in unnecessary hardship and the relief granted would not be contrary to the public interest but would do substantial justice and would be in accordance with the spirit of this article. Additionally, no application for variance from this article may be considered by the board of adjustment unless a copy of the application has been furnished to the airport manager for advice as to the aeronautical effects of the variance. If the airport manager does not respond to the application within 15 days after receipt, the board of adjustment may act on its own to grant or deny the application.
- (e) *Obstruction marking and lighting.* Any permit or variance granted if such is deemed advisable by the joint airport zoning board or the board of adjustment to effectuate the purpose of this article and if such is deemed reasonable in the circumstances may be so conditioned as to require the owner of the structure or tree in question to install, operate and maintain at his own expense such markings and lights as may be deemed necessary.

(Code 1968, § 4-28)

Cross reference(s)—Application for permit shall be filed with the joint airport zoning board, § 18-57.

State law reference(s)—Permits, V.T.C.A., Local Government Code § 241.021.

Sec. 18-60. Height restriction zones.

In order to carry out this article, there are created and established certain height restriction zones which include all of the horizontal surfaces and conical surfaces as they apply to the airport. An area which is located in more than one of the zones listed in this section is considered to be only in the zone with the more restrictive height limitation. The various zones are established and defined as follows:

- (1) *Approach zones.*
 - a. Runway 18 approach zone is established beneath the approach surface at the end of runway 18 on the airport for precision instrument landings and takeoffs. The inner edge of the approach zone shall have a width of 1,000 feet which coincides with the width of the primary surface at a distance of 200 feet beyond the end of the runway, widening thereafter uniformly to a width of 16,000 feet at a horizontal distance of 50,000 feet beyond the end of the primary surface, its centerline being the continuation of the centerline of the runway.

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- b. Runway 36 approach zone is established beneath the approach surface at the end of runway 36 on the airport for nonprecision instrument landings and takeoffs. The inner edge of the approach zone shall have a width of 1,000 feet which coincides with the widths of the primary surface at a distance of 200 feet beyond the end of the runway, widening thereafter uniformly to a width of 4,000 feet at a horizontal distance of 10,000 feet beyond the end of the primary surface, its centerline being the continuation of the centerline of the runway.
 - c. Runway 09/27 approach zones are established beneath the approach surface at the end of runway 09/27 on the airport for visual landings and takeoffs. The inner edge of the approach zone shall have a width of 500 feet which coincides with the width of the primary surface at a distance of 200 feet beyond each end of the runway, widening thereafter uniformly to a width of 1,500 feet at a horizontal distance of 5,000 feet beyond each end of the primary surface, its centerline being the continuation of the centerline of the runway.
- (2) *Transitional zones.* Transitional zones are established beneath the transitional surface adjacent to each runway and approach surface as indicated on the zoning map. Transitional surfaces, symmetrically located on either side of a runway, have variable widths as shown on the zoning map which is on file in the city secretary's office. Transitional surfaces extend outward and upward at right angles to the runway centerline and the runway centerline extended at a slope of 7:1 from the sides of the primary surface and from the sides of approach surfaces. Transitional surfaces for those portions of the precision approach surface which project through and beyond the limits of the conical surface extend a distance of 5,000 feet measured horizontally from the edge of the approach surface and at right angles to the runway centerline.
 - (3) *Horizontal zone.* The horizontal zone is established as the area beneath a horizontal plane 150 feet above the established airport elevation, the perimeter of which is constructed by swinging arcs of 10,000 feet radii from the center of each end of the primary surface of runways 18/36 and connecting the adjacent arcs by lines tangent to those arcs.
 - (4) *Conical zone.* The conical zone is established as the area beneath the conical surface extending outward and upward from the periphery of the horizontal surface at a slope of 20:1 for a horizontal distance of 4,000 feet.

(Code 1968, § 4-23)

Sec. 18-61. Height limitations.

- (a) *Established.* Except as otherwise provided in this article, no structure shall be erected, altered or maintained and no trees shall be allowed to grow in any zone created by this article to a height in excess of the applicable height limit established in this section for such zone. Such applicable height limitations are established for each of the zones as follows:
 - (1) *Approach zones.*

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- a. *Runway 18.* One foot in height for each 50 feet in horizontal distance beginning at the end of and at the elevation of the primary surface and extending to a point 10,000 feet from the end of the primary surface, then rising one foot in height for each 40 feet in horizontal distance for an additional 40,000 feet from the end of the primary surface.
 - b. *Runway 36.* One foot in height for each 34 feet in horizontal distance beginning at the end of and at the elevation of the primary surface and extending to a point 10,000 feet from the end of the primary surface.
 - c. *Runway 09/27.* One foot in height for each 20 feet in horizontal distance beginning at the end of and at the elevation of the primary surface and extending to a point 5,000 feet from the end of the primary surface.
- (2) *Transitional zones.* Slope seven feet outward for each foot upward beginning at the sides of and at the same elevation as the primary surface and the approach surface and extending to a height of 150 feet above the airport elevation which is 422 feet above mean sea level. In addition, there are established height limits sloping seven feet outward for each foot upward beginning at the sides of and at the same elevation as the approach surface and extending to where they intersect the conical surface. Where the precision instrument runway approach zone projects beyond the conical zone, there are established height limits sloping seven feet outward for each foot upward beginning at the sides of and at the same elevation as the approach surface, and extending a horizontal distance of 5,000 feet measured at 90-degree angles to the extended runway centerline.
 - (3) *Horizontal zone.* Established at 150 feet above the airport elevation or a height of 572 feet above the mean sea level.
 - (4) *Conical zone.* Slopes 20 feet outward for each foot upward beginning at the periphery of the horizontal zone and at 150 feet above the airport elevation and extending to a height of 350 feet above the airport elevation.
- (b) *Exceptions.* Nothing in this article shall be construed as prohibiting the growth, construction or maintenance of a tree or structure to a height up to 50 feet above the surface of the land.
- (Code 1968, § 4-24)

Sec. 18-62. Use restrictions.

Notwithstanding any other section of this article, no use may be made of land or water within any zone established by this article in such a manner as to:

- (1) Create electrical interference with navigational signals or radio communication between the airport and aircraft;
- (2) Make it difficult for pilots to distinguish between airport lights and others;
- (3) Result in glare in the eyes of pilots using the airport;
- (4) Create bird strike hazards; or

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- (5) Otherwise in any way endanger or interfere with the landing, taking off or maneuvering of aircraft intending to use the airport.

(Code 1968, § 4-25)

Sec. 18-63. Nonconforming uses.

- (a) *Generally.* This article shall not be construed to require the removal, lowering or other change or alteration of any structure or tree not conforming to this article as of the effective date of the ordinance from which this article derives or otherwise interfere with the continuance of any nonconforming use. Nothing in this article shall require any change in the construction, alteration or intended use of any structure, the construction or alteration of which began prior to the effective date of the ordinance from which this article derives.
- (b) *Marking and lighting.* Notwithstanding subsection (a) of this section, the owner of any nonconforming structure or tree is required to permit the installation, operation and maintenance thereon of such markers and lights as shall be deemed necessary by the joint airport zoning board to indicate to the operators of aircraft in the vicinity of the airport the presence of such airport hazards. Such markers and lights shall be installed, operated and maintained at the expense of the owner.

(Code 1968, § 4-27)

Sec. 18-64. Controlled area.

For purposes of this article, the area within which land use compatibility zoning may take place shall be known as the "controlled area." The controlled area means that land located outside airport boundaries and within a rectangle bounded by lines located no farther than 1½ statute miles from the centerline of an instrument or primary runway and lines no farther than five statute miles from each end of the paved surface of an instrument or primary runway.

(Code 1968, § 4-26)

Sec. 18-65. Board of adjustment.

- (a) There is hereby created a board of adjustment to have and exercise the following powers:
- (1) To hear and decide appeals from any order, requirement, decision, or determination made by the city and county joint airport zoning board in the enforcement of this article;
 - (2) To hear and decide special exceptions to the terms of this article upon which such board of adjustment under such regulations may be required to pass;
 - (3) To hear and decide specific variances.
- (b) The board of adjustment shall consist of five members, two appointed by the city, two appointed by the county and one, who shall be the chairman, appointed by the previous four

members from the city and the county. The members shall serve a term of two years and are removable for cause by the city and county upon written charges, after a public hearing.

- (c) The board of adjustment shall adopt rules for its governance and procedure in harmony with the provisions of this article. Meetings of the board of adjustment shall be held at the call of the chairman and at such times as the board of adjustment may determine. The chairman, or in his absence the acting chairman, may administer oaths and compel the attendance of witnesses. All hearings of the board of adjustment shall keep minutes of its proceedings showing the vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall immediately be filed in the office of the joint airport zoning board and shall be a public record.
- (d) The board of adjustment shall make written findings of fact and conclusions of law stating the facts upon which it relied when making its legal conclusions in reversing, affirming or modifying any order, requirement, decision or determination which comes before it under the provisions of this article.
- (e) The concurring vote of four members of the board of adjustment shall be necessary to reverse any order, requirement, decision or determination of the joint airport zoning board or to decide in favor of the applicant on any matter upon which it is required to pass under this article, or to effect any variation in this article.

(Code 1968, § 4-30)

Cross reference(s)—Boards, committees, commissions, § 2-86.

State law reference(s)—Board of adjustment, V.T.C.A., Local Government Code § 241.032.

Sec. 18-66. Appeals.

- (a) Any person aggrieved, or any taxpayer affected, by any decision of the joint airport zoning board made in its administration of this article, if of the opinion that a decision of the joint airport zoning board is an improper application of these regulations, may appeal to the board of adjustment.
- (b) All appeals under this article must be taken within a reasonable time as provided by the rules of the board of adjustment by filing with the joint airport zoning board a notice of appeal specifying the grounds thereof. The joint airport zoning board shall forthwith transmit to the board of adjustment all papers constituting the record upon which the action appealed from was taken.
- (c) An appeal shall stay all proceedings in furtherance of the action appealed from, unless the joint airport zoning board certifies to the board of adjustment, after the notice of appeal has been filed with it, that by reason of the facts stated in the certificate, a stay would, in the opinion of the joint airport zoning board, cause imminent peril to life or property. In such case, proceedings shall be stayed except by the board of adjustment on notice to the joint airport zoning board and on due cause shown.

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- (d) The board of adjustment shall fix a reasonable time for hearing appeals, give public notice and due notice to the parties in interest, and decide the same within a reasonable time. Upon the hearing any party may appear in person, by agent, or by attorney.
 - (e) The board of adjustment, in conformity with the provisions of this article, may reverse or affirm, in whole or in part, or modify the order, requirement, decision or determination appealed from and may make such order, requirement, decision or determination, as may be appropriate under the circumstances.

(Code 1968, § 4-31)

Sec. 18-67. Judicial review.

Any person aggrieved, or any taxpayer affected, by any decision of the board of adjustment may appeal to a court of competent jurisdiction, as provided by V.T.C.A., Local Government Code § 241.041.

(Code 1968, § 4-32)

Sec. 18-68. Enforcement and remedies.

The city or county may institute in any court of competent jurisdiction an action to prevent, restrain, correct or abate any violation of this article or of any order or ruling made in connection with its administration or enforcement including, but not limited to, an action for injunctive relief as provided by the Airport Zoning Act, V.T.C.A., Local Government Code § 241.044.

(Code 1968, § 4-33)

Secs. 18-69—18-99. Reserved.

ARTICLE IV. MINIMUM STANDARDS FOR FIXED BASE OPERATORS AND AIRPORT TENANTS AT THE PALESTINE MUNICIPAL AIRPORT⁵

Sec. 18-100. Minimum standards and requirements.

The city, as owner(s) of the Palestine Municipal Airport shall hereinafter be referred to as the lessor.

The following minimum standards and requirements for commercial aeronautical activities have been established in the public interest for the safe and efficient operation of the Palestine Municipal Airport; to enhance its orderly growth; to preclude the granting of an exclusive right to conduct an aeronautical activity in violation of Section 308(a) of the Federal Aviation Act of 1958; to conform to Title VI of the Civil Rights Act of 1964 and Part 21 of the Department of

⁵Editor's note(s)—Ord. No. O-5-01, Exh. B, adopted Mar. 12, 2001, did not specify manner of codification, hence; inclusion of these provisions as §§ 18-100 and 18-101 was at the discretion of the editor.

Transportation Regulations; and to assure to all lessees the availability of airport property on fair and reasonable terms and without unjust discrimination.

- (1) A fixed base operator is defined as any person, firm, or corporation performing any of the functions or furnishing any of the services as hereinafter set out for fixed base operators at the Palestine Municipal Airport. No person, firm, or corporation shall engage in any commercial activity as a fixed base operator as herein defined unless the same is done in full compliance with the standards, rules and regulations herein set forth.
- (2) An airport tenant is defined as any person, firm, or corporation leasing property at the Palestine Municipal Airport for aeronautical purposes who is not a fixed base operator. An airport tenant may hangar his aircraft on his leased property subject to the provisions of Category "L" or "M" as applicable.
- (3) All fixed base operators and airport tenants shall protect the public generally, the customers or clients of such fixed base operators, and the Palestine Municipal Airport from any and all lawful damages, claims, or liability and shall carry comprehensive general liability insurance in a company authorized to do business in the state with limits as prescribed in the respective categories, with the city named as an additional insured, which policies must be approved by the airport manager and a certificate of insurance thereof furnished to the airport manager. It is further understood that as circumstances in the future dictate, the city may require an increase in bodily injury and property damage insurance.
- (4) A fixed base operator, by submitting of an annual financial statement by February 28 for the previous calendar year, to the city, airport manager, shall satisfy the lessor that it is technically and financially able to perform the services of a fixed base operator. This shall include the responsibility for demonstrating continued financial solvency and business ability by the submitting of an annual balance sheet, credit references and any other proof that the lessor may require from time to time. In cases of doubt by the lessor to such ability of a fixed base operator, the lessor may conduct a hearing before persons designated by the city manager to determine appropriate action. In each instance, the lessor shall be the final judge as to the qualifications and financial ability of the lessee.

The lessor will not accept an original request to lease land area unless the proposed lessee puts forth in writing a proposal which sets forth the scope of operation he proposes, including the following:

- a. The services he/she will offer.
- b. The amount of land he/she desires to lease.
- c. The building space he/she will construct or lease.
- d. The number of aircraft he/she will provide.
- e. The number of persons he/she will employ.
- f. The hours of proposed operation.

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- g. The amount and types of insurance coverage he/she will maintain.
 - h. Evidence of his/her financial capability to perform and provide the above services and facilities.
- (5) Any person, firm or corporation capable of meeting the minimum standards set forth herein for any of the stated fixed base operator categories is eligible to become a fixed base operator at the airport, subject to the execution of a written lease for five years containing such terms and conditions as may be determined by the lessor. A fixed base operator or airport tenant shall not engage in any business or activity on the airport other than that authorized under his particular category or categories. Any fixed base operator desiring to extend his operation into more than one category or to discontinue operations in a category, shall first apply in writing to the lessor for permission to do so, setting forth in detail the reasons and conditions for the request. The lessor shall then grant or deny the request on such terms and conditions as the lessor deems to be prudent and proper under the circumstances. Each fixed base operator shall, unless otherwise provided by the municipality, provide his/her own personnel and equipment, and other requirements as herein stated upon land leased from the lessor.
- (6) All fixed base operators at said airport shall, unless otherwise provided by the municipality, provide ample lounges and rest rooms for their customers and shall make telephone service conveniently and readily available for public use.
- (7) All construction required of such operators shall be in accordance with design and construction standards required or established by the lessor for the facility or activity involved. Title to any and all buildings and appurtenances, which may be built on lessor property, shall revert to the lessor, when and if the subject lessee vacates the lease for any reason. (Alternate: When and if subject lessee vacates the lease for any reason, he/she may either remove said buildings at his/her expense within 30 days, or title will automatically pass to the lessor.) All operators shall be required to furnish the lessor payment and performance bonds commensurate with any construction required under the standards herein fixed or under any contract or lease by and between such operator and the lessor.
- (8) The rates or charges for any and all activities and services of such operators shall be determined by the operators, subject to the approval of the lessor, and subject, further, to the requirement that all such rates or charges shall be reasonable and be equally and fairly applied to all users of the services.
- (9) All operators at the airport shall be full time, financially sound and progressive business enterprises, with adequately manned and equipped facilities, including ample office facilities, and who observe normal or specifically required business hours.
- (10) All fixed base operators shall, at their own expense, pay all taxes and assessments against any buildings or other structures placed on the premises by them, as well as all taxes and assessments against the personal property used by them in their operations, unless provided by the municipality.

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- (11) All operators shall abide by and comply with all state, county and city laws and ordinances, the rules and regulations of the city, and the rules and regulations of the state and the Federal Aviation Administration (FAA).
 - (12) In the event the city constructs the physical plant facilities (hangars, etc.) for use by any operator under the provisions of any lease or other contract, such lease or contract with such operators shall be on such terms and conditions as to guarantee a full return of the investment within 15 years, plus interest and reasonable rental for use during such period.
 - (13) All operators shall provide and pay for, unless provided by the municipality, all lights, gas, electrical current, water, sewer charges and garbage collection charges used or incurred anywhere in or about the leased premises, and shall pay the charges made therefor by the suppliers thereof promptly when due.
 - (14) All contracts and leases between such operators and the city shall be subordinate to the provisions of any existing or future agreement(s) between the city and the United States, relative to the operation or maintenance of the airport.
 - (15) No fixed base operators shall sublease or sublet any premises leased by such operator from the lessor, or assign any such lease, without the prior written approval of the lessor, and any such subletting or assignment shall be subject to all of the minimum standards herein set forth.
 - (16) In the event the lessee sublets any portion of his/her lease, the sublessee must agree to assume the full obligations of the lease as set out herein and must agree to fully cooperate with the airport manager in seeing that these standards are complied with. The sublessee shall immediately comply with any reasonable request or direction of the airport manager as it relates to the enforcement of these standards.
 - (17) In the event that the lessee or sublessee fails to comply fully with these standards or fails to comply with the reasonable request or direction of the airport manager as it relates to these standards, said lessee or sublessee shall be in default. If said default continues for more than 30 days after notice of said default, the lessor may terminate the lease. Said lessee is responsible for the performance of the sublessee.
 - (18) Fixed base operators shall have the right to use common areas and facilities of the airport, including runways, taxiways, aprons, roadways, floodlights, landing lights, signals and other conveniences for the takeoff, flying and landing of aircraft of lessee.
 - (19) Beginning with the effective date of adoption of these minimum standards, leases to fixed base operators and airport tenants shall be limited to a maximum of ~~5~~40 years, including options. In addition, FBO leases shall, at the discretion of the lessor, be subject to review and reevaluation at each renewal. ~~See Appendix B- Fee Schedule. in relation to the Consumer Price Index. In this regard, when at the end of each renewal, the cost of living index is determined by the lessor to be higher than the previous renewal period, the rental terms thereof shall be increased to such percentage of increase or of said cost of living index. If at the end of each renewal period the said cost of living index has decreased, the lessor shall take no action to review or~~

~~reevaluate the lease. Airport tenants shall pay \$35.00 per month for the first ten years of the lease. It will be adjusted for the additional 15 years of the lease as follows: at the 11th year, the cost of living index (according to the guidelines set by the U.S. Department of Labor) increase from the tenth to the 11th year will be applied to the \$35.00. Subsequent yearly increases will be applied for the remaining term.~~

- (20) Lessees will, at all times during the continuance of the term of the lease and any renewal or extension thereof, conduct, operate and maintain for the benefit of the flying public, the fixed base operation provided for and described therein, and provide all parts and services as defined and set forth, and will make all such services available to the public and that it will devote its best efforts for the accomplishment of such purposes and that it will at all times charge fair, reasonable and not unjustly discriminatory prices to patrons and customers for all merchandise or materials and services furnished or rendered. Notwithstanding anything contained in a lease that may be or appear to the contrary, it is expressly understood and agreed that the rights granted thereunder are nonexclusive and the lessor reserves the right to grant similar privileges to another operator or operators upon formal application by that operator, and upon demonstration of compliance with paragraphs (4) and (5) herein.
- (21) All contracts and leases between such operators and the city shall be subordinate to the right of the city during time of war or national emergency to lease the landing area or any part thereof to the United States Government for military or naval use, and if any such lease is executed, the provisions of any contracts or leases between such operators and the city, insofar as they are inconsistent with the provisions of the lease to the government, shall be suspended.
- (22) Upon adoption of these standards, all leases entered into and any amendments to existing leases shall be in accordance with the standards. Present lease holders shall be granted three months to comply with all standards set forth.
- (23) The lessee shall remove from the airport or otherwise dispose of in a manner approved by the airport manager all garbage, debris, and other waste material (whether solid or liquid) arising out of its occupancy of the premises or out of its operations. Said lessee shall keep and maintain his/her leased premises in a neat and orderly manner as defined by the lessor. Any garbage, debris, or waste which may be temporarily stored in the open shall be kept in suitable garbage or waste receptacles, the same to be made of metal and equipped with tight fitting covers and to be of a design to safely and properly contain whatever may be placed therein. The lessee shall use extreme care when effecting removal of all such waste.
- (24) The city reserves the right to enter upon any premises leased to fixed base operators and airport tenants at reasonable times for the purpose of making such inspections as it may deem expedient to the proper enforcement of these minimum standards and for the proper enforcement of any covenant or condition of any contract or lease agreement of any fixed based operator or airport tenant.
- (25) The city recognizes the rights of any person, firm or corporation operating aircraft on the airport to perform services on its own aircraft with its own regular employees

(including, but not limited to maintenance, repair and fueling) that it may choose to perform. Aircraft fueling accomplished under this provision shall be in strict accordance with Category D(1) herein and any safety regulations and/or ordinance as referenced in paragraph (11).

- (26) All operations conducted at the airport will be conducted in the safest manner possible and for the maximum benefit of the flying public and the citizens of the surrounding area.
- (27) Where these standards call for a minimum square footage of space, and the applicant is permitted to conduct more than one activity, then such applicant shall have the minimum square footage for that activity which requires the greatest minimum square footage.
- (28) *Standard lease provisions.* All leases, subleases, contracts, or franchises for airport property, or for airport operations or use, shall contain the following standard provisions:
- a. The right to conduct aeronautical activities for furnishing services to the public is granted the lessee subject to lessee agreeing:
 1. To furnish said services on a fair, equal and not unjustly discriminatory basis to all users thereof, and
 2. To charge fair, reasonable and not unjustly discriminatory prices for each unit or service; provided that the lessee may be allowed to make reasonable and nondiscriminatory discounts, rebates, or other similar types of price reductions to volume purchasers.
 - b. The lessee for himself/herself, his/her personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that: (1) no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land and the furnishing of services thereon, no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination, (3) that the lessee shall use the premises in compliance with all other requirements imposed by or pursuant to 49 CFR Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation, and as said regulations may be amended.
 - c. That in the event of breach of any of the preceding nondiscrimination covenants, lessor shall have the right to terminate the license, lease, permit, etc., and to reenter and repossess said land and the facilities thereon, and hold the same as if said lease had never been made or issued.
 - d. During the time of war or national emergency, lessor shall have the right to lease the landing area or any part thereof to the United States Government for military or naval use, and, if such lease is executed, the provisions of this instrument,

insofar as they are inconsistent with the provisions of the lease to the government, shall be suspended.

- e. No right or privilege has been granted which would operate to prevent any person, firm or corporation operating aircraft on the airport from performing any services on its own aircraft with its own regular employees (including but not limited to maintenance, repair, and fueling) that it may choose to perform.
- f. It is understood and agreed that nothing herein contained shall be construed to grant or authorize the granting of an exclusive right forbidden by Section 308(a) of the Federal Aviation Act of 1958 or for aeronautical activities such as but not limited to:
 - 1. Charter operations.
 - 2. Pilot training.
 - 3. Aircraft rental.
 - 4. Aerial photography.
 - 5. Crop dusting.
 - 6. Sale of aviation petroleum products.
 - 7. Air carrier operations.
 - 8. Aircraft sales, and service incidental thereto.
 - 9. Any other activity which, because of its direct relationship to the operation of aircraft, can be regarded as an aeronautical activity.
- g. Lessor reserves the right, in a reasonable and nondiscriminatory manner, to further develop or improve the landing area of the airport as it sees fit, regardless of the desires or views of lessee and without interference or hindrance. However, lessor shall notify lessee in writing, 60 days prior to planned development.
- h. Lessor shall have the right, but not the obligation, to maintain and keep in repair the landing area of the airport and all publicly owned facilities of the airport, together with the right to direct and control all activities of lessee in this regard.
- i. All hangars, buildings, properties or land on the airport, shall be maintained in a clean, attractive, weed free, well painted, junk free condition.

If an operator or lessee has an area where it normally keeps damaged aircraft, aircraft parts, construction fixtures, and jigs, barrels, containers, or other unattractive items, lessee shall enclose such an area with a screen that will hide such area from public view.
- j. Lessor reserves the right to take any action it considers necessary to protect the aerial approaches of the airport against obstructions together with the right to prevent the erection of any building or other structure on or adjacent to the airport which would limit the usefulness of the airport or constitute a hazard to aircraft.

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- k. This agreement shall be subordinate to the provisions of any existing or future agreement between lessor and the United States, relative to the operation or maintenance of the airport.
 - l. Incorporated into this agreement, by reference and as though set forth herein verbatim, are the minimum standards for fixed base operators and airport tenants adopted by the lessor. Such minimum standards shall be lawful, reasonable and nondiscriminatory. Further, all parties hereto agree to comply with any and all laws and regulations, including those of the FAA, and will not permit the premises covered by this agreement to be used for any unlawful or improper purpose.
 - m. Each lessee shall at all times have in effect liability insurance for all of lessee's operations in the amounts set out in the standard for the particular activity in question and referenced in the minimum standards. Such insurance policies shall further name the lessor as additional insureds. Certificates of such insurance shall be furnished by lessee to the lessor and a certificate presently then in effect shall be on file at all times.
 - n. The standards and regulations enacted by the governmental agency responsible for the operation of the airport, now or in the future, may provide for use charges to be paid by those using, occupying, or conducting operations at the airport. Such charges may be based upon square footage, receipts or other reasonable basis, to be established by such standards and regulations. Lessee agrees to pay such charges as same are due and owing under any such standards or regulations now or hereafter in effect. Any such use charges shall be lawful, reasonable and nondiscriminatory.
 - o. Lessor may, on account of the breach of any provision hereof, including the standards and regulations incorporated herein by reference, terminate this agreement and eject the party in violation in accordance with the provisions of this lease. (Details concerning insolvency, notice, and other matters concerning lessee's default may be in a particular lease.)
 - p. Lessee agrees to save and hold harmless the lessor and its agents, servants, and employees of and from any and all liabilities, expenses, causes of action, damages and attorney's fees resulting or to result from any of lessee's businesses, operations, occupancy, or use of the airfield, or resulting from any act or omission of lessee's agents, servants or employees. And this indemnity agreement shall apply and protect such lessor and its agents, servants, and employees, even though it be contended, or even established, that said lessor or its agents, servants, or employees were negligent, or that their conduct or omission in any way caused or contributed to any such liability, expense, damage, cause of action, or attorney's fees.
 - q. The purpose of the lease and the operations to be conducted by lessee or sublessee, and the identity of the premises to be occupied, are set forth in this

lease. No other operations, business, or occupancy may be had or done without the additional written consent of the lessor.

- r. This agreement may not be assigned, in whole or in part, nor may the premises described herein be subleased, in whole or in part, without the prior written consent of the lessor. Such consent shall not be unreasonably withheld.
- s. In the event lessee becomes insolvent, or the subject of any kind or chapter of bankruptcy proceeding, or if a receiver, assignee, or other liquidating officer is appointed for the business of lessee, then lessor may cancel this lease at lessor's option upon giving written notice to lessee.

Sec. 18-101. Fixed base operator categories.

(a) *Category A. Aircraft sales.* Any lessee desiring to engage in the sale of new or used aircraft must lease and/or provide as a minimum the following:

- (1) Land. Basic requirement: The leasehold shall contain adequate space for building, storage of aircraft, and display.
- (2) Buildings. Basic requirement: Lease or construct adequate space of properly lighted, air conditioned, and heated space for office, public lounge, rest rooms and public use telephone.
- (3) Personnel. Basic requirement: One person having a current commercial pilot certificate with ratings appropriate for the types of aircraft to be demonstrated.
- (4) Dealerships. Basic requirement: New aircraft dealers shall hold an authorized factory or subdealership. All aircraft dealers shall hold a dealership license or permit if required by state.
- (5) Aircraft. Basic requirement: A dealer of new aircraft shall have available or on call one current model demonstrator.
- (6) Services. Basic requirement: Provide for adequate parts and servicing of aircraft and accessories during warranty periods (new aircraft).
- (7) Hours of operation. The normal operating hours will be at the operator's discretion, but he/she should be reasonably available to the public.

(8) Insurance coverage.

Aircraft liability

a. Public liability insurance

- 1. Bodily injury \$500,000.00 each person
\$1,000,000.00 total aggregate liability as to any one accident
- 2. Property damage \$500,000.00 each accident
\$1,000,000.00 total aggregate liability under the policy

Comprehensive public liability and property damage

a. Public liability insurance

1. Bodily injury \$500,000.00 each person
\$1,000,000.00 total aggregate liability as to any one accident
2. Property damage \$500,000.00 each accident
\$1,000,000.00 total aggregate liability under the policy

Note: The above coverages should include aircraft held for sale and demonstration by the lessee but owned by others. Hangar keepers liability for nonowned aircraft left in lessee's care if appropriate.

Products liability: \$500,000.00 each accident (if lessee provides aircraft services)
\$1,000,000.00 total aggregate liabilities to any one accident.

Amounts under the basic insurance coverage may be increased if warranted by the city.

(b) *Category B. Aircraft rental.* Any lessee desiring to engage in the rental of aircraft to the public must provide as a minimum the following:

- (1) Land. Basic requirement: The leasehold shall contain adequate space for aircraft parking and building.
- (2) Buildings. Basic requirement: Lease or construct building which will provide adequate properly air conditioned, heated and lighted space for office, public lounge, rest rooms and public use telephone.
- (3) Personnel. Basic requirement: One person having a current commercial pilot certificate with appropriate ratings.
- (4) Aircraft. Basic requirement: One airworthy aircraft owned or leased in writing to the lessee.
- (5) Hours of operation. Basic requirement: The hours of operation shall be determined by lessee with approval of lessor.
- (6) Insurance coverage for owned for leased aircraft.

Aircraft liability

a. Public liability insurance

1. Bodily injury \$500,000.00 each person
\$1,000,000.00 total aggregate liability as to any one accident
1. Property damage \$500,000.00 each accident
\$1,000,000.00 total aggregate liability under the policy

Comprehensive public liability and property damage

a. Public liability insurance

1. Bodily injury \$500,000.00 each person

\$1,000,000.00 total aggregate liability as to any one accident

2. Property damage \$500,000.00 each accident

\$1,000,000.00 total aggregate liability under the policy

Amount under basic coverage may be increased if warranted by the city.

- (c) *Category C. Flight training.* Any lessee desiring to engage in pilot flight instruction shall provide as a minimum the following:

- (1) Land. Basic requirement: The leasehold shall contain adequate space for lessee's buildings and aircraft tie downs.
- (2) Buildings. Basic requirement: Lease or construct a building having adequate properly air conditioned, lighted and heated floor space to provide classroom, briefing room, pilot lounge, rest rooms, office space and public use telephone.
- (3) Personnel. Basic requirement: One person properly certificated by FAA as flight instructor to cover the type of training offered.
- (4) Aircraft. Basic requirement: The lessee shall own or have leased to him/her in writing one properly certificated aircraft equipped for flight instruction.
- (5) Hours of operation. Basic requirement: The hours of operation shall be determined by lessee with the approval of the lessor.
- (6) Insurance coverage for owned or leased aircraft.

Aircraft liability

- a. Public liability insurance

1. Bodily injury \$500,000.00 each person
\$1,000,000.00 total aggregate liability as to any one accident
2. Property damage \$500,000.00 each accident
\$1,000,000.00 total aggregate liability under the policy

Comprehensive public liability and property damage

- a. Public liability insurance

1. Bodily injury \$500,000.00 each person
\$1,000,000.00 total aggregate liability as to any one accident
2. Property damage \$500,000.00 each accident
\$1,000,000.00 total aggregate liability under the policy

Amount under basic coverage may be increased if warranted.

- (d) *Category D. Public aircraft fuels and oil dispensing service.* Lessees desiring to dispense aviation fuels and oil and provide other related services, such as tie down and parking, shall provide as a minimum the following services and facilities:

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- (1) Land. Basic requirement: The leasehold shall contain adequate land to provide for buildings, aircraft parking area equipped with six tie downs and dispensing equipment. Increased land area to provide for additional facilities such as paved aircraft parking area, private auto parking, paved access walkway for the public, additional tie downs, etc.
 - (2) Buildings. Basic requirement: Construct or lease a building providing adequate properly lighted, air conditioned and heated floor space for office, public lounge, rest rooms and public use telephone.
 - (3) Personnel. Basic requirement: One properly trained person shall be on duty during operating hours.
 - a. Sufficient properly trained personnel shall be available to serve the public 24 hours per day. The concessionaire shall require attendants to be courteous and furnish good, prompt and efficient service at all times and shall provide service in a fair, equal and nondiscriminatory basis to all airport users.
 - b. Solicitation of fueling services in a loud, boisterous, offensive or obstructive manner shall not be permitted. The concessionaire and his/her employees will maintain a friendly and cooperative, though competitive, relationship with other companies engaged in like business.
 - (4) Aircraft service equipment. Basic requirement: Emergency starting equipment, adequate fire extinguishers.
 - (5) Services. Basic requirement: Fuel, park and tie down aircraft, oil. Rental car service. Operate UNICOM. Courtesy car availability is desirable.
 - (6) Fuel. Basic requirement: Lessee shall provide at least two grades of aircraft fuel, including 100 octane and Jet A. MOGAS, when provided, shall meet the designated FAA specifications for the type of fuel being provided and shall be supplied only to those aircraft that have been certified under the appropriate supplemental type certificate to use this fuel.
 - (7) Fuel facilities. Basic requirement: Two metered filter-equipped dispensers fixed or mobile for dispensing two grades of fuel and separate dispensing pumps and meters for each grade of fuel are required.
 - a. Trucks. If lessee elects to utilize mobile dispensing trucks, such trucks shall have a minimum capacity of 800 gallons for 100 octane and 2,000 gallons for Jet A. Trucks shall be properly maintained, operated and equipped in accordance with applicable FAA, city and National Fire Protection Association recommendations, requirements and regulations.
 - b. Tank farm. If lessee elects to utilize fixed storage tanks, lessee shall furnish at least two aircraft fuel storage tanks with a capacity of 5,000 gallons.
 1. Fuel storage tanks shall be above ground unless otherwise authorized and such installations shall be in a location approved by the lessor in the fuel farm and shall comply with applicable, uniform Building Code Standards,

fire codes and ordinances of the city and recommendations of the National Fire Protection Association. Aviation fuel tanks shall have capabilities for cleaning and maintenance.

2. Fuel storage tanks shall comply with requirements set out by Environmental Protection Agency, the FAA, and the state.
 3. All plans and specifications for improvements on tank farm (including landscaping) shall be prepared and presented to the lessor and shall require the written approval of the lessor before any construction or installation may be undertaken.
 4. All construction or improvements on tank farms shall conform with any general architectural requirements of the city and shall be undertaken in accordance with local, state and federal codes, ordinances and regulations now in force or hereinafter prescribed by authority of law. Lessee shall, at its sole cost and expense, obtain all necessary building permits and all labor and material bonds.
 5. Lessee shall, at its sole cost and expense, maintain fuel farm, all improvements thereon, and all appurtenances thereto, in a presentable condition consistent with good business practice and equal in appearance and character to other similar improvements on said airport. Lessee shall repair all damages caused by its employees, patrons, or their operation thereon; shall maintain and repair all equipment thereon; and shall keep its premises in a safe, neat, sightly and good physical condition.
 6. Lessee shall, in the event it shall become necessary to make physical changes on its premises, promptly make such changes and installations at its sole expense, subject to the approval of the lessor, who in their reasonable discretion, shall be the sole judge of the quality of maintenance. Upon written notice by lessor to lessee, lessee shall be required to perform whatever reasonable maintenance lessor deems necessary. If said maintenance is not undertaken by lessee within ten days after receipt of written notice, lessor shall have the right to enter upon the demised premises and perform the necessary maintenance, the cost of which shall be borne by lessee.
 7. All fuel storage tanks on airport property, owned by lessee or a tenant shall, at the termination of the lease, be removed by the owner of the tank at his/her expense.
- (8) Hours of operation. Basic requirement: Fueling service shall be provided from 8:00 a.m. to sundown seven days a week. On call service shall be provided during nonscheduled hours of operation.
- (9) Insurance coverage.
- Comprehensive public liability and property damage

a. Public liability insurance

1. Bodily injury \$500,000.00 each person
\$1,000,000.00 total aggregate liability as to any one accident
2. Property damage \$500,000.00 each accident
\$1,000,000.00 total aggregate liability under the policy

Amount under basic coverage may be increased if warranted by the lessor.

- (10) Fire extinguishers will be readily available during all refueling or defueling. Personnel will be trained in the use of such equipment as well as in rescue operations. Such persons will attend necessary training provided by local fire marshal or the city.
 - (11) Static discharging ground wires will be attached to the aircraft, the fuel tank, or refueling pit, and to zero potential (ground) before any fueling operations. Grounding rods of sufficient length to reach permanent underground moisture will be conveniently located.
 - (12) Adequate fuel filters and water traps will be installed on all fuel handling equipment and a suitable program for periodically conducting water contamination checks will be established and followed.
 - (13) FBO personnel used to dispense aircraft fuels and lubricants will be trained in the proper recognition of aircraft fuel tank markings, kinds and grades of aircraft fuels and lubricants, and safety precautions necessary for fuel handling. Such personnel must, while servicing aircraft, wear sufficient identification so that the public may know which person is authorized to dispense petroleum products.
 - (14) Automatic fuel dispensers may be utilized with appropriate disclaimers being provided by lessee.
 - (15) In all matters related to aircraft fueling safety and servicing, the provisions of the most recent NFPA Manual 407 "Standard for Aircraft Fuel Servicing," together with American Petroleum Institute quality control standards, as such documents may be amended from time to time, shall be used as the basis for all airport fueling operations. Copies thereof are on file with the airport manager. In the event of conflict between such documents and the standards set forth elsewhere herein, the standards set forth herein shall control.
- (d(1)) *Category D(1). Nonpublic aircraft fuels and oil dispensing.* Lessees desiring to conduct nonpublic aircraft fuel and oil dispensing shall meet the following minimum standards and provide the following minimum facilities:

Restriction: Lessees holding nonpublic aircraft fuels dispensing permits shall not sell or deliver aircraft fuels to anyone other than lessee. Fueling of any aircraft not owned or leased by lessee (except in case of emergency) shall result in immediate revocation of the right to bring fuel upon, or store fuel on, airport property. Upon request by lessor, lessee shall provide evidence of ownership or lease of any aircraft being fueled. A corporation may not be formed for the expressed purpose of providing fuel services under this standard.

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- (1) Personnel. Basic requirement: Personnel engaged in dispensing aircraft fuel shall be properly trained with regard to safety procedures.
 - (2) Fuel. Basic requirement: Lessee shall provide only the type or grade of fuel required to service the lessee's aircraft.
 - (3) Fuel facilities. Basic requirement: Metered, filter-equipped dispensers fixed or mobile for dispensing grades of gasoline required. Separate dispensing pumps and meters for each grade of fuel are required.
- (a) Trucks. If lessee elects to utilize mobile dispensing trucks, such trucks shall have a minimum capacity of 250 gallons for each fuel type provided. Trucks shall be properly maintained, operated and equipped in accordance with applicable FAA, city and National Fire Protection Association recommendations, requirements and regulations.
 - (b) Tank farm.
 - a. Fuel storage tanks shall be above ground unless otherwise authorized and such installations shall be in a location approved by the airport manager in the fuel farm, and shall comply with applicable, uniform building code standards, fire codes and ordinances of the city and recommendations of the National Fire Protection Association. Aviation fuel tanks shall have capabilities for cleaning and maintenance.
 - b. Fuel storage tanks shall comply with requirements set out by Environmental Protection Agency, the FAA, and the state.
 - c. All plans and specifications for improvements on tank farm (including landscaping) shall be prepared and presented to the airport manager and shall require the written approval of the city before any construction or installation may be undertaken.
 - d. All construction or improvements on tank farms shall conform with any general architectural requirements of the city and shall be undertaken in accordance with local, state and federal codes, ordinances and regulations now in force or hereinafter prescribed by authority of law. Lessee shall, at its sole cost and expense, obtain all necessary building permits and all labor and material bonds.
 - e. Lessee shall, at its sole cost and expense, maintain fuel farm, all improvements thereon, and all appurtenances thereto, in a presentable condition consistent with good business practice and equal in appearance and character to other similar improvements on said airport. Lessee shall repair all damages caused by its employees, patrons, or their operation thereon; shall maintain and repair all equipment thereon; and shall keep its premises in a safe, neat, slightly and good physical condition.
 - f. Lessee shall, in the event it shall become necessary to make physical changes on its premises, promptly make such changes and installations at its sole expense, subject to the approval of the lessor, who in their reasonable discretion, shall be the sole judge of the quality of maintenance. Upon written notice by lessor to

lessee, lessee shall be required to perform whatever reasonable maintenance lessor deems necessary. If said maintenance is not undertaken by lessee within ten days after receipt of written notice, lessor shall have the right to enter upon the demised premises and perform the necessary maintenance, the cost of which shall be borne by lessee.

(4) Insurance coverage.

Aircraft liability

a. Public liability insurance

1. Bodily injury \$500,000.00 each person
\$1,000,000.00 total aggregate liability as to any one accident
2. Property damage \$500,000.00 each accident
\$1,000,000.00 total aggregate liability under the policy

Amount under basic coverage may be increased if warranted by lessor.

- (5) Fire extinguishers will be readily available during all refueling or defueling. Personnel will be trained in the use of such equipment as well as in rescue operations. Such persons will attend appropriate training provided by local fire marshal or the city.
 - (6) Static discharging ground wires will attached to the aircraft, the fuel tank, or refueling pit, and to zero potential (ground) before any fueling operations. Grounding rods of sufficient length to reach permanent underground moisture will be conveniently located.
 - (7) Adequate fuel filters and water traps will be installed on all fuel handling equipment and a suitable program for periodically conducting water contamination checks will be established and followed.
 - (8) In all matters related to aircraft fueling safety and servicing, the provisions of the most recent NFPA Manual 407 "Standards for Aircraft Fuel Servicing," together with American Petroleum Institute quality control standards, as such documents may be amended from time to time, shall be used as the basis for all airport fueling operations. Copies thereof are on file with the airport manager. In the event of conflict between such documents and the standards set forth elsewhere herein, the standards set forth herein shall control.
- (e) *Category E. Airframe and/or power plant repair.* Any lessee desiring to engage in airframe and/or power plant repair service must provide as a minimum the following:
- (1) Land. Basic requirement: The leasehold shall contain an area of adequate space for all buildings and temporary parking of aircraft. Increased land area to provide for additional facilities such as private auto parking, paved ramp area to appropriate lot line, paved pedestrian access walkway, etc.

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- (2) Buildings. Basic requirement: Lease or construct a building sufficient to provide adequate shop and hangar space meeting local and state industrial code requirements plus adequate office space. Provide public use telephone.
 - (3) Personnel. Basic requirement: One person currently certified by FAA with ratings appropriate for work being performed who may hold an airframe and/or power plant rating.
 - (4) Hours of operation. Basic requirement: The hours of operation shall be determined by lessee with the approval of the lessor.
 - (5) Equipment. Basic requirement: Sufficient equipment, tools, supplies and availability of parts to perform maintenance in accordance with manufacturers recommendations or equivalent. Demonstrate the ability to and assume responsibility for promptly removing from the public landing area any disabled aircraft as soon as permitted by cognizant federal and/or state authorities.
 - (6) Insurance coverage.

Comprehensive public liability and property damage

a. Public liability insurance

1. Bodily injury \$500,000.00 each person
\$1,000,000.00 total aggregate liability as to any one accident
2. Property damage \$500,000.00 each accident
\$1,000,000.00 total aggregate liability under the policy

Products liability: \$500,000.00 each accident (if lessee provides aircraft services).
\$1,000,000.00 total aggregate liabilities to any one accident.

Amounts under the basic insurance coverage may be increased if warranted by the city.

- (f) *Category F. Air taxi service.* Lessees desiring to engage in air taxi service must hold an FAA Air Taxi-Commercial Operator Certificate with ratings appropriate to the functions to be accomplished, and provide as a minimum the following:
 - (1) Land. Basic requirement: The leasehold shall contain adequate land for building.
 - (2) Buildings. Basic requirement: Lease or construct a building providing a minimum of adequate properly heated, air conditioned and lighted space for office, public lounge, rest rooms and public use telephone.
 - (3) Personnel. Basic requirement: One FAA certificated commercial pilot who is appropriately rated to conduct air taxi service offered.
 - (4) Aircraft. Basic requirement: One four-place aircraft meeting all the requirements of the air taxi/commercial operator certificate held. Note: Aircraft shall be owned or leased by agreement in writing and meet all the relevant requirements of Part 135 of the FAA Regulations.

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- (5) Hours of operation. Basic requirement: The hours of operation shall be determined by lessee with the approval of the lessor. Provide on call service during nonoperating hours.

- (6) Insurance coverage.

Aircraft liability

- a. Public liability insurance

1. Bodily injury \$500,000.00 each person
\$1,000,000.00 total aggregate liability as to any one accident
2. Property damage \$500,000.00 each accident
\$1,000,000.00 total aggregate liability under the policy

Comprehensive public liability and property damage

- a. Public liability insurance

1. Bodily injury \$500,000.00 each person
\$1,000,000.00 total aggregate liability as to any one accident
2. Property damage \$500,000.00 each accident
\$1,000,000.00 total aggregate liability under the policy

Amounts under the basic insurance coverage may be increased if warranted by the lessor.

- (g) *Category G. Radio, instrument, or propeller repair service.* Lessees desiring to provide a radio, instrument or propeller repair service must hold an FAA repair station certificate and ratings for same and provide as a minimum the following:

- (1) Land. Basic requirement: The leasehold shall contain adequate land for building.
- (2) Buildings. Basic requirement: Construct or lease building providing adequate properly lighted, air conditioned and heated space to house office, rest room facilities and minimum shop and hangar space as required for FAA repair shop certification. Public use telephone.
- (3) Personnel. Basic requirement: One FAA certificated repairman qualified in accordance with the terms of the repair station certificate.
- (4) Hours of operation. Basic requirement: The hours of operation shall be determined by lessee and approved by lessor. Provide on call service during weekends.
- (5) Insurance coverage.

Aircraft liability

- a. Public liability insurance

1. Bodily injury \$500,000.00 each person

\$1,000,000.00 total aggregate liability as to any one accident

2. Property damage \$500,000.00 each accident

\$1,000,000 total aggregate liability under the policy

Comprehensive public liability and property damage

- a. Public liability insurance

1. Bodily injury \$500,000.00 each person

\$1,000,000 total aggregate liability as to any one accident

2. Property damage \$500,000.00 each accident

\$1,000,000.00 total aggregate liability under the policy

Amounts under the basic insurance coverage may be increased if warranted by the lessor.

- (h) *Category H. Aerial applications(long term)*. Lessees desiring to engage in aerial application operations must hold an agricultural aircraft operator certificate issued by the FAA; comply with requirements of the state and political subdivisions thereof; and said operations must be negotiated with the lessor.

- (j) *Category J. Specialized commercial flight services*. Lessees desiring to engage in the specialized commercial air activities including but not limited to those listed below may provide as a minimum the following:

Banner towing and aerial advertising

Aerial photography or survey

Fire fighting or fire patrol

Powerline or pipe line patrol

Any other operations specifically excluded from Part 135 of the Federal Aviation Regulations.

- (1) Land. Basic requirement: Leasehold shall contain adequate land to provide for buildings, aircraft parking and tie downs.
- (2) Buildings. Basic requirement: Construct or lease adequate properly heated and lighted floor space for office. Telephone.
- (3) Personnel. Basic requirement: One person having a current commercial pilot certificate with appropriate ratings for the aircraft to be flown.
- (4) Aircraft. Basic requirement: One properly certificated aircraft owned or leased in writing to the lessee.
- (5) Hours of operation. Basic requirement: The normal operating hours will be at the operators discretion and approval by the airport manager, but he/she should be reasonably available to the public.

(6) Insurance coverage for owned or leased aircraft.

Aircraft liability

a. Public liability insurance

1. Bodily injury \$500,000.00 each person
\$1,000,000.00 total aggregate liability as to any one accident
2. Property damage \$500,000.00 each accident
\$1,000,000.00 total aggregate liability under the policy

Comprehensive public liability and property damage

a. Public liability insurance

1. Bodily injury \$500,000.00 each person
\$1,000,000 total aggregate liability as to any one accident
2. Property damage \$500,000.00 each accident
\$1,000,000.00 total aggregate liability under the policy

Amounts under the basic insurance coverage may be increased if warranted by the lessor.

(k) *Category K. Multiple services.* Lessees desiring to engage in two or more commercial aeronautical activities must provide as a minimum the following:

- (1) Land. Basic requirement: The leasehold for multiple activities shall contain adequate space for specific use area requirements established for the service to be offered (specific use spaces need not be additive where combination use can be reasonably and feasibly established).
- (2) Buildings. Basic requirement. Lease or construct a building containing adequate space to provide properly lighted, air conditioned and heated space for specific use area requirements established for the service to be offered (specific use space need not be additive where combination use can be reasonably and feasibly established). Repair stations must provide minimum shop and hangar space as required by FAA repair shop certification.
- (3) Personnel. Basic requirement: Multiple responsibilities may be assigned to personnel to meet personnel requirements for all activities.
- (4) Aircraft. All requirements for aircraft for the specific activities to be engaged in must be provided; however, multiple uses can be made of all aircraft, except aerial applicator aircraft, to meet these requirements. In order to meet these requirements, however, a minimum of two aircraft must be owned or under the direct control of the lessee and based on the lessee's leasehold.
- (5) Equipment. All equipment, specifically required for each activity, must be provided.

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- (6) Services. All services specifically required for each activity must be provided during the hours of operations.
 - (7) Hours of operation. The lessee will adhere to the operating schedule as required for each activity.
 - (8) Insurance coverage. The lessee will obtain the highest single coverage in the amounts established for each type of insurance required for the specific activity.
 - (l) *Category L. Flying clubs.* In an effort to foster and promote flying for pleasure, develop skills in aeronautics, including pilotage, navigation, and an awareness and appreciation of aviation requirements and techniques, the category of flying clubs is added to the standards of the airport.

All flying clubs desiring to base their aircraft and operate on the airport must comply with the applicable provisions of these standards and requirements. However, they shall be exempt from regular fixed base operator requirements upon satisfactory fulfillment of the conditions contained herein.

- (1) The club shall be a nonprofit entity (corporation, association or partnership) organized for the express purpose of providing its members with aircraft for their personal use and enjoyment only. The ownership of the aircraft must be vested in the name of the flying club (or owned proportionately by all of its members). Each member must be a bonafide share owner of the aircraft or a stockholder in the corporation. The property rights of the members of the club shall be equal and no part of the net earnings of the club will inure to the benefit of any member in any form (salaries, bonuses, etc.). The club may not derive greater revenue from the use of its aircraft than the amount necessary for the operations, maintenance and replacement of its aircraft.
- (2) Flying clubs may not offer or conduct charter, air taxi, or rentals of aircraft operations. They may not conduct aircraft flight instruction except for regular members, and only members of the flying club may act as pilot in command of the aircraft except when receiving dual instruction. No flying club shall permit its aircraft to be utilized for the giving of flight instruction to any person, including members of the club owning the aircraft, when such person pays or becomes obligated to pay for such instructions, except when instruction is given by a lessee based on the airport who provides flight training. Any qualified mechanic and/or instructor who is a registered member and part owner of the aircraft owned and operated by a flying club shall not be restricted from doing maintenance work and/or giving instruction in aircraft owned by the club, so long as the club does not become obligated to pay for such maintenance work or instruction, except that such mechanics and instructors may be compensated by credit against payment of dues or flight time.
- (3) All flying clubs and their members are prohibited from leasing or selling any goods or services whatsoever to any person or firm other than a member of such club at the airport except that said flying club may sell or exchange its capital equipment.
- (4) A flying club shall abide by and comply with all federal, state and local laws, ordinances, regulations and the rules and regulations of this airport management.

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- (5) The flying club, with its permit request, shall furnish the airport management a copy of its charter and by-laws, articles of association, partnership agreement or other documentation supporting its existence; a roster, or list of members, including names of officers and directors, and investment share held by each member to be revised on a semiannual basis; evidence of insurance in the form of a certificate of insurance with hold harmless clause in favor of the airport, its officers and employees (ten days' prior notice of cancellation shall be filed with airport management); number and type of aircraft; evidence that aircraft are properly certificated; evidence that ownership is vested in the club; and operating rules of the club. In addition, the club shall maintain a set of books showing all club income and expenses. Said books shall be available for inspection by airport management to determining compliance with this provision.
- (6) Insurance coverage.
- Comprehensive public liability and property damage
- a. Public liability insurance
1. Bodily injury \$500,000.00 each person
\$1,000,000.00 total aggregate liability as to any one accident
 2. Property damage \$500,000.00 each accident
\$1,000,000.00 total aggregate liability under the policy
- (7) A flying club which violates any of the foregoing, or permits one or more members to do so, will be notified in writing of the violation and given ten days in which to correct said violation. Should such violation not be corrected within ten days, a public hearing will be held for the purpose of considering termination of tenancy.
- (m) *Category M. Airport tenant.* A person having the use designation of "airport tenant" shall be limited to the following and only the following uses:
- Storage of aircraft and nonhazardous personal property and service and maintenance on aircraft.
- Such person may provide fuel for owned or leased aircraft, but only after meeting the requirements of (D(1)) "nonpublic aircraft fuels and oil dispensing."
- (1) Insurance coverage.
- Aircraft liability
- a. Public liability insurance
1. Bodily injury \$500,000.00 each person
\$1,000,000.00 total aggregate liability as to any one accident
 2. Property damage \$500,000.00 each accident
\$1,000,000.00 total aggregate liability under the policy
- Comprehensive public liability and property damage

a. Public liability insurance

1. Bodily injury \$500,000.00 each person
\$1,000,000.00 total aggregate liability as to any one accident
2. Property damage \$500,000.00 each accident
\$1,000,000.00 total aggregate liability under the policy

Amounts under the basic insurance coverage may be increased if warranted by the lessor.

- (2) Due to the vast variety of single and multi-occupancy hangars, a single, minimum standard for building and acreage is not established. Therefore, each application under this standard will be considered on its own merits.

(Ord. No. O-5-01, Exh. B, 3-12-2001)

Chapter 34 CEMETERIES¹

ARTICLE I. IN GENERAL

Sec. 34-1. Interment of bodies in cemeteries required.

It shall be unlawful for any person to bury or inter the body of any deceased person at any place within the city except in a regularly dedicated cemetery.

(Code 1968, § 8-2)

Sec. 34-2. Hours restricted.

It shall be unlawful for any person to enter, go into or remain in any cemetery which is located in the city between the hours of 8:00 p.m. and 6:00 a.m.

(Code 1968, § 8-1)

Sec. 34-3. Right of exclusion.

The city council shall have the right to exclude from the cemetery grounds any person who shall persist in disobeying any of the sections of this chapter or other rules or regulations governing the cemetery.

(Code 1968, § 8-9)

Sec. 34-4. Removal of offensive structures.

If any monument, vault, effigy or enclosure or any structure whatever or any inscription shall be placed in or upon any lot which shall be determined by the authorities of the cemetery to be offensive, improper or injurious to the appearance of the surrounding lots or grounds, they shall enter upon such lot and remove the offensive or improper object or inscription.

(Code 1968, § 8-11)

¹Cross reference(s)—Possession of open containers of alcoholic beverages in public places, § 10-4; streets, sidewalks and other public places, ch. 86.

State law reference(s)—Cemeteries, V.T.C.A., Health and Safety Code §§ 711.001 et seq., 713.011 et seq.

Sec. 34-5. Operation of vehicles.

It shall be unlawful for any person to drive or operate any vehicle upon the lots, lawns or walks of any cemetery within the city, except for city maintenance vehicles.

(Code 1968, § 8-3)

Sec. 34-6. Grades of lots.

The grades of lots within the cemetery, once established, shall not be changed without the consent of the **Parks & Recreation** director ~~of public works~~.

(Code 1968, § 8-4)

Sec. 34-7. Boundary markers.

All boundary markers within the cemetery set by the **Parks & Recreation** director ~~of public works~~ shall remain undisturbed.

(Code 1968, § 8-5)

Sec. 34-8. Signs or advertisements.

No signs indicating that a lot or vault is for sale or signs, cards or advertisements of stonecutters, undertakers or any person shall be permitted within the cemetery.

(Code 1968, § 8-6)

Sec. 34-9. Enclosures, ornaments prohibited.

Enclosures of any kind, curbing or coping around the lot, ornaments, chairs, settees, vases, glass jars, pitchers, artificial flowers, toys, watering cans or other articles that may be considered objectionable by the city are prohibited within the cemetery. Flags which extend more than 24 inches above ground level are not permitted. The right to remove such articles without notice to lot holders is reserved by the city.

(Code 1968, § 8-7; Ord. No. O-08-12, § I, 2-27-2012; Ord. No. O-22-17 , § I, 6-12-2017; Ord. No. O-15-21 , § I, 4-12-2021)

Sec. 34-10. Trees and shrubs.

- (a) If any trees or shrubs situated in any lot within the cemetery shall, by means of their roots or branches, become detrimental to the adjacent lots or avenues or become unsightly or inconvenient for visitors, the city shall have the right to enter the lot to remove the trees or shrubbery or such part thereof as the city shall determine to be detrimental, unsightly or inconvenient. The city shall have the right to remove any tree or shrub that may be infected by scales or other diseases and to plant and mow grass on all lots and graves.

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- (b) The planting of trees, shrubs or flowers within the cemetery that would interfere with mowing or other maintenance activities shall be prohibited.

(Code 1968, § 8-8)

Sec. 34-11. Guy ropes and moving materials.

Guy ropes must not be fastened to any tree, monument or tomb in the cemetery. All materials must be moved in the paths and over planks laid for that purpose and not over the adjoining lots.

(Code 1968, § 8-10)

Sec. 34-12. Vaults

Any casket buried in a city-owned cemetery must be enclosed in a permanent vault. These vaults can be constructed of steel, Fiberglass, or concrete and will prevent the grave site from settling and collapsing.

Secs. 34-13—34-30. Reserved.

ARTICLE II. PERPETUAL CARE FUND²

Sec. 34-31. Established.

There is created a perpetual care cemetery fund, the income from which will be used for the perpetual care and maintenance of the city cemeteries and for such other purposes as may be necessary to provide for city-owned cemeteries.

(Code 1968, § 8-20)

Sec. 34-32. Allocation of lot sales.

All lot sales in the city cemeteries will be set aside into the perpetual care fund.

(Code 1968, § 8-21)

Sec. 34-33. Authority to accept gifts and donations.

The city is authorized to accept, as gifts or by devise, money or any other property of value which may be sold, with the proceeds deposited into the perpetual care fund.

(Code 1968, § 8-22)

²State law reference(s)—Perpetual care, V.T.C.A., Health and Safety Code §§ 712.001 et seq., 713.002 et seq.

Sec. 34-34. Investment of funds.

The city shall have the power and authority to invest and reinvest all funds advanced to it for the purposes set forth in this article.

(Code 1968, § 8-23)

Sec. 34-35. Authority of others to care for lots.

None of the rights, powers and duties provided for in this article shall deprive any person having any interest in a grave or burial lot or kinship within the third degree by affinity or consanguinity to those therein interred from beautifying or caring for the grave or burial lot individually or at his own expense under the reasonable rules which the city may from time to time provide.

(Code 1968, § 8-24)

Sec. 34-36. Charges.

The city council establishes a charge for city cemetery lots in an amount set forth in the **APPENDIX B-** fee schedule adopted by the city council.

(Ord. No. O-25-98, § I, 9-29-98; Ord. No. O-38A-06, § XIV, 11-13-2006)

Secs. 34-37—34-50. Reserved.

ARTICLE III. RESERVED

Secs. 34-51—34-55. Reserved.

Editor's note(s)—Ord. No. O-13-05, § 4, adopted Apr. 25, 2005, repealed Art. III in its entirety.

Former Art. III pertained to the cemetery board and derived from Code 1968, §§ 2-7, 8-31—8-35.

Chapter 70 LIBRARY¹

Sec. 70-1. Definitions.

The following words, terms, and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

~~Book-~~ Library card means the identifying card assigned to an item of property by the library staff for control purposes.

Library means the public library and any branch libraries maintained by the city.

Library card number means the identifying number of the card issued to each patron of the library authorizing such person to check out library materials.

Patron means any person who uses or seeks to use any facility, service, program, or item offered by the library.

Surplus library material means any books, magazines, records, files and any other audio or visual materials no longer needed by the library. The term does not include furnishings, equipment, or other capital assets.

(Code 1968, § 17-1)

Cross reference(s)—Definitions generally, § 1-2.

Sec. 70-2. Violation; penalty.

Violation of this chapter shall be punishable, upon conviction, in accordance with section 1-13. Such penalty shall be in addition to the regular library fines or replacement costs specified in section ~~70-3~~ 4.

(Code 1968, § 17-4)

Sec. 70-3. Library cards.

- (a) A library card shall be required of each user of the library who desires to be loaned books and other library materials.
- (b) A library card may be obtained by filing an application along with proof of residence with the library staff. The application shall contain the following information:
 - (1) Full name of resident.
 - (2) Residence address and telephone number.
 - (3) State driver's license number or other identification acceptable to the city and date of birth.
 - (4) If the patron is under 17 years of age, the parent or guardian of the patron shall also provide information required in subsections (b)(1) through (3) of this section to the library staff and join in the application for the library card.

~~(5) —Point of contact, consisting of the name, phone number and address of a person known to the applicant and not living in the same household as the patron.~~

- (c) The library card shall remain city property.
- (d) Possession of a library card allows the patron to borrow any available material for a time period named by the library staff.
- (e) It will be presumed that the person named on the library card, which was presented to obtain material from the library, has authorized use of the card and accepts the responsibility to return to the library any material obtained by use of the card. It shall be prima facie evidence that the person or his parent or guardian, if the patron is under ~~16~~ 18 years of age, who signed the library card is the person who borrowed the materials. The introduction into evidence of the original or a true and correct copy of the ~~book-library~~ card assigned to such property, bearing a library card number which was recorded on the ~~book-library~~ card when the property was checked out, is prima facie evidence that the person to whom the library number is assigned, according to the records of the library, did borrow such property.
- (f) The patron shall notify the library staff upon loss or theft of the card or of change of address immediately.

(Code 1968, § 17-2)

Sec. 70-4. Borrowing of library materials.

- (a) Any patron may borrow materials normally circulated from the library by presenting a library card to the library staff. The library staff shall then check out the material in the name appearing on the card. The library staff shall set a date for the return of the material.
- (b) Any person who injures or defaces any book or other property belonging to the library by writing, marking, tearing, breaking, or otherwise mutilating shall pay the current real replacement cost of that item and, in addition, an administrative fee as set forth in ~~the APPENDIX B-Fee schedule~~ as adopted by the city council.
- (c) Any person who loses library books or materials of any kind shall pay the current retail replacement cost of that item and, in addition, an administrative fee as set forth in ~~the APPENDIX B-Fee schedule~~ as adopted by the city council.
- (d) Any person who retains a library book or materials past the time stated by the library staff shall pay the fee set forth in ~~the APPENDIX B-Fee schedule~~ as adopted by the city council as a condition to further library services.
- (e) If the library materials are not returned by the date specified when borrowed or if there are unpaid library fines, the library staff may suspend the use of the library card which was used to obtain the materials.
- (f) The library staff shall reinstate the library card upon return of the material and payment of all fines and fees.
- (g) It shall be unlawful for any person to knowingly retain any book or other property belonging to the library past the date set by the library staff for its return. First notice shall be given by U.S. mail to the address shown on the patron's library card any time after the expiration of the original loan time of the property. Second notice shall be given by U.S. ~~certified~~ mail, ~~return receipt requested~~, to the address shown on the patron's library card if no action was taken following the first notice. ~~The introduction into evidence of a copy of the second written notice that any library~~

~~material is overdue, together with evidence that such notice was deposited in the United States mail, certified, return receipt requested, addressed to a person, is prima facie evidence that the person has knowledge that such property is overdue.~~ Retention of the property for more than 30 days after such notice is mailed shall be prima facie evidence of knowledge. Library materials will be considered lost after 60 days overdue. Any debt 90 days overdue may be sent to a third-party collection agency.

Chapter 98 UTILITIES¹

ARTICLE I. IN GENERAL

Sec. 98-1. Sewer connection required.

All owners or occupants of buildings or agents for the owners of buildings situated in the city where a sanitary sewer exists or where it may exist and where the property line of the land on which any such building is situated approaches or extends to within 100 feet of any such sewer are required to construct or cause to connect to the city sewer under the supervision of the **Director of Public Works & Utilities.** ~~director.~~

(Code 1968, § 31-4; Ord. No. O-33-15 , § I, 9-14-2015)

Sec. 98-1.1. Variances.

- (a) The city council may authorize a variance to the requirements in section 98-1 to allow the installation of an alternative sewage treatment facility to serve a structure owned by a nonprofit entity that will be located on a property that is currently served by city-owned sanitary sewer lines.
- (b) The variance shall be granted in the discretion of the council based on the following criteria:
 - (1) The cost of installing an alternative sewage treatment facility is significantly less than the cost of sanitary sewer line tap installation, and the cost of sanitary sewer line tap installation is significantly greater than the typical cost faced by a property owner due to conditions specific to the property or the proposed use of the property;
 - (2) Site conditions such as distance from nearest city-owned sewer line, topography of the site, the type of development that the alternative sewage treatment facility would serve, and any other condition that makes connecting to a city-owned sewer line technically not feasible.

(Ord. No. O-33-15 , § II, 9-14-2015)

¹Charter reference(s)—City to own, erect, maintain and operate waterworks and waterworks system, § 2.11; power to regulate franchises for public utilities, § 2.12; power to buy, own, construct, maintain and regulate gas and electric systems, §§ 2.13, 2.14; authority to provide sanitary sewer system, § 2.29; power to require utility companies to extend service, § 2.30; power to obtain funds for acquisition of public utility, § 2.31.

Cross reference(s)—Drought contingency plan, §§ 38-161—38-173; climbing water towers and other utility poles prohibited, § 74-4; tax on gas and electricity, § 90-131.

Sec. 98-2. Connections for certain drainage into sanitary sewers prohibited.

It shall be unlawful for any person to make or to have made any connection with the sanitary sewer system of the city that will permit any surface or drain water from cellars, the ground or roofs of houses or the overflowing of cisterns or cesspools to enter any sanitary sewer directly or indirectly.

(Code 1968, § 31-3)

Sec. 98-3. Certain deposits on ground prohibited.

It shall be unlawful for any person to throw or allow any person under his control to throw or deposit on the surface of the ground any liquid or solid filth, feces or urine.

(Code 1968, § 31-8)

Cross reference(s)—Responsibility for removing stagnant water, rubbish, trash and other matter, § 46-54.

Sec. 98-4. Discharge of wastes.

It shall be unlawful for any person to allow any slop, washwater or wastewater of any kind to flow over the pavement or into any open gutter or into the street.

(Code 1968, § 31-9)

Cross reference(s)—Responsibility for removing stagnant water, rubbish, trash and other matter, § 46-54.

Sec. 98-5. Unauthorized turning on or off of water.

It shall be unlawful for any person to turn water on or off at a water meter or elsewhere without specific authority from the city. However, any person may so turn water on or off if broken waterlines or similar emergencies occur. Any person unlawfully turning water on or off at a meter without specific authority shall be subject to the penalties outlined in section 98-86 of this Code.

(Code 1968, § 31-10; Ord. No. 0-36-03, § I, 11-24-2003)

Secs. 98-6—98-24. Reserved.

ARTICLE II. DISCHARGE OF INDUSTRIAL WASTES²

²Editor's note(s)—Ord. No. O-15-11, § I, adopted April 11, 2011, repealed art. II, §§ 98-26—98-58, in its entirety and enacted a new art. II, §§ 98-25—98-59, as set out herein. Formerly, said article pertained to similar subject matter and derived from the Code of 1968, §§ 31-61—31-63, 31-65—31-94; Ord. No. O-29-95, § I.A,

adopted Sept. 28, 1995; Ord. O-15-02, adopted June 24, 2002; Ord. No. O-31-03, adopted Oct. 27, 2003; Ord. No. O-38a-06, §§ XX, XXI, adopted Nov. 13, 2006.

Cross reference(s)—Health and sanitation board, § 2-111 et seq.; health and sanitation, ch. 58.

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(Supp. No. 43)

Sec. 98-25. Purpose and policy.

- (a) This article sets forth uniform requirements for users of the publicly-owned treatment works for the City of Palestine, and enables the city to comply with all applicable state and federal laws, including the Act and the General Pretreatment Regulations (40 CFR Part 403). The objectives of this article are:
- (1) To prevent the introduction of pollutants into the POTW that will interfere with its operation;
 - (2) To prevent the introduction of pollutants into the POTW that will pass through the POTW, inadequately treated, into receiving waters, or that will otherwise be incompatible with the POTW;
 - (3) To protect both the general public and POTW personnel who may be affected by wastewater and sludge in the course of their employment;
 - (4) To promote reuse and recycling of industrial wastewater and sludge from the POTW; and
 - (5) To enable the City of Palestine to comply with its National Pollutant Discharge Elimination System permit conditions, sludge use and disposal requirements, and any other federal or state laws to which the POTW is subject.
- (b) This article shall apply to all users of the POTW. The article authorizes the issuance of individual wastewater discharge permits; provides for monitoring, compliance, permits; provides for monitoring, compliance, and enforcement activities; establishes administrative review procedures; and requires user reporting. To the extent that a user is not located within the city limits, that user is deemed to have consented to the jurisdiction of the City of Palestine by discharging wastewater into the POTW.

(Ord. No. O-15-11, § I, 4-11-2011)

Sec. 98-26. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Act means the Federal Water Pollution Control Act, also known as the Clean Water Act (CWA), 33 USC 1251 et seq., as amended.

Approval authority means:

- (1) The administrator of the EPA, as long as the state lacks an approved state pretreatment program; or
- (2) The executive director of the state department of water resources, if the state becomes an NPDES state with an approved state pretreatment program.

Authorized representative means:

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- (1) A principal executive officer of at least the level of vice-president, if the industrial user is a corporation;
 - (2) A general partner or proprietor, if the industrial user is a partnership or proprietorship, respectively; or
 - (3) A duly-authorized representative of the individual designated in subsection (1) or (2) of this definition, if such representative is responsible for the overall operation of the facilities from which the discharge originates.

BOD means the quantity of oxygen, expressed in milligrams per liter, utilized in the biochemical oxidation of organic matter under standard laboratory conditions of five days at a temperature of 20 degrees Celsius. The laboratory determinations shall be made in accordance with 40 CFR 136.

Building drain means that part of the lowest horizontal piping of a drainage system which receives the discharge from soil, waste and other drainage pipes of the building and conveys it to the building sewer, beginning three feet outside the inner face of the building wall.

Building sewer means the extension from the building drain to the sanitary sewer or other place of disposal.

Categorical industrial user means an industrial user subject to a categorical pretreatment standard or categorical standard.

COD means the measure of the oxygen-consuming capacity of inorganic and organic matter present in water or wastewater, expressed in milligrams per liter as the amount of oxygen consumed from a chemical oxidant in a specific test. The laboratory determinations shall be made in accordance with 40 CFR 136.

Composite sampling means a sample made up of grab samples collected at equal intervals and then combined proportional to flow, a sample continuously collected proportionately to flow or equal volumes taken at varying time intervals. Composite samples should be used when collected in a 24-hour period or the period the daily discharge is less than 24 hours.

Control authority means the City of Palestine.

Cooling water means the water discharged from any use such as air conditioning, cooling or refrigeration or to which the only pollutant added is heat.

Daily maximum limit means the maximum allowable discharge limit of a pollutant during a calendar day. Where daily maximum limits are expressed in units of mass, the daily discharge is the total mass discharged over the course of the day. Where daily maximum limits are expressed in terms of a concentration, the daily discharge is the arithmetic average measurement of the pollutant concentration derived from all measurements taken that day.

Direct discharge means the discharge of treated or untreated wastewater directly to the waters of the state.

Director means the director of the industrial wastewater control for the city or any person acting in that capacity or his duly authorized deputy, agent or representative.

Discharge permit means a permit as described in section 98-41.

Domestic sewage means water-carried wastes normally discharging into the sanitary sewers of dwellings, including apartment houses and hotels, office buildings, factories and institutions that are free from stormwater, surface water and industrial wastes.

Environmental protection agency means the U.S. Environmental Protection Agency or, where appropriate, the regional water management division director, the regional administrator, or other duly authorized official of said agency.

Garbage means solid wastes and residue from the preparation, cooking and dispensing of food and from the handling, storage and sale of food products and produce.

Grab sample means a sample that is taken from a waste stream on a one-time basis with no regard to the flow in the waste stream and without consideration of time.

Holding tank waste means any waste from holding tanks such as vessels, chemical toilets, campers, trailers, septic tanks and vacuum-pump tank trucks.

Indirect discharge or *discharge* means the introduction of pollutants into a POTW from any nondomestic source regulated pursuant to subsection 307(b), (c) or (d) of the Act.

Industrial user means a source of indirect discharge.

Industrial waste means all water-carried solids, liquids and gaseous wastes resulting from any industrial, manufacturing or food processing operation or process or from the development of any natural resource or any mixture of these with water or domestic sewage as distinct from normal domestic sewage.

Interceptor means a device designed and installed to separate and retain deleterious, hazardous or undesirable matter from normal waste and to permit normal sewage or liquid wastes to discharge into the disposal system.

Interference means a discharge which, alone or in conjunction with a discharge or discharge from other sources, both (i) inhibits or disrupts the POTW, its treatment processes or operations or its sludge processes, use or disposal; and (ii) therefore, is a cause of a violation of any requirement of the POTW's NPDES permit, including an increase in the magnitude or duration of a violation, or of the prevention of sewage sludge use or disposal in compliance with the following statutes and requirements or permits issued thereunder or more stringent state or local regulations: Section 405 of the Clean Water Act; the Solid Waste Disposal Act (SWDA), including Title II, more commonly referred to as the Resource Conservation and Recovery Act (RCRA), and including state requirements contained in any state sludge management plan prepared pursuant to subtitle D of the SWDA; the Clean Air Act; the Toxic Substances Control Act; and the Marine Protection, Research and Sanctuaries Act.

Milligrams per liter (mg/l or ppm) means a weight-to-volume ratio. The milligrams-per-liter value multiplied by the factor 8.34 shall be equivalent to pounds per million gallons of water.

National Categorical Pretreatment Standard or *pretreatment standard* means any rule containing pollutant discharge limits promulgated by the EPA in accordance with subsections 307(b) and (c) of the Act (33 USC 1317) that applies to a specific category of industrial user.

New source means any building, structure, facility or installation from which there is or may be a discharge of pollutants, the construction of which commenced after the publication of proposed pretreatment standards under subsection 307(c) of the Act which will be applicable to such source if such standards are thereafter promulgated in accordance with the subsection.

Pass through means a discharge which exits the POTW into waters of the United States in quantities or concentrations which, alone or in conjunction with a discharge from other sources, is a cause of violation of any requirements of the POTW's NPDES permit, including an increase in the magnitude or duration of a violation.

pH means the logarithm (base 10) of the reciprocal of the hydrogen ion concentration expressed in grams per liter. It shall be determined in accordance with 40 CFR 136.

Pollutant means any dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discharged equipment, rock, sand, cellar dirt and industrial, municipal and agricultural waste discharged into water.

Pollution means the manmade or man-induced alteration of the chemical, physical, biological and radiological integrity of water.

POTW treatment plant means that portion of the POTW designed to provide treatment to wastewater.

Pretreatment or treatment means the reduction of the amount of pollutants, the elimination of pollutants or the alteration of the nature of pollutant properties in wastewater to a less harmful state prior to or in lieu of discharging or otherwise introducing such pollutants into a POTW. The reduction or alteration can be obtained by physical, chemical or biological processes or process changes or by other means, except as prohibited by 40 CFR section 403.6.

Pretreatment requirement means any substantive or procedural requirement related to pretreatment, other than a national pretreatment standard imposed on an industrial user.

Public sewer means a sewer controlled by the city.

Publicly-owned treatment works (POTW) means a city treatment works as defined by section 212 of the Act (33 USC 1292), including any sewers that convey wastewater to the POTW treatment plant, but does not include pipes, sewers or other conveyances not connected to a facility providing treatment. For the purposes of this article, POTW also includes any sewers that convey wastewaters to the POTW from persons outside the city who are, by contract or agreement with the city, users of the city's POTW.

Sanitary sewer means a sewer that conveys wastewater and into which stormwaters, surface waters and groundwaters or unpolluted industrial wastes are not intentionally passed.

Septage means a liquid, semisolid or solid domestic waste pumped out of septic tanks.

Sewer service charge means the charge made on all users of the public sewer whose wastes do not exceed in strength the concentration values established in this article.

Shall is mandatory; *may* is permissive.

Significant industrial users means:

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- (1) All dischargers subject to categorical pretreatment standards under 40 CFR 403.6 and 40 CFR chapter I, subchapter N; and
 - (2) All noncategorical dischargers that, in the opinion of the control authority, have a reasonable potential to adversely affect the POTW's operation or that contribute a process wastestream which makes up five percent or more of the average dry-weather capacity of the POTW treatment plant or that discharge an average of 25,000 gallons per day or more of process wastewater to the POTW. However, the control authority need not designate as significant any noncategorical industrial user that, in the opinion of the control authority and with the agreement of the approval authority, has no potential for adversely affecting the POTW's operation or for violating any pretreatment standard or requirement. The agreement of the approval authority is not necessary if the noncategorical discharger would have been designated as significant only because of an average discharge of 25,000 gallons per day or more of process wastewater. Any noncategorical industrial user designated as significant may petition the control authority to be deleted from the list of significant industrial users on the grounds that it has no potential for adversely affecting the POTW's operation or violating any pretreatment standard or requirement.

Significant noncompliance means, for a significant industrial user meeting one or more of the following criteria, or any industrial user which meets the criteria in (3), (4), or (8):

- (1) Chronic violations of wastewater discharge limits, defined here as those in which 66 percent or more of all of the measurements taken for the same pollutant parameter during a six-month period exceed (by any magnitude) a numeric pretreatment standard or requirement, including instantaneous limits, as defined by 40 CFR 403.3(l);
- (2) Technical review criteria (TRC) violations, defined here as those in which 33 percent or more of all of the measurements taken for the same pollutant parameter during a six-month period equal or exceed the product of the numeric pretreatment standard or requirement including instantaneous limits, as defined by 40 CFR 403.3(l) multiplied by the applicable TRC (TRC=1.4 for BOD, TSS, fats, oil, and grease, and 1.2 for all other pollutants except pH);
- (3) Any other violation of a pretreatment standard or requirement as defined by 40 CFR 403.3(l) (daily maximum, long-term average, instantaneous limit, or narrative standard) that the city determines has caused, alone or in combination with other discharges, interference or pass through (including endangering the health of city personnel or the general public);
- (4) Any discharge of a pollutant that has caused imminent endangerment to human health, welfare or to the environment or has resulted in the city's exercise of its emergency authority to halt or prevent such a discharge;
- (5) Failure to meet, within 90 days after the scheduled date, a compliance schedule milestone contained in an individual wastewater discharge permit or enforcement order for starting construction, completing construction, or attaining final compliance;

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- (6) Failure to provide, within 45 days after the due date, any required reports, including baseline monitoring reports, reports on compliance with categorical pretreatment standard deadlines, periodic self-monitoring reports, and reports on compliance with compliance schedules;
 - (7) Failure to accurately report noncompliance; or
 - (8) Any other violation or group of violations, which may include a violation of best management practices, which the POTW determines will adversely affect the operation or implementation of the local pretreatment program.

Slug means any discharge of water, sewage or industrial waste other than toxic materials which in concentration of any given constituent or in quantity or flow exceeds for any period of duration longer than 15 minutes more than five times the average 24-hour concentration or flows during normal operation.

Standard industrial classification (SIC) means a classification pursuant to the Standard Industrial Classification Manual issued by the Executive Office of the President, Office of Management and Budget, 1972.

Standard methods means the examination and analytical procedures set forth in the latest edition at the time of analysis of Standard Methods for the Examination of Water and Sewage as prepared, approved and published jointly by the American Public Health Association, the American Water Works Association, and the Water Pollution Control Federation.

Storm sewer means a sewer which carries stormwaters and surface waters and drainage, but excludes domestic sewage and industrial wastes.

Stormwater runoff means that portion of the rainfall that is drained into the storm sewers or conveyed by surface flow to manmade or natural drainage courses.

Surcharge means the charge in addition to the sewage service charge which is made on those persons whose wastes are greater in strength than the concentration values established as representative of normal charges or are greater in flow.

Suspended solids means solids that either float on the surface of or are in suspension in water, sewage or other liquids and which are removable by a laboratory filtration device. Quantitative determination of suspended solids shall be made in accordance with 40 CFR 136.

Toxic pollutant means any pollutant or combination of pollutants listed as toxic in rules promulgated by the administrator of the environmental protection agency under CWA 307.

User means any person who contributes, causes or permits the contribution of wastewater into the city's POTW.

Wastewater means a combination of the water-carried waste from residences, business establishments, institutions and industrial establishments, together with such groundwater, surface water and stormwater as may be present.

(Ord. No. O-15-11, § I, 4-11-2011)

Sec. 98-27. Penalties.

- (a) Any person who shall violate any section of this article or who shall fail to comply with any section of this article shall, upon conviction, be punished as provided in section 1-13. Each day that such violation continues shall constitute a separate offense and each conviction shall be punished accordingly.
- (b) Any person violating this article shall become liable to the city for any expense, loss or damage occasioned by the city because of such violation. In addition to the penalties in this section, the city may recover reasonable attorney's fees, court costs, court reporter's fees and other expenses of litigation by appropriate suit at law against the person found to have violated this article or the orders, rules and permits issued under this article.
- (c) In determining the amount of liability, the court shall take into account all relevant circumstances, including, but not limited to, the extent of harm caused by the violation, the magnitude and duration, any economic benefit gained through the industrial user's violation, corrective actions by the industrial user, the compliance history of the user and any other factor as justice requires.

(Ord. No. O-15-11, § I, 4-11-2011)

Sec. 98-28. Public nuisance.

It shall be a public nuisance to violate this article.

(Ord. No. O-15-11, § I, 4-11-2011)

Sec. 98-29. Enforcement remedies for noncompliance.

- (a) *[Enforcement response plan.]* The city shall develop and enforce an enforcement response plan that will describe how the city will investigate instances of noncompliance, describe a plan of escalating responses for violations, allocate responsibility for such responses, and adequately reflect the city's primary responsibility to enforce all applicable pretreatment requirements and standards.
- (b) *Notification of violation.* When a user has violated, or continues to violate, any provision of this article, an individual wastewater discharge permit, an order issued pursuant to this article, or any other pretreatment standard or requirement, the city may serve upon that user a written notice of violation. The notice shall set forth a deadline for the user to submit to the city an explanation of the violation and a plan for the satisfactory correction and prevention thereof, to include specific required actions. Submission of such a plan in no way relieves the user of liability for any violations occurring before or after receipt of the notice of violation. Nothing in this section shall limit the authority of the city to take any action, including emergency actions or any other enforcement action, without first issuing a notice of violation.
- (c) *Consent orders.* The city may enter into consent orders, assurances of compliance, or other similar agreements with any user responsible for noncompliance. Such agreements shall

include specific action to be taken by the user to correct the noncompliance within a time period specified by the document. Such documents shall have the same force and effect as the administrative orders issued pursuant to subsections (e) and (f) of this section, and shall be judicially enforceable.

- (d) *Show cause hearing.* The city may order a user which has violated, or continues to violate, any provision of this article, an individual wastewater discharge permit, an order issued hereunder, or any other pretreatment standard or requirement, to appear before the city council and show cause why the proposed enforcement action should not be taken. Notice shall be served on the user specifying the time and place for the meeting, the proposed enforcement action, the reasons for such action, and a request that the user show cause why the proposed enforcement action should not be taken. The notice of the meeting shall be served personally or by registered or certified mail, return receipt requested, at least four days prior to the hearing. Such notice may be served on any authorized representative of the user. A show cause hearing shall not be a bar against, or prerequisite for, taking any other action against the user.
- (e) *Compliance orders.* When a user has violated, or continues to violate, any provision of this article, an individual wastewater discharge permit, an order issued under this article, or any other pretreatment standard or requirement, the city may issue an order to the user responsible for the discharge directing that the user come into compliance within a specified time. If the user does not come into compliance within the time provided, sewer service may be discontinued unless adequate treatment facilities, devices, or other related appurtenances are installed and properly operated. Compliance orders also may contain other requirements to address the noncompliance, including additional self-monitoring and management practices designed to minimize the amount of pollutants discharged to the sewer. A compliance order may not extend the deadline for compliance established for a pretreatment standard or requirement, nor does a compliance order relieve the user of liability for any violation, including any continuing violation. Issuance of a compliance order shall not be a bar against, or a prerequisite for, taking any other action against the user.
- (f) *Cease and desist orders.* When a user has violated, or continues to violate, any provision of this article, an individual wastewater discharge permit, an order issued under this article, or any other pretreatment standard or requirement, or the city determines that the user's past violations are likely to recur, the city may issue an order directing the user to cease and desist all such violations and to immediately comply with all requirements and take such appropriate remedial or preventive action as may be needed to properly address a continuing or threatened violation, including halting operations or terminating the discharge. Issuance of a cease and desist order shall not be a bar against, or a prerequisite for, taking any other action against the user.
- (g) *Emergency suspensions.* The city may immediately suspend a user's discharge, after informal notice to the user, whenever such suspension is necessary to stop an actual or threatened discharge, which reasonably appears to present or cause an imminent or substantial endangerment to the health or welfare of persons. The city may also immediately suspend a user's discharge, after notice and opportunity to respond, that threatens to

interfere with the operation of the POTW, or which presents, or may present, an endangerment to the environment.

- (1) Any user notified of a suspension of its discharge shall immediately stop or eliminate its contribution. In the event of a user's failure to immediately comply voluntarily with the suspension order, the city may take such steps as deemed necessary, including immediate severance of the sewer connection, to prevent or minimize damage to the POTW, its receiving stream, or endangerment to any individuals. The city may allow the user to recommence its discharge when the user has demonstrated to the satisfaction of the city manager that the period of endangerment has passed, unless the termination proceedings in subsection (h) of this section are initiated against the user.
 - (2) A user that is responsible, in whole or in part, for any discharge presenting imminent endangerment shall submit to the city a detailed written statement, describing the causes of the harmful contribution and the measures taken to prevent any future occurrence, prior to the date of any show cause or termination hearing under subsections (d) or (h) of this section. Nothing in this section shall be interpreted as requiring a hearing prior to any emergency suspension under this section.
- (h) *Termination of discharge.* In addition to the provisions in section 98-44 of this article, any user who violates the following conditions is subject to discharge termination:
- (1) Violation of individual wastewater discharge permit or general permit conditions;
 - (2) Failure to accurately report the wastewater constituents and characteristics of its discharge;
 - (3) Failure to report significant changes in operations or wastewater volume, constituents, and characteristics prior to discharge;
 - (4) Refusal of reasonable access to the user's premises for the purpose of inspection, monitoring, or sampling; or
 - (5) Violation of the pretreatment standards.

Such user will be notified of the proposed termination of its discharge and be offered an opportunity to show cause under section 98-29 of this article why the proposed action should not be taken. Exercise of this option by [the superintendent] shall not be a bar to, or a prerequisite for, taking any other action against the user.

- (i) *Injunctive relief.* When a user has violated, or continues to violate, any provision of this article, an individual wastewater discharge permit, an order issued under this article, or any other pretreatment standard or requirement, the city may petition the any appropriate court for the issuance of a temporary or permanent injunction, as appropriate, which restrains the violation of, or compels the specific performance of the requirements of, the user's individual wastewater discharge permit, an order of the city issued under this article, or any other requirement imposed by this article. The city may also seek such other appropriate legal or equitable relief, including a requirement that the user conduct environmental remediation. A petition for injunctive relief shall not be a bar against, or a prerequisite for, taking any other action against a user.

(j) *Civil penalties.*

- (1) A user who has violated, or continues to violate, any provision of this subchapter, an individual wastewater discharge permit, an order issued hereunder, or any other pretreatment standard or requirement, shall be liable for the maximum civil penalty of allowed under state law, but not less than \$1,000.00 per violation, per day. In the case of a monthly or other long-term average discharge limit, penalties shall accrue for each day during the period of the violation.
- (2) The city may recover reasonable attorneys' fees, court costs, and other expenses associated with enforcement activities, including sampling and monitoring expenses, and the cost of any actual damages incurred by [the city].
- (3) In determining the amount of civil liability, the court shall take into account all relevant circumstances, including, but not limited to, the extent of harm caused by the violation, the magnitude and duration of the violation, any economic benefit gained through the user's violation, corrective actions by the user, the compliance history of the user, and any other factor as justice requires.
- (4) Filing a suit for civil penalties shall not be a bar against, or a prerequisite for, taking any other action against a user.

(k) *Criminal prosecution.* Except to the extent that greater penalties are provided by state law:

- (1) A user who willfully or negligently violates any provision of this article, an individual wastewater discharge permit, an order issued hereunder, or any other pretreatment standard or requirement shall, upon conviction, be guilty of a misdemeanor, punishable as provided by section 1-13 of this Code.
- (2) A user who willfully or negligently introduces any substance into the POTW which causes personal injury or property damage shall, upon conviction, be guilty of a misdemeanor, punishable as provided by section 1-13 of this Code.
- (3) A user who knowingly makes any false statements, representations, or certifications in any application, record, report, plan, or other documentation filed, or required to be maintained, pursuant to this subchapter, individual wastewater discharge permit, or an order issued under this article, or who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required under this article shall, upon conviction, be guilty of a misdemeanor, punishable as provided by section 1-13 of this Code.

(l) *Appeals.* A user who is the subject of an enforcement action by city staff under this section may appeal to the city council. If the city council does not vote to reverse or modify the enforcement action within 30 days of the receipt of the appeal, the appeal will be denied by operation of law.

(m) *Remedies nonexclusive.* The remedies provided for in this section are not exclusive. The city may take any, all, or any combination of these actions against a noncompliant user. Enforcement of pretreatment violations will generally be in accordance with the city's enforcement response plan. However, the city may take other action against any user when

the circumstances warrant. Further, the city is empowered to take more than one enforcement action against any noncompliant user.

(Ord. No. O-15-11, § I, 4-11-2011)

Sec. 98-30. Bypass.

(a) For the purposes of this section:

- (1) *Bypass* means the intentional diversion of wastestreams from any portion of a user's treatment facility.
- (2) *Severe property damage* means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

(b) A user may allow any bypass to occur which does not cause pretreatment standards or requirements to be violated, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provision of subsections (c) and (d) of this section.

(c) *Bypass notifications.*

- (1) If a user knows in advance of the need for a bypass, it shall submit prior notice to the city at least ten days before the date of the bypass, if possible.
- (2) A user shall submit notice to the city of an unanticipated bypass that exceeds applicable pretreatment standards within 24 hours of the time it becomes aware of the bypass. A written submission shall also be provided within five days of the time the user becomes aware of the bypass. The written submission shall contain a description of the bypass and its cause; the duration of the bypass, including exact dates and times, and, if the bypass has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the bypass. The city may waive the written report on a case-by-case basis if the report received within 24 hours adequately informs the city of the details of the bypass.

(d) *Violation.* It is a violation of this article to permit a bypass, unless:

- (1) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;
- (2) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and
- (3) The user submitted notices as required under subsection (c) of this section.

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- (e) *Approval.* The city may approve an anticipated bypass, after considering its adverse effects, if the city manager determines that it will meet the three conditions listed in subsection (d) of this section.

(Ord. No. O-15-11, § I, 4-11-2011)

Sec. 98-31. Act of God defense.

- (a) *Act of God defense.* The act of God defense constitutes a statutory affirmative defense, pursuant to V.T.C.A., Water Code § 7.251, in an action brought in municipal or state court. If a person can establish that an event that would otherwise be a violation of a pretreatment ordinance, or a permit issued under the ordinance, was caused solely by an act of God, war, strike, riot, or other catastrophe, the event is not a violation of the ordinance or permit.
- (b) An industrial user who wishes to establish the act of God affirmative defense shall demonstrate, through relevant evidence, that:
- (1) An event that would otherwise be a violation of a pretreatment ordinance or a permit issued under the ordinance occurred, and the sole cause of the event was an act of God, war, strike, riot or other catastrophe; and
 - (2) The industrial user has submitted the following information to the POTW and the city within 24 hours of becoming aware of the event that would otherwise be a violation of a pretreatment ordinance or a permit issued under the ordinance (if this information is provided orally, a written submission must be provided within five days):
 - a. A description of the event, and the nature and cause of the event;
 - b. The time period of the event, including exact dates and times or, if still continuing, the anticipated time the event is expected to continue; and
 - c. Steps being taken or planned to reduce, eliminate and prevent recurrence of the event.
- (c) *Burden of proof.* In any enforcement proceeding, the industrial user seeking to establish the act of God affirmative defense shall have the burden of proving by a preponderance of the evidence that an event that would otherwise be a violation of a pretreatment ordinance, or a permit issued under the ordinance, was caused solely by an act of God, war, strike, riot or other catastrophe.

(Ord. No. O-15-11, § I, 4-11-2011)

Sec. 98-32. Discharges into sanitary sewer prohibited.

It shall be an offense for any person to discharge to any sanitary sewer any stormwater, groundwater, roof runoff, subsurface drainage or any water from downspouts, yard drains, yard fountains or ponds or lawn sprays.

(Ord. No. O-15-11, § I, 4-11-2011)

Sec. 98-33. Discharges to streets, gutters or ditches.

It shall be unlawful for any person to discharge into any street, gutter, drainage ditch or drainage structure any wastewater or other liquid waste containing cement, concrete, building materials, oil, chemicals or other liquid industrial waste.

(Ord. No. O-15-11, § I, 4-11-2011)

Sec. 98-34. Grease, oil and sand interceptors.

- (a) *Location; construction.* Grease, oil and sand traps or interceptors shall be provided for the proper handling of liquid wastes containing grease in excessive amounts or any flammable wastes, sand and other harmful ingredients. Such interceptors shall be of a type and capacity approved by the director and shall be located as to be readily and easily accessible for cleaning and inspection. Grease and oil interceptors shall be constructed of impervious materials capable of withstanding abrupt and extreme changes in temperature. Grease traps shall be of substantial construction, watertight and equipped with easily removable covers which, when bolted in place, shall be gastight and watertight. Where installed, all grease, oil and sand interceptors shall be maintained by the owner at his expense, in efficient operation at all times. Interceptors shall be sized and installed according to specification on file in the city secretary's office.
- (b) *Inspection point or manhole.* Any person discharging or desiring to discharge any industrial waste mixture into the sanitary sewer of the city or any sewer connected therewith may be required to provide and maintain in a suitably accessible position on the premises or such premises occupied by him an inspection port or manhole near the outlet of each sewer, drain, pipe, channel or connection which communicates with the sewer or sewer works of the city or any sewer connected therewith. Each such manhole or inspection port shall be of such design and construction which will prevent infiltration by groundwaters and surface waters and shall be so maintained by the person discharging wastes that any authorized representative or employee of the city may readily and safely measure the volume and obtain samples of the flow at all times. Plans for construction of the control manholes or inspection ports, including such flow-measuring devices as may be required, shall be reviewed by the city. The sampling location must be sufficient for representative samples to be collected.
- (c) *Vehicle wash facilities.* Any industry or commercial establishment engaging in the washing of motorized vehicles, whether utilizing automated equipment or handwashing, is required to discharge into the sanitary sewer system and shall discharge through a sand, grease and oil interceptor approved by the director. The wash area shall be covered to eliminate rainwater from entering the sanitary sewer. Installations may apply to the director for a variance if these conditions are impossible to meet.
- (d) *Minor vehicle maintenance areas.* Areas where minor vehicle repairs, such as engine tune-up, air conditioning repair, radiator flushing and repair, electrical repair, front-end alignments, exhaust system replacement and repair, suspension system replacement and

repair, and brake shoe replacement, may discharge floor wash water to the sanitary sewer through a properly sized sand and grease trap.

- (e) *Major vehicle maintenance areas and fluid change areas.* Areas where major vehicle repairs, such as engine dismantling, transmission repairs, hydraulic system repairs, differential repair or rebuilding of any of such parts or fluid changing shall not have a floor drain or other device where wastewater may discharge directly to the sanitary sewer. These areas shall be physically separated from any area that drains into the sanitary sewer. All drainage from these areas shall discharge into a hold-haul tank or approved pretreatment device.
- (f) *Vehicle washing, steam cleaning and chemical cleaning facilities.* Drainage from steam cleaning and chemical cleaning facilities shall not be discharged to the sanitary sewer unless a facility or process is provided that will consistently produce an effluent that is in compliance with this article, particularly in regard to grease, oils, organics and phosphates.
- (g) *Grease and sand trap maintenance notification.* Any industry with grease and sand trap or interceptor tanks shall obtain and maintain the waste hauler's trip ticket for a 12-month period. The waste hauler trip ticket shall reflect the date that the tank is emptied, the business name or generator, the hauler's name and state department of health number, the signature of the hauler or driver, signature of the businesses manager and or representative and where the waste was disposed. Such information will coincide with federal, state and local rules. Waste from grease traps shall be completely evacuated by the waste hauler. The waste hauler shall not allow any liquid, once pumped into the truck, to be discharged back into grease trap.

(Ord. No. O-15-11, § I, 4-11-2011)

Sec. 98-35. Septage.

- (a) Septage shall be hauled to the POTW treatment plant for disposal during hours designated by the director. The septage shall be discharged into that portion of the POTW plant designated by the director, provided:
 - (1) The POTW plant is capable, in the opinion of the plant operator, of receiving and treating septage without inconvenience to the operation staff, overloading or degradation of plant effluent.
 - (2) The POTW plant operator verifies by inspection that no grease trap cleaning, toxic wastes or other unacceptable wastes are present.
- (b) The POTW plant operator may collect samples and require test results as deemed necessary.

(Ord. No. O-15-11, § I, 4-11-2011)

Sec. 98-36. Charges and permit fee for septage haulers.

It shall be unlawful for any person to haul septage in the City of Palestine without having first obtained a permit. The permit will be valid for one year and entitles the septage hauler to

use the wastewater treatment plant, as provided by their article, unless modified by ordinance or state or federal law. The annual permit fee, and the charge for unloading, shall be as set forth in ~~the~~ **APPENDIX B**-Fee schedule adopted by the city council.

(Ord. No. O-15-11, § I, 4-11-2011)

Sec. 98-37. Prohibited discharges.

- (a) No user shall introduce or cause to be introduced into the POTW any pollutant or wastewater which causes pass through or interference. These general prohibitions apply to all users of the POTW whether or not they are subject to categorical pretreatment standards or any other national, state, or local pretreatment standards or requirements.
- (b) Under this article, it shall be unlawful for any person to discharge:
 - (1) Any wastewater or cooling water having a temperature which will inhibit biological activity in the POTW plant resulting in interference, and no wastewater or cooling water with a temperature which causes the POTW influent temperature to exceed 40 degrees Celsius (104 degrees Fahrenheit).
 - (2) Any waters or wastes which contain wax, grease or oil, plastic or other substance that will solidify or become discernibly viscous at temperatures between 60 degrees to 90 degrees Fahrenheit.
 - (3) Any discharge of pollutants which create a fire or explosive hazard in the POTW, including, but not limited to, wastestreams with a closed-cup flashpoint of less than 140 degrees Fahrenheit or 60 degrees Celsius using the test methods specified in 40 CFR 261.21.
 - (4) Pollutants, including oxygen-demanding pollutants such as BOD, released in a discharge at a flow rate and/or pollutant concentration which, either singly or by interaction with other pollutants, will cause interference with the POTW.
 - (5) Any garbage that has not been properly comminuted or shredded to particles not greater than one-half-inch in dimension.
 - (6) Any noxious or malodorous substance that can form a gas, that, either singly or through interaction with other wastes, is capable of causing objectionable odors or presents a hazard to life and property or that forms solids in concentrations exceeding limits established in this article, or creates any other condition deleterious to structures or treatment processes or requires unusual facilities, attention or expense to handle.
 - (7) Any trucked waste into the POTW, except at points designated by the POTW.
 - (8) Free or emulsified oil and grease exceeding, on analysis, an average of 200 mg/l of either or combinations of free or emulsified oil and grease, if such wastes:
 - a. Can deposit grease or oil in the sewer lines in such manner as to clog the sewers;
 - b. Can overload the user/discharger's skimming and grease handling equipment;

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- c. Are not amenable to biological oxidation and will therefore pass to the receiving waters without being affected by normal sewage treatment processes; or
 - d. Can have deleterious effects on the treatment process due to the excessive quantities.
- (9) Acids or alkalies that attack or corrode the POTW or have a pH value lower than 5.0 or higher than 11.0, respectively.
 - (10) Compounds of the heavy metals, in solution or suspension, in concentrations exceeding those established in a discharge permit or in the technically based local limits as set out in section 90-60.
 - (11) Cyanide or cyanogen compounds capable of liberating hydrocyanic gas on acidification in excess of one ppm by weight of cyanide in the wastes from any outlet into the public sewers.
 - (12) Radioactive materials exceeding the existing standards of the state department of health.
 - (13) Any wastewaters containing phenols or other taste producing substances in such concentrations that produce an odor or taste in the effluent and affects the taste and odor of the receiving water.
 - (14) Materials that exert or cause:
 - a. Unusual concentrations of solids or compositions, as for example total suspended solids of inert nature, such as Fuller's earth, and sodium sulfate;
 - b. Excessive discoloration;
 - c. Unusual biochemical oxygen demand, unusual COD or an immediate oxygen demand;
 - d. High hydrogen sulfide content; or
 - e. Unusual flow and concentration.
 - (15) Any pollutant, including oxygen demanding pollutants, released at a flow rate or pollutant concentration that a user knows or has reason to know will cause interference to the POTW.
 - (16) A slug or slug load.
 - (17) Toxic substances that are not amenable to treatment or reduction by the wastewater treatment process employed or are amenable to treatment only to such degree that the wastewater treatment plant cannot meet the requirements of other agencies having jurisdiction over discharge to the receiving waters without first pretreating to a concentration acceptable to the city.
 - (18) Any wastewater containing toxic pollutants in sufficient quantities, either singly or by interaction with other pollutants, that causes interference to the POTW.

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- (19) Any substance that may cause interference with the POTW's effluent or any other product of the POTW such as residue, sludges or scum.
 - (20) Any substance that will cause the POTW to violate its NPDES or state disposal system permit or the receiving water quality standards.
 - (21) Pollutants which result in the presence of toxic gases, vapors, or fumes within the POTW in a quantity that may cause acute worker health and safety problems.
 - (22) Petroleum oil, nonbiodegradable cutting oil, or products of mineral oil origin, in amounts that will cause interference or pass through.
- (c) Any person desiring to discharge wastewater that contains arsenic, cadmium, chromium, copper, cyanide, lead, mercury, nickel, silver, zinc, or phenolics must submit an application to the city to obtain a permit as outlined in sections 98-43 and 98-44. The city shall establish permit limits in accordance with the allocation method contained in the city's EPA approved pretreatment program.
 - (d) Users must comply with the categorical pretreatment standards found at 40 CFR Chapter 1, Subchapter N, Parts 405—471.
 - (e) Right of revision.
 - (1) The city may initiate program modification at any time to reflect changing conditions at the POTW. Program modification is necessary whenever there is a significant change in the operation of the pretreatment program that differs from the information in the city's submission approved by the TCEQ.
 - (2) Approval procedures for non-substantial modifications.
 - a. The city shall notify the TCEQ of any non-substantial modification at least 45 days prior to implementation by the city by providing a statement of the basis for the desired program modification, a modified program description, or such other documents the TCEQ determines to be necessary under the circumstances.
 - b. Within 45 days after the submission of the city's statement, the TCEQ shall notify the city of its decision to approve or disapprove the non-substantial modification.
 - c. If the TCEQ does not notify the city within 45 days of its decision to approve or deny the modification, or to treat the modification as substantial, the POTW may implement the modification.

(Ord. No. O-15-11, § I, 4-11-2011; Ord. No. O-44-15 , § I, 11-9-2015)

Sec. 98-38. Dilution to achieve compliance.

- (a) It shall be unlawful for any person to increase the use of process water or in any way attempt to dilute a discharge as a partial or complete substitute for adequate treatment to achieve compliance with the limitations contained in this article.

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- (b) When wastewater subject to a categorical pretreatment standard is mixed with wastewater not regulated by the same standard, an alternate limit calculated in accordance with 40 CFR 403.6(e) shall be imposed.

(Ord. No. O-15-11, § I, 4-11-2011)

Sec. 98-39. Notice of prohibited discharge.

- (a) When the director determines that a user is discharging to the POTW any of the substances enumerated in section 98-37 or any other substance in such amounts that could interfere with the operation of the POTW, the director shall:
 - (1) Advise the user of the impact of the discharge on the POTW.
 - (2) Develop an effluent limitation for such user to correct the interference with the POTW and incorporate this limit into the user's permit.
 - (3) Allocate the substance among users that discharge that substance. The limit shall not exceed any value given in section 98-37 or cause the headworks limit established by the city to be violated.
- (b) The administrative options listed in subsection (a) of this section will not in any way exempt the user from any enforcement action resulting from a violation.
- (c) Any user must notify the director or the POTW immediately of all problem discharges, including slug discharges.

(Ord. No. O-15-11, § I, 4-11-2011)

Sec. 98-40. Flow equalization.

If there are unusual volumes of industrial waste or the character of the industrial waste exceeds that of normal waste at certain times within a 24-hour period, a flow-equalizing tank may be required so that the discharge over a 24-hour period complies with the normal waste quality and flow requirement.

(Ord. No. O-15-11, § I, 4-11-2011)

Sec. 98-41. Permit required.

- (a) A significant industrial user must not discharge or allow discharge of industrial waste into the wastewater system without obtaining and maintaining a valid permit from the director.
- (b) The city shall verify prior to discharge that wastes authorized to be discharged will receive, if needed, suitable pretreatment within the law, ordinances, rules and orders of federal, state and local governments.
- (c) The city may request material safety data sheets (MSDS) of all materials used on or stored on the site.

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- (d) Any industry subject to 40 CFR 405—471 and any applicable state rules shall be required to obtain a discharge permit or comply with all rules, pretreatment requirements or discharge limits applicable to that particular industrial category. National pretreatment standards take precedent over this article if the national standards are more stringent than the local limits.

(Ord. No. O-15-11, § I, 4-11-2011)

Sec. 98-42. Permit fees.

Application, monitoring, and inspection fees shall be in the amount set forth in ~~the~~ **APPENDIX B-** Fee schedule adopted by the city council.

(Ord. No. O-15-11, § I, 4-11-2011)

Sec. 98-43. Permit application.

A person required to obtain a discharge permit under this article shall complete and file with the city an application containing at least the following information:

- (1) Name, address and location, if different from the mailing address.
- (2) SIC number according to the Standard Industrial Classification Manual, Bureau of the Budget, 1972, as amended.
- (3) Wastewater constituents and characteristics, including, but not limited to, those mentioned in sections 98-32 through 98-37 of this article as determined by a reliable analytical laboratory; sampling and analysis shall be performed in accordance with procedures established by the EPA pursuant to section 304(g) of the Act and contained in 40 CFR 136, as amended.
- (4) Time and duration of contribution.
- (5) Average daily and three-minute peak wastewater flow rates, including daily, monthly and seasonable variations, if any.
- (6) Site plans, floor plans, mechanical and plumbing plans and details to show all sewers, sewer connections and appurtenances by the size, location and elevation.
- (7) Description of activities, facilities and plant processes on the premises, including all materials that are or could be discharged.
- (8) Where known, the nature and concentration of any pollutants in the discharge that are limited by any city, state or federal pretreatment standards and a statement regarding whether or not the pretreatment standards are being met on a consistent basis and, if not, whether additional operation and maintenance (O&M) or additional pretreatment is required for the user to meet applicable pretreatment standards.
- (9) If additional pretreatment or O&M will be required to meet the pretreatment standards, the shortest schedule by which the user will provide such additional pretreatment. The completion date in this schedule shall not be later than the compliance date established

for the applicable pretreatment standard. The following conditions shall apply to this schedule:

- a. The schedule shall contain increments of progress in the form of dates for the commencement and completion of major events leading to the construction and operation of additional pretreatment required for the user to meet the applicable pretreatment standards, i.e., hiring an engineer, completing preliminary plans, completing final plans, executing a contract for major components, commencing construction, completing construction, etc.
 - b. No increment referred to in subsection (9)a. of this section shall exceed nine months.
 - c. Not later than 14 days following each date in the schedule and the final date for compliance, the user shall submit a progress report to the director including, as a minimum, whether or not it complied with the increment of progress, the reason for delay and the steps being taken by the user to return the construction to the schedule established. No more than nine months shall elapse between such progress reports to the director.
- (10) Each product produced by type, amount, process and rate of production.
- (11) Type and amount of raw materials processed (average and maximum per day).
- (12) Number and type of employees and hours of operation of the plant and proposed or actual hours of operation of the pretreatment system.
- (13) The signature of an authorized representative of the user, along with the following certification: "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."
- (14) Any other information as may be deemed by the city to be necessary to evaluate the permit application. The city will evaluate the data furnished by the user and may require additional information. After evaluation and acceptance of the data furnished, the city may issue a discharge permit subject to terms and conditions provided in this article.

(Ord. No. O-15-11, § I, 4-11-2011)

Sec. 98-44. Permit conditions.

A discharge permit required under this article shall be expressly subject to all sections of this article and all other applicable requirements, user charges and fees established by the city. Permits may contain the following:

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- (1) The unit charge or schedule of user charges and fees for the wastewater to be discharged to the POTW.
 - (2) Limits on the average and maximum wastewater pollutants with estimated amounts and strengths of industrial wastes. When a discharger discharges 25,000 gallons or more daily, strengths shall be based on actual samples from the point or points of discharge.
 - (3) Limits on average and maximum rate and time of discharge or requirements for flow regulations and equalization. Where applicable, flow-regulating devices approved by the director shall be installed.
 - (4) The city shall require to be provided and operated at the user's own expense monitoring facilities to allow inspection, sampling and flow measurement of the building sewer and internal drainage systems. The permit shall identify the pollutants to be monitored. The monitoring facility should normally be situated on the user's premises but the city may, when such a location would be impractical or cause undue hardship on the user, allow the facility to be constructed in the public street or sidewalk area and located so that it will not be obstructed by landscaping or parked vehicles. Sampling locations must be sufficient for representative samples to be collected. There shall be ample room in or near such sampling manhole or facility to allow accurate sampling and preparation of samples for analysis. The facility, sampling and measuring equipment shall be maintained at all times in a safe and proper operating condition at the expense of the user. Whether constructed on public or private property, the sampling and monitoring facilities shall be provided in accordance with the city's requirements and all applicable local construction standards and specifications. Construction shall be completed within 90 days following written notification by the city. All materials shall be removed from pretreatment facilities. Storage, handling, disposal and transportation of these wastes shall be done according to all applicable federal, state and local regulations that pertain to the type and class of waste generated.
 - (5) Other special requirements for installation and maintenance of inspection and sampling facilities.
 - (6) Specifications for monitoring programs which may include sampling locations, frequency of sampling, number, types and standards for tests and reporting schedule.
 - (7) A statement of the applicable civil and criminal penalties for violation of pretreatment standards and requirements, and any applicable compliance schedules.
 - (8) Requirements for submission of technical reports or discharge reports. Should the user's test results show the user's discharge to be out of compliance with the set limits, the user must resample and submit a report indicating compliance within 30 days following the instance of noncompliance and notify the city of the violation within 24 hours of becoming aware of the violation as noted in 40 CFR 403.12(g)(2).
 - (9) Requirements for maintaining and retaining plant records relating to wastewater constituents and volumes for three years.
 - (10) Requirements for immediate notification of all slug loads and discharges.

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- (11) Where required, to modify or eliminate wastes that are harmful to the structures, processes or operation of the sewer works or detrimental to the quality of the effluent, the person shall provide, at his expense, such preliminary treatment or processing facilities which will render his wastes acceptable for admission to the POTW. Additional information regarding this subsection is found in section 98-48. Plans, specifications and any other pertinent information relating to proposed preliminary treatment or processing facilities or flow equalization facilities shall be submitted for approval of the director prior to the start of their construction, if the effluent from such facilities is to be discharged into the public sewers. All such plans shall be prepared by a registered professional engineer and shall bear his signature and seal.
- (12) Requirements for O&M of the pretreatment facilities in a manner to eliminate odors, health hazards, etc.
- (13) Requirements for notification of the POTW in advance of any substantial changes in the volume or character of pollutants in their discharges.
- (14) Provisions for revocation or termination of the permit as set out in 40 CFR §§ 403.8(f)(1)(vi)(B) and 403.8(f)(5).
- (15) Other conditions as deemed appropriate by the city to ensure compliance with this article.

(Ord. No. O-15-11, § I, 4-11-2011)

Sec. 98-45. Permit modifications.

Within six months of the promulgation of a national categorical pretreatment standard, the discharge permit of users subject to these standards shall be revised to require compliance with the standards within the timeframe prescribed by the standards. Where a user, subject to a national categorical pretreatment standard, has not previously submitted an application for a discharge permit, the user shall apply for a discharge permit within 90 days after the promulgation of the applicable national categorical pretreatment standard. In addition, the user with an existing discharge permit shall submit to the director within 30 days after the promulgation of an applicable federal categorical pretreatment standard the information required by section 98-43.

(Ord. No. O-15-11, § I, 4-11-2011)

Sec. 98-46. Permit duration.

Permits shall be issued under this article for a specified time period, not to exceed five years, but potentially for less than one year. A permit will be stated to expire on a specific date. The user shall apply for permit reissuance a minimum of 60 days prior to the expiration of the permit. The terms and conditions of the permit may be subject to modification by the city during the period of the permit as limitations or requirements, as identified in section 98-43, are modified or other just cause exists. The user shall be informed of any proposed changes in his

permit at least 30 days prior to the effective date of change. Any changes or new conditions in the permit shall include a reasonable time schedule for compliance.

(Ord. No. O-15-11, § I, 4-11-2011)

Sec. 98-47. Permit transferability.

Permits granted under this article are not transferable or assignable.

(Ord. No. O-15-11, § I, 4-11-2011)

Sec. 98-48. Pretreatment facilities.

Users shall provide necessary wastewater treatment as required to comply with this article and shall achieve compliance with all federal categorical pretreatment standards within the time limitations as specified by the federal pretreatment regulations. Any facilities required to pretreat wastewater to a level acceptable to the city shall be provided, operated and maintained at the user's expense. Detailed plans showing the pretreatment facilities and operating procedures shall be submitted to the city for review and shall be acceptable to the city before construction of the facility. The review of such plans and operating procedures will in no way relieve the user from the responsibility of modifying the facility as necessary to produce an effluent acceptable to the city under this article. Any subsequent changes in the pretreatment facilities or method of operation shall be reported to and be acceptable to the city prior to the user's initiation of the changes.

(Ord. No. O-15-11, § I, 4-11-2011)

Sec. 98-49. Industrial waste surcharges.

- (a) Users discharging industrial wastes which exhibit none of the characteristics of wastes prohibited in section 98-37, other than excessive BOD or suspended solids, having a concentration during a 24-hour period average of suspended solids or BOD content in excess of 500 mg/l, shall be required to pretreat the industrial wastes to meet the requirements of normal domestic sewage. However, such wastes may be accepted by the city for treatment if all the following requirements are met:

- (1) The waste will not cause damage to the collection system.
- (2) The waste will not impair the treatment process.
- (3) The user agrees to pay a surcharge over and above the existing sewer rates with the basics for surcharges on industrial waste to be computed in the following manner:

The volume of water usage as averaged from the preceding months of November, December and January expressed in million gallons per month (mgm) shall be used to compute the total pounds of BOD and TSS discharged into the POTW's sewers.

$$\text{Avg. vol. (mgm)} \times 8.34 \text{ lbs.} \times (\text{BOD mg/l} - 250 \text{ mg/l}) = \text{lbs. BOD discharge}$$

$\text{Avg. vol. (mgm)} \times 8.34 \text{ lbs.} \times (\text{TSS mg/l} - 250 \text{ mg/l}) = \text{lbs. TSS discharge}$

$\text{Lbs. BOD discharge} \times \$0.47/\text{lb. BOD treatment} = \text{BOD surcharge per month}$

$\text{Lbs. TSS discharge} \times \$0.45 \text{ cost/lb. TSS treatment} = \text{TSS surcharge per month}$

$\text{Total surcharge/month} = \text{BOD surcharge/month} + \text{TSS surcharge/month}$

- (b) The basis for determining the surcharge shall be reviewed biennially and shall be adjusted to reflect any increase or decrease in wastewater treatment costs based on the previous year's experience.

(Ord. No. O-15-11, § I, 4-11-2011)

Sec. 98-50. Billing.

Industrial waste surcharges shall be included as a separate item on the regular bill for water and sewer charges and shall be paid monthly in accordance with the practices of the city. Surcharges shall be paid at the same time that the sewer charges become due.

(Ord. No. O-15-11, § I, 4-11-2011)

Sec. 98-51. Failure to pay charges.

In addition to the sanctions provided for by this article, the city is entitled to exercise sanctions provided by the other sections of this Code for failure to pay the bill for water and sewer charges when due.

(Ord. No. O-15-11, § I, 4-11-2011)

Sec. 98-52. Discharge of industrial waste.

When wastewater containing industrial waste materials is discharged to the POTW and such wastes are not properly pretreated or otherwise corrected, the approving authority may:

- (1) Reject the wastes and terminate the service;
- (2) Require control of the quantities and rates of discharge of such wastes with flow-regulating devices;
- (3) Deny or condition new or increased contributions of pollutants, or changes in the nature of pollutants, to the POTW by industrial users where such contributions do not meet applicable pretreatment standards and requirements or where such contributions would cause the city to violate its NPDES permit; or
- (4) Require payment of surcharges for excessive cost of treatment, provided such wastes are amenable to treatment by the POTW. These surcharges may be for waste materials other than those in section 98-49.

(Ord. No. O-15-11, § I, 4-11-2011)

Sec. 98-53. Periodic compliance reports.

(a) *Baseline monitoring reports (BMRs).*

- (1) Within either 180 days after the effective date of a categorical pretreatment standard, or the final administrative decision on a category determination under 40 CFR 403.6(a)(4), whichever is later, existing categorical industrial users currently discharging to or scheduled to discharge to the POTW shall submit to the city a baseline monitoring report. At least 90 days prior to commencement of their discharge, new sources, and sources that become categorical industrial users subsequent to the promulgation of an applicable categorical standard, shall submit to the city a baseline monitoring report. A new source shall report the method of pretreatment it intends to use to meet applicable categorical standards. A new source also shall give estimates of its anticipated flow and quantity of pollutants to be discharged.
- (2) A baseline monitoring report shall include:
 - a. The name and address of the facility, including the name of the operator and owner;
 - b. Contact information, description of activities, facilities, and plant production processes on the premises;
 - c. A list of any environmental control permits held by or for the facility;
 - d. A brief description of the nature, average rate of production (including each product produced by type, amount, processes, and rate of production), and standard industrial classifications of the operation(s) carried out by such user, including a schematic process diagram that indicates points of discharge to the POTW from the regulated processes;
 - e. Information showing the measured average daily and maximum daily flow, in gallons per day, to the POTW from regulated process streams and other streams, as necessary, to allow use of the combined wastestream formula set out in 40 CFR 403.6(e);
 - f. A measurement of pollutants, including:
 1. The categorical pretreatment standards applicable to each regulated process and any new categorically regulated processes for existing sources;
 2. The results of sampling and analysis, performed in compliance with the requirements of paragraph 3 of this subsection, identifying the nature, concentration, and mass, as required by the categorical pretreatment standard or by the city, of regulated pollutants in the discharge from each regulated process;
 3. Instantaneous, daily maximum, and long-term average concentrations, or mass, where required;

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4. Where the categorical pretreatment standard requires compliance with a best management practices or pollution prevention alternative, documentation as required by the city or the applicable categorical pretreatment standard to determine compliance with the standard; and
 5. The time, date, and place of sampling and methods of analysis, and a certification that such sampling and analysis is representative of normal work cycles and expected pollutant discharges to the POTW;
- g. A statement, reviewed by the user's authorized representative and certified by a qualified professional, indicating whether pretreatment standards are being met on a consistent basis, and, if not, whether additional operation and maintenance (O&M) or additional pretreatment is required to meet the pretreatment standards and requirements; and
 - h. If additional pretreatment or O&M will be required to meet the pretreatment standards, a compliance schedule meeting the requirements of paragraph 4 of this subsection that sets forth the shortest schedule by which the user will provide such additional pretreatment or O&M must be provided, including a completion date that is not later than the compliance date established for the applicable pretreatment standard;
 - i. Signature and report certification. All baseline monitoring reports must be certified in accordance with subsection (e) of this section and signed by an authorized representative as defined in section 98-26.
- (3) Sampling and analysis requirements.
- a. The user shall take a minimum of one representative sample to compile that data necessary to comply with the requirements of this paragraph.
 - b. Samples should be taken immediately downstream from pretreatment facilities if such exist or immediately downstream from the regulated process if no pretreatment exists. If other wastewaters are mixed with the regulated wastewater prior to pretreatment the user should measure the flows and concentrations necessary to allow use of the combined waste stream formula in 40 CFR 403.6(e) to evaluate compliance with the pretreatment standards. Where an alternate concentration or mass limit has been calculated in accordance with 40 CFR 403.6(e) this adjusted limit along with supporting data shall be submitted to the control authority.
 - c. Sampling and analysis shall be performed in accordance with the techniques prescribed in 40 CFR Part 136 and amendments thereto, unless otherwise specified in an applicable categorical pretreatment standard. If 40 CFR Part 136 does not contain sampling or analytical techniques for the pollutant in question, or if the EPA determines that the Part 136 sampling and analytical techniques are inappropriate for the pollutant in question, sampling and analyses shall be performed by using validated analytical methods or any other applicable sampling

and analytical procedures, including procedures suggested by the city or other parties approved by EPA.

- d. The city may allow the submission of a baseline report which utilizes only historical data so long as the data provides information sufficient to determine the need for industrial pretreatment measures;
- (4) Compliance schedule requirements.
- a. The schedule shall contain progress increments, not to exceed nine months, in the form of dates for the commencement and completion of major events leading to the construction and operation of additional pretreatment required for the user to meet the applicable pretreatment standards (such events include, but are not limited to, hiring an engineer, completing preliminary and final plans, executing contracts for major components, commencing and completing construction, and beginning and conducting routine operation);
 - b. The schedule shall require a progress report to the city no later than 14 days following each date in the schedule and the final date of compliance including, as a minimum, whether or not it complied with the increment of progress, the reason for any delay, and, if appropriate, the steps being taken by the user to return to the established schedule; and
 - c. Progress reports shall be required no less frequently than every nine months.
- (b) *Ninety-day compliance reports.* Within 90 days following the date for final compliance with applicable pretreatment standards in this article or, for a new source, following commencement of the contribution of wastewater into the POTW, any industrial user classified as a regulated categorical standard industry and therefore subject to federal pretreatment standards and requirements shall submit to the control authority a 90-day compliance report indicating the nature and concentration of all pollutants in the discharge from the regulated process which are limited by pretreatment standards or requirements. The report shall state whether the applicable pretreatment standards or requirements are being met on a consistent basis and, if not, what additional O&M or pretreatment is necessary to bring the industrial user into compliance with the applicable pretreatment standards or requirements. This statement shall be signed by an authorized representative of the industrial user.
- (c) *Periodic compliance reports.*
- (1) Regulated categorical standard industries subject to a pretreatment standard after the compliance date of such pretreatment standard or, for new sources, after commencement of the discharge into the POTW shall submit a semiannual compliance report to the city during the months of June and December, unless required more frequently in the pretreatment standard or by the city, indicating the nature and concentration of pollutants in the effluent which are limited by such pretreatment standards. In addition, this report shall include a record of measured or estimated average and maximum daily flows for the reporting period. At the discretion of the city and in consideration of such factors as local high or local low flow rates, holidays,

budget cycles, etc. The city may agree to alter the months during which such reports are to be submitted. This report must be signed by an authorized representative of the industrial user.

- (2) Significant industrial users under the jurisdiction of this article are required to fulfill the same reporting requirements as a regulated categorical standard industry.
- (d) *Mass limitations.* The city may impose mass limitations on industrial users which are using dilution to meet applicable pretreatment standards or requirements or in other cases where the imposition of mass limitations are appropriate. In such cases, the required reports shall indicate the mass therein which is limited by the applicable pretreatment standards. The frequency of monitoring shall be prescribed in the applicable pretreatment standard. All analyses shall be performed in accordance with procedures established by the approval authority, pursuant to Section 304(g) of the Act and contained in 40 CFR 136 and amendments thereto or with any other test procedures approved by the approval authority. Sampling shall be performed in accordance with the techniques approved by the city.
- (e) *Signatory requirements.* Signatory requirements for industrial user reports will be required, as stated in 40 CFR 401.12(1). The reports listed in this section shall include a certification statement as set forth in 40 CFR 403.6(a)(2)(ii) and shall be signed as follows:
 - (1) By a responsible corporate officer, if the industrial user submitting the reports required by subsections (a), (b) and (d) of this section is a corporation. For the purpose of this subsection, a responsible corporate officer means: (i) a president, secretary, treasurer or vice-president of the corporation in charge of a principal business function or any other person who performs similar policy- or decision-making functions for the corporation; or (ii) the manager of one or more manufacturing, production or operation facilities employing more than 250 persons or having gross annual sales or expenditures exceeding \$25,000,000.00 (in second quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.
 - (2) By a general partner or proprietor if the industrial user submitting the reports required by subsections (a), (b) and (d) of this section or 40 CFR 403.12 is a partnership or sole proprietorship respectively.
 - (3) By a duly-authorized representative of the individual designated in subsection (e)(1) or (2) of this section if:
 - a. The authorization is made in writing by the individual described in subsections (e)(1) or (2) of this section;
 - b. The authorization specifies either an individual or a position having responsibility for the overall operation of the facility from which the industrial discharge originates, such as the position of plant manager, operator of a well or well field superintendent, or a position of equivalent responsibility or having overall responsibility for environmental matters for the company; and
 - c. The written authorization is submitted to the control authority.

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- (4) If an authorization under subsections (e)(1) or (2) of this section is no longer accurate because a different individual or position has responsibility for the overall operation of the facility or overall responsibility for environmental matters for the company, a new authorization satisfying the requirements of subsections (e)(1) or (2) of this section must be submitted to the control authority prior to or together with any reports to be signed by an authorized representative.

(Ord. No. O-15-11, § I, 4-11-2011)

Sec. 98-54. Notice of noncompliance.

- (a) The city shall publish annually, in a newspaper of general circulation that provides meaningful public notice within the city, a list of the users which, at any time during the previous 12 months, were in significant noncompliance with applicable pretreatment standards and requirements. The term in significant noncompliance of this article. This list shall be published in the month of August and shall cover the previous 12 months. This notification shall also summarize any enforcement actions taken against the user during the same 12 months.
- (b) All records relating to compliance with pretreatment standards shall be made available to officials of the EPA, the state water commission or the city upon request.

(Ord. No. O-15-11, § I, 4-11-2011)

Sec. 98-55. Accidental discharges.

- (a) Each user under this article shall provide protection from accidental discharge of prohibited materials or other substances regulated by this article. Facilities to prevent accidental discharge of prohibited materials shall be provided and maintained at the owner's or user's own cost and expense. Detailed plans showing facilities and operating procedures to provide this protection shall be submitted to the director for review and shall be approved by the director before construction of the facility. All users shall complete such a plan within one year of the effective date of the ordinance from which this article derives. No user who commences contribution to the POTW after the effective date of the ordinance from which this article derives shall be permitted to introduce pollutants into the system until accidental discharge procedures have been approved by the director. Review and approval of such plans and operating procedures shall not relieve the industrial user from the responsibility to modify the user's facility as necessary to meet the requirements of this article. If an accidental discharge occurs, it is the responsibility of the user to immediately telephone and notify the POTW of the incident. The notification shall include location of discharge, type of waste, concentration and volume and corrective actions.
- (b) Within five days following an accidental discharge, the user shall submit to the director a detailed written report describing the cause of the discharge and the measures to be taken by the user to prevent similar future occurrences. Such notification shall not relieve the user of any expense, loss, damage or other liability which may be incurred as a result of damage to

the POTW, fish kills or any other damage to person or property nor shall such notification relieve the user from any penalties imposed by this article or other applicable law.

- (c) A notice shall be permanently posted on the user's bulletin board or other prominent place advising employees of whom to call if a dangerous discharge occurs. Employers shall ensure that all employees who may cause or suffer such a dangerous discharge to occur are advised of the emergency notification procedure.

(Ord. No. O-15-11, § I, 4-11-2011)

Sec. 98-56. Inspection and sampling.

- (a) The city shall inspect the facilities of any user to determine whether the requirements of this article are being met. Persons or occupants of premises where wastewater is created or discharged shall allow the city or its representative ready access at all reasonable times to all parts of the premises for the purposes of inspection, sampling, records examination or in the performance of any of their duties. The city, the state water commission and the EPA shall have the right to set up on the user's property such devices as are necessary to conduct sampling inspection, compliance monitoring and metering operations. Where a user has security measures in force which would require proper identification and clearance before entry into the premises, the user shall make necessary arrangements with its security guards so that, upon presentation of suitable identification, personnel from the city, the state water commission and EPA will be permitted, without delay, for the purpose of performing their specific responsibilities.
- (b) The city has the authority to copy records; the user must retain a copy of its records for at least three years.
- (c) The city laboratory will use the testing procedures as required in 40 CFR 136 or if 40 CFR 136 does not include an analytical technique the city shall use analytical methods specified by the regulation as the latest version of standard methods. Additionally this subsection applies to industrial users for all sample collection and analytical procedures.
- (d) The city will inspect the facilities and sample the discharges of each significant industrial user no less than once per year.
- (e) If the city has been refused access to a building, structure, or property, or any part thereof, and is able to demonstrate probable cause to believe that there may be a violation of this article, or that there is a need to inspect or sample as part of the inspection and sampling requirements of this section, which are designed to verify compliance with this article and permits or orders issued under this article, or to protect the overall public health, safety and welfare of the community, the city manager or his designated representative may seek issuance of a search warrant from any court with appropriate jurisdiction.

(Ord. No. O-15-11, § I, 4-11-2011)

Sec. 98-57. Harmful contributions.

- (a) The city may suspend the water and wastewater treatment service and wastewater discharge permit when such suspension is necessary, in the opinion of the city, in order to stop an actual or imminent discharge that presents or may present an imminent or substantial endangerment to the health or welfare of persons or to the environment or that causes interference to the POTW or that causes the city to violate any condition of its NPDES permit.
- (b) Any person notified of a suspension of the wastewater treatment service or wastewater discharge permit shall immediately stop or eliminate the contribution. If the person fails to comply voluntarily with the suspension order, the city shall take such steps as deemed necessary, including immediate disconnection of water service and severance of the sewer connection, to prevent or minimize damage to the POTW system or endangerment to any individual. The city shall reinstate the wastewater discharge permit and the water and wastewater treatment service upon proof of the elimination of the noncomplying discharge. A detailed written statement submitted by the user describing the causes of the harmful contribution and the measures taken to prevent any future occurrence shall be submitted to the city within 15 days of the date of occurrence.

(Ord. No. O-15-11, § I, 4-11-2011)

Sec. 98-58. Show cause hearing.

- (a) The city may order any user who causes or allows a noncompliant discharge to enter the POTW to show cause before the city council why the proposed enforcement action should not be taken. A notice shall be serviced on the user specifying the time and place of a hearing to be held by the city council regarding the violation, the reasons why the action is to be taken, the proposed enforcement action and directing the user to show cause before the city council why the proposed enforcement action should not be taken. The notice of the hearing shall be served personally or by certified mail, return receipt requested, at least four days before the hearing. Service may be made on any agent or officer of a corporation.
- (b) The city council may itself conduct the hearing and take the evidence or may designate any of its members or any officer or employee to:
 - (1) Ensure in the name of the city council notices of hearings requesting the attendance and testimony of witnesses and the production of evidence relevant to any matter involved in such hearings.
 - (2) Take the evidence.
 - (3) Transmit a report of the evidence and hearing, including transcripts and other evidence, together with recommendations to the city council for action thereon.
- (c) At any hearing held pursuant to this article, testimony taken must be under oath and recorded stenographically. The transcript, so recorded, will be made available to any member of the public or any party to the hearing upon payment of the usual charges thereof.

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- (d) After the city council has reviewed the evidence, it may issue an order to the user responsible for the discharge directing that, following a specified time period, the water and sewer service be discontinued unless adequate treatment facilities, devices or other related appurtenances shall have been installed or existing treatment facilities, devices or other related appurtenances are properly operated. Further orders and directives as are necessary and appropriate may be issued.

(Ord. No. O-15-11, § I, 4-11-2011)

Sec. 98-59. Confidential information.

Information and data on a user obtained from reports, questionnaires, permit applications, permits and monitoring programs and from inspections under this article shall be available to the public or other governmental agency without restriction unless the user specifically requests and is able to demonstrate to the satisfaction of the city attorney that the release of such information would divulge information, processes or methods of production entitled to protection as trade secrets of the user. When requested by the person furnishing a report, the portions of a report which might disclose trade secrets or secret processes shall not be made available for inspection by the public but shall be made available upon written request to governmental agencies for uses related to this article, the national pollutant discharge elimination system (NPDES) permit, state disposal system permit and the pretreatment programs; provided, however, that such portions of a report shall be available for use by the state or any state agency in judicial review or enforcement proceedings involving the person furnishing the report. Wastewater constituents and characteristics will not be recognized as confidential information.

(Ord. No. O-15-11, § I, 4-11-2011)

Sec. 98-60. Technically based local limits.

Pollutant of Concern	Adopted Local Limits (mg/L)
Arsenic, Total	0.1625
Cadmium, Total	0.4738
Chromium, Total	15.6653
Cyanide, Total	2.40
Lead, Total	5.15
Mercury, Total	0.00
Nickel, Total	10.4924
Selenium, Total	0.1334
Silver, Total	8.2968

(Ord. No. O-44-15 , § II, 11-9-2015)

Secs. 98-61—98-80. Reserved.

ARTICLE III. RATES AND CHARGES

Sec. 98-81. Application for service.

Written application shall be made to the city for water, sewer or any other utility service that may be furnished by the city. Such application shall state the name and address of the applicant, the type of utility service desired, the purposes for which the application is made and such other information as the city may request.

(Code 1968, § 31-21; Ord. No. O-28-95, § I.A, 9-28-95; Ord. No. O-27-96, § I.A, 10-14-96; Ord. No. O-24-98, § I.A, 9-28-98)

Sec. 98-82. Water taps.

- (a) It shall be unlawful for any person, other than an authorized employee of the city, to make any tap to any water line part of the city's water system.
- (b) The charges which shall be assessed and collected from the customer for the installation of a water tap, meter and box shall be as follows. **See Appendix B- Fee Schedule**

Size of Connection (inches)	Cost of Tap, Meter and Box
3/4	1,458.29 \$2116.68
1	1,583.41 \$2241.80
1 1/2	2,731.22 \$4397.73
2	2,868.18 \$4538.56
Over 2	Actual cost of material and labor

- (c) If installation requires a pavement cut, ten-foot × ten-foot cut, there shall be an additional charge ~~of \$830.00-1310.00~~ which shall be assessed and collected from the customer. **See Appendix B- Fee Schedule**
- (d) If installation requires a highway bore there shall be an additional charge ~~of \$930.00-1100.00 minimum plus actual cost of labor and material which~~ shall be assessed and collected from the customer. **See Appendix B- Fee Schedule**

(Code 1968, §§ 31-22, 31-23; Ord. No. O-28-95, § I.B, 9-28-95; Ord. No. O-27-96, § I.B, 10-14-96; Ord. No. O-24-98, § I.B, 9-28-98; Ord. No. O-27-05, § I, 9-15-2006; Ord. No. O-18-11, § I, 5-9-2011; Ord. No. O-20-21 , § I, 6-14-2021)

Sec. 98-83. Meters required.

Meters shall be required to measure the consumption of each utility service furnished by the city, except garbage collection and sewer service.

(Code 1968, § 31-24)

Sec. 98-84. Installation, maintenance of meters.

All meters required by this article and used to measure the consumption of utility services furnished by the city shall be installed and maintained by the city. No two residences or houses shall be served by the same water meter.

(Code 1968, § 31-25)

Sec. 98-85. Ownership of meters.

All meters used for the measurement of the consumption of any utility service furnished by the city shall be the property of the city. It shall be unlawful for any person to install or maintain any meter for such purposes anywhere within the city which is not owned by the city.

(Code 1968, § 31-26)

Sec. 98-86. Tampering with meters.

It shall be unlawful for any person, other than a duly authorized employee of the city, to tamper with any meter or to in any manner injure any meter or to manipulate or attempt to manipulate any meter in any manner so as to affect its registration or measurement of the metered utility service. Any person tampering with any meter will be assessed a meter tampering fee of \$150.00. Should the tampering result in damage to the meter or meter transponder, the person will be assessed an additional fee, not to exceed the replacement cost of the meter and/or its parts.

(Code 1968, § 31-27; Ord. No. 0-36-03, § II, 11-24-2003)

Sec. 98-87. Utility deposit.

- (a) Along with the application for water, wastewater, or solid waste collection service, the applicant shall pay to the city a deposit as follows:
 - (1) If the application seeks to establish water, wastewater, and solid waste residential service, \$120.00.
 - (2) If the applicant seeks to establish water, wastewater, or solid waste residential service, but not all three services, \$60.00.
 - (3) Commercial and industrial service, \$180.00.

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- (b) At the time the application for service is made, the applicant shall pay to the city an amount equal to one-half of the appropriate deposit. The remaining deposit amount will be spread equally over the first two utility bills. Nothing in this section shall prohibit an applicant from paying the entire amount of the deposit when they apply for service.

(Ord. No. O-24-10, § II, 4-26-2010)

Editor's note(s)—Ord. No. O-24-10, § II, adopted April 26, 2010, amended § 98-87 in its entirety as set out herein. Formerly, said section pertained to water deposit. See the Code Comparative Table for a complete derivation.

Sec. 98-88. Refund of deposit.

- (a) Any utility deposit made to the city by any customer shall be refunded to the customer when:
- (1) The customer has one year of continuous water service;
 - (2) The customer has no more than two late payments in the past 12 months;
 - (3) The customer has no disconnects for non-payment in the past 12 months; and
 - (4) The customer has no returned checks in the past 12 months.
- (b) If the city has refunded the customer's utility deposit under the criteria set out in subsection (a) of this section, and thereafter the customer's water service has been disconnected for nonpayment, the customer shall pay a new utility deposit.

(Code 1968, § 31-29; Ord. No. O-39-2012, § I, 9-10-2012)

Sec. 98-89. Payment of interest on deposits.

It shall be unlawful for the water or sewer department or any officer or agent of the city to pay any interest whatsoever on any money deposited with the water or sewer department, except interest, if any, which may have lawfully accrued on deposits held by the city. The payment of interest by the city on any water, sewer or other deposit not specifically authorized in this section is prohibited.

(Code 1968, § 31-30)

Sec. 98-90. Water rates.

The monthly water rates or charges to be charged by the city for treated water furnished to its consumers in the city shall be as follows:

- (1) The minimum monthly charge for the first 2,000 gallons shall be based on the size of the meter as follows:
 - a. Three-fourths-inch to one-inch\$16.17
 1. Three-fourths to one-inch sprinkler21.68

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- b. One and one-half-inch 42.18
 - c. Two-inch 61.61
 - d. Three-inch 123.11
 - e. Four-inch 195.37
 - f. Six-inch 516.48
 - g. Eight-inch 774.61
- (2) Usage charges shall be as follows:
- a. Residential:
 - 1. From 2,000 gallons to 6,000 gallons, per 1,000 gallons \$6.73
 - 2. From 6,000 gallons to 20,000 gallons, per 1,000 gallons 8.41
 - 3. After 20,000 gallons, per 1,000 gallons 10.51
 - b. Commercial:
 - 1. From 2,000 gallons to 20,000 gallons, per 1,000 gallons \$7.18
 - 2. After 20,000 gallons, per 1,000 gallons 8.98
 - 3. Sprinkler: From 2,000 gallons to 20,000 gallons, per 1,000 gallons 7.18
 - 4. Sprinkler: After 20,000 gallons, per 1,000 gallons 10.51
 - c. Multifamily, as defined in subsection (3):
 - 1. From 2,000 gallons to 20,000 gallons, per 1,000 gallons \$7.18
 - 2. After 20,000 gallons, per 1,000 gallons 8.98
 - 3. Sprinkler: From 2,000 gallons to 20,000 gallons, per 1,000 gallons 7.18
 - 4. Sprinkler: After 20,000 gallons, per 1,000 gallons 10.51
 - d. Industrial:
 - 1. From 2,000 gallons to 20,000 gallons, per 1,000 gallons \$7.18
 - 2. After 20,000 gallons, per 1,000 gallons 8.98
 - 3. Sprinkler: From 2,000 gallons to 20,000 gallons, per 1,000 gallons 7.18
 - 4. Sprinkler: After 20,000 gallons, per 1,000 gallons 10.51
 - e. Raw water, per 1,000 gallons \$0.89
 - f. Starting in October 2021, a three-fourths-percent increase in all water rates, or an increase equal to the CPI inflation index annually, whichever is greater, should be implemented each year.

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- (3) Apartment houses or multi-family dwellings or multi-unit buildings designed to house two or more families or units shall, unless each unit is separately metered, be charged and billed at the multifamily rate set forth in subsection (2)(c) of this section.
 - (4) Mobile home parks and trailer courts shall, unless each unit is separately metered, be charged and billed at the commercial rate set forth in subsection (2)(b) of this section.
 - (5) The rates specified in all water contracts entered into by the city, except those specified in the following subsection (6) shall be charged and billed at the rate of \$7.18 per 1,000 gallons with no minimum charge per month.
 - (6) All consumers located outside the corporate limits of the city which have made agreements with the city for water services on an individual basis for an individual consumer shall be charged at a rate that is 1.25 times the rates set forth in subsections (1) and (2) of this section.
 - (7) If a consumer requests that the meter be reread and/or requests a data log and such is done there shall be a charge of \$16.50 assessed on the next bill of that customer. This fee is waived if it is apparent the user has a leak and/or it is determined by the city that the first reading was incorrect. Also, there shall be a charge of \$52.00 if the meter has been pulled for nonpayment of services.
 - (8) Each new consumer of city water shall pay a nonrefundable water utility service setup charge in the amount of \$10.00 which will be charged to the consumer on the first bill sent to the consumer for water service. Each consumer who desires to have an existing water service transfer shall pay a transfer fee in the amount of \$25.00 which will be billed to the consumer on the first bill for water service at the new address.
 - (9) Payments will be due 20 days from the billing date.
 - (10) A late charge of ten percent will be assessed for an account that has not been paid in full within 20 days from the billing date.

(Code 1968, § 31-31; Ord. No. O-28-95, § I.D, 9-28-95; Ord. No. O-27-96, § I.D, 10-14-96; Ord. No. O-24-98, § I.D, 9-28-98; Ord. No. O-36-03, § IV, 11-24-2003; Ord. No. 27-05, § II, 9-15-2005; Ord. No. O-33-06, § I, 9-18-2006; Ord. No. O-41-07, § I, 9-17-2007; Ord. No. O-46-07, § I, 9-17-2007; Ord. No. O-24-10, § II, 4-26-2010; Ord. No. O-41-12, § I, 9-24-2012; Ord. No. O-47-13, § I, 9-23-2013; Ord. No. O-31-17, § I, 9-25-2017; Ord. No. O-01-18, § I, 1-8-2018 ; Ord. No. O-35-18, § I, 9-24-2018 ; Ord. No. O-23-19, § I, 7-8-2019 ; Ord. No. O-29-22, § I, 12-12-2022; Ord. No. O-22-23, § I, 9-11-2023)

Sec. 98-91. Wastewater rates.

The monthly wastewater rates or wastewater charges to be paid by the users of the city sanitary sewer system shall be computed upon the numbers of gallons of water metered to such consumer through the water meter of such consumer and shall be calculated in the following manner:

- (1) Residential. Residential users shall pay the charge according to the following:

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- a. First 2,000 gallons, minimum charge, base charge\$20.26
 - b. Over 2,000 gallons, per 1,000 gallons6.76
 - c. Rates for residential wastewater service will be calculated upon actual monthly water usage. The winter period shall be between December 1 through March 31. If a user was not a customer for the entire previous winter period, the average monthly water usage will be the citywide average winter usage for all residential users. Averages will be recalculated May 1 of every year.
- (2) Non-consumers of city water. Consumers located inside the corporate limits of the city who are provided sanitary wastewater services but are not connected to city water shall pay a charge of \$58.69 per month. Consumers located outside the corporate limits of the city who are provided sanitary wastewater services but are not connected to city water shall pay a charge of \$73.37 per month.
 - (3) Multifamily. Apartment houses or multifamily dwellings or multi-unit buildings designed to house two or more families or units shall, unless each unit is separately metered, pay the charge according to the following:
 - a. Gallons per month:
 1. 0—2,000\$51.80
 2. Over 2,000 gallons, for every 1,000 gallons6.80
 - (4) Commercial. Commercial users shall pay the charge according to the following:
 - a. Gallons per month:
 1. 0—2,000\$51.80
 2. Over 2,000 gallons, for every 1,000 gallons6.80
 - b. Over-strength charges. Commercial users shall pay \$0.84 per mg/l of TSS, BOD, ammonia, or oil and grease over the maximum concentration of 250 mg/l of TSS or BOD, 30 mg/l of ammonia (N), or 200 mg/l of oil and grease.
 - (5) Industrial. Industrial users shall pay the charge according to the following:
 - a. Gallons per month:
 1. 0—2,000\$51.80
 2. Over 2,000 gallons, for every 1,000 gallons6.80
 - b. Over-strength charges. Commercial users shall pay \$0.84 per mg/l of TSS, BOD, ammonia, or oil and grease over the maximum concentration of 250 mg/l of TSS or BOD, 30 mg/l of ammonia (N), or 200 mg/l of oil and grease.
 - (6) Mobile home parks and trailer courts shall, unless each unit is separately metered, be charged and billed at the commercial rate.
 - (7) A late charge of ten percent will be assessed for an account that has not been paid in full within 20 days from the billing date.

- (8) All consumers located outside the corporate limits of the city which have made agreements with the city for wastewater services on an individual basis for an individual consumer shall be charged at a rate that is 1.25 times the rates set forth in this section.

(Code 1968, § 31-32; Ord. No. O-28-95, § I.E, 9-28-95; Ord. No. O-27-96, § I.E, 10-14-96; Ord. No. O-24-98, § I.E, 9-28-9; Ord. No. O-23-02, 10-23-2002; Ord. No. 27-05, § III, 9-15-2005; Ord. No. O-30-05, § I, 10-24-2005; Ord. No. O-7-06, § I, 3-13-2006; Ord. No. O-33-06, § II, 9-18-2006; Ord. No. O-41-07, § II, 9-17-2007; Ord. No. O-46-07, § II, 9-17-2007; Ord. No. O-24-10, § III, 4-26-2010; Ord. No. O-38-11, § I, 8-22-2011; Ord. No. O-47-13, § II, 9-23-2013; Ord. No. O-56-13, § I, 10-28-2013; Ord. No. O-31-17, § II, 9-25-2017; Ord. No. O-01-18, § II, 1-8-2018 ; Ord. No. O-29-22, § I, 12-12-2022; Ord. No. O-22-23, § I, 9-11-2023)

Sec. 98-92. Charges for sewer tap and installation.

- (a) There shall be **fees** assessed and collected from the customer for the installation of a sanitary sewer tap. ~~the following charge(s):~~ See Appendix B- Fee Schedule

Size of Connection (inches)	Cost
Up to 4 feet deep	1,019.31 – \$1536.67
	\$100.00 per foot over 4 feet deep
6 feet deep	Actual cost of materials and labor

- (b) ~~If installation requires a pavement cut, ten-foot ×: ten-foot cut, there shall be an additional charge of \$830.00 which shall be assessed and collected from the customer.~~
- (c) ~~If installation requires a highway bore there shall be an additional charge of \$930.00 minimum plus actual cost of labor and material which shall be assessed and collected from the customer.~~

(Code 1968, § 31-32.1; Ord. No. O-24-98, § I.E, 9-28-98; Ord. No. O-27-05, § IV, 9-15-2005; Ord. No. O-20-21, § I, 6-14-2021)

Sec. 98-93. Solid waste collection fees.

The monthly solid waste fees to be paid by the users of the city solid waste collection system shall be calculated in the following manner:

- (1) *Residential.* Residential users shall be pay the charges according to the following:
- (a) Each residential unit within the city limits shall be charged \$15.86 per month for residential garbage and rubbish collection services. This charge shall entitle the user to a single 96-gallon poly cart, which is collected once per week.
- (b) Each residential unit shall pay an additional \$2.10 per month as a street-sweeping fee.

- (c) Each residential unit within the city limits shall be charged \$10.00 per month for each additional poly cart for residential garbage and rubbish collection services.
- (2) *Commercial.* Commercial users shall pay the charge according to the following:
- (a) Each commercial unit within the city limits shall be charged a minimum of \$43.75 per month for commercial garbage and rubbish collection services. This charge shall entitle the user to a single 96-gallon poly cart, which is collected twice per week.
- (b) Each commercial unit within the city limits shall be charged \$21.88 per month for each additional poly cart for commercial garbage and rubbish collection services.
- (c) Each commercial unit shall pay an additional \$2.10 per month as a street-sweeping fee.
- (d) All other persons having collection of solid waste other than residential users, including commercial and industrial users, shall have the option of collection in roll-off containers or dumpsters (instead of poly carts) ranging from two-yard to eight-yard in capacity and collection at a frequency of one day a week up to five days per week according to the schedule of rates as follows:

Table (d)(i). Dumpsters

Size	1 x wk	2 x wk	3 x wk	4 x wk	5 x wk
2-yd	\$101.25	\$171.33	\$222.36	\$261.99	\$324.84
3-yd	120.31	199.96	262.60	334.04	444.73
4-yd	141.89	251.40	344.75	445.39	491.24
6-yd	182.13	305.73	428.13	620.92	671.24
8-yd	222.36	384.99	548.84	711.51	893.19

Table (d)(ii). Dumpsters—Extra Lifts

Size	Extra Lifts	Locks	Casters
2-yd	\$59.90	\$26.65	\$26.65
3-yd	65.89	26.65	26.65
4-yd	71.88	26.65	26.65
6-yd	77.87	26.65	26.65
8-yd	83.86	26.65	26.65

Table (d)(iii). Roll-Off

Size	Non-Compactable
20-yd	\$658.30 per haul
30-yd	\$890.65 per haul
40-yd	\$1,157.02 per haul

<i>Size</i>	<i>Compactable</i>
30-yd	\$981.96 per haul
40-yd	\$1,178.35 per haul
Delivery fee	\$197.27
Rental per day	\$7.18
Relocation	\$79.36
Dry run	\$197.27

- (e) All consumers located outside the corporate limits of the city which have made agreements with the city for solid waste collection services on an individual basis for an individual consumer shall be charged at a rate that is 1.25 times the rates set forth in this section.
- (f) That the contractor "waste connections" shall have the sole and exclusive franchise license and privilege to provide services for all roll-off residential, commercial, and industrial municipal waste collection removal and disposal services within the corporate limits of the city.

(Code 1968, § 31-33; Ord. No. 0-26-01, 9-24-2001; Ord. No. O-27-05, § V, 9-15-2005; Ord. No. O-33-06, § III, 9-18-2006; Ord. No. O-41-07, § III, 9-17-2007; Ord. No. 0-46-07, § III, 9-17-2007; Ord. No. O-43-10, § I, 8-23-2010; Ord. No. O-24-10, § IV, 4-26-2010; Ord. No. O-41-11, § I, 9-12-2011; Ord. No. O-44-11, § I, 9-26-2011; Ord. No. O-47-13, § III, 9-23-2013; Ord. No. O-41-14, § I, 10-13-2014; Ord. No. O-36-18, § I, 9-24-2018 ; Ord. No. O-32-19, § I, 10-28-2019 ; Ord. No. O-11-20, § I, 3-24-2020 ; Ord. No. O-14-20, § I, 6-22-2020; Ord. No. O-21-22, § I, 9-12-2022; Ord. No. O-28-22, § I, 12-12-2022)

Cross reference(s)—Collection and disposal of solid waste, § 82-26 et seq.

Sec. 98-94. Disconnection of service for nonpayment.

- (a) *Disconnection charges.* If any consumer of utility services furnished by the city does not pay the rates and charges within 20 days following the billing date, the city shall have the authority to disconnect or terminate or cause to be disconnected or terminated all utility services furnished such consumer. A disconnection fee of \$50.00 shall be assessed on the consumer; if not paid by 5:00 p.m. on the cutoff date listed on cutoff notice. This is in addition to any past due amounts owed on the utility account.
- (b) *After hours reconnection charges.* If any customer requests their services be reinstated after business hours, holidays, and weekends an additional reconnection charge of \$50.00 will be collected.

(Code 1968, § 31-35; Ord. No. O-28-95, § I.F, 9-28-95; Ord. No. O-27-96, § I.F, 10-14-96; Ord. No. O-24-98, § I.F, 9-28-98; Ord. No. 0-36-03, § V, 11-24-2003; Ord. No. O-24-10, § V, 4-26-2010; Ord. No. O-29-22, § I, 12-12-2022; Ord. No. O-22-23, § I, 9-11-2023)

Sec. 98-95. Reserved.

Editor's note(s)—Section I.G of Ord. No. O-28-95, adopted Sept. 28, 1995, repealed § 98-95 in its entirety. Formerly, § 98-95 pertained to resumption of service and reconnection fee and derived from § 31-36 of the 1968 Code.

Section I.G of Ord. No. O-24-98, adopted Sept. 28, 1998, reaffirmed the repeal of § 98-95.

Sec. 98-96. Rates and charges of private public utilities fixed by city council.

The city council shall fix and approve the rates charged by any private public utility company doing business within the city. It shall be unlawful for any such public utility company or any officer or employee thereof to assess or charge for services rendered any rate other than the rate so fixed or approved.

(Code 1968, § 31-37)

Sec. 98-97. TXU gas distribution tariffs and schedules.

- (a) Effective immediately upon the passage of this section, the maximum general service rate for sales of natural gas rendered to residential, commercial, and industrial consumers within the city limits of Palestine, Texas by TXU Gas Distribution, a division of TXU Gas Company, a Texas corporation, its successors and assigns, is hereby fixed and determined as set forth in Item A.
- (b) The residential and commercial rates set forth above shall be adjusted upward or downward from a base of \$2.7535 per mcf by a gas cost adjustment factor expressed as an amount per 1,000 cubic feet (mcf) of natural gas for changes in the intercompany city gate rate charge as authorized by the Railroad Commission of Texas or other regulatory body having jurisdiction for gas delivered to the Palestine distribution system, according to Item B. The industrial rates shall be adjusted in accordance with their contract terms.
- (c) Residential and commercial rates shall also be subject to weather normalization adjustments according to Item C.
- (d) The residential and commercial rates set forth above shall be adjusted upward or downward for changes in taxes and other governmental impositions, rental fees or charges according to Item D. Industrial rates shall be adjusted in accordance with their contract.
- (e) In addition to the aforesaid rates, company shall have the right to collect such reasonable charges as are necessary to conduct its business and to carry out its reasonable rules and regulations. The charges set forth in Items E and F, are approved. Services for which no charge is set out may be performed and charged for by company at a level established by the normal forces of competition.
- (f) In addition to the aforesaid rates, company is authorized to recover the current rate case expense through a surcharge designed for a six-month nominal recovery period. The surcharge per mcf will be calculated by dividing the rate case expense to be recovered by one-half of the adjusted annual sales volume to residential, commercial, and industrial rates-

N customers. The company will provide monthly status reports to the city to account for the collection of rate case expense.

- (g) The rates set forth in this section may be changed and amended by either the city or company in the manner provided by law. Service hereunder is subject to the orders of regulatory bodies having jurisdiction, and to the company's rules and regulations currently on file in the company's office.
- (h) Unless otherwise noted herein, other than TXU gas distribution (a named party), no person or entity has been admitted as a party to this rate proceeding.
- (i) It is hereby found and determined that said meeting at which this section was passed was open to the public, as required by Texas law, and that advance public notice of the time, place and purpose of said meeting was given.
- (j) Item A rates. Subject to applicable adjustments, the following rates are the maximum applicable to residential, commercial and industrial consumers per meter per month or for any part of a month for which gas service is available at the same location:

(1) *Residential:*

- a. Customer charge \$8.0000
- b. All consumption per mcf 4.7865

If the service period is less than 28 days in a month the customer charge is \$.2857 times the number of days service. If the consumption contains a portion of an mcf, a pro rata portion of the per mcf charge will be made.

(2) *Commercial:*

- a. Customer charge \$14.00
- b. First 20 mcf, per mcf 4.7923
- c. Next 30 mcf, per mcf 4.4923
- d. Over 50 mcf, per mcf 4.3423

If the service period is less than 28 days in a month the customer charge is \$.5000 times the number of days service. If the consumption contains a portion of an mcf, a prorata portion of the per mcf charge will be made.

Bills are due and payable when rendered and must be paid within 15 days from monthly billing date.

Residential off-peak sales discount:

An off-peak sales discount of \$.25 per mcf will apply to residential customers' volume purchased in excess of eight mcf for each of the billing months May through October.

Industrial:

Monthly rates: Subject to the company's limitations on the availability of each rate, customer shall receive service under its choice of one of the following rates in accordance with the rate selected by customer as provided in the contract:

Rate 1*

First 125 mcf or less \$281.99

All over 125 mcf, per mcf 2.177

Rate 2*

First 600 mcf or less 1,219.24

All over 600 mcf, per mcf 1.880

Rate 3*

First 1,250 mcf or less 2,260.47

All over 1,250 mcf, per mcf 1.759

* The rate to be charged the customer is the contract rate negotiated with the customer but shall not exceed these rates.

In all other respects, industrial rates-N shall remain in effect as filed with the city. One hundred percent of the increase in industrial margin is to accrue to the benefit of TXU gas distribution.

Transportation rates:

The fee for industrial transportation service shall not exceed the rate specified in the contract with the industrial customer.

- (i) *Item B. Gas cost adjustment.* Each residential and commercial monthly bill at the above rates shall be adjusted for gas cost as follows:
- (1) The city gate rate increase or decrease applicable to current billing month residential and commercial sales shall be estimated to the nearest \$0.0001 per mcf based upon:
 - a. The city gate rate estimated to be applicable to volumes purchased during the current calendar month, expressed to the nearest \$0.0001 per mcf (shown below as "Re"), less
 - b. The base city gate rate of \$2.7535 per mcf, multiplied by
 - c. A volume factor of 1.0000 determined in establishing the above rates for the distribution system as the ratio of adjusted purchased volumes divided by adjusted sales volumes.
 - (2) Correction of the estimated adjustment determined by Item B(1) above for the second preceding billing month shall be included as part of the adjustment for the second following billing month. The correcting factor (shown below as "c") shall be expressed to the nearest \$0.0001 per mcf based upon:
 - a. The corrected adjustment amount based upon the actual city gate rate, less

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- b. The estimated adjustment amount billed under Item B(1) above, divided by
 - c. Distribution system residential and commercial sales mcf recorded on the company's books during the prior year for the month that the correction is included as part of the adjustment.

In summary, the gas cost adjustment (GCA) shall be determined to the nearest \$0.0001 per mcf by Item B(1) and Item B(2) as follows:

$$GCA = [\text{Item B(1)} + \text{Item B(2)}]$$

$$GCA = [(1.0000) (\text{Re } \$2.7535) + C]$$

- (j) *Item C. Weather normalization adjustment.* The Weather Normalization Adjustment clause authorized in the rate ordinance dated July 24, 1995 will continue in effect with one change. The actual residential base load will be used to determine the residential heating load rather than the residential class base load. There is no change in the determination of the base load for commercial customers. The revised weather normalization adjustment clause reads as follows:

Effective with bills rendered during the October 2000 through May 2001 billing months, and annually thereafter for the October through May billing months, the above residential and commercial consumption rates for gas service, as adjusted, will be subject to a weather normalization adjustment each billing cycle to reflect the impact of variations in the actual heating degree days during the period included in the billing cycle from the normal level of heating degree days during the period included in the billing cycle. The weather normalization adjustment will be implemented on a per mcf basis and will be applicable to the heating load of each customer during the period included in the billing cycle. It will be determined separately for residential and commercial customers based on heating degree data recorded by the Waco weather station. The adjustment to be made for each billing cycle will be calculated according to the following formula:

$$WNA = \frac{NDD}{ADD} \times M \times AHL$$

Where: WNA = Weather normalization adjustment

NDD = Normal heating degree days during the period covered by the billing cycle

ADD = Actual heating degree days during the period covered by the billing cycle

M = Weighted average margin per mcf included in the commodity portion of the rates effective during the October through May billing months

AHL = Actual heating load per customer

The heating load to which the weather normalization adjustment is to be applied for residential and commercial customers is determined by subtracting the base load for the customer from the total volume being billed to the customer. The base load of a customer is the average level of nonheating consumption.

The weather normalization adjustment is subject to a 50 percent limitation factor based on temperatures being 50 percent warmer or colder than normal. The weather normalization adjustment will be calculated to the nearest \$.0001 per mcf.

(k) *Item D. Tax adjustment.* Each monthly bill at the above residential and commercial rates, as adjusted above, shall be adjusted for municipal franchise fees (street and alley rental taxes) and the state gross receipts taxes imposed by V.T.C.A., Tax Code §§ 182.021—182.024. Each monthly bill, as adjusted above shall also be adjusted by an amount equivalent to the proportionate part of any new tax, or any tax increase or decrease, or any increase or decrease of any other governmental imposition, rental fee, or charge (except state, county, city and special district ad valorem taxes and taxes on net income) levied, assessed or imposed subsequent to December 31, 1999, upon or allocated to the company's distribution operations, by any new or amended law, ordinance or contract. Municipal franchise fees (street and alley rental taxes) and the state gross receipts taxes imposed by V.T.C.A., Tax Code §§ 182.021— 182.024 shall continue to be collected pursuant to individual industrial contracts.

(l) *Item E. Schedule of service charges.*

(1) Connection charge. In addition to the charges and rates set out above, the company shall charge and collect the sum of:

Schedule	Charge
Business hours	\$35.00
After business hours	52.50

For each reconnection of gas service where service has been discontinued at the same premises for any reason, for the initial inauguration of service, and for each inauguration of service when the billable party has changed, with the following exceptions:

- a. For a builder who uses gas temporarily during construction or for display purposes.
 - b. Whenever gas service has been temporarily interrupted because of system outage or service work done by company; or
 - c. For any reason deemed necessary for company operations.
- (2) Read for change charge. A read for change charge of \$12.00 is made when it is necessary for a company employee to read the meter at a currently served location because of a change in the billable party.
- (3) Returned check charges. A returned check handling charge of \$16.25 is made for each check returned to the company for any reason.
- (4) Delinquent notification charge. A charge of \$4.75 shall be made for each trip by a company employee to a customer's residence or place of business when there is an amount owed to the company that is past due. This charge shall not be made when the trip is required for safety investigations or when gas service has been temporarily interrupted because of system outage or service work done by company.

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- (m) *Item F. Main line extension rate.* The charge for extending mains beyond the free limit established by franchise for residential, commercial, and industrial customers shall be based on the actual cost per foot of the extension.

(Ord. No. O-28-00, 11-13-2000)

Editor's note(s)—With the city's concurrence, section 98-97, Lone Star Gas Company tariffs and schedules was deleted as being superseded by Ord. No. O-28-00, adopted Nov. 13, 2000 and derived from 1968 Code, § 31-38; Ord. No. O-19-95, §§ 1—5, adopted July 24, 1995.

Sec. 98-98. Water leak adjustments.

- (1) The City of Palestine shall provide at its discretion up to a 90-day leak adjustment to water utility customers one time per water utility account per 12-month period for the following instances
 - a. Leaking water line pipes, joints and valves.
 - b. Leaking toilets, water heaters, and sinks.
 - c. Underground sprinkler line leaks.
- (2) Proof of a leak repair must be provided by the water utility customer and the following items are acceptable as proof:
 - a. Hardware store receipt.
 - b. Plumbing contractor receipt.
 - c. Notice from rental management company.
 - d. Signed letter from utility customer stating what was repaired including the date of repair, name of customer, address, and phone number.
- (3) Water leak adjustments will reduce the per 1,000-gallon water utility usage fee by 50 percent of the usage above the customer's average water usage for three billing periods starting with the first billing period in which the leak occurred. City staff is authorized to calculate the average water usage.
 - a. For unusual or large event water leaks, hidden or difficult to detect leaks, or extended weather events, city manager has discretion to give utility customers up to a 100-percent adjustment for the first 30-day billing period of usage above the customer's average water usage. Any different or larger adjustments will require city council approval.
 - b. This adjustment does not include base water and water meter charges.
 - c. This adjustment also applies to the sewer charges and sewer surcharges for commercial customers.

(Ord. No. O-12-22 , § I, 4-25-2022)

Secs. 98-99—98-120. Reserved.



Agenda Date: April 8, 2024

To: City Council

From: Kimberly Beckman, Public Works Admin

Agenda Item: Consider authorizing City Manager to accept the purchase of 2 Yaskawa Model Z1B1361PMBRTL

Date Submitted: 03/20/2024

SUMMARY:

Consider authorizing the City Manager to accept the purchase of 2 Yaskawa Model Z1B1361PMBRTL 300 HP, 480V, 361A for the Raw Water Pump Station in the amount of \$96,430.00 from Trane Technologies. The drives we have now do not function properly, we can not get parts because they are phased out/outdated. In replacing these, we will have newer drives that are more up to date with a more readily available list of parts. These drives are variable frequency drives and allow the pumps to be started slowly and ramp up to speed, and to minimize damage to pumps during start-ups and shut-downs.

RECOMMENDED ACTION:

Recommend City Manager to accept the purchase of 2 Yaskawa Model Z1B1361PMBRTL from Trane Technologies.

CITY MANAGER APPROVAL:

Attachments

WT Plant



Proposal

PROPRIETARY AND CONFIDENTIAL PROPERTY OF Trane U.S. Inc.
DISTRIBUTION TO OTHER THAN THE NAMED RECIPIENT IS PROHIBITED

Prepared For: James Martin

Date: March 28, 2024

Job Name:

City Of Palestine – WT Plant 300 HP Drives

BuyBoard Contract No. 720-23

Opportunity No. 7659467

Delivery Terms:

Freight Allowed and Prepaid - F.O.B. Factory

Payment Terms: Net 30 Days

Trane U.S. Inc. is pleased to provide the following proposal for your review and approval.

(1) Yaskawa Model Z1B1B361PMBRTL, 300 HP, 480V, 361A.

- UL listing and CSA approval
- Built-in real time clock for time and date stamping events
- Voltmeter, ammeter, kilowatt meter elapsed run time meter
- Diagnostic fault indication
- S-curve soft start / soft stop capability
- Dynamic noise control for quiet motor operation
- Programmable security code
- Eight programmable digital inputs
- Four programmable relays
- Seven preset speeds
- LCD keypad with hand/off/auto functions.
- Input disconnect switch with a lockable, through-the-door operating mechanism
- Drive output and bypass contactors are both electrically and software interlocked.
- BACnet, Siemens Apogee, Metasys N2, and Modbus communication protocols as standard
- Door mounted control keypad with LCD display
- UL Type 1 enclosure
- 3-contactor bypass
- Circuit Breaker (100kAIC)
- Input Reactor 3%
- LonWorks
- 3 year Parts Labor and Travel warranty with Factory authorized start-up & training ****

Total Net Price per drive (Excluding Sales Tax) \$ 42,690.00

Total price to install Drive #1.....\$ 4,500.00

Total price to install Drive #2.....\$ 6,550.00

Total project price for both drives with installed.....\$ 96,430.00

Sincerely,

Tim Alexander / Ronnie Weems- Sales

Trane U.S. Inc.

9225 Premier Court

Shreveport, LA 71106

Office Phone: (318) 683-4100

Acceptance of this proposal by buyer is expressly conditioned upon each of the terms, provisions and conditions set forth under Trane's Terms and Conditions of Sale.

Purchase Order:

Purchaser - Company Name

Signature

Name: _____

Title: _____

Date: _____

A emailed copy represents a legal and binding document

TERMS AND CONDITIONS – COMMERCIAL INSTALLATION

“Company” shall mean Trane U.S. Inc. dba Trane.

1. Acceptance; Agreement. These terms and conditions are an integral part of Company's offer and form the basis of any agreement (the “Agreement”) resulting from Company's proposal (the “Proposal”) for the commercial goods and/or services described (the “Work”). **COMPANY'S TERMS AND CONDITIONS ARE SUBJECT TO PERIODIC CHANGE OR AMENDMENT.** The Proposal is subject to acceptance in writing by the party to whom this offer is made or an authorized agent (“Customer”) delivered to Company within 30 days from the date of the Proposal. If Customer accepts the Proposal by placing an order, without the addition of any other terms and conditions of sale or any other modification, Customer's order shall be deemed acceptance of the Proposal subject to Company's terms and conditions. If Customer's order is expressly conditioned upon Company's acceptance or assent to terms and/or conditions other than those expressed herein, return of such order by Company with Company's terms and conditions attached or referenced serves as Company's notice of objection to Customer's terms and as Company's counter-offer to provide Work in accordance with the Proposal and the Company terms and conditions. If Customer does not reject or object in writing to Company within 10 days, Company's counter-offer will be deemed accepted. Customer's acceptance of the Work by Company will in any event constitute an acceptance by Customer of Company's terms and conditions. This Agreement is subject to credit approval by Company. Upon disapproval of credit, Company may delay or suspend performance or, at its option, renegotiate prices and/or terms and conditions with Customer. If Company and Customer are unable to agree on such revisions, this Agreement shall be cancelled without any liability, other than Customer's obligation to pay for Work rendered by Company to the date of cancellation.

2. Pricing and Taxes. Unless otherwise noted, the price in the Proposal includes standard ground transportation and, if required by law, all sales, consumer, use and similar taxes legally enacted as of the date hereof for equipment and material installed by Company. Tax exemption is contingent upon Customer furnishing appropriate certificates evidencing Customer's tax exempt status. Company shall charge Customer additional costs for bonds agreed to be provided. Equipment sold on an uninstalled basis and any taxable labor/labour do not include sales tax and taxes will be added. Following acceptance without addition of any other terms and condition of sale or any other modification by Customer, the prices stated are firm provided that notification of release for immediate production and shipment is received at the factory not later than 3 months from order receipt. If such release is received later than 3 months from order receipt date, prices will be increased a straight 1% (not compounded) for each one-month period (or part thereof) beyond the 3 month firm price period up to the date of receipt of such release. If such release is not received within 6 months after date of order receipt, the prices are subject to renegotiation, or at Company's option, the order will be cancelled. Any delay in shipment caused by Customer's actions will subject prices to increase equal to the percentage increase in list prices during that period of delay and Company may charge Customer with incurred storage fees.

3. Exclusions from Work. Company's obligation is limited to the Work as defined and does not include any modifications to the Work site under the Americans With Disabilities Act or any other law or building code(s). In no event shall Company be required to perform work Company reasonably believes is outside of the defined Work without a written change order signed by Customer and Company.

4. Performance. Company shall perform the Work in accordance with industry standards generally applicable in the area under similar circumstances as of the time Company performs the Work. Company may refuse to perform any Work where working conditions could endanger property or put at risk the safety of persons. Unless otherwise agreed to by Customer and Company, at Customer's expense and before the Work begins, Customer will provide any necessary access platforms, catwalks to safely perform the Work in compliance with OSHA or state industrial safety regulations.

5. Payment. Customer shall pay Company's invoices within net 30 days of invoice date. Company may invoice Customer for all equipment or material furnished, whether delivered to the installation site or to an off-site storage facility and for all Work performed on-site or off-site. No retention shall be withheld from any payments except as expressly agreed in writing by Company, in which case retention shall be reduced per the contract documents and released no later than the date of substantial completion. Under no circumstances shall any retention be withheld for the equipment portion of the order. If payment is not received as required, Company may suspend performance and the time for completion shall be extended for a reasonable period of time not less than the period of suspension. Customer shall be liable to Company for all reasonable shutdown, standby and start-up costs as a result of the suspension. Company reserves the right to add to any account outstanding for more than 30 days a service charge equal to 1.5% of the principal amount due at the end of each month. Customer shall pay all costs (including attorneys' fees) incurred by Company in attempting to collect amounts due and otherwise enforcing these terms and conditions. If requested, Company will provide appropriate lien waivers upon receipt of payment. Customer agrees that, unless Customer makes payment in advance, Company will have a purchase money security interest in all equipment from Company to secure payment in full of all amounts due Company and its order for the equipment, together with these terms and conditions, form a security agreement. Customer shall keep the equipment free of all taxes and encumbrances, shall not remove the equipment from its original installation point and shall not assign or transfer any interest in the equipment until all payments due Company have been made.

6. Time for Completion. Except to the extent otherwise expressly agreed in writing signed by an authorized representative of Company, all dates provided by Company or its representatives for commencement, progress or completion are estimates only. While Company shall use commercially reasonable efforts to meet such estimated dates, Company shall not be responsible for any damages for its failure to do so.

7. Access. Company and its subcontractors shall be provided access to the Work site during regular business hours, or such other hours as may be requested by Company and acceptable to the Work site' owner or tenant for the performance of the Work, including sufficient areas for staging, mobilization, and storage. Company's access to correct any emergency condition shall not be restricted. Customer grants to Company the right to remotely connect (via phone modem, internet or other agreed upon means) to Customer's building automation system (BAS) and or HVAC equipment to view, extract, or otherwise collect and retain data from the BAS, HVAC equipment, or other building systems, and to diagnose and remotely make repairs at Customer's request.

8. Completion. Notwithstanding any other term or condition herein, when Company informs Customer that the Work has been completed, Customer shall inspect the Work in the presence of Company's representative, and Customer shall either (a) accept the Work in its entirety in writing, or (b) accept the Work in part and specifically identify, in writing, any exception items. Customer agrees to re-inspect any and all excepted items as soon as Company informs Customer that all such excepted items have been completed. The initial acceptance inspection shall take place within ten (10) days from the date when Company informs Customer that the Work has been completed. Any subsequent re-inspection of excepted items shall take place within five (5) days from the date when Company informs Customer that the excepted items have been completed. Customer's failure to cooperate and complete any of said inspections within the required time limits shall constitute complete acceptance of the Work as of ten (10) days from date when Company informs Customer that the Work, or the excepted items, if applicable, has/have been completed.

9. Permits and Governmental Fees. Company shall secure (with Customer's assistance) and pay for building and other permits and governmental fees, licenses, and inspections necessary for proper performance and completion of the Work which are legally required when bids from Company's subcontractors are received, negotiations thereon concluded, or the effective date of a relevant Change Order, whichever is later. Customer is responsible for necessary approvals, easements, assessments and charges for construction, use or occupancy of permanent structures or for permanent changes to existing facilities. If the cost of such permits, fees, licenses and inspections are not included in the Proposal, Company will invoice Customer for such costs.

10. Utilities During Construction. Customer shall provide without charge to Company all water, heat, and utilities required for performance of the Work.

11. Concealed or Unknown Conditions. In the performance of the Work, if Company encounters conditions at the Work site that are (i) subsurface or otherwise concealed physical conditions that differ materially from those indicated on drawings expressly incorporated herein or (ii) unknown physical conditions of an unusual nature that differ materially from those conditions ordinarily found to exist and generally recognized as inherent in construction activities of the type and character as the Work, Company shall notify Customer of such conditions promptly, prior to significantly disturbing same. If such conditions differ materially and cause an increase in Company's cost of, or time required for, performance of any part of the Work, Company shall be entitled to, and Customer shall consent by Change Order to, an equitable adjustment in the Contract Price, contract time, or both.

12. Pre-Existing Conditions. Company is not liable for any claims, damages, losses, or expenses, arising from or related to conditions that existed in, on, or upon the Work site before the Commencement Date of this Agreement (“Pre-Existing Conditions”), including, without limitation, damages, losses, or expenses involving Pre-Existing Conditions of building envelope issues, mechanical issues, plumbing issues, and/or indoor air quality issues involving mold/mould and/or fungi. Company also is not liable for any claims, damages, losses, or expenses, arising from or related to work done by or services provided by individuals or entities that are not employed by or hired by Company.

13. Asbestos and Hazardous Materials. Company's Work and other services in connection with this Agreement expressly excludes any identification, abatement, cleanup, control, disposal, removal or other work connected with asbestos, polychlorinated biphenyl (“PCB”), or other hazardous materials (hereinafter, collectively, “Hazardous Materials”). Customer warrants and represents that, except as set forth in a writing signed by Company, there are no Hazardous Materials on the Work site that will in any way affect Company's Work and Customer has disclosed to Company the existence and location of any Hazardous Materials in all areas within which Company will be performing the Work. Should Company become aware of or suspect the presence of Hazardous Materials, Company may immediately stop work in the affected area and shall notify Customer. Customer will be exclusively responsible for taking any and all action necessary to correct the condition in accordance with all applicable laws and regulations. Customer shall be exclusively responsible for and, to the fullest extent permitted by law, shall indemnify and hold harmless Company (including its employees, agents and subcontractors) from and against any loss, claim, liability, fees, penalties, injury (including death) or liability of any nature, and the payment thereof arising out of or relating to any Hazardous Materials on or about the Work site, not brought onto the Work site by Company. Company shall be required to resume performance of the Work in the affected area only in the absence of Hazardous Materials or when the affected area has been rendered harmless. In no event shall Company be obligated to transport or handle Hazardous Materials, provide any notices to any governmental agency, or examine the Work site for the presence of Hazardous Materials.

14. Force Majeure. Company's duty to perform under this Agreement is contingent upon the non-occurrence of an Event of Force Majeure. If Company shall be unable to carry out any material obligation under this Agreement due to an Event of Force Majeure, this Agreement shall at Company's election (i) remain in effect but Company's

obligations shall be suspended until the uncontrollable event terminates or (ii) be terminated upon 10 days notice to Customer, in which event Customer shall pay Company for all parts of the Work furnished to the date of termination. An "Event of Force Majeure" shall mean any cause or event beyond the control of Company. Without limiting the foregoing, "Event of Force Majeure" includes: acts of God; acts of terrorism, war or the public enemy; flood; earthquake; tornado; storm; fire; civil disobedience; pandemic insurrections; riots; labor/labour disputes; labor/labour or material shortages; sabotage; restraint by court order or public authority (whether valid or invalid), and action or non-action by or inability to obtain or keep in force the necessary governmental authorizations, permits, licenses, certificates or approvals if not caused by Company; and the requirements of any applicable government in any manner that diverts either the material or the finished product to the direct or indirect benefit of the government.

15. Customer's Breach. Each of the following events or conditions shall constitute a breach by Customer and shall give Company the right, without an election of remedies, to terminate this Agreement or suspend performance by delivery of written notice: (1) Any failure by Customer to pay amounts when due; or (2) any general assignment by Customer for the benefit of its creditors, or if Customer becomes bankrupt or insolvent or takes the benefit of any statute for bankrupt or insolvent debtors, or makes or proposes to make any proposal or arrangement with creditors, or if any steps are taken for the winding up or other termination of Customer or the liquidation of its assets, or if a trustee, receiver, or similar person is appointed over any of the assets or interests of Customer; (3) Any representation or warranty furnished by Customer in this Agreement is false or misleading in any material respect when made; or (4) Any failure by Customer to perform or comply with any material provision of this Agreement. Customer shall be liable to Company for all Work furnished to date and all damages sustained by Company (including lost profit and overhead).

16. Indemnity. To the fullest extent permitted by law, Company and Customer shall indemnify, defend and hold harmless each other from any and all claims, actions, costs, expenses, damages and liabilities, including reasonable attorneys' fees, resulting from death or bodily injury or damage to real or tangible personal property, to the extent caused by the negligence or misconduct of their respective employees or other authorized agents in connection with their activities within the scope of this Agreement. Neither party shall indemnify the other against claims, damages, expenses or liabilities to the extent attributable to the acts or omissions of the other party. If the parties are both at fault, the obligation to indemnify shall be proportional to their relative fault. The duty to indemnify will continue in full force and effect, notwithstanding the expiration or early termination hereof, with respect to any claims based on facts or conditions that occurred prior to expiration or termination.

17. Limitation of Liability. NOTWITHSTANDING ANYTHING TO THE CONTRARY, IN NO EVENT SHALL COMPANY BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT CONSEQUENTIAL, OR PUNITIVE OR EXEMPLARY DAMAGES (INCLUDING WITHOUT LIMITATION BUSINESS INTERRUPTION, LOST DATA, LOST REVENUE, LOST PROFITS, LOST DOLLAR SAVINGS, OR LOST ENERGY USE SAVINGS, EVEN IF A PARTY HAS BEEN ADVISED OF SUCH POSSIBLE DAMAGES OR IF SAME WERE REASONABLY FORESEEABLE AND REGARDLESS OF WHETHER THE CAUSE OF ACTION IS FRAMED IN CONTRACT, NEGLIGENCE, ANY OTHER TORT, WARRANTY, STRICT LIABILITY, OR PRODUCT LIABILITY). In no event will Company's liability in connection with the provision of products or services or otherwise under this Agreement exceed the entire amount paid to Company by Customer under this Agreement.

18. Patent Indemnity. Company shall protect and indemnify Customer from and against all claims, damages, judgments and loss arising from infringement or alleged infringement of any United States patent by any of the goods manufactured by Company and delivered hereunder, provided that in the event of suit or threat of suit for patent infringement, Company shall promptly be notified and given full opportunity to negotiate a settlement. Company does not warrant against infringement by reason of Customer's design of the articles or the use thereof in combination with other materials or in the operation of any process. In the event of litigation, Customer agrees to reasonably cooperate with Company. In connection with any proceeding under the provisions of this Section, all parties concerned shall be entitled to be represented by counsel at their own expense.

19. Limited Warranty. Company warrants for a period of 12 months from the date of substantial completion ("Warranty Period") commercial equipment manufactured and installed by Company against failure due to defects in material and manufacture and that the labor/labour furnished is warranted to have been properly performed (the "Limited Warranty"). Trane equipment sold on an uninstalled basis is warranted in accordance with Company's standard warranty for supplied equipment. **Product manufactured by Company that includes required startup and is sold in North America will not be warranted by Company unless Company performs the product start-up.** Substantial completion shall be the earlier of the date that the Work is sufficiently complete so that the Work can be utilized for its intended use or the date that Customer receives beneficial use of the Work. If such defect is discovered within the Warranty Period, Company will correct the defect or furnish replacement equipment (or, at its option, parts therefor) and, if said equipment was installed pursuant hereto, labor/labour associated with the replacement of parts or equipment not conforming to this Limited Warranty. Defects must be reported to Company within the Warranty Period. Exclusions from this Limited Warranty include damage or failure arising from: wear and tear; corrosion, erosion, deterioration; Customer's failure to follow the Company-provided maintenance plan; refrigerant not supplied by Trane; and modifications made by others to Company's equipment. Company shall not be obligated to pay for the cost of lost refrigerant. Notwithstanding the foregoing, all warranties provided herein terminate upon termination or cancellation of this Agreement. No warranty liability whatsoever shall attach to Company until the Work has been paid for in full and then said liability shall be limited to the lesser of Company's cost to correct the defective Work and/or the purchase price of the equipment shown to be defective. Equipment, material and/or parts that are not manufactured by Company are not warranted by Company and have such warranties as may be extended by the respective manufacturer. **THE WARRANTY AND LIABILITY SET FORTH IN THIS AGREEMENT ARE IN LIEU OF ALL OTHER WARRANTIES AND LIABILITIES, WHETHER IN CONTRACT OR IN NEGLIGENCE, EXPRESS OR IMPLIED, IN LAW OR IN FACT, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND/OR OTHERS ARISING FROM COURSE OF DEALING OR TRADE. COMPANY MAKES NO REPRESENTATION OR WARRANTY EXPRESS OR IMPLIED REGARDING PREVENTION BY THE WORK, OR ANY COMPONENT THEREOF, OF MOLD/MOULD, FUNGUS, BACTERIA, MICROBIAL GROWTH, OR ANY OTHER CONTAMINATES. COMPANY SPECIFICALLY DISCLAIMS ANY LIABILITY IF THE WORK OR ANY COMPONENT THEREOF IS USED TO PREVENT OR INHIBIT THE GROWTH OF SUCH MATERIALS.**

20. Insurance. Company agrees to maintain the following insurance while the Work is being performed with limits not less than shown below and will, upon request from Customer, provide a Certificate of evidencing the following coverage:

Commercial General Liability	\$2,000,000 per occurrence
Automobile Liability	\$2,000,000 CSL
Workers Compensation	Statutory Limits

If Customer has requested to be named as an additional insured under Company's insurance policy, Company will do so but only subject to Company's manuscript additional insured endorsement under its primary Commercial General Liability policies. In no event does Company waive its right of subrogation.

21. Commencement of Statutory Limitation Period. Except as to warranty claims, as may be applicable, any applicable statutes of limitation for acts or failures to act shall commence to run, and any alleged cause of action stemming therefrom shall be deemed to have accrued, in any and all events not later than the last date that Company or its subcontractors physically performed work on the project site.

22. General. Except as provided below, to the maximum extent provided by law, this Agreement is made and shall be interpreted and enforced in accordance with the laws of the state or province in which the Work is performed, without regard to choice of law principles which might otherwise call for the application of a different state's or province's law. Any dispute arising under or relating to this Agreement that is not disposed of by agreement shall be decided by litigation in a court of competent jurisdiction located in the state or province in which the Work is performed. Any action or suit arising out of or related to this Agreement must be commenced within one year after the cause of action has accrued. To the extent the Work site is owned and/or operated by any agency of the Federal Government, determination of any substantive issue of law shall be according to the Federal common law of Government contracts as enunciated and applied by Federal judicial bodies and boards of contract appeals of the Federal Government. This Agreement contains all of the agreements, representations and understandings of the parties and supersedes all previous understandings, commitments or agreements, oral or written, related to the subject matter hereof. This Agreement may not be amended, modified or terminated except by a writing signed by the parties hereto. No documents shall be incorporated herein by reference except to the extent Company is a signatory thereon. If any term or condition of this Agreement is invalid, illegal or incapable of being enforced by any rule of law, all other terms and conditions of this Agreement will nevertheless remain in full force and effect as long as the economic or legal substance of the transaction contemplated hereby is not affected in a manner adverse to any party hereto. Customer may not assign, transfer, or convey this Agreement, or any part hereof, or its right, title or interest herein, without the written consent of the Company. Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of Customer's permitted successors and assigns. This Agreement may be executed in several counterparts, each of which when executed shall be deemed to be an original, but all together shall constitute but one and the same Agreement. A fully executed facsimile copy hereof or the several counterparts shall suffice as an original.

23. Equal Employment Opportunity/Affirmative Action Clause. Company is a federal contractor that complies fully with Executive Order 11246, as amended, and the applicable regulations contained in 41 C.F.R. Parts 60-1 through 60-60, 29 U.S.C. Section 793 and the applicable regulations contained in 41 C.F.R. Part 60-741; and 38 U.S.C. Section 4212 and the applicable regulations contained in 41 C.F.R. Part 60-250 Executive Order 13496 and Section 29 CFR 471, appendix A to subpart A, regarding the notice of employee rights in the United States and with Canadian Charter of Rights and Freedoms Schedule B to the Canada Act 1982 (U.K.) 1982, c. 11 and applicable Provincial Human Rights Codes and employment law in Canada.

24. U.S. Government Work.

The following provision applies only to direct sales by Company to the US Government. The Parties acknowledge that all items or services ordered and delivered under this Agreement are Commercial Items as defined under Part 12 of the Federal Acquisition Regulation (FAR). In particular, Company agrees to be bound only by those Federal contracting clauses that apply to "commercial" suppliers and that are contained in FAR 52.212-5(e)(1). Company complies with 52.219-8 or 52.219-9 in its service and installation contracting business.

The following provision applies only to indirect sales by Company to the US Government. As a Commercial Item Subcontractor, Company accepts only the following mandatory flow down provisions: 52.219-8; 52.222-26; 52.222-35; 52.222-36; 52.222-39; 52.247-64. If the Work is in connection with a U.S. Government contract,

Customer certifies that it has provided and will provide current, accurate, and complete information, representations and certifications to all government officials, including but not limited to the contracting officer and officials of the Small Business Administration, on all matters related to the prime contract, including but not limited to all aspects of its ownership, eligibility, and performance. Anything herein notwithstanding, Company will have no obligations to Customer unless and until Customer provides Company with a true, correct and complete executed copy of the prime contract. Upon request, Customer will provide copies to Company of all requested written communications with any government official related to the prime contract prior to or concurrent with the execution thereof, including but not limited to any communications related to Customer's ownership, eligibility or performance of the prime contract. Customer will obtain written authorization and approval from Company prior to providing any government official any information about Company's performance of the work that is the subject of the Proposal or this Agreement, other than the Proposal or this Agreement.

25. Limited Waiver of Sovereign Immunity. If Customer is an Indian tribe (in the U.S.) or a First Nation or Band Council (in Canada), Customer, whether acting in its capacity as a government, governmental entity, a duly organized corporate entity or otherwise, for itself and for its agents, successors, and assigns: (1) hereby provides this limited waiver of its sovereign immunity as to any damages, claims, lawsuit, or cause of action (herein "Action") brought against Customer by Company and arising or alleged to arise out of the furnishing by Company of any product or service under this Agreement, whether such Action is based in contract, tort, strict liability, civil liability or any other legal theory; (2) agrees that jurisdiction and venue for any such Action shall be proper and valid (a) if Customer is in the U.S., in any state or United States court located in the state in which Company is performing this Agreement or (b) if Customer is in Canada, in the superior court of the province or territory in which the work was performed; (3) expressly consents to such Action, and waives any objection to jurisdiction or venue; (4) waives any requirement of exhaustion of tribal court or administrative remedies for any Action arising out of or related to this Agreement; and (5) expressly acknowledges and agrees that Company is not subject to the jurisdiction of Customer's tribal court or any similar tribal forum, that Customer will not bring any action against Company in tribal court, and that Customer will not avail itself of any ruling or direction of the tribal court permitting or directing it to suspend its payment or other obligations under this Agreement. The individual signing on behalf of Customer warrants and represents that such individual is duly authorized to provide this waiver and enter into this Agreement and that this Agreement constitutes the valid and legally binding obligation of Customer, enforceable in accordance with its terms.

1-26.251-10(0315)

Supersedes 1-26.251-10(0614)



Agenda Date: April 8, 2024
To: City Council
From: Kimberly Beckman, Public Works Admin
Agenda Item: Consider authorizing City Manager to purchase meters from Core & Main
Date Submitted: 04/03/2024

SUMMARY:

Consider authorizing the City Manager to purchase meters from Core & Main in the amount of \$86,588.97. This will finish out the meter swaps for 2-inch and 1 1/2-inch meters. The total left to swap for 2-inch meters is 126 meters, and 1 1/2-inch meters is 56 meters.

RECOMMENDED ACTION:

Staff recommends authorizing the City Manager to purchase meters from Core & Main.

CITY MANAGER APPROVAL:

Attachments

Core & Main



INVOICE

1830 Craig Park Court
St. Louis, MO 63146



Invoice # U397491
Invoice Date 2/23/24
Account # 053850
Sales Rep ROGER SANDERS
Phone # 936-639-2341
Branch # 528 Lufkin, TX
Total Amount Due \$34,400.00

Remit To:
CORE & MAIN LP
PO BOX 28330
ST LOUIS, MO 63146

5494 1 MB 0.571 E0371X I0442 D12487279008 S2 P10159110 0001:0001



CITY OF PALESTINE
PURCHASING DEPT.
1620 W PALESTINE AVE
PALESTINE TX 75801-3326

Shipped to: 6/23/23 Backordered from: T066735

CUSTOMER PICK-UP -

Thank you for the opportunity to serve you! We appreciate your prompt payment.

Date Ordered	Date Shipped	Customer PO #	Job Name	Job #	Bill of Lading	Shipped Via	Invoice #
6/19/23	2/23/24	.				WILL CALL	U397491

Product Code	Description	Quantity		B/O	Price	UM	Extended Price
		Ordered	Shipped				
43ED2J11RPWG1SG89	T10 2 PROCODER R900I USG BRZ W/6'ANT ED2J11RPWG11SG89	40	40		860.00000	EA	34,400.00

PAYMENT AUTHORIZATION

Partial

DATE: _____

AMOUNT: \$ _____

CITY: _____

STATE: _____

ZIP: _____

NAME: _____

ADDRESS: _____

PHONE: _____

EMAIL: _____

DATE: _____

AMOUNT: \$ _____

CITY: _____

STATE: _____

ZIP: _____

NAME: _____

ADDRESS: _____

PHONE: _____

EMAIL: _____

Online
ADVANTAGE™

- Manage billing online
- Reprint invoices
- Retrieve proof of deliveries

Be suspicious of emails requesting wire transfers or payments to Core & Main using updated remittance information. For tips about how to identify bad actors, visit coreandmain.com/identifying-fraud.

Freight Delivery Handling Restock Misc.

Subtotal: 34,400.00
Other: 0.00
Tax: 0.00
Invoice Total: \$34,400.00

Terms: NET 30
Ordered By: ROGER SANDERS

This transaction is governed by and subject to CORE & MAIN's standard terms and conditions, which are incorporated by reference and accepted. To review these terms and conditions, please visit: <http://tandc.coreandmain.com/>.



Bid Proposal for City of Palestine: Neptune Meter Recap

CITY OF PALESTINE
Job Location: Palestine, TX
Bid Date: 03/22/2024
Core & Main 3418275

Core & Main
1907 Kurth Dr
Lufkin, TX 75904
Phone: 9366392341
Fax: 9366327834

Seq#	Qty	Description	Units	Price	Ext Price
10	1	4 TF COMPOUND MTR PROCODER R900I 6' EXT. ANTENNA USG EC3CRPWG11SG89	EA	4,228.67	4,228.67
20	20	T10 2 PROCODER R900I USG BRZ W/6'ANT ED2J11RPWG11SG89	EA	1,031.34	20,626.80
30	50	DM2G11 DISC MTR 1-1/2 T10	EA	546.67	27,333.50
				Sub Total	52,188.97
				Tax	0.00
				Total	52,188.97

UNLESS OTHERWISE SPECIFIED HEREIN, PRICES QUOTED ARE VALID IF ACCEPTED BY CUSTOMER AND PRODUCTS ARE RELEASED BY CUSTOMER FOR MANUFACTURE WITHIN THIRTY (30) CALENDAR DAYS FROM THE DATE OF THIS QUOTATION. CORE & MAIN LP RESERVES THE RIGHT TO INCREASE PRICES TO ADDRESS FACTORS, INCLUDING BUT NOT LIMITED TO, GOVERNMENT REGULATIONS, TARIFFS, TRANSPORTATION, FUEL AND RAW MATERIAL COSTS. DELIVERY WILL COMMENCE BASED UPON MANUFACTURER LEAD TIMES. ANY MATERIAL DELIVERIES DELAYED BEYOND MANUFACTURER LEAD TIMES MAY BE SUBJECT TO PRICE INCREASES AND/OR APPLICABLE STORAGE FEES. THIS BID PROPOSAL IS CONTINGENT UPON BUYER'S ACCEPTANCE OF SELLER'S TERMS AND CONDITIONS OF SALE, AS MODIFIED FROM TIME TO TIME, WHICH CAN BE FOUND AT: <https://coreandmain.com/TandC/>



Agenda Date: April 8, 2024

To: City Council

From: Kimberly Beckman, Public Works Admin

Agenda Item: Consider authorizing City Manager to negotiate sell of 2007 Caterpillar front end loader model 938G

Date Submitted: 04/03/2024

SUMMARY:

Consider authorizing the City Manager to negotiate the sale of a 2007 Caterpillar front-end loader model 938G to ANRA (Angelina Neches River Authority) for their compost site. The unit was replaced last year with a new piece of equipment.

RECOMMENDED ACTION:

Staff recommends authorizing the City Manager to negotiate the sale of a 2007 Caterpillar front-end loader model 938G.

CITY MANAGER APPROVAL:

Attachments

Image





Agenda Date: April 8, 2024
To: City Council
From: Susan Davis, Planning Technician
Agenda Item: Specific Use Permit for Sale of Alcoholic Beverages at 712 N. Cottage Ave.
Date Submitted: 04/03/2024

SUMMARY:

Discussion and consideration of a request for a Specific Use Permit for the sale of alcoholic beverages for off-premises consumption by Ordonez Groceries located at 712 N. Cottage Avenue. The applicant is Gorgonio Ordonez, Jr. The property is located within a Mixed Use Neighborhood (MUN), which allows the sale of alcoholic beverages by Specific Use. On February 23, 2024, twelve notices were mailed to property owners within 200-feet of the location of the specific use permit request. None have been returned in favor of the request. One (8.3%) has been returned in opposition. Eleven (91.7%) owners did not respond. Discussion was held during the regular meeting of the Planning and Zoning Commission held on March 7, 2024, concerning the volume of crime and safety of the neighborhood. The Planning & Zoning Commission voted unanimously to deny the Specific Use Permit.

The Specific Use Permit Application was tabled during the City Council meeting held on March 25, 2024, to allow consideration of conditions on the permit.

RECOMMENDED ACTION:

For discussion and consideration.

CITY MANAGER APPROVAL:

Attachments

Application
Staff Report

240077



SPECIFIC USE PERMIT APPLICATION

APPLICANT INFORMATION

Applicant Name: Gorgonio Ordonez, Jr. (Ordonez Groceries LLC)
Address: 808 North Cottage Avenue
City: Palestine State: Texas Zip: 75801
Phone Number: 903-948-7341 Email: _____ Fax: _____

PROPERTY DESCRIPTION

Address (if available): 712 North Cottage Avenue
Subdivision: _____ Lot: 5B & 6 Block: B2
Anderson County Appraisal District Block Map # _____ Tract #: _____
Existing Deed Restrictions: ☐ Yes (Attach a copy with the application) ☐ No
Proposed Deed Restrictions: ☐ Yes (Attach a copy with the application) ☐ No

PRESENT USE OF PROPERTY

Describe how the property is currently being used: The building on the property is being used as a grocery store, selling produce, soft drinks, dairy products, and misc. dry goods.

PROPOSED USE OF PROPERTY

Describe the proposed use of the property (be specific): _____

PLEASE SEE ATTACHED

Attach additional sheets if necessary including any surveys or drawings that will show the proposed improvements on the property.

Application continued on the second page.



SPECIFIC USE PERMIT APPLICATION

PROPERTY OWNER OR AUTHORIZED APPLICANT ACKNOWLEDGEMENT

I acknowledge under penalty of perjury that I am the legal owner of the property described in the application or, alternatively, that I am authorized to represent all of the owners of the property described in this application.

State of: Texas County of: Anderson

This instrument was acknowledged before me on the

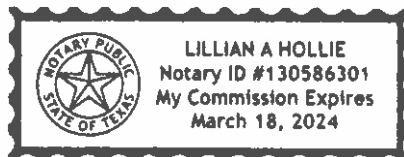
07/02/2024

Day/Month/Year

By: Lillian Hollie

Signature of Notary Public

Signature of Applicant



Gorgonio Ordóñez, Jr.
Ordóñez Groceries LLC
712 North Cottage Avenue, Palestine, Texas 75801

Attachment to Specific Use Application

PROPOSED USE OF PROPERTY

Describe the proposed use of the property (be specific):

The proposed use of the property is the addition of the sale of beer and wine to the items already sold by Ordóñez Groceries (currently selling groceries, produce, soft drinks, dairy products and misc. dry goods).

The license being applied for through the State of Texas limits the sale of beer and wine to be consumed off-premises only.

On October 11, 2021, The City Council declined to issue a Specific Use Permit to Ordóñez Groceries. The Public Hearing minutes specified that, although two Notification Surveys were received back in favor of the request, the Planning and Zoning Commissions stated Notification Surveys were not available in Spanish.

Therefore, we are requesting that the Notification Surveys pertinent to this application be sent in both Spanish and English or to be notified if that is something the applicant needs to undertake.

As part of the current State Application underway, a Legal Notice was published in the Palestine Herald Press for two consecutive days with no response (see attached). Recently Ordóñez Groceries status as an LLC in good standing was verified by the State Controller's Office.

We are questioning the measurements used to determine the proximity of the grocery store to the New Jerusalem Church located at 814 Spencer Street. Measurements, utilizing instructions found in Charter Reference – "location of alcoholic beverage establishments (b)," taken independently do not agree with your records.

Also being questioned is the use of term, "alcoholic beverage establishment" in the Charter reference. The grocery store will be selling beer and wine to be consumed off-site and as part of their inventory, not as their sole inventory as the term "establishment" implies.

Secondly, we understand the Police Department was represented at the City Council Meeting of October 11, 2021 and can appreciate the concern. Therefore, we have requested and received Police Report records for the area surrounding the grocery store. Records indicate that the neighborhood is safe with only a "dog incident" reported since 2021. The grocery store itself is

secured with iron bars. Mr. Ordonez's family residence is directly behind the grocery store. He has a vested interest in continuing to keep the neighborhood safe for his family and neighbors.

Mr. Ordonez seeks to be competitive and to grow his business while providing a safe alternative to traveling out of the neighborhood to make these purchases.

Meeting Minutes

Palestine Herald

Police Report

Mapping Requirements



CITY COUNCIL
AGENDA DATE: April 8, 2024
ITEM XZ-24-2 / STAFF REPORT

REQUEST: A specific use permit to allow the sale of alcoholic beverages by Ordonez Groceries located at 712 North Cottage Avenue

APPLICANT: Gorgonio Ordonez, Jr.

EXHIBITS: Zoning Map, Area Map, Measurement of Distance to Church

PREPARED BY: Susan Davis, Planning Tech

PROPERTY INFORMATION

LOCATION: 712 Cottage Avenue

ZONING: MUN, Mixed Use Neighborhood

OVERLAY ZONES: None

LAND USE: Commercial - Grocery Store

ADJACENT ZONING: MUN, Mixed Use Neighborhood and MR, Mixed Residential

ACREAGE: 0.4305 acres

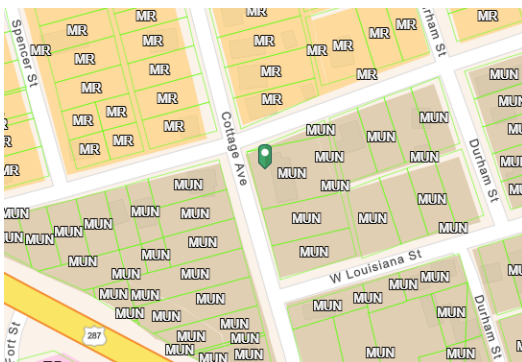
SUBDIVISION:

SUMMARY OF REQUEST

The applicant, Gorgonio Ordonez, Jr., applied for a specific use permit to allow the sale of beer and wine by his grocery store located at 712 North Cottage Avenue for off-premises consumption. The property is zoned MUN, Mixed Use Neighborhood which allows the sale of alcoholic beverages if approved by specific use permit.

PROPERTY ZONING AND LAND USE

The property where the sale of alcoholic beverages is proposed to be located is zoned Mixed Use Neighborhood. Adjacent zoning districts include Mixed Residential to the north and Mixed Use Neighborhood to the south, east, and west.



PUBLIC NOTICE

On February 23, 2024, twelve notices (written in English and Spanish) were mailed to property owners within 200-feet of the location of the specific use permit request. One (8.3%) has been returned in favor of the request. One (8.3%) has been returned in opposition. Ten (83.4%) owners did not respond.

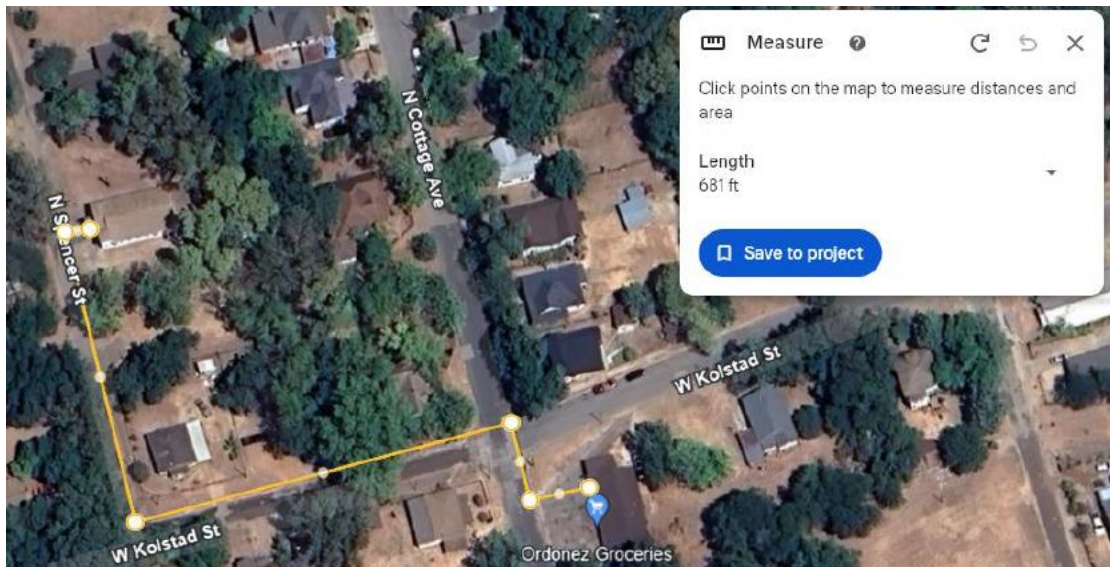
ZONING AND DEVELOPMENT REQUIREMENTS

Chapter 10, Article 1, Section 10-2 of the Code of Ordinances for the City of Palestine provides as follows:

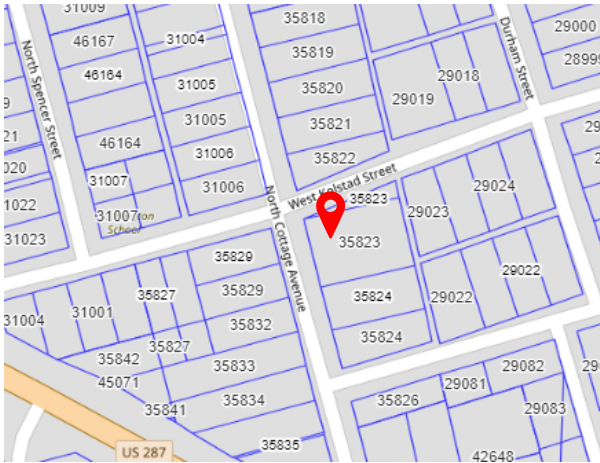
Sec. 10-2. - Proximity of business to churches, hospitals and schools.

- (a) No alcoholic beverage license or permit shall be issued to any dealer or person engaged in the handling of alcoholic beverages as defined in the Alcoholic Beverage Code, where the place of business of any such dealer or person is within 300 feet of any church, public hospital, school or other educational institution.
- (b) The measurement of the distance between the place of business where alcoholic beverages are sold and the church or public hospital shall be along the property lines of the street fronts and from front door to front door and in direct line across intersections.

New Jerusalem Baptist Church is located at 814 Spencer Street, Palestine, Avenue. The distance between Ordonez Groceries and New Jerusalem Baptist Church is 681 ft. based upon measurements along the property lines of the street fronts and from front door to front door as shown on the map below:



SPECIFIC USE PERMIT LOCATION MAP



STAFF COMMENTS

On October 11, 2021, City Council declined to issue a Specific Use Permit to Ordonez Groceries after discussing concerns of beer and wine being sold in a residential neighborhood and notification surveys not being available in Spanish.

Notification Surveys were mailed to the property owners within a 200 ft. radius in both English and Spanish on February 23, 2024.

In addition, the map provided during the October 2021 Planning and Zoning and City Council meetings indicates that distance between New Jerusalem Church and Ordonez Groceries was 284.3 ft. The method of measurement was in a straight line directly to a property identified as the church and across adjacent property owner's property. The information available through mapping and the Anderson County Appraisal District indicates that the church is several lots north of the property identified on the 2021 map.

PLANNING & ZONING COMMISSION RECOMMENDATION

During the regular meeting of the Planning and Zoning Commission held on March 7, 2024, Gorgonio Ordonez spoke in favor and advised that he is trying to compete with other local businesses; Patricia Morrissey also spoke in favor; and Chief Mark Harcrow spoke in opposition citing the high volume of crime in the neighborhood. Discussion was held by the Commissioners concerning the recommendation made by the Chief of Police, and safety of the neighborhood. The Planning & Zoning Commission unanimously voted to deny the motion by 5-0 vote.

CITY COUNCIL

City Council tabled the application during its meeting held on March 25, 2024, to allow time for consideration of conditions on the permit.



Agenda Date: April 8, 2024

To: City Council

From: Kimberly Beckman, Public Works Admin

Agenda Item: Consider authorizing City Manager to execute a professional engineering services agreement with Birkhoff, Hendricks, and Carter LLP

Date Submitted: 04/03/2024

SUMMARY:

Consider authorizing the City Manager to execute a Professional Engineering Services Agreement with Birkhoff, Hendricks, and Carter L.L.P. for design services to replace the Bassett Road culvert in the amount of \$89,900.00.

RECOMMENDED ACTION:

Staff recommends authorizing the City Manager to execute a Professional Engineering Services Agreement with Birkhoff, Hendricks, and Carter L.L.P.

CITY MANAGER APPROVAL:

Attachments

Professional Engineering Documents

Basset Rd Culvert Image

BIRKHOFF, HENDRICKS & CARTER, L.L.P.**PROFESSIONAL ENGINEERS**

Texas Board of Professional Engineers and Land Surveyors

Engineering Firm 526

Survey Firm 100138-00

Project No. 2024???

Client: City of Palestine

Date: 3-Apr-24

Project: Basset Rd Culvert Replacement

By: CMK

PRELIMINARY ENGINEER'S OPINION OF CONSTRUCTION COST

Item No.	Description	Quantity	Unit	Price	Amount
1	Remove and Dispose of Asphalt Pavement	670	SY	\$ 30.00	\$ 20,100.00
2	Asphalt Saw Cutting	40	LF	\$ 5.00	\$ 200.00
3	Unclassified Channel Excavation	250	CY	\$ 50.00	\$ 12,500.00
4	Remove and Dispose of 72" CMP	60	LF	\$ 100.00	\$ 6,000.00
5	Furnish and Install 5-ft (Rise) x 7-ft (Span) RCB w/ Embedment	60	LF	\$ 1,300.00	\$ 78,000.00
6	Construct TxDOT Type PW Concrete Wingwalls w/ Apron	2	Ea	\$ 38,000.00	\$ 76,000.00
7	Furnish and Install 5-foot curb inlet	4	Ea	\$ 7,500.00	\$ 30,000.00
8	Furnish and Install Class III 24-inch RCP w/ Embedment	60	LF	\$ 120.00	\$ 7,200.00
9	Construct C221 Traffic Rail on Concrete Wingwall	90	LF	\$ 175.00	\$ 15,750.00
10	Construct MBGF Approach And Departure Sections	200	LF	\$ 150.00	\$ 30,000.00
11	Furnish and Install 6-inch Reinforced Concrete Pavement w/ curband gutter on 6-inch compacted subgrade	670	SY	\$ 100.00	\$ 67,000.00
12	Construct Curb Transitions (6-inch to ground)	40	LF	\$ 15.00	\$ 600.00
13	Repair Sanitary Sewer Aerial Crossing	1	Ea	\$ 35,000.00	\$ 35,000.00
14	Lower Existing Water Line	1	Ea	\$ 15,000.00	\$ 15,000.00
15	Furnish and Construct Cement Stabilized Backfill	110	CY	\$ 200.00	\$ 22,000.00
16	Furnish, Install and Maintain Hydromulch	1,333	SY	\$ 3.00	\$ 4,000.00
17	Furnish, Implement, Maintain and Remove Erosion Control Measures	1	Ea	\$ 3,000.00	\$ 3,000.00
18	Furnish, Implement, Maintain and Remove Traffic Control Devices	1	Ea	\$ 5,000.00	\$ 5,000.00
	Construction Subtotal:				\$ 427,350.00
	Contingencies and Miscellaneous Items:	25%			\$ 106,838.00
	Construction Total:				\$ 534,188.00
	Engineering, Surveying and Construction Admin				\$ 89,900.00
	Quality Control and Material Testing	2.5%			\$ 13,355.00
	Project Total:				\$ 637,443.00
	USE (Rounded up to Nearest \$10,000):				\$ 640,000.00

PROFESSIONAL ENGINEERING SERVICES AGREEMENT

THIS AGREEMENT is made and entered into by and between the **City of Palestine, Texas**, hereinafter referred to as "City", and **Birkhoff, Hendricks & Carter, L.L.P.**, hereinafter referred to as "Engineer", to be effective from and after the date as provided herein.

The City desires to engage the services of the Engineer to complete engineering design provide bidding and construction administration services and provide surveying services for the ***Basset Road Culvert Replacement***, hereinafter referred to as the "Project"; and the Engineer desires to render such engineering design services for the City under the terms and conditions provided herein. That for and in consideration of the covenants contained herein, and for the mutual benefits to be obtained hereby, the parties hereto agree as follows:

I. Employment of the Engineer

The City hereby agrees to retain the Engineer to perform professional engineering services in connection with the Project; Engineer agrees to perform such services in accordance with the terms and condition of this Agreement.

II. Scope of Services

The parties agree that Engineer shall perform such services as expressly set forth and described in Exhibit "A", which is attached hereto and thereby made a part of this Agreement. The parties understand and agree that deviations or modifications, in the form of written changes may be authorized from time to time by the City. Engineer shall have no further obligations or responsibilities for the project except as agreed to in writing. Engineer's services and work product are intended for the sole use and benefit of Client and are not intended to create any third party rights or benefits, or for any use by any other entity or person for any other purpose.

Engineer shall perform the professional engineering services with the professional skill and care ordinarily provided by competent engineers practicing in North Central Texas and under the same or similar circumstances and professional license. Professional services shall be performed as expeditiously as is prudent, considering the ordinary professional skill and care of a competent engineer.

III. Schedule of Work

The Engineer agrees to commence services immediately upon execution of this Agreement, and to proceed diligently with said service, except for delays beyond the reasonable control of Engineer.

IV. Compensation and Method of Payment

The parties agree that Engineer shall be compensated for all services provided pursuant to this Agreement in the amount and manner described and set forth in the Payment Schedule attached hereto as Exhibit "B" and thereby made a part of this Agreement. City agrees to pay invoices upon receipt. Statement for services shall include a line for previous payments, contract amount, and amount due current invoice.

V. Information To Be Provided By The City

The City agrees to furnish, prior to commencement of work, all information requested by Engineer that is available to the City.

VI. Insurance

Engineer agrees to procure and maintain for the duration of the contract Professional Liability Insurance (\$3,000,000), Worker's Compensation, General Liability and Automobile Insurance.

VII. Assignment and Subletting

The Engineer agrees that neither this Agreement nor the services to be performed hereunder will be assigned or sublet without the prior written consent of the City. The Engineer further agrees that the assignment or subletting of any portion or feature of the work or materials required in the performance of this Agreement shall not relieve the Engineer from its full obligations to the City as provided by this Agreement.

VIII. Contract Termination

The parties agree that City or the Engineer shall have the right to terminate this Agreement without cause upon thirty (30) days written notice to the other. In the event of such termination without cause, Engineer shall deliver to City all finished or unfinished documents, data, studies, surveys, drawings, maps, models, reports, photographs or other items prepared by Engineer in connection with this Agreement. Engineer

shall be entitled to compensation for any and all services completed in accordance with the provisions of this Agreement prior to termination.

IX. Engineer's Opinion of Cost

The parties recognize and agree that any and all opinions of cost prepared by Engineer in connection with the Project represent the best judgment of Engineer as a design professional familiar with the construction industry, but that the Engineer does not guarantee that bids solicited or received in connection with the Project will not vary from the opinion by the Engineer.

X. Construction

On projects that include construction, the Owner recognizes that the Contractor and Subcontractors will be solely in control of the Project site and exclusively responsible for construction means, methods, scheduling, sequencing, jobsite safety, safety programs, and compliance with all construction documents and directions from Owner or Building Officials. Construction contracts are between the Client and the Construction Contractor. Consultant shall not be responsible for construction related damages, losses, costs, or claims; except only to the extent caused by Consultant's sole negligence.

XI. Ownership of Documents

Original drawings, specifications and reports are the property of the Engineer; however, the Project is the property of the City. City shall be furnished with such reproductions of drawings, specifications and reports. Upon completion of the services or any earlier termination of this Agreement under Article VIII, Engineer will revise drawings to reflect changes made during construction as reported by the City and contractor, and will furnish the City with one set of construction record drawings in accordance with terms provided in Exhibit "A" – Engineering Services.

All deliverables shall be furnished, as an additional service, at any other time requested by the City when such deliverables are available in the Engineer's record keeping system.

XII. Complete Contract

This Agreement, including the exhibits hereto numbered "A" through "B" constitutes the entire agreement by and between the parties regarding the subject matter hereof, and supersedes all prior or contemporaneous written or oral understanding. This agreement may only be amended, supplemented, modified or canceled by a duly executed written agreement.

XIII. Mailing of Notices

Unless instructed otherwise in writing, Engineer agrees that all notices or communications to City permitted or required under this Agreement shall be addressed to City at the following address:

Mr. Kevin Olson
Public Works Director
City of Palestine
1620 West Palestine Ave
Palestine, Texas 75801

City agrees that all notices or communications to Engineer permitted or required under this Agreement shall be addressed to Engineer at the following address:

Mr. Craig M. Kerkhoff, P.E., C.F.M.
Birkhoff, Hendricks & Carter, L.L.P.
11910 Greenville Ave., #600
Dallas, Texas 75243
Phone: (214) 361-7900
ckerkhoff@bhcllp.com

All notices or communications required to be given in writing by one party or the other shall be considered as having been given to the addressee on the date such notice or communication is posted by the sending party.

XIV. Texas Board of Professional Engineers & Land Surveying Contact Information

Recipients of professional land surveying services under this agreement may direct complaints regarding such services to the Texas Board of Professional Engineers & Land Surveyors, 1917 South Interstate 35, Austin, Texas 78741, Phone (512) 440-7723.

XV. Contract Amendments

This Agreement may be amended only by the mutual agreement of the parties expressed in writing.

XVI. Effective Date

This Agreement shall be effective from and after execution by both parties hereto, with originals in the hand of both parties.

WITNESS OUR HANDS AND SEALS on the date indicated below.

CITY OF PALESTINE, TEXAS
A Texas Home-Rule Municipal Corporation

BIRKHOFF, HENDRICKS & CARTER, L.L.P.
A Texas Limited Liability Partnership
Texas Board of Professional Engineers & Land Surveyors
Engineering Firm No. 526
Land Surveying Firm No. 100318-06

By: _____

By:  _____
Craig M. Kerkhoff, P.E., C.F.M.
Managing Partner

Date: _____

Date: 4/3/24 _____

ATTEST

By: _____

EXHIBIT “A”

ENGINEERING SERVICES

Bassett Road Culvert Replacement

The project generally consists of a preliminary engineering evaluation of the existing storm drainage culvert underneath Bassett Road, located between Court Drive and Highway 79, to determine the appropriate sizing of box culvert that will convey the existing storm water effectively without raising the 100-year water surface elevation (WSEL) or significantly increase velocities. The existing 100-year WSEL is over the top of the roadway. This project will not raise the proposed roadway surface to be above the 100-year WSEL. The preliminary engineering evaluation with recommended box culverts and improvements will be submitted to the City. At the City’s direction, final engineering plans will be prepared for bidding and construction.

The final engineering plans will include the design of box culverts, wingwalls, erosion protection, minor channel improvements, guard rails, roadway rehabilitation and piers to support the existing water and sanitary sewer aerial crossings adjacent to and on each side of the roadway. It is assumed that the roadway can be closed during construction, and phasing of construction will not be required. It is assumed that all work will take place within existing ROW and drainage easements of the City, and that land right acquisition will not be required.

Part I: Evaluation and Preliminary Design

- A. Obtain current hydraulic model from the FEMA Project Library.
- B. Delineate existing drainage area based on aerial topographic contours provided by the City.
- C. Survey cross-sections of the channel to obtain creek flow lines and culvert sizes. Survey 100-feet upstream and downstream of the existing culvert crossing in order to create current effective cross-sections. Contact 811 and request underground utilities be located. Survey the existing roadway and roadway ditches for approximately 200 feet each side of the existing culvert crossing.
- D. Prepare a duplicate effective hydraulic model using HEC-RAS based on the model obtained from FEMA for the existing culvert structure and prepare a corrected effective hydraulic model including the survey information obtained for this project to determine existing capacity and velocities for the 100-year frequency event and for additional frequency flows as obtained from the model obtained from FEMA.
- E. Preliminarily size proposed box culverts to increase the conveyance without significant alteration of the constraints of the existing roadway surface and channel.

- F. Provide a flood study letter report that includes input/output reports, cross sections, profile plots and summary tables for the duplicate effective model, corrected effective model and proposed model and a narrative discussing the results of the study.
- G. Engineer's Preliminary Opinion of Probable Construction Cost based on schematic design of improvements.

Part II: Final Design

- A. Construction Plan-Profile Sheets prepared at a scale of not less than 1"= 20' for the proposed culvert and roadway improvements and relocation of the existing water line and sanitary sewer line at the creek crossing.
- B. Standard Details
- C. Special Details
- D. Cover Sheet, Location Map and Sheet Index
- E. Submittals to State Regulatory Agencies, as required
- F. Preparation of required Texas Department of Transportation permits, as required
- G. Two (2) Design review meetings
- H. Opinion of Probable Construction Estimate at 60% and 90% plan submittals
- I. Preparation of Specifications and Contract Documents
- J. Printing of three (3) sets of preliminary plans and specifications at 60% and 90% for review by the City.

Part III: Bidding Phase:

- A. The City will publish notices in the newspaper recognized by the City Council as the official newspaper for the City of Palestine. BHC will post the plans for bid advertisement on Civcast.
- B. The Engineer will answer online questions in order submitted, in addition the Engineer will prepare addenda to modify the plans and specifications as required in response to questions. Questions must be submitted by potential bidders a minimum of 96-hours before the bid opening. All addenda shall be posted a minimum of 24-hours before the bid opening.
- C. Assist the City during opening of bids and provide bid tabulation sheets.

- D. Complete cursory review of bid documents to determine that the bid includes all sheets of the Engineer's office original file set and check the math of the bids received.
- E. Obtain experience record and references from the apparent low bidder. Check references of apparent low bidder.
- F. Formulate opinion from information received and provide a letter of recommendation for award of a construction contract. Bid tabulation summary sheets will also be sent to the City.

Part IV: Construction Phase

- A. Attend the Pre-Construction Conference, including preparing an agenda.
- B. Attend coordination meetings with contractor, quality control personnel, and City representatives as required to discuss strategy, problem areas, progress, and other coordination matters (2 meetings are included).
- C. Review shop drawings and other submittal information which the Contractor submits. This review is for the benefit of the Owner and covers only general conformance with information stated by the Contract Documents. The contractor is to review and stamp their approval on submittals prior to submitting to the Engineer. Review by the Engineer does not relieve the Contractor of any responsibilities, safety measures or the necessity to construct a complete and workable facility in accordance with the Contract Documents. Review of shop drawings will be completed by review of electronic PDF files provided by the Contractor.
- D. Provide written responses to requests for information or clarification to City or Contractor. Responses will be in electronic format.
- E. Prepare and process routine change orders for this project as they pertain to the original scope of work. Transmittal will be electronically and will include construction plan sheet changes.
- F. Make periodic site visits during construction as the project requirements dictate. Minimum of one project site visit per month (2 visits are included).
- G. Prepare monthly pay request from information obtained from Contractor and/or the City Inspector and prepare pay request(s) along with letter of recommendation for payment. Pay requests will be transmitted electronically.
- H. Accompany the City during their final walk-through of the project. Prepare a punch list for City's review and approval and transmit it electronically.

- I. Prepare record drawings utilizing information from the contractor and City's on-site Representative. Record drawings will be transmitted electronically in PDF format.

Part V: Additional Services

- A. Field survey for evaluation of existing above ground topographic information at the crossing and roadway rehabilitation and utility locations marked by others.
- B. Geotechnical Investigations will include two 30-foot deep bores outside each end of the existing culvert as well as two additional 10-foot deep roadway bores approximately 100-feet each side of the existing culvert crossing.
- C. Printing of six (6) sets of final plans and specifications for distribution to the successful contractor including two (2) sets of final plans and specifications for the City.

Part VI: Terms and Conditions For Electronic File Transfers

Electronic files are transmitted on the terms and conditions below:

By opening, accessing, copying or otherwise using the transmitted electronic files, these terms and conditions are accepted by the user.

- A. The electronic files are compatible with the following software packages operating on a PC using Windows operating systems:
 - Autocad Civil 3D 2022 , Civil 3D 2017
 - Innovyse InfoWater Pro 3.0 with ESRI Arc Pro 2.7
 - Innovyze InfoSewer Pro 7.6 with ESRI Arc Map 10.4
 - ESRI 10.4
 - MS Office 365
 - Bluebeam Revu (PDF) Ver 10 - Ver 2020
- B. Birkhoff, Hendricks & Carter, L.L.P. makes no warranty as to the compatibility of these files beyond the specified release of the above stated software.
- C. Because data stored on electronic media can deteriorate undetected or be modified, Birkhoff, Hendricks & Carter, L.L.P. will not be held liable for completeness or correctness of electronic media.
- D. The electronic files are instruments of our service. Where there is a conflict between the hard copy drawings and the electronic files, Birkhoff, Hendricks & Carter, L.L.P.'s hard copy file will govern in all cases.
- E. Electronic files may only be modified in accordance with the Texas Engineering Practice Act for modifying another Engineer's design.

Part VII: Exclusions

The intent of this scope of services is to include only the services specifically listed herein and none others. Services specifically excluded from this scope of services include, but are not necessarily limited to the following:

- A. Certification that work is in accordance with plans and specifications
- B. Consulting services by others not included in Scope of Services
- C. Contractor's means and methods
- D. Environmental cleanup
- E. Environmental impact statements and assessments
- F. ADA submittals, reviews, inspections, approvals or fees
- G. Fees for permits
- H. Fiduciary responsibility to the Client
- I. Landscape/Streetscape architecture/irrigation plans
- J. On-site construction safety precautions, programs and responsibility (Contractor's responsibility)
- K. Phasing of Contractor's work
- L. Quality control and testing services during construction
- M. Revisions and/or change orders as a result of revisions after completion of original design (unless to correct error on plans)
- N. Services in connection with condemnation hearings
- O. Traffic engineering report or study
- P. Title searches.
- Q. Tree Protection/Survey
- R. Trench safety designs
- S. Wetlands determination
- T. Application for Conditional Letter of Map Revision (CLOMR) or Letter of Map Revision (LOMR)
- U. Preparation of Land Rights Documents including easements or rights-of way.

EXHIBIT “B”

PAYMENT SCHEDULE

Payment for engineering services described under Parts I, II, III and IV shall be based on a Lump Sum amount of \$71,250.

Lump Sum:

Evaluation and Preliminary Design	\$25,000
Final Design	\$35,000
Bidding Phase Services	\$ 4,100
Construction Admin. Services	\$ 7,150
Total Basic Services	\$71,250
Lump Sum Fee	

Payment for Additional Services described under Part V shall be on the basis of salary cost times a multiplier of 2.45 for time expended on the task. Field survey crew shall be based on \$195.00 per hour, inclusive of all equipment rentals and software licensing; plus, mileage charged at \$0.67 per mile. Expenses shall be at invoice cost times a multiplier of 1.15. We recommend budgeting \$18,650 for the additional services.

Additional Services (recommended budget):

Design Survey	\$ 7,650
Geotechnical Evaluation	\$10,500
Printing of plans and specs	\$ 500
Total Additional Services	\$18,650
Not to Exceed Fee	

The maximum overall fee of **\$89,900** established herein shall not be exceeded without written authorization from the City, based on increased scope of services. Itemized invoices for services shall be submitted not more than once per month and will (include) be accompanied by a monthly progress report.

Payment shall be due upon receipt of the invoice.

REPLACE EXISTING (2)- 72"
CORRUGATED METAL PIPE CULVERT
WITH (2)-5'X6' REINFORCED BOX
CULVERT. REPLACE 300LF ASPHALT
PAVEMENT WITH CONCRETE PAVEMENT

REPLACE 667 SY ASPHALT
PAVEMENT WITH
REINFORCED CONCRETE
WITH CURB AND GUTTER
(20-FOOT WIDTH)

10' CURB
TRANSITION
(TYPICAL)

DRAINAGE CHANNELS
TO BE
CEMENT STABILIZED

2- 72-INCH C.M.P. CULVERT
REPLACE WITH
2- 5'X6' R.C.B. CULVERT

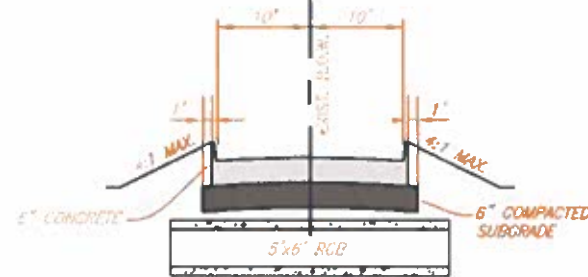
REPAIR
SANITARY SEWER
AERIAL CROSSING

CONSTRUCTION FW-0
HEADWALLS
H = 9', SS = [4:1]

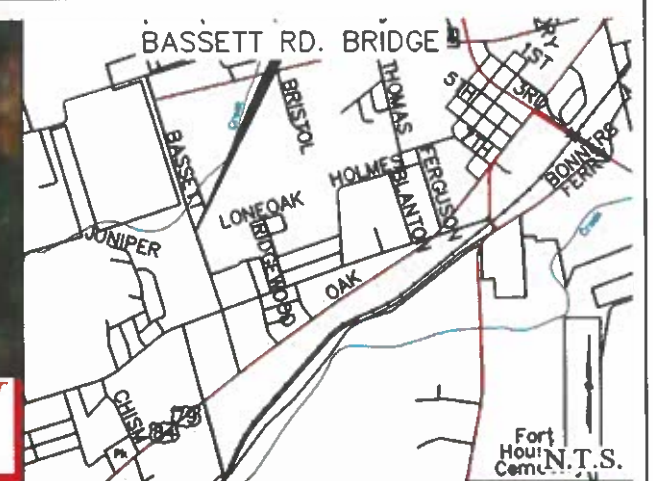
DRAINAGE CHANNELS
TO BE
CEMENT STABILIZED

CURB INLET

WATERLINE
TO REMAIN



**BASSET ROAD BRIDGE
TYPICAL SECTION**



These plans and related specifications were prepared for construction of this specific project only. None of these documents is to be used for any other project. If this drawing is converted to an electronic file, any discrepancy between the electronic file and the original, handwritten or printed, original document, the original document shall govern in all cases.

BIRKHOFF, HENDRICKS & CARTER, L.L.P.
PROFESSIONAL ENGINEERS
TBPE Firm No. 526; TBPLS Firm No. 10031800
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THESE DOCUMENTS ARE FOR INTERIM REVIEW
AND ARE NOT INTENDED FOR CONSTRUCTION,
BIDDING, OR PERMIT PURPOSES.
GRANT M. KIRKHOFF
TEXAS P.E. NO. 108102
DATE: February 2022

THE CITY OF PALESTINE
BASSET ROAD BRIDGE RECONSTRUCTION
CULVERT RECONSTRUCTION

BHC
PROJECT NO.
7010-BUSDEV
February
2022

SHEET NO.
1



Agenda Date: April 8, 2024
To: City Council
From: Teresa Herrera, City Manager
Agenda Item: Texas State Railroad Authority
Date Submitted:

SUMMARY:

Sec. 4501.153. GRANTS FROM OTHER TAXING AUTHORITY; CONTRACT.

Authorizes a taxing authority in Anderson [County] or Cherokee County to grant certain tax revenues to the authority. Provides that the grant must serve a public purpose of the taxing authority making the grant.

We have included a copy of Bill Analysis S.B. 1659 from 2007.

RECOMMENDED ACTION:

Provide staff with clear and actionable guidance.

CITY MANAGER APPROVAL:

Attachments

SB 1659

BILL ANALYSIS

Senate Research Center
80R10342 MXM-D

S.B. 1659
By: Nichols
Natural Resources
3/30/2007
As Filed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The Texas State Railroad (railroad) is a steam powered tourist excursion train operated by the Texas Parks and Wildlife Department (TPWD). The railroad dates back to the late 1800s when the Texas prison system opened the East Texas Penitentiary in Rusk, Texas.

The railroad was turned over to TPWD in 1972, and inmates from the Texas Department of Corrections set to work clearing brush, replacing cross ties, and repairing bridges. Park employees traveled over much of the United States to obtain vintage rail cars and steam locomotives for use in the park and Victorian-style depots were constructed at both ends of the line to provide passenger comfort and interpretive exhibits. After years of hard work, the Texas State Railroad Park opened in 1976 to provide children of all ages with the thrill and romance of steam powered railroading. TPWD can no longer afford to keep the train running and TPWD is proposing to make the train a static display.

As proposed, S.B. 1659 creates the Texas State Railroad Authority (authority) and directs TPWD to transfer the train and its assets to the authority. The authority will be a quasi-governmental entity reflecting a partnership between the communities of Rusk and Palestine. The authority will be able to partner with a private operator to run and manage the train. The authority will have the ability to lease all or part of the railroad and its facilities to a private operator for future operations. S.B. 1659 creates a local public-private partnership which will ensure that the railroad continues to be a focal point for tourism and economic development in East Texas.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to any state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Title 4, Special District Local Laws Code, by adding Subtitle D, as follows:

SUBTITLE D. PARKS AND RECREATION

CHAPTER 4501. TEXAS STATE RAILROAD AUTHORITY

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 4501.001. DEFINITIONS. Defines "authority," "board," and "director."

Sec. 4501.002. CREATION AND NATURE OF AUTHORITY. Provides that the Texas State Railroad Authority (authority) is a special district created under Section 59, Article XVI, Texas Constitution, for the development of parks and recreational facilities.

Sec. 4501.003. PURPOSES OF AUTHORITY. Provides that the authority is created to achieve certain functions. Provides that the creation of this authority is necessary to promote, develop, encourage, and maintain employment, commerce, transportation, tourism, recreation, the arts, entertainment, economic development, and public welfare in Anderson and Cherokee counties.

Sec. 4501.004. FINDINGS OF BENEFIT AND PUBLIC PURPOSE. (a) Provides that the authority is created to serve a public use and benefit.

(b) Provides that all residents of this state will benefit from the works and projects provided by the authority.

(c) Sets forth that the creation of the authority is in the public interest and is essential to meet certain goals.

(d) Sets forth certain actions the authority will undertake.

(e) Prohibits the authority from acting as the agent or instrumentality of any private interest, even though the authority will incidentally benefit many private interests in addition to the paramount public interest.

Sec. 4501.005. LIBERAL CONSTRUCTION OF CHAPTER. Requires that this chapter be liberally construed in conformity with the findings and purposes stated in this chapter.

Sec. 4501.006. GENERAL WATER DISTRICT LAW NOT APPLICABLE. Provides that Chapter 49 (Provisions Applicable to All Districts), Water Code, does not apply to the authority.

[Reserves Sections 4501.007–4501.050 for expansion.]

SUBCHAPTER B. BOARD OF DIRECTORS

Sec. 4501.051. GOVERNING BODY; TERMS. Provides that the authority is governed by a board of seven voting directors appointed under Section 4501.053, except as provided by Section 4501.058. Provides for the composition and terms of the board.

Sec. 4501.052. ELIGIBILITY. Provides that a person must be at least 21 years of age to be qualified to serve as a director. Prohibits a voting director from serving more than three consecutive terms. Provides that at least two of the three directors appointed by the City of Palestine must reside in Anderson County and that two of the three directors appointed by the City of Rusk must reside in Cherokee County.

Sec. 4501.053. APPOINTMENT OF DIRECTORS. Requires the city council of the City of Palestine to appoint as a voting director one person proposed by the mayor of Palestine, by majority vote, not later than August 31 of each year. Requires the city council of the City of Rusk to appoint as a voting director one person proposed by the mayor of Rusk, by majority vote, not later than August 31 of each year. Requires the directors appointed by Subsection (a) to appoint a seventh director, by majority vote, not later than September 30 of every third year.

Sec. 4501.054. NONVOTING DIRECTORS. Sets forth certain persons who are to serve as nonvoting directors. Provides that a nonvoting director is not counted in determining the board quorum.

Sec. 4501.055. VACANCIES. Provides that a board vacancy is filled in the same manner as the original appointment.

Sec. 4501.056. VOTING AUTHORITY OF PRESIDENT. Provides that the board president is a voting member but is only authorized to vote to break a tie. Entitles all other voting directors to one vote on any issue before the board.

Sec. 4501.057. OFFICERS. Requires the board to elect from among the voting directors officers for the authority, including a president, a vice president, a secretary, and a treasurer, each year. Prohibits the president and vice president from being directors appointed by the same city.

Sec. 4501.058. EXPANSION OF BOARD. Authorizes the board to increase the number of voting directors by authorizing the governing body of any political subdivision in this state other than the cities of Palestine and Rusk to appoint one or more voting directors by resolution adopted by a two-thirds majority vote. Requires the resolution to establish certain criteria.

[Reserves Sections 4501.059-4501.100 for expansion.]

SUBCHAPTER C. POWERS AND DUTIES

Sec. 4501.101. GENERAL POWERS. Provides that the authority has the powers necessary to accomplish any authority purpose, including the purposes specified in Section 4501.003.

Sec. 4501.102. CONTRACT TO MANAGE OR OPERATE AUTHORITY PROPERTY. Authorizes the authority to contract with any person to manage or operate all or part of authority property.

Sec. 4501.103. COMPETITIVE BIDDING. (a) Provides that except as provided by Subsection (b), the competitive bidding requirements for a municipality under Chapter 252 (Purchasing and Contracting Authority of Municipalities), Local Government Code, applies to the authority.

(b) Provides that a contract with a private person under Section 4501.102 or 4501.104(2) is exempt from the competitive bidding requirements of Chapter 252 (Purchasing and Contracting Authority of Municipalities), Local Government Code, or any other statute.

Sec. 4501.104. GENERAL PROPERTY POWERS. Authorizes the authority to acquire, own, lease, operate, construct, maintain, repair, improve, or extend improvements, equipment, or any other property necessary to accomplish an authority purpose or to lease or otherwise convey authority property to private parties for an authority purpose.

Sec. 4501.105. DISPOSITION OF PUBLIC PARKS AND RECREATIONAL LANDS; EXEMPTION FROM APPLICABILITY OF OTHER LAW. Provides that Chapter 26 (Protection of Public Parks and Recreational Lands), Parks and Wildlife Code, does not apply to the use, transfer, or other disposition of property by certain methods.

Sec. 4501.106. NONPROFIT CORPORATION. Authorizes the board to authorize the creation of a nonprofit corporation to assist the authority in implementing a project or providing a service authorized by this chapter by resolution. Authorizes the nonprofit corporation to implement any project and provide any service authorized by this chapter. Requires the board to appoint the board of directors of the nonprofit corporation.

Sec. 4501.107. AUTHORITY TO SUE AND BE SUED; IMMUNITY. Authorizes the authority to sue and be sued in this state. Provides that this section does not waive any governmental immunity that would otherwise apply to the authority.

[Reserves Sections 4501.108-4501.150 for expansion.]

SUBCHAPTER D. GENERAL FINANCIAL PROVISIONS

Sec. 4501.151. AD VALOREM TAXES PROHIBITED. Prohibits the authority from imposing an ad valorem tax.

Sec. 4501.152. GRANTS; DONATIONS. Authorizes the authority to accept grants and donations, including property, for any authority purpose.

Sec. 4501.153. GRANTS FROM OTHER TAXING AUTHORITY; CONTRACT. Authorizes a taxing authority in Anderson [County] or Cherokee County to grant certain

tax revenues to the authority. Provides that the grant must serve a public purpose of the taxing authority making the grant.

[Reserves Sections 4501.154-4501.200 for expansion.]

SUBCHAPTER E. BONDS

Sec. 4501.201. DEFINITION. Defines "bond."

Sec. 4501.202. POWER TO ISSUE BONDS. Authorizes the authority to issue bonds to carry out any power conferred by this chapter. Provides that the bonds must be authorized by a board resolution.

Sec. 4501.203. MATURITY. Provides that authority bonds must mature not later than 40 years after their date of issuance.

Sec. 4501.204. BONDS PAYABLE FROM REVENUE. Authorizes bonds issued under this subchapter to be secured under board resolution by a pledge of certain revenues. Authorizes the board to undertake certain actions in the resolution authorizing the bonds. Authorizes the board to adopt and execute any other proceeding or instrument necessary or convenient in the issuance of the bonds.

Sec. 4501.205. ADDITIONAL SECURITY. (a) Authorizes bonds to be additionally secured, at the discretion of the board, by a deed of trust or mortgage lien on physical property of the authority, franchises, easements, water rights and appropriations permits, leases, contracts, and all rights appurtenant to the property, vesting in the trustee the power to take certain actions.

(b) Provides that a purchaser under a sale under the deed of trust lien, if one is given, is the absolute owner of property and rights purchased and is entitled to maintain and operate the property and rights.

(c) Authorizes a trust indenture to provide for certain things, regardless of the existence of the deed of trust or mortgage lien on the property.

Sec. 4501.206. BONDS EXEMPT FROM TAXATION. Provides that a bond issued under this subchapter, the transfer of the bond, and income from the bond, including profits made on the sale of the bond, are exempt from taxation in this state.

[Reserves Sections 4501.207-4501.250 for expansion.]

SUBCHAPTER F. DISSOLUTION

Sec. 4501.251. DISSOLUTION OF AUTHORITY; OUTSTANDING DEBT. Authorizes the board to dissolve the authority regardless of whether the authority has debt. Requires the authority to remain in existence solely for the purpose of discharging its debts if the authority has debt when it is dissolved. Provides that the dissolution is effective when all debts have been discharged.

SECTION 2. Repealer: Section 22.182 (Texas State Railroad), Parks and Wildlife Code.

SECTION 3. (a) Requires the city council of the City of Palestine and the city council of the City of Rusk to appoint three voting directors from three persons proposed by the mayor of Palestine or Rusk, as applicable, to serve as directors under Subchapter B, Chapter 4501, Special District Local Laws Code, as added by this Act, not later than September 1, 2007.

(b) Requires the directors appointed under this section to represent each city to draw lots to determine which director from each city serves a term expiring on certain dates.

(c) Requires the directors appointed under Subsection (a) of this section to meet in open session and appoint a seventh director not later than September 30, 2007. Requires the seventh director to serve a term expiring October 1, 2010.

SECTION 4. (a) Provides that not earlier than September 1, 2007, and on execution of the requirements of Section 5 of this Act, certain properties, obligations and liabilities, and files and records, are transferred to the authority.

(b) Authorizes the Texas Parks and Wildlife Department (TPWD) to agree with the authority to transfer any property of TPWD to the authority to implement the transfer required by this Act before September 1, 2007.

(c) Requires TPWD to continue to perform functions and activities under Section 22.182 (Texas State Railroad), Parks and Wildlife Code, in the period beginning on the effective date of this Act and ending on execution of the requirements of Section 5 of this Act, as if that section had not been repealed by this Act, and continues the former law in effect for that purpose.

SECTION 5. (a) Requires TPWD to transfer to the authority the property described by Subsection (d) of this section, for the consideration described by Subsection (b) of this section, not later than October 1, 2007.

(b) Provides that consideration for the transfer authorized by Subsection (a) of this section is an agreement between the parties that requires the authority to use the property in a manner that primarily promotes a state public purpose by using the property to operate the Texas State Railroad (railroad). Provides that if the authority does not use the property transferred under this Act in a manner that primarily promotes a state public interest by using the property to operate the railroad, ownership of the property automatically reverts to TPWD.

(c) Requires TPWD to transfer the property by an appropriate instrument of transfer. Provides that the instrument of transfer must include certain provisions.

(d) Provides that the property to which Subsection (a) of this section refers is all real and personal property associated with the railroad owned by the State of Texas, including certain properties.

SECTION 6. Sets forth certain legislative findings.

SECTION 7. Effective date: upon passage or September 1, 2007.