



November 5, 2024

Notice is hereby given of a Regular Meeting of Nacogdoches City Council to be held on the above date in the City Council Chambers of City Hall, 202 E. Pilar Street, Nacogdoches, Texas, beginning at 5:30 p.m. for the purpose of considering the following agenda items.

Some City Council Members may attend via videoconference but a quorum of the City Council and the Presiding Officer will be present at the above-stated physical location. The meeting will be streamed live at: <https://www.nactx.us/21>. There will be an opportunity for the public to comment on agenda items in person in Council Chambers.

**PLEASE LIMIT PRESENTATIONS TO THREE MINUTES
(UNLESS PRIOR APPROVAL IS OBTAINED)**

1. CALL TO ORDER.
2. PLEDGE OF ALLEGIANCE.
3. OPEN FORUM. Open Forum is an opportunity for citizens to address the City Council about items listed on the agenda, as well as on matters that are not specifically listed on the agenda. Alternatively, a citizen may address the City Council about an agenda item when the item comes up for consideration during the meeting. In order to address the City Council, please complete the Public Comment Form and submit it to the City Secretary prior to the start of the meeting. In accordance with the Texas Open Meetings Act, the City Council will not discuss, deliberate, or make any decisions on items not listed on the agenda. Comments are limited to 3 minutes per person.
4. ITEMS TO BE REMOVED FROM CONSENT AGENDA.
5. CONSENT AGENDA: Items included under Consent Agenda require little or no deliberation by Council. Approval of Consent Agenda authorizes the City Manager or his designee to proceed with conclusion of each in accordance with staff recommendations as reflected in the minutes of this meeting.
 - A. Consider approval of a contract by and between the City of Nacogdoches and SCS Engineers for professional engineering services on Landfill Major Permit Amendment – Phase I Services in a not-to-exceed amount of \$724,135.00. (Assistant City Engineer)
 - B. Consider approval of the renewal of a two-year contract between the City of Nacogdoches and HillCo Partners for the provision of intergovernmental consulting services in an amount not to exceed \$120,000. (City Manager)
 - C. Consider approval of multiple Indefinite Deliverable Indefinite Quantity contracts by and between the City of Nacogdoches and Longview Asphalt, Inc. and Texas Materials, for asphalt products and limestone base material used in Public Works operations in a not-to-exceed total budgeted amount of \$250,000.00. (Director of

Public Works)

- D. Consider approval of a Professional Services Contract between Cunningham Recreation and the City of Nacogdoches for playground design and construction at Robert McCrimmon Park for an amount not to exceed \$240,000. (Community Services Director)
 - E. Consider approval of minutes for the October 8, 2024, City Council Regular Meeting and the October 15, 2024, City Council Regular Meeting. (City Secretary)
 - F. Consider approval of the purchase of Track Loader from Holt Cat for a not-to-exceed amount of \$467,080.00. (Public Works Operations Manager)
6. REGULAR AGENDA: City Council will receive staff recommendations and public input on the following items, and may deliberate and take formal action on the item.
- A. **Public Hearing:** Consider approval of a Specific Use Permit, in a B-2, General Business and R-4, Multi-Family Zoning District for Stone, Sand, Gravel & Mineral Extraction, for approximately 5 acres, on Lot 1, City Block 47, generally located on the east side of Old Tyler Road, approximately one-half mile north of the Powers Street and Old Tyler Road intersection. This request has been submitted by James Wood on behalf of the owner, John Mast of Separate Property Partnership, L.P. Case File SUP2024-06. (Interim City Planner)
 - B. **Public Hearing:** Consider approval of a Zone Change from I-2, Heavy Industrial to R-4, Multi-Family for approximately 2.87 acres, on Lot 78-S-5, City Block 56, located at 808 East Lane Drive and 2924 Hunter Street. This request has been submitted by the property owners, Lee and Tracy Saenz. Case File ZON2024-03. (Interim City Planner)
 - C. **Public Hearing:** Consider approval of a Zone Change from R-2, Single Family to R-3, Two Family for approximately 1 acre, on Lot(s) 1&2, of the Larry Wade Subdivision and Lot(s) 6, 7, 8, 9, & 10, City Block 47, generally located on the north side of Powers Street, approximately 350 feet east of the Ritchie Street and Powers Street intersection. This request has been submitted by the owner, Clifton White. Case File ZON2024-04. (Interim City Planner)
 - D. **Public Hearing:** Consider amending the Code of Ordinances of the City of Nacogdoches, Texas, Chapter 78 – “Signs”, Article I. – “In General”, Article IV – “Permits”, and Article V. – “Regulations for On-Premises Signs by District”, to define feather-type signs and allow for further control of placement, maintenance, and the number of times these signs can be used throughout the year. (Executive Director of Development and Infrastructure)
 - E. **Public Hearing:** Consider amending the Code of Ordinances of the City of Nacogdoches, Texas, including Chapter 46 – “Health and Sanitation”, Article III. – “Smoking Pollution Control”, and Chapter 118 – “Zoning”, Article I – “In General”, Article III. – “District Regulations”, and Article IV. – “Supplementary District Regulations” to allow for additional clarification and requirements for tobacco and

vape stores in the city of Nacogdoches. (Executive Director of Development and Infrastructure)

- F. **Public Hearing:** Consider amending the Code of Ordinances of the City of Nacogdoches, Texas, Chapter 118 – “Zoning”, Article II – “Administration”, Division 4 – “Amendment Procedure”, to allow for the change of designation of the controlling board for protests of zoning changes. (Executive Director of Development and Infrastructure)
- G. **Public Hearing:** Consider amending the Code of Ordinances of the City of Nacogdoches, Texas, Chapter 118 – “Zoning”, Article II – “Administration”, Division 3 – “Board of Adjustment”, to amend the number of days to file an appeal to the Board of Adjustment and who may appeal Board of Adjustment decisions. (Executive Director of Development and Infrastructure)
- H. Consider approval of the purchase of 65 body-worn cameras and approval of a contract by and between Nacogdoches Police Department and Motorola Solutions. (Chief of Police)
- 7. **EXECUTIVE SESSION:** Executive Sessions are for City Council to receive information and deliberate on matters specified in Subchapter D of the Texas Open Meetings Act. Council may reconvene in open session to vote on the matter.
 - A. Personnel Matters – Pursuant to Texas Government Code Section 551.074, deliberations regarding the appointment or employment of a public officer or employee. The subject of this executive session is the position of the City Manager.
- 8. Open for action, if any, on Executive Session item(s).
- 9. ADJOURN.



Rhonda Lewis
City Secretary



This agenda is posted as required under G. C. Section 551.041. For more information or a copy of the Open Meetings Act, please contact Attorney General of Texas at 1-800-252-8011; City Secretary at (936) 559-2506 or visit City of Nacogdoches web site at www.nactx.us.

CERTIFICATION

This meeting will be conducted pursuant to Chapter 551 of the Texas Government Code. The Council reserves the right to adjourn into Executive Session at any time during the meeting to discuss any of the above posted agenda, as authorized by Texas Local Government Code Sections 551.071 [litigation and certain consultation with attorney], 551.072 [acquisition of

interest in real property], 551.073 [prospective gift to city], 551.074 [certain personnel deliberations], 551.076 [deployment/implementation of security personnel or devices], or 551.087 [deliberations regarding economic development negotiations]. The City of Nacogdoches is committed to compliance with the Americans with Disabilities Act. Reasonable modifications and equal access to communications may be provided upon request. Please contact the City Secretary at (936) 559-2506 for information. I certify the notice of meeting was posted in the directory outside of City Hall, 202 E. Pilar Street, Nacogdoches, Texas, on October 31, 2024, by 5:00 p.m., pursuant to Chapter 551 of the Texas Government Code.

Rhonda Lewis, City Secretary

PRESENTER: Jason Vickery, Assistant City Engineer

ITEM/SUBJECT: Consider approval of a contract by and between the City of Nacogdoches and SCS Engineers for professional engineering services on Landfill Major Permit Amendment – Phase I Services in a not-to-exceed amount of \$724,135.00. (Assistant City Engineer)

SUMMARY/BACKGROUND: At the June 18, 2024 City Council Meeting, the council approved the selection of SCS Engineers in accordance with the Request for Qualifications (RFQ) #24-10-124. Since that award selection, City Staff and SCS have worked to further define the scope of services required, resulting in a proposal from SCS for professional engineering services for a Type I Major Amendment Permit Application (PA) for the City of Nacogdoches Landfill. This permit application will consist of a vertical and lateral expansion of the City of Nacogdoches Landfill. The City intends to connect Blocks M and P, raise the top elevation of Blocks M, P and O and expand the landfill waste footprint of Block O.

It is projected to take three (3) years to complete the entire project. Due to the multiyear nature of this effort, the work has been divided into phases. Under this proposed Phase I contract, SCS and their subconsultant, Hydrex Environmental Consulting, LLC (Hydrex) will perform the following Phase I tasks for this major amendment at the specified fees:

Task 1.1:	LiDAR Topographic Survey	\$ 17,250
Task 1.2:	Conceptual Landfill Grading Plan	\$ 14,750
Task 2:	Type I Major Amendment Permit Application – Phase I	\$ 327,300
Task 3:	Hydrogeologic/Geotechnical	\$ 160,335
Task 4.1:	Wetlands Delineation and Coordination with USACE	\$ 10,300
Task 4.2:	Section 404 Individual Permit	\$ 72,050
Task 4.3:	Project-Specific Mitigation Bank	\$ 100,650
Task 5:	Ecological and Archaeological Studies	\$ 21,500
Total		\$ 724,135

This is a time and materials (hourly) contract and there is a budget available for this contract.

FINANCIAL:

Item is budgeted:

Account No.: 31.41 680.97

Account Name: *Sanitation Fund CIP*

Amount: \$ 724,135.00

COUNCIL PRIORITIES: THIS AGENDA ITEM IS CONSISTENT WITH THE FOLLOWING CITY COUNCIL PRIORITIES

Infrastructure

CITY CONTACT: Jason Vickery, Assistant Director of Public Works/Assistant City Engineer
vickeryj@nactx.us
(936) 559-2518

ATTACHMENTS: 1. Professional Engineering Services Contract - SCS

**CITY OF NACOGDOCHES
ARCHITECTURAL & ENGINEERING
PROFESSIONAL SERVICES CONTRACT**

This Contract is between the **City of Nacogdoches**, a Texas home-rule municipal corporation, (the “City”) and **SCS Engineers** (the “Consultant”), whereby the Consultant agrees to provide the City with certain professional services as described herein and the City agrees to pay the Consultant for those services.

**ARTICLE I
Scope of Services**

- 1.01 In consideration of the compensation stated in paragraph 2.01 below, the Consultant agrees to provide the City with the professional services as described in **Exhibit A**, the Scope of Services, which is incorporated herein by reference for all purposes, and which services may be more generally described as follows: **Landfill Major Permit Amendment – Phase I Services** (the “Project”).

**ARTICLE II
Payment**

- 2.01 In consideration of the Consultant’s provision of the professional services in compliance with all terms and conditions of this Contract, the City shall pay the Consultant according to the terms set forth in **Exhibit B**. Except in the event of a duly authorized change order, approved by the City as provided in this Contract, the total cost of all professional services provided under this Contract may not exceed **Seven Hundred Twenty-Four Thousand One Hundred Thirty-Five and 00/100 Dollars (\$724,135.00)**.

**ARTICLE III
Time of Performance and Construction Cost**

- 3.01 The Consultant shall complete the professional services within the times set forth in **Exhibit A**. Consultant expressly agrees that such times are as expeditious as is prudent considering the ordinary professional skill and care of a competent engineer or architect.

- 3.02 **Time is of the essence of this Contract.** The Consultant shall be prepared to provide the professional services in the most expedient and efficient manner possible in order to complete the work by the times specified. Promptly after the execution of this Contract, the Consultant shall prepare and submit for the City to approve in writing, a detailed schedule for the performance of the Consultant's services to meet the City's project milestone dates which are included in this Contract. The Consultant's schedule shall include allowances for periods of time required for the City's review and for approval of submissions by authorities having jurisdiction over the Project. The schedule will also specify payment milestones associated with design tasks.
- 3.03 The Consultant's services consist of all of the services required to be performed by Consultant, Consultant's employees and Consultant's sub-consultants under the terms of this Contract. Such services are set forth in the attached Exhibit A. The Consultant shall contract and employ at its expense sub-consultants necessary for the design of the Project, and such sub-consultants shall be licensed as required by the State of Texas and approved in writing by the City.
- 3.04 The Consultant shall designate a principal of the firm reasonably satisfactory to the City who shall, for so long as acceptable to the City, be in charge of Consultant's services to be performed hereunder through to completion, and who shall be available for general consultation throughout the Project. Any replacement of that principal shall be approved in writing (which shall not be unreasonably withheld) by the City, prior to replacement.
- 3.05 Consultant shall be responsible for the coordination of all drawings and design documents relating to Consultant's design and used on the Project, regardless of whether such drawings and documents are prepared by Consultant. Consultant shall be responsible for the completeness and accuracy of all drawings and specifications submitted by or through Consultant and for its compliance with all applicable codes, ordinances, regulations, laws and statutes.
- 3.06 Consultant's evaluations of the City's project budget and the preliminary estimates of construction cost and detailed estimates of construction cost represent the Consultant's best judgment as a design professional familiar with the construction industry.

[Scope Item – Refer to Exhibit A]

**ARTICLE IV
Conceptual Design**

- 4.01 Consultant shall meet with the City for the purpose of determining the nature of the Project. The Consultant shall inquire in writing as to the information it believes the City may have in its possession that is necessary for the Consultant's performance. The City shall provide the information within its possession that it can make available to the Consultant. The City shall designate a representative to act as the contact person on behalf of the City.

- 4.02 The Consultant shall determine the Project needs, including, but not limited to, tests, analyses, reports, site evaluations, surveys, comparisons with other municipal projects, review of budgetary constraints and other preliminary investigations necessary for the Project. Consultant shall verify the observable existing conditions of the Project and verify any existing as-built drawings. Consultant shall confirm that the Project can be designed and constructed within the time limits outlined in this Contract. Consultant shall prepare a detailed design phase schedule which includes all review and approval periods during the project phases from Conceptual Design to Construction, design development and construction document phases. Consultant shall confirm that the Project can be designed and constructed for the dollar amount of the Project budget, if applicable. Consultant shall generally review the City's available budget for the Project and provide an early opinion of the adequacy of funds for the intended scope of work.
- 4.03 The Consultant shall prepare a Conceptual Design that shall include preliminary schematic layouts, alternative ideas, surveys, sketches and exhibits demonstrating the considerations involved in the Project. The Conceptual Design shall contemplate compliance with all applicable laws, statutes, ordinances, codes and regulations. Upon the City's request, the Consultant shall meet with City staff and/or City Council to make a presentation of its report.

ARTICLE V

Preliminary Design

- 5.01 The City shall direct the Consultant to commence work on the Preliminary Design by sending to the Consultant a letter of authorization to begin work on the Preliminary Design pursuant to this Contract. Upon receipt of the letter of authorization to commence Preliminary Design, the Consultant shall meet with the City for the purpose of determining the extent of any revisions to the Conceptual Design.
- 5.02 The Consultant shall prepare the Preliminary Design of the Project, including, but not limited to, the preliminary drawings and specifications and other documents to fix and describe the size and character of the Project as to civil, architectural, structural, mechanical and electrical systems, materials and such other elements as may be appropriate. The Consultant shall submit to the City a detailed estimate of the construction costs of the Project, based on current area, volume, or other unit costs. This estimate shall also indicate costs for allowances, contingencies, fees, permits, and all other costs involved in constructing the Project and the time required for construction of the Project from commencement to final completion.
- 5.03 Upon completion of the Preliminary Design of the Project, the Consultant shall so notify the City. Upon request the Consultant shall provide a Preliminary Engineering Report and meet with the City staff and/or City Council to make a presentation of its Preliminary Design of the Project. The Consultant shall provide an explanation of the Preliminary Design and cost estimate and shall verify that, to the best of Consultant's belief, the Project requirements and construction can be completed within the Project budget and schedule.

ARTICLE VI

Final Design

- ~~6.01 — The City shall direct the Consultant to commence work on the Final Design of the Project by sending to the Consultant a letter of authorization to begin work on the Final Design phase of the Project. Upon receipt of the Letter of Authorization to proceed with Final Design of the Project, the Consultant shall immediately prepare the Final Design, including, but not limited to, the bid documents, contract, drawings, and specifications, to fix and describe the size and character of the Project as to civil, structural, mechanical, and electrical systems, materials, and such other elements as may be appropriate. The Final Design of the Project shall comply with all applicable laws, statutes, ordinances, codes and regulations.~~
- ~~6.02 — Notwithstanding the City's approval of the Final Design, the Consultant warrants that the Final Design will be sufficient and adequate to fulfill the purposes of the Project. Additionally, Consultant will provide technical criteria, written descriptions and design data for the City's use in filing applications for permits from other governmental authorities or entities. Consultant shall assist the City in the preparation of permits and consultations with other entities having jurisdiction over the Project.~~
- ~~6.03 — The Consultant shall prepare and separately seal the special provisions, the technical specifications, and bid proposal form(s) in conformance with the City's current pre-approved, "Standard Form of Construction Agreement" for the construction contract between the City and the construction contractor. The Consultant hereby agrees that no changes, modifications, supplementations, alterations, or deletions will be made to the City's standard form without the prior written approval of the City.~~
- ~~6.04 — The Consultant shall provide the City with complete construction design plans and contract documents sufficient to be advertised for bids by the City. The contract documents shall include the design and specifications and other changes that are required to fulfill the purpose of the Project. Upon completion of the Final Design of the Project, with the submission of the complete contract documents, and upon request of the City, the Consultant shall meet with City staff and/or the City Council to present the Final Design of the Project. The Consultant shall provide an explanation of the Final Design and cost estimate.~~

ARTICLE VII

Bid Preparations & Evaluation

- ~~7.01 — The Consultant shall assist the City in advertising for and obtaining bids or negotiating proposals for the construction of the Project. Upon request, the Consultant shall meet with City staff and/or the City Council to present, and make recommendations on, the bids submitted for the construction of the Project.~~
- ~~7.02 — The Consultant shall review the construction contractors' bids, including subcontractors, suppliers, and other persons required for completion of the Project. The Consultant shall~~

~~evaluate each bid and provide these evaluations to the City along with a recommendation on each bid. The Consultant shall also review the qualifications and references of the lowest responsible bidder. A written evaluation of the bids shall be provided to the City by Consultant and shall include any bidding irregularities subject to waiver. If the lowest bid for the construction of the Project exceeds the final cost estimate set forth in the Final Design of the Project, then the Consultant, at its sole cost and expense, shall revise the construction documents so that the total construction costs of the Project will not exceed the final cost estimate contained in the Final Design of the Project.~~

~~7.03 Where substitutions are requested by a construction contractor, the Consultant shall review the substitution requested and shall recommend approval or disapproval of such substitutions.~~

ARTICLE VIII

Construction Administration

~~8.01 The Consultant shall be a representative of, and shall advise and consult with, the City (1) during construction, and (2) at the City's direction from time to time during the correction or warranty period described in the construction contract. The Consultant shall have authority to act on behalf of the City only to the extent provided in this Contract unless modified by written instrument.~~

~~8.02 The Consultant shall make visits to the site, with a frequency appropriate to the scope of the Project, to inspect the progress and quality of the executed work of the construction contractor and its subcontractors and to determine if such work is proceeding in accordance with the contract documents. Consultant shall periodically review the as-built drawings for accuracy and completeness, and shall report its findings to the City.~~

~~8.03 Resident Project Representative (RPR): The Consultant shall provide the services of an RPR to support more frequent and extensive observations of the contractor's work. The presence of the RPR will not diminish the responsibilities of the Consultant's design professionals to provide site visits to monitor the progress of the project. Duties and responsibilities of the RPR include:~~

- ~~a. The RPR will generally deal directly with the contractor and report to the Consultant, who in turn will report to the City. The RPR works under the direction of the Consultant. The RPR may communicate directly with the City, but only with the knowledge of the Consultant.~~
- ~~b. The RPR will not normally direct the work of the contractor but shall observe its compliance with the plans and specifications and report such directly to the Consultant. The RPR can communicate any concerns directly to the contractor, but all observed conditions will always be given to the Consultant as well.~~
- ~~c. If the RPR observes unsafe conditions, or other potentially hazardous conditions that might risk life and safety to anyone, he/she will immediately report such to the~~

contractor, Consultant and City. In such circumstances, the RPR will have the authority to stop the work of the contractor until the issue can be resolved.

- ~~d. The RPR shall, on behalf of the Consultant, make and keep as-built drawings in the field to record any variances from the original designs shown in plans and specifications.~~
- ~~e. The RPR shall keep and maintain inspection reports for each day he/she is present on the project site. These reports shall be made available to the City at the end of the project. The daily reports shall include times of observations, activities observed, materials used or delivered to the job, problems encountered and solutions or adjustments made in the field.~~
- ~~f. The RPR shall review pay estimates from the contractor, on behalf of the Consultant, to verify the quantity and quality of work requested for payment. At no time will the RPR approve pay estimates, contract addendums, modifications, or change orders involving changes in the contract price.~~
- ~~g. The RPR shall be present to observe and witness all testing of on-site equipment and installed materials under the direction of the Consultant.~~

~~8.04 The Consultant shall keep the City informed of the progress and quality of the work through periodic project meetings and written monthly status reports. The Consultant shall employ the professional skill and care ordinarily provided by competent engineers or architects practicing in the same or similar locality and under the same or similar circumstances and professional license in discovering and promptly reporting to the City any defects or deficiencies in such work and shall disapprove or reject any work failing to conform to the contract documents.~~

~~8.05 The Consultant shall review and approve shop drawings and samples, the results of tests and inspections, and other data that each construction contractor or subcontractor is required to provide. The Consultant's review and approval shall include a determination of whether the work complies with all applicable laws, statutes, ordinances and codes and a determination of whether the work, when completed, will be in compliance with the requirements of the contract documents.~~

~~8.06 The Consultant shall determine the acceptability of substitute materials and equipment that may be proposed by construction contractors or subcontractors. The Consultant shall also receive and review maintenance and operating instruction manuals, schedules, guarantees, and certificates of inspection, which are to be assembled by the construction contractor in accordance with the contract documents.~~

~~8.07 The Consultant shall issue all instructions of the City to the construction contractor as well as interpretations and clarifications of the contract documents pertaining to the performance of the work. Consultant shall interpret the contract documents and judge the performance thereunder by the contractor constructing the Project, and Consultant shall,~~

~~within a reasonable time, render such interpretations and clarifications as it may deem necessary for the proper execution and progress of the work. Consultant shall receive no additional compensation for providing clarification of the drawings and specifications.~~

- ~~8.08 The Consultant shall review the amounts owing to the construction contractor and recommend to the City, in writing, payments to the construction contractor of such amounts. The Consultant's recommendation of payment, being based upon the Consultant's on-site inspections, observations, and its experience and qualifications as a design professional, shall constitute a recommendation by the Consultant to the City that the quality of such work is in accordance with the contract documents and that the work has progressed to the point reflected in Consultant's recommendation for payment.~~
- ~~8.09 Upon notification from the construction contractor that the Project is substantially complete, the Consultant shall conduct an inspection of the site to determine if the Project is substantially complete. The Consultant shall prepare a checklist of items that shall be completed prior to final acceptance. Upon notification by the construction contractor that the checklist items designated by the Consultant for completion have been completed, the Consultant shall inspect the Project to verify final completion.~~
- ~~8.10 The Consultant shall not be responsible for the work of the construction contractor or any of its subcontractors, except that the Consultant shall be responsible for the construction contractor's schedules or failure to carry out the work in accordance with the contract documents if such failures result from the Consultant's negligent acts or omissions. This provision shall not alter the Consultant's duties to the City arising from the performance of the Consultant's obligations under this Contract.~~
- ~~8.11 The Consultant shall conduct at least one on-site inspection during the warranty period and shall report to the City as to the continued acceptability of the work.~~
- ~~8.12 The Consultant shall recommend and prepare change orders, work directives and clarification notices on behalf of the City but shall not execute and issue such documents or otherwise alter the financial scope of the Project without an advance, written authorization from the City.~~
- ~~8.13 The Consultant shall perform all of its duties under this Article VIII so as to not cause any delay in the progress of construction of the Project.~~
- ~~8.14 The Consultant shall assist the construction contractor and City in obtaining a Certificate of Occupancy by accompanying governing officials during inspections of the Project if requested to do so by the City.~~

ARTICLE IX

Change Orders & Documents & Materials

- 9.01 No changes shall be made, nor will invoices for changes, alterations, modifications, deviations, or extra work or services be recognized or paid to Consultant except upon the

prior written order from authorized personnel of the City. The Consultant shall not execute change orders on behalf of the City or otherwise alter the financial scope of the Project, except upon the prior written approval from authorized personnel of the City.

9.02 a. When the original contract amount plus all change orders is less than \$50,000, the City Manager or his delegate may approve the written change order provided the change order does not increase the total amount set forth in the contract to more than \$50,000. For such contracts, when a change order results in a total contract amount that exceeds \$50,000, the City Council must approve such change order prior to commencement of the services or work.

b. When the original contract amount plus all change orders is equal to or greater than \$50,000, the City Manager or his delegate may approve the written change order. For such contracts, when a change order exceeds \$50,000, the City Council must approve such change order prior to commencement of the services or work.

c. **Any request by the Consultant for an increase in the Scope of Services and an increase in the amount listed in paragraph two of this Contract shall be made and approved by the City prior to the Consultant providing such services.** If there is a dispute between the Consultant and the City respecting any service provided or to be provided hereunder by the Consultant, including a dispute as to whether such service is additional to the Scope of Services included in this Contract, the Consultant agrees to continue providing on a timely basis all services to be provided by the Consultant hereunder, including any service as to which there is a dispute.

9.03 The Consultant shall furnish the City one (1) set of major permit amendment documents contemplated in the proposal in Exhibit A. It is hereby agreed that additional copies shall be provided to the City at the City's expense. ~~The Consultant shall provide the City _____ (—) sets of reproducible, mylar record drawings that clearly show all the changes made during the construction process, based upon the marked-up prints, drawings, and other data furnished by the construction contractor to the Consultant.~~ The Consultant shall provide copies of documents, computer files if available, surveys, notes, and tracings used or prepared by the Consultant. The foregoing documentation, the Consultant's work product, and other information in the Consultant's possession concerning the Project shall be the property of the City from the time of preparation. The Consultant shall furnish one set of digital files representing the final record drawings.

ARTICLE X

Warranty, Indemnification & Release

10.01 Pursuant to Section 271.904(d) of the Texas Local Government Code, the Consultant shall perform the services with the professional skill and care ordinarily provided by competent engineers or architects practicing under the same or similar circumstances and professional license and as expeditiously as is prudent considering the ordinary skill and care of a competent engineer or architect. The information provided by the Consultant, the design, the preparation of drawings, the designation or selection of materials and equipment, the

selection and supervision of personnel, and the performance of all other services under this Contract are performed with the professional skill and care ordinarily provided by competent engineers or architects practicing in the same or similar circumstances and professional license. Approval of the City shall not constitute, or be deemed, a release of the responsibility and liability of the Consultant, its employees, agents, or associates for the exercise of skill and diligence to promote the accuracy and competency of their designs, information, plans, specifications or any other document, nor shall the City's approval be deemed to be the assumption of responsibility by the City for any defect or error in the aforesaid documents prepared by the Consultant, its employees, associates, agents, or subcontractors.

- 10.02 The Consultant shall promptly correct any designs or specifications furnished by the Consultant at no cost to the City. The City's approval, acceptance, use of, or payment for, all or any part of the Consultant's services hereunder or of the Project itself shall in no way alter the Consultant's obligations or the City's rights hereunder.
- 10.03 In all activities or services performed hereunder, the Consultant is an independent contractor and not an agent or employee of the City. The Consultant and its employees are not the agents, servants, or employees of the City. As an independent contractor, the Consultant shall be responsible for the professional services and the final work product contemplated under this Contract. Except for materials furnished by the City, the Consultant shall supply all materials, equipment, and labor required for the professional services to be provided under this Contract. The Consultant shall have ultimate control over the execution of the services it is to provide under this Contract. The Consultant shall have the sole obligation to employ, direct, control, supervise, manage, discharge, and compensate all of its employees or subcontractors, and the City shall have no control of or supervision over the employees of the Consultant or any of the Consultant's subcontractors.
- 10.04 The Consultant must at all times exercise reasonable precautions on behalf of, and be solely responsible for, the safety of its officers, employees, agents, subcontractors, licensees, and other persons, as well as its personal property, while in the vicinity of the Project or any of the work being done on or for the Project. It is expressly understood and agreed that the City shall not be liable or responsible for the negligence of the Consultant, its officers and employees.
- 10.05 INDEMNITY. THE CONSULTANT SHALL INDEMNIFY, DEFEND, AND HOLD HARMLESS THE CITY, ITS OFFICERS, AGENTS AND/OR EMPLOYEES (SEPARATELY AND COLLECTIVELY REFERRED TO IN THIS PARAGRAPH AS "INDEMNITEE"), FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS OR SUITS, AND ALL RELATED DAMAGES, COSTS, ATTORNEY FEES, AND EXPENSES CAUSED BY, ARISING OUT OF, OR RESULTING FROM ANY ACTS OF NEGLIGENCE, INTENTIONAL TORTS, WILFULL MISCONDUCT, PERSONAL INJURY OR DAMAGE TO PROPERTY AND OTHERWISE RELATED TO CONSULTANT'S PERFORMANCE, AND/OR FAILURES TO PAY A SUBCONTRACTOR OR SUPPLIER COMMITTED BY THE CONSULTANT OR ITS AGENTS, EMPLOYEES, SUB-CONTRACTORS,**

ORDER FULFILLERS, OR CONSULTANTS UNDER CONTRACT TO CONSULTANT, OR ANOTHER ENTITY OVER WHICH THE CONSULTANT EXERCISES CONTROL, OR SUPPLIERS OF SUBCONTRACTORS IN THE EXECUTION OR PERFORMANCE OF THE CONTRACT.

- 10.06 CONSULTANT SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS THE CITY FROM AND AGAINST ANY AND ALL CLAIMS, VIOLATIONS, MISAPPROPRIATIONS OR INFRINGEMENT OF ANY PATENT, TRADEMARK, COPYRIGHT, TRADE SECRET OR OTHER INTELLECTUAL PROPERTY RIGHTS AND/OR OTHER INTANGIBLE PROPERTY, PUBLICITY OR PRIVACY RIGHTS AND/OR IN CONNECTION WITH OR ARISING FROM: (1) THE PERFORMANCE OR ACTIONS OF CONSULTANT PURSUANT TO THIS CONTRACT; (2) ANY DELIVERABLE, WORK PRODUCT, CONFIGURED SERVICE OR OTHER SERVICE PROVIDED HEREUNDER; AND/OR THE CITY'S AND /OR CONSULTANT'S USE OF OR ACQUISITION OF ANY REQUESTED SERVICES OR OTHER ITEMS PROVIDED TO THE CITY BY CONSULTANT.**
- 10.07 CONSULTANT AND THE CITY AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM UNDER 10.05 OR 10.06. CONSULTANT SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE, INCLUDING ATTORNEYS' FEES. THE DEFENSE OF ANY LAWSUIT SHALL BE COORDINATED BY THE CONSULTANT WITH THE CITY ATTORNEY WHEN THE CITY IS NAMED DEFENDANT IN ANY LAWSUIT AND CONSULTANT MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE CITY ATTORNEY. IF THE CITY DETERMINES THAT A CONFLICT EXISTS BETWEEN ITS INTERESTS AND THOSE OF CONSULTANT OR IF THE CITY IS REQUIRED BY LAW TO SELECT SEPARATE COUNSEL, THE CITY WILL BE PERMITTED TO SELECT SEPARATE COUNSEL AND THE CONSULTANT WILL PAY ALL REASONABLE COSTS OF THE CITY'S COUNSEL.**
- ~~10.08 Release. The Consultant releases, relinquishes, and discharges the City, its officers, agents, employees, and volunteers from all claims, demands, and causes of action of every kind and character, including the cost of defense thereof, for any injury to, sickness or death of the Consultant or its employees and any loss of or damage to any property of the Consultant or its employees that is caused by or alleged to be caused by, arises out of, or is in connection with the Consultant's work to be performed hereunder. Both the City and the Consultant expressly intend that this release shall apply regardless of whether said claims, demands, and causes of action are covered, in whole or in part, by insurance and in the event of injury, sickness, death, loss, or damage suffered by the Consultant or its employees, but not otherwise, this release shall apply regardless of whether such loss, damage, injury, or death was caused in whole or in part by the City, any other party released hereunder, the Consultant, or any third party.~~**

- 10.09 It is agreed with respect to any legal limitations now or hereafter in effect and affecting the validity or enforceability of the indemnification, release or other obligations under Paragraphs 10.05, 10.06, 10.07 and 10.08 such legal limitations are made a part of the obligations and shall operate to amend same to the minimum extent necessary to bring the provision(s) into conformity with the requirements of such limitations, and as so modified, the obligations set forth therein shall continue in full force and effect.**

ARTICLE XI Insurance

- 11.01 The Consultant shall procure and maintain at its sole cost and expense for the duration of this Contract insurance against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the work hereunder by the Consultant, its agents, representatives, volunteers, employees or subcontractors. The policies, limits and endorsements required are as set forth on **Exhibit C**.

ARTICLE XII Use of Drawings, Specifications and Other Documents

- 12.01 The drawings, specifications and other documents prepared by the Consultant and Consultant's sub-consultants for this Project shall become the property of the City whether the Project is completed or not. The City shall be furnished and permitted to retain reproducible copies and electronic versions of Consultant's drawings, specifications and other documents.
- 12.02 The documents prepared by Consultant may be used as a prototype for other facilities by the City. The City may elect to use the Consultant to perform the site adaptation and other architectural or engineering services involved in reuse of the prototype. If so, the Consultant is obligated to perform the work for an additional compensation that will fairly compensate the Consultant and its sub-consultants only for the additional work involved. It is reasonable to expect that the fair additional compensation will be significantly less than the fee provided for under this Contract. If the City elects to employ a different architect or engineer to perform the site adaptation and other architectural or engineering services involved in reuse of the prototype, that architect or engineer will be entitled to use Consultant's sub-consultants on the same basis that Consultant would have been entitled to use them for the work on the reuse of the prototype, and such architect or engineer will be entitled, to the extent allowed by law, to duplicate the design and review and refer to the construction documents, approved shop drawings and calculations, and change order drawings in performing its work. The Consultant will not be responsible for errors and omissions of a subsequent architect or engineer. The Consultant shall commit its sub-consultants to the terms of this subparagraph. The provisions of this section shall survive termination of this Contract.
- 12.03 In the event of termination of this Contract for any reason, the City shall receive all original documents prepared to the date of termination and shall have the right to use those

documents and any reproductions in any way necessary to complete the Project.

- 12.04 Only the details of the drawings relating to this Project may be used by the Consultant on other projects, but they shall not be used as a whole without written authorization by the City. The City-furnished forms, conditions, and other written documents shall not be used on other projects by the Consultant.

ARTICLE XIII

Termination

- 13.01 The City may terminate this Contract at any time upon **thirty (30)** calendar days' written notice. Upon the Consultant's receipt of such notice, the Consultant shall cease work immediately. To the extent of funds appropriated or otherwise legally available for such purposes, the Consultant shall be compensated only for the services satisfactorily performed prior to the termination date.
- 13.02 If, through any cause, the Consultant fails to fulfill its obligations under this Contract, or if the Consultant violates any of the agreements of this Contract, the City has the right to terminate this Contract by giving the Consultant **five (5)** calendar days written notice to the Consultant. The Consultant will be compensated for the services satisfactorily performed prior to the termination date.
- 13.03 No term or provision of this Contract shall be construed to relieve the Consultant of liability to the City for damages sustained by the City because of any breach of contract and/or negligence by the Consultant. The City may withhold payments to the Consultant for the purpose of setoff until the exact amount of damages due the City from the Consultant is determined and paid.

ARTICLE XIV

Miscellaneous Terms

- 14.01 This Contract has been made under and shall be governed by the laws of the State of Texas. The parties agree that performance and all matters related thereto shall be in Nacogdoches County, Texas.
- 14.02 The City, or if State funds are used to pay any part of this contract, the State Auditor, may conduct an audit or investigation of any entity receiving funds directly under this contract or indirectly through a subcontract under the contract. Acceptance of funds under the contract or through a subcontract under the contract acts as acceptance of the authority of the City or the State Auditor to conduct an audit or investigation. Consultant agrees to cooperate and must provide the City and/or State Auditor with access to any information the City and/or State Auditor considers relevant to the investigation or audit. The Consultant agrees to refund to the City any overpayments disclosed by any such audit.
- 14.03 The Consultant shall retain all such records for a period of four (4) years after final payment on this Contract or until all audit and litigation matters that the City has brought to the attention of the Consultant are resolved, whichever is longer.

14.04 Consultant hereby assigns to the City any and all claims for overcharges associated with this Agreement which arise under the antitrust laws of the United States, 15 USCA Section 1 et seq., and/or which arise under the antitrust laws of the State of Texas, Business and Commerce Code Ann., Section 15.01, et seq.

14.05 Notices shall be mailed to the addresses designated herein or as may be designated in writing by the parties from time to time and shall be deemed received when sent postage prepaid U.S. Mail to the following addresses:

City of Nacogdoches
Attn: City Manager
202 East Pilar Street
P.O. Box 635030
Nacogdoches, Texas 75961

Consultant:
SCS Engineers
Attn: Jeff Reed
12651 Briar Forest Drive, Suite 205
Houston, Texas 77077

14.06 No waiver by either party hereto of any term or condition of this Contract shall be deemed or construed to be a waiver of any other term or condition or subsequent waiver of the same term or condition.

14.07 This Contract represents the entire and integrated agreement between the City and the Consultant and supersedes all prior negotiations, representations, or agreements, either written or oral. This Contract may only be amended by written instrument approved and executed by the parties.

14.08 This Contract and all rights and obligations contained herein may not be assigned by the Consultant without the prior written approval of the City.

14.09 If any provision of this Contract shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court of competent jurisdiction finds that any provision of this Contract is invalid or unenforceable, but that by limiting such provision it may become valid and enforceable, then such provision shall be deemed to be written, construed, and enforced as so limited.

14.10 The Consultant, its agents, employees, and subcontractors must comply with all applicable federal and state laws, the charter and ordinances of the City of Nacogdoches, and with all applicable rules and regulations promulgated by local, state, and national boards, bureaus, and agencies. The Consultant must obtain all necessary ~~permits and~~ licenses required in completing the work and providing the services required by this Contract.

- 14.11 **Contractor Affirmations:** If this contract is funded in whole or in part by money from the State of Texas, State law requires the following certifications, representations and/or warranties. Regardless of funding by the State, by signature hereon affixed, the Contractor hereby certifies that:
- (a) Contractor has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with this Contract.
 - (b) Contractor represents and warrants that it has no actual or potential conflicts of interest in the goods and or services described in the scope of work to this contract.
 - (c) **Antitrust.** Pursuant to 15 U.S.C. §1, et seq. and Tex. Bus. & Comm. Code §15.01, et seq. neither the contractor nor the firm, corporation, partnership, or institution represented by the contractor, or anyone acting for such a firm, corporation or institution has violated the antitrust laws of this state, federal antitrust laws, nor communicated directly or indirectly the bid made to any competitor or any other person engaged in such line of business.
 - (d) **Debarment.** Contractor certifies that Contractor and its principals are eligible to participate in this transaction and have not been subjected to suspension, debarment, or similar ineligibility determined by any federal, state or local governmental entity and that Contractor is in compliance with the State of Texas statutes and rules relating to procurement. Entities ineligible for state procurement are listed on the State of Texas Debarred Vendor List maintained by the Texas Comptroller of Public Accounts and the System for Award Management (SAM) maintained by the General Services Administration. Entities ineligible for federal procurement are listed at <http://www.sam.gov/content/exclusions> .
 - (e) **Terrorism Watch List.** Contractor represents and warrants that it does not do business with Iran, Sudan or a foreign terrorist organization as prohibited by Texas Government Code 2252.152. Contractor certifies that it is not listed on the federal government's terrorism watch list as described in Executive Order 13224.
 - (f) **Convictions.** Under Sections 2155.006, 2155.0061 and 2261.053 of the Texas Government Code, Contractor certifies that it is not ineligible to receive the specified contract and may be terminated and payment withheld if this certification is inaccurate. These sections prohibit contracts that include proposed financial participation by an individual or business entity who has been convicted in the past five years of (a) violating a federal law or assessed a penalty in connection with a contract involving relief for Hurricane Rita, Hurricane Katrina, or any other disaster, as defined by §418.004, Gov't Code, occurring after September 24, 2005; and (b) of any offense related to the direct support or promotion of human trafficking.

- (g) **COVID Vaccinations.** Contractor certifies that it does not require its customers to provide any documentation certifying the Customer's COVID-19 vaccination or post-transmission recovery on entry to, or to receive service from the Contractor's business.
- (h) **Boycotts.** (a) To the extent this Contract is considered a Contract for goods or services subject to § 2270.002 Texas Government Code, Contractor verifies that it: (i) does not boycott Israel; and (ii) will not boycott Israel during the term of this Contract.
- (b) To the extent this Contract has a value of \$100,000 or more and Contractor is an organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations, that exists to make a profit that employs 10 or more full time employees, Contractor certifies that it: (i) does not and will not boycott energy companies during the term of the contract (*See Texas Government Code 2274.002, et seq.*); and (ii) does not and will not discriminate against a firearm entity or firearm trade association (*See Texas Government Code 2274.002, et seq.*).
- 14.12 The parties acknowledge that they have read, understood, and intend to be bound by the terms and conditions of this Contract. If there is a conflict between a provision in any documents provided by Consultant made a part of this Contract and any other provision in this Contract, the latter controls.
- 14.13 This Contract will be effective when signed by the last party whose signing makes the Contract fully executed. The parties may execute this Contract in duplicate originals, each of equal dignity.
- 14.14 **Notice of Indemnification. City and Consultant hereby acknowledge and agree that this Contract contains certain indemnification obligations and covenants.**

SCS ENGINEERS

12651 Briar Forest Drive, Suite 205
Houston, Texas 77077

By: Jeffrey K. Reed
Printed Name: Jeffrey K. Reed
Title: Vice President
Date: October 30, 2024
Firm Registration No.: F-3407

CITY OF NACOGDOCHES

P. O. Box 635030
Nacogdoches, Texas 75963-5030

By: _____
Printed Name: _____
Title: City Manager
Date: _____

APPROVED AS TO CONTENT:

Director of Public Works

APPROVED AS TO FORM:

City Attorney

Exhibit A

Scope of Services

Preparation of a Type I Major Amendment Permit Application (PA) for the City of Nacogdoches Landfill in Nacogdoches County, Texas. This permit application will consist of a vertical and lateral expansion of the City of Nacogdoches landfill. The City intends to connect Blocks M and P, raise the top elevation of Blocks M, P and O and to expand the landfill waste footprint of Block O. Phase I services are as outlined below:

Task 1 – Conceptual Landfill Grading Plans and Topography

SCS proposes to prepare a LiDAR topographic survey of the landfill property and conceptual grading plans for review with the City to base the expansion design and ensuing permit amendment application. SCS will prepare the topography and conceptual grading plans as described in Subtasks 1.1 and 1.2 below, respectively. SCS proposes one meeting to review and discuss the plans. Upon review and approval by the City, SCS will proceed with Task 2.

Sub Task 1.1 – LiDAR Topographic Survey of Landfill Property

Hydrex will establish a series of temporary Ground Control Points (GCPs) across the flight area. Using survey-grade ‘smart target’ technology, coordinates and elevations of the GCPs will be obtained. Data collected from the GCPs will be utilized to process the flight data to ensure a high degree of accuracy in all datasets. Hydrex will complete a LiDAR survey of the +/-320-acre property using a DJI Matrice 300 equipped with a Zenmuse L2 LiDAR sensor to collect topographic data. A second flight will then be performed using an RGB sensor to collect high-resolution aerial photographs of the project site. All operations associated with this project will be performed in compliance with the Federal Aviation Administration Part 107 rules associated with small, unmanned aircraft systems (drones). Hydrex will process the data to generate a point cloud cleaned to bare earth surfaces and use photogrammetry software to produce a seamless ortho-mosaic aerial for use in landfill design.

Sub Task 1.2 – Conceptual Airspace from City’s Property

SCS will prepare up to two conceptual excavation and final grading plans of a proposed expanded landfill footprint within the property of the landfill. SCS will estimate the waste volume increase from the expanded waste footprint. SCS will prepare new excavation grades for the unconstructed Block O footprint. SCS will propose to combine Block M and P, and horizontally and vertically expand Block O within the current landfill property.

Task 2 - Type I Major Amendment Permit Application – Phase I Services

This task is for Phase I services related to the preparation of a Type I Major Permit Amendment Application for a lateral and horizontal expansion of the City of Nacogdoches Landfill. This application will be prepared for the City’s submittal to the Texas Commission on Environmental Quality (TCEQ). The application design will be based on the selected conceptual grading plans from Task 1.

SCS will prepare a Type I Permit Amendment Application in accordance with the requirements of 30 TAC 330.5(a)(3) and 330.9(g)(2). The services related to Phase I of the application will include the following:

- **Part I Application Form - 00650;**
- **Part II Application Form for New Permit or Permit Amendment for a Municipal Waste Landfill Facility - 20885;**
- **Transportation Data and Coordination Report Form for Municipal Solid Waste Type I Landfills - 20719**
- **Waste Acceptance Plan Form Type I and Type IAE Landfill Facilities – 20873;**
- **Part I/II in accordance with 30 TAC 330.59 and 330.61 (Parts I and II are typically combined):**

- Transportation Study (*TxDOT and City information only, no additional traffic study proposed*),
- Oil and Water Wells,
- Location Restrictions (Subchapter M),
 - Easements, Buffer Zones (50 feet) and Rights-of-Way;
 - Endangered or Threatened Species;
 - Wetlands;
 - Fault Areas;
 - Seismic Impact Zones;
 - Unstable Areas;
 - Coastal Areas; and
 - Type I Landfill Permit Issuance Prohibited.
- Figures, Including:
 - General Location Map,
 - County Highway Map,
 - Topographic Map,
 - Land Use Map,
 - Aerial Photograph
 - Landowner Map,
 - Airport Map,
 - Floodplain Map (*A portion of Block O is in the floodplain, so a flood study is required*),
 - Geology Map,
 - Seismic Impact Zone Map,
 - Facility Layout Maps.

• **Part III in accordance with 30 TAC 330.63:**

• **Site Development Plan (SDP):**

- All text and attachments, including:
 - SDP Narrative
 - Attachment 1 – General Facility Design,
 - Facility Access,
 - Facility Waste Movement and Design,
 - Facility Sanitation,
 - Water Pollution Control,
 - Endangered Species Protection (*anticipated not necessary*),
 - Attachment 3 - Waste Management Unit Design,
 - Liner Quality Control Plan (Subchapter H),
 - Alternative Liner Demonstration,

- Attachment 4 - Geology Report (see Task 3 below),

Hydrex will develop a topographic survey of the landfill in Subtask 1.1 above. The City will provide a legal description and drawing of the permit and property boundaries, and information on any easements and/or rights-of-way that are on the site.

Hydrex will prepare a Soil Boring Plan (SBP) and present to the TCEQ early in the project. Hydrex will prepare the ecological, wetlands, waters of the US, geological and hydrogeological studies in the tasks described below.

SCS will prepare alternate liner design, appropriate permit drawings to accommodate new design, and update plans and narratives to meet applicable TCEQ rules or accommodate the new design.

SCS has included costs for SCS/Hydrex staff to attend 2 meetings with the TCEQ, this includes an initial meeting to discuss the scope of the application (and perhaps present the SBP) and an additional meeting to submit the application. SCS has included costs for 2 meetings with the City, this includes an initial kick-off meeting to discuss informational requirements and a meeting to discuss the 90 percent draft set. It is not anticipated that a meeting will be required for the 100 percent draft set or the final set, that these comments can easily be handled via teleconference.

Task 3 – Hydrogeologic/Geotechnical

This task includes work in accordance with the requirements of 30 TAC §330.63(e) and (f). The services related to Phase I of the application services include the following information:

- Geology Report

For Task 3, Hydrex will develop and prepare the required Geology Report. Preparation of the Geology Report will include regional and site-specific geologic and hydrogeologic discussions, regional and site-specific lithologic cross-sections, and determination of unstable areas (i.e. faulting and subsidence). The Geology Report will utilize all applicable historical borings in determination of need for additional borings. Current evaluations indicate additional borings/piezometers may not be required. Hydrex will provide a Soil Boring Plan (SBP) demonstrating either the adequacy of the historical borings or the need for additional borings. All relevant and available boring data, including any new boring information collected will be used to develop a complete site-specific correlation and characterization of the subsurface.

Additional borings will not be installed unless determined to be required. However, estimated costs of approximately \$35,000.00 for installation of up to six (6) subsurface borings **are** included in Task 3. These costs will not be realized unless new borings are required.

Task 4 – Wetlands Delineation and Mitigation

This task includes work in accordance with the requirements of 30 TAC §330.553. Hydrex will review the 320-acre property to determine if the expansion will impact wetlands, and other waters of the U.S. (WOTUS), and provide mitigation strategies to achieve no net loss of WOTUS.

Sub Task 4.1 – Wetlands Delineation and Coordination with USACE

Hydrex will utilize the Delineation of WOTUS Report completed by Hydrex in 2020 and will update to current site conditions, as necessary. The results of the delineation and proposed impacts will be coordinated with the U.S. Army Corps of Engineers (USACE) Fort Worth District to determine the appropriate authorization required to comply with Section 404 of the Clean Water Act. We anticipate an expansion at Block O will result in No Permit Required. We anticipate an expansion between Blocks P and M will require the efforts of Sub Tasks 4.2 and 4.3.

Sub Task 4.2 – Section 404 Individual Permit

Based on our initial review, we anticipate a Section 404 Individual Permit (IP) will be required for an expansion of Blocks P and M. First, Hydrex will attend a pre-application meeting with the USACE Fort Worth District to discuss the project and identify any challenges or additional requirements. Subsequently, Hydrex will prepare and submit an IP application to the USACE.

Sub Task 4.3 – Project-Specific Mitigation Bank

A Compensatory Mitigation Plan will be required to satisfy the requirements of the Section 404 IP. It is estimated that purchasing stream credits from an existing mitigation bank will cost between \$3.2M and \$5M, with the potential for this amount to increase in the future. Therefore, an alternative for compensatory mitigation is proposed which will involve setting up a new stream mitigation bank for the City of Nacogdoches. Based on preliminary studies, an ideal site for a stream mitigation bank may exist on City-owned property. The subject property is located west of the intersection of University Drive and Maroney Drive. The City currently owns an approximate 120-acre tract of land with impaired streams that have the potential to be restored using natural stream design. There appears to be sufficient linear distance of stream reach that could generate enough credits to offset the proposed impacts at the landfill, with a possible excess of credits for future projects or sale on the open market. The initial scope of work for the mitigation bank includes baseline assessments, preparation of a Draft Prospectus, a site visit and comments from the Interagency Review Team (USACE, USFWS, EPA, TCEQ, TPWD, THC, RRC, etc.). Upon receiving comments from the IRT, Hydrex will produce a pro forma and credit release schedule for discussion with the City regarding the next steps and costs associated with establishing a new mitigation bank.

Subtask 4.3.1 - LiDAR Topographic Survey of Bank Property

Hydrex will establish a series of temporary Ground Control Points (GCPs) across the flight area. Using survey-grade ‘smart target’ technology, coordinates and elevations of the GCPs will be obtained. Data collected from the GCPs will be utilized to process the flight data to ensure a high degree of accuracy in all datasets.

Hydrex will complete a LiDAR survey of the +/-100-acre property using a DJI Matrice 300 equipped with an Zenmuse L2 LiDAR sensor to collect topographic data. A second flight will then be performed using an RGB sensor to collect high-resolution aerial photographs of the project site. All operations associated with this project will be performed in compliance with the Federal Aviation Administration Part 107 rules associated with small, unmanned aircraft systems (drones).

Hydrex will process the data to generate a point cloud cleaned to bare earth surfaces and use photogrammetry software to produce a seamless ortho-mosaic aerial for use in landfill design.

Subtask 4.3.2 - Delineation of Waters of the U.S.

Hydrex will delineate the boundaries of potential waters of the U.S. (streams, open-waters, and wetlands) within the proposed mitigation bank area. The delineation will be performed in accordance with the methods and procedures established in the 1987 *Corps of Engineers Wetlands Delineation Manual*, the 2010 *Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Atlantic and Gulf Coastal Plains Region (Version 2.0)*, and *Regulatory Guidance Letter No. 05-05: Ordinary High Water Mark Identification*.

Subtask 4.3.3 - Functional Assessment Baseline and Projected

Hydrex will complete a baseline functional assessment of streams located within the proposed mitigation bank area. Hydrex will use data collected in the field to conduct a Texas Rapid Assessment Method (TXRAM) 2.0. Stream Assessment Reaches (SARs) will be determined based on channel condition, riparian buffer, in-stream condition, and hydrologic condition. Postconstruction projections will be calculated to determine possible ecological lift from restoration activities and quantity of mitigation credits that will be generated.

Subtask 4.3.4 - Scout Northern Property for Potential Bank Inclusion/Reference

Hydrex will review the remainder of the property to determine if additional streams and areas should be included in the proposed mitigation bank depending on the potential for enhancement or restoration. The on-site streams will also be evaluated to determine if there is a reference reach on the property that may represent post-construction conditions.

Subtask 4.3.5 - Threatened/Endangered Species Habitat Evaluation

Hydrex will perform a threatened and endangered species habitat evaluation on the proposed mitigation bank property. Federal listed species will be based on the *Official Species List* generated through the USFWS Information for Planning and Consultation (IPaC) online system. The Texas Natural Diversity Database (TXNDD) for the area will also be reviewed for known preexisting rare, threatened, and endangered plants, animals, natural communities, and animal aggregations within the project area. Hydrex will provide our professional opinion as to the potential for any listed species or their critical habitat to occur on the project site. The results of the habitat evaluation will be prepared for review by the USFWS, USACE, and TPWD. Additional studies may be warranted during the Prospectus stage of the mitigation bank, which is outside the scope of this proposal.

Subtask 4.3.6 - Archeological Desktop Review

As the initial effort to address cultural resources, Hydrex will prepare a Cultural Resources Desktop Review for the proposed mitigation bank property. The desktop review will include records review to determine the potential for the proposed project to impact any previously documented cultural resources, or any potential unknown cultural resources that may be eligible for listing on the National Registry of Historic Places (NRHP). Additional studies may be warranted during the Prospectus stage of the mitigation bank, which is outside the scope of this proposal.

Subtask 4.3.7 - Draft Prospectus

Hydrex will prepare a Draft Prospectus for submittal to the USACE and review by the IRT. The Draft Prospectus provides an overview of the proposed mitigation bank and is the basis for public

and IRT initial comments. The draft will include the results of the baseline assessments, objectives of the proposed bank, how it will be established and operated, the proposed service area, the general need and purpose, technical feasibility, ownership arrangements, long-term management strategy, and qualifications of the sponsor to successfully complete the proposed restoration and enhancement activities.

Subtask 4.3.8 - IRT Site Visit

Hydrex will host a meeting with the IRT to show them the potential mitigation bank site and explain the results of the baseline assessments and the proposed restoration activities.

Subtask 4.3.9 - Proforma, Credit Release Schedule

Based on the results of the Draft Prospectus and subsequent IRT site visit and comments, Hydrex will produce a pro forma and credit release schedule for discussion with the City regarding the next steps for creating a mitigation bank.

Task 5 – Ecological and Archaeological Studies

Hydrex will perform a threatened and endangered species habitat evaluation for state and federal listed species within Nacogdoches County, Texas. Federal listed species will be based on the *Official Species List* generated through the USFWS Information for Planning and Consultation (IPaC) online system. The Texas Natural Diversity Database (TXNDD) for the area will also be reviewed for known preexisting rare, threatened, and endangered plants, animals, natural communities, and animal aggregations within the project area. Hydrex will provide our professional opinion as to the potential for any listed species or their critical habitat to occur on the landfill property. The results of the habitat evaluation will be prepared for review by the USFWS, USACE, and TPWD. Additional studies may be requested by these agencies, which is outside the scope of this proposal.

As the initial effort to address cultural resources, Hydrex will prepare a Cultural Resources Desktop Review. The desktop review will include records review to determine the potential for the proposed project to impact any previously documented cultural resources, or any potential unknown cultural resources that may be eligible for listing on the National Registry of Historic Places (NRHP). Hydrex will coordinate with the Texas Historical Commission to determine if a detailed cultural resource study is required at the landfill property. If additional studies are required, these studies are outside the scope of this proposal.

Exhibit B
Payment Terms and Schedule

Compensation for services shall be as outlined below:

Time and Materials Services (hourly, rate schedule attached)

Task 1.1:	LiDAR Topographic Survey	\$ 17,250
Task 1.2:	Conceptual Landfill Grading Plan	\$ 14,750
Task 2:	Type I Major Amendment Permit Application – Phase I	\$ 327,300
Task 3:	Hydrogeologic/Geotechnical	\$ 160,335
Task 4.1:	Wetlands Delineation and Coordination with USACE	\$ 10,300
Task 4.2:	Section 404 Individual Permit	\$ 72,050
Task 4.3:	Project-Specific Mitigation Bank	\$ 100,650
Task 5:	Ecological and Archaeological Studies	\$ 21,500

Total \$ 724,135

Unless amended by a duly authorized written change order, the total payment for all invoices on this job, including both salary and non-salary expenses, shall not exceed the amount set forth in paragraph 2.01 of this Contract (**\$ 724,135.00**).

The Consultant must submit **monthly** invoices to the City, accompanied by an explanation of charges, professional fees, services, and expenses. The City will pay such invoices according to its normal payment procedures.

Exhibit C

Insurance Requirements

During the term of this Contract all Consultants' insurance policies shall meet the following requirements:

- I. Standard Insurance Policies Required:
 - A. Commercial General Liability
 - B. Business Automobile Liability
 - C. Workers' Compensation
 - D. Professional Liability

- II. For each of these policies, the Consultant's insurance coverage shall be primary insurance with respect to the City, its officials, agents, employees and volunteers. Any self-insurance or insurance policies maintained by the City, its officials, agents, employees or volunteers, shall be considered in excess of the Consultant's insurance and shall not contribute to it. No term or provision of the indemnification provided by the Consultant to the City pursuant to this Contract shall be construed or interpreted as limiting or otherwise affecting the terms of the insurance coverage. All Certificates of Insurance and endorsements shall be furnished to the City's Representative at the time of execution of this Contract, attached hereto as **Exhibit D**, and approved by the City before any letter of authorization to commence planning will issue or any work on the Project commences.

- III. General Requirements Applicable to All Policies
 - A. Only insurance carriers licensed and authorized to do business in the State of Texas will be accepted.
 - B. Deductibles shall be listed on the Certificate of Insurance.
 - C. "Claims made" policies will not be accepted, except for Professional Liability insurance.
 - D. Coverage shall not be suspended, voided, canceled, or reduced in coverage or in limits except after thirty (30) calendar days prior written notice has been given to the City of Nacogdoches.
 - E. The Certificates of Insurance shall be prepared and executed by the insurance company or its authorized agent on the most current State of Texas Department of Insurance-approved forms.
 - F. The City of Nacogdoches, its officials, employees and volunteers, are to be named as "Additional Insured" to the Commercial General, Umbrella and Business Automobile Liability policies. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officials, employees or volunteers.
 - G. Waiver of subrogation in a form at least as broad as ISO form 2404 shall be provided in favor of the City on all policies obtained by the Contractor in compliance with the terms of this Agreement.

IV. Commercial (General) Liability requirements:

- A. Coverage shall be written by a carrier rated "A:VIII" or better in accordance with the current A. M. Best Key Rating Guide.
- B. Minimum Limit of \$1,000,000 per occurrence for bodily injury and property damage with a \$2,000,000 annual aggregate.
- C. No coverage shall be excluded from the standard policy without notification of individual exclusions being attached for review and acceptance.
- D. The coverage shall not exclude premises/operations; independent contracts, products/completed operations, contractual liability (insuring the indemnity provided herein), and where exposures exist, Explosion Collapse and Underground coverage.
- E. The City shall be included as an additional insured and the policy shall be endorsed to waive subrogation and to be primary and non-contributory.

V. Business Automobile Liability requirements:

- A. Coverage shall be written by a carrier rated "A:VIII" or better in accordance with the current A. M. Best Key Rating Guide.
- B. Minimum Combined Single Limit of \$1,000,000 per occurrence for bodily injury and property damage.
- C. The Business Auto Policy must show Symbol 1 in the Covered Autos portion of the liability section in Item 2 of the declarations page.
- D. The coverage shall include owned autos, leased or rented autos, non-owned autos, any autos and hired autos.

VI. The worker's compensation insurance requirements:

- 1. Employer's Liability shall be no less than the required statutory minimum limits for each accident, each disease and cover all employees of Consultant, the Consultant, and all employees of any and all subconsultants or subcontractors of Consultant providing services on the Project.
- 2. "Texas Waiver of Our Right to Recover From Others Endorsement, WC 42 03 04" shall be included in this policy.
- 3. Texas must appear in Item 3A of the Workers Compensation coverage or Item 3C must contain the following: All States except those listed in Item 3A and the States of NV, ND, OH, WA, WV, and WY.

VII. Professional Liability requirements:

- A. Coverage shall be written by a carrier rated "A:VIII" or better in accordance with the current A.M. Best Key Rating Guide.
- B. Minimum of \$1,000,000 per claim and \$2,000,000 aggregate, with a maximum deductible of \$100,000.00. Financial statements shall be furnished to the City of

- Nacogdoches when requested.
- C. Policy must include availability of a two-year extended reporting period.
- D. Retroactive date must be shown on certificate.

Exhibit D
Certificates of Insurance



CERTIFICATE OF LIABILITY INSURANCE

3/31/2025

DATE (MM/DD/YYYY)
03/14/2024

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Lockton Insurance Brokers, LLC CA License #0B99399 777 S. Figueroa Street, 52nd fl. Los Angeles CA 90017 213-689-0065	CONTACT NAME: PHONE (A/C, No, Ext): E-MAIL ADDRESS: INSURER(S) AFFORDING COVERAGE INSURER A: Zurich American Insurance Company INSURER B: Steadfast Insurance Company INSURER C: INSURER D: INSURER E: INSURER F:	FAX (A/C, No): NAIC # 16535 26387
---	--	--

COVERAGES SCSEN01 **CERTIFICATE NUMBER:** 18259734 **REVISION NUMBER:** XXXXXXXX

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☒ OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: ☐ POLICY ☒ PROJECT ☒ LOC OTHER:	Y	Y	GLO 0112778-09	03/31/2024	03/31/2025	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 \$
A	☒ AUTOMOBILE LIABILITY ☐ ANY AUTO ☐ OWNED AUTOS ONLY ☐ HIRED AUTOS ONLY ☐ SCHEDULED AUTOS ☐ NON-OWNED AUTOS ONLY	N	N	BAP 0112780-09	04/01/2024	04/01/2025	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ XXXXXXXX BODILY INJURY (Per accident) \$ XXXXXXXX PROPERTY DAMAGE (Per accident) \$ XXXXXXXX \$ XXXXXXXX
	☐ UMBRELLA LIAB ☐ OCCUR ☐ EXCESS LIAB ☐ CLAIMS-MADE DED RETENTION \$			NOT APPLICABLE			EACH OCCURRENCE \$ XXXXXXXX AGGREGATE \$ XXXXXXXX \$
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N N	N/A	WC0112779-09	04/01/2024	04/01/2025	☒ PER STATUTE ☐ OTHER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
B	Env Prof (E&O)- Prof Liab - Claims Made	N	N	PEC 0112862-09	03/31/2024	03/31/2025	Per Claim: \$1,000,000 Aggregate: \$2,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

RE: SCS Project # 16209006.XX. Job Description: Architectural & Engineering Professional Services Contract - City of Nacogdoches LF, 4602 Northwest Stalling Dr., Nacogdoches 75964. Commercial General Liability Deductible \$10,000, Auto Liability Deductible \$10,000, Workers' Compensation Deductible \$0, and Professional Liability Deductible \$100,000. The Professional Liability retroactive date is 04/01/1970. The City of Nacogdoches is included as additional insured on a primary and non-contributory basis in accordance with the policy provisions of the Commercial General Liability policy. Continued on the next page.

CERTIFICATE HOLDER

CANCELLATION

See Attachments

18259734 City of Nacogdoches Attn: City Manager PO Box 635030 Nacogdoches, TX 75961	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE
--	---

© 1988-2015 ACORD CORPORATION. All rights reserved

A Waiver of Subrogation in favor of the City of Nacogdoches in accordance with the policy provisions of the Commercial General Liability and Workers' Compensation policies.

Additional Insured – Automatic – Owners, Lessees Or Contractors

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

Policy No. GLO 0112778-09

Effective Date: 03/31/2024

This endorsement modifies insurance provided under the:

Commercial General Liability Coverage Part

A. Section II – Who Is An Insured is amended to include as an additional insured any person or organization whom you are required to add as an additional insured under a written contract or written agreement executed by you, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" and subject to the following:

1. If such written contract or written agreement specifically requires that you provide that the person or organization be named as an additional insured under one or both of the following endorsements:

- a. The Insurance Services Office (ISO) ISO CG 20 10 (10/01 edition); or
- b. The ISO CG 20 37 (10/01 edition),

such person or organization is then an additional insured with respect to such endorsement(s), but only to the extent that "bodily injury", "property damage" or "personal and advertising injury" arises out of:

- (1) Your ongoing operations, with respect to Paragraph 1.a. above; or
 - (2) "Your work", with respect to Paragraph 1.b. above,
- which is the subject of the written contract or written agreement.

However, solely with respect to this Paragraph 1., insurance afforded to such additional insured:

- (a) Only applies if the "bodily injury", "property damage" or "personal and advertising injury" offense occurs during the policy period and subsequent to your execution of the written contract or written agreement; and
- (b) Does not apply to "bodily injury" or "property damage" caused by "your work" and included within the "products-completed operations hazard" unless the written contract or written agreement specifically requires that you provide such coverage to such additional insured.

2. If such written contract or written agreement specifically requires that you provide that the person or organization be named as an additional insured under one or both of the following endorsements:

- a. The Insurance Services Office (ISO) ISO CG 20 10 (07/04 edition); or
- b. The ISO CG 20 37 (07/04 edition),

such person or organization is then an additional insured with respect to such endorsement(s), but only to the extent that "bodily injury", "property damage" or "personal and advertising injury" is caused, in whole or in part, by:

- (1) Your acts or omissions; or
- (2) The acts or omissions of those acting on your behalf,

in the performance of:

- (a) Your ongoing operations, with respect to Paragraph **2.a.** above; or
- (b) "Your work" and included in the "products-completed operations hazard", with respect to Paragraph **2.b.** above,

which is the subject of the written contract or written agreement.

However, solely with respect to this Paragraph **2.**, insurance afforded to such additional insured:

- (i) Only applies if the "bodily injury", "property damage" or "personal and advertising injury" offense occurs during the policy period and subsequent to your execution of the written contract or written agreement; and
- (ii) Does not apply to "bodily injury" or "property damage" caused by "your work" and included within the "products-completed operations hazard" unless the written contract or written agreement specifically requires that you provide such coverage to such additional insured.

- 3.** If neither Paragraph **1.** nor Paragraph **2.** above apply and such written contract or written agreement requires that you provide that the person or organization be named as an additional insured:

- a. Under the ISO CG 20 10 (04/13 edition, any subsequent edition or if no edition date is specified); or
- b. With respect to ongoing operations (if no form is specified),

such person or organization is then an additional insured only to the extent that "bodily injury", "property damage" or "personal and advertising injury" is caused, in whole or in part by:

- (1) Your acts or omissions; or
- (2) The acts or omissions of those acting on your behalf,

in the performance of your ongoing operations, which is the subject of the written contract or written agreement.

However, solely with respect to this Paragraph **3.**, insurance afforded to such additional insured:

- (a) Only applies to the extent permitted by law;
- (b) Will not be broader than that which you are required by the written contract or written agreement to provide for such additional insured; and
- (c) Only applies if the "bodily injury", "property damage" or "personal and advertising injury" offense occurs during the policy period and subsequent to your execution of the written contract or written agreement.

- 4.** If neither Paragraph **1.** nor Paragraph **2.** above apply and such written contract or written agreement requires that you provide that the person or organization be named as an additional insured:

- a. Under the ISO CG 20 37 (04/13 edition, any subsequent edition or if no edition date is specified); or
- b. With respect to the "products-completed operations hazard" (if no form is specified),

such person or organization is then an additional insured only to the extent that "bodily injury" or "property damage" is caused, in whole or in part by "your work" and included in the "products-completed operations hazard", which is the subject of the written contract or written agreement.

However, solely with respect to this Paragraph **4.**, insurance afforded to such additional insured:

- (1) Only applies to the extent permitted by law;
- (2) Will not be broader than that which you are required by the written contract or written agreement to provide for such additional insured;
- (3) Only applies if the "bodily injury" or "property damage" occurs during the policy period and subsequent to your execution of the written contract or written agreement; and
- (4) Does not apply to "bodily injury" or "property damage" caused by "your work" and included within the "products-completed operations hazard" unless the written contract or written agreement specifically requires that you provide such coverage to such additional insured.

- B.** Solely with respect to the insurance afforded to any additional insured referenced in Section **A.** of this endorsement, the following additional exclusion applies:

This insurance does not apply to "bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of, or failure to render, any professional architectural, engineering or surveying services including:

1. The preparing, approving or failing to prepare or approve maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
2. Supervisory, inspection, architectural or engineering activities.

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage", or the offense which caused the "personal and advertising injury", involved the rendering of or the failure to render any professional architectural, engineering or surveying services.

- C.** Solely with respect to the coverage provided by this endorsement, the following is added to Paragraph **2. Duties In The Event Of Occurrence, Offense, Claim Or Suit** of Section **IV – Commercial General Liability Conditions**:

The additional insured must see to it that:

- (1) We are notified as soon as practicable of an "occurrence" or offense that may result in a claim;
- (2) We receive written notice of a claim or "suit" as soon as practicable; and
- (3) A request for defense and indemnity of the claim or "suit" will promptly be brought against any policy issued by another insurer under which the additional insured may be an insured in any capacity. This provision does not apply to insurance on which the additional insured is a Named Insured if the written contract or written agreement requires that this coverage be primary and non-contributory.

- D.** Solely with respect to the coverage provided by this endorsement:

1. The following is added to the **Other Insurance** Condition of Section **IV – Commercial General Liability Conditions**:

Primary and Noncontributory insurance

This insurance is primary to and will not seek contribution from any other insurance available to an additional insured provided that:

- a. The additional insured is a Named Insured under such other insurance; and
- b. You are required by written contract or written agreement that this insurance be primary and not seek contribution from any other insurance available to the additional insured.

2. The following paragraph is added to Paragraph **4.b.** of the **Other Insurance** Condition under Section **IV – Commercial General Liability Conditions**:

This insurance is excess over:

Any of the other insurance, whether primary, excess, contingent or on any other basis, available to an additional insured, in which the additional insured on our policy is also covered as an additional insured on another policy providing coverage for the same "occurrence", offense, claim or "suit". This provision does not apply to any policy in which the additional insured is a Named Insured on such other policy and where our policy is required by a written contract or written agreement to provide coverage to the additional insured on a primary and noncontributory basis.

- E.** This endorsement does not apply to an additional insured which has been added to this Coverage Part by an endorsement showing the additional insured in a Schedule of additional insureds, and which endorsement applies specifically to that identified additional insured.

- F.** Solely with respect to the insurance afforded to an additional insured under Paragraph **A.3.** or Paragraph **A.4.** of this endorsement, the following is added to Section **III – Limits Of Insurance**:

Additional Insured – Automatic – Owners, Lessees Or Contractors Limit

The most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the written contract or written agreement referenced in Section **A.** of this endorsement; or
 2. Available under the applicable Limits of Insurance shown in the Declarations,
- whichever is less.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.

All other terms, conditions, provisions and exclusions of this policy remain the same.

POLICY NUMBER:GLO 0112778-09

COMMERCIAL GENERAL LIABILITY
CG 24 04 05 09

WAIVER OF TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

SCHEDULE

Name Of Person Or Organization:

ANY PERSON OR ORGANIZATION THAT REQUIRES YOU TO WAIVE YOUR RIGHTS OF RECOVERY, IN A WRITTEN CONTRACT OR AGREEMENT WITH THE NAMED INSURED THAT IS EXECUTED PRIOR TO THE ACCIDENT OR LOSS.

Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

The following is added to Paragraph 8. **Transfer Of Rights Of Recovery Against Others To Us** of Section IV -- **Conditions:**

We waive any right of recovery we may have against the person or organization shown in the Schedule above because of payments we make for injury or damage arising out of your ongoing operations or "your work" done under a contract with that person or organization and included in the "products-completed operations hazard". This waiver applies only to the person or organization shown in the Schedule above.

Policy Number: WC0112779-09

(Ed. 6-14)

TEXAS WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT

This endorsement applies only to the insurance provided by the policy because Texas is shown in Item 3.A. of the Information Page

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule, but this waiver applies only with respect to bodily injury arising out of the operations described in the Schedule where you are required by a written contract to obtain this waiver from us.

This endorsement shall not operate directly or indirectly to benefit anyone not named in the Schedule.

The premium for this endorsement is shown in the Schedule.

Schedule

1. ☐ Specific Waiver

Name of person or organization

ALL PERSONS AND/OR ORGANIZATIONS THAT ARE REQUIRED BY
 WRITTEN CONTRACT OR AGREEMENT WITH THE INSURED, EXECUTED
 PRIOR TO THE ACCIDENT OR LOSS, THAT WAIVER OF SUBROGATION
 BE PROVIDED UNDER THIS POLICY FOR WORK PERFORMED BY YOU FOR
 THAT PERSON AND/OR ORGANIZATION

☐ Blanket Waiver

Any person or organization for whom the Named Insured has agreed by written contract to furnish this waiver.

2. Operations:

3. Premium:

The premium charge for this endorsement shall be 2 percent of the premium developed on payroll in connection with work performed for the above person(s) or organization(s) arising out of the operations described.

4. Advance Premium: INCL

PRESENTER: Rick Beverlin, City Manager

ITEM/SUBJECT: Consider approval of the renewal of a two-year contract between the City of Nacogdoches and HillCo Partners for the provision of intergovernmental consulting services in an amount not to exceed \$120,000. (City Manager)

SUMMARY/BACKGROUND: The 89th Texas Legislative Session will begin on January 14, 2025.

It is challenging and time-consuming for our local elected officials and city staff to travel and stay in Austin to attend public hearings, provide testimony, and visit with Legislators and their staff during the legislative session. While the Texas Municipal League does excellent work at keeping cities updated on bills affecting local entities, they do not get involved in advocating for specific interests of a specific city. Due to the specific legislative needs, the lack of expertise in the legislative process, and time constraints, cities in Texas use firms that specialize in advocating for the interests of their communities.

In October 2020, the City conducted a RFQ process to select a firm to assist the City with the 87th Texas legislative session and beyond. HillCo Partners was selected as the City's consultant. The terms of the RFQ and contract provided for a two-year contract from January 1, 2021, until December 31, 2022, with the option to renew two additional times. The second renewal period was January 1, 2023, through December 31, 2024. The second and final renewal period for this contract is proposed in this agenda item and would cover the period from January 1, 2025, through December 31, 2026.

HillCo Partners is a legislative consulting firm based in Austin, Texas. Over the course of this contract, HillCo Partners has assisted the City with legislative issues and connecting with state agencies. As much work, if not more, is provided to the City outside the legislative session as occurs during the session. HillCo assisted the City with the implementation of the CARES Act funding during the COVID-19 pandemic. They also played a large role in obtaining Texas Enterprise Funds for the Eaton Expansion project. Other HillCo assistance to the City has included TxDOT, TABC, and the Texas Department of Agriculture.

The amount of this contract is not to exceed \$120,000 over a two-year period. This price has remained the same the entire length of this contract.

HillCo's scope of services received by the City of Nacogdoches includes:

- Assist in the coordination, development, and implementation of the City's legislative agenda and assist the City with development of strategies to effectively enact the legislative agenda.
- Ensure that the City's legislative agenda is generally aligned with the legislative agendas of the Nacogdoches Economic Development Corporation, Nacogdoches County,

Nacogdoches ISD, and Stephen F. Austin State University.

- Represent the City in dealings with elected and appointed officials, legislative staff, and interested stakeholders on matters of municipal governance and identify and analyze legislation filed for potential municipal impact, with a particular emphasis on home rule authority, unfunded mandates, economic development, taxes and local revenue streams, zoning and regulatory authority, utilities, state-imposed fees, or other legislative priorities as identified by the City.
- Assess legislation, including filed bills, committee amendments, committee substitutes, conference committee reports, and floor amendments, for potential impact on Nacogdoches' adopted legislative agenda.
- Advise the City of upcoming meetings, hearings, briefings, and other formal or informal sessions in a timely manner to allow the City an opportunity to participate in advocacy efforts.
- Periodic reporting as determined by City staff on interim committees, agencies, or proposals that would impact the City.
- Draft legislation, identify and recruit legislative sponsors, trade and not for profit organizational support, coordinate meetings with committee staff and committee chairs, Nacogdoches' legislative delegation, and key legislative leaders in support of City-introduced legislation.
- Draft and provide items related to witness testimony including: a) speaking points for City officials or staff who testify before House and Senate committees, b) written testimony so that the City can state its position on the record even when no witness will provide oral testimony.
- Identify and create a strategy to secure funding opportunities for city initiatives including, but not limited to, mobility and road infrastructure, economic development, rural broadband, tourism, water, wastewater, and other utility projects.
- Create and coordinate strategies for the City to defeat legislation that could have a negative impact on the City's ability to carry out its governmental and proprietary functions.
- Identify opportunities and implement strategies to enhance the City's profile with targeted individuals and entities, including the arrangement of periodic visits, and/or functions with key legislators and staff
- Draft and deliver letters, handouts, and other correspondence including letters of support or opposition to legislators, regulatory bodies, or other parts of the State of Texas.

FINANCIAL:

Item is budgeted:

Account No: 01.75.630.91

Account Name: General Fund Non-Dept. Lobbyist Fees

Amount: \$20,000

Account No: 30.75.630.91

Account Name: Utility Fund Non-Dept. Lobbyist Fees

Amount: \$20,000

Account No: 31.75.630.91

Account Name: Sanitation Fund Non-Dept. Lobbyist Fees

Amount: \$20,000

COUNCIL PRIORITIES: THIS AGENDA ITEM IS CONSISTENT WITH THE FOLLOWING CITY COUNCIL PRIORITIES

CITY CONTACT: Richard B. Beverlin, City Manager
beverlinr@nactx.us
(936) 559-2506

ATTACHMENTS: 1. HillCo 2023 Contract - Expires 12/2024
2. HillCo Letter Agreement Renewal 2025-2026

CITY OF NACOGDOCHES GENERAL SERVICE CONTRACT

This General Service Contract is by and between the City of Nacogdoches, a Texas Home-Rule Municipal Corporation (the "City"), and HillCo Partners (the "Contractor"), for the following work: Legislative Services as described in the Scope of Services attached as Exhibit "A".

ARTICLE I PAYMENT AND TERM

1.1 Consideration. In consideration for the services performed in the Scope of Services and Contractor's completion of work in conformity with this Contract, the City shall pay the Contractor an amount not to exceed One hundred twenty thousand dollars and zero cents (\$ 120,000). In no event shall payment under this contract exceed appropriations made by City Council.

1.2 Payment Application. Within **seven (7)** calendar days of completion of the services the Contractor will submit its payment application to the City.

1.3 City's Payment and Approval. The City will pay the Contractor as shown in **Exhibit "B"** Payment Schedule, for the services performed no later than **thirty (30)** calendar days from the date of the City's receipt of the payment application and the City's approval of the services.

1.4 Term. The initial term of the Contract is for two (2) years with the option to renew for one (1) additional two (2) year term. Any renewal must be in writing and executed by the parties. If, for any reason, funds are not appropriated to continue the contract, the contract shall become null and void and shall terminate.

1.5 Executed Contract. The "Notice to Proceed" will not be given nor shall any work commence until this Contract is fully executed and all exhibits and other attachments are completely executed and attached to the Contract.

ARTICLE II CHANGE ORDERS

2.1 Changes will not be made, nor will invoices for changes, alterations, modifications, deviations, or extra work or services be recognized or paid, except upon the prior written order from authorized personnel of the City. The Contractor will not execute change orders on behalf of the City or otherwise alter the financial scope of the services except in the event of a duly authorized change order approved by the City as provided in this Contract.

(a) **City Manager Approval.** When the original Contract amount plus all change orders is \$50,000 or less, the City Manager or his designee may approve the written change order provided the change order does not increase the total amount set forth in the

Contract to more than \$50,000. For such contracts, when a change order results in a total contract amount that exceeds \$50,000, the City Council of the City must approve such change order prior to commencement of the services or work; and

(b) **City Council Approval.** When the original contract amount plus all change orders is equal to or greater than \$50,000, the City Manager or his designee may approve the written change order provided the change order does not exceed \$50,000 and provided the sum of all change orders does not exceed 25% of the original contract amount. For such contracts, when a change order exceeds \$50,000 or when the sum of all change orders exceeds 25% of the original contract amount, the City Council of the City must approve such change order prior to commencement of the services or work.

(c) **Increase in Scope.** Any request by the Contractor for an increase in the Scope of Services and an increase in the amount listed in Article II of this Contract shall be made and approved by the City prior to the Contractor providing such services or the right to payment for such additional services shall be waived.

(d) **Dispute.** If there is a dispute between the Contractor and the City respecting any service provided or to be provided hereunder by the Contractor, including a dispute as to whether such service is additional to the Scope of Services included in this Contract, the Contractor agrees to continue providing on a timely basis all services to be provided by the Contractor hereunder, including any service as to which there is a dispute.

ARTICLE III INDEPENDENT CONTRACTOR AND SUBCONTRACTORS

3.1 Independent Contractor. It is understood and agreed by the parties that the Contractor is an independent contractor retained for the services described in the Scope of Services. The City will not control the manner or the means of the Contractor's performance but shall be entitled to a work product as in the Scope of Services. The City will not be responsible for reporting or paying employment taxes or other similar levies that may be required by the United States Internal Revenue Service or other State or Federal agencies. This Contract does not create a joint venture.

3.2 Subcontractor. The term "subcontractor" shall mean and include only those hired by and having a direct contact with the Contractor for performance of work on the Project. The City shall have no responsibility to any subcontractor employed by a Contractor for performance of work on the Project, and all subcontractors shall look exclusively to the Contractor for any payments due. The Contractor shall be fully responsible to the City for the acts and omissions of its subcontractors. Nothing contained herein shall create any contractual or employment relations between any subcontractor and the City.

ARTICLE IV INSURANCE

4.1 The Contractor shall procure and maintain, at its sole cost and expense for the duration of this Contract, insurance against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the services performed by the Contractor, its officers, agents, volunteers, and employees.

4.2 The Contractor's insurance shall list the City of Nacogdoches, its officers, agents, volunteers, and employees as additional insureds. The Required Limits of Insurance are attached in **Exhibit "C"**. Certificates of insurance evidencing the required insurance policies are attached in **Exhibit "D"**.

ARTICLE V INDEMNIFICATION AND RELEASE

5.1 Indemnification. The Contractor shall indemnify, hold harmless, and defend the City, its officers, agents, volunteers, employees, representatives, contractors, assignees and/or designees from and against any and all claims, losses, damages, causes of action, suits, and liability of every kind, including all expenses of litigation, court costs, and attorneys' fees, for injury to or death of any person or for damage to any property arising out of or in connection with the work done by the Contractor under this Contract. Such indemnity shall apply regardless of whether the claims, losses, damages, causes of action, suits, or liability arise in whole or in part from the negligence of the City, any other party indemnified hereunder, the Contractor, or any third party.

5.2 Release. The Contractor assumes full responsibility for the work to be performed hereunder and hereby releases, relinquishes, and discharges the City, its officers, agents, volunteers, and employees from all claims, demands, and causes of action of every kind and character, including the cost of defense thereof, for any injury to or death of any person and any loss of or damage to any property that is caused by, alleged to be caused by, arising out of, or in connection with the Contractor's work to be performed hereunder. This release shall apply regardless of whether said claims, demands, and causes of action are covered in whole or in part by insurance and regardless of whether such injury, death, loss, or damage was caused in whole or in part by the negligence of the City, any other party released hereunder, the Contractor, or any third party.

5.3 Notice of Claims. If a claim, demand, suit, or other action is asserted against the Contractor which arises under or concerns the Agreement, or which could have a material adverse effect on the Contractor's ability to perform thereunder, the Contractor shall give written notice to the City within ten (10) calendar days after receipt of notice by the Contractor. Such notice to the City shall state the date of notification of any such claim, demand, suit, or other action; the names and address of the claimant(s); the basis thereof; and the name of each person against whom such claim is asserted.

ARTICLE VI GENERAL TERMS

6.1 Performance. Contractor, its employees, associates, or subcontractors shall perform all the services described in the Scope of Services in a professional manner and be fully qualified and competent to perform those services. Contractor shall undertake the work and complete it in a timely manner.

6.2 Termination. The City may terminate the Project and this Contract, at any time, for convenience. In the event of such termination the City will notify the Contractor in writing and the Contractor shall cease work immediately. Contractor shall be compensated for the services performed. Should the City terminate this Contract for convenience, the City shall pay Contractor for the services performed and expenses incurred before the date of termination.

6.3 Venue, Claims and Audit. (a) This Contract has been made under and shall be governed by the laws of the State of Texas.

(b) The parties agree that performance and all matters related thereto shall be in Nacogdoches County, Texas.

(c) Venue of any dispute will be in Nacogdoches County, Texas.

(d) The City, or if State funds are used to pay any part of this contract, the State Auditor, may conduct an audit or investigation of any entity receiving funds directly under this contract or indirectly through a subcontract under the contract. Acceptance of funds under the contract or through a subcontract under the contract acts as acceptance of the authority of the City or the State Auditor to conduct an audit or investigation. Contractor agrees to cooperate and must provide the City or State Auditor with access to any information the City or State Auditor considers relevant to the investigation or audit.

6.4 Amendment. This Contract may only be amended by a written instrument approved and executed by the parties.

6.5 Taxes. The City is exempt from payment of state and local sales and use taxes on labor and materials incorporated into the project. If necessary, it is the Contractor's responsibility to obtain a sales tax permit, resale certificate, and exemption certificate that shall enable the Contractor to buy any materials to be incorporated into the project and then resell the aforementioned materials to the City without paying the tax on the materials at the time of purchase.

6.6 Compliance with Laws. The Contractor will comply with all applicable federal, state, and local statutes, regulations, ordinances, and other laws, including but not limited to the following:

(a) Contractor shall be responsible for obtaining all necessary permits, certificates and/or licenses to fulfill contractual obligations to the City.

(b) The Immigration Reform and Control Act (IRCA). The Contractor may not knowingly obtain the labor or services of an undocumented worker. The Contractor, not the City, must verify eligibility for employment as required by IRCA;

(c) In accordance with Section 2155.4441 of the Texas Government Code, Contractor agrees that during the performance of this contract it shall purchase products and materials produced in Texas when they are available at a price and time comparable to products and materials produced outside this state;

6.7 Contractor Affirmations: If this contract is funded in whole or in part by money from the State of Texas, State law requires the following certifications, representations and/or warranties. By signature hereon affixed, the Contractor hereby certifies that:

6.7.1 Contractor has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with this Contract.

6.7.2 Contractor represents and warrants that it has no actual or potential conflicts of interest in the goods and or services described in the scope of work to this contract.

6.7.1 Antitrust. Pursuant to 15 U.S.C. §1, *et seq.* and Tex. Bus. & Comm. Code §15.01, *et seq.* neither the contractor nor the firm, corporation, partnership, or institution represented by the contractor, or anyone acting for such a firm, corporation or institution has violated the antitrust laws of this state, federal antitrust laws, nor communicated directly or indirectly the bid made to any competitor or any other person engaged in such line of business.

6.7.2 Child Support. Pursuant to §231.006(d), Texas Family Code, regarding child support, the Contractor certifies that the individual or business entity named in this Contract is not ineligible to receive the specified payment and acknowledges that the contract may be terminated and payment may be withheld if this certification is inaccurate.

6.7.3 Debarment. Contractor certifies that Contractor and its principals are eligible to participate in this transaction and have not been subjected to suspension, debarment, or similar ineligibility determined by any federal, state or local governmental entity and that Contractor is in compliance with the State of Texas statutes and rules relating to procurement. Entities ineligible for state procurement are listed on the State of Texas Debarred Vendor List maintained by the Texas Comptroller of Public Accounts and the System for Award Management (SAM) maintained by the General Services Administration. Entities ineligible for federal procurement are listed at <http://www.sam.gov/content/exclusions>.

6.7.4 Convictions. Under Sections 2155.006, 2155.0061 and 2261.053 of the Texas Government Code, Respondent certifies that it is not ineligible to receive the specified contract and may be terminated and payment withheld if this certification is inaccurate. These sections prohibit contracts that include proposed financial participation by an individual or business entity who has been convicted in the past five years of (a) violating a federal law or assessed a penalty in connection with a contract involving relief for Hurricane Rita, Hurricane

Katrina, or any other disaster, as defined by §418.004, Gov't Code, occurring after September 24, 2005; and (b) of any offense related to the direct support or promotion of human trafficking.

6.7.5 COVID Vaccinations. Respondent certifies that it does not require its customers to provide any documentation certifying the Customer's COVID-19 vaccination or post-transmission recovery on entry to, or to receive service from the Respondent's business.

6.7.6 Boycott. (a) To the extent this Contract is considered a Contract for goods or services subject to § 2270.002 Texas Government Code, Contractor verifies that it: i) does not boycott Israel; and ii) will not boycott Israel during the term of this Contract.

(b) To the extent this Contract has a value of \$100,000 or more and Respondent is an organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations, that exists to make a profit that employs 10 or more full time employees, Respondent certifies that it: (i) does not and will not boycott energy companies during the term of the contract (*See Texas Government Code 2274.002, et seq.*); and (ii) does not and will not discriminate against a firearm entity or firearm trade association (*See Texas Government Code 2274.002, et seq.*).

6.8 Waiver of Terms. No waiver or deferral by either party of any term or condition of this Contract shall be deemed or construed to be a waiver or deferral of any other term or condition or subsequent waiver or deferral of the same term or condition.

6.9 Assignment. This Contract and the rights and obligations contained herein may not be assigned by the Contractor without the prior written approval of City.

6.10 Invalid Provisions. If any provision of this Contract shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court of competent jurisdiction finds that any provision of this Contract is invalid or unenforceable, but that by limiting such provision it may become valid and enforceable, then such provision shall be deemed to be written, construed, and enforced as so limited.

6.11 Entire Agreement. This Contract represents the entire and integrated agreement between the City and Contractor and supersedes all prior negotiations, representations, or agreements, either written or oral. This Contract may only be amended by written instrument approved and executed by the parties.

6.12 Agree to Terms. The parties state that they have read the terms and conditions of this Contract and agree to the terms and conditions contained in this Contract.

6.13 Effective Date. This Contract will be effective when it is signed by the last party making it fully executed.

6.14 Notice. Any official notice under this Contract will be sent to the following addresses:

City of Nacogdoches
Attn: City Manager
PO BOX 635030
202 East Pilar Street
Nacogdoches, TX 75961

Contractor: HillCo Partners
Attn: Kelly Barnes
823 Congress Ave, Suite 900
Austin, TX 78701

6.15 Severability. In the event any one or more of the provisions contained in this Contract shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect the other provisions, and in lieu of each provision that is invalid, illegal or unenforceable, there shall be added a new provision to this Contract as similar in terms to such invalid, illegal, or unenforceable provision as may be possible and yet be valid, legal and enforceable, by means of good faith negotiation by the Parties to this Contract or by reform by a court of competent jurisdiction.

6.16 Duplicate Originals. The parties may execute this Contract in duplicate originals, each of equal dignity.

6.17 Exhibits. All exhibits to this Contract are incorporated and made part of this Agreement for all purposes.

List of Exhibits

- A. Scope of Services
- B. Payment Schedule
- C. Insurance Requirements
- D. Certificates of Insurance

HillCo Partners

By: JH

Printed Name: JAY HOWARD

Title: Partner

Date: 1-3-2023

CITY OF NACOGDOCHES

By: [Signature]
City Manager

Date: 12/8/2022

APPROVED AS TO FORM:

[Signature]
City Attorney

Date: 12/08/22

EXHIBIT A SCOPE OF SERVICES

The terms and conditions of this Contract shall take precedence and control over any term or provision of the Scope of Services that in any way conflicts with, differs from, or attempts to alter the terms of this Contract.

- Assist in the coordination, development, and implementation of the City's legislative agenda and assist the City with development of strategies to effectively enact the legislative agenda.
- Ensure that the City's legislative agenda is generally aligned with the legislative agendas of the Nacogdoches Economic Development Corporation, Nacogdoches County, Nacogdoches ISD, and Stephen F. Austin State University, and other city partners.
- Represent the City in dealings with elected and appointed officials, legislative staff, and interested stakeholders on matters of municipal governance with a particular emphasis on home rule authority, unfunded mandates, economic development, taxes and local revenue streams, zoning and regulatory authority, utilities, state-imposed fees, or other legislative priorities as identified by the City.
- Identify and analyze legislation filed for potential municipal impact, with particular emphasis on home rule authority, unfunded mandates, economic development, taxes and local revenue streams, zoning and regulatory authority, utilities, state-imposed fees, or other legislative priorities that have been identified by the City.
- Assess legislation, including filed bills, committee amendments, committee substitutes, conference committee reports, and floor amendments, for potential impact on Nacogdoches' adopted legislative agenda.
- Advise the City of upcoming meetings, hearings, briefings and other formal or informal sessions in a timely manner to allow the City an opportunity to participate in advocacy efforts.
- Periodic reporting as determined by City staff on interim committees, agencies, or proposals that would impact the City.
- Draft legislation, identify and recruit legislative sponsors, trade and not for profit organizational support, coordinate meetings with committee staff and committee chairs, Nacogdoches' legislative delegation, and key legislative leaders in support of City-introduced legislation
- Draft and provide items related to witness testimony including:
 - speaking points for City officials or staff who testify before House and Senate committees,
 - written testimony so that the City can state its position on the record even when no witness will provide oral testimony
- Identify and create a strategy to secure funding opportunities for city initiatives including, but not limited to, mobility and road infrastructure, economic development, rural broadband, tourism, water, wastewater, and other utility projects;
- Create and coordinate strategies for the City to defeat legislation that could have a negative impact on the City's ability to carry out its governmental and proprietary functions.

- Identify opportunities and implement strategies to enhance the City's profile with targeted individuals and entities, including the arrangement of periodic visits and/or functions with key legislators and staff
- Draft and deliver letters, handouts, and other correspondence including letters of support opposition to legislators, regulatory bodies, or other parties of the State of Texas.

EXHIBIT B
PAYMENT SCHEDULE

Payment is a fixed fee in the amount listed in Article II of this Contract. This amount shall be payable by the City pursuant to the schedule listed below and upon completion of the services and written acceptance by the City.

Schedule of Payment for each phase will be \$2500 payable on the 15th and final day of each month.

EXHIBIT C INSURANCE REQUIREMENTS

Throughout the term of this Agreement the Contractor must comply with the following:

I. Standard Insurance Policies Required:

- A. Commercial General Liability
- B. Business Automobile Liability
- C. Workers' Compensation

II. General Requirements Applicable to All Policies:

- A. Only Insurance Carriers licensed and admitted to do business in the State of Texas will be accepted.
- B. Deductibles shall be listed on the Certificate of Insurance and are acceptable only on a per occurrence basis for property damage only.
- C. "Claims Made" policies are not accepted.
- D. Each insurance policy shall be endorsed to state that coverage shall not be suspended, voided, canceled, reduced in coverage or in limits except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City of Nacogdoches.
- E. Upon request, certified copies of all insurance policies shall be furnished to the City of Nacogdoches.
- F. The City of Nacogdoches, its officials, employees and volunteers, are to be named as "Additional Insured" to the Commercial General, Umbrella and Business Automobile Liability policies. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officials, employees or volunteers.
- G. Waiver of subrogation in a form at least as broad as ISO form 2404 shall be provided in favor of the City on all policies obtained by the Contractor in compliance with the terms of this Agreement.

III. Commercial General Liability

- A. General Liability insurance shall be written by a carrier rated "A: VIII" or better under the current A. M. Best Key Rating Guide.
- B. Policies shall contain an endorsement naming the City as Additional Insured and further providing "primary and non-contributory" language with regard to self-insurance or any insurance the City may have or obtain

- C. Limits of liability must be equal to or greater than \$1,000,000 per occurrence for bodily injury and property damage, with an annual aggregate limit of \$2,000,000. Limits shall be endorsed to be per project.
- D. No coverage shall be excluded from the standard policy without notification of individual exclusions being submitted for the City's review and acceptance
- E. The coverage shall include, but not be limited to the following: premises/operations with separate aggregate; independent contracts; products/completed operations; contractual liability (insuring the indemnity provided herein) Host Liquor Liability, and Personal & Advertising Liability.

IV. Business Automobile Liability

- A. Business Automobile Liability insurance shall be written by a carrier rated "A: VIII" or better rating under the current A. M. Best Key Rating Guide.
- B. Policies shall contain an endorsement naming the City as Additional Insured and further providing "primary and non-contributory" language with regard to self-insurance or any insurance the City may have or obtain
- C. Combined Single Limit of Liability not less than \$1,000,000 per occurrence for bodily injury and property damage.
- D. The Business Auto Policy must show Symbol 1 in the Covered Autos Portion of the liability section in Item 2 of the declarations page
- E. The coverage shall include any autos, owned autos, leased or rented autos, non-owned autos, and hired autos.

V. Workers' Compensation Insurance

- A. Workers compensation insurance shall include the following terms:
 - 1. Employer's Liability minimum limits of liability not less than \$500,000 for each accident/each disease/each employee are required
 - 2. "Texas Waiver of Our Right to Recover From Others Endorsement, WC 42 03 04" shall be included in this policy
 - 3. TEXAS must appear in Item 3A of the Workers' Compensation coverage or Item 3C must contain the following: "All States except those listed in Item 3A and the States of NV, ND, OH, WA, WV, and WY"

EXHIBIT D
CERTIFICATES OF INSURANCE



November 6, 2024
HillCo Partners
Attn: Kelly Barnes
823 Congress Avenue, Suite 900
Austin, TX 78701

RE: Renewal of Contract for Legislative Services

Mr. Barnes:

We are pleased to inform you that the City of Nacogdoches intends to renew the contract with HillCo Partners, originally executed on January 1, 2023 and set to expire on December 31, 2024.

We propose to extend the contract for an additional two years, effective from January 1, 2025 to December 31, 2026. We appreciate the services your organization has provided and look forward to continuing our partnership.

Please indicate your acceptance of this renewal by signing below and returning a copy of this letter by December 5, 2024. If you have any questions or require further discussion, please do not hesitate to reach out.

Thank you for your continued cooperation.

Sincerely,

Richard B. Beverlin, III
City Manager

Acknowledgment of Renewal

On behalf of HillCo Partners, I hereby agree to the renewal of the contract as outlined above.

Signature: _____

Name: _____

Title: _____

Date: _____

PRESENTER: Case Opperman, Director of Public Works

ITEM/SUBJECT: Consider approval of multiple Indefinite Deliverable Indefinite Quantity contracts by and between the City of Nacogdoches and Longview Asphalt, Inc. and Texas Materials, for asphalt products and limestone base material used in Public Works operations in a not-to-exceed total budgeted amount of \$250,000.00. (Director of Public Works)

SUMMARY/BACKGROUND: The City of Nacogdoches utilizes a number of different products in patching and paving streets, stabilizing excavations, etc. in Public Works' typical functions, spending approximately \$250,000 per year. On October 17, 2024, the City received bids for the purchase of annual asphalt products and limestone base material.

Bidders were allowed to bid on one or all of the products and the award of low bid contracts are considered individually for each product. Bids were comprised of individual Unit Prices (per ton) with no minimum or maximum quantity guaranteed. Due to the volatility of current markets, unit prices will be agreed upon quarterly and can be escalated or deescalated based on the Bureau of Labor Statistics' Producer Price Index. Upon completion of the one-year term of the original agreement and upon mutual agreement of both parties, the original agreement may be renewed for up to two (2) additional one (1) year renewals [three (3) years total] under the terms of the contract.

Two (2) suppliers submitted bids for these products, as follows:

Vendor	Type D Asphalt (\$/ton)	Type C Asphalt (\$/ton)	Limestone Base (\$/ton)
Longview Asphalt	112.00	112.00	49.50
Texas Materials	115.00	115.00	40.50

Due to the nature of material supply, staff recommends awarding contracts to both suppliers in case one supplier can't fulfill a specific order. Primary and secondary suppliers are identified based on best value to the City, as well as Local Government Code allowances for local consideration. As the low bidder for Type D and C asphalt, Longview Asphalt will be the primary supplier for those materials. Texas Materials will be the primary supplier for the limestone base. Staff recommends the award of an annual unit price contract to both Longview Asphalt, Inc. and Texas Materials as our FY24-25 asphalt product and limestone base suppliers.

FINANCIAL:

Item is budgeted:

Account No.: 01.26 620.30

Account Name: *Street Maintenance*

Amount: \$250,000

**COUNCIL PRIORITIES: THIS AGENDA ITEM IS CONSISTENT WITH THE
FOLLOWING CITY COUNCIL PRIORITIES**

Infrastructure

CITY CONTACT: Case Opperman, Director of Public Works/City Engineer
oppermanc@nactx.us
(936) 559-2515

ATTACHMENTS:

1. Bid Tab
2. Longview Asphalt Contract
3. Texas Materials Contract



Bid Tabulation

FY24-25 Asphalt Products & Limestone Base
Thursday, October 17, 2024 @ 2:00 PM

Vendor	Type D Hot Mix Asphaltic Concrete (\$/ton)	Type C Hot Mix Asphaltic Concrete (\$/ton)	Type A, Grade 2 Limestone Base (\$/ton)
Longview Asphalt	112.00	112.00	49.50
Texas Materials	115.00	115.00	40.50

Bid Award	Type D Hot Mix Asphaltic Concrete (\$/ton)	Type C Hot Mix Asphaltic Concrete (\$/ton)	Type A, Grade 2 Limestone Base (\$/ton)
Longview Asphalt	112.00 – Primary	112.00 – Primary	49.50 – Secondary
Texas Materials	115.00 – Secondary	115.00 – Secondary	40.50 – Primary

City of Nacogdoches – Public Works Department

P.O. Drawer 635030 • Nacogdoches, TX 75963 • (936) 559-2580 • Fax (936) 559-2589 •
www.nactx.us • Home of Stephen F. Austin State University • www.sfasu.edu



INVITATION TO BID

ANNUAL COMMODITY REQUIREMENTS
for
INDEFINITE DELIVERY
and
INDEFINITE QUANTITIES

Bid # 25-10-104

ASPHALT PRODUCTS
and
LIMESTONE BASE

Bids must be received before:
Thursday, October 17, 2024
2:00 PM
City Hall Conference Room 203
202 East Pilar Street
Nacogdoches, Texas 75961

Refer Inquiries To:

Case Opperman, PE – Director of Public Works/City Engineer
City of Nacogdoches
(936) 559-2515
Email: oppermanc@nactx.us

TABLE OF CONTENTS

INTRODUCTION

DEFINITIONS

INSTRUCTIONS to BIDDERS

STANDARD TERMS and CONDITIONS

SPECIAL TERMS and CONDITIONS

TECHNICAL SPECIFICATIONS

QUOTATION FORM

CERTIFICATION and ACKNOWLEDGMENT

INTRODUCTION

Bids are solicited for **Asphalt Products and Limestone Base** with the following definitions, term and conditions of bidding. Upon award by the City, this Bid will shall become the working contract for the Parties.

A. **NOTICE**

Sealed bids are due at **2:00 PM on Thursday, October 17, 2024** after which time all qualified bids will be opened and publicly read aloud at **Conference Room 203, 202 East Pilar Street, Nacogdoches, Texas 75961**. Bids received after the specified deadline will be returned unopened.

Sealed bids shall be clearly marked with the bid number and title and addressed to the City of Nacogdoches – Engineering Department. Bids shall be delivered using one of the following:

Hand-deliver to:
202 E. Pilar St., Room 239
Nacogdoches, TX 75961

Mail to:
Attn: Case Opperman
Engineering Department
PO Box 635030
Nacogdoches, TX 75963

Ship to (FedEx, UPS, DHL):
Attn: Case Opperman
Engineering Department
202 E. Pilar St., Room 239
Nacogdoches, TX 75961

Vendors may receive notice of bids from the City of Nacogdoches from a variety of channels. Approved methods of dissemination include: www.civcastusa.com or on the City website at <https://www.nactx.us/bids.aspx>. The receipt of solicitations through any other means may result in the receipt of incomplete specifications or addenda which could ultimately render your bid non-compliant. City of Nacogdoches accepts no responsibility for the receipt or notification of solicitations through any other source.

B. **QUESTIONS and INQUIRIES**

Questions and inquiries about this Solicitation shall be submitted in writing to the following individual:

Case Opperman, PE
Director of Public Works/City Engineer
oppermanc@nactx.us

The deadline for written questions is **October 14, 2024 at 5:00 PM**.

C. **SCHEDULE OF IMPORTANT DATES**

The tentative schedule for this Solicitation is as follows:

Release ITB to Vendors	October 2, 2024
Advertisement Dates	October 2, 2024
	October 9, 2024
Deadline for Questions and Inquiries	October 14, 2024
ITB Due Date	October 17, 2024
Earliest Award by City	November 2024

DEFINITIONS

The following definitions shall be used to identify terms throughout this invitation to bid:

A. AGREEMENT/CONTRACT

A mutually binding legal document obligating the Vendor to furnish the products specified within this solicitation and obligating the City to pay for the goods as specified. This may be an authorized purchase order or this Invitation to Bid.

B. BID/RESPONSE/OFFER/QUOTATION

A complete, properly signed response to this solicitation that, if accepted, would bind the Respondent to perform the resulting contract.

C. BIDDER/RESPONDENT/OFFERER

The Respondent identified throughout the solicitation that they consider themselves qualified to provide the products specified herein, and are interested in making an offer to provide the goods to the City.

D. CITY

The City of Nacogdoches, located in Nacogdoches County, Texas.

E. CITY COUNCIL – The elected officials of the City of Nacogdoches, Texas given the authority to exercise such powers and jurisdiction of all City business as conferred by the City Charter and State Constitution and Laws.

F. PIGGYBACK CONTRACT

A contract or agreement that has been competitively bid in accordance with State of Texas statutes, rules, policies and procedures and has been extended for the use of state and local agencies that have entered (or will) into an Interlocal Agreement with the City.

G. PURCHASE ORDER

A purchase order records the financial obligation of the City to pay for products properly received; therefore, a purchase order is also required for all contracts with an expenditure of funds entered into by the City Manager or City Council.

H. SOLICITATION/INVITATION TO BID

This Solicitation document issued by the City containing terms, conditions and specifications for the products to be procured.

I. VENDOR/CONTRACTOR

Person or business enterprise providing products to the City as fulfillment of obligations arising from an agreement or purchase order.

INSTRUCTION TO BIDDERS

Qualified bidders interested in responding to this Solicitation must submit the following information as part of their bid response. Failure to provide any information requested in this Solicitation may result in disqualification of the bid response.

A. **FORMS**

All Responses must be submitted on the form(s) provided by the City, and accompanied by all required attachments. All figures must be written in ink or typewritten. Mistakes may be crossed out, corrections inserted adjacent thereto and initiated in ink by the person certifying the bid.

B. **RECEIPT OF BIDS**

Sealed bids must be received by the City prior to the date and time specified. The mere fact that the bid was dispatched will not be considered; the bidder must insure that the bid is actually delivered. Bids received after that time will be returned unopened to the Respondent. Bid responses submitted via fax or email are not acceptable.

C. **CERTIFICATION**

This Solicitation includes a certification page. Respondent must:

1. Furnish complete name, mailing address, telephone number and email of the individual duly authorized to execute contractual documents on behalf of the Respondent.
2. Furnish name of individual(s), along with respective telephone numbers and email addresses, who will be responsible for answering all questions.
3. Certify that they have not conspired with any other potential Respondents in any manner to attempt to control competitive pricing.
4. Certify that they are duly qualified, capable and otherwise bondable business entity not in receivership or contemplating same, and has not filed bankruptcy.

D. **EXCEPTIONS**

Any deviations from terms, conditions or specifications contained herein must be clearly indicated in the Response to this Solicitation in writing at or before the due date and time. Any deviations or exceptions are subject to review by the City and may deem the Response disqualified or non-responsive. If no exceptions are stated, it will be understood that all general terms and conditions and specific requirements will be complied with, without exception.

E. **TAX EXEMPT**

Respondents bid prices must be net, exclusive of taxes. The City is exempt from State Retail Tax and Federal Excise Tax.

F. **DISCLOSURE OF INTERESTED PARTIES**

Contracting hereunder may require compliance with §2252.908 Texas Government Code/Disclosure of Interested Parties for contracts that (1) require an action or vote by the City Council before the contract may be signed; or (2) has a value of at least \$1 million. The law provides that a governmental entity may not enter into certain contracts with a business entity unless the business entity submits a disclosure of interested parties to the governmental entity at the time the business entity submits the signed contract to the governmental entity or state agency.

The process as implemented by the Texas Ethics Commission ("TEC") is as follows:

1. The disclosure of interested parties must be performed using the [Texas Ethics Commission's electronic filing application](#) listing each interested party of which the business entity is aware on Form 1295, obtaining a certification of filing number for this form from the TEC, and printing a copy of it to submit to the City.
2. The copy of Form 1295 submitted to the City must be notarized and contain the unique certification number from the TEC. The form must be filed with the City pursuant to §2252.908 Texas Government Code, "at the time the business entity submits the signed contract" to the City.

The City, in turn, will submit a copy of the disclosure form to the TEC not later than the 30th day after the date the City receives the disclosure of interested parties from the business entity.

STANDARD TERMS and CONDITIONS

A. ACCEPTANCE

Acceptance is deemed to have occurred upon the latter of the following: the Vendor's signature on this Invitation to Bid or approval by the City Council, or their designee. A City of Nacogdoches Purchase Order is required prior to the delivery of any products provided to the City.

B. ABSENCE of PURCHASE ORDER or AGREEMENT

The City is not responsible for delivery of any commodities or equipment without a proper Purchase Order.

C. ADDENDA

If it becomes necessary to revise any part of this bid, prior to the due date and time, a written addendum will be provided to all Bidders. The City is not bound by any oral representations, clarifications, or changes made in the written specification by the City's employees, unless such clarification of change is provided to Bidders in written addendum form from the City.

Addenda will be transmitted to all that are known to have received a copy of the bid documents and specifications. However, it shall be the sole responsibility of the Bidder to verify issuance of any addenda and to check all avenues of document availability prior to the opening date and time. Bidder shall provide written acknowledgment of all addenda.

D. ADVERTISING and PUBLICITY

Vendor shall not advertise or otherwise publicize, without the City's prior written consent, the fact that the City has entered into the Agreement, except to the extent required by applicable law.

E. ASSIGNMENTS

The Agreement shall be binding upon and inure to the benefit of the City and the Vendor, and their respective successors and assignees, provided however, that no right or interest in the Agreement shall be assigned and no obligation shall be delegated by the Vendor without the prior written consent of the City. Any attempted assignment or delegation by the Vendor shall be void unless made in conformity with this Paragraph. The Agreement is not intended to confer any rights or benefits on any person, firm or entity not a party hereto; it being the intention of the parties that there be no third party beneficiaries to the Agreement.

F. AWARD of CONTRACT

A Contract may be awarded to either the lowest responsible bidder or the bidder who provides goods or materials at the best value for the City. In determining the best value for the City, the City may consider, but is not necessarily limited to, the following factors:

- a. conformity to specifications;
- b. the purchase price, including payment discount terms;
- c. the reputation of the bidder and of the bidder's goods or services;
- d. the quality of the bidder's goods or services;
- e. the extent to which the goods or services meet the City's needs;
- f. the bidder's past relationship with the City;
- g. the impact on the ability of the City to comply with laws and rules relating to contracting with historically underutilized businesses and nonprofit organizations employing persons with disabilities;
- h. delivery terms;
- i. payment terms;
- j. availability of repair and maintenance parts;
- k. financial condition;
- l. products or services that have a lesser or reduced effect on human health and the environment when compared with competing products and services that serve the same purpose. This comparison may consider raw materials acquisition, product, manufacturing, packaging, distribution, reuse, operation, maintenance, or disposal of the product or service;
- m. the total long-term cost to the City to acquire the bidder's goods or services; and
- n. any relevant criteria specifically listed in this request for bid.

Although the cost of products to be provided is an essential part of the Bid, the City is not obligated to award a contract on the sole basis of cost. The City reserves the right to award multiple contracts as it deems necessary or desirable.

Pursuant to Local Government Code 271.9051, if the bid is less than \$500,000 and the City Council determines that a local bidder whose principal place of business is in the City offers the City the best combination of contract price and additional economic development opportunities for the City created by the contract award, including the employment of residents of the municipality and increased tax revenues to the municipality, the city **may** award the bid to the local bidder whose bid is within 5% of the lowest bid.

Pursuant to Local Government Code 271.905, if the City Council determines that a local bidder whose principal place of business is in the City offers the City the best combination of contract price and additional economic development opportunities for the City created by the contract award, including the employment of residents of the municipality and increased tax revenues to the municipality, the city **may** award the bid to the local bidder whose bid is within 3% of the lowest bid.

G. BUSINESS PRACTICES

Minority business enterprises and/or historically underutilized businesses will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, creed, sex, or national origin in consideration for an award.

H. CANCELLATION or TERMINATION

1. Termination For Cause:

In the event of default by the Vendor, the City shall have the right to terminate the Agreement for cause, by written notice effective ten (10) calendar days, unless otherwise specified, after the date of such notice, unless the Vendor, within such ten (10) day period cures such default, or provides evidence sufficient to prove to the City's satisfaction that such default does not, in fact, exist. In addition to any other remedies available under law or in equity, the City shall be entitled to recover all actual damages, costs, losses and expenses incurred by the City as a result of the Vendor's default, including without limitation, cost of cover, reasonable attorneys' fees, court costs and prejudgment and post-judgment interest at the maximum lawful rate. Additionally, in the event of default by the Vendor, the City may remove the Vendor from the City's Vendor List and any Offer submitted by the Vendor may be disqualified for up to three (3) years. All rights and remedies under the Agreement are cumulative and not exclusive of any other right or remedy provided by law.

2. Termination Without Cause:

The City shall have the right to terminate the Agreement, in whole or in part, without cause any time upon thirty (30) calendar days' prior written notice. Upon receipt of a notice of termination, the Vendor shall promptly cease all further work pursuant to the Agreement, with such exceptions, if any, specified in the notice of termination. The City shall pay the Vendor, to the extent of funds appropriated or otherwise legally available for such purposes, for all products actually delivered and obligations incurred prior to the date of termination in accordance with the terms hereof.

3. Non-Appropriation:

The resulting Agreement is a commitment of the City's current revenues only. It is understood and agreed that the City shall have the right to terminate the Agreement if, for any reason, funds are not appropriated to continue this Agreement.

4. Cancellation:

The City reserves the right to cancel the Agreement for default for all or any part of the delivered portion of the deliverables if the Vendor breaches any term hereof including warranties, or becomes insolvent or commits acts of bankruptcy. Such right of cancellation is in addition to and not in lieu of any remedies which the City may have in law or in equity.

I. CLAIMS

If a claim, demand, suit or other action is asserted against the Vendor which arises under or concerns the Agreement, or which could have a material adverse effect on the Vendor's ability to perform thereunder, the Vendor shall give written notice to the City within ten (10) calendar days after receipt of notice by the Vendor. Such notice to the City shall state the date of notification of any such claim, demand, suit or other action; the names and address of the claimant(s); the basis thereof; and the name of each person against whom such claim is asserted. Such notice shall be delivered to the City Attorney at PO Box 635030, Nacogdoches, TX 75963.

J. CODES, PERMITS, LICENSES

Vendor shall comply with all federal, state and local standards, codes and ordinances, as well as other authorities that have jurisdiction pertaining to the products delivered and their application. None of the terms or provisions of the specification shall be construed as waiving any rules, regulations or requirements of these authorities. Vendor shall be responsible for obtaining all necessary permits, certificates and/or licenses to fulfill contractual obligations to the City.

K. COLLUSION

Advanced disclosures of any information to any particular bidder which gives that particular bidder any advantage over any other interested bidder in advance of the opening of bids, whether in response to advertising or an informal request for bids, made or permitted by a member of the governing body or an employee or representative thereof, will cause to void all responses to that particular bid solicitation or request.

L. COMMUNICATION

To insure the proper and fair evaluation of this bid, the City prohibits ex parte communication (e.g., unsolicited) initiated by the Respondent to the City Official or Employee evaluating or considering the Responses prior to the time an award has been made. Communication between Respondents and the City will be initiated by the appropriate City Official or Employee in order to obtain information or clarification needed to develop a proper and accurate evaluation of the Bid. Ex parte communication may be grounds for disqualifying the offending Respondent from consideration or award of the Bid then in evaluation, or any future Solicitation.

Unless otherwise specified, all requests for clarification or questions regarding a Solicitation must be directed as provided herein.

M. CONFIDENTIALITY

In order to provide the deliverables to the City, Vendor may require access to certain of the City's and/or its licensors' confidential information (including, but not limited to, inventions, employee information, trade secrets, confidential know-how, confidential business information and other information which the City or its licensors consider confidential)(collectively, "Confidential Information"). Vendor acknowledges and agrees that the Confidential Information is the valuable property of the City and/or its licensors, and any unauthorized use, disclosure, dissemination or other release of the Confidential Information will substantially injure the City and/or its licensors. The Vendor (including its employees, subcontractors, agents or representatives) agrees that it will maintain the Confidential Information in strict confidence and shall not disclose, disseminate, copy, divulge, recreate or otherwise use the Confidential Information without the prior written consent of the City, or in a manner not expressly permitted under this Agreement, unless the Confidential Information is required to be disclosed by law or as a result of an order of any court or other governmental authority with proper jurisdiction, provided the Vendor promptly notifies the City prior to disclosing such information so as to permit the City reasonable time to seek an appropriate protective order. The Vendor agrees to use protective measures no less stringent than the Vendor uses within its own business to protect its own most valuable information, which protective measures shall under all circumstances be at least reasonable measures to ensure the continued confidentiality of the Confidential Information.

N. DEFAULT

Vendor shall be in default under the Agreement if the Vendor (a) fails to fully, timely and faithfully perform any of its material obligations under the Agreement, (b) fails to fully, timely and faithfully perform any of its material obligations under any agreement Vendor has with the City, (c) fails to timely pay any fees or taxes owed to the City, (d) becomes insolvent or seeks relief under the bankruptcy laws of the United States, or (e) makes a material misrepresentation in Vendor's bid, or in any report or deliverable required to be submitted by Vendor to the City.

A Vendor who abandons or defaults the work on the Agreement and causes the City to purchase the products elsewhere may be charged the difference in cost of products, if any, and may not be considered in the re-advertisement of the service and may be rejected as an

irresponsible bidder and not considered in future Solicitations for the same type of service unless the scope of work is significantly modified.

O. DELAYS

The City may delay scheduled deliveries or other due dates by written notice to the Vendor if the City deems it is in its best interest. If such delay causes an increase in the cost of the work under the Agreement, the City and the Vendor shall negotiate an equitable adjustment for costs incurred by the Vendor in the Agreement price and execute an amendment to the Agreement. The Vendor must assert its right to an adjustment within ten (10) calendar days from the date of receipt of the notice of delay. Failure to agree on any adjusted price shall be handled under the Dispute Resolution Process specified herein. However, nothing in this provision shall excuse the Vendor from delaying the deliveries as notified.

P. DISCLOSURE OF PENDING LITIGATION:

Each Respondent shall include in its proposal a complete disclosure of any material civil or criminal litigation or pending investigation which involves the Respondent or in which the Respondent has been judged guilty.

Q. DISPUTE RESOLUTION

If either the Vendor or the City has a claim, dispute or other matter in question for breach of duty, obligations, services rendered or any warranty that arises under this Agreement, the parties shall first attempt to resolve the matter through this dispute resolution process. The disputing party shall notify the other party in writing as soon as practicable after discovering the claim, dispute or breach. The notice shall state the nature of the dispute and list the party's specific reasons for such dispute. Within ten (10) business days of receipt of the notice, both parties shall make a good faith effort, in person or through generally accepted means, to resolve any claim, dispute, breach or other matter in question that may arise out of, or in connection with, this Agreement. If the parties fail to resolve the dispute within sixty (60) days of the date of receipt of the notice of the dispute, then the parties may submit the matter to non-binding mediation upon written consent of authorized representatives of both parties in accordance with the Arbitration Rules of the American Arbitration Association or other applicable rules governing mediation then in effect. If the parties cannot resolve the dispute through mediation, then either party shall have the right to exercise any and all remedies available under law regarding the dispute.

R. EFFECTIVE DATE and TERM

This Bid shall be effective upon approval by the City and full execution of this Invitation to Bid and issuance of a City Purchase Order, and shall continue in effect until all obligations are performed in accordance with the terms and conditions herein.

S. FORCE MAJEURE

Neither party shall be liable for any default or delay in the performance of its obligations under this Agreement if, while and to the extent such default or delay is caused by acts of God, fire, riots, civil commotion, labor disruptions, sabotage, sovereign conduct, or any other cause beyond reasonable control. In the event of default or delay in performance due to any of the foregoing causes, then the time for completion of the services will be extended; provided, however, in such an event, a conference will be held within three (3) business days to establish a mutually agreeable period of time reasonably necessary to overcome the effect of such failure to perform.

T. FRAUD

Fraudulent statements by the Vendor on any bid or in any report or deliverable required to be submitted by the Vendor to the City shall be grounds for termination of the Agreement for cause by the City and may result in legal action.

U. GRATUITIES

The City may, by written notice to the Vendor, cancel the Agreement without liability if it is determined by the City that gratuities were offered or given by the Vendor or any agent or representative of the Vendor to any officer or employee of the City with the intent of securing the Agreement or securing favorable treatment with respect to awarding or amending or the making of any determinations with respect to performance of the Agreement. In the event the Agreement is cancelled by the City pursuant to this Section, the City shall be entitled, in addition to any other rights and remedies, to recover the benefits or payments to the Vendor, as a result of the gratuities.

V. INDEPENDENT CONTRACTOR

Nothing in this bid is intended to be construed as creating an employer/employee relationship, a partnership or joint venture. The Vendor's services shall be those of an independent contractor. The Vendor agrees and understands that the Agreement does not grant any rights or privileges established for employees of the City. Vendor shall not be within protection or coverage of the City's Worker Compensation Insurance, Health Insurance, Liability Insurance or any other insurance that the City, from time to time, may have in force.

W. INDEMNITY

VENDOR SHALL INDEMNIFY, HOLD HARMLESS, AND DEFEND THE CITY, ITS OFFICERS, AGENTS, AND EMPLOYEES FROM AND AGAINST ANY AND ALL CLAIMS, LOSSES, DAMAGES, CAUSES OF ACTION, SUITS, AND LIABILITY OF EVERY KIND, INCLUDING ALL EXPENSES OF LITIGATION, COURT COSTS, AND ATTORNEY'S FEES, FOR INJURY TO OR DEATH OF ANY PERSON OR FOR DAMAGE TO ANY PROPERTY ARISING OUT OF OR IN CONNECTION WITH THE WORK DONE BY THE CONTRACTOR UNDER THIS CONTRACT. SUCH INDEMNITY SHALL APPLY REGARDLESS OF WHETHER THE CLAIMS, LOSSES, DAMAGES, CAUSES OF ACTION, SUITS, OR LIABILITY ARISE IN WHOLE OR IN PART FROM THE NEGLIGENCE OF THE CITY, ANY OTHER PARTY INDEMNIFIED HEREUNDER, THE CONTRACTOR, OR ANY THIRD PARTY.

X. INFRINGEMENT

Vendor represents and warrants to the City that: (a) Vendor shall provide the City good and indefeasible title to the deliverables and (b) the deliverables supplied by the Vendor in accordance with the specifications of the Agreement shall not infringe, directly or contributory, any patent, trademark, copyright, trade secret or any other intellectual property right of any kind of any third party; that no claims have been made by an person or entity with respect to the ownership or operation of the deliverables and the Vendor does not know of any basis for any such claims. Vendor shall, at its sole expense, defend, indemnify and hold the City harmless from and against all liability, damages and costs (including court costs and reasonable fees of attorneys and other professionals) arising out of or resulting from: (a) any claim that the City's exercise anywhere in the world of the rights associated with the City's ownership, and if applicable, license rights, and its use of the deliverable infringes the intellectual property rights of any third party; or (b) Vendor's breach of any of the Vendor's representations or warranties stated in this Agreement. In the event of any such claim, the City shall have the right to monitor such claim or, at its option, engage its own separate counsel to act as co-counsel on the City's behalf. Further, Vendor agrees that the City's

specifications regarding the deliverables shall in no way diminish Vendor's warranties or obligations under this Paragraph, and the City makes no warranty that the products, development or delivery of such deliverables will not impact such warranties of Vendor.

Y. INSURANCE REQUIREMENTS

Upon request, Vendor shall provide a copy of its insurance policies to the City.

Z. INTERLOCAL AGREEMENT

Other governmental entities may be extended the opportunity to purchase from Solicitations awarded by the City, with the consent and agreement of the successful Vendor(s) and the City. Such consent and agreement shall be conclusively inferred from lack of exception to this clause in Vendor's Response. However, all parties indicate their understanding and all parties hereby expressly agree that the City is not an agent of, partner to or representative of those outside agencies or entities and that the City is not obligated or liable for any action or debts that arise out of such independently negotiated piggyback procurements.

AA. INTERPRETATION

The Agreement is intended by both parties as the final, complete and exclusive statement of the terms of their Agreement. No course of prior dealing between the parties or course of performance or usage of the trade shall be relevant to supplement or explain any term used in the Agreement. Although the Agreement may have been substantially drafted by one party, it is the intent of the parties that all provisions be construed in a manner fair to both parties, reading no provision more strictly against one party of the other. Whenever a term defined by the Uniform Commercial Code (the "UCC"), as enacted by the State of Texas, is used in the Agreement, the UCC definition shall control unless otherwise defined in the Agreement.

BB. INVALIDITY

The invalidity, illegality or unenforceability of any provision of this Agreement shall in no way affect the validity or enforceability of any other portion or provision of the Agreement. Any void provision shall be deemed severed from the Agreement and the balance of the Agreement shall be construed and enforced as if the Agreement did not contain the particular portion or provision held to be void. The parties further agree to reform the Agreement to replace the stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this section shall not prevent the entire Agreement from being void should a provision which is the essence of the Agreement be determined to be void.

CC. LIABILITY

Any person, firm or corporation party to this Agreement or Purchase Order shall be liable for all damages incurred while in the performance of the Agreement. Vendor assumes full responsibility for the terms contained herein and hereby releases, relinquishes, and discharges the City, its officers, agents and employees from all claims, demands and causes of action of any nature including the cost of defense thereof, for any injury to, including death of, any person whether that person be a third party, supplier or an employee of either of the parties hereto, and any loss of or damage to property, whether the same be that of either of the parties, caused by or alleged to have been caused by, arising out of or in connection with the issuance of the Agreement or Purchase Order to the Vendor and the negligence of the Vendor, whether or not said claims, demands and causes of action in whole or in part are covered by insurance. Certificates of insurance may be required for, but not limited to, Commercial General Liability, Business Auto Liability, Workers Compensation and Professional Liability Insurance.

DD. LIENS

Vendor shall defend, indemnify and hold the City harmless from and against any and all liens and encumbrances for all products delivered under this Agreement. At the City's request, the Vendor or its subcontractors shall provide a proper release of all liens or satisfactory evidence of freedom from liens shall be delivered to the City.

EE. MANAGEMENT

Should there be a change in ownership or management, the Agreement may be canceled unless a mutual Agreement is reached with the new owner to continue the Agreement with its present terms, conditions and pricing. The Agreement is nontransferable by either party.

FF. NOTICES

Unless otherwise specified, all notices, requests or other communications required or appropriate to be given under the Agreement shall be in writing and deemed delivered three (3) business days after postmarked if sent by US Postal Service Certified or Registered Mail, Return Receipt Requested. Notices delivered by other means shall be deemed delivered upon receipt by the addressee. Routine communications may be made by first class mail, fax, or other commercially accepted means. Notices to the Vendor shall be sent to the address specified in the Vendor's bid or at such other address as a party may notify the other in writing. Notices to the City shall be addressed to: City of Nacogdoches, PO Box 635030, Nacogdoches, TX 75963 and marked to the attention of the City Manager.

GG. OVERCHARGES

Vendor hereby assigns to the City any and all claims for overcharges associated with this Agreement which arise under the antitrust laws of the United States, 15 USCA Section 1 et seq., and/or which arise under the antitrust laws of the State of Texas, *Business and Commerce Code Ann.*, Section 15.01, et seq.

HH. PAYMENT TERMS

1. Tax Exempt Status:

The City is exempt from all federal excise, state and local taxes unless otherwise stated in this document. The City claims exemption from all sales and/or use taxes under Texas Tax Code §151.309, as amended. Texas Limited Sales Tax Exemption Certificates are furnished upon request. Vendor will not charge for such taxes. If billed, the City will not remit payment until a corrected invoice is received.

2. Invoicing Requirements:

Unless otherwise specified, all invoices shall be submitted to City of Nacogdoches, Accounts Payable, PO Box 635030, Nacogdoches, TX 75963-5030, and issued as required by the Purchase Order or Agreement. Each invoice must reference the unique Purchase Order number, and include the Vendor's complete name and remit to address. If applicable, transportation and delivery charges must be itemized on the each invoice. A copy of the bill of lading and the freight waybill must be submitted with the invoice if applicable.

3. Payment Terms:

All payments will be processed in accordance with Texas Prompt Payment Act, *Texas Government Code*, Subtitle F, Chapter 2251. The City will pay Vendor within thirty days after acceptance of good or materials delivered, or the day of receipt of a correct invoice, whichever is later. The Vendor may charge a late fee (fee shall not be greater than that permitted under the Texas Prompt Payment Act) for payments not made in accordance with this prompt payment policy; however, the policy does not apply to payments made by the City in the event: (a) there is a bona fide dispute between the City and Vendor

concerning the good delivered, that causes the payment to be late; (b) the terms of a federal agreement, grant, regulation or statute prevents the City from making a timely payment with Federal funds; (c) there is a bona fide dispute between the Vendor and a subcontractor and its suppliers concerning deliveries made, which caused the payment to be late; or (d) the invoice is not mailed to the City in strict accordance with instructions on the Purchase Order or Agreement, or other such contractual agreement.

4. Right To Audit:

The Vendor agrees that the representatives of the City shall have access to, and the rights to audit, examine, or reproduce, any and all records of the Vendor related to the performance under this Agreement. The Vendor shall retain all such records for a period of four (4) years after final payment on this Agreement or until all audit and litigation matters that the City has brought to the attention of the Vendor are resolved, whichever is longer. The Vendor agrees to refund to the City any overpayments disclosed by any such audit.

5. Firm Pricing:

The price shall remain firm for the duration of the Agreement, or any extension period, unless expressly approved in writing. No separate line item charges shall be permitted for either bidding or invoice purposes, which shall include equipment rental, demurrage, fuel surcharges, delivery charges, and costs associated with obtaining permits or any other extraneous charges. Vendor further certifies that the prices in the bid have been arrived at independently without consultation, communication, or agreement for the purpose of restricting competition, as to any matter relating to such fees with any other firm or with any competitor.

6. Price Warranty:

The Vendor warrants the prices quoted are not materially higher than the Vendors current prices on orders by others for like deliverables under similar terms of purchase. In addition to any other remedy available, the City may deduct from any amounts owed to the Vendor, or otherwise recover, any amounts paid for items materially in excess of the Vendor's current prices on orders by others for like deliverables under similar terms of purchase.

7. Travel Expenses:

All travel, lodging and/or per diem expenses associated with providing the products specified must be included in the original Bid and resulting Purchase Order. All travel expenses are subject to review by the City and documentation of actual itemized expenses may be requested. No reimbursement will be made without prior authorization, or for expenses not actually incurred. Airline fares in excess of coach or economy will not be reimbursed.

II. PERSONAL INTEREST

No officer, employee, independent consultant or elected official of the City who is involved in the development, evaluation or decision-making process of this Solicitation shall have a financial interest, direct or indirect, in the resulting Agreement. Any willful violation of this Paragraph shall constitute impropriety in office, and any officer or employee guilty thereof shall be subject to disciplinary action up to and including dismissal. In the event a member of the governing body or an appointed board or commission of the City belongs to a cooperative association, the City may purchase products from the association only if no member of the governing body, board or commission will receive pecuniary benefit from the purchase, other than as reflected as in increase in dividends distributed generally to members of the association. Any violation of this provision with the knowledge, expressed or implied, by the Vendor shall render the Agreement voidable by the City. Nevertheless, the City may obtain the products under the Agreement if a conflict of interest affidavit is filed and the Council member recuses his/herself.

JJ. PRIORITY OF DOCUMENTS

In the event there are inconsistencies between the general provisions and special (or other) terms and conditions contained herein, the latter will take precedence.

KK. PUBLIC INFORMATION

All Responses are subject to release as public information unless the Response or specific parts of the Response can be shown to be exempt from the Texas Public Information Act. Respondents are advised to consult with their legal counsel regarding disclosure issues and take the appropriate precautions to safeguard trade secrets or any other proprietary information. The City assumes no obligation or responsibility for asserting legal arguments on behalf of potential Respondents.

If a Respondent believes that a Response or parts of a Response are confidential, then the Respondent shall so specify. The Respondent shall stamp in bold red letters the term "**CONFIDENTIAL**" on that part of the Response, which the Respondent believes to be confidential. Vague and general claims as to confidentiality shall not be accepted. All Responses and parts of Responses that are not marked as confidential will be automatically considered public information.

LL. REIMBURSEMENTS

There is no expressed or implied obligation for the City of Nacogdoches to reimburse responding firms for any expenses incurred in preparing bids in response to this Invitation to Bid and the City will not reimburse responding firms for these expenses, nor will the City pay any subsequent costs associated with the provision of additional information or presentation, or to procure a contract for these products.

MM. RESERVATIONS

The City reserves the right to request clarification or additional information specific to any response after all Responses have been received and the Solicitation due date has passed. Additionally, the City reserves the right to accept or reject all or part of any Response, waive any formalities or technical inconsistencies, delete any requirement or specification from the Solicitation, or terminate the Solicitation when deemed to be in City's best interest.

NN. RESPONSES BECOME PROPERTY OF THE CITY:

Submissions received in response to a Solicitation become the sole property of the City.

OO. RIGHT TO ASSURANCES

In the event the City, in good faith, has reason to question the intent of the Vendor to perform, the City may demand written assurances of the intent to perform. In the event no written assurance is given within the time specified, the City may treat this failure as an anticipatory repudiation of the Agreement.

PP. SEVERABILITY

The invalidity or unenforceability of any provision herein shall not affect the validity or enforceability of any other provision.

QQ. SURVIVABILITY OF OBLIGATIONS

All provisions of the Agreement that impose continuing obligations on the parties, including but not limited to the warranty, indemnity and confidentiality obligations of the parties, shall survive the expiration or termination of the Agreement.

RR. VENDOR'S OBLIGATION:

Vendor shall fully and timely provide all deliverables described in this Solicitation, Vendor's bid must be in strict accordance with the terms, covenants and conditions of the Agreement and all applicable federal, state and local laws, rules and regulations.

SS. VENUE

This Agreement is made under and shall be governed by the laws of the State of Texas, including when applicable, the UCC as adopted in Texas, VTCA, *Business & Commerce Code*, Chapter 1, excluding any rule or principle that would refer to and apply the substantive law of another state or jurisdiction. This Agreement is fully performable in Nacogdoches, Texas, and the venue for any action related to this Agreement shall be Nacogdoches, Texas. All issues arising from this Agreement shall be resolved in the courts of Nacogdoches County, Texas and the parties agree to submit to the exclusive personal jurisdiction of such courts. The foregoing, however, shall not be construed or interpreted to limit or restrict the right or the ability of the City to seek and secure injunctive relief from any competent authority as contemplated herein and does not waive the City's defense of sovereign immunity.

TT. WAIVER

No claim or right arising out of a breach of the Agreement can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party. No waiver by either the Vendor or the City of any one or more events of default by the other party shall operate as, or be construed to be, a permanent waiver of any rights or obligations under the Agreement, or an express or implied acceptance of any other existing or future default(s), whether of similar or different character.

UU. WITHDRAWAL

Respondents may request withdrawal of a sealed bid prior to the scheduled bid opening time, provided the request for withdrawal is submitted to the City in writing.

SPECIAL TERMS and CONDITIONS

A. TERM OF AGREEMENT

1. Original Term:

The initial term of the agreement shall become effective from date of acceptance and approval by the City of Nacogdoches. It shall remain in full force and effect for twelve (12) months.

2. Renewal Term:

Upon completion of the term of the original agreement and upon mutual agreement of both parties, the original agreement may be renewed for up to two (2) additional one (1) years [three (3) years total]. The renewal will be under the same terms and conditions as the original agreement. In the event a new agreement cannot be executed at the anniversary date of the original term or any renewal term, the agreement may be renewed month-to-month until a new agreement is executed.

B. ESCALATION/DE-ESCALATION

The Parties agree that the supplier has based its bid on certain pricing assumptions of materials to be incorporated into the agreement. However, the market for products that are specified herein may be considered by both parties to be volatile, where sudden price increases could occur that are beyond the control of the supplier, despite its best efforts.

Vendor and City shall agree quarterly on an adjusted price for the commodity or commodities. A price adjustment can be performed whereby, the initial "Bid Price" or subsequent "New Price", shall be adjusted by the percent change, up or down, as indicated by the price indices as provided by the United States Bureau of Labor Statistics for the commodity or commodities. The percent change can be adjusted by the average quarterly commodity change percent.

Supplier(s) are required to give a thirty (30) day written notice before price increases are effective.

Any agreement awarded with an escalation clause shall be subject to de-escalation provisions in the same or similar manner in the event of cost reductions.

C. BID LITERATURE

Respondents must submit with their bid the latest printed literature and detailed specifications on equipment or material the Bidder proposes to furnish. Any catalog, brand name, or manufacturer's reference used is considered to be descriptive-not restrictive and is indicative of the type and quality the City desires to purchase.

D. COMMODITIES/EQUIPMENT

1. Material Safety Data Sheets: Under the "Hazardous Communication Act," commonly known as the "Texas Right to Know Act," a Vendor must provide to the City WITH EACH DELIVERY Material Safety Data Sheets, which are applicable to hazardous substances as defined in the Act.
2. Assembly: Products provided under this Agreement shall be completely assembled, adjusted, and all equipment including standard and supplemental equipment installed, and made ready for continuous operation unless otherwise specified in bid document.
3. Goods: Products furnished shall be the latest improved model in current production, as offered to commercial trade, and shall be of quality workmanship and material. The Vendor represents that all products offered shall be new. Unless otherwise specified, used, shopworn, demonstrator, prototype or discontinued models are not acceptable.
4. Packaging of Deliverables: Vendor must package deliverables in accordance with good commercial practice and shall include a packing list showing the description of each item, the quantity and the unit price. Unless otherwise provided in writing by the City, each shipping container shall be clearly and permanently marked with the Vendor's name and address, and the City's name, address and Purchase Order number. Vendor shall bear all costs of packaging. Deliverables must be suitably packed to secure lowest transportation cost, conform with requirements of common carriers and ensure safe delivery. The City's count or weight shall be final and conclusive on shipments not accompanied by packing lists.
5. Warranty: The products specified shall be warranted against defects in material or workmanship for a period of not less than twelve (12) months from date of acceptance by the City. If the manufacturer's warranty exceeds twelve (12) months, then the manufacturer's warranty shall be in effect. Vendor shall furnish a copy of the manufacturer's warranty at the time of delivery.
6. No Limitation of Manufacturers' Warranties: Vendor may not limit, exclude or disclaim any warranty provided by manufacturer.
7. Special Tools and Equipment: If the price stated in the Offer includes the cost of any special tooling or special test equipment fabricated or required by the Vendor to fulfill the Agreement, such special tooling and/or equipment and all process sheets associated thereto shall become the property of the City and shall be identified by the Vendor as such.

E. DELIVERY

1. Delivery Terms, Transportation Charges, FOB: Deliverables shall be shipped FOB point of delivery unless otherwise specified on the Purchase Order or in the Solicitation. The Vendor's price shall be deemed to include all delivery and transportation charges. The City shall have the right to designate what method of transportation shall be used to ship deliverables. The place of delivery shall be specified in the Purchase Order.
2. No Substitutions or Cancellations: Unless specifically permitted in writing by the City, no substitutions or cancellations shall be acceptable.
3. Notice of Delay In Delivery: If a delay in delivery is anticipated, Vendor shall give written notice to the City. The City has the right to extend the delivery time/service date, or to cancel the Purchase Order or Agreement. Vendor shall keep the City advised at all times of the status of the order. Default in promised delivery or failure to meet specifications authorizes the City to procure the products from an alternate source and charge the full increase, if any, in cost and handling to defaulting Vendor. Default on delivery may result in legal action and recourse.
4. Delivery Location, Hours, Days, Holidays: Unless otherwise specified, all deliveries must be made to City of Nacogdoches, between the hours of 8AM and 5PM (CST), Monday through Friday except regularly observed state and federal holidays. Receipt of products does not signify acceptance. If goods are delivered to the incorrect location, Vendor is responsible for all expenses associated delivering items to their correct destination.
5. No Shipment under Reservation: Vendor is not authorized to ship deliverables under reservation and no tender of bill of lading will operate as a tender of deliverables.
6. Title/Risk of Loss: Title to and risk of loss of the deliverables shall pass to the City only when the City actually receives and accepts the deliverables (no delivery, no sale).
7. Right of Inspection And Rejection: The City expressly reserves all rights under law, including but not limited to, the Uniform Commercial Code, to inspect the deliverables at delivery or at a reasonable time subsequent to delivery, and to reject defective or non-conforming deliverables. The Vendor will be notified if the products are not in compliance with the required specifications. If any products are rejected as non-compliant, the required products may be procured from an alternate source, and the Vendor may be charged the full increase in cost, if any. If the City has the right to inspect the Vendor's or the Vendor's subcontractors facilities, or the deliverables at the Vendor's or the Vendor's subcontractors premises, the Vendor shall furnish or shall cause to be furnished without additional charge all reasonable facilities and assistance to the City to facilitate such inspection.
8. Acceptance of Incomplete or Non-Conforming Goods: If, instead of requiring immediate correction or removal and replacement of defective or non-conforming deliverables, the City prefers to accept such deliverables, the City may do so. The Vendor shall pay all claims, losses and damages attributable to the City's evaluation of and determination to accept such defective or non-conforming deliverables. If any such acceptance occurs prior to final payment, the City may deduct such amounts as are necessary to compensate the City for the diminished value of the defective or non-conforming deliverables. If discovery that the deliverables are defective or non-conforming occurs after final payment, Vendor may be required to refund such amounts to the City.

F. REGULATIONS and STANDARDS

The products provided shall meet or exceed all Federal and State of Texas safety, health, lighting, and noise regulations and standards in effect and applicable to equipment furnished at the time of manufacture.

G. SAMPLES

Samples of items shall be furnished, if requested by the City, without charge, and if not destroyed, shall upon request be returned at the bidder's expense.

H. VENDORS SALES TERRITORY

City waives any responsibility or liability for Respondents bidding products "outside" their authorized territory by manufacturer or product line. Any Respondent bidding outside an approved manufacturer line does so at his own risk and discretion. Respondents shall comply with all sales terms according to the original bid and Purchase Order regardless of claim or dispute with product line representatives.

I. WORKMANSHIP

All parts not specifically mentioned which are necessary for the unit to be complete and ready for operation or which are normally furnished as standard equipment shall be furnished by the successful bidder. All parts shall conform in strength, quality, and workmanship to the accepted standards of the industry.

TECHNICAL SPECIFICATIONS

A. TYPE D HOT MIX

Texas Department of Transportation Standard Specification Item #340, latest edition
The material will be picked up at Suppliers plant and loaded into City vehicles.

B. TYPE C HOT MIX

Texas Department of Transportation Standard Specification #255, latest edition
The material will be picked up at Suppliers plant and loaded into City vehicles.

C. TYPE A, GRADE 2, BASE MATERIAL

Texas Department of Transportation Standard Specification 247, latest edition
The material will be picked up at Suppliers plant and loaded into City vehicles.

D. SUPPLEMENTAL MATERIALS

Please submit a list of materials offered by the Supplier with description, unit price and unit of measure. These materials may be purchased by the City during the term of this contract at the prices stipulated; however, these supplemental materials and prices will not be used in the evaluation of the bids received.

QUOTATION FORM

A. DELIVERY REQUIREMENTS

Respondent will show exact cost to load product in City vehicles.

B. DISCOUNTS

Cash discounts will not be considered in determining award; all cash discounts offered will be taken if earned. Respondent will list and deduct all discounts not based on early payment from prices quoted.

C. **QUANTITIES**

Quantities indicated below are estimated based upon the best available information. The City reserves the right to increase or decrease the quantities by any amount deemed necessary to meet its needs without any adjustments in the unit prices bid.

D. **UNIT PRICES**

Prices should be itemized. Unit prices shall be set to no more than four (4) decimal places. The City reserves the right to award by item or by total bid. If there are discrepancies between unit prices and extension, the unit price will prevail.

E. **VALIDITY OF PRICING**

Pricing will be considered firm for acceptance for a minimum of 60 days after the due date unless otherwise specified in the Solicitation. The validity period may be extended beyond that date on agreement of parties.

F. **QUOTATION**

All Responses must be submitted on the form(s) provided below:

<u>Item #</u>	<u>Quantity</u>	<u>UOM</u>	<u>Description</u>	<u>Unit Price</u>	<u>Total Price</u>
1.	Est. 2,000 ton		Type D Hot Mix	\$ <u>112.00</u>	\$ <u>224,000.00</u>
2.	Est. 1,500 ton		Type C Hot Mix	\$ <u>112.00</u>	\$ <u>168,000.00</u>
3.	Est. 1,000 ton		Type A, Grade 2, Base Material	\$ <u>49.50</u>	\$ <u>49,500.00</u>
4.	Unknown		Supplemental Materials	Attach Price List	

G. **PRODUCTION PLANT**

All responses must indicate the location of the Suppliers Production Plant:

1616 S. University Dr.
Street Address

Nacogdoches, Tx 75961
City, State, Zip

CERTIFICATION and ACKNOWLEDGMENT

By submitting a Proposal in response to this solicitation, the Respondent certifies that at the time of submission, the following statements required by State of Texas purchasing laws or the Governor's executive orders are true:

1. Respondent has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with this Contract.

2. Respondent represents and warrants that it has no actual or potential conflicts of interest in the goods and or services described in the scope of work to this contract.

3. Antitrust. Pursuant to 15 U.S.C. §1, et seq. and Tex. Bus. & Comm. Code §15.01, et seq. neither the Respondent nor the firm, corporation, partnership, or institution represented by the Respondent, or anyone acting for such a firm, corporation or institution has violated the antitrust laws of this state, federal antitrust laws, nor communicated directly or indirectly the bid made to any competitor or any other person engaged in such line of business.

4. Terrorism Watch List. Respondent represents and warrants that it does not do business with Iran, Sudan or a foreign terrorist organization as prohibited by Texas Government Code 2252.152. Respondent certifies that it is not listed on the federal government's terrorism watch list as described in Executive Order 13224.

5. Convictions. Under Sections 2155.006, 2155.0061 and 2261.053 of the Texas Government Code, Respondent certifies that it is not ineligible to receive the specified contract and may be terminated and payment withheld if this certification is inaccurate. These sections prohibit contracts that include proposed financial participation by an individual or business entity who has been convicted in the past five years of (a) violating a federal law or assessed a penalty in connection with a contract involving relief for Hurricane Rita, Hurricane Katrina, or any other disaster, as defined by §418.004, Gov't Code, occurring after September 24, 2005; and (b) of any offense related to the direct support or promotion of human trafficking.

6. COVID Vaccinations. Respondent certifies that it does not require its customers to provide any documentation certifying the Customer's COVID-19 vaccination or post-transmission recovery on entry to, or to receive service from the Respondent's business.

7. Boycotts. (a) To the extent this Contract is considered a Contract for goods or services subject to § 2270.002 Texas Government Code, Respondent verifies that it: (i) does not boycott Israel; and (ii) will not boycott Israel during the term of this Contract.

(b) To the extent this Contract has a value of \$100,000 or more and Respondent is an organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations, that exists to make a profit that employs 10 or more full time employees, Respondent certifies that it: (i) does not and will not boycott energy companies during the term of the contract (See *Texas Government Code 2274.002, et seq.*); and (ii) does not and will not discriminate against a firearm entity or firearm trade association (See *Texas Government Code 2274.002, et seq.*).

If between the time of Proposal submission and time of award, the truthfulness of any of the foregoing changes, the Respondent will notify the City of Nacogdoches Purchasing Agent. Failure to do so may result in terminating any contract or purchase order issued pursuant to this bid.

DISCLOSURE OF INTERESTED PARTIES The law states that a governmental entity may not enter into certain contracts with a nonexempt business entity unless the business entity submits a disclosure of interested parties to the governmental entity. By submitting a Proposal in response to this solicitation, the Respondent agrees to comply with HB 1295, Government Code 2252.908. Respondent agrees to provide the City Secretary of the City of Nacogdoches, and/or requesting department, the "Certificate of Interested Parties," Form 1295 as required, within ten (10) business days from notification of pending award, renewal, amended or extended contract.

Signed By: [Signature] Title: General Manager

Typed Name: Eddie Updike Company Name: Longview Asphalt, Inc.

Phone No.: 903-758-0065 Fax No.: _____

Email: eupdike@longviewasphalt.com

Bid Address: P.O. Box 3661 Longview Tx 75606
P.O. Box or Street City State Zip

Order Address: 1616 S. University Dr. Nacogdoches Tx 75961
P.O. Box or Street City State Zip

Remit Address: P.O. Box 3661 Longview Tx 75606
P.O. Box or Street City State Zip

Federal Tax ID No.: 75-1667637

DUNS No.: _____

Date: 10.16.24

FOR CITY USE ONLY

Approved By: _____ Date: _____
City Manager, City of Nacogdoches



INVITATION TO BID

ANNUAL COMMODITY REQUIREMENTS
for
INDEFINITE DELIVERY
and
INDEFINITE QUANTITIES

Bid # 25-10-104

ASPHALT PRODUCTS
and
LIMESTONE BASE

Bids must be received before:
Thursday, October 17, 2024
2:00 PM
City Hall Conference Room 203
202 East Pilar Street
Nacogdoches, Texas 75961

Refer Inquiries To:

Case Opperman, PE – Director of Public Works/City Engineer
City of Nacogdoches
(936) 559-2515
Email: oppermanc@nactx.us

TABLE OF CONTENTS

INTRODUCTION

DEFINITIONS

INSTRUCTIONS to BIDDERS

STANDARD TERMS and CONDITIONS

SPECIAL TERMS and CONDITIONS

TECHNICAL SPECIFICATIONS

QUOTATION FORM

CERTIFICATION and ACKNOWLEDGMENT

INTRODUCTION

Bids are solicited for **Asphalt Products and Limestone Base** with the following definitions, term and conditions of bidding. Upon award by the City, this Bid will shall become the working contract for the Parties.

A. **NOTICE**

Sealed bids are due at **2:00 PM on Thursday, October 17, 2024** after which time all qualified bids will be opened and publicly read aloud at **Conference Room 203, 202 East Pilar Street, Nacogdoches, Texas 75961**. Bids received after the specified deadline will be returned unopened.

Sealed bids shall be clearly marked with the bid number and title and addressed to the City of Nacogdoches – Engineering Department. Bids shall be delivered using one of the following:

Hand-deliver to:

202 E. Pilar St., Room 239
Nacogdoches, TX 75961

Mail to:

Attn: Case Opperman
Engineering Department
PO Box 635030
Nacogdoches, TX 75963

Ship to (FedEx, UPS, DHL):

Attn: Case Opperman
Engineering Department
202 E. Pilar St., Room 239
Nacogdoches, TX 75961

Vendors may receive notice of bids from the City of Nacogdoches from a variety of channels. Approved methods of dissemination include: www.civcastusa.com or on the City website at <https://www.nactx.us/bids.aspx>. The receipt of solicitations through any other means may result in the receipt of incomplete specifications or addenda which could ultimately render your bid non-compliant. City of Nacogdoches accepts no responsibility for the receipt or notification of solicitations through any other source.

B. **QUESTIONS and INQUIRIES**

Questions and inquiries about this Solicitation shall be submitted in writing to the following individual:

Case Opperman, PE
Director of Public Works/City Engineer
oppermanc@nactx.us

The deadline for written questions is **October 14, 2024 at 5:00 PM**.

C. **SCHEDULE OF IMPORTANT DATES**

The tentative schedule for this Solicitation is as follows:

Release ITB to Vendors	October 2, 2024
Advertisement Dates	October 2, 2024
	October 9, 2024
Deadline for Questions and Inquiries	October 14, 2024
ITB Due Date	October 17, 2024
Earliest Award by City	November 2024

DEFINITIONS

The following definitions shall be used to identify terms throughout this invitation to bid:

A. AGREEMENT/CONTRACT

A mutually binding legal document obligating the Vendor to furnish the products specified within this solicitation and obligating the City to pay for the goods as specified. This may be an authorized purchase order or this Invitation to Bid.

B. BID/RESPONSE/OFFER/QUOTATION

A complete, properly signed response to this solicitation that, if accepted, would bind the Respondent to perform the resulting contract.

C. BIDDER/RESPONDENT/OFFERER

The Respondent identified throughout the solicitation that they consider themselves qualified to provide the products specified herein, and are interested in making an offer to provide the goods to the City.

D. CITY

The City of Nacogdoches, located in Nacogdoches County, Texas.

E. CITY COUNCIL – The elected officials of the City of Nacogdoches, Texas given the authority to exercise such powers and jurisdiction of all City business as conferred by the City Charter and State Constitution and Laws.

F. PIGGYBACK CONTRACT

A contract or agreement that has been competitively bid in accordance with State of Texas statutes, rules, policies and procedures and has been extended for the use of state and local agencies that have entered (or will) into an Interlocal Agreement with the City.

G. PURCHASE ORDER

A purchase order records the financial obligation of the City to pay for products properly received; therefore, a purchase order is also required for all contracts with an expenditure of funds entered into by the City Manager or City Council.

H. SOLICITATION/INVITATION TO BID

This Solicitation document issued by the City containing terms, conditions and specifications for the products to be procured.

I. VENDOR/CONTRACTOR

Person or business enterprise providing products to the City as fulfillment of obligations arising from an agreement or purchase order.

INSTRUCTION TO BIDDERS

Qualified bidders interested in responding to this Solicitation must submit the following information as part of their bid response. Failure to provide any information requested in this Solicitation may result in disqualification of the bid response.

A. **FORMS**

All Responses must be submitted on the form(s) provided by the City, and accompanied by all required attachments. All figures must be written in ink or typewritten. Mistakes may be crossed out, corrections inserted adjacent thereto and initiated in ink by the person certifying the bid.

B. **RECEIPT OF BIDS**

Sealed bids must be received by the City prior to the date and time specified. The mere fact that the bid was dispatched will not be considered; the bidder must insure that the bid is actually delivered. Bids received after that time will be returned unopened to the Respondent. Bid responses submitted via fax or email are not acceptable.

C. **CERTIFICATION**

This Solicitation includes a certification page. Respondent must:

1. Furnish complete name, mailing address, telephone number and email of the individual duly authorized to execute contractual documents on behalf of the Respondent.
2. Furnish name of individual(s), along with respective telephone numbers and email addresses, who will be responsible for answering all questions.
3. Certify that they have not conspired with any other potential Respondents in any manner to attempt to control competitive pricing.
4. Certify that they are duly qualified, capable and otherwise bondable business entity not in receivership or contemplating same, and has not filed bankruptcy.

D. **EXCEPTIONS**

Any deviations from terms, conditions or specifications contained herein must be clearly indicated in the Response to this Solicitation in writing at or before the due date and time. Any deviations or exceptions are subject to review by the City and may deem the Response disqualified or non-responsive. If no exceptions are stated, it will be understood that all general terms and conditions and specific requirements will be complied with, without exception.

E. **TAX EXEMPT**

Respondents bid prices must be net, exclusive of taxes. The City is exempt from State Retail Tax and Federal Excise Tax.

F. **DISCLOSURE OF INTERESTED PARTIES**

Contracting hereunder may require compliance with §2252.908 Texas Government Code/Disclosure of Interested Parties for contracts that (1) require an action or vote by the City Council before the contract may be signed; or (2) has a value of at least \$1 million. The law provides that a governmental entity may not enter into certain contracts with a business entity unless the business entity submits a disclosure of interested parties to the governmental entity at the time the business entity submits the signed contract to the governmental entity or state agency.

The process as implemented by the Texas Ethics Commission ("TEC") is as follows:

1. The disclosure of interested parties must be performed using the [Texas Ethics Commission's electronic filing application](#) listing each interested party of which the business entity is aware on Form 1295, obtaining a certification of filing number for this form from the TEC, and printing a copy of it to submit to the City.
2. The copy of Form 1295 submitted to the City must be notarized and contain the unique certification number from the TEC. The form must be filed with the City pursuant to §2252.908 Texas Government Code, "at the time the business entity submits the signed contract" to the City.

The City, in turn, will submit a copy of the disclosure form to the TEC not later than the 30th day after the date the City receives the disclosure of interested parties from the business entity.

STANDARD TERMS and CONDITIONS

A. ACCEPTANCE

Acceptance is deemed to have occurred upon the latter of the following: the Vendor's signature on this Invitation to Bid or approval by the City Council, or their designee. A City of Nacogdoches Purchase Order is required prior to the delivery of any products provided to the City.

B. ABSENCE of PURCHASE ORDER or AGREEMENT

The City is not responsible for delivery of any commodities or equipment without a proper Purchase Order.

C. ADDENDA

If it becomes necessary to revise any part of this bid, prior to the due date and time, a written addendum will be provided to all Bidders. The City is not bound by any oral representations, clarifications, or changes made in the written specification by the City's employees, unless such clarification of change is provided to Bidders in written addendum form from the City.

Addenda will be transmitted to all that are known to have received a copy of the bid documents and specifications. However, it shall be the sole responsibility of the Bidder to verify issuance of any addenda and to check all avenues of document availability prior to the opening date and time. Bidder shall provide written acknowledgment of all addenda.

D. ADVERTISING and PUBLICITY

Vendor shall not advertise or otherwise publicize, without the City's prior written consent, the fact that the City has entered into the Agreement, except to the extent required by applicable law.

E. ASSIGNMENTS

The Agreement shall be binding upon and inure to the benefit of the City and the Vendor, and their respective successors and assignees, provided however, that no right or interest in the Agreement shall be assigned and no obligation shall be delegated by the Vendor without the prior written consent of the City. Any attempted assignment or delegation by the Vendor shall be void unless made in conformity with this Paragraph. The Agreement is not intended to confer any rights or benefits on any person, firm or entity not a party hereto; it being the intention of the parties that there be no third party beneficiaries to the Agreement.

F. AWARD of CONTRACT

A Contract may be awarded to either the lowest responsible bidder or the bidder who provides goods or materials at the best value for the City. In determining the best value for the City, the City may consider, but is not necessarily limited to, the following factors:

- a. conformity to specifications;
- b. the purchase price, including payment discount terms;
- c. the reputation of the bidder and of the bidder's goods or services;
- d. the quality of the bidder's goods or services;
- e. the extent to which the goods or services meet the City's needs;
- f. the bidder's past relationship with the City;
- g. the impact on the ability of the City to comply with laws and rules relating to contracting with historically underutilized businesses and nonprofit organizations employing persons with disabilities;
- h. delivery terms;
- i. payment terms;
- j. availability of repair and maintenance parts;
- k. financial condition;
- l. products or services that have a lesser or reduced effect on human health and the environment when compared with competing products and services that serve the same purpose. This comparison may consider raw materials acquisition, product, manufacturing, packaging, distribution, reuse, operation, maintenance, or disposal of the product or service;
- m. the total long-term cost to the City to acquire the bidder's goods or services; and
- n. any relevant criteria specifically listed in this request for bid.

Although the cost of products to be provided is an essential part of the Bid, the City is not obligated to award a contract on the sole basis of cost. The City reserves the right to award multiple contracts as it deems necessary or desirable.

Pursuant to Local Government Code 271.9051, if the bid is less than \$500,000 and the City Council determines that a local bidder whose principal place of business is in the City offers the City the best combination of contract price and additional economic development opportunities for the City created by the contract award, including the employment of residents of the municipality and increased tax revenues to the municipality, the city **may** award the bid to the local bidder whose bid is within 5% of the lowest bid.

Pursuant to Local Government Code 271.905, if the City Council determines that a local bidder whose principal place of business is in the City offers the City the best combination of contract price and additional economic development opportunities for the City created by the contract award, including the employment of residents of the municipality and increased tax revenues to the municipality, the city **may** award the bid to the local bidder whose bid is within 3% of the lowest bid.

G. BUSINESS PRACTICES

Minority business enterprises and/or historically underutilized businesses will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, creed, sex, or national origin in consideration for an award.

H. CANCELLATION or TERMINATION

1. Termination For Cause:

In the event of default by the Vendor, the City shall have the right to terminate the Agreement for cause, by written notice effective ten (10) calendar days, unless otherwise specified, after the date of such notice, unless the Vendor, within such ten (10) day period cures such default, or provides evidence sufficient to prove to the City's satisfaction that such default does not, in fact, exist. In addition to any other remedies available under law or in equity, the City shall be entitled to recover all actual damages, costs, losses and expenses incurred by the City as a result of the Vendor's default, including without limitation, cost of cover, reasonable attorneys' fees, court costs and prejudgment and post-judgment interest at the maximum lawful rate. Additionally, in the event of default by the Vendor, the City may remove the Vendor from the City's Vendor List and any Offer submitted by the Vendor may be disqualified for up to three (3) years. All rights and remedies under the Agreement are cumulative and not exclusive of any other right or remedy provided by law.

2. Termination Without Cause:

The City shall have the right to terminate the Agreement, in whole or in part, without cause any time upon thirty (30) calendar days' prior written notice. Upon receipt of a notice of termination, the Vendor shall promptly cease all further work pursuant to the Agreement, with such exceptions, if any, specified in the notice of termination. The City shall pay the Vendor, to the extent of funds appropriated or otherwise legally available for such purposes, for all products actually delivered and obligations incurred prior to the date of termination in accordance with the terms hereof.

3. Non-Appropriation:

The resulting Agreement is a commitment of the City's current revenues only. It is understood and agreed that the City shall have the right to terminate the Agreement if, for any reason, funds are not appropriated to continue this Agreement.

4. Cancellation:

The City reserves the right to cancel the Agreement for default for all or any part of the delivered portion of the deliverables if the Vendor breaches any term hereof including warranties, or becomes insolvent or commits acts of bankruptcy. Such right of cancellation is in addition to and not in lieu of any remedies which the City may have in law or in equity.

I. CLAIMS

If a claim, demand, suit or other action is asserted against the Vendor which arises under or concerns the Agreement, or which could have a material adverse effect on the Vendor's ability to perform thereunder, the Vendor shall give written notice to the City within ten (10) calendar days after receipt of notice by the Vendor. Such notice to the City shall state the date of notification of any such claim, demand, suit or other action; the names and address of the claimant(s); the basis thereof; and the name of each person against whom such claim is asserted. Such notice shall be delivered to the City Attorney at PO Box 635030, Nacogdoches, TX 75963.

J. CODES, PERMITS, LICENSES

Vendor shall comply with all federal, state and local standards, codes and ordinances, as well as other authorities that have jurisdiction pertaining to the products delivered and their application. None of the terms or provisions of the specification shall be construed as waiving any rules, regulations or requirements of these authorities. Vendor shall be responsible for obtaining all necessary permits, certificates and/or licenses to fulfill contractual obligations to the City.

K. COLLUSION

Advanced disclosures of any information to any particular bidder which gives that particular bidder any advantage over any other interested bidder in advance of the opening of bids, whether in response to advertising or an informal request for bids, made or permitted by a member of the governing body or an employee or representative thereof, will cause to void all responses to that particular bid solicitation or request.

L. COMMUNICATION

To insure the proper and fair evaluation of this bid, the City prohibits ex parte communication (e.g., unsolicited) initiated by the Respondent to the City Official or Employee evaluating or considering the Responses prior to the time an award has been made. Communication between Respondents and the City will be initiated by the appropriate City Official or Employee in order to obtain information or clarification needed to develop a proper and accurate evaluation of the Bid. Ex parte communication may be grounds for disqualifying the offending Respondent from consideration or award of the Bid then in evaluation, or any future Solicitation.

Unless otherwise specified, all requests for clarification or questions regarding a Solicitation must be directed as provided herein.

M. CONFIDENTIALITY

In order to provide the deliverables to the City, Vendor may require access to certain of the City's and/or its licensors' confidential information (including, but not limited to, inventions, employee information, trade secrets, confidential know-how, confidential business information and other information which the City or its licensors consider confidential)(collectively, "Confidential Information"). Vendor acknowledges and agrees that the Confidential Information is the valuable property of the City and/or its licensors, and any unauthorized use, disclosure, dissemination or other release of the Confidential Information will substantially injure the City and/or its licensors. The Vendor (including its employees, subcontractors, agents or representatives) agrees that it will maintain the Confidential Information in strict confidence and shall not disclose, disseminate, copy, divulge, recreate or otherwise use the Confidential Information without the prior written consent of the City, or in a manner not expressly permitted under this Agreement, unless the Confidential Information is required to be disclosed by law or as a result of an order of any court or other governmental authority with proper jurisdiction, provided the Vendor promptly notifies the City prior to disclosing such information so as to permit the City reasonable time to seek an appropriate protective order. The Vendor agrees to use protective measures no less stringent than the Vendor uses within its own business to protect its own most valuable information, which protective measures shall under all circumstances be at least reasonable measures to ensure the continued confidentiality of the Confidential Information.

N. DEFAULT

Vendor shall be in default under the Agreement if the Vendor (a) fails to fully, timely and faithfully perform any of its material obligations under the Agreement, (b) fails to fully, timely and faithfully perform any of its material obligations under any agreement Vendor has with the City, (c) fails to timely pay any fees or taxes owed to the City, (d) becomes insolvent or seeks relief under the bankruptcy laws of the United States, or (e) makes a material misrepresentation in Vendor's bid, or in any report or deliverable required to be submitted by Vendor to the City.

A Vendor who abandons or defaults the work on the Agreement and causes the City to purchase the products elsewhere may be charged the difference in cost of products, if any, and may not be considered in the re-advertisement of the service and may be rejected as an

irresponsible bidder and not considered in future Solicitations for the same type of service unless the scope of work is significantly modified.

O. DELAYS

The City may delay scheduled deliveries or other due dates by written notice to the Vendor if the City deems it is in its best interest. If such delay causes an increase in the cost of the work under the Agreement, the City and the Vendor shall negotiate an equitable adjustment for costs incurred by the Vendor in the Agreement price and execute an amendment to the Agreement. The Vendor must assert its right to an adjustment within ten (10) calendar days from the date of receipt of the notice of delay. Failure to agree on any adjusted price shall be handled under the Dispute Resolution Process specified herein. However, nothing in this provision shall excuse the Vendor from delaying the deliveries as notified.

P. DISCLOSURE OF PENDING LITIGATION:

Each Respondent shall include in its proposal a complete disclosure of any material civil or criminal litigation or pending investigation which involves the Respondent or in which the Respondent has been judged guilty.

Q. DISPUTE RESOLUTION

If either the Vendor or the City has a claim, dispute or other matter in question for breach of duty, obligations, services rendered or any warranty that arises under this Agreement, the parties shall first attempt to resolve the matter through this dispute resolution process. The disputing party shall notify the other party in writing as soon as practicable after discovering the claim, dispute or breach. The notice shall state the nature of the dispute and list the party's specific reasons for such dispute. Within ten (10) business days of receipt of the notice, both parties shall make a good faith effort, in person or through generally accepted means, to resolve any claim, dispute, breach or other matter in question that may arise out of, or in connection with, this Agreement. If the parties fail to resolve the dispute within sixty (60) days of the date of receipt of the notice of the dispute, then the parties may submit the matter to non-binding mediation upon written consent of authorized representatives of both parties in accordance with the Arbitration Rules of the American Arbitration Association or other applicable rules governing mediation then in effect. If the parties cannot resolve the dispute through mediation, then either party shall have the right to exercise any and all remedies available under law regarding the dispute.

R. EFFECTIVE DATE and TERM

This Bid shall be effective upon approval by the City and full execution of this Invitation to Bid and issuance of a City Purchase Order, and shall continue in effect until all obligations are performed in accordance with the terms and conditions herein.

S. FORCE MAJEURE

Neither party shall be liable for any default or delay in the performance of its obligations under this Agreement if, while and to the extent such default or delay is caused by acts of God, fire, riots, civil commotion, labor disruptions, sabotage, sovereign conduct, or any other cause beyond reasonable control. In the event of default or delay in performance due to any of the foregoing causes, then the time for completion of the services will be extended; provided, however, in such an event, a conference will be held within three (3) business days to establish a mutually agreeable period of time reasonably necessary to overcome the effect of such failure to perform.

T. FRAUD

Fraudulent statements by the Vendor on any bid or in any report or deliverable required to be submitted by the Vendor to the City shall be grounds for termination of the Agreement for cause by the City and may result in legal action.

U. GRATUITIES

The City may, by written notice to the Vendor, cancel the Agreement without liability if it is determined by the City that gratuities were offered or given by the Vendor or any agent or representative of the Vendor to any officer or employee of the City with the intent of securing the Agreement or securing favorable treatment with respect to awarding or amending or the making of any determinations with respect to performance of the Agreement. In the event the Agreement is cancelled by the City pursuant to this Section, the City shall be entitled, in addition to any other rights and remedies, to recover the benefits or payments to the Vendor, as a result of the gratuities.

V. INDEPENDENT CONTRACTOR

Nothing in this bid is intended to be construed as creating an employer/employee relationship, a partnership or joint venture. The Vendor's services shall be those of an independent contractor. The Vendor agrees and understands that the Agreement does not grant any rights or privileges established for employees of the City. Vendor shall not be within protection or coverage of the City's Worker Compensation Insurance, Health Insurance, Liability Insurance or any other insurance that the City, from time to time, may have in force.

W. INDEMNITY

VENDOR SHALL INDEMNIFY, HOLD HARMLESS, AND DEFEND THE CITY, ITS OFFICERS, AGENTS, AND EMPLOYEES FROM AND AGAINST ANY AND ALL CLAIMS, LOSSES, DAMAGES, CAUSES OF ACTION, SUITS, AND LIABILITY OF EVERY KIND, INCLUDING ALL EXPENSES OF LITIGATION, COURT COSTS, AND ATTORNEY'S FEES, FOR INJURY TO OR DEATH OF ANY PERSON OR FOR DAMAGE TO ANY PROPERTY ARISING OUT OF OR IN CONNECTION WITH THE WORK DONE BY THE CONTRACTOR UNDER THIS CONTRACT. SUCH INDEMNITY SHALL APPLY REGARDLESS OF WHETHER THE CLAIMS, LOSSES, DAMAGES, CAUSES OF ACTION, SUITS, OR LIABILITY ARISE IN WHOLE OR IN PART FROM THE NEGLIGENCE OF THE CITY, ANY OTHER PARTY INDEMNIFIED HEREUNDER, THE CONTRACTOR, OR ANY THIRD PARTY.

X. INFRINGEMENT

Vendor represents and warrants to the City that: (a) Vendor shall provide the City good and indefeasible title to the deliverables and (b) the deliverables supplied by the Vendor in accordance with the specifications of the Agreement shall not infringe, directly or contributory, any patent, trademark, copyright, trade secret or any other intellectual property right of any kind of any third party; that no claims have been made by an person or entity with respect to the ownership or operation of the deliverables and the Vendor does not know of any basis for any such claims. Vendor shall, at its sole expense, defend, indemnify and hold the City harmless from and against all liability, damages and costs (including court costs and reasonable fees of attorneys and other professionals) arising out of or resulting from: (a) any claim that the City's exercise anywhere in the world of the rights associated with the City's ownership, and if applicable, license rights, and its use of the deliverable infringes the intellectual property rights of any third party; or (b) Vendor's breach of any of the Vendor's representations or warranties stated in this Agreement. In the event of any such claim, the City shall have the right to monitor such claim or, at its option, engage its own separate counsel to act as co-counsel on the City's behalf. Further, Vendor agrees that the City's

specifications regarding the deliverables shall in no way diminish Vendor's warranties or obligations under this Paragraph, and the City makes no warranty that the products, development or delivery of such deliverables will not impact such warranties of Vendor.

Y. INSURANCE REQUIREMENTS

Upon request, Vendor shall provide a copy of its insurance policies to the City.

Z. INTERLOCAL AGREEMENT

Other governmental entities may be extended the opportunity to purchase from Solicitations awarded by the City, with the consent and agreement of the successful Vendor(s) and the City. Such consent and agreement shall be conclusively inferred from lack of exception to this clause in Vendor's Response. However, all parties indicate their understanding and all parties hereby expressly agree that the City is not an agent of, partner to or representative of those outside agencies or entities and that the City is not obligated or liable for any action or debts that arise out of such independently negotiated piggyback procurements.

AA. INTERPRETATION

The Agreement is intended by both parties as the final, complete and exclusive statement of the terms of their Agreement. No course of prior dealing between the parties or course of performance or usage of the trade shall be relevant to supplement or explain any term used in the Agreement. Although the Agreement may have been substantially drafted by one party, it is the intent of the parties that all provisions be construed in a manner fair to both parties, reading no provision more strictly against one party of the other. Whenever a term defined by the Uniform Commercial Code (the "UCC"), as enacted by the State of Texas, is used in the Agreement, the UCC definition shall control unless otherwise defined in the Agreement.

BB. INVALIDITY

The invalidity, illegality or unenforceability of any provision of this Agreement shall in no way affect the validity or enforceability of any other portion or provision of the Agreement. Any void provision shall be deemed severed from the Agreement and the balance of the Agreement shall be construed and enforced as if the Agreement did not contain the particular portion or provision held to be void. The parties further agree to reform the Agreement to replace the stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this section shall not prevent the entire Agreement from being void should a provision which is the essence of the Agreement be determined to be void.

CC. LIABILITY

Any person, firm or corporation party to this Agreement or Purchase Order shall be liable for all damages incurred while in the performance of the Agreement. Vendor assumes full responsibility for the terms contained herein and hereby releases, relinquishes, and discharges the City, its officers, agents and employees from all claims, demands and causes of action of any nature including the cost of defense thereof, for any injury to, including death of, any person whether that person be a third party, supplier or an employee of either of the parties hereto, and any loss of or damage to property, whether the same be that of either of the parties, caused by or alleged to have been caused by, arising out of or in connection with the issuance of the Agreement or Purchase Order to the Vendor and the negligence of the Vendor, whether or not said claims, demands and causes of action in whole or in part are covered by insurance. Certificates of insurance may be required for, but not limited to, Commercial General Liability, Business Auto Liability, Workers Compensation and Professional Liability Insurance.

DD. LIENS

Vendor shall defend, indemnify and hold the City harmless from and against any and all liens and encumbrances for all products delivered under this Agreement. At the City's request, the Vendor or its subcontractors shall provide a proper release of all liens or satisfactory evidence of freedom from liens shall be delivered to the City.

EE. MANAGEMENT

Should there be a change in ownership or management, the Agreement may be canceled unless a mutual Agreement is reached with the new owner to continue the Agreement with its present terms, conditions and pricing. The Agreement is nontransferable by either party.

FF. NOTICES

Unless otherwise specified, all notices, requests or other communications required or appropriate to be given under the Agreement shall be in writing and deemed delivered three (3) business days after postmarked if sent by US Postal Service Certified or Registered Mail, Return Receipt Requested. Notices delivered by other means shall be deemed delivered upon receipt by the addressee. Routine communications may be made by first class mail, fax, or other commercially accepted means. Notices to the Vendor shall be sent to the address specified in the Vendor's bid or at such other address as a party may notify the other in writing. Notices to the City shall be addressed to: City of Nacogdoches, PO Box 635030, Nacogdoches, TX 75963 and marked to the attention of the City Manager.

GG. OVERCHARGES

Vendor hereby assigns to the City any and all claims for overcharges associated with this Agreement which arise under the antitrust laws of the United States, 15 USCA Section 1 et seq., and/or which arise under the antitrust laws of the State of Texas, *Business and Commerce Code Ann.*, Section 15.01, et seq.

HH. PAYMENT TERMS

1. Tax Exempt Status:

The City is exempt from all federal excise, state and local taxes unless otherwise stated in this document. The City claims exemption from all sales and/or use taxes under Texas Tax Code §151.309, as amended. Texas Limited Sales Tax Exemption Certificates are furnished upon request. Vendor will not charge for such taxes. If billed, the City will not remit payment until a corrected invoice is received.

2. Invoicing Requirements:

Unless otherwise specified, all invoices shall be submitted to City of Nacogdoches, Accounts Payable, PO Box 635030, Nacogdoches, TX 75963-5030, and issued as required by the Purchase Order or Agreement. Each invoice must reference the unique Purchase Order number, and include the Vendor's complete name and remit to address. If applicable, transportation and delivery charges must be itemized on the each invoice. A copy of the bill of lading and the freight waybill must be submitted with the invoice if applicable.

3. Payment Terms:

All payments will be processed in accordance with Texas Prompt Payment Act, *Texas Government Code*, Subtitle F, Chapter 2251. The City will pay Vendor within thirty days after acceptance of good or materials delivered, or the day of receipt of a correct invoice, whichever is later. The Vendor may charge a late fee (fee shall not be greater than that permitted under the Texas Prompt Payment Act) for payments not made in accordance with this prompt payment policy; however, the policy does not apply to payments made by the City in the event: (a) there is a bona fide dispute between the City and Vendor

concerning the good delivered, that causes the payment to be late; (b) the terms of a federal agreement, grant, regulation or statute prevents the City from making a timely payment with Federal funds; (c) there is a bona fide dispute between the Vendor and a subcontractor and its suppliers concerning deliveries made, which caused the payment to be late; or (d) the invoice is not mailed to the City in strict accordance with instructions on the Purchase Order or Agreement, or other such contractual agreement.

4. Right To Audit:

The Vendor agrees that the representatives of the City shall have access to, and the rights to audit, examine, or reproduce, any and all records of the Vendor related to the performance under this Agreement. The Vendor shall retain all such records for a period of four (4) years after final payment on this Agreement or until all audit and litigation matters that the City has brought to the attention of the Vendor are resolved, whichever is longer. The Vendor agrees to refund to the City any overpayments disclosed by any such audit.

5. Firm Pricing:

The price shall remain firm for the duration of the Agreement, or any extension period, unless expressly approved in writing. No separate line item charges shall be permitted for either bidding or invoice purposes, which shall include equipment rental, demurrage, fuel surcharges, delivery charges, and costs associated with obtaining permits or any other extraneous charges. Vendor further certifies that the prices in the bid have been arrived at independently without consultation, communication, or agreement for the purpose of restricting competition, as to any matter relating to such fees with any other firm or with any competitor.

6. Price Warranty:

The Vendor warrants the prices quoted are not materially higher than the Vendors current prices on orders by others for like deliverables under similar terms of purchase. In addition to any other remedy available, the City may deduct from any amounts owed to the Vendor, or otherwise recover, any amounts paid for items materially in excess of the Vendor's current prices on orders by others for like deliverables under similar terms of purchase.

7. Travel Expenses:

All travel, lodging and/or per diem expenses associated with providing the products specified must be included in the original Bid and resulting Purchase Order. All travel expenses are subject to review by the City and documentation of actual itemized expenses may be requested. No reimbursement will be made without prior authorization, or for expenses not actually incurred. Airline fares in excess of coach or economy will not be reimbursed.

II. PERSONAL INTEREST

No officer, employee, independent consultant or elected official of the City who is involved in the development, evaluation or decision-making process of this Solicitation shall have a financial interest, direct or indirect, in the resulting Agreement. Any willful violation of this Paragraph shall constitute impropriety in office, and any officer or employee guilty thereof shall be subject to disciplinary action up to and including dismissal. In the event a member of the governing body or an appointed board or commission of the City belongs to a cooperative association, the City may purchase products from the association only if no member of the governing body, board or commission will receive pecuniary benefit from the purchase, other than as reflected as in increase in dividends distributed generally to members of the association. Any violation of this provision with the knowledge, expressed or implied, by the Vendor shall render the Agreement voidable by the City. Nevertheless, the City may obtain the products under the Agreement if a conflict of interest affidavit is filed and the Council member recuses his/herself.

JJ. PRIORITY OF DOCUMENTS

In the event there are inconsistencies between the general provisions and special (or other) terms and conditions contained herein, the latter will take precedence.

KK. PUBLIC INFORMATION

All Responses are subject to release as public information unless the Response or specific parts of the Response can be shown to be exempt from the Texas Public Information Act. Respondents are advised to consult with their legal counsel regarding disclosure issues and take the appropriate precautions to safeguard trade secrets or any other proprietary information. The City assumes no obligation or responsibility for asserting legal arguments on behalf of potential Respondents.

If a Respondent believes that a Response or parts of a Response are confidential, then the Respondent shall so specify. The Respondent shall stamp in bold red letters the term "**CONFIDENTIAL**" on that part of the Response, which the Respondent believes to be confidential. Vague and general claims as to confidentiality shall not be accepted. All Responses and parts of Responses that are not marked as confidential will be automatically considered public information.

LL. REIMBURSEMENTS

There is no expressed or implied obligation for the City of Nacogdoches to reimburse responding firms for any expenses incurred in preparing bids in response to this Invitation to Bid and the City will not reimburse responding firms for these expenses, nor will the City pay any subsequent costs associated with the provision of additional information or presentation, or to procure a contract for these products.

MM. RESERVATIONS

The City reserves the right to request clarification or additional information specific to any response after all Responses have been received and the Solicitation due date has passed. Additionally, the City reserves the right to accept or reject all or part of any Response, waive any formalities or technical inconsistencies, delete any requirement or specification from the Solicitation, or terminate the Solicitation when deemed to be in City's best interest.

NN. RESPONSES BECOME PROPERTY OF THE CITY:

Submissions received in response to a Solicitation become the sole property of the City.

OO. RIGHT TO ASSURANCES

In the event the City, in good faith, has reason to question the intent of the Vendor to perform, the City may demand written assurances of the intent to perform. In the event no written assurance is given within the time specified, the City may treat this failure as an anticipatory repudiation of the Agreement.

PP. SEVERABILITY

The invalidity or unenforceability of any provision herein shall not affect the validity or enforceability of any other provision.

QQ. SURVIVABILITY OF OBLIGATIONS

All provisions of the Agreement that impose continuing obligations on the parties, including but not limited to the warranty, indemnity and confidentiality obligations of the parties, shall survive the expiration or termination of the Agreement.

RR. VENDOR'S OBLIGATION:

Vendor shall fully and timely provide all deliverables described in this Solicitation, Vendor's bid must be in strict accordance with the terms, covenants and conditions of the Agreement and all applicable federal, state and local laws, rules and regulations.

SS. VENUE

This Agreement is made under and shall be governed by the laws of the State of Texas, including when applicable, the UCC as adopted in Texas, VTCA, *Business & Commerce Code*, Chapter 1, excluding any rule or principle that would refer to and apply the substantive law of another state or jurisdiction. This Agreement is fully performable in Nacogdoches, Texas, and the venue for any action related to this Agreement shall be Nacogdoches, Texas. All issues arising from this Agreement shall be resolved in the courts of Nacogdoches County, Texas and the parties agree to submit to the exclusive personal jurisdiction of such courts. The foregoing, however, shall not be construed or interpreted to limit or restrict the right or the ability of the City to seek and secure injunctive relief from any competent authority as contemplated herein and does not waive the City's defense of sovereign immunity.

TT. WAIVER

No claim or right arising out of a breach of the Agreement can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party. No waiver by either the Vendor or the City of any one or more events of default by the other party shall operate as, or be construed to be, a permanent waiver of any rights or obligations under the Agreement, or an express or implied acceptance of any other existing or future default(s), whether of similar or different character.

UU. WITHDRAWAL

Respondents may request withdrawal of a sealed bid prior to the scheduled bid opening time, provided the request for withdrawal is submitted to the City in writing.

SPECIAL TERMS and CONDITIONS

A. TERM OF AGREEMENT

1. Original Term:

The initial term of the agreement shall become effective from date of acceptance and approval by the City of Nacogdoches. It shall remain in full force and effect for twelve (12) months.

2. Renewal Term:

Upon completion of the term of the original agreement and upon mutual agreement of both parties, the original agreement may be renewed for up to two (2) additional one (1) years [three (3) years total]. The renewal will be under the same terms and conditions as the original agreement. In the event a new agreement cannot be executed at the anniversary date of the original term or any renewal term, the agreement may be renewed month-to-month until a new agreement is executed.

B. ESCALATION/DE-ESCALATION

The Parties agree that the supplier has based its bid on certain pricing assumptions of materials to be incorporated into the agreement. However, the market for products that are specified herein may be considered by both parties to be volatile, where sudden price increases could occur that are beyond the control of the supplier, despite its best efforts.

Vendor and City shall agree quarterly on an adjusted price for the commodity or commodities. A price adjustment can be performed whereby, the initial "Bid Price" or subsequent "New Price", shall be adjusted by the percent change, up or down, as indicated by the price indices as provided by the United States Bureau of Labor Statistics for the commodity or commodities. The percent change can be adjusted by the average quarterly commodity change percent.

Supplier(s) are required to give a thirty (30) day written notice before price increases are effective.

Any agreement awarded with an escalation clause shall be subject to de-escalation provisions in the same or similar manner in the event of cost reductions.

C. BID LITERATURE

Respondents must submit with their bid the latest printed literature and detailed specifications on equipment or material the Bidder proposes to furnish. Any catalog, brand name, or manufacturer's reference used is considered to be descriptive-not restrictive and is indicative of the type and quality the City desires to purchase.

D. COMMODITIES/EQUIPMENT

1. Material Safety Data Sheets: Under the "Hazardous Communication Act," commonly known as the "Texas Right to Know Act," a Vendor must provide to the City WITH EACH DELIVERY Material Safety Data Sheets, which are applicable to hazardous substances as defined in the Act.
2. Assembly: Products provided under this Agreement shall be completely assembled, adjusted, and all equipment including standard and supplemental equipment installed, and made ready for continuous operation unless otherwise specified in bid document.
3. Goods: Products furnished shall be the latest improved model in current production, as offered to commercial trade, and shall be of quality workmanship and material. The Vendor represents that all products offered shall be new. Unless otherwise specified, used, shopworn, demonstrator, prototype or discontinued models are not acceptable.
4. Packaging of Deliverables: Vendor must package deliverables in accordance with good commercial practice and shall include a packing list showing the description of each item, the quantity and the unit price. Unless otherwise provided in writing by the City, each shipping container shall be clearly and permanently marked with the Vendor's name and address, and the City's name, address and Purchase Order number. Vendor shall bear all costs of packaging. Deliverables must be suitably packed to secure lowest transportation cost, conform with requirements of common carriers and ensure safe delivery. The City's count or weight shall be final and conclusive on shipments not accompanied by packing lists.
5. Warranty: The products specified shall be warranted against defects in material or workmanship for a period of not less than twelve (12) months from date of acceptance by the City. If the manufacturer's warranty exceeds twelve (12) months, then the manufacturer's warranty shall be in effect. Vendor shall furnish a copy of the manufacturer's warranty at the time of delivery.
6. No Limitation of Manufacturers' Warranties: Vendor may not limit, exclude or disclaim any warranty provided by manufacturer.
7. Special Tools and Equipment: If the price stated in the Offer includes the cost of any special tooling or special test equipment fabricated or required by the Vendor to fulfill the Agreement, such special tooling and/or equipment and all process sheets associated thereto shall become the property of the City and shall be identified by the Vendor as such.

E. DELIVERY

1. Delivery Terms, Transportation Charges, FOB: Deliverables shall be shipped FOB point of delivery unless otherwise specified on the Purchase Order or in the Solicitation. The Vendor's price shall be deemed to include all delivery and transportation charges. The City shall have the right to designate what method of transportation shall be used to ship deliverables. The place of delivery shall be specified in the Purchase Order.
2. No Substitutions or Cancellations: Unless specifically permitted in writing by the City, no substitutions or cancellations shall be acceptable.
3. Notice of Delay In Delivery: If a delay in delivery is anticipated, Vendor shall give written notice to the City. The City has the right to extend the delivery time/service date, or to cancel the Purchase Order or Agreement. Vendor shall keep the City advised at all times of the status of the order. Default in promised delivery or failure to meet specifications authorizes the City to procure the products from an alternate source and charge the full increase, if any, in cost and handling to defaulting Vendor. Default on delivery may result in legal action and recourse.
4. Delivery Location, Hours, Days, Holidays: Unless otherwise specified, all deliveries must be made to City of Nacogdoches, between the hours of 8AM and 5PM (CST), Monday through Friday except regularly observed state and federal holidays. Receipt of products does not signify acceptance. If goods are delivered to the incorrect location, Vendor is responsible for all expenses associated delivering items to their correct destination.
5. No Shipment under Reservation: Vendor is not authorized to ship deliverables under reservation and no tender of bill of lading will operate as a tender of deliverables.
6. Title/Risk of Loss: Title to and risk of loss of the deliverables shall pass to the City only when the City actually receives and accepts the deliverables (no delivery, no sale).
7. Right of Inspection And Rejection: The City expressly reserves all rights under law, including but not limited to, the Uniform Commercial Code, to inspect the deliverables at delivery or at a reasonable time subsequent to delivery, and to reject defective or non-conforming deliverables. The Vendor will be notified if the products are not in compliance with the required specifications. If any products are rejected as non-compliant, the required products may be procured from an alternate source, and the Vendor may be charged the full increase in cost, if any. If the City has the right to inspect the Vendor's or the Vendor's subcontractors facilities, or the deliverables at the Vendor's or the Vendor's subcontractors premises, the Vendor shall furnish or shall cause to be furnished without additional charge all reasonable facilities and assistance to the City to facilitate such inspection.
8. Acceptance of Incomplete or Non-Conforming Goods: If, instead of requiring immediate correction or removal and replacement of defective or non-conforming deliverables, the City prefers to accept such deliverables, the City may do so. The Vendor shall pay all claims, losses and damages attributable to the City's evaluation of and determination to accept such defective or non-conforming deliverables. If any such acceptance occurs prior to final payment, the City may deduct such amounts as are necessary to compensate the City for the diminished value of the defective or non-conforming deliverables. If discovery that the deliverables are defective or non-conforming occurs after final payment, Vendor may be required to refund such amounts to the City.

F. REGULATIONS and STANDARDS

The products provided shall meet or exceed all Federal and State of Texas safety, health, lighting, and noise regulations and standards in effect and applicable to equipment furnished at the time of manufacture.

G. SAMPLES

Samples of items shall be furnished, if requested by the City, without charge, and if not destroyed, shall upon request be returned at the bidder's expense.

H. VENDORS SALES TERRITORY

City waives any responsibility or liability for Respondents bidding products "outside" their authorized territory by manufacturer or product line. Any Respondent bidding outside an approved manufacturer line does so at his own risk and discretion. Respondents shall comply with all sales terms according to the original bid and Purchase Order regardless of claim or dispute with product line representatives.

I. WORKMANSHIP

All parts not specifically mentioned which are necessary for the unit to be complete and ready for operation or which are normally furnished as standard equipment shall be furnished by the successful bidder. All parts shall conform in strength, quality, and workmanship to the accepted standards of the industry.

TECHNICAL SPECIFICATIONS

A. TYPE D HOT MIX

Texas Department of Transportation Standard Specification Item #340, latest edition
The material will be picked up at Suppliers plant and loaded into City vehicles.

B. TYPE C HOT MIX

Texas Department of Transportation Standard Specification #255, latest edition
The material will be picked up at Suppliers plant and loaded into City vehicles.

C. TYPE A, GRADE 2, BASE MATERIAL

Texas Department of Transportation Standard Specification 247, latest edition
The material will be picked up at Suppliers plant and loaded into City vehicles.

D. SUPPLEMENTAL MATERIALS

Please submit a list of materials offered by the Supplier with description, unit price and unit of measure. These materials may be purchased by the City during the term of this contract at the prices stipulated; however, these supplemental materials and prices will not be used in the evaluation of the bids received.

QUOTATION FORM

A. DELIVERY REQUIREMENTS

Respondent will show exact cost to load product in City vehicles.

B. DISCOUNTS

Cash discounts will not be considered in determining award; all cash discounts offered will be taken if earned. Respondent will list and deduct all discounts not based on early payment from prices quoted.

C. **QUANTITIES**

Quantities indicated below are estimated based upon the best available information. The City reserves the right to increase or decrease the quantities by any amount deemed necessary to meet its needs without any adjustments in the unit prices bid.

D. **UNIT PRICES**

Prices should be itemized. Unit prices shall be set to no more than four (4) decimal places. The City reserves the right to award by item or by total bid. If there are discrepancies between unit prices and extension, the unit price will prevail.

E. **VALIDITY OF PRICING**

Pricing will be considered firm for acceptance for a minimum of 60 days after the due date unless otherwise specified in the Solicitation. The validity period may be extended beyond that date on agreement of parties.

F. **QUOTATION**

All Responses must be submitted on the form(s) provided below:

<u>Item #</u>	<u>Quantity</u>	<u>UOM</u>	<u>Description</u>	<u>Unit Price</u>	<u>Total Price</u>
1.	Est. 2,000 ton		Type D Hot Mix	\$ <u>115</u>	\$ <u>230,000</u>
2.	Est. 1,500 ton		Type C Hot Mix	\$ <u>115</u>	\$ <u>172,500</u>
3.	Est. 1,000 ton		Type A, Grade 2, Base Material	\$ <u>40.50</u>	\$ <u>40,500</u>
4.	Unknown		Supplemental Materials	Attach Price List	

G. **PRODUCTION PLANT**

All responses must indicate the location of the Suppliers Production Plant:

2406 Spence St.

Street Address

Lufkin, TX 75904

City, State, Zip

CERTIFICATION and ACKNOWLEDGMENT

By submitting a Proposal in response to this solicitation, the Respondent certifies that at the time of submission, the following statements required by State of Texas purchasing laws or the Governor's executive orders are true:

1. Respondent has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with this Contract.

2. Respondent represents and warrants that it has no actual or potential conflicts of interest in the goods and or services described in the scope of work to this contract.

3. Antitrust. Pursuant to 15 U.S.C. §1, et seq. and Tex. Bus. & Comm. Code §15.01, et seq. neither the Respondent nor the firm, corporation, partnership, or institution represented by the Respondent, or anyone acting for such a firm, corporation or institution has violated the antitrust laws of this state, federal antitrust laws, nor communicated directly or indirectly the bid made to any competitor or any other person engaged in such line of business.

4. Terrorism Watch List. Respondent represents and warrants that it does not do business with Iran, Sudan or a foreign terrorist organization as prohibited by Texas Government Code 2252.152. Respondent certifies that it is not listed on the federal government's terrorism watch list as described in Executive Order 13224.

5. Convictions. Under Sections 2155.006, 2155.0061 and 2261.053 of the Texas Government Code, Respondent certifies that it is not ineligible to receive the specified contract and may be terminated and payment withheld if this certification is inaccurate. These sections prohibit contracts that include proposed financial participation by an individual or business entity who has been convicted in the past five years of (a) violating a federal law or assessed a penalty in connection with a contract involving relief for Hurricane Rita, Hurricane Katrina, or any other disaster, as defined by §418.004, Gov't Code, occurring after September 24, 2005; and (b) of any offense related to the direct support or promotion of human trafficking.

6. COVID Vaccinations. Respondent certifies that it does not require its customers to provide any documentation certifying the Customer's COVID-19 vaccination or post-transmission recovery on entry to, or to receive service from the Respondent's business.

7. Boycotts. (a) To the extent this Contract is considered a Contract for goods or services subject to § 2270.002 Texas Government Code, Respondent verifies that it: (i) does not boycott Israel; and (ii) will not boycott Israel during the term of this Contract.

(b) To the extent this Contract has a value of \$100,000 or more and Respondent is an organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations, that exists to make a profit that employs 10 or more full time employees, Respondent certifies that it: (i) does not and will not boycott energy companies during the term of the contract (See *Texas Government Code 2274.002, et seq.*); and (ii) does not and will not discriminate against a firearm entity or firearm trade association (See *Texas Government Code 2274.002, et seq.*).

If between the time of Proposal submission and time of award, the truthfulness of any of the foregoing changes, the Respondent will notify the City of Nacogdoches Purchasing Agent. Failure to do so may result in terminating any contract or purchase order issued pursuant to this bid.

DISCLOSURE OF INTERESTED PARTIES The law states that a governmental entity may not enter into certain contracts with a nonexempt business entity unless the business entity submits a disclosure of interested parties to the governmental entity. By submitting a Proposal in response to this solicitation, the Respondent agrees to comply with HB 1295, Government Code 2252.908. Respondent agrees to provide the City Secretary of the City of Nacogdoches, and/or requesting department, the "Certificate of Interested Parties," Form 1295 as required, within ten (10) business days from notification of pending award, renewal, amended or extended contract.

Signed By: Jared Dean Title: VP/GM

Typed Name: Jared Dean Company Name: Texas Materials

Phone No.: 936-699-5283 Fax No.: _____

Email: Christi.Finch@texasmaterials.com ; jared.dean@texasmaterials.com

Bid Address: 204 E. Burke Ave. Hufkin TX 75904
P.O. Box or Street City State Zip

Order Address: _____

Bank of America Lockbox Services Lockbox #845198
Remit Address: 1950 N. Stemmons Fwy Suite 5010 Dallas, TX 75207
P.O. Box or Street City State Zip

Federal Tax ID No.: 58-1401466

DUNS No.: 039939236

Date: 10-15-2024

FOR CITY USE ONLY

Approved By: _____ Date: _____
City Manager, City of Nacogdoches

PRESENTER: Jessica Sowell, Community Services Director

ITEM/SUBJECT: Consider approval of a Professional Services Contract between Cunningham Recreation and the City of Nacogdoches for playground design and construction at Robert McCrimmon Park for an amount not to exceed \$240,000. (Community Services Director)

SUMMARY/BACKGROUND: The Parks Department is requesting the approval of the Professional Services Contract between the City of Nacogdoches and Cunningham Recreation for the design and installation of a new playground at Robert McCrimmon Park. This playground project is a part of Bond Proposition E and is the first of the Parks Bond projects.

Representatives from Cunningham Recreation attended the September 30th Parks Advisory Board Meeting and discussed potential playground designs, timelines and priorities with the board. A draft design was presented to the Parks Advisory Board on Monday, October 28th. The Advisory Board provided positive feedback to staff citing that the company included many of their wish list items into the draft design. Very few alterations were proposed and feedback will be sent to Cunningham Recreation on November 1st for incorporation, where possible, into the final design. The DRAFT design rendering is included in the packet and will be finalized and signed off on by November 17th, ensuring the City receives the very generous grant from Cunningham Recreation.

The not-to-exceed amount includes design, materials and installation of a new playground at Robert McCrimmon Park.

FINANCIAL:

Item is budgeted:

Account No.: 44.680.37

Account Name: Project Construction

Project Code: 286-19

Amount: \$240,000

COUNCIL PRIORITIES: THIS AGENDA ITEM IS CONSISTENT WITH THE FOLLOWING CITY COUNCIL PRIORITIES

CITY CONTACT: Jessica Sowell, Community Services Director
sowellj@nactx.us
(936) 559-2935

ATTACHMENTS:

1. City of Nacodoches_Robert McCrimmon Playground_Construction Contract
2. Proposal - DRAFT
3. Parks Advisory Board Minutes September 30, 2024

4. Parks Advisory Board Minutes October 28, 2024
5. McCrimmon Rendering 1
6. McCrimmon Rendering 2

CITY OF NACOGDOCHES CONSTRUCTION AGREEMENT

This Agreement is entered into by and between the **City of Nacogdoches**, a Texas home-rule municipal corporation (the "City") and **PlayCore Wisconsin, Inc. dba GameTime c/o Cunningham Recreation**, a limited liability corporation (the "Contractor"), for **Construction Services for Robert McCrimmon Playground** located in Nacogdoches, Texas (the "Project").

1. DEFINITIONS

1.01. Calendar Day. A "calendar day" is any day of the week or month, no days being excepted.

1.02. City. Whenever the word "City" is used, it shall mean and be understood as referring to the City of Nacogdoches, Texas.

1.03. City's Representative. Whenever the words "City's Representative" or "Representative" are used, it shall mean and be understood as referring to the City Manager or his delegate, who shall act as City's agent. The City's Representative may inspect and issue instructions but shall not directly supervise the Contractor.

1.04. Contract Amount. The term "Contract Amount" shall mean the amount of Contractor's lump sum base bid proposal, together with all alternates, as accepted by the City in accordance with the Contractor's Proposal. In the case of a unit price contract, Contract Amount shall mean the sum of the product of all unit prices times the respective estimated final quantities of work, for all base bid and alternates, as accepted by the City.

1.05. Contract Documents. The term "Contract Documents" shall mean those documents listed in Paragraph 2.01.

1.06. Contractor. Whenever the word "Contractor" is used, it shall mean the person(s), partnership, or corporation who has agreed to perform the work embraced in this Agreement and the other Contract Documents.

1.07. Extra Work. The term "Extra Work" shall mean and include work that is **not** covered or contemplated by the Contract Documents but that may be required by City's Representative and approved by the City in writing **prior** to the work being done by the Contractor.

1.08. Final Completion. The term "Final Completion" shall mean that all the work has been completed, all final punch list items have been inspected and satisfactorily completed, all payments to materialmen and subcontractors have been made, all documentation and warranties have been submitted, and all closeout documents have been executed and approved by the City.

1.09. Interpretation of Phrases. Whenever the words "directed", "permitted", "designated", "required", "considered necessary", "prescribed", or words of like import are used, it is understood that the direction, requirement, permission, order, designation, or prescription of City's Representative is intended. Similarly, the words "approved", "acceptable", "satisfactory", or words of like import shall mean approved by, accepted by, or satisfactory to City's Representative.

1.10. Nonconforming work. The term "nonconforming work" shall mean work or any part thereof that is rejected by City's Representative as not conforming with the Contract Documents.

1.11. Parties. The "parties" are the City and the Contractor.

1.12. Project. The term "Project" shall mean and include all that is required to obtain a final product that is acceptable to the City. The term "work" shall have like meaning.

1.13. Subcontractor. The term "subcontractor" shall mean and include only those hired by and having a direct contact with Contractor for performance of work on the Project. The City shall have no responsibility to any subcontractor employed by a Contractor for performance of work on the Project, and all subcontractors shall look exclusively to the Contractor for any payments due.

1.14. Substantially Completed. The term "Substantially Completed" means that in the opinion of the City's Representative the Project, including all systems and improvements, is in a condition to serve its intended purpose but still may require minor miscellaneous work and adjustment. Final payment of the Agreement Price, including retainage, however, shall be withheld until Final Completion and acceptance of the work by the City. Acceptance by the City shall not impair or waive any warranty obligation of Contractor.

1.15. Work. The term "work" as used in this Agreement shall mean and include all that is required herein to obtain a final product that is acceptable to the City. The term "Project" shall have like meaning. This Project includes the following: **Construction Services for Robert McCrimmon Playground** located in Nacogdoches, Texas.

1.16. Working Day. A "working day" means any day not including Saturdays, Sundays, or legal holidays.

2. CONTRACT DOCUMENTS

2.01. The Contract Documents and their priority shall be as follows:

- 2.01.01. This signed Agreement
- 2.01.02. Addendum to this Agreement
- 2.01.03. General Conditions
- 2.01.04. Special Conditions
- 2.01.05. Technical specifications
- 2.01.06. Drawings
- 2.01.07. Instructions to Bidders and any other notices to Bidders or Contractor
- 2.01.08. Performance bond, Payment bonds, Bid bonds and Special bonds
- 2.01.09. Contractor's Proposal

2.02. Where applicable, the Contractor will be furnished three (3) sets of plans, drawings, specifications, and related Contract Documents for its use during construction. Plans and specifications provided for use during construction shall be furnished directly to the Contractor only.

2.03. The Contractor shall distribute copies of the plans and specifications to suppliers and subcontractors as necessary. The Contractor shall keep one (1) copy of the plans and specifications accessible at the work

site with the latest revisions noted thereon. For proper execution of the work contemplated by this Agreement, additional sets of drawings, plans and specifications may be purchased by the Contractor.

2.04. All drawings, specifications, and copies thereof furnished by the City shall not be re-used on other work, and with the exception of one (1) copy of the signed Contract Documents, all documents, including sets of the plans and specifications and “as built” drawings, are to be returned to the City on request at the completion of the work. All Contract Documents, models, mockups, or other representations are the property of the City. In the event of inconsistencies within or between parts of the Contract Documents, the Contractor shall (1) provide the better quality or greater quantity of Work, or (2) comply with the more stringent requirement, either or both in accordance with the City’s interpretation. The terms and conditions of this Clause 2.04, however, shall not relieve the Contractor of any of the obligations set forth in Paragraphs 8.01. and 8.02.

3. AWARD OF CONTRACT

3.01. Upon the award of the contract by the City Council, the parties shall execute this Agreement, and the Contractor shall deliver to City's Representative all documents, bonds, and certificates of insurance required herein.

3.02. **Time is of the essence in this Agreement.** Accordingly, the Contractor shall be prepared to perform the work in the most expedient and efficient possible manner in order to complete the work by the times specified in this Agreement for Substantial Completion and Final Completion. In addition, the Contractor's work on the Project shall be commenced on the date to be specified in the notice to proceed. The notice to proceed may be given by oral notification or set by City's Representative at the post-contract award conference. **The notice to proceed may not be given, nor may any work be commenced, until this Agreement is fully executed and complete, including all required exhibits and other attachments, particularly those required under Paragraphs 27 and 28 (Insurance & Bonds).**

3.03. **Contract Amount.** Except in the event of a duly authorized change order approved by the City as provided in this Contract, and in consideration of the Contractor’s final completion of all work in conformity with this Contract, the City shall pay the Contractor an amount not to exceed Two hundred and forty Thousand and 00/100 Dollars (\$240,000.00).

4. CITY'S REPRESENTATIVE

4.01. The Contractor shall forward all communications, written or oral, to the City through the City's Representative.

4.02. The City's Representative may periodically review and inspect the work of the Contractor.

4.03. The City's Representative shall appoint, from time to time, such subordinate supervisors or inspectors as City's Representative may deem proper to inspect the work performed under this Agreement and ensure that said work is performed in accordance with the plans and specifications.

4.04. The Contractor shall regard and obey the directions and instructions of City's Representative, any subordinate supervisors or inspectors appointed by the City provided such directions and instructions are consistent with the obligations of this Agreement.

4.05. Should the Contractor object to any orders by any subordinate supervisor or inspector, the Contractor may, within two (2) days from receipt of such order, make written appeal to City's Representative for his decision.

5. INDEPENDENT CONTRACTOR

5.01. In all activities or services performed hereunder, the Contractor is an independent contractor and not an agent or employee of the City. The Contractor, as an independent contractor, shall be responsible for the final product contemplated under this Agreement. Except for materials furnished by the City, the Contractor shall supply all materials, equipment and labor required for the execution of the work on the Project. The Contractor shall have ultimate control over the execution of the work under this Agreement. The Contractor shall have the sole obligation to employ, direct, control, supervise, manage, discharge, and compensate all of its employees and subcontractors, and the City shall have no control of or supervision over the employees of the Contractor or any of the Contractor's subcontractors except to the limited extent provided for in this Agreement.

5.02. The Contractor shall retain personal control and shall give its personal attention to the faithful prosecution and completion of the work and fulfillment of this Agreement. The subletting of any portion or feature of the work or materials required in the performance of this Agreement shall not relieve the Contractor from its obligations to the City under this Agreement. The Contractor shall appoint and keep on the Project during the progress of the work a competent Project Manager and any necessary assistants, all satisfactory to City's Representative, to act as the Contractor's representative and to supervise its employees and subcontractors. All directions given to the Project Manager shall be binding as if given to the Contractor. Adequate supervision by competent and reasonable representatives of the Contractor is essential to the proper performance of the work, and lack of such supervision shall be grounds for suspending the operations of the Contractor and is a breach of this Agreement.

5.03. Unless otherwise stipulated, the Contractor shall provide and pay for all labor, materials, tools, equipment, transportation, facilities, and drawings, including engineering, and any other services necessary or reasonably incidental to the performance of the work by the Contractor. It shall be the responsibility of the Contractor to furnish a completed work product that meets the requirements of the City. Any additional work, material, or equipment needed to meet the intent of this specification shall be supplied by the Contractor ***without*** claim for additional payment, even though not specifically mentioned herein.

5.04. Any injury or damage to the Contractor or the Project caused by an act of God, natural cause, a party or entity not privy to this Agreement, or other force majeure shall be assumed and borne by the Contractor.

6. DISORDERLY EMPLOYEES

The Contractor agrees to employ only orderly and competent employees skillful in the performance of the type of work required, and agrees that whenever City's Representative shall inform the Contractor in writing that any person or persons on the work are, in his opinion, incompetent, unfaithful, or disorderly, such person or person shall be discharged from the work and shall not again be re-employed on the site or the Project without City's Representative's written permission.

7. HOURS OF WORK

The Contractor may work Monday through Friday from 7 a.m. to 6 p.m., exclusive of Saturdays, Sundays, or legal holidays. The Contractor may work overtime, weekends, and holidays only when approved in advance by the City's Representative. The time for Substantial Completion shall not be affected in any way by inclusion of this section or by the City's consent or lack of consent to work outside of the times specified in this Agreement.

8. NATURE OF THE WORK

8.01. It is understood and agreed that the Contractor has, by careful examination, studied and compared the various Drawings and other Contract Documents, satisfied itself as to the nature and location of the work, the conditions of the ground and soil, the nature of any structures, the character, quality, and quantity of the material to be utilized, the character of equipment and facilities needed for and during the prosecution of the work, the time needed to complete the work, Contractor's ability to meet all deadlines and schedules required by this Agreement, the general and local conditions, including but not limited to weather, and all other matters that in any way affect the work under this Agreement. These obligations are for the purpose of facilitating construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, any errors, inconsistencies or omissions discovered, or which reasonably should have been discovered by the Contractor shall be reported promptly to the City as a request for information in such form as the City may require. However, the Contractor shall not perform any act or do any work on the Project that places the safety of persons at risk or potentially damages materials or equipment used in the Project, and the Contractor shall do nothing that would render any test or tests erroneous.

8.02. Any design errors or omissions noted by the Contractor during this review shall be reported promptly to the City, but it is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional unless otherwise specifically provided in the Contract Documents. The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, building codes, and rules and regulations, but any nonconformity discovered by or which reasonably should have been discovered or made known to the Contractor shall be reported promptly to the City.

8.03. If the Contractor fails to perform the obligations of Paragraphs 8.01. and 8.02., the Contractor shall pay such costs and damages to the City as would have been avoided if the Contractor had performed such obligations. The Contractor shall not be liable to the City for damages resulting from errors, inconsistencies or omissions in the Contract Documents or for differences between field measurements or conditions and the Contract Documents unless the Contractor recognized or reasonably should have recognized such error, inconsistency, omission or difference and knowingly failed to report it to the City.

9. POST-AGREEMENT AWARD MEETINGS

9.01. Prior to the commencement of the work, the parties shall meet and attend a post-agreement award meeting at the time and place determined by City's Representative. At the post-agreement award meeting, the parties shall meet, discuss, and finalize all schedules, including commencement date, and/or specifications submitted for review. No later than ten (10) days prior to the post-agreement award meeting, the Contractor shall submit to City's Representative the following documents:

- (a) Schedules of work contemplated, including the starting and ending date, as well as an indication of the completion of stages of work hereunder.
- (b) The names and addresses of all proposed subcontractors in writing.
- (c) Schedules of the starting and ending dates of subcontractors and the scope of work contemplated for subcontractors.
- (d) Name, local office, phone number and addresses and, home phone numbers for the Contractor and its Project Superintendent/Manager.
- (e) For construction projects, four (4) copies of all shop and/or setting drawings or schedules for the submission thereof.
- (f) Where applicable, materials procurement schedules and material supplier names, addresses and phone numbers.

9.02. The City's Representative, within five (5) working days after the initial post-agreement award conference or any other meetings, may submit minutes of the meeting to the Contractor. The Contractor shall thereafter have five (5) working days to review the minutes and make its objections, changes, or reductions thereto in writing. The Contractor shall thereafter sign the minutes and promptly return them to City's Representative. Where there is disagreement, City's Representative will make the final determination.

10. PROGRESS OF WORK

10.01. Unless otherwise specifically provided, the Contractor shall prosecute its work at such time and sessions, in such order of precedence, and in such manner as shall be most conducive to the economy of the Project; provided, however, that the order and time of prosecution shall be such that the Project shall be Substantially Completed in accordance with this Agreement, the plans and specifications, and within the time of completion designated in the schedules agreed upon by the parties.

10.02. Further, the parties shall be subject to the following:

- (a) The Contractor shall submit a progress schedule and payment schedule of the work contemplated by this Agreement at the initial post-agreement award meeting and subsequent meetings.
- (b) City's Representative shall be entitled to make objections to the Contractor's schedule submitted herein. The Contractor shall promptly resubmit a revised schedule to City's Representative.
- (c) The Project Superintendent/Manager shall coordinate its activities with City's Representative. If required by the City, the Contractor shall provide a weekly schedule of planned activities, which may be reviewed on a daily basis.
- (d) The Contractor shall submit, at such time as may reasonably be requested by City's Representative, additional schedules that shall list the order in which the Contractor proposes to carry on the work with dates at which the Contractor will start the several parts of the work and the estimated dates of completion of the several parts.

(e) The Contractor shall attend additional meetings called by City's Representative upon twenty-four (24) hours written notice unless otherwise agreed in writing by the parties.

(f) When the City is having other work done, either by agreement or by its own force, City's Representative may direct the time and manner of work done under this Agreement so that conflicts will be avoided and the various work being done by and for the City shall be coordinated.

(g) In the event that it is determined by the City that the progress of the work is not in accordance with the approved progress and payment schedule, the City may so inform the Contractor and require the Contractor to take such action as is necessary to insure completion of the Project within the time specified.

10.03. The process of approving Contractor's schedules and updates to Contractor's schedules shall not constitute a warranty by the City that any non-Contractor milestones or activities will occur as set out in the Contractor's schedules. Approval of a contractor's schedules does not constitute a commitment by the City to furnish any City-furnished information or material any earlier than the City would otherwise be obligated to furnish that information or material under the Contract Documents. Failure of the Work to proceed in the sequence scheduled by Contractor shall not alone serve as the basis for a Claim for additional compensation or time. In the event there is interference with the Work which is beyond its control, Contractor shall attempt to reschedule the Work in a manner that will hold the additional time and costs beyond its control to a minimum. The Contractor shall monitor the progress of the Work for conformance with the requirements of the construction schedules and shall promptly advise the City of any delays or potential delays. In the event any schedule indicates any delays, the Contractor shall propose an affirmative plan to correct the delay. In no event shall any schedule constitute an adjustment in the Contract Time, any Milestone Date or the Contract Sum unless any such adjustment is agreed to by the City and authorized pursuant to Change Order.

10.04. **Work Stoppage.** If in the judgment of either the City or City's Representative any of the work or materials furnished is not in strict accordance with this Agreement or any portion of the work is being performed so as to create a hazardous condition, they may, in their sole discretion, order the work of the Contractor or any sub contractor wholly or partially stopped until any objectionable person, work, or material is removed from the premises. Such stoppage or suspension shall neither invalidate any of the Contractor's performance obligations under this Agreement, including the time of performance and deadlines therefore, nor will any extra charge be allowed the Contractor by reason of such stoppage or suspension.

11. SITE CONDITIONS AND MANAGEMENT

11.01. Where the Contractor is working around or in existing structures, it shall verify conditions at the site, including but not limited to, door openings and passages. Any items constructed or manufactured off-site or outside of buildings shall be done so that they are not too bulky for existing facilities. The Contractor shall provide special apparatus as required to handle any such items. All special handling equipment charges shall be at the Contractor's expense. Further, Contractor shall include in its price for the Work, all labor, materials, equipment and/or engineering services required to protect the adjacent properties and/or structures from damage due to performance of the Work.

11.02. The Contractor shall be responsible for all power, light, and water required to perform the work.

11.03. Throughout the progress of the work, the Contractor shall keep the working area free from debris of all types, and remove from premises all rubbish, resulting from any work being done by him. At the completion of the work, the Contractor shall leave the premises in a clean and finished condition. Any failure to do so may be remedied and charged back to the Contractor.

11.04. **Layout of Work.** Except as specifically provided herein, the Contractor shall lay out all work in a manner acceptable to City's Representative in accordance with applicable City of Nacogdoches codes and ordinances. City's Representative will review the Contractor's layout of all structures and any other layout work done by the Contractor at the construction meeting, or at the Contractor's request, but this review does not relieve the Contractor of the responsibility of accurately locating all work in accordance with the plans and specifications.

11.05. **Lines and Grades.** All lines and grades shall be furnished by the Contractor. Benchmarks and control stakes have been provided by the City's Representative. All benchmarks and control stakes shall be carefully preserved by the Contractor. In case of destruction or removal of the same by the Contractor, its subcontractors, or employees, such stakes, marks, etc. shall be replaced by the Contractor at the Contractor's expense. If the Contractor fails to do so, the City may do so and charge back the Contractor. Additional construction staking as needed for the work, including lines and grades, shall be the sole responsibility of the Contractor, and the Contractor shall receive no extra time or compensation therefor.

11.06. **Contractor's Structures.** The building or locating of structures for housing men or the erection of tents or other forms of protection will be permitted only at such places as City's Representative shall permit. The Contractor shall not damage the property where such structures are allowed and shall at all times maintain sanitary conditions in and about such structures in a manner satisfactory to the City. The City may charge the Contractor for any damage or injury to the City, its property, or third persons as a result of the location or use of such structures.

11.07. The Contractor and any entity over whom the Contractor has control shall not erect any sign on the Project site without the prior written consent of the City.

11.08. City may have other work related to the Project performed at the Project site during the time the Work is performed. Contractor should schedule its Work to coordinate with the work of other contractors and utilities with the understanding that some of that work may be performed at times other than as set out in the Contract Documents or as otherwise anticipated. City will endeavor to have such other work performed so as not to unduly interfere with Contractor's performance when Contractor notifies City of specific reasonable needs well in advance of those needs and where it is possible to do so. Although Contractor should anticipate some delays and interference to its sequence of Work because of work by other contractors and utilities, and will not be entitled to either an extension of time or additional compensation because of them, in the event of substantial delay caused by another contractor or a utility, after advance notice of its needs by Contractor, Contractor will be entitled to make a claim for an extension of time as provided herein.

11.09. When two or more contractors, including Contractor, are employed on related or adjacent work or obtain materials from the same material source, or when work must be completed by one contractor before another can begin, each shall conduct his operations in such a manner as not to cause any unnecessary delay or hindrance to the other. Each contractor, including Contractor if applicable, shall be responsible to the other for all damage to work, to persons, or to property caused to the other by his operations, and for loss caused the other due to unreasonable or unjustified delays or failure to finish the work or portions thereof, or furnish materials within the time requested. Should Contractor cause damage to the work or property of any

separate contractor at the Project site, or should any claim arising out of Contractor's separate contractor at the Project site, or should any claim arising out of Contractor's performance of the Work at the Project site be made by any separate contractor against Contractor, City or other consultants, or any other person, Contractor shall promptly attempt to settle with such other contractor by agreement, or to otherwise resolve the dispute. **Contractor shall, to the fullest extent permitted by applicable laws, indemnify and hold City harmless from and against all claims, damages, losses and expenses (including, but not limited to, fees of architects, attorneys and other professionals and court costs) arising directly, indirectly or consequentially out of any action, legal or equitable, brought by any separate contractor against City to the extent based on a claim arising out of Contractor's negligence.**

12. MATERIALS

12.01. Materials or work described in words that when so applied have well-known technical or trade meaning shall be held to refer to such recognized standards. All work shall be done and all materials furnished in strict conformity with this Agreement, the other Contract Documents, and recognized industry standards. When specific products, systems or items of equipment are referred to in the Contract Documents, any ancillary devices necessary for connecting the products, systems or items of equipment shall also be provided. When standards, codes, manufacturer's instructions and guarantees are required by the Contract Documents, the current edition at the time of Contract execution shall apply, unless another edition is specified in the Contract Documents. References to standards, codes, manufacturer's instructions and guarantees shall apply in full, except (1) they do not supersede more stringent standards set out in the Contract Documents, and (2) any exclusions or waivers that are inconsistent with the Contract Documents do not apply.

12.02. All materials shall be approved by the City prior to purchase by the Contractor. Unless otherwise specified herein, the Contractor shall purchase all materials and equipment outright and shall not subject the materials and equipment utilized in the Project to any conditional sales agreement, bailment, lease, or other agreement reserving unto seller any right, title, or interest therein. Title to all materials, but not risk of loss, shall pass to the City upon delivery to the Project.

12.03. Where the City deems it necessary to supply materials, it may furnish to the Contractor the list of materials set forth in the attached "List of City Furnished Materials". Upon receipt of said materials, the Contractor shall immediately furnish to the City a written receipt. Moreover, the Contractor shall, on behalf of the City, accept delivery of the materials set forth in the attached "List of Materials Ordered by the City". Under such circumstances, the Contractor shall promptly forward to the City for payment the supplier's invoice together with the Contractor's receipt in writing for such materials.

- (a) Upon acceptance of the materials furnished or ordered by the City, the Contractor warrants that it shall properly handle, transport, store and safeguard the materials.
- (b) Further, the Contractor shall repair, repaint or replace any and all materials or any part thereof damaged or stolen while in its possession. Such materials are considered to be in the Contractor's possession from the moment the Contractor either accepts delivery of the materials or signs a receipt accepting delivery of said materials until the Subcontractor's work is completed and accepted by the City's Representative.
- (c) Before transporting any of the materials furnished or ordered by the City, the Contractor shall establish to the City's satisfaction that it has obtained insurance against losses, theft, damage, equal to

or greater than the amounts spent by the City in securing said materials. It shall be incumbent upon the Contractor to verify the cost of materials.

(d) The City shall not be obligated to furnish materials in excess of the quantities, size, kind, and type set forth in the attached List of City Furnished Materials and List of Materials Ordered by the City. If the City furnishes, and the Contractor accepts, materials in excess thereof, the values of such excess materials shall be their actual cost as stated by the City.

(e) Upon delivery, the Contractor shall promptly receive, unload, transport, and handle all materials and equipment on the List of Materials Ordered by the City at its expense and shall be responsible for all shipping costs.

12.04. **Materials and supplies shall be new and of good quality.** Upon request, the Contractor shall supply proof of quality and manufacturer. No refurbished, reconditioned, or other previously utilized materials or supplies will be used without the prior signed authorization of City's Representative. The Contractor may utilize substitutes of equal quality and function only upon the prior written authorization of the City's Representative. The City's Representative may require documentation as to quality and function, including manufacturer's specifications, to insure that the proposed substitute is equal to the required material or supply. The City's Representative shall have sole discretion over the use of substitute materials and supplies. Contractor shall bear the risk of any delay in performance caused by submitting substitutions.

12.05. Only materials and equipment which are to be used directly in the Work shall be brought to and stored on the Project site by the Contractor. After equipment is no longer required for the Work, it shall be promptly removed from the Project site. Protection of construction material and equipment stored at the Project site from weather, theft, damage and all other perils is solely the responsibility of the Contractor.

13. ENTRY, OBSERVATION, TESTING & POSSESSION

13.01. The City reserves the right to enter the Project site or sites by such employee(s) or agent(s) as it may elect for the purpose of inspecting the work. The City further reserves the right to enter the Project site or sites for the purpose of performing such collateral work as the City may desire.

13.02. The City's Representative shall have the right, at all reasonable times, to observe and test the work. The Contractor shall make necessary arrangements and provide proper facilities and access for such observation and testing at any location where the work or any part thereof is in preparation or progress. The Contractor shall ascertain the scope of any observation that may be contemplated by City's Representative and shall give ample notice as to the time each part of the work will be ready for observation.

13.03. The City's Representative may require Contractor to remove, dismantle, or uncover completed work. If the work is not in accordance with the plans, specifications, or other Contract Documents, the Contractor shall pay the costs of repair and restoration of the work required to be removed, dismantled, or uncovered. Unless Contractor is obligated to provide advance notice of inspection, prior to covering up the work, and fails to do so, if the work is in accordance with the plans, specifications, and other Contract Documents, the City shall pay the costs of repair and restoration of the work.

13.04. City shall have the right to take possession of and use any completed or partially completed portions of the Project prior to the time for completing the entire Project or such portions which may not have expired. The parties agree and understand that possession and use shall not constitute an acceptance of any work not

completed in accordance with this Agreement. Further, insurance changes required to keep Contractor's insurance in effect shall be the responsibility of Contractor.

14. REJECTED WORK

14.01. All work deemed not in conformity with this Agreement as determined by the City in its sole discretion, may be rejected by the City. City's Representative may reject any work found to be defective or not in accordance with the Contract Documents, regardless of the stage of the work's completion or the time or place of discovery of such defects or inconsistencies and regardless of whether City's Representative has previously accepted the work through oversight or otherwise. Neither observations nor inspections, tests, or approvals made by City's Representative, or other persons authorized under this Agreement to make such observations, inspections, tests, or approvals, shall relieve the Contractor from the obligation to perform the work in accordance with the requirements of this Agreement and the other Contract Documents.

14.02. If the work or any part thereof is rejected by the City, it shall be deemed by City's Representative as not in conformity with this Agreement. Any remedial action required, as set forth herein, shall be at the Contractor's expense, as follows:

- (a) The Contractor may be required, at the City's option, after notice from City's Representative, to remedy such work so that it shall be in full compliance with this Agreement. All rejected work or materials shall be immediately replaced in order to conform with this Agreement.
- (b) If the City deems it inexpedient to correct work damaged or not done in accordance with this Agreement, an equitable deduction from the agreed sum may be made by the City at the City's sole discretion.

15. SUBCONTRACTING & SUBCONTRACTORS

15.01. The Contractor agrees that it will retain personal control and will give its personal attention to the fulfillment of this Agreement. The Contractor further agrees that subletting of any portion or feature of the work or materials required in the performance of this Agreement shall not relieve the Contractor from its full obligation to the City as provided by this Agreement.

15.02. Subcontractors must be approved by City's Representative prior to hiring or beginning any work on the Project. If City's Representative judges any subcontractor to be failing to perform the work in strict accordance with the drawings and specifications, the Contractor, after due notice, shall discharge the same, but this shall in no way release the Contractor from its obligations and responsibility under this Agreement. Every subcontractor shall be bound by the terms and provisions of this Agreement and the Contract Documents as far as applicable to their work. The Contractor shall be fully responsible to the City for the acts and omissions of its subcontractors. Nothing contained herein shall create any contractual or employment relations between any subcontractor and the City.

16. PAYMENT

16.01. The City stipulates that it is an exempt organization as defined by the Limited Sales, Excise and Use Tax Act and, as such, is exempt from the payment of the sales tax on materials and supplies used in the performance of this Contract. The Contractor shall issue exemption certificates to its suppliers and Subcontractors in lieu of said sales tax for all such materials and supplies, and said exemption certificates must

comply with the State Comptroller's Ruling No. 95-0.07 and shall be subject to the provision of the State Comptroller's Ruling No. 95-0.09, effective October 1, 1969.

16.02. Progress Payment Applications. The Contractor shall submit applications for payment as provided for herein. Applications for payment will be processed by the City's Representative. Before the first Application for Payment, the Contractor shall submit to the City a schedule of values allocated to various portions of the Work, prepared in such form and supported by such data to substantiate its accuracy as the City may require. This schedule, unless objected to by the City, shall be used as a basis for reviewing the Contractor's Applications for Payment. On or before the 15th day of each month, the Contractor shall submit to City's Representative, for approval or modification, a statement showing as completely as practicable the total value of the actual work performed by the Contractor and accepted by the City up to and including the last day of the *preceding* month. The statement shall also include the value of all materials not previously submitted for payment which have been delivered to the site but have not yet been incorporated into the work.

16.03. Progress Payments. On or before the **30th** calendar day following the City's receipt of a progress payment application made in conformity with Paragraph 16.02, the City shall pay to the Contractor the approved amount of the progress payment based on the Contractor's applications for payment, and the recommendation and approval of City's Representative. Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage of work completed by the Contractor and approved by the City, but in each case less the aggregate of payments previously made, less retainage, and less amounts as City's Representative shall determine and the City may withhold in accordance with this Agreement. Upon Final Completion, including the delivery of all close out documents, such as "as built" drawings, warranties, guarantees, required additional materials, releases, operation and maintenance manuals, and acceptance of the work in accordance with this Agreement, the City shall pay the remainder of the balance due under this Agreement, less any sums withheld under other terms of this Agreement and less the retainage, which shall be retained for a period of thirty (30) calendar days from the date of Final Completion. Acceptance of retainage by Contractor shall constitute a Waiver and Release of all claims by Contractor.

16.04. Retainage. From each approved statement, the City shall retain until final payment, ten percent (10%), where the full contract amount is less than \$400,000.00, and five percent (5%), where the full contract amount is \$400,000.00 or more. The City may also retain from each approved statement any other sums authorized under the terms of this Agreement.

16.05. If the actual amount of work to be done and the materials to be furnished differ from estimates and where the basis for payment is the unit price method, then payment shall be for the actual amount of accepted work done and materials furnished on the Project.

16.06. Reduction in the scope or quantity of work on unit price items shall merely reduce the number of units. In the event that materials have been delivered prior to notice of such reduction, the City will have the option either to pay freight & transportation costs and any re-stocking charges actually incurred by the Contractor or to purchase the materials. The Contractor shall never be entitled to anticipated or lost profits on the deleted or reduced portion of a job, whether bid on a unit price or lump sum basis.

16.07. The Contractor shall have the sole obligation to pay any and all charges or fees and give all notices necessary to and incidental to the lawful prosecution of the work hereunder. The Contractor shall not and shall have no authority whatsoever to obligate the City to make any payments to another party nor make any

promises or representation of any nature on behalf of the City, without the specific written approval of the City.

16.08. The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the City may direct, but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection.

16.09. Unless otherwise provided in the Contract Documents:

- (a) allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- (b) Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit and other expenses contemplated for stated allowance amounts shall be included in the Contract Amount but not in the allowances;
- (c) whenever costs are more than or less than allowances, the Contract Amount shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Paragraph 16.9(a) and (2) changes in the Contractor's costs under Paragraph 16.9(b).

16.10. **Suspension of Payments.** The City, at any time, may suspend monthly progress payments on the work if it determines that the projected liquidated damages may exceed retainage. The City, at any time, may suspend monthly progress payments if it believes that the Contractor will not complete the work due to actual default or that the Contractor has represented or done some act that indicates that it will not complete the work in accordance with this Agreement or within the time period submitted in its bid. Provided, however, City is in no way obligated to Contractor's surety to withhold payment pursuant to the provisions of this Paragraph.

16.11. **Withhold Funds.** Regardless of any bond, the City may, on account of subsequently discovered evidence and in addition to the retainage withheld under Paragraph 16.04, withhold funds or nullify all or part of any acceptance or certificate to such extent as may be necessary to protect itself from loss on account of any of the following, or as otherwise provided in this Agreement:

- (a) Defective work.
- (b) Claims made or reasonable evidence indicating probable filing of claims by unpaid vendors or other third parties.
- (c) Failure of the Contractor to make prompt payments to subcontractors for labor or material or materialmen.
- (d) Claims made or reasonable evidence indicating claims will be made for damage to another by the Contractor.
- (e) Claims made or reasonable evidence indicating claims will be made for damage to third parties, including adjacent property owners.
- (f) Claims made or reasonable evidence indicating claims will be made for unremedied damage to property owned by the City.
- (g) City's determination of an amount of liquidated damages.
- (h) Charges made for repairs to the Contractor's defective work or repairs made by the City to correct damage to other property.
- (i) Other amounts authorized under this Agreement or under any other agreement made between City and Contractor.

Provided, however, City is in no way obligated to Contractor's surety to withhold payment pursuant to the provisions of this Paragraph.

16.12. The Parties agree that the City or the state auditor, if state funds are used to fund this contract, may conduct an audit or investigation of any entity receiving funds from the City directly or indirectly through a subcontract under the contract. The acceptance of funds under the contract or subcontract acts as acceptance of the authority of the City or the state auditor to conduct an audit or investigation in connection with those funds. An entity that is the subject of an audit or investigation must provide the City or the state auditor with access to any information the City or the auditor considers relevant to the investigation.

17. EXTRA WORK CHARGES

17.01. No changes shall be made, nor will bills for changes, alterations, modifications, deviations, and extra orders be recognized or paid for except upon the written order from authorized personnel of the City.

17.02. For "Extra Work", as defined in Paragraph 1.07 and authorized through written change orders, and pursuant to Section 252.048(d) of the Texas Local Government Code, the original contract price may not be increased by more than ***twenty-five percent (25%)***. Written change orders that do not exceed ***twenty-five percent (25%)*** of the original contract amount may be made or approved by the City Manager or his delegate if the change order is less than ***Fifty Thousand Dollars (\$50,000.00)***. Changes in excess of ***Fifty Thousand Dollars (\$50,000.00)*** must be approved by the City Council prior to commencement of the services or work. **Any requests by the Contractor for a change to the Contract Amount shall be made prior to the beginning of the work covered by the proposed change or the right to payment for Extra Work shall be waived.** No course of conduct or dealings between the parties, nor implied acceptance of alterations or additions to the Work or changes to the Contract schedule shall be the basis for any claim for an increase in compensation or change in time. Any cost incurred by Contractor in connection with any Extra Work shall be included in Contractor's requested change order and Contractor's failure to include any such cost shall act to Waive and Release any claim for such non included cost.

17.03. The Contractor shall complete all work as specified or indicated in the Contract Documents. The Contractor shall complete all Extra Work in connection therewith. All work and materials shall be in strict conformity with the specifications. The Substantial Completion of the work shall not excuse the Contractor from performing all the work undertaken, whether of a minor or major nature, and thereby completing the Project in accordance with the Contract Documents. In the event that the Contractor fails to perform the work as required for Substantial Completion or Final Completion, the City may contract with a third party to complete the work and the Contractor shall assume and pay the costs of the performance of the work as contracted.

(a) It is agreed that the Contractor shall perform all Extra Work under the direction of City's Representative when presented with a written work order signed by City.

(b) **No claim for Extra Work of any kind will be allowed unless ordered in writing by the City.** In case any orders or instructions appear to the Contractor to involve Extra Work for which it should receive compensation or an adjustment in the construction time, it shall make written request to City's Representative for a written order from City authorizing such Extra Work and City shall not unreasonably withhold approval of Contractor's justifiable compensation claim for Extra Work.

(c) Should a difference of opinion arise as to what does or does not constitute Extra Work, or as to the payment therefor, and the City insists upon its performance, then the Contractor shall proceed with the work after making written requests for written orders in a change order and shall keep adequate and accurate account of the actual field costs therefor, as provided under Method C.

(d) It is also agreed that the compensation to be paid to the Contractor for performing Extra Work shall be determined by one or more of the following methods:

Method A - By agreed unit prices, or

Method B - By agreed lump sum, or

Method C - If neither Method A nor Method B is agreed upon before the Extra Work is commenced, then the Contractor shall be paid the actual field cost of the work.

(e) **Method A - Unit Prices.** The Contractor agrees to perform Extra Work for the unit prices in the Contractor's Proposal. The Contractor also agrees and warrants that when it is necessary to construct units not shown in the Contract Documents, it shall construct such units for a price arrived at as follows:

(1) The cost of materials shall be determined by the invoices;

(2) The cost of labor shall be the reasonable cost thereof, as determined by the City, but in no event shall it exceed an amount determined by calculating the ratio of the total labor costs to the total costs to the total material costs in the section of the Proposal involved, and multiplying the cost of materials for the unit in question by this ratio. Provided, however, that the ratio shall be calculated for only those units that are similar to the new unit for which a price is to be determined.

(f) **Method B - Lump Sum.** The lump sum shall be reasonably close to the amount for similar work previously done or combinations of similar units. Invoices for materials used shall be provided in support of the agreed lump sum.

(g) **Method C - Actual Field Costs.** The actual field cost is hereby defined to include the cost of all applicable workmen and laborers, as well as materials, supplies, teams, trucks, rentals on machinery and equipment, for the time actually employed or used for such Extra Work, plus actual transportation charges necessarily incurred, together with other costs reasonably incurred directly on account of such Extra Work, including social security, old age benefits, maintenance bonds, public liability, property damage, worker's compensation, and all other insurance as may be required by law or ordinances or required and agreed to by the City or City's Representative. City's Representative may direct the form in which accounts of the actual field costs shall be kept and records of these accounts shall be made available to City's Representative. Unless otherwise agreed upon, the prices for the use of machinery and equipment shall be determined by using one hundred percent (100%), unless otherwise specified, of the latest schedule of equipment and ownership expenses adopted by the Associated General Contractors of America. Where practical, the terms and prices for the use of machinery and equipment shall be incorporated in the written Extra Work order. Actual field costs shall not exceed the prevailing market price therefor within reasonable tolerances as determined by City's Representative. The amount due to Contractor for costs other than actual field costs shall be calculated in accordance with the following standards:

- (1) No indirect or consequential damages will be allowed.
- (2) All costs must be directly and specifically shown to be caused by a proven wrong. No recovery shall be based on a comparison by planned expenditures to total actual expenditures or on estimated losses of labor efficiency, or on a comparison of planned manloading to actual manloading, or any other analysis that is used to show damages indirectly.
- (3) Damages are limited to extra costs specifically shown to have been directly caused by a proven wrong.
- (4) The maximum daily limit on any recovery for delay shall be the amount established by the Contractor for job overhead costs, defined in the pay applications, divided by the total number of days specified for completion called for in the original Contract. Absent an overhead amount in the Schedule of Values, the amount estimated by Contractor for job overhead cost shall be used.

18. TIME OF COMPLETION

18.01. The date of beginning, the time for Substantial Completion and Final Completion of work as specified in this Agreement are of the essence in this Agreement.

18.02. The work embraced by this Agreement shall be commenced on the date specified in the notice to proceed. Said notice to proceed will be given in written form or set by the City's Representative at the post-award conference.

18.03. The work shall be Substantially Completed within the time bid, which shall run from the date when the notice to proceed is given by City's Representative. The Contractor has bid **120 calendar days** for the time within which it shall reach Substantial Completion of the Project.

18.04. The work shall reach Final Completion and be ready for final payment within **thirty (30) calendar days** from the date of Substantial Completion.

19. SUBSTANTIAL COMPLETION

19.01. The Contractor shall notify City's Representative when, in the Contractor's opinion, the contract is Substantially Completed. Within ten (10) calendar days after the Contractor has given City's Representative written notice that the work has been Substantially Completed, City's Representative shall inspect the work for the preparation of a final punch list.

- (a) If City's Representative and the City find that the work is not Substantially Completed, then they shall so notify the Contractor who shall then complete the work. City's Representative shall not be required to provide a list of unfinished work.
- (b) If the City Representative and City find that the work is Substantially Completed, the City shall issue to the Contractor its certificate of Substantial Completion.

19.02. The Substantial Completion of the work shall not excuse the Contractor from performing all of the work undertaken, whether of a minor or major nature, and thereby completing the Project in accordance with the Contract Documents.

20. FINAL COMPLETION

20.01. Contractor shall notify the City's Representative when it believes that the work has reached Final Completion as defined in Paragraph 1.08. If the City's Representative and the City accept and deems such work Finally Complete, then Contractor shall be so notified and certificates of completion and acceptance, as provided herein, shall be issued. A complete itemized statement of this Agreement account, certified by the City's Representative as correct, shall then be prepared and delivered to Contractor. Contractor or City, as the case may be, shall pay the balance due as reflected by said statement within thirty (30) calendar days.

20.02. The Contractor shall procure all required certificates of acceptance or completions issued by state, municipal, or other authorities and submit the same to the City. The City may withhold any payments due under this Agreement until the necessary certificates are procured and delivered.

20.03. Neither the final payment nor any acceptance nor certificate nor any provision of this Agreement shall relieve the Contractor of any responsibility for faulty workmanship or materials. At the option of the City, the Contractor shall remedy any defects and pay for any damage to other work which may appear after final acceptance of the work.

21. DELAYS

21.01. The Contractor, in undertaking to complete the work within the times herein fixed, has taken into consideration and made allowance for all hindrances and delays incident to such work, whether growing out of delays in securing material or workmen or delays arising from inclement weather or otherwise.

21.02. The City may, in its sole discretion, delay the work during inclement weather in order to preserve the Project, insure safety of work forces, and the preservation of materials and equipment. In such event and upon a written request from the Contractor, the City may grant an extension of time pursuant to Paragraph 22 to offset for such stoppage of the work.

21.03. In the event of delays resulting from changes ordered in the work by the City or other delays caused by the City or for the City's convenience, the Contractor may apply to the City for recovery of incidental expenses resulting from increased storage costs or other costs necessary to protect the value of the work. In no event shall any consequential or other damages be allowed or any other charges or claims be made by the Contractor for hindrances or delays resulting from any other cause.

22. EXTENSIONS OF TIME

The Contractor has submitted its proposal in full recognition of the time required for the completion of this Project, taking into consideration all factors including, but not limited to the average climatic range and industrial conditions. The Contractor has considered the liquidated damage provision of this Agreement and understands and agrees that it shall not be entitled to, nor will it request, an extension of time for either Substantial Completion or Final Completion, except when the work has been delayed by one or more of the following:

- (1) an act or neglect of the City, the City's Representative, employees of the City, or other contractors employed by the City;
- (2) by changes ordered in the work, or reductions thereto approved in writing;
- (3) by "rain days" (days with rainfall in excess of one-tenth of an inch) during the term of this Agreement that exceed the average number of rain days for such term for this locality, both as determined by the Texas A&M University weather service; or
- (4) by other causes that the City and the Contractor agree may reasonably justify delay and that were beyond the Contractor's reasonable control and ability to estimate, predict, or avoid, such as delays caused by unforeseen labor disputes, fire, natural disasters, acts of war, and other rare and unpredictable events. This term does **not** include normal delays incident to the delivery of materials, tools, or labor that reasonably could have been predicted and/or accounted for in the Contractor's proposal or decision to bid.

If one or more of the foregoing conditions is present, the Contractor may apply in writing for an extension of time, within thirty (30) days of the occurrence of the event causing the delay, submitting therewith all written justification as may be required by the City's Representative. Within ten (10) calendar days after receipt of a written request for an extension of time, which is supported by all requested documentation, the City shall, in writing and in its sole discretion, grant or deny the request. Under no circumstances shall any extension of time by the City be valid and binding unless it is in writing and in conformity with the other terms of this Agreement.

23. LIQUIDATED DAMAGES

23.01. The time for the Substantial and Final Completion of the work described herein are reasonable times for the completion of each, taking into consideration all conditions, including but not limited to the average climatic conditions and usual industrial conditions prevailing in this locality. The amount of liquidated damages for the Contractor's failure to meet the deadlines for Substantial and/or Final Completion are fixed and agreed on by the Contractor because of the impracticability and extreme difficulty in fixing and ascertaining the actual damages that the City would in such an event sustain. The amounts to be charged are agreed to be damages the City would sustain and shall be retained by the City from current periodic estimates for payment or from final payment.

23.02. As a result of the difficulty in estimation, calculation and ascertainment of City's damages due to a failure of Contractor to achieve timely completion of the Work, if the Contractor should neglect, fail, or refuse to either Substantially Complete or Finally Complete the work within the time herein specified, or any proper extension thereof granted by the City's Representative pursuant to the terms of Paragraph 22 of this Agreement, then the Contractor does hereby agree as part of the consideration for the awarding of this Agreement that the City may permanently withhold from the Contractor's total compensation the sum of **Five Hundred and no/100 DOLLARS (\$500.00)** for each and every calendar day that the Contractor shall be in default after the time stipulated for Substantial Completion and/or Final Completion, not as a penalty, but as liquidated damages for the breach of this Agreement. It being specifically understood that the assessment of liquidated damages may be made for any failure to meet either or both of the deadlines specified for Substantial Completion and/or Final Completion.

24. CHARGES FOR INJURY OR REPAIR

24.01. The Contractor shall be liable for any damages incurred or repairs made necessary by reason of its work and/or caused by it. Repairs of any kind required by the City will be made and charged to the Contractor by the City.

24.02. The Contractor shall take the necessary precautions to protect any areas adjacent to its work.

24.03. The work specified consists of all work, materials, and labor required by the City to repair any damage to the property of the City, including but not limited to structures, roadways, curbs, parking areas, and sidewalks.

25. WARRANTY

25.01. Upon issuance of a certificate of Final Completion, the Contractor warrants for a period of one (1) year as follows:

The Contractor warrants that all labor and materials provided to the City under this Agreement shall be new unless otherwise approved in advance by City's Representative and that all work will be of good quality, free from faults and defects, and in conformance with this Agreement, the other Contract Documents, and recognized industry standards.

25.02. All work not conforming to these requirements, including but not limited to unapproved substitutions, may be considered defective.

25.03. This warranty is in addition to any rights or warranties expressed or implied by law and in addition to any consumer protection claims arising from misrepresentations by the Contractor.

25.04. Where more than a one (1) year warranty is specified for individual products, work, or materials, the longer warranty shall govern.

25.05. This warranty obligation shall be covered by any performance or payment bonds tendered in compliance with this Agreement.

25.06. **Defective Work Discovered During Warranty Period.** If any of the work is found or determined to be either defective, including obvious defects, or otherwise not in accordance with this Agreement within one (1) year after the date of the issuance of a certificate of Final Completion of the Work or a designated portion of the Work, whichever is longer, or within one (1) year after acceptance by the City of designated equipment, or within such longer period of time as may be prescribed by law or by the terms of any applicable special warranty required by this Agreement, the Contractor shall promptly commence to correct the defective work at no cost to the City.

25.07. After receipt of written notice from the City to begin corrective work, the Contractor shall promptly begin the corrective work. The obligation to correct any defective work shall survive the termination of this Agreement. The guarantee to correct the defective work shall not constitute the exclusive remedy of City, nor shall other remedies be limited to the terms of either the warranty or the guarantee.

25.08. If within ten (10) calendar days after the City has notified the Contractor of a defect, failure, or abnormality in the work, the Contractor has not started to make the necessary corrections or adjustments, the City is hereby authorized to make the corrections or adjustments, or to order the work to be done by a third party. The cost of the work shall be paid by the Contractor or its surety.

25.09. The cost of all materials, parts, labor, transportation, supervision, special instruments, and supplies required for the replacement or repair of parts and for correction of defects shall be paid by the Contractor or by the surety.

25.10. The guarantee shall be extended to cover all repairs and replacements furnished, and the term of the guarantee for each repair or replacement shall be one (1) year after the installation or completion. The one (1) year warranty shall cover all work, equipment, and materials that are part of this Project, whether or not a warranty is specified in the individual section of the Contract Documents that prescribe that particular aspect of the work.

26. PAYMENT OF EMPLOYEES, SUBCONTRACTORS & SUPPLIERS

26.01. **Wage Rates.** Pursuant to Section 2258.023(a) of the Texas Government Code, wage rates paid by the Contractor and any subcontractor on this Project shall be not less than the general prevailing rate of per diem wages for work of a similar character in this locality as specified in the schedule of general prevailing rates of per diem wages attached hereto as Exhibit A.

26.02. **Statutory Penalty.** Pursuant to Section 2258.023(b) of the Texas Government Code, if the Contractor or any subcontractor violates the requirements of Paragraph 26.01, the Contractor or subcontractor as the case may be shall pay the City **Sixty Dollars (\$60.00)** for each worker employed for each calendar day or part of the day that the worker is paid less than the stipulated wage rates.

26.03. The Contractor and each subcontractor shall pay all of their employees engaged in work on the Project in full (less mandatory legal deductions) in cash or by check readily cashable, without discount, no less than once each week.

26.04. No later than the seventh (7th) calendar day following the payment of wages, the Contractor must file with City's Representative a certified, sworn, legible copy of such payroll. This shall contain the name of each employee, their classification, the number of hours worked on each day, rate of pay, and net pay. The affidavit shall state that the copy is a true and correct copy of such payroll and that no rebates or deductions (except as shown) have been made or will be made in the future from the wages therein shown.

26.05. **Payment of Subcontractors.** The Contractor shall be solely and exclusively responsible for compensating any of the Contractor's employees, subcontractors, materialmen and/or suppliers of any type or nature whatsoever and for insuring that no claims or liens of any type arising out of or incidental to the performance of any services performed pursuant to this Agreement are filed against any property owned by the City. In the event a statutory lien notice is sent to the City, the Contractor shall, where no payment bond covers the work, upon written notice from the City, immediately obtain a bond at its expense and hold the City harmless from any losses that may result from the filing or enforcement of any said lien notice. In the event that the Contractor defaults in the provision of the bond, the City may withhold such funds as are necessary to assure the payment of such claim until litigation determines to whom payment shall be made.

26.06. **Affidavit of Bills Paid.** Prior to Final Acceptance of the Project, the Contractor shall provide a notarized affidavit stating that all bills for labor, materials, and incidentals incurred have been paid in full, that any claims from manufacturers, materialmen, and subcontractors have been released, and that there are no claims pending of which the Contractor has been notified.

27. **INSURANCE**

27.01. The Contractor shall procure and maintain at its sole cost and expense for the duration of this Agreement insurance against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the work hereunder by the Contractor, its agents, representatives, volunteers, employees or subcontractors. The policies, coverages, limits and endorsements required are as set forth in Exhibit B.

28. **BOND PROVISIONS**

28.01. Pursuant to Section 2253.021 of the Texas Government Code, for all public works contracts with governmental entities, a payment bond is required if the Contract Amount exceeds \$50,000, and a performance bond is required if the Contract Amount exceeds \$100,000. Below those amounts, the City *may* require payment and/or performance bonds. In the event a performance or payment bond or both is required either by law or in the City's discretion, such bonds shall be executed in accordance with all requirements of Article 7.19-1 of the Texas Insurance Code, all other applicable law, and the following:

- (a) The Contractor shall execute performance and payment bonds for the full Contract Amount.
- (b) The bond surety shall be authorized under the laws of the State of Texas to provide a performance and payment bond and shall have attached proof of authorization of the surety to act in the performance and payment of bonds.
- (c) The Contractor shall provide original, sealed, and complete counterparts of the executed bonds in the forms required by the Contract Documents, which are attached as Exhibit C, together with valid original powers of attorney, **at the time of execution of this Agreement and prior** to the commencement of work. Copies of the executed bonds shall be attached hereto as **Exhibit C**.
- (d) The performance and payment bonds shall remain in effect for a period of one (1) year after Final Completion of the work and shall be extended for any warranty work to cover the warranty period.
- (e) If at any time during the execution of this Agreement in the required period thereafter, the bond or bonds become invalid or ineffective for any reason, the Contractor shall promptly supply within ten (10) days such other bond or bonds, which bond or bonds shall assure performance or payment as required.

28.02. The Contractor may make such changes and alterations as the City may require in the work or any part thereof without affecting the validity of this Agreement and any accompanying bond. If such changes or alterations diminish the quantity of the work to be done, they shall not constitute the basis for any claim for damages or anticipated profits. If the City makes changes or alterations that render useless any work already done or material already used in said work, then the City shall compensate the Contractor for any material or labor so used, and for any actual loss occasioned by such change due to actual expenses incurred in preparation for the work as originally planned, in accordance with the provisions of Article 17.

29. SURETY

29.01. If the Contractor has abandoned the Project or the City has terminated the contract for cause and the Contractor's Surety, after notice demanding completion is sent, fails to commence the completion of the work in compliance with this Agreement, then the City at its option may provide for completion of the work in either of the following manners:

29.01.01. The City may employ such force of men and use of instruments, machinery, equipment, tools, materials, and supplies as said the City may deem necessary to complete the work and charge the expense of such labor, machinery, equipment, tools, materials, and supplies to said the Contractor, and the expense so charged shall be deducted and paid by the City out of such monies as may be due or that may thereafter at any time become due to the Contractor and Surety.

29.01.02. The City may, after notice published as required by law, accept sealed bids and let this Agreement for the completion of the work under substantially the same terms and conditions that are provided in this Agreement. In case of any increase in cost to the City under the new agreement as compared to what would have been the cost under this Agreement, such increase together with all of the City's damages due to Contractor's abandonment and/or default, including liquidated damages, as provided pursuant to Paragraph 38, entitled "TERMINATION FOR CAUSE" shall be charged to the Contractor and the surety shall be and remain bound therefor. However, should the cost to complete such new agreement prove to be less than that which would have been the cost to complete the work under this Agreement, the Contractor shall be credited therewith after all deductions are made in accordance with this Agreement.

29.02. Should the cost to complete the work exceed the Contract Amount and the Contractor fails to pay the amount due to the City within the time designated and there remains any machinery, equipment, tools, materials, or supplies on the site of the work, notice thereof, together with an itemized list of such equipment and materials, shall be mailed to the Contractor at its respective address designated in this Agreement; provided, however, that actual written notice given in any manner shall satisfy this condition. After mailing, or otherwise giving such notice, such property shall be held at the risk of the Contractor subject only to the duty of City's Representative to exercise ordinary care to protect such property. After fifteen (15) calendar days from the date of said notice, City's Representative may sell such machinery, equipment, tools, materials, or supplies and apply the net sum derived from such sale to the credit of the Contractor. Such sale may be made at either public or private sale, with or without notice, as City's Representative may elect. City's Representative shall release any machinery, equipment, tools, materials, or supplies which remain on the job site and belong to persons other than the Contractor to their proper owners.

29.03. In the event the account shows that the cost to complete the work is less than that which would have been the cost to City had the work been completed by the Contractor under the terms of this Agreement, or when the Contractor shall pay the balance shown to be due by them to the City, then all machinery, equipment, tools, materials, or supplies left on the site of the work shall be turned over to the Contractor.

30. COMPLIANCE WITH LAW

30.01. The Contractor's work and materials shall comply with all state and federal laws, municipal ordinances, regulations, codes, and directions of inspectors appointed by proper authorities having jurisdiction.

30.02. The Contractor shall perform and require all subcontractors to perform the work in accordance with applicable laws, codes, ordinances, and regulations of the State of Texas and the United States and in

compliance with OSHA and other laws as they apply to its employees. In the event any of the conditions of the specifications violate the code for any industry, then such code conditions shall prevail.

30.03. The Contractor shall follow all applicable state and federal laws, municipal ordinances, and guidelines concerning soil erosion and sediment control throughout the Project and warranty term.

30.04 The Immigration Reform and Control Act (IRCA). The Contractor may not knowingly obtain the labor or services of an undocumented worker. The Contractor, not the City, must verify eligibility for employment as required by IRCA;

30.05 In accordance with Section 2155.4441 of the Texas Government Code, Contractor agrees that during the performance of this contract it shall purchase products and materials produced in Texas when they are available at a price and time comparable to products and materials produced outside this state;

31. SAFETY PRECAUTIONS

31.01. All safety measures, policies and precautions at the site are a part of the construction techniques and processes for which the Contractor shall be solely responsible. The Contractor is solely responsible for handling and use of hazardous materials or waste, and informing employees of any such hazardous materials or waste. The Contractor shall provide copies of all hazardous materials and waste data sheets to the Nacogdoches Fire Department marked "Attn.: Assistant Chief".

31.02. The Contractor has the sole obligation to protect or warn any individual of potential hazards created by the performance of the work set forth herein. The Contractor shall, at its own expense, take such precautionary measures for the protection of persons, property, and the work as may be necessary.

31.03. The Contractor shall be held responsible for all damages to property, personal injuries and/or death due to failure of safety devices of any type or nature that may be required to protect or warn any individual of potential hazards created by the performance of the work set forth herein; and when any property damage is incurred, the damaged portion shall immediately be replaced or compensated for by the Contractor at its own cost and expense.

31.04. Contractor agrees that it shall not transport to, use, generate, dispose of, or install at the Project site any Hazardous Substance (as defined in Paragraph 31.07, except in accordance with applicable Environmental Laws. Further, in performing the Work, Contractor shall not cause any release of Hazardous Substances into, or contamination of, the environment, including the soil, the atmosphere, any water course or ground water, except in accordance with applicable Environmental Laws (as hereafter defined at Paragraph 31.07). **In the event Contractor engages in any of the activities prohibited in this Paragraph 31.04 to the fullest extent permitted by law, Contractor hereby indemnifies and holds City and all of its respective officials, agents and employees harmless from and against any and all claims, damages, losses, causes of action, suits and liabilities of every kind, including, but not limited to, expenses of litigation, court costs, punitive damages and attorneys' fees, arising out of, incidental to or resulting from the activities prohibited in this Paragraph 31.04.**

31.05. In the event Contractor encounters on the Project site any Hazardous Substance, or what Contractor may reasonably believe to be a Hazardous Substance, and which is being introduced to the Work, or exists on the Project site, in a manner violative of any applicable Environmental Laws, Contractor shall immediately

stop work in the area affected and report the condition to City in writing. The Work in the affected area shall not thereafter be resumed except by written authorization of City if in fact a Hazardous Substance has been encountered and has not been rendered harmless. In the event Contractor fails to stop the Work upon encountering a Hazardous Substance at the Project site, **to the fullest extent permitted by law, Contractor hereby indemnifies and holds City and all of its officials, agents and employees harmless from and against any and all claims, damages, losses, causes of action, suits and liabilities of every kind, including, but not limited to, expenses of litigation, court costs, punitive damages and attorneys' fees, arising out of, incidental to or resulting from Contractor's failure to stop the Work.**

31.06. City and Contractor may enter into a separate agreement and/or Change Order for Contractor to remediate and/or render harmless the Hazardous Substance, but Contractor shall not be required to remediate and/or render harmless the Hazardous Substance absent such agreement. Contractor shall not be required to resume work in any area affected by the Hazardous Substance until such time as the Hazardous Substance has been remediated and/or rendered harmless.

31.07. For purposes of this Agreement, the term "Hazardous Substance" shall mean and include any element, constituent, chemical, substance, compound, or mixture, which are defined as a hazardous substance by any local, state or federal law, rule, ordinance, by-law, or regulation pertaining to environmental regulation, contamination, clean-up or disclosure, including, without limitation, The Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), The Resource Conservation and Recovery Act ("RCRA"), The Toxic Substances Control Act ("TSCA"), The Clean Water Act ("CWA"), The Clean Air Act ("CAA"), and the Marine Protection Research and Sanctuaries Act ("MPRSA"), The Occupational Safety and Health Act ("OSHA"), The Superfund Amendments and Reauthorization Act of 1986 ("SARA"), or other state superlien or environmental clean-up or disclosure statutes including all state and local counterparts of such laws (all such laws, rules and regulations being referred to collectively as "Environmental Laws"). It is the Contractor's responsibility to comply with this Paragraph 31.07 based on the law in effect at the time its services are rendered and to comply with any amendments to those laws for all services rendered after the effective date of any such amendments.

32. TRENCH SAFETY

The Contractor must comply with Texas law regarding trench excavation exceeding five feet in depth and in accordance with the following items:

32.01 The Contractor must comply with the requirements of Tex. Health & Safety Code Ann. §756.022-023 (Vernon 1992), as amended, and the requirements of 29 C.F.R., Sections 1926.650 through 1926.653 inclusive, "Excavation, Trenching and Shoring," of the Occupational Safety and Health Administration Standards, as amended.

32.02 The Contractor must include a separate pay item for trench safety complying with trench safety requirements, stating a unit price per linear foot of trench safety systems, as measured along the centerline of trench including manholes and other line structures.

32.03 Before beginning work on this project, the Contractor must submit to the City a complete trench safety program that complies with state and federal regulations. It is the sole duty, responsibility and prerogative of the Contractor, not the City, to determine the specific applicability of the designed trench safety systems to each field condition encountered on the project.

32.04 The Contractor must provide the City the name of the “competent person” required by OSHA standards to perform the trench safety inspections. The Contractor must make daily inspections to ensure that the systems comply with all applicable laws and regulations, and must maintain a permanent record of daily inspections available for examination by the City or other government authority.

32.05 If evidence of possible cave-ins or slides is apparent, the Contractor must cease all work in the trench and surrounding area until the necessary precautions have been taken by the Contractor to safeguard personnel entering the trench.

33. INDEMNITY

33.01. CONTRACTOR SHALL PROTECT, DEFEND, HOLD HARMLESS AND INDEMNIFY THE CITY AND/OR ITS OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND OR/OR DESIGNEES FROM ANY AND ALL CLAIMS, DEMANDS, EXPENSES, LIABILITY, SUITS OR CAUSES OF ACTION, AND ALL RELATED COSTS, ATTORNEY FEES, AN EXPENSES FOR INJURY TO ANY PERSON, INCLUDING DEATH, AND FOR DAMAGE TO ANY PROPERTY, TANGIBLE OR INTANGIBLE, OR FOR ANY BREACH OF CONTRACT ARISING OUT OF OR IN ANY MANNER CONNECTED WITH THE WORK DONE BY ANY PERSON UNDER THIS CONTRACT, BUT ONLY TO THE EXTENT SUCH LIABILITIES AND DEMANDS RESULT FROM THE NEGLIGENT ACTS AND OMISSIONS OF CONTRACTOR, ITS EMPLOYEES, SUBCONTRACTORS, AND AGENTS FOR WHICH THEY ARE PROVEN AT FAULT. IT IS THE INTENT OF THE PARTIES THAT THIS PROVISION SHALL EXTEND TO, AND INCLUDE, ANY AND ALL CLAIMS, CAUSES OF ACTION OR LIABILITY CAUSED BY THE CONCURRENT, JOINT AND/OR CONTRIBUTORY NEGLIGENCE OF THE CITY, AN ALLEGED BREACH OF AN EXPRESS OR IMPLIED WARRANTY BY THE CITY OR WHICH ARISES OUT OF ANY THEORY OF STRICT OR PRODUCTS LIABILITY.

33.02 Upon completion of the installation, this indemnification is not intended to cover, and the Contractor is not responsible for, any claims or damages resulting from any lack of maintenance; inadequate supervision; negligence; intentional acts of anyone other than the Contractor or their affiliates; inadequate surfacing; or vandalism. Regarding product liability, this indemnification and any insurance provided by Contractor is intended to indemnify for claims arising solely from the negligent design or manufacture of the Playground Equipment. This clarification of the indemnification section of this contract supersedes any other section of this contract, regarding indemnification, which might be interpreted in any other way.

33.03 The defense of any claim shall be coordinated by Contractor with the City Attorney of the City of Nacogdoches, Texas when the City is named Defendant in any lawsuit and Contractor may not agree to any settlement without first obtaining the concurrence from the City Attorney. The Parties agree to furnish timely written notice to each other of any such claim.

33.04. The indemnifications contained in paragraphs 33.01 shall include but not be limited to the following specific instances:

- (a) In the event the City is damaged due to the act, omission, mistake, fault or default of the Contractor, then the Contractor shall indemnify and hold harmless and defend the City for such damage.
- (b) The Contractor shall indemnify and hold harmless and defend the City from any claims for payment for goods or services brought by any material suppliers, mechanics, laborers, or other subcontractors.
- (c) The Contractor shall indemnify and hold harmless and defend the City from any and all injuries to or claims of adjacent property owners caused by the Contractor, its agents, employees, and representatives.
- (d) The Contractor shall be responsible for any damage to the floor, walls, etc., caused by the Contractor's personnel or equipment during installation.
- (e) The Contractor shall also be responsible for the removal of all related debris.
- (f) The Contractor shall also be responsible for subcontractors hired by it.
- (g) The Contractor shall indemnify, hold harmless, and defend the City from any liability caused by the Contractor's failure to comply with applicable federal, state, or local regulations, that touch upon or concern the maintenance of a safe and protected working environment and the safe use and operation of machinery and equipment in that working environment, no matter where fault or responsibility lies.

33.05. The indemnification obligations of the Contractor under this section shall not extend to include the liability of any professional engineer, the architect, their consultants, and agents or employees of any of them arising out of (1) the preparation or approval of maps, drawings, opinions, reports, surveys, Change Orders, designs or specifications, or (2) the giving of or the failure to give directions or instructions by the professional engineer, the architect, their consultants, and agents and employees of any of them, provided such giving or failure to give is the primary cause of the injury or damage.

33.06. It is agreed with respect to any legal limitations now or hereafter in effect and affecting the validity or enforceability of the indemnification obligation under Paragraph 33.01, such legal limitations are made a part of the indemnification obligation and shall operate to amend the indemnification obligation to the minimum extent necessary to bring the provision into conformity with the requirements of such limitations, and as so modified, the indemnification obligation shall continue in full force and effect.

34. RELEASE

The Contractor assumes full responsibility for the work to be performed hereunder, and hereby releases, relinquishes, and discharges the City, its officers, agents, and employees from all claims, demands, and causes of action of every kind and character, including the cost of defense thereof, for any injury to or death of any person (whether employees of either party or other third parties) and any loss of or damage to any property (whether property of either of the parties hereto, their employees, or of third parties) that is caused by or alleged to be caused by, arising out of, or in

connection with the Contractor's work to be performed hereunder. This release shall apply regardless of whether said claims, demands, and causes of action are covered in whole or in part by insurance, and in the event of injury, death, property damage, or loss suffered by the Contractor, any subcontractor, or any person or organization directly or indirectly employed by any of them to perform or furnish work on the Project, this release shall apply regardless of whether such injury, death, loss, or damage was caused in whole or in part by the negligence of the City.

35. PERMITS AND LICENSES

The Contractor shall secure and pay for all necessary permits and licenses, governmental fees, and inspections necessary for the proper execution and completion of the work. During this Agreement term and/or period during which the Contractor is working, it shall give all notices and comply with all laws, ordinances, rules, regulations, and lawful orders of any public authority bearing on the performance of the work.

36. ROYALTIES AND LICENSING FEES

The Contractor shall pay all royalties and licensing fees. The Contractor shall hold the City harmless and indemnify the City from the payment of any royalties, damages, losses or expenses including attorney's fees for suits, claims or otherwise, growing out of infringement or alleged infringement of patents, materials and methods used in the Project. It shall defend all suits or claims for infringement of any patent rights. Further, if the Contractor has reason to believe that the design, service, process, or product specified is an infringement of a patent, it shall promptly give such information to City's Representative.

37. BREACH OF CONTRACT & DAMAGES

37.01. The City shall have the right to declare the Contractor in breach of this Agreement for cause when the City determines that this Agreement is not being performed according to its understanding of the intent and meaning of this Agreement. Such breach shall not in any way invalidate, abrogate, or terminate the Contractor's obligations under this Agreement.

37.02. Without prejudice to any other legal or equitable right or remedy that the City would otherwise possess hereunder or as a matter of law, the City upon giving the Contractor five (5) calendar days prior written notice shall be entitled to damages for breach of contract, upon but not limited to the following occurrences:

- (a) If the Contractor shall fail to remedy any default after written notice thereof from City's Representative, as City's Representative shall direct; or
- (b) If the Contractor shall fail for any reason other than the failure by City's Representative to make payments called upon when due; or
- (c) If the Contractor commits a substantial default under any of the terms, provisions, conditions, or covenants contained in this Agreement.

38. TERMINATION FOR CAUSE

Without prejudice to any other legal or equitable right or remedy that the City would otherwise possess hereunder or as a matter of law, the City upon giving the Contractor five (5) calendar days prior written notice shall be entitled to terminate this Agreement in its entirety at any time for any of the following:

38.01. If the Contractor becomes insolvent, commits any act of bankruptcy, makes a general assignment for the benefit of creditors, or becomes the subject of any proceeding commenced under any statute or law for the relief of debtors and, after notice, fails to provide adequate assurance that it can remedy all of its defaults; or

38.02. If a receiver, trustee, or liquidator of any of the property or income of the Contractor shall be appointed; or

38.03. If the Contractor shall fail to prosecute the work or any part thereof with diligence necessary to insure its progress and completion as prescribed by the time schedules; or

38.04. If the Contractor shall fail to remedy any default within ten (10) calendar days after written notice thereof from City's Representative, as City's Representative shall direct; or

38.05. If the Contractor shall fail for any reason other than the failure by City's Representative to make payments called upon when due; or

38.06. If the Contractor abandons the Work.

38.07. If the Contractor commits a substantial default under any of the terms, provisions, conditions, or covenants contained in this Agreement.

39. TERMINATION FOR CONVENIENCE

39.01. The performance of the work may be terminated at any time in whole or, from time to time, in part, by the City for its convenience. Any such termination shall be effected by delivery to the Contractor of a written notice (notice of termination) specifying the extent to which performance of the work is terminated, and the date upon which termination becomes effective.

39.02 In the event of termination for convenience, the Contractor shall only be paid the reasonable value of the Work performed prior to the effective date of the termination notice and shall be further subject to any claim the City may have against the Contractor under other provisions of this Agreement or as a matter of law. In the event of termination for convenience, Contractor Waives and Releases any claim for lost profit, other than profit on Work performed prior to the effective date of such termination.

40. RIGHT TO COMPLETE

If this Agreement is terminated for cause, the City shall have the right but shall not be obligated to complete the work itself or by others; and to this end, the City shall be entitled to take possession of and use such equipment, without rental obligation therefor, and materials as may be on the job site, and to exercise all rights, options, and privileges of the Contractor under its subcontracts, purchase orders, or otherwise; and the Contractor shall promptly assign such rights, options, and privileges to City. If the City elects to complete

the work itself or by others, pursuant to the foregoing, then the Contractor and/or Contractor's surety will reimburse City for all costs incurred by the City (including, without limitation, applicable, general, administrative expenses, field overhead, the cost of necessary equipment, materials, field labor, additional fees paid to architects, engineers, attorneys or others to assist the City in connection with the termination and liquidated damages) in completing and/or correcting work by the Contractor that fails to meet any requirement of this Agreement or the other Contract Documents.

41. CLOSE OUT

41.01. After receipt of a notice of termination, whether for cause or convenience, unless otherwise directed by City's Representative, the Contractor shall, in good faith and to the best of its ability, do all things necessary in the light of such notice to assure the efficient and proper closeout of the terminated work (including the protection of City's property). Among other things, the Contractor shall, except as otherwise directed or approved by City's Representative, do the following:

- (a) Stop the work on the date and to the extent specified in the notice of termination;
- (b) Place no further orders or subcontracts for services, equipment, or materials, except as may be necessary for completion of such portion of the work as is not terminated;
- (c) Terminate all orders and subcontracts to the extent that they relate to the performance of the work terminated by the notice of termination;
- (d) Assign to City's Representative, in the manner and to the extent directed by it, all of the right, title, and interest of the Contractor under the orders or subcontracts so terminated; in which case, City's Representative shall have the right to settle or pay any or all claims arising out of the termination of such orders and subcontracts;
- (e) With the approval of City's Representative, settle all outstanding liabilities and all claims arising out of such termination, orders, and subcontracts;
- (f) Deliver to City's Representative, when directed by City's Representative, all documents and all property, which if the work had been completed, Contractor would have been required to account for or deliver to City's Representative, and transfer title to such property to City's Representative to the extent not already transferred.

42. TERMINATION CONVERSION

Upon determination of Court of competent jurisdiction that termination of the Contractor pursuant to Paragraph 38 was wrongful and/or otherwise improper, such termination will be deemed converted to a termination for convenience pursuant to Paragraph 39 and Contractor's remedy for such termination shall be limited to the recovery of the payments permitted for termination for convenience as set forth in Paragraph 39.

43. HIRING

During the term of this Agreement and for a period of one (1) year thereafter, the Contractor agrees not to solicit for hire any employee or employees of the City that were associated with work specified under this

Agreement. In the event that this provision is breached by the Contractor, the Contractor agrees to pay the City damages in the amount equal to twelve (12) months of the employee's total compensation plus any legal expenses associated with enforcement of this provision.

44. **ASSIGNMENT**

This Agreement and the rights and obligations contained herein may not be assigned by the Contractor without the prior written approval of the City.

45. **EFFECTIVE DATE**

The effective date of this contract shall be the date of award of the contract.

46. **OTHER TERMS**

46.01. **Invalidity.** If any provision of this Agreement shall be held to be invalid, illegal or unenforceable by a court or other tribunal of competent jurisdiction, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby. The parties shall use their best efforts to replace the respective provision or provisions of this Agreement with legal terms and conditions approximating the original intent of the parties.

46.02. **Written Notice.** Unless otherwise specified, written notice shall be deemed to have been duly served if delivered in person to the individual or to a member of the firm or to any officer of the corporation for whom it is intended or if it is delivered or sent certified mail to the last business address as listed herein. Each party will have the right to change its business address by at least thirty (30) calendar days written notice to the other parties in writing of such change.

46.03. **Entire Agreement.** It is understood that this Agreement contains the entire agreement between the parties and supersedes any and all prior agreements, arrangements, or understandings between the parties relating to the subject matter. No oral understandings, statements, promises or inducements contrary to the terms of this Agreement exist. This Agreement cannot be changed or terminated orally. No verbal agreement or conversation with any officer, agent or employee of the City, either before or after the execution of this Agreement, shall affect or modify any of the terms or obligations hereunder.

46.04. **Amendment.** No amendment to this Agreement shall be effective and binding unless and until it is reduced to writing and signed by duly authorized representatives of both parties.

46.05. **Mediation.** After receipt of a Notice of Claim, the City may elect to refer the matter to the Architect, City's Representative or another party for review. Contractor will attend meetings called to review and discuss the Claims and mitigation of the problem, and shall furnish any reasonable factual backup for the Claim requested. The City may also elect to defer consideration of the Claim until the Work is completed, in which case the same review options shall be available to the City at the completion of the Work. At any stage, the City, at its sole discretion, is entitled to refer a Claim to mediation under the Construction Industry Mediation Rules of the American Arbitration Association, and, if this referral is made, Contractor will take part in the mediation process. The filing, mediation or rejection of a Claim does not entitle Contractor to stop performance of the Work. The Contractor shall proceed diligently with performance of the Contract during the pendency of any claim, excepting termination or under City's direction to stop the Work. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

The parties shall share the Mediator's fee and any filing fees equally and the Mediation shall be held in Nacogdoches, Texas.

46.06. **Arbitration.** In the event of a dispute and upon the mutual written consent of both parties, the parties may agree to arbitration without waiving any of their other rights hereunder.

46.07. **Choice of Law and Place of Performance.** This Agreement has been made under and shall be governed by the laws of the State of Texas. Performance and all matters related thereto shall be in Nacogdoches County, Texas, United States of America.

46.08. **Authority to do business.** The Contractor represents that it has a certificate of authority, authorizing it to do business in the State of Texas, a registered agent and registered office during the duration of this contract.

46.09. **Authority to Contract.** Each party has the full power and authority to enter into and perform this Agreement, and the person signing this Agreement on behalf of each party has been properly authorized and empowered to enter into this Agreement. The persons executing this Agreement hereby represent that they have authorization to sign on behalf of their respective corporations.

46.10. Contractor Affirmations: If this contract is funded in whole or in part by money from the State of Texas, State law requires the following certifications, representations and/or warranties. Regardless of funding by the State, by signature hereon affixed, the Contractor hereby certifies that:

- (a) Contractor has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with this Contract
- (b) Contractor represents and warrants that it has no actual or potential conflicts of interest in the goods and or services described in the scope of work to this contract.
- (c) **Antitrust.** Pursuant to 15 U.S.C. §1, et seq. and Tex. Bus. & Comm. Code §15.01, et seq. neither the contractor nor the firm, corporation, partnership, or institution represented by the contractor, or anyone acting for such a firm, corporation or institution has violated the antitrust laws of this state, federal antitrust laws, nor communicated directly or indirectly the bid made to any competitor or any other person engaged in such line of business.
- (d) **Child Support.** Pursuant to §231.006(d), Texas Family Code, regarding child support, the Contractor certifies that the individual or business entity named in this Contract is not ineligible to receive the specified payment and acknowledges that the contract may be terminated, and payment may be withheld if this certification is inaccurate. Furthermore, any Contractor subject to §231.006, Gov't Code, must include names and Social Security numbers of each person with at least 25% ownership of the business entity submitting the bid. This information must be provided prior to award. Enter the Name & Social Security Numbers for each person below:

Name:	Social Security Number:
Name:	Social Security Number:
Name:	Social Security Number:

- (e) **Debarment.** Contractor certifies that Contractor and its principals are eligible to participate in this transaction and have not been subjected to suspension, debarment, or similar ineligibility determined by any federal, state or local governmental entity and that Contractor is in compliance with the State of Texas statutes and rules relating to procurement. Entities ineligible for state procurement are listed on the State of Texas Debarred Vendor List maintained by the Texas Comptroller of Public Accounts and the System for Award Management (SAM) maintained by the General Services Administration. Entities ineligible for federal procurement are listed at <http://www.sam.gov/content/exclusions>.
- (f) **Terrorism Watch List.** Contractor represents and warrants that it does not do business with Iran, Sudan or a foreign terrorist organization as prohibited by Texas Government Code 2252.152. Contractor certifies that it is not listed on the federal government's terrorism watch list as described in Executive Order 13224.
- (g) **Critical Infrastructure.** If Contractor will be granted direct or indirect access to a communication infrastructure system, cybersecurity system, electric grid, hazardous waste treatment system, or water treatment facility, Contractor certifies that neither it or its parent company, is (1) majority owned by citizens or governmental entities of China, North Korea, Russia or any other country designated by the Governor under Government Code 2274.0103, or (2) headquartered in any of those countries.
- (h) **Convictions.** Under Sections 2155.006, 23155.0061 and 2261.053 of the Texas Government Code, Contractor certifies that it is not ineligible to receive the specified contract and may be terminated and payment withheld if this certification is inaccurate. These sections prohibit contracts that include proposed financial participation by an individual or business entity who has been convicted in the past five years of (a) violating a federal law or assessed a penalty in connection with a contract involving relief for Hurricane Rita, Hurricane Katrina, or any other disaster, as defined by §418.004, Gov't Code, occurring after September 24, 2005; and (b) of any offense related to the direct support or promotion of human trafficking.
- (i) **COVID Vaccinations.** Contractor certifies that it does not require its customers to provide any documentation certifying the Customer's COVID-19 vaccination or post-transmission recovery on entry to, or to receive service from the Contractor's business.
- (j) **Boycotts.** (1) To the extent this Contract is considered a Contract for goods or services subject to § 2270.002 Texas Government Code, Contractor verifies that it: (i) does not boycott Israel; and (ii) will not boycott Israel during the term of this Contract. (2) To the extent this Contract has a value of \$100,000 or more and Contractor is an organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations, that exists to make a profit that employs 10 or more full time employees, Contractor certifies that it: (i) does not and will not boycott energy companies during the term of the contract (*See*

Texas Government Code 2274.002, et seq.); and (ii) does not and will not discriminate against a firearm entity or firearm trade association (*See Texas Government Code 2274.002, et seq.*).

46.11. **Waiver.** Failure of any party, at any time, to enforce a provision of this Agreement shall in no way constitute a waiver of that provision nor in any way affect the validity of this Agreement, any part hereof, or the right of the City thereafter to enforce each and every provision hereof. No term of this Agreement shall be deemed waived or breach excused unless the waiver shall be in writing and signed by the party claimed to have waived. Furthermore, any consent to or waiver of a breach will not constitute consent to or waiver of or excuse of any other different or subsequent breach.

46.12. **Headings, Gender, Number.** The article headings are used in this Agreement for convenience and reference purposes only and are not intended to define, limit, or describe the scope or intent of any provision of this Agreement and shall have no meaning or effect upon its interpretation. Words of any gender used in this Agreement shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, and vice versa, unless the context requires otherwise.

46.13. **Agreement Read.** The parties acknowledge that they have had opportunity to consult with counsel of their choice, have read, understand and intend to be bound by the terms and conditions of this Agreement.

46.14. **Multiple Originals.** It is understood and agreed that this Agreement may be executed in a number of identical counterparts, each of which shall be deemed an original for all purposes.

46.15. **Notice of Indemnification.** City and Contractor hereby acknowledge and agree that this Agreement contains certain indemnification obligations and covenants.

**PLAYCORE WISCONSIN, INC.
DBA GAMETIME**

CITY OF NACOGDOCHES

By: 

By: _____

Printed Name: Clint Whiteside

City Manager

Title: Director of Sales Administration

Date: _____

Date: 10/24/2024

APPROVED AS TO FORM:

City Attorney

Date: _____

Exhibit A
DAVIS BACON WAGE RATES

{Insert Appropriate Classification of Wage Rates
From
<https://www.wdol.gov/dba.aspx>}

Exhibit B
INSURANCE REQUIREMENTS

During the term of this Agreement Contractor's insurance policies shall meet the following requirements:

I. Standard Insurance Policies Required:

- A. Commercial General Liability
- B. Business Automobile Liability
- C. Umbrella / Excess Liability – required for contract amounts exceeding \$1,000,000
- D. Workers' Compensation
- E. Builder's Risk – provides coverage for contractor's labor and materials for a project during construction that involves a structure such as a building or garage. builder's risk policy shall be written on "all risks" form.

II. General Requirements Applicable to All Policies:

- A. Only Insurance Carriers licensed and admitted to do business in the State of Texas will be accepted.
- B. Deductibles shall be listed on the Certificate of Insurance and are acceptable only on a per occurrence basis for property damage only.
- C. "Claims Made" policies are not accepted.
- D. Each insurance policy shall be endorsed to state that coverage shall not be suspended, voided, canceled, reduced in coverage or in limits except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City of Nacogdoches.
- E. Upon receipt of a verified claim, certified copies of all insurance policies shall be furnished to the City of Nacogdoches.
- F. The City of Nacogdoches, its officials, employees and volunteers, are to be named as "Additional Insured" to the Commercial General, Umbrella and Business Automobile Liability policies. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officials, employees or volunteers.
- G. Waiver of subrogation in a form at least as broad as ISO form 2404 shall be provided in favor of the City on all policies obtained by the Contractor in compliance with the terms of this Agreement.

III. Commercial General Liability

- A. General Liability insurance shall be written by a carrier with a "A:VIII" or better rating in accordance with the current Best Key Rating Guide.
- B. Limit of \$500,000.00 per occurrence for bodily injury and property damage with an annual

aggregate limit of \$1,000,000.00 which limits shall be endorsed to be per Project.

- C. Coverage shall be at least as broad as ISO form GC 00 01.
- D. No coverage shall be excluded from the standard policy without notification of individual exclusions being attached for review and acceptance.
- E. The coverage shall include but not be limited to the following: premises/operations with separate aggregate; independent contracts; products/completed operations; contractual liability (insuring the indemnity provided herein) Host Liquor Liability, Personal & Advertising Liability; and Explosion, Collapse, and Underground coverage.

IV. Business Automobile Liability

- A. Business Automobile Liability insurance shall be written by a carrier with a “A:VIII” or better rating in accordance with the current Best Key Rating Guide.
- B. Minimum Combined Single Limit of \$1,000,000.00 per occurrence for bodily injury and property damage.
- C. Coverage shall be at least as broad as auto form CNA 103809MT.
- D. The Business Auto Policy must show Symbol 1 in the Covered Autos Portion of the liability section in Item 2 of the declarations page.
- E. The coverage shall include owned autos, leased or rented autos, non-owned autos, any autos and hired autos.
- F. Pollution Liability coverage shall be provided on the certificate of insurance, with a limit of \$1,000,000.00.

V. Excess Liability

Umbrella form excess liability coverage following the form of the underlying coverage with a minimum limit of \$5,000,000.00 or the total value of the contract, whichever is greater, per occurrence/aggregate when combined with the lowest primary liability coverage, is required for contracts exceeding \$1,000,000 in total value.

- VI. Those policies set forth in Paragraphs III, IV, and V shall contain an endorsement naming the City as Additional Insured and further providing that the Contractor’s policies are primary to any self-insurance or insurance policies procured by the City. The additional insured endorsement shall be in a form at least as broad as ISO form GC 2010. Waiver of subrogation in a form at least as broad as ISO form 2404 shall be provided in favor of the City on all policies obtained by the Contractor in compliance with the terms of this Agreement. Contractor shall be responsible for all deductibles which may exist on any policies obtained in compliance with the terms of this Agreement. All coverage for subcontractors shall be subject to the requirements stated herein. All Certificates of Insurance and endorsements shall be

furnished to the City's Representative at the time of execution of this Agreement, attached hereto as Exhibit D, and approved by the City before work commences.

VII. Workers Compensation Insurance

- A. Pursuant to the requirements set forth in Title 28, Section 110.110 of the Texas Administrative Code, all employees of the Contractor, all employees of any and all subcontractors, and all other persons providing services on the Project must be covered by a workers compensation insurance policy: either directly through their employer's policy (the Contractor's or subcontractor's policy) or through an executed coverage agreement on an approved Texas Department of Insurance Division of Workers Compensation (DWC) form. Accordingly, if a subcontractor does not have his or her own policy and a coverage agreement is used, contractors and subcontractors must use that portion of the form whereby the hiring contractor agrees to provide coverage to the employees of the subcontractor. The portion of the form that would otherwise allow them not to provide coverage for the employees of an independent contractor may not be used.
- B. Workers compensation insurance shall include the following terms:
1. Employer's Liability minimum limits of \$1,000,000.00 for each accident/each disease/each employee are required.
 2. "Texas Waiver of Our Right to Recover From Others Endorsement, WC 42 03 04" shall be included in this policy.
 3. Texas must appear in Item 3A of the Workers Compensation coverage or Item 3C must contain the following: All States except those listed in Item 3A and the States of NV, ND, OH, WA, WV, and WY.
- C. Pursuant to the explicit terms of Title 28, Section 110.110(c) (7) of the Texas Administrative Code, the bid specifications, this Agreement, and all subcontracts on this Project must include the following terms and conditions in the following language, without any additional words or changes, except those required to accommodate the specific document in which they are contained or to impose stricter standards of documentation:

"A. Definitions:

Certificate of coverage ("certificate") – An original certificate of insurance, a certificate of authority to self-insure issued by the Division of Workers Compensation, or a coverage agreement (DWC-81, DWC-83, or DWC-84), showing statutory workers' compensation insurance coverage for the person's or entity's employees providing services on a project, for the duration of the project.

Duration of the project - includes the time from the beginning of the work on the project until the Contractor's/person's work on the project has been completed and accepted by the governmental entity.

Persons providing services on the project ("subcontractors" in § 406.096 [of the Texas Labor Code]) - includes all persons or entities performing all or part of the services the Contractor has undertaken to perform on the project, regardless of whether that person contracted directly with the Contractor and regardless of whether that person has employees. This includes, without limitation, independent Contractors, subcontractors, leasing companies, motor carriers, owner-operators, employees of any such entity, or employees of any entity which furnishes persons to provide services on the project. "Services" include, without limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other service related to a project. "Services" does not include activities unrelated to the project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.

- B. The Contractor shall provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, that meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all employees of the Contractor providing services on the project, for the duration of the project.*
- C. The Contractor must provide a certificate of coverage to the governmental entity prior to being awarded the contract.*
- D. If the coverage period shown on the Contractor's current certificate of coverage ends during the duration of the project, the Contractor must, prior to the end of the coverage period, file a new certificate of coverage with the governmental entity showing that coverage has been extended.*
- E. The Contractor shall obtain from each person providing services on a project, and provide to the governmental entity:*
 - (1) a certificate of coverage, prior to that person beginning work on the project, so the governmental entity will have on file certificates of coverage showing coverage for all persons providing services on the project; and*
 - (2) no later than seven calendar days after receipt by the Contractor, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project.*
- F. The Contractor shall retain all required certificates of coverage for the duration of the project and for one year thereafter.*
- G. The Contractor shall notify the governmental entity in writing by certified mail or personal delivery, within 10 calendar days after the Contractor knew or should have known, or any change that materially affects the provision of coverage of any person providing services on the project.*
- H. The Contractor shall post on each project site a notice, in the text, form and manner prescribed by the Division of Workers Compensation, informing all persons providing services on the project that they are required to be covered, and stating how a person may verify coverage and report lack of coverage.*

- I. *The Contractor shall contractually require each person with whom it contracts to provide services on a project, to:*
- (1) *provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, that meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all of its employees providing services on the project, for the duration of the project;*
 - (2) *provide to the Contractor, prior to that person beginning work on the project, a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the project, for the duration of the project;*
 - (3) *provide the Contractor, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project;*
 - (4) *obtain from each other person with whom it contracts, and provide to the Contractor:*
 - (a) *A certificate of coverage, prior to the other person beginning work on the project; and*
 - (b) *A new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the project;*
 - (5) *retain all required certificates of coverage on file for the duration of the project and for one year thereafter;*
 - (6) *notify the governmental entity in writing by certified mail or personal delivery, within 10 calendar days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project; and*
 - (7) *Contractually require each person with whom it contracts to perform as required by paragraphs (a) - (g), with the certificates of coverage to be provided to the person for whom they are providing services.*
- J. *By signing this contract, or providing, or causing to be provided a certificate of coverage, the Contractor is representing to the governmental entity that all employees of the Contractor who will provide services on the project will be covered by workers' compensation coverage for the duration of the project; that the coverage will be based on proper reporting of classification codes and payroll amounts; and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the Commission's Division of Self-Insurance Regulation. Providing false or misleading information may subject the Contractor to administrative penalties, criminal penalties, civil penalties, or other civil actions.*
- K. *The Contractor's failure to comply with any of these provisions is a breach of contract by the*

Contractor that entitles the governmental entity to declare the contract void if the Contractor does not remedy the breach within ten calendar days after receipt of notice of breach from the governmental entity.”

- VIII. Certificates of Insurance shall be prepared and executed by the insurance company or its authorized agent, and shall contain the following provisions and warranties:
- A. The company is licensed and admitted to do business in the State of Texas.
 - B. The insurance policies provided by the insurance company are underwritten on forms that have been provided by the Texas State Board of Insurance or ISO.
 - C. All endorsements and insurance coverages according to requirements and instructions contained herein.
 - D. The form of the notice of cancellation, termination, or change in coverage provisions to the City of Nacogdoches.
 - E. Original endorsements affecting coverage required by this section shall be furnished with the certificates of insurance.

Exhibit C
PERFORMANCE AND PAYMENT BONDS

PERFORMANCE BOND

Project No. _____

THE STATE OF TEXAS

§
§

KNOW ALL MEN BY THESE PRESENTS:

THE COUNTY OF NACOGDOCHES

§

THAT WE, _____, as Principal, hereinafter called "Contractor" and the other subscriber hereto _____, as Surety, do hereby acknowledge ourselves to be held and firmly bound to the City of Nacogdoches, a municipal corporation, in the sum of _____ and /100 (\$, .) for the payment of which sum, well and truly to be made to the City of Nacogdoches and its successors, the said Contractor and Surety do bind themselves, their heirs, executors, administrators, successors, and assigns, jointly and severally.

THE CONDITIONS OF THIS OBLIGATION ARE SUCH THAT:

WHEREAS, the Contractor has on or about this day executed a Contract in writing with the City of Nacogdoches for **Construction Services for Robert McCrimmon Playground** all of such work to be done as set out in full in said Contract Documents therein referred to and adopted by the City Council, all of which are made a part of this instrument as fully and completely as if set out in full herein.

NOW THEREFORE, if the said Contractor shall faithfully and strictly perform Contract in all its terms, provisions, and stipulations in accordance with its true meaning and effect, and in accordance with the Contract Documents referred to therein and shall comply strictly with each and every provision of the Contract, including all warranties and indemnities therein and with this bond, then this obligation shall become null and void and shall have no further force and effect; otherwise the same is to remain in full force and effect.

It is further understood and agreed that the Surety does hereby relieve the City of Nacogdoches or its representatives from the exercise of any diligence whatever in securing compliance on the part of the Contractor with the terms of the Contract, including the making of payments thereunder and, having fully considered its Principal's competence to perform the Contract in the underwriting of this Performance Bond, the Surety hereby waives any notice to it of any default, or delay by the Contractor in the performance of his Contract and agrees that it, the Surety, shall be bound to take notice of and shall be held to have knowledge of all acts or omissions of the Contractor in all matters pertaining to the Contract. The Surety understands and agrees that the provision in the Contract that the City of Nacogdoches shall retain certain amounts due the Contractor until the expiration of thirty days from the acceptance of the Work is intended for the City's benefit, and the City of Nacogdoches shall have the right to pay or withhold such retained amounts or any other amount owing under the Contract without changing or affecting the liability of the Surety hereon in any degree.

It is further expressly agreed by Surety that the City of Nacogdoches or its representatives are at liberty at any time, without notice to the Surety, to make any change in the Contract Documents and in the Work to be done thereunder, as provided in the Contract, and in the terms and conditions thereof, or to make any change in, addition to, or deduction from the work to be done thereunder; and that such changes, if made, shall not in any way vitiate the obligation in this bond and undertaking or release the Surety therefrom.

It is further expressly agreed and understood that the Contractor and Surety will fully indemnify and hold harmless the City of Nacogdoches from any liability, loss, cost, expense, or damage arising out of or in connection with the work done by the Contractor under the Contract. In the event that the City of Nacogdoches shall bring any

suit or other proceeding at law on the Contract or this bond or both, the Contractor and Surety agree to pay to the City the actual amounts of attorneys' fees incurred by the city in connection with such suit.

This bond and all obligations created hereunder shall be performable in NACOGDOCHES County, Texas. This bond is given in compliance with the provisions of Chapter 2253 of the Texas Government Code, as amended, which is incorporated herein by this reference. However, all of the express provisions hereof shall be applicable whether or not within the scope of said statute.

Notices required or permitted hereunder shall be in writing and shall be deemed delivered when actually received or, if earlier, on the third day following deposit in a United State Postal Service post office or receptacle, with proper postage affixed (certified mail, return receipt requested), addressed to the respective other party at the address prescribed in the Contract Documents, or at such other address as the receiving party may hereafter prescribe by written notice to the sending party.

IN WITNESS THEREOF, the said Contractor and Surety have signed and sealed this instrument on the respective dates written below their signatures and have attached current Power of Attorney.

ATTEST and SEAL: (if a corporation) (SEAL)
WITNESS: (if not a corporation)

(Name of Contractor)

By: _____
Name:
Title:

By: _____
Name:
Title:
Date:

ATTEST/WITNESS (SEAL)

(Full Name of Surety)

By: _____
Name:
Title:
Date:

(Address of Surety for Notice)

By: _____
Name:
Title:
Date:

REVIEWED:

THE FOREGOING BOND IS ACCEPTED
ON BEHALF OF
THE CITY OF NACOGDOCHES, TEXAS:

City Attorney's Office

City Manager

NOTE: Date of bonds must be equal to or after the date of execution by City.

TEXAS STATUTORY PAYMENT BOND

Project No. _____

THE STATE OF TEXAS

§

KNOW ALL MEN BY THESE PRESENTS:

THE COUNTY OF NACOGDOCHES

§

§

THAT WE, _____, as Principal, hereinafter called "Principal" and the other subscriber hereto _____, a corporation organized and existing under the laws of the State of _____, licensed to business in the State of Texas and admitted to write bonds, as Surety, herein after called "Surety", do hereby acknowledge ourselves to be held and firmly bound to the City of Nacogdoches, a municipal corporation, in the sum of _____ and /100 (\$ _____, . _____) for payment whereof, the said Principal and Surety bind themselves, and their heirs, administrators, executors, successors and assigns jointly and severally.

THE CONDITIONS OF THIS OBLIGATION ARE SUCH THAT:

WHEREAS, Principal has entered into a certain contract with the City of Nacogdoches, dated the _____ day of _____, 20____, for **Construction Services for Robert McCrimmon Playground** which contract is hereby referred to and made a part hereof as fully and to the same extent as if copied at length herein.

NOW THEREFORE, the condition of this obligation is such that if Principal shall pay all claimants supplying labor and material to him or a subcontractor in the prosecution of the work provided for in said contract, then, this obligation shall be null and void; otherwise to remain in full force and effect;

PROVIDED, HOWEVER, that this bond is executed pursuant to the provisions of Chapter 2253 of the Texas Government Code and all liabilities on this bond shall be determined in accordance with the provisions, conditions and limitations of said Code to the same extent as if it were copied at length herein.

IN WITNESS THEREOF, the said Principal and Surety have signed and sealed this instrument on the respective dates written below their signatures.

ATTEST and SEAL: (if a corporation) (SEAL)
WITNESS: (if not a corporation)

(Name of Contractor)

By: _____
Name:
Title:

By: _____
Name:
Title:
Date:

ATTEST/WITNESS (SEAL)

(Full Name of Surety)

By: _____
Name:
Title:
Date:

(Address of Surety for Notice)

By: _____
Name:
Title:
Date:

REVIEWED:

THE FOREGOING BOND IS ACCEPTED
ON BEHALF OF
THE CITY OF NACOGDOCHES, TEXAS:

City Attorney's Office

City Manager

NOTE: Date of bonds must be equal to or after the date of execution by City.

Exhibit D
CERTIFICATES OF INSURANCE AND ENDORSEMENTS

Exhibit E
PLANS, SPECIFICATIONS AND DRAWINGS

Proposal for
City of Nacogdoches

Prepared by



10/25/2024
PROJECT: 172336
Robert McCrimmon Park



800-438-2780 | cunninghamrec.com

Hello!

We are excited for the opportunity to work with you on your upcoming exciting new playground project! For almost 60 years, Cunningham Recreation has designed and built thousands of playgrounds for children of all ages and all abilities. We partner with municipalities, schools, architects and youth organizations to plan, design and build their vision from the ground-up.

Cunningham Recreation is the exclusive representative for GameTime park and playground equipment in North Carolina, South Carolina, Virginia, West Virginia, Arkansas, Kansas, Missouri, Illinois, Oklahoma, Texas, Tennessee, Iowa, Nebraska, North Dakota, South Dakota, Delaware, Maryland, and DC.

The following pages will provide greater detail about our proposal(s), more information on Cunningham Recreation and GameTime and how we can meet the goals of your project.

Please reach out with any questions or additional details. I look forward to working with you.

Sincerely,



Ashlee Acosta
Sales Associate
972-795-2452
ashlee@cunninghamrec.com



About Cunningham Recreation and GameTime



Since 1929, GameTime has been a pioneer in the commercial playground equipment industry. GameTime has continued to bring meaningful research around the importance of play to the design, engineering, manufacture, and delivery of play equipment. GameTime Play Equipment's work has elevated industry standards on safety, physical and mental development, inclusion, and intergenerational interaction.

GameTime play systems, site furnishings and amenities are constructed from the highest quality materials and are backed by the industry's best warranty and customer service. Equipment is manufactured to meet current ASTM, CPSC and ADA guidelines for playground safety and accessibility.

For almost 60 years, Cunningham Recreation has been providing commercial park and playground equipment from design to construction. We are proud to serve as GameTime Play Equipment's exclusive representative in North Carolina, South Carolina, Virginia, West Virginia, Arkansas, Kansas, Missouri, Illinois, Oklahoma, Tennessee, Texas, Iowa, Nebraska, North Dakota, South Dakota, Delaware, Maryland, and DC.

Cunningham Recreation has adequate coverage in each territory to ensure our customers receive professional assistance and excellent customer service.

Range of Installation and Services

GameTime holds an ISO 9001 certification, which validates our high-quality manufacturing standards and our commitment to excellence in the design, production, installation, inspection and testing of our products. Our ISO 14001 certification supports our dedication to environmental sustainability and our commitment to eliminating waste, implementing recycling practices in our manufacturing facility, and offering recycled and recyclable products to our customers.

Cunningham Recreation specializes in complete park and playground solutions. We offer a full range of commercial park and play equipment for children of all ages and all abilities, and we have completed thousands of installations.

Cunningham Recreation offers a variety of resources and design approaches for planning and maintaining parks and playgrounds.



Both Cunningham Recreation and GameTime are considered leaders in the playground industry. Why not partner with a leader? Our research, design principles, innovative products and available resources are at your disposal.



SIGNATURE PROJECTS



Southeast Metro Park – Austin, TX

This playground is for all ages and abilities; and somewhat of an outdoor museum. Its focal point is that of a Mosasaur, a prehistoric sea creature, discovered years ago in Travis County. Children are able to explore the full-length skeleton of the Mosasaur including crawling through the gigantic open toothed mouth. The playground provides a colorful and inclusive experience with its custom GFRC sea turtles and sea coral climbers, half spheres and other playful landscape features. It is completed with poured-in-place rubber safety surfacing.

Total Cost: \$600,000

College View Park – Carthage, TX

This 3-acre park is designed to reach all ages and abilities! It includes a GameTime inclusive play structure with integrated shade and freestanding play items consisting of an arch saucer swing, a 3-bay swing with adaptive seats, an inclusive whirl, multiple sensory wave seats, a Tri Runner and freestanding musical components. The project is completed with 7400 sq ft of poured-in-place rubber safety surfacing. A walking path wraps the area with multiple freestanding fitness components, several shades with benches and a gazebo.

Total Cost: \$700,000

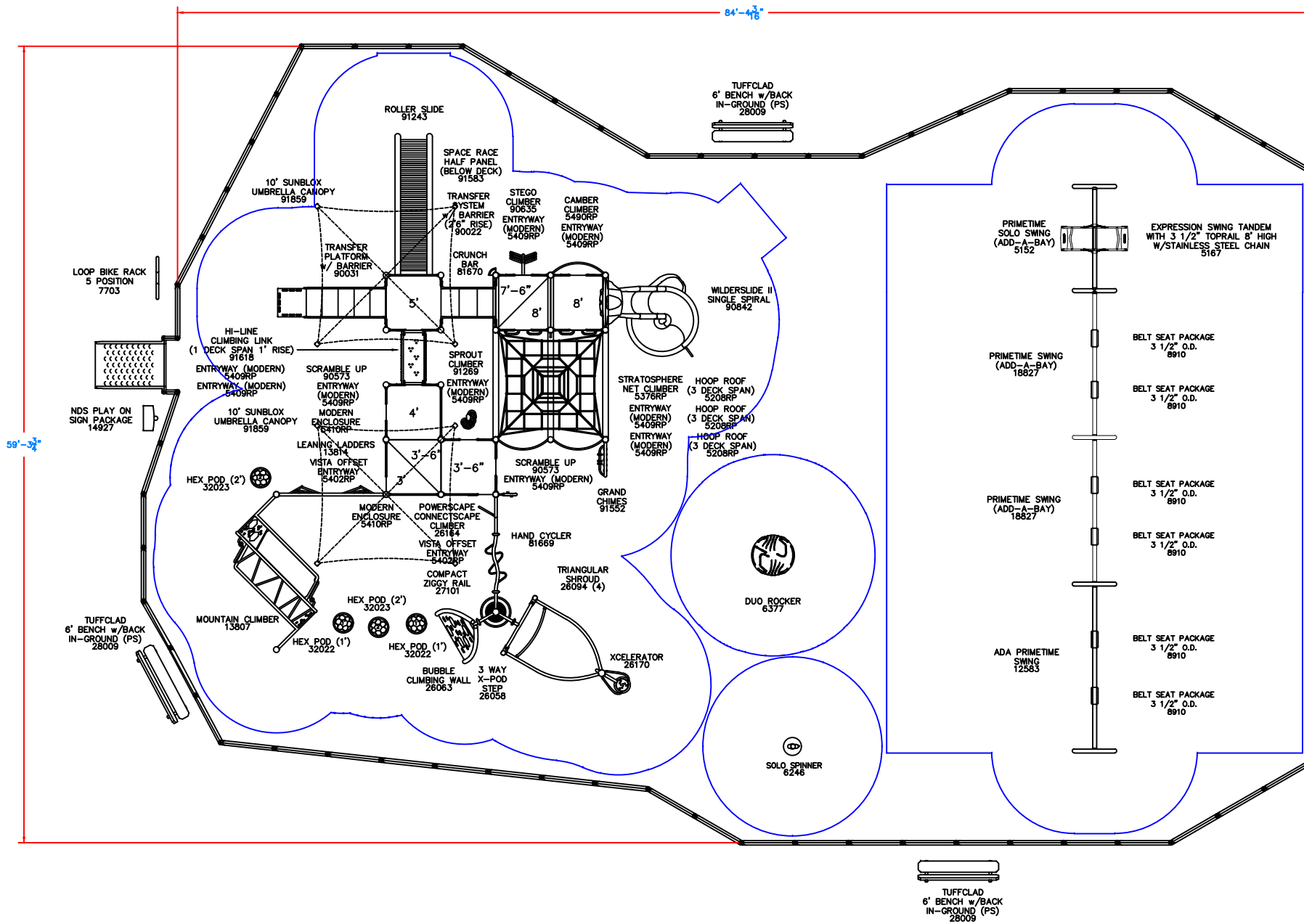


Alcott Station Park – Mesquite, TX

This unique 5 acre park features a large GameTime Modern City play structure with beautiful turf safety surfacing as well as a Thrive 450 adult outdoor fitness area with poured-in-place rubber safety surfacing; and a two mile walking trail connecting all the other amenities in the park. Employees of the adjacent businesses as well as residents of the local neighborhoods are sure to utilize this beautiful space.

Total Cost: \$250,000





SURFACING		CURBING	
TYPE	EW* SQ FT 4,345 DEPTH 12"	TYPE	PLSTC LN FT 266 HT 12"

*SUPPLIED AND INSTALL BY OTHERS



150 PlayCore Drive SE
Fort Payne, AL 35967
www.gametime.com

City of Nacogdoches
Robert McCrimmon Park
Nacogdoches, TX
Representative
Cunningham Recreation

This play equipment is recommended for children ages
5-12

Minimum Area Required:
Scale:
This drawing can be scaled only when in an 24" x 36" format

IMPORTANT: Soft resilient surfacing should be placed in the use zones of all equipment, as specified for each type of equipment, and at depths to meet the critical fall heights as specified by the U.S. consumer Product Safety Commission, ASTM standard F 1487 and Canadian Standard CAN/CSA-Z-614

Drawn By:
TCV
Date:
10/24/2024
Drawing Name:
172336-01-01



GameTime c/o Cunningham Recreation
PO Box 240981
Charlotte, NC 28224
800.438.2780
704.525.7356 FAX

10/25/2024
Quote #
172336-01-01

Robert McCrimmon Park - 2024 Grant (Equipment)

City of Nacogdoches
Attn: Jessica Sowell
1112 North Street
Nacogdoches, TX 75961
United States
Phone: 936-559-2940
sowellj@nactx.us

Ship to Zip 77301

Quantity	Part #	Description	Unit Price	Amount
1	RDU	GameTime - Modular PowerScape Play Structure for Ages 5-12 [2ColorHDPE:_____] [Accent:_____] [HDPE:_____] [Accent2:_____] [Basic:_____] [RotoPlastic:_____] [Deck:Pvc:_____] [Cabling:_____] [Fabric1:_____]	\$194,428.00	\$194,428.00
		(1) 13807 -- Mountain Climber		
		(1) 13814 -- Leaning Ladders		
		(1) 14927 -- NDS Play On Sign Package		
		(1) 26058 -- 3 Way X-Pod Step		
		(1) 26063 -- Bubble Climbing Wall Attachment		
		(4) 26094 -- Triangular Shroud		
		(1) 26164 -- 3'-6" Connectscape Climber		
		(1) 26170 -- Xcelerator		
		(1) 27101 -- Compact Ziggy Rail		
		(2) 32022 -- Hex Pod Step (1')		
		(2) 32023 -- Hex Pod Step (2')		
		(3) 5208RP -- Hoop Roof (3 Deck Span)		
		(1) 5376RP -- Stratosphere Net Climber		
		(2) 5402RP -- OFFSET ENTRYWAY (MODERN)		
		(3) 5409RP -- ENTRYWAY (MODERN)		
		(6) 5409RP -- ENTRYWAY (MODERN)		
		(1) 5410RP -- MODERN ENCLOSURE		
		(1) 5410RP -- MODERN ENCLOSURE		
		(1) 5490RP -- SKY CAMBER CLIMBER (8')		
		(4) 80000 -- 49" Sq Punched Steel Deck		
		(2) 80078 -- 6"Stepped Platform		
		(1) 81669 -- Hand Cycler		
		(1) 81670 -- Crunch Bar		
		(1) 90022 -- 2'-6" Transfer System W/ Barrier		
		(1) 90031 -- 5' Transfer Platform W/Barrier		



GameTime c/o Cunningham Recreation
 PO Box 240981
 Charlotte, NC 28224
 800.438.2780
 704.525.7356 FAX

10/25/2024
 Quote #
 172336-01-01

Robert McCrimmon Park - 2024 Grant (Equipment)

Quantity	Part #	Description	Unit Price	Amount
		(1) 90263 -- 5' Upright, Alum		
		(5) 90268 -- 10' Upright, Alum		
		(2) 90269 -- 11' Upright, Alum		
		(2) 90270 -- 12' Upright, Alum		
		(3) 90273 -- 15' Upright, Alum		
		(2) 90573 -- Scramble Up (3'-6" To 5'-0")		
		(1) 90635 -- Stego Climber (7'-0" & 7'6")		
		(1) 90842 -- Single Spiral		
		(1) 91243 -- Roller Slide		
		(1) 91269 -- Sprout Climber		
		(1) 91552 -- Grand Chimes		
		(1) 91583 -- Space Race Half Panel		
		(1) 91618 -- Hi-Line Climbing Link 1' Rise (1 dk)		
		(2) 91859 -- 10' Sunblox Umbrella Canopy		
		(1) G90270 -- 12' Upright, Galv		
		(3) G90272 -- 14' Upright, Galv		
		(5) G90273 -- 15' Upright, Galv		
1	RDU	GameTime - Three and Half Bay PrimeTime Swings [Basic:_____]	\$10,290.00	\$10,290.00
		(1) 5152 -- Pt Solo Add-A-Bay 3 1/2" X 8'		
		(1) 5167 -- Expression Swing Tandem		
		(6) 8910 -- Belt Seat 3 1/2"Od(8910)		
		(1) 12583 -- Ada Primetime Swing Frame, 3 1/2" Od		
		(2) 18827 -- Primetime Swing Add A Bay 3 1/2" X 8'		
1	6377	GameTime - Duo Rocker [Basic:_____][Roto Plastic:_____]	\$3,099.00	\$3,099.00
1	6246	GameTime - Solo Spinner [Basic:_____][Roto Plastic:_____]	\$2,420.00	\$2,420.00
1	4858	GameTime - Access Playcurb-W/Adap	\$820.00	\$820.00
65	4862	GameTime - 12" Playground Border	\$83.00	\$5,395.00
2	161290	GameTime - Geo-Textile 2250 Sqft Roll	\$1,147.00	\$2,294.00
1	161291	GameTime - Geo-Textile 1125 Sqft Roll	\$572.00	\$572.00
1	7703	GT-Site - 5 Position Loop Bike Rack [Basic:_____]	\$300.00	\$300.00
3	28009	GT-Site - 6' P/S Bench W/Back Inground [Basic:_____][Coated Site:_____]	\$1,025.00	\$3,075.00
1	178749	GameTime - Owner's Kit	\$89.00	\$89.00



GameTime c/o Cunningham Recreation
 PO Box 240981
 Charlotte, NC 28224
 800.438.2780
 704.525.7356 FAX

10/25/2024
 Quote #
 172336-01-01

Robert McCrimmon Park - 2024 Grant (Equipment)

Quantity	Part #	Description	Unit Price	Amount
1	2024 GT- Grant	MISC - 2024 Matching Funds Grant- Grant Rules and Limitations: To qualify for up to 100% matching grant, list price of the qualifying playground system must exceed \$75,000, and payment in full must accompany your order. For play systems with a list price of less than \$75,000 and greater than \$25,000 with payment in full, GameTime playground grants are available with matching funds up to 80%. For play systems that exceed \$25,000, and purchased with credit terms, matching funds are available up to 65%. Matching funds are subject to rounding rules and may vary based on qualified purchase. No other offer, discount, or special programs can be used with this grant program. This special matching fund offer applies to PowerScape®, PrimeTime®, Xscape®, and Modern City® systems only. Up to 50% matching funds for select outdoor fitness equipment, including THRIVE®, Challenge Course, KidCourse, and The Stadium®. VistaRope®, freestanding net structures, TuffForms, Landmark Design, GTSymphony freestanding, other freestanding play products, and Play On! non-system events are not eligible for funding. All applications must be received and validated by the project administrator by October 18, 2024. GameTime reserves the right to decline any application for a GameTime grant. GameTime will accept grant orders until October 25, 2024, or until all eligible funds are disbursed, whichever comes first. Customer must be able to receive order by December 31, 2024, subject to transportation availability. GameTime reserves the right to terminate this offer at any time without notice. GameTime playground grants can only be applied to additional GameTime purchases and only in conjunction with the original purchase. Standard policies and warranties as listed in the 2024 GameTime Playground Design Guide apply. Freight and applicable sales tax are extra and not included. Other terms and restrictions may apply. Contact your local GameTime representative for complete details.		
			Sub Total	\$222,782.00
			Discount	(\$100,605.92)
			Estimated Freight	\$13,058.29
			Total	\$135,234.37

Comments

*MATERIALS ONLY - Installation on Quote 172336-02-01: Quotation does not include any site work, off-loading, storage, safety surfacing, or installation.

*Cash with Order (CWO) discount requires payment (in full), via check or money order, at the time of order.



GameTime c/o Cunningham Recreation
PO Box 240981
Charlotte, NC 28224
800.438.2780
704.525.7356 FAX

10/25/2024
Quote #
172336-01-01

Robert McCrimmon Park - 2024 Grant (Equipment)

GAMETIME - TERMS & CONDITIONS:

- **PRICING:** Due to fluctuating economic conditions, pricing is valid for 30 days and is subject to change. Please request updated pricing if your quote is older than 30 days before making a purchase.
- **TERMS OF SALE:** For equipment & material purchases, Net 30 days from date of invoice for governmental agencies and those with approved credit. All others, full payment for equipment, taxes and freight up front. Balance for services & materials due upon completion or as otherwise negotiated upon credit application review. Pre-payment may be required for equipment orders totaling less than \$5,000. Payment by VISA, MasterCard, or AMEX is accepted (**If you elect to pay by credit card, GameTime charges a 2.50% processing fee that is assessed on the amount of your payment. This fee is shown as a separate line item and included in the total amount charged to your credit card. You have the option to pay by check, ACH or Wire without any additional fees.**). Checks should be made payable to Playcore Wisconsin, Inc. dba GameTime unless otherwise directed. **Any order exceeding \$300,000 will require progress payments during the course of completion.**
- **CREDIT APPLICATION:** Required for all non-governmental agencies and those entities who have not purchased from GameTime within the previous twelve calendar months.
- **FINANCE CHARGE:** A 1.5% monthly finance charge (or maximum permitted by law) will be added to all invoices over 30 days past due.
- **CASH WITH ORDER DISCOUNT:** Orders for GameTime equipment paid in full at time of order via check or electronic funds transfer (EFT) are eligible for a 3% cash-with-order (CWO) discount. Consult local sales representative for CWO terms.
- **ORDERS:** All orders shall be in writing by purchase order, signed quotation or similar documentation. Purchase orders must be made out to Playcore Wisconsin, Inc. dba GameTime.
- **FREIGHT CHARGES:** Shipments shall be F.O.B. destination. Freight charges prepaid and added separately.
- **SHIPMENT:** **Standard Lead time is 6-8 weeks (some items may take longer)** after receipt and acceptance of purchase order, credit application, color selections and approved drawings or submittals.
- **PACKAGING:** All goods shall be packaged in accordance with acceptable commercial practices and marked to preclude confusion during unloading and handling.
- **RECEIPT OF GOODS:** Customer shall coordinate, receive, unload, inspect and provide written acceptance of shipment. Any damage to packaging or equipment must be noted when signing delivery ticket. If damages are noted, receiver must submit a claim to Cunningham Recreation within 15 Days. Receiver is also responsible for taking inventory of the shipment and reporting any concealed damage or discrepancy in quantities received within 60 days of receipt.
- **RETURNS:** Returns are only available on shipments delivered within the last 60 days. A 25% (min.) restocking fee will be deducted from any credit due. Customer is responsible for all packaging & shipping charges. Credit is based on condition of items upon return. All returns must be in unused and merchantable condition. GameTime reserves the right to deduct costs associated with restoring returned goods to merchantable condition. Uprights & custom products cannot be returned.
- **TAXES:** Sales tax is shown as a separate line item when included. A copy of your tax exemption certificate must be submitted at time of order or taxes will be added to your invoice.

SUPPLY ONLY:

- All items are quoted supply only.
- Installation services are not included.
- Customer is responsible for coordinating delivery, receipt, unloading, and inventory equipment.
- Missing or damaged equipment must be reported within 60 days of delivery.



GameTime c/o Cunningham Recreation
PO Box 240981
Charlotte, NC 28224
800.438.2780
704.525.7356 FAX

10/25/2024
Quote #
172336-01-01

Robert McCrimmon Park - 2024 Grant (Equipment)

ACCEPTANCE OF QUOTATION:

Acceptance of this proposal indicates your agreement to the terms and conditions stated herein.

Accepted By (printed): _____ Title: _____

Telephone: _____ Fax: _____

P.O. Number: _____ Date: _____

Purchase Amount: **\$135,234.37**

SALES TAX EXEMPTION CERTIFICATE #: _____

(PLEASE PROVIDE A COPY OF CERTIFICATE)

Salesperson's Signature

Customer Signature

BILLING INFORMATION:

Bill to: _____

Contact: _____

Address: _____

Address: _____

City, State: _____ Zip: _____

Tel: _____ Fax: _____

E-mail: _____

SHIPPING INFORMATION:

Ship to: _____

Contact: _____

Address: _____

Address: _____

City, State: _____ Zip: _____

Tel: _____ Fax: _____

E-mail: _____



GameTime c/o Cunningham Recreation
PO Box 240981
Charlotte, NC 28224
800.438.2780
704.525.7356 FAX

10/25/2024
Quote #
172336-02-01

Robert McCrimmon Park - 2024 Grant (Installation)

City of Nacogdoches
Attn: Jessica Sowell
1112 North Street
Nacogdoches, TX 75961
United States
Phone: 936-559-2940
sowellj@nactx.us

Ship to Zip 77301

Quantity	Part #	Description	Unit Price	Amount
1	INSTALL	MISC - Grading	\$1,700.00	\$1,700.00
1	INSTALL	MISC - Installation of Equipment on Quote 172336-01-01	\$87,457.83	\$87,457.83
			Sub Total	\$89,157.83
			Total	\$89,157.83

Comments

*INSTALLATION of Equipment on Quote 172336-02-01 - Site must be clear, level, free of obstructions, and accessible. *Site should permit installation equipment access. Purchaser shall be responsible for unknown conditions such as buried utilities, tree stumps, bedrock or any concealed materials or conditions that may result in additional costs.*

*Customer is responsible for removal and disposal of existing equipment, as well as supply and installation of wood surfacing



GameTime c/o Cunningham Recreation
PO Box 240981
Charlotte, NC 28224
800.438.2780
704.525.7356 FAX

10/25/2024
Quote #
172336-02-01

Robert McCrimmon Park - 2024 Grant (Installation)

GAMETIME - TERMS & CONDITIONS:

- **PRICING:** Due to fluctuating economic conditions, pricing is valid for 30 days and is subject to change. Please request updated pricing if your quote is older than 30 days before making a purchase.
- **TERMS OF SALE:** For equipment & material purchases, Net 30 days from date of invoice for governmental agencies and those with approved credit. All others, full payment for equipment, taxes and freight up front. Balance for services & materials due upon completion or as otherwise negotiated upon credit application review. Pre-payment may be required for equipment orders totaling less than \$5,000. Payment by VISA, MasterCard, or AMEX is accepted (**If you elect to pay by credit card, GameTime charges a 2.50% processing fee that is assessed on the amount of your payment. This fee is shown as a separate line item and included in the total amount charged to your credit card. You have the option to pay by check, ACH or Wire without any additional fees.**). Checks should be made payable to Playcore Wisconsin, Inc. dba GameTime unless otherwise directed. **Any order exceeding \$300,000 will require progress payments during the course of completion.**
- **CREDIT APPLICATION:** Required for all non-governmental agencies and those entities who have not purchased from GameTime within the previous twelve calendar months.
- **FINANCE CHARGE:** A 1.5% monthly finance charge (or maximum permitted by law) will be added to all invoices over 30 days past due.
- **CASH WITH ORDER DISCOUNT:** Orders for GameTime equipment paid in full at time of order via check or electronic funds transfer (EFT) are eligible for a 3% cash-with-order (CWO) discount. Consult local sales representative for CWO terms.
- **ORDERS:** All orders shall be in writing by purchase order, signed quotation or similar documentation. Purchase orders must be made out to Playcore Wisconsin, Inc. dba GameTime.
- **FREIGHT CHARGES:** Shipments shall be F.O.B. destination. Freight charges prepaid and added separately.
- **SHIPMENT:** **Standard Lead time is 6-8 weeks (some items may take longer)** after receipt and acceptance of purchase order, credit application, color selections and approved drawings or submittals.
- **PACKAGING:** All goods shall be packaged in accordance with acceptable commercial practices and marked to preclude confusion during unloading and handling.
- **RECEIPT OF GOODS:** Customer shall coordinate, receive, unload, inspect and provide written acceptance of shipment. Any damage to packaging or equipment must be noted when signing delivery ticket. If damages are noted, receiver must submit a claim to Cunningham Recreation within 15 Days. Receiver is also responsible for taking inventory of the shipment and reporting any concealed damage or discrepancy in quantities received within 60 days of receipt.
- **RETURNS:** Returns are only available on shipments delivered within the last 60 days. A 25% (min.) restocking fee will be deducted from any credit due. Customer is responsible for all packaging & shipping charges. Credit is based on condition of items upon return. All returns must be in unused and merchantable condition. GameTime reserves the right to deduct costs associated with restoring returned goods to merchantable condition. Uprights & custom products cannot be returned.
- **TAXES:** Sales tax is shown as a separate line item when included. A copy of your tax exemption certificate must be submitted at time of order or taxes will be added to your invoice.

INSTALLATION CONDITIONS:

- **ACCESS:** The site must be clear, level, and provide unrestricted access for trucks and machinery. Any site that is inaccessible may incur additional charges.
- **STORAGE:** The customer is responsible for providing a secure area for off-loading and storing equipment during installation. Once equipment is delivered to the site, the owner assumes responsibility for any theft or vandalism unless alternative arrangements are made and documented in the quotation.
- **FOOTER EXCAVATION:** Installation pricing is based on footer excavation through earth/soil only, prior to the installation of drains, subbase, or surfacing. The customer is responsible for any unforeseen conditions such as buried utilities (public or private), tree stumps, rocks, or any other concealed materials or conditions that may result in additional labor or material costs.
- **UTILITIES:** The installer will contact 811 to locate all public utilities before layout and excavation of footer holes. The owner is responsible for identifying any private utilities. Cunningham Recreation and the installer are not liable for any damage to unmarked private utilities.
- **ADDITIONAL COSTS:** Pricing is based on a single mobilization for installation unless otherwise stated. The price includes only the items specified in this quotation. Additional site work or specialized equipment needs may result in price adjustments.
- **SITE CONDITIONS:** The site must have a slope of less than 1.5%. Any excavation or grading required to achieve an acceptable slope is the responsibility of others unless otherwise noted. All demolition and site preparation must be completed before the installation crew is mobilized.
- **GENERAL INSTALLATION NOTES:** Installation will be performed according to the manufacturer's specifications by a GameTime-certified installer. A one-year warranty on all labor is provided from the date of completion. Product warranty and service claims may not include labor.



GameTime c/o Cunningham Recreation
PO Box 240981
Charlotte, NC 28224
800.438.2780
704.525.7356 FAX

10/25/2024
Quote #
172336-02-01

Robert McCrimmon Park - 2024 Grant (Installation)

ACCEPTANCE OF QUOTATION:

Acceptance of this proposal indicates your agreement to the terms and conditions stated herein.

Accepted By (printed): _____ Title: _____

Telephone: _____ Fax: _____

P.O. Number: _____ Date: _____

Purchase Amount: **\$89,157.83**

SALES TAX EXEMPTION CERTIFICATE #: _____

(PLEASE PROVIDE A COPY OF CERTIFICATE)

Salesperson's Signature

Customer Signature

BILLING INFORMATION:

Bill to: _____

Contact: _____

Address: _____

Address: _____

City, State: _____ Zip: _____

Tel: _____ Fax: _____

E-mail: _____

SHIPPING INFORMATION:

Ship to: _____

Contact: _____

Address: _____

Address: _____

City, State: _____ Zip: _____

Tel: _____ Fax: _____

E-mail: _____



Minutes
Parks & Recreation Advisory Board
September 30, 2024 at 4:00 P.M. – In person Meeting

Members Present: Mark Sowell (Chairman), Rod Allen, Sue McLaughlin, Charles Gregory, Michael Montes, Rodney Ray and Nannette Fausett, Carlis Whitehead, Dawn Stover, Christy Turner, Michael Molling and Lauren Tyler.

Members Absent: Angela Williams, Abby Echeverria, and Tracie Lasater.

Others Present: Jessica Sowell, Carlie Allen, Joy Palmer, Tommy Stanley, Cecilia Sarmiento, Tim Ductworth and Ashley Acosta

1. Call to Order.

The meeting was called to order at 4:01pm by Chairman Mark Sowell.

2. Receive playground presentation from Cunningham Recreation.

Ashley Acosta and Tim Ductworth from Cunningham Recreation gave presentation. Acosta and Ductworth explained Cunningham is the largest agency that represents Game Time which has been used for many playgrounds in Nacogdoches. Grant funds have been used previously for some of the playgrounds in Nacogdoches built by Game Time. Acosta explains CORE, a third party research company gathering demographics of the area. Cunningham Recreation designs playgrounds based on the demographics of the area and the community needs. This assists with design justification. Options include designation of a park as a National Demonstration Site (NDS) which sends reports about who is visiting the park to have more clear data and the park would receive National Recognition.

Ductworth explains different product lines for playgrounds Prime Time: baseline playgrounds, Powerscape: top of the line, heavier duty, less likely to have vandalism, Ionics: more different shapes and different features. Pictures of the different playground options were provided to the Parks and Recreation Advisory Board. Acosta explains that all the lines can work together if there is interest in certain elements from different lines. Options include ropes and nets including options for children with disabilities. Other options include topography into the playground design, and including shade and benches.

Acosta discusses the grant opportunity. The matching funds grant is offered through Game Time and is first come first serve. The grant will match funds for the playground equipment, but does not apply to free standing items or surfacing. Design would be made around grant eligible items. The grant deadline is November 15th.

Acosta explains the demographics of Robert McCrimmon Park. All demographic information is provided to the Parks and Recreation Advisory Board.

3. Discuss new playground options for Robert McCrimmon Park.

Pictures of the current playground at Robert McCrimmon Park are shown to the Parks and Recreation Advisory Board for reference. Chairman Mark Sowell inquired about the typical amount not covered by the grant. Ductworth explains typical costs would be about 38-40% of the overall budget, those costs depend on what type of surfacing is used. McLaughlin inquired about how to ensure most of the budget is eligible for the match grant. Ductworth explains it is the



design. Parks and Recreation Board members can provide input on what age range and design elements that are important for the park. Robert McCrimmon park is currently utilized most for teenagers playing basketball. Chairman Mark Sowell inquires about what age range our current parks cover. Pecan Park playground is for younger children, Pioneer Park playground is more for the older children, Banita Creek Park playground covers both older and younger ages, Ritchie Street Park playground is inclusive. Discussion includes possible sports theme, but light theming to keep budget in mind, having different options for different ages, offering multi generational options, shade needed possibly integrated, potential drainage issues might need to be taken into consideration in the design. Board members agree that the equipment is more important than the theme, focusing on children ages 5-12 with lower level play for younger children, utilizing the Powerscape line with different levels of play with different styles, possibly including nets (nets at current parks are 7-8 years old and still in good shape) and integrating bike racks, benches and possibly walking area. Ductworth suggests for the swings to have the top rail different color than the support rails to assist in the look of the design. City staff explains the process of getting the approval for the contract. At the next meeting on October 28th, the Parks and Recreation Board members will be presented with some design options.

4. Adjourn.

The meeting was adjourned at 5:17pm by Chairman Sowell.

Joy Palmer
Recreation Supervisor

Dr. Mark Sowell
Board Chair



Minutes
Parks & Recreation Advisory Board
October 28, 2024 at 4:00 P.M. – In person Meeting

Members Present: Tracie Lasater, Rod Allen, Sue McLaughlin, Charles Gregory, Carlis Whitehead, Dawn Stover, Michael Molling and Lauren Tyler.

Members Absent: Mark Sowell (Chairman), Angela Williams, Abby Echeverria, Michael Montes, Rodney Ray, Nannette Fausett, and Christy Turner,

Others Present: Jessica Sowell, Carlie Allen, Joy Palmer, Cecilia Sarmiento

1. Call to Order.

The meeting was called to order at 4:07pm by Jessica Sowell.

2. Consider approval of Minutes: August 26th, 2024 and September 30th, 2024.

Allen motioned to approve. Tyler seconded, all approved.

3. Receive updates on Parks and Recreation projects.

Staff gave updates on

4. Discuss park restroom project options.

5. Discuss Robert McCrimmon Park Playground options.

Staff presents the proposed design for Robert McCrimmon Park. Design drawing, equipment list and full color design photos were presented to the board. Design includes most of the playground elements connected to insure the most grant eligible equipment. Staff explains cost breakdown. The playground equipment is \$222,782 with grant funds from Game Time in the amount of \$100,605. The cost to Nacogdoches for the playground equipment is \$135,234 with additional install cost of \$89,157. The total cost to Nacogdoches is \$224,391. Staff reminded the board of the overall budget of \$240,000. Not included in cost, playground mulch and a drinking fountain. Design includes bike racks and park benches as discussed at the last meeting. Gregory inquired about placement of the playground. The design includes the swing set to run parallel to the basketball court with a larger footprint than the current playground. Lasater inquires about current playground equipment. Staff informs that all current playground equipment in good/working condition will be reused at other parks that have not been updated. Any other equipment will be recycled or disposed of as needed. Staff identified changes: solo spinner and space race half panel have potential maintenance issues, staff would like to change out to comparable products, stargazer and thundering which are both slightly cheaper but comparable products. Molling expresses concern for shade for the benches. Some shade is available from the current trees at the park, but staff will investigate shading options. Gregory inquires about trash can placement, some trash receptacles already exist at this location, however, additional or new trash receptacles will be placed as needed and are a regular part of the park budget. Tyler inquired about Drinking fountains. Drinking fountains are not included in the current price and design, but can be added. The city already owns drinking fountains that can be installed with just the cost of installation. In addition, a quote was received for a walking track around the playground which is quoted at \$34,000. The Parks Advocacy League (PAL) has been raising money for Robert McCrimmon park and may have funds that could be used for this walking path. Tyler likes the walking path for parents to walk and also kids to ride bicycles or roller skate safely. Gregory

inquires about accessibility. Playground design has a few accessibility items included in the design, a couple transfer stations and roller slide for hearing impaired, not as accessible as the all abilities playground at Ritchie Street park, but includes more sensory equipment. Allen discusses a similar playground in Frankston, Texas with handicap accessibility, staff will look at design. GameTime playgrounds have the ability to switch out parts as they all connect together the same, so there is an ability to add items in the future. Tyler likes the transfer platforms, roller slide and the overall design which includes a lot of the board requests. Next steps, staff will be gathering the feedback from this meeting and requests any other feedback be submitted by November 1st to stick to our strict timeline to receive the grant. The contract will be on the November 5th City Council meeting agenda to approve a not to exceed \$240,000 contract. To receive the grant the signed contract and final design is due to GameTime on November 14th. We have one more rendering as part of our agreement in which we can make any recommended changes. Once the signed contract is received by GameTime they will schedule an installation timeframe. Ordering and receiving the equipment can take four to six weeks with installation scheduled after equipment is received and inventoried and site work completed. Once installation begins the project is typically completed within a week or two depending on weather conditions.

6. Discuss future goals and vision for Parks and Recreation Advisory Board.

7. Adjourn.

The meeting was adjourned at 5:09pm by Jessica Sowell.

Joy Palmer
Recreation Supervisor

Dr. Mark Sowell
Board Chair

Robert McCrimmon Park Nacogdoches, TX

Design • Build • PLAY!



Design Rendering—NOT FINAL

Color Palette:
Oceanscape

800.438.2780

Page 181 of 441

Robert McCrimmon Park Nacogdoches, TX

Design • Build • PLAY!



Color Palette:
Oceanscape



Design Rendering—NOT FINAL



City Council Meeting

Date: November 5, 2024

Agenda Item: 5.E.

PRESENTER: Rhonda Lewis, City Secretary

ITEM/SUBJECT: Consider approval of minutes for the October 8, 2024, City Council Regular Meeting and the October 15, 2024, City Council Regular Meeting. (City Secretary)

SUMMARY/BACKGROUND:

FINANCIAL:

No financial impact associated with this item.

COUNCIL PRIORITIES: THIS AGENDA ITEM IS CONSISTENT WITH THE FOLLOWING CITY COUNCIL PRIORITIES

CITY CONTACT: Rhonda Lewis, City Secretary
lewisi@nactx.us
(936) 559-2506

ATTACHMENTS:

1. City Council Meeting Minutes 10.08.24
2. City Council Meeting Minutes 10.15.24



Regular Session
Nacogdoches City Council
October 8, 2024 – 5:30 p.m.
City Council Chambers
202 E. Pilar Street, Nacogdoches, TX

City Council present: Mayor Randy Johnson; Council Members, Kathleen Belanger; Blane Williams; Brad Maule, and Chad Huckaby

1. Called to order at 5:30 p.m.

2. Pledge of Allegiance.

3. Open Forum:

There were no comments in Open Forum.

4. ITEMS TO BE REMOVED FROM THE CONSENT AGENDA:

There were no items removed from the Consent Agenda.

5. CONSENT AGENDA:

Councilman Huckaby moved to approve the Consent Agenda. Councilman Maule duly seconded the motion and the Consent Agenda was approved unanimously.

6. REGULAR AGENDA:

- A. Hold a discussion regarding the naming of future Rulfs Street relocation as part of the TxDOT Lanana Creek Bridge Replacement Project.

Case Opperman, City Engineer and Director of Public Works, presented this item to Council stating that preliminary plans for TxDOT requires the closing of Rulfs Street for the replacement of the Lanana Creek Bridge at Main Street. TxDOT plans to relocate the street and would like feedback on renaming the street or keeping the Rulfs Street name. Mr. Opperman stated that renaming the street would have an impact on Postal Operations for the occupants on Rulfs Street.

Mayor Johnson stated he would recommend leaving the named Rulfs Street to avoid having the postal issues.

Councilman Huckaby added that retaining the name is good for maintaining the historic nature of the street.

City Council gave direction to relay to TxDOT to keep the name of Rulfs Street in the City of Nacogdoches.

- B. Discuss the naming of a future dedicated City street between Industrial Drive and Earnest McLain Road.

Case Opperman, City Engineer and Director of Public Works, addressed Council stating that the developer of an industrial park would like the Council's opinion on the naming of a street dedicated to the City. The developer proposed "Wildcreek Road" for the street.

City Council agreed that the name wise acceptable for the industrial development.

- C. Consider approval of a contract by and between the City of Nacogdoches and KSA Engineers, Inc. for professional engineering services for 2024 SWTP Filter 1 Rehabilitation for a not-to-exceed amount of \$40,000.00.

Case Opperman, City Engineer and Director of Public Works, stated in order to keep the filters and water plant in good operating conditions, rehabilitation must take place every other year. Filter number 1 is determined to be the next priority in the process. Mr. Opperman presented the costs for the services for KSA Engineers.

Mayor Johnson made a motion to approve KSA Engineers to provide the services for the filter rehabilitation on Filter 1. Councilman Maule duly seconded the motion, and the motion carried unanimously.

D. Consideration and possible action to appoint two (2) City Council Members to the City of Nacogdoches Zoning Ordinance Amendment Committee.

Jerry Baker, City Attorney, presented this item to Council stating the need of a subcommittee made up of members of Council, ZBA, and staff in order to move forward in the process of Ordinance Amendments. Mr. Baker asked for the nomination of two members of Council to sit on the subcommittee.

Councilwoman Belanger expressed her interest in sitting on the subcommittee.

Mayor Johnson stated that he heard from two others who expressed interest as well.

Mayor Johnson made a motion to nominate Councilman Maule and Williams to the Zoning Ordinance Amendment Committee. Councilman Maule duly seconded the motion. Councilwoman Belanger stated her interest on sitting on the subcommittee once again.

Mayor Johnson's motion passed by a vote of 4-1 in favor of Councilman Maule and Williams to sit on the Zoning Ordinance Amendment Committee.

7. EXECUTIVE SESSION:

Mayor Johnson and the rest of Council adjourned into Executive Session at 5:47 p.m.

Mayor Johnson and Council reconvened in Regular Session at 6:06 p.m. with no action taken in Executive Session.

A full recording of the Special City Council Meeting for September 30, 2024, may be viewed here: [Regular City Council Meeting - 20241008](#)

8. **ADJOURNED:** 6:06 p.m.

ATTEST:

Rhonda Lewis, City Secretary

Mayor, Randy Johnson
City Council
City of Nacogdoches



**Regular Session
Nacogdoches City Council
October 15, 2024 – 5:30 p.m.**

City Council Chambers
202 E. Pilar Street, Nacogdoches, TX

City Council present: Mayor Randy Johnson; Council Members, Kathleen Belanger; Blane Williams; Brad Maule, and Chad Huckaby

1. Called to order at 5:30 p.m.

2. Pledge of Allegiance.

3. Open Forum:

There were no comments in Open Forum.

4. ITEMS TO BE REMOVED FROM THE CONSENT AGENDA:

There were no items removed from the Consent Agenda.

5. CONSENT AGENDA:

Councilman Huckaby moved to approve the Consent Agenda. Councilman Williams duly seconded the motion and the Consent Agenda was approved unanimously.

6. REGULAR AGENDA:

- A. Consider selection of Two Fifteen Consulting and KSA Engineers, Inc. for Professional Engineering Services for Storm Drainage Improvement Projects.

Case Opperman, City Engineer and Director of Public Works, presented this item to Council stating that the City sent out a Request for Qualifications for this contract. Based on the criteria, the number of the projects, and based off of the best scores, the top two firms, KSA Engineers and Two Fifteen Consulting were recommended by Staff for the contract.

Councilman Huckaby made a motion to approve the two firms for the Storm Drainage Improvement Projects. Councilwoman Belanger duly seconded the motion, and motion carried unanimously.

- B. Discuss and consider proposed updates to Chapter 50 of the Nacogdoches Code of Ordinances.

Jessica Sowell, Community Services Director, asked Council to consider some updates to Chapter 50, which governs the Historic Landmark Preservation Ordinances for the City. The changes will address reapplications for Certificates of Appropriateness. Once denied by HLPC this will eliminate the exact application presented numerous times to the HLPC.

Councilwoman Belanger moved to approve the proposed updates to Chapter 50 of the Code of Ordinances. Councilman Maule duly seconded the motion, and the motion carried unanimously.

- C. THIS ITEM IS MOVED TO A FUTURE CITY COUNCIL MEETING.

- D. Discuss and consider supplement to Nacogdoches Historic District Design Guidelines related to murals.

Jessica Sowell, Community Services Director, stated that the item before Council has been an issue for several months. HLPC expressed the need for further guidance on what is appropriate and what is not, what is in their purview and what is not. This will be an additional Chapter to the HLPC Guidelines.

Councilman Maule made a motion of approve the Historic District Design Guidelines related to murals. Councilwoman Belanger duly seconded the motion, and the motion carried unanimously.

A full recording of the Special City Council Meeting for September 30, 2024, may be viewed here: [Regular City Council Meeting - 20241015](#)

7. **ADJOURNED:** 5:41 p.m.

ATTEST:

Mayor, Randy Johnson
City Council
City of Nacogdoches

Rhonda Lewis, City Secretary



City Council Meeting

Date: November 5, 2024

Agenda Item: 5.F.

PRESENTER: Cary Walker, Public Works Manager

ITEM/SUBJECT: Consider approval of the purchase of Track Loader from Holt Cat for a not-to-exceed amount of \$467,080.00. (Public Works Operations Manager)

SUMMARY/BACKGROUND: Track Loaders are used in daily operations at the landfill to process waste and spread it over the landfill so that the Compactor can compress it. The existing loader is seven years old and worn out, needing significant impending repairs. At this time, the equipment still has enough value to be able to be auctioned off.

Staff has procured a quote for replacement of this equipment from Holt Cat which will include a six-year, 10,000-hour warranty. They are under a Sourcwell cooperative purchasing contract (Sourcwell Contract #011723-CAT) which is exempt from the competitive bidding process under Texas Local Government Code Section 252.022(a)(12)(D). The total cost from Holt Cat for this equipment is \$467,080.00. This is a budgeted item in the FY24-25 budget.

FINANCIAL:

Item is budgeted:

Account No.: 31.41 680.25

Account Name: *Sanitation Disposal - Equipment & Machinery*

Amount: \$467,080

COUNCIL PRIORITIES: THIS AGENDA ITEM IS CONSISTENT WITH THE FOLLOWING CITY COUNCIL PRIORITIES

Not Applicable

CITY CONTACT: Cary Walker, Public Works Operations Manager
walkercl@nactx.us
(936) 559-2582

ATTACHMENTS: 1. Track Loader Holt Cat Quote



DATE: Mar 13, 2024
QUOTE #:335253-01

CITY OF NACOGDOCHES PUBLIC WORKS
CARY WALKER
PO BOX 635070
NACOGDOCHES, TEXAS 75963-5070

Lively, Charles
936.675.1200

One (1) New Caterpillar Inc Model: 963 Track Loaders with all standard equipment in addition to the additional specifications listed below:

SOURCEWELL CONTRACT NUMBER: 032119-CAT
SOURCEWELL MEMBER NUMBER: 24383

SALE PRICE	\$467,080.00
EXT WARRANTY	Included
TOTAL PRICE	\$467,080.00
SUB TOTAL	\$467,080.00
TOTAL PURCHASE PRICE	\$467,080.00

WARRANTY

Standard Warranty: 12 Month/Unlimited Hours Total Machine
Extended Warranty: 60 MO/10000 HR POWERTRAIN + HYDRAULICS + TECH

DATE: Mar 13, 2024QUOTE #:Quote 335253-01

MACHINE SPECIFICATIONS

DESCRIPTION	REF.#
963 HRC TRACK LOADER	561-4700
WASTE ES / DEMOLITION PKG 12A	568-0998
ENGINE	566-7533
FAN, DEMAND, REVERSING	573-8266
PRECLEANER, TURBINE, W/SCREEN	566-0323
GUARD, IDLER	3W-8578
TRACK,22",DG,HDXL,CTRHOLE,CTWS	619-9054
LINES IMPLEMENT, STANDARD	574-4239
Page 1	

DESCRIPTION	REF.#
LIGHTS, ADDITIONAL	587-0518
CAB, DELUXE	574-5821
SEAT, DELUXE	578-7640
PREMIUM CORP RADIO (24V)	590-3290
TRANSMISSION CONTROL, JOYSTICK	576-3199
HYDRAULIC 2V,GP JOYSTICK, PACK	572-6399
SERVICE PACKAGE, EXTENDED	454-9489
PRODUCT LINK, CELLULAR PLE643	575-0729
TANK, FUEL, STANDARD	386-2801
LINKAGE, STANDARD	569-6228
BKTA GPWA ST 102.7" 4.10YD3 PO	599-6937
BEACON, LED FLASHING	593-4672
EASY ACCESS PACKAGE	469-6095
AIR PRECLEANER, CAB	577-4087
GUARD FULL LENGTH, TRACK, HDXL	605-0919
REGIONAL PACKAGE, USA	575-0671
KIT, VISIBILITY, SINGLE CAMERA	574-7874
CTWS & MSS RECEIVER, BLE	623-5152

STANDARD EQUIPMENT

POWERTRAIN

Modular cooling system for engine air intake, oil and water
Fan radiator, electronically controlled, hydraulically driven, temperature sensing, on demand
Electro Hydrostatic Control (EHC) for transmission

Engine idle shutdown
Auto engine speed control
Electric fuel pump
Water separator
Starting aid, glow plug
Caterpillar extended life coolant

UNDERCARRIAGE

Caterpillar heavy duty undercarriage and tracks (38 sections), 1850mm (72.8") track gauge
Track guiding guards, end section
Track adjuster, hydraulic
Sprocket rims, with replaceable bolt-on tough steel segments

Guards, sprocket
7 track rollers per side, with two upper carrier rollers, lifetime lubricated
Idlers, conventional type, lifetime lubricated
Oscillating track roller frames

ELECTRICAL

Alternator, 24 volt, heavy duty
Alarm, backup
Horn, electric
2 heavy duty batteries, high output, maintenance free, 1120 CCA

Switch, main disconnect
Starter, electric (heavy duty, 24 volt)
4 halogen lights : 2 facing forward, roof mounted, 2 facing rearward, integrated in the air conditioner unit

OPERATOR ENVIRONMENT

Pressurized, sound suppressed, ROPS/FOPS
Cab with tinted glass and right
side sliding window
Air conditioning and heating
Heater / defroster with automatic
temperature control and automatic
blower control
Armrests, adjustable
Electro Hydraulic, seat mounted control
levers with faster processing
Seat belt, retractable, with buckling
indicator on dash
Mirror, rearview, inside, adjustable
Radio ready. Includes 24 to 12 volt
converter, speakers, antenna, 12V
power outlet and USB port 5V supply

Coat hook
Storage compartments under left armrest
Document holder on right console
Floor mat, rubber, heavy duty
Windshield washers and wipers,
multiple speed front and rear
Durable metal roof
Parking brake switch and "brake-on"
indicator light
Implement lock-out switch
Durable metal fender
Rearview HD camera (EU5/T4F only)
10" colour touchscreen display with
integrated rear camera display and
machine slope indicator

OTHER STANDARD EQUIPMENT

Sound suppression, exterior
Z-bar loader linkage
Load sensing implement pump with
variable displacement
Implement cylinders with sensors
Operator programmable lift and tilt
kickouts
Engine enclosure with lockable doors
Radiator core 6.5fpi, debris resistant
Hinged radiator guard and swing out fan

Guards, full bottom
Ecology drains on hydraulic oil tank
Product Link ready
Oil sampling valves
Hoses, Caterpillar XT
HYDO Advanced 10
4 x 2 Easy tie-down points on chassis
Implement oil return filter in
hydraulic tank

PRESENTER: Juan Pollette, Interim City Planner

ITEM/SUBJECT: Public Hearing: Consider approval of a Specific Use Permit, in a B-2, General Business and R-4, Multi-Family Zoning District for Stone, Sand, Gravel & Mineral Extraction, for approximately 5 acres, on Lot 1, City Block 47, generally located on the east side of Old Tyler Road, approximately one-half mile north of the Powers Street and Old Tyler Road intersection. This request has been submitted by James Wood on behalf of the owner, John Mast of Separate Property Partnership, L.P. Case File SUP2024-06. (Interim City Planner)

SUMMARY/BACKGROUND: The front half of the property along Old Tyler Road is zoned B-2, General Business, and the back half is zoned R-4, Multi-Family. The property is currently undeveloped but is operating as a Stone, Sand, Gravel & Mineral Extraction operation. To operate the proposed use, the owner is required to have a Specific Use Permit (SUP). The SUP process allows staff, the Commission, and the City Council to assess this use in this area, and depending on the surrounding uses, or impacts on infrastructure or the environment, the opportunity to review and impose reasonable conditions if necessary.

This property has significant elevation changes, with the north side about 30 feet higher than the south and a 15-foot elevation gain along the western frontage on Old Tyler Road. It is mostly undeveloped and wooded except for an acre in the center that is being excavated. The owner intends to use the extracted dirt for other development projects in the city, and once excavation reaches the appropriate grade, the property will be sold for future development consistent with the current zoning.

ADJACENT LAND USES:

The subject property is currently zoned B-2, General Business, and R-4, Multi-Family, and is currently undeveloped. The surrounding zoning and land uses are as follows:

Direction	Comprehensive Plan	Zoning	Land Use
North	Single-Family Residential	B-2, General Business R-4, Multi-Family	Undeveloped
South	Single-Family Residential	R-4, Multi-Family	Residential
East	Single-Family Residential	I-2, Heavy Industrial	Industrial
West (Across OTR)	Single-Family Residential	B-2, General Business	Residential

The surrounding area is a mix of B-2, General Business, R-4, Multi-Family, and I-2, Heavy Industrial zoning districts. The property is surrounded by single-family residential homes except

for the east side which is industrial use. There are a few undeveloped lots adjacent to the north and west across Old Tyler Road.

REVIEW CRITERIA:

The proposed use meets all required SUP conditions. In accordance with Sec. 118.173 of the Zoning Ordinance, a SUP may be approved if all the following conditions have been found:

Compatibility. *The specific use will be compatible with and not injurious to the use and enjoyment of other property in the immediate vicinity, nor significantly diminish or impair property values within the immediate vicinity;*

The property is located near several legal non-conforming single-family homes to the west across Old Tyler Road. A single-family home is adjacent to the south and a vacant lot to the north. To the east, there is a 14.5-acre industrial track that seems to be vacant. The applicant intends to leave the property ready for future commercial or residential development once the excavation is done in approximately 12 months.

Orderly growth and development. *The establishment of the specific use will not impede the normal and orderly development and improvement of surrounding vacant property;*

The SUP should not impede the normal and orderly development of surrounding vacant property. There is an undeveloped lot adjacent to the north of the subject property and two east across Old Tyler Road. After completing the dirt extraction, the property will be ready for future development that is in line with the zoning district.

Supporting Facilities. *Adequate utilities, access roads, drainage, and other necessary supporting facilities have been or will be provided;*

The subject property fronts and takes direct access from Old Tyler Road which is designated as a minor arterial roadway on the City's Thoroughfare Plan. This section of Old Tyler Road is constructed as a two-lane roadway, with a right-of-way (ROW) of 80 feet. The roadway is adequate to accommodate the nature and volume of traffic typically generated by the proposed use. The property has access to public utilities, with an 8-inch water and 6-inch sewer main located along Old Tyler Road.

Drives and Parking. *The design, location and arrangement of all driveways and parking spaces provides for the safe and convenient movement of vehicular and pedestrian traffic without adversely affecting the general public or adjacent developments;*

The proposed driveways and parking areas will comply with the City's current land development design standards.

Nuisances. *Adequate nuisance-prevention measures have been or will be taken to prevent or control offensive odor, fumes, dust, noise and vibration;*

The applicant is proposing to mitigate any nuisances from dust and noise that will be generated by the machinery by preserving the existing large trees and vegetated area located along the street frontage and the southern and northern boundary of the property as a natural buffer. The property owner has also installed silt fencing along the roadway to keep dirt from washing into the road. Hours of operation will be Monday through Saturday from 7:00 a.m. to 6:00 p.m. each day. The applicant has also submitted a Stormwater Pollution Prevention Plan (SWP3) outlining and establishing best management practices and sediment and erosion controls that will be maintained for the duration of construction.

Lighting. *Any lighting to be provided will be directional so as not to disturb or adversely affect neighboring properties;*

The owner is not proposing any additional lighting.

Landscaping. *Sufficient landscaping and screening to ensure harmony and compatibility with adjacent property exists or will be provided;*

This development will be subject to Zoning Ordinance **Sec. 118-430. - Commercial district landscaping**, which requires the installation of trees to be planted along the street frontage. The property already has an existing large, vegetated area with several large mature trees located along the western boundary line of the property fronting the roadway.

Comprehensive Plan. *The proposed use is in accordance with the comprehensive plan.*

Staff finds that the current Future Land Use Plan (FLUP) designation of the property is not consistent with the current zoning of the property. The FLUP designates the subject property and the surrounding areas as Single-Family Residential (SFR). The SFR category in the FLUP is described as “Conventional one-family detached dwellings (also includes duplexes).” Although this FLUP designation is not consistent with the current zoning of the property and other surrounding properties zoned commercial and developed as residential, the proposed use is temporary and is intended to make the property more attractive for future compatible development. Approval of the SUP will not change the land uses permitted by the current underlying zoning district.

PUBLIC ENGAGEMENT:

- September 16, 2024: Staff coordinated a neighborhood meeting at City Hall on behalf of the applicant for surrounding property owners (within 500 feet) to receive input about the request. None of the surrounding property owners attended the meeting.
- September 24, 2024: Staff mailed thirteen (13) notices to property owners within a 200-foot notification area. Staff has not received any responses in favor or opposition to the Specific Use Permit request.
- September 29, 2024: Legal ad published in the Daily Sentinel newspaper.

This zoning application is subject to additional notification procedures approved by Council in January 2021, including: signage posted on the subject property; notices on the city website and social media pages; and courtesy notices mailed to property owners within 500 feet of the subject property.

P&Z ACTION:

The Planning & Zoning Commission heard this item on October 14, 2024, and voted unanimously (5-0) to recommend approval of the Specific Use Permit with the following conditions:

1. Hours of operation will be from 7:00 a.m. to 6:00 p.m., Monday through Saturday.
2. Preserve the existing vegetative buffer at a minimum of 25 ft in width around the north, south, east, and west of the property, allowing for a reasonable entrance into the area of excavation.
3. Install and maintain standard stormwater pollution prevention fencing in line with state regulations along the entrance of the property.
4. SUP will expire in 12 months from the date it is put into ordinance.
5. Additional street sweeping or cleanup will be provided once a week or as needed to keep the roadway in front of the site free of mud and debris.

FINANCIAL:

No financial impact is associated with this item.

COUNCIL PRIORITIES: THIS AGENDA ITEM IS CONSISTENT WITH THE FOLLOWING CITY COUNCIL PRIORITIES

Not Applicable

CITY CONTACT: Juan Pollette, Interim City Planner
pollettej@nactx.us
(936) 559-2559

ATTACHMENTS:

1. Ordinance
2. Aerial Map
3. Zoning Map
4. Future Land Use Map
5. Notification Map
6. Site Photos
7. SW3P
8. Property Owner Consent Form

ORDINANCE NO.

AN ORDINANCE OF THE CITY OF NACOGDOCHES, TEXAS, GRANTING A SPECIFIC USE PERMIT FOR STONE, GRAVEL & MINERAL EXTRACTION LOCATED WITHIN THE B-2, GENERAL BUSINESS AND R-4, MULTI-FAMILY ZONING DISTRICT, LEGALLY DESCRIBED AS APPROXIMATELY 5 ACRES, LOT 1, CITY BLOCK 47, GENERALLY LOCATED ON THE EAST SIDE OF NW STALLINGS DRIVE APPROXIMATELY 350 FEET NORTH OF OLD TYLER ROAD, APPROXIMATELY ONE-HALF MILE NORTH OF THE POWERS STREET AND OLD TYLER ROAD INTERSECTION, IN NACOGDOCHES, TEXAS, PROVIDING REQUIREMENTS AND CONDITIONS FOR SAID SPECIFIC USE PERMIT; CONTAINING FINDINGS; PROVIDING A REPEAL CLAUSE; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Specific Use Permit process allows the Planning and Zoning Commission and City Council to consider the conditions specific to individual tracts of land and the operational characteristics of various businesses; and

WHEREAS, James Wood, filed an application for a Specific Use Permit for Stone, Gravel & Mineral Extraction on property that is currently zoned as B-2, General Business and R-4, Multi-Family ; legally described as approximately 5 acres, Lot 1 City Block 47, generally located on the east side of Old Tyler Road, approximately one-half mile north of the Powers Street and Old Tyler Road intersection(the “Property”), and situated within the corporate limits of the City of Nacogdoches, Texas (the “City”), being more particularly described in **Exhibit “A”**, attached hereto and made a part hereof for all purposes; and

WHEREAS, the Owner of the Property, through its above-mentioned and duly authorized representatives, has presented an application to the City for the granting a Specific Use Permit to use said Property for the purpose of Stone, Gravel & Mineral Extraction (the “Specific Use”), as authorized by the City's Zoning Ordinance; and

WHEREAS, after satisfaction of all conditions precedent required by law, the Planning and Zoning Commission held a public hearing and did make recommendation to the City Council for approval of the Specific Use Permit application submitted for the above-referenced site; and

WHEREAS, after satisfaction of all conditions precedent required by law and receiving the recommendation of the Planning and Zoning Commission, the City Council conducted a public hearing, and immediately thereafter approved the application for a Specific Use Permit allowing for the construction, operation, and maintenance for Stone, Gravel & Mineral Extraction.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF NACOGDOCHES, TEXAS:

SECTION I
Findings.

The facts and matters set forth in the preamble of this Ordinance are hereby found to be true and correct, and same are deemed to be in furtherance of a public purpose.

SECTION II

Approval of Specific Use Permit

Pursuant to the requirements of Chapter 118 of the Code of Ordinances of the City of Nacogdoches, Texas, a Specific Use Permit is hereby approved allowing for the construction, operation, and maintenance of Stone, Gravel & Mineral Extraction at the above-described location, with the following conditions:

- a) Hours of Operation are from 7 am – 6 pm, Monday through Saturday.
- b) Preserve the existing vegetative buffer at a minimum of 25' around all property lines.
- c) Install and maintain stormwater pollution prevention fencing in line with state regulations along the entrance of the property.
- d) The Specific Use Permit is valid for 12 months.
- e) Additional street sweeping or clean-up will be provided once a week or as needed to keep the roadway in front of the site free of mud and debris.

SECTION III

Repeal

This Ordinance shall in no manner repeal, amend, change, supplement, or revise any provision of any ordinance of the City, save and except the granting of the Specific Use Permit as herein provided.

SECTION IV

Effective Date

This Ordinance shall take effect following its passage and publication as may be required by governing law.

SECTION V

Severability

If any word, article, phrase, paragraph, sentence, clause, or provision of this Ordinance shall be adjudged by a court of competent jurisdiction to be invalid, the invalidity shall not affect other provisions or applications of this Ordinance which can be given effect without the invalid provision, and to this end, the provisions of this Ordinance are declared to be severable.

SECTION VI

Proper Notice and Open Meetings

It is hereby officially found and determined that the meeting at which this Ordinance was 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 of the Texas Government Code.

**SECTION VII
FILING**

The Deputy City Secretary is hereby authorized and instructed to file a signed and sealed copy of this Ordinance in and among the records of the City of Nacogdoches, Texas.

**PASSED AND APPROVED, this the ____ day of August, 2024, by a vote of
____(ayes) to ____ (nays) of the City Council of the City of Nacogdoches, Texas.**

CITY OF NACOGDOCHES

By:

Randy Johnson, Mayor

ATTEST:

APPROVED AS TO FORM:

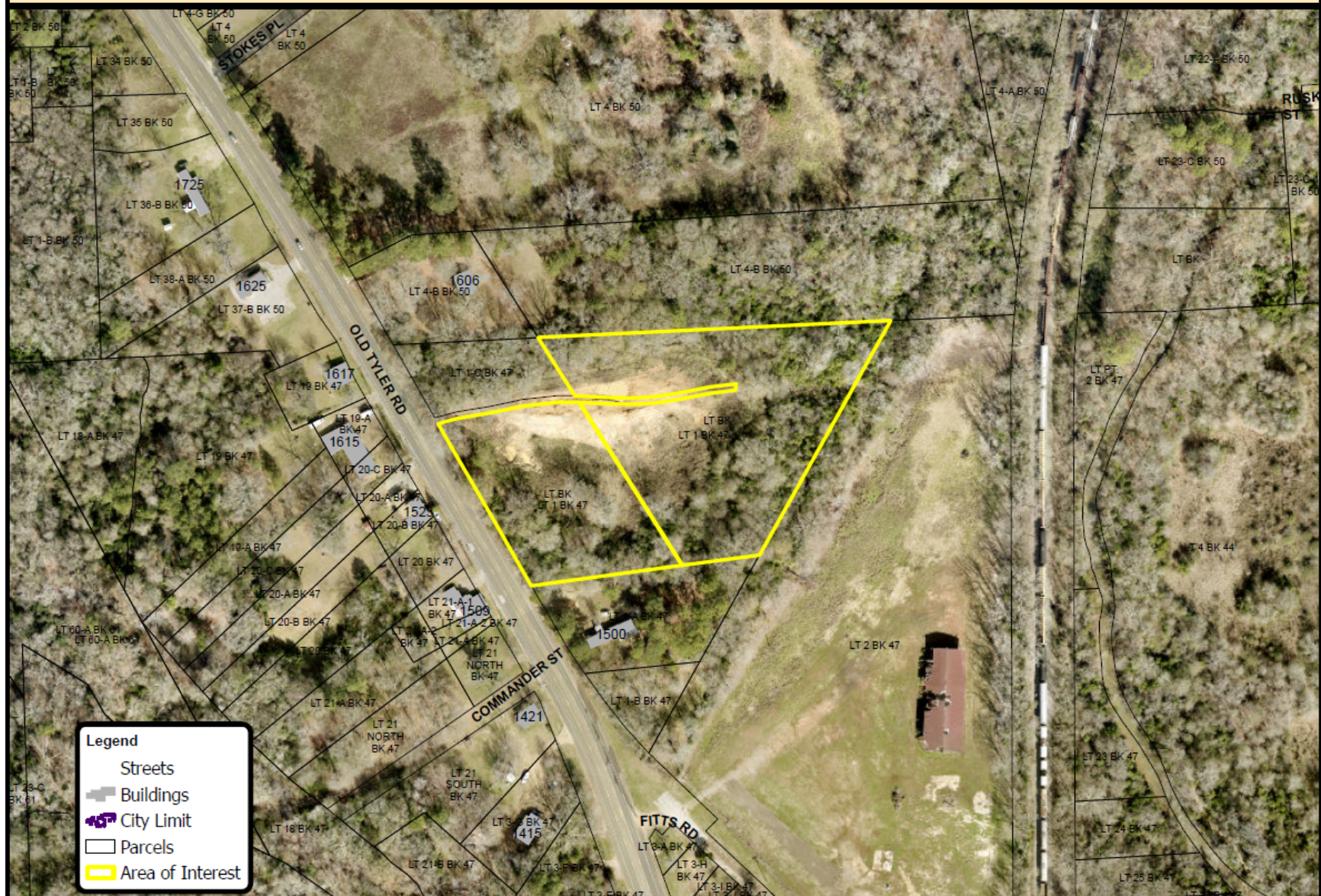
Rhonda Lewis, City Secretary

Jerry Baker, City Attorney

APPROVED AS TO CONTENT:

Juan Pollette, Interim City Planner

EXHIBIT "A"



8

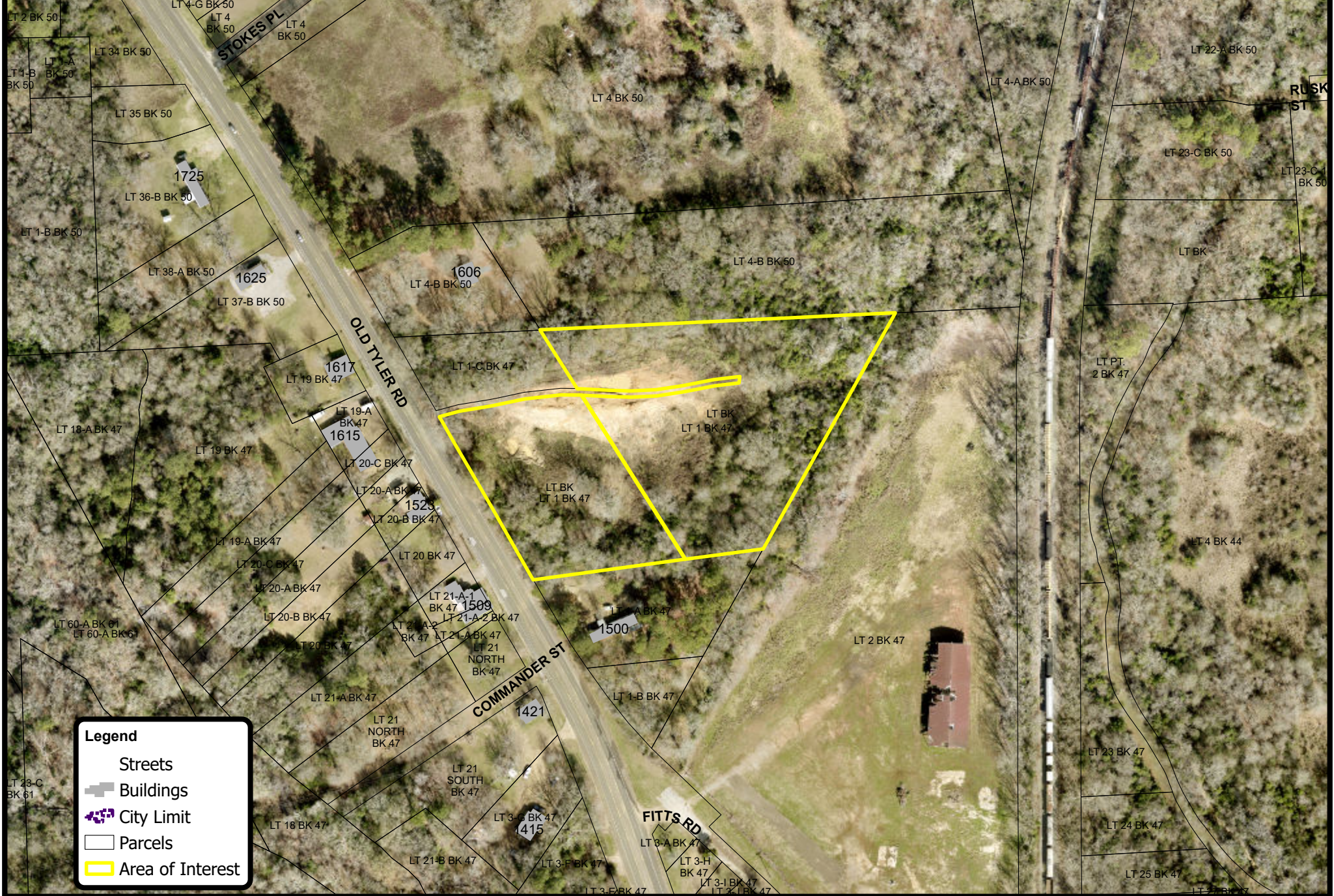
0 80 160 240 320 Feet

Date Created: 09/19/24 14:54 | Document Generated Automatically

Notice: This product is for informational purposes only and may not have been prepared for or be suitable for legal, engineering or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries.



SUP2024-06 Aerial Map

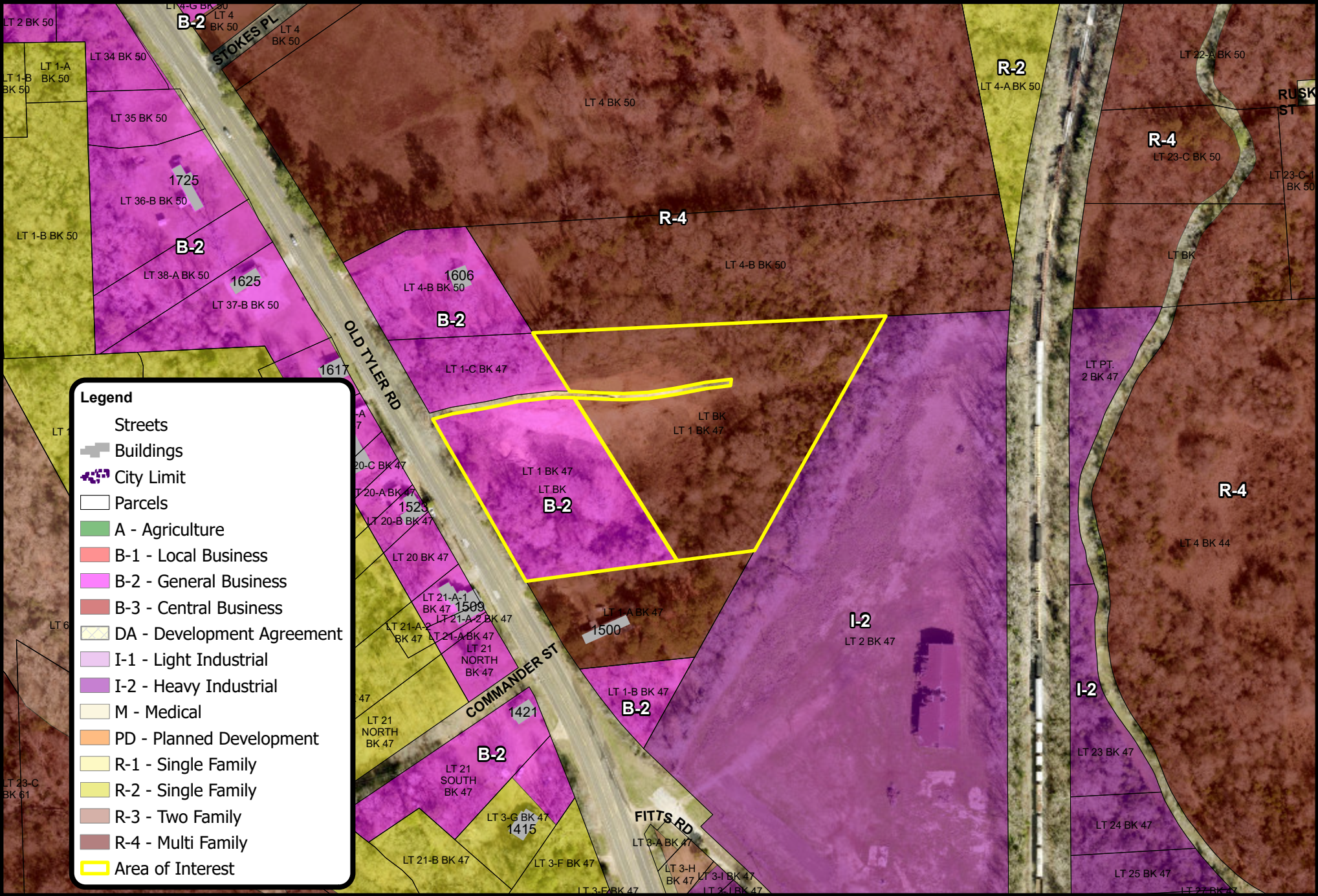


0 80 160 240 320 Feet

Date Created: 09/19/24 14:54 | Document Generated Automatically

Notice: This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries.

SUP2024-06 Zoning Map

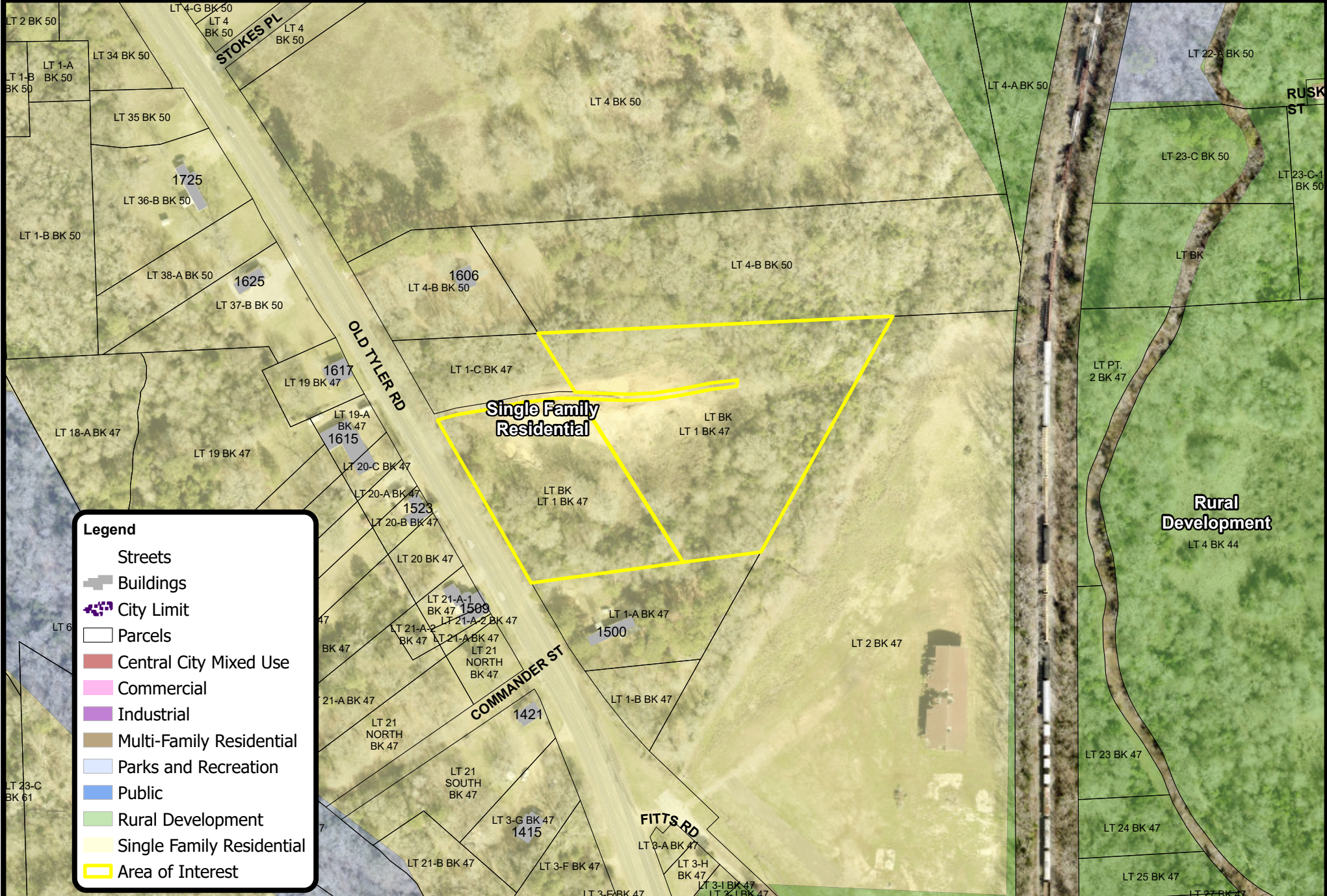


0 80 160 240 320 Feet

Date Created: 09/19/24 14:54 | Document Generated Automatically

Notice: This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries.

SUP2024-06 Future Land Use Map

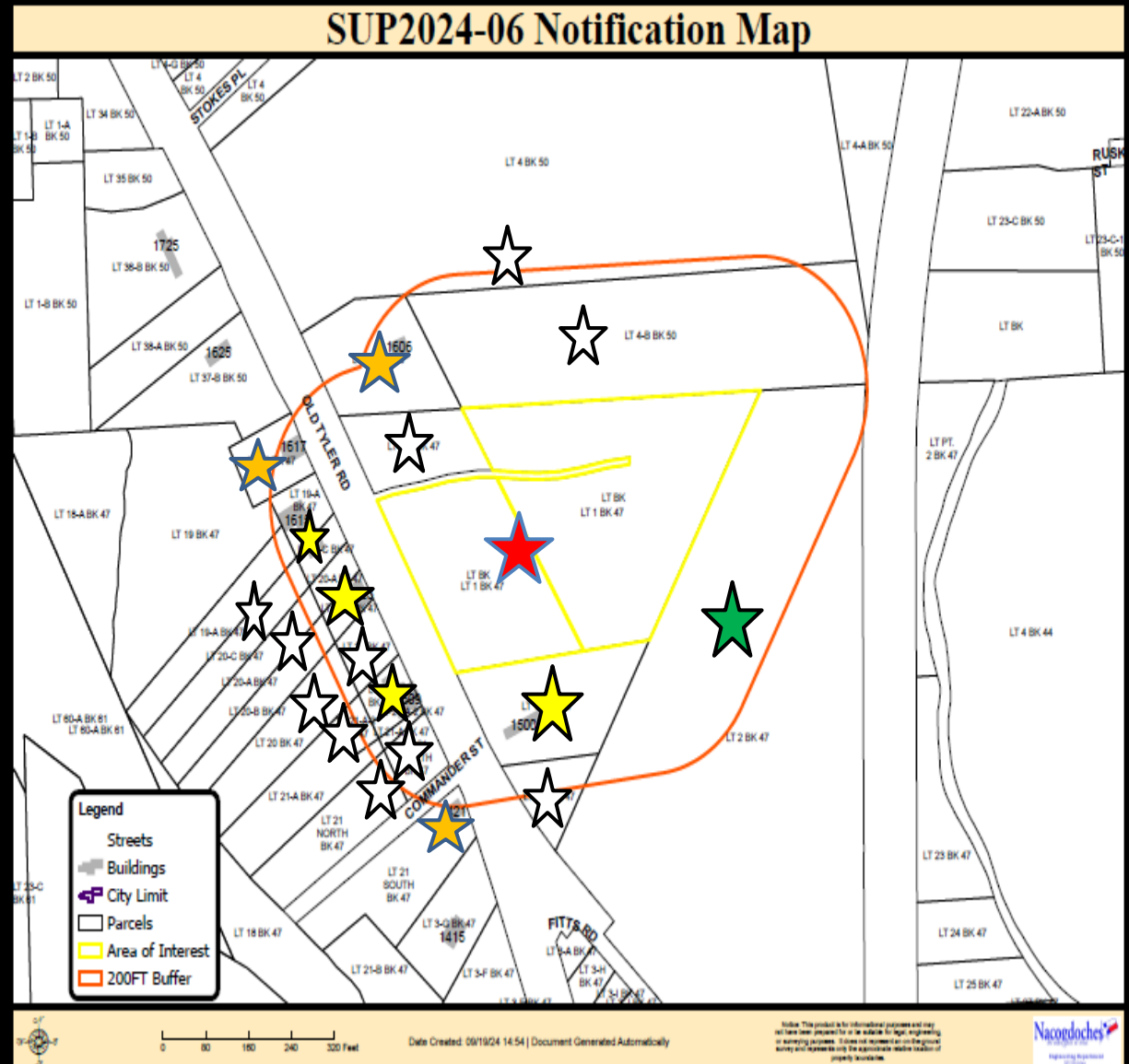


200 Foot Notification Map

SUP2024-06: Old Tyler Road

Legend

-  200 Foot Buffer
-  Proposed SUP
-  Abandoned/Storage Shed
-  Single-Family-Owner Occupied
-  Single-Family-Rental
-  Vacant/ Undeveloped
-  Agriculture



SUP2024-06 Site Photos

Subject property view from Old Tyler Rd.





View looking east inside of
the subject property

View looking north inside
the subject property





North side of property

South side of property



Single family homes
west of subject
property across OTR.



STORMWATER POLLUTION PREVENTION PLAN

PROPOSED OLD TYLER ROAD SAND PIT CONSTRUCTION PROJECT

**AN APPROXIMATE 4.50-ACRE CONSTRUCTION SITE
OLD TYLER ROAD
NACOGDOCHES (NACOGDOCHES COUNTY), TEXAS**

Date: September 16, 2024

Prepared for:

**James Wood
James Wood Construction Company
724 East Main Street
Nacogdoches, TX 75964**

Prepared by:

**Hydrex Environmental
312 Old Tyler Road
Nacogdoches, Texas 75961
(936) 568-9451 FAX (936) 568-9527**

STORMWATER POLLUTION PREVENTION PLAN

PROPOSED OLD TYLER ROAD SAND PIT CONSTRUCTION PROJECT

**AN APPROXIMATE 4.50-ACRE CONSTRUCTION SITE
OLD TYLER ROAD
NACOGDOCHES (NACOGDOCHES COUNTY), TEXAS**

Prepared For:

**James Wood
James Wood Construction Company
724 East Main Street
Nacogdoches, TX 75964**

September 16, 2024

**Mellisa Cooper, CESCP
Project Manager**



Prepared by:



**312 Old Tyler
Nacogdoches, Texas 75961
(936) 568-9451 FAX (936) 568-952**

September 16, 2024

Mr. James Wood
James Wood Construction Company
724 East Main Street
Nacogdoches, TX 75964

**Re: Stormwater Pollution Prevention Plan
Proposed Old Tyler Road Sand Pit Construction Project
An Approximate 4.50-Acre Construction Site
Old Tyler Road
Nacogdoches (Nacogdoches County), Texas
Hydrex Project No. S-01-1800**

Dear Mr. Wood:

Hydrex Environmental is pleased to submit the accompanying Stormwater Pollution Prevention Plan (SWP3) for the above-referenced construction site. The SWP3 was prepared in accordance with the requirements outlined in Texas Pollutant Discharge Elimination System (TPDES) General Permit No. TXR150000.

The site's SWP3 must be implemented and followed by your construction manager and/or contractor(s) until construction is complete and final stabilization of the construction area has been achieved. If you have any questions, please feel free to call me at (936) 568-9451. Thank you for the opportunity to provide you with this service and we look forward to working with you in the future.

Sincerely,
Hydrex Environmental



Mellisa Cooper, CESCP
Project Manager

CERTIFICATION PAGE

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 there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

Sign as required by 30 TAC §305.44(b).

Signed: _____ Date: _____
Name: Mr. James Wood
Title: Authorized Representative

If plan is shared by more than one entity:

Signed: _____ Date: _____ TPDES #: _____
Name: _____
Title: _____

Signed: _____ Date: _____ TPDES #: _____
Name: _____
Title: _____

Signed: _____ Date: _____ TPDES #: _____
Name: _____
Title: _____

Primary Operators

James Wood Construction Company and MBI Company

TABLE OF CONTENTS

	Page
1.0 INTRODUCTION.....	1
2.0 SITE DESCRIPTION.....	2
2.1 Topography and Receiving Waters	2
2.2 Rainfall Data.....	2
2.3 On-Site Soils	2
2.4 Description and Sequence of Soil Disturbing Activities	4
3.0 DESCRIPTION OF POTENTIAL POLLUTANTS AND SOURCES	5
4.0 DESCRIPTION OF STORMWATER CONTROLS.....	6
4.1 Best Management Practices	6
4.2 Good Housekeeping Measures.....	9
4.3 Erosion and Sediment Control Requirements	10
4.4 Temporary Concrete Washout Facility	11
4.5 Concrete Truck Washout Requirements	11
4.6 Recordkeeping of Scheduled Construction Activities	12
5.0 MAINTENANCE AND INSPECTIONS.....	14
5.1 Maintenance.....	14
5.2 Inspections.....	15
6.0 NON-STORMWATER DISCHARGES	17
6.1 Permitted Non-Stormwater Discharges.....	17
6.2 Non-Permitted Non-Stormwater Discharges	18
7.0 AMENDING THE PLAN.....	19
8.0 PLAN AVAILABILITY, POSTED NOTICES, AND RECORD RETENTION	20
8.1 Plan Availability	20
8.2 Posted Notices	20
8.3 Retention of Records	21
9.0 COMPLIANCE WITH APPROVED STATE AND LOCAL PLANS	22
10.0 REFERENCES.....	23

TABLE OF CONTENTS

(Continued)

TABLES

Table 1. Potential Pollutants and Their Sources	6
Table 2. Types and Locations of Best Management Practices	8
Table 3. Good Housekeeping Measures Performed On-Site	11

APPENDICES

Appendix A - Plates

Plate A-1	Vicinity Map
Plate A-2	USGS Topographic Map
Plate A-3	Sediment and Erosion Control Plan
Plate A-4	NRCS Soil Survey Map

Appendix B - Stormwater Controls

Plate B-1	Typical Design Details for Erosion and Sediment Controls
Plate B-2	Typical Design Details for Inlet Protection
Plate B-3	Typical Design Details for Temporary Concrete Washout Facilities

Appendix C - Record of Construction Schedule Activities

Record of Disturbance/Stabilization Activities

Appendix D - Inspection Forms for Stormwater Controls

Stormwater Construction Site Inspection Forms
Qualifications of the Inspector(s)

Appendix E - Texas Pollutant Discharge Elimination System (TPDES) General Permit No. TXR150000

Appendix F - Miscellaneous Documents

Required Activities to Perform
Small Construction Site Notice

1.0 INTRODUCTION

James Wood Construction Company is moving dirt from a sand pit located on Old Tyler Road. The project is located on an approximate 4.5-acre construction site located at along Old Tyler Road in Nacogdoches (Nacogdoches County), Texas (Appendix A, Plates A-1 and A-2). This Stormwater Pollution Prevention Plan (SWP3) has been prepared to outline and establish the best management practices (BMPs) and sediment and erosion controls that will be implemented, maintained, and/or followed for the duration of construction, including final stabilization by the operators, James Wood Construction Company and MBI Company, (Operator).

This SWP3 has been developed in accordance with the requirements outlined in Texas Pollutant Discharge Elimination System (TPDES) Construction General Permit TXR150000, dated March 5, 2023. The purpose of implementing and following the site's SWP3 will be to minimize pollutants in stormwater discharges from the construction site. A copy of the TPDES Construction General Permit TXR150000 is included in Appendix E.

The disturbed area for this construction project will encompass approximately 4.5 acres of land (Appendix A, Plate A-3). Construction activities planned for this project will include the following:

- 1) installation of sediment controls,
- 2) land clearing, grubbing, grading, and site preparation,
- 3) removal of sand and grading as needed,
- 4) construction of any stormwater drainage conveyances, and
- 5) final grading and stabilization of disturbed areas.

Construction activities associated with this project will begin August 2024 and are expected to be completed October 31, 2024.

2.0 SITE DESCRIPTION

The disturbed area for this construction project encompasses approximately 4.5 acres of land located along Old Tyler Road in Nacogdoches (Nacogdoches County), Texas (Nacogdoches County), Texas (Appendix A, Plates A-1 and A-2).

2.1 Topography and Receiving Waters

Topographically, the construction site is located in an area of nearly level to gently sloping terrain on the top of a hill within the watershed of Banita Creek (Appendix A, Plate A-2). The terrain across the construction site slopes slightly to the east. Currently, stormwater runoff is expected to follow surface topography and move as sheet flow east to offsite stormwater conveyances which flow toward Banita Creek. Banita Creek drains into La Nana Bayou and then ultimately drains into the Angelina River. Post-construction stormwater runoff at the site will be directed to off site stormwater conveyances which will direct stormwater east towards Banita Creek.

2.2 Rainfall Data

According to the *Soil Survey of Nacogdoches County, Texas*, the average annual rainfall for Nacogdoches County is approximately 50 inches. About 50% of precipitation occurs between April and September.

2.3 On-Site Soils

The NRCS Web Soil Survey for Nacogdoches County, Texas indicates the soils at the project site are mapped as *Lilbert-Urban land complex, 1 to 8 percent slopes*, *Tenaha-Urban land complex, 5 to 20 percent slopes*, and *Trawick-Urban land complex, 8 to 20 percent slopes* (Appendix A, Plate A-4).

The *Lilbert-Urban land complex, 1 to 8 percent slopes* soil unit occurs throughout the central section of the construction site. This broad, gently sloping soil is on convex ridges. These soils contain 45 percent of Lilbert soils, 35 percent of urban soils, and 20

Section II

percent of other soils composed of Darco soils and Bowie soils. These soils are made up of dark grayish brown to a pale brown loamy fine sand in the surface layers to a depth of 33 inches. The subsoil layers are a strong brown sandy clay loam to a depth of 72 inches. The Urban land part of the soils are so covered by structures and parking lots that it identification is not feasible. This soil has high potential for urban development.

The *Tenaha-Urban land complex, 5 to 20 percent slopes*, soil unit occurs throughout the western section of the construction site. This deep sloping to moderately steep, upland soil is on broad hills and side slopes above drainage ways. They are long and narrow, located on ridges and knobs. These soils contain nearly 10 percent of other soils composed of Darco soils. These soils are made up of dark grayish brown to pale brown loamy fine sand in the surface layers to a depth of 22 inches. The subsoil layers are a yellowish red sandy clay loam to a depth of 46 inches. They are well drained, have moderate permeability, medium available water capacity, severe erosion hazard, and medium runoff potential. This soil has medium potential for urban development.

The *Trawick-Urban land complex, 8 to 20 percent slopes* soil unit occurs throughout the eastern section of the construction site. This deep, sloping to moderately steep soil and urban land is located on convex side slopes. These soils contain 55 percent of Trawick soils, 30 percent of urban soils, and 15 percent of other soils composed of Bub soils and Nacogdoches soils. These soils are made up of dark red clay loam in the surface layers to a depth of 5 inches. The subsoil layers are a dark red clay to a depth of 45 inches. The Urban land part of the soils are so covered by structures and parking lots that it identification is not feasible. This soil has low potential for urban development.

2.4 Description and Sequence of Soil Disturbing Activities

During construction, up to 4.5 acres of total land area will be disturbed or used for storage. Soil disturbing activities may include, but are not limited to:

- 1) land clearing in preparation for installation of sediment control fencing,
- 2) installation of sediment control fencing,
- 3) land clearing, grubbing, and grading in support of proposed construction activities, and/or
- 4) final grading and seeding/planting for establishment of permanent vegetative cover in disturbed areas outside of newly constructed areas.

Construction activities for this project are scheduled to be performed in the following general order:

- 1) land clearing and grubbing the proposed construction area for installation of sediment control fencing,
- 2) installation of sediment control fencing along down-gradient boundaries of the construction site,
- 3) land clearing, grubbing, and grading in support of construction and/or modification of proposed and existing stormwater drainage conveyances,
- 4) temporary stabilization of disturbed areas and stockpiles of soil immediately after disturbance, or as soon as practical, if the areas will not be re-disturbed within fourteen (14) days,
- 5) completion of construction activities and/or modifications to the proposed and existing stormwater drainage conveyances,
- 6) completion of final grading and establishment of permanent vegetative cover for final stabilization of previously disturbed areas outside construction areas,
- 7) removal of all remaining temporary erosion/sediment controls upon completion of all construction activities and when the site is stabilized, and
- 8) stabilization of any areas disturbed during removal of the temporary sediment/erosion controls.

3.0 DESCRIPTION OF POTENTIAL POLLUTANTS AND SOURCES

The potential for pollutants to enter or mix with stormwater at this construction site is primarily dependent upon the activities performed and the materials used during the construction process. Activities that can potentially affect stormwater through contact include land clearing, grading, excavating, fueling, concrete pouring, asphalt paving, vehicle tracking, waste disposal, stabilization, and fertilization. A list of potential pollutants located on-site and their sources is presented in the following table.

Table 1. Potential Pollutants and Their Sources

Potential Pollutants	Source
Sediment	Disturbed soil from land clearing and grading activities and stock piles of dirt and topsoil from on and off-site sources.
Petroleum products	Diesel and oil from on-site storage or from construction vehicles used on-site.
Concrete and asphalt	Discharge or runoff from use of concrete and/or asphalt materials during construction.
Solid waste	Materials used during construction or used by workers while on-site.
Fertilizers	Use of fertilizers during stabilization of soils and sediment.

As needed, additional pollutants can be added to the table as they are brought on-site.

Control measures contained within this plan are designed to eliminate or reduce any potential impact of these activities and materials to stormwater discharges that may leave the construction site. Specific best management practices and control measures for this site are described in Section 4.0.

4.0 DESCRIPTION OF STORMWATER CONTROLS

The following information describes the best management practices (BMPs) and control measures that may be implemented as part of construction activities, to control and minimize pollutants in stormwater discharges from the construction area. The locations where these controls may be implemented are indicated on the Sediment and Erosion Control Plan map, (Appendix A, Plate A-3). Typical design details for some of the types of control measures that may be implemented during construction are included in Appendix B of this SWP3 and within construction plan details maintained by the Operator. The Operator will be responsible for ensuring all necessary BMPs and control measures are properly installed and adequately maintained in accordance with good engineering practices and manufacturer's specifications.

4.1 Best Management Practices

BMPs are controls or techniques used to reduce or eliminate the potential for pollutants in stormwater discharges from leaving the construction site. The following table lists the types of BMPs as well as the location and purpose of the BMPs, and appropriate timing for implementing and maintaining the BMPs.

Table 2. Types and Locations of Best Management Practices

Type of Stormwater BMP	Location and Purpose of BMP	Appropriate Timing of the BMP
Construction Exit(s)	Construction exit(s) will serve to reduce vehicle tracking from the construction site and will be installed in accordance with the design guidelines. If on paved surfaces, alternate acceptable means of reducing sediment tracking will be utilized. If needed, pre-existing culverts at the entrance will be replaced during construction.	As an initial construction activity, until permanent exits are established.

Table 2. Types and Locations of Best Management Practices

Type of Stormwater BMP	Location and Purpose of BMP	Appropriate Timing of the BMP
Sediment Control Fencing	Along down-gradient boundaries of the site to minimize the potential for off-site accumulations of sediment during construction.	As construction begins and for the duration of construction until final stabilization occurs.
Inlet Protection	If needed, Inlets receiving stormwater runoff from the construction site will be protected to reduce the potential for sediment entering any storm sewer system or conveyance. In unpaved areas, inlet protection will be provided by sediment control fencing or other similar devices. Inlet protection will be provided in paved areas by bagged gravel or other appropriate means of protection.	After installation of inlets to a storm sewer system until final stabilization occurs.
Swales and Rock Check Dams	If needed, diversion, interceptor, or perimeter swales will be installed to direct stormwater away from the site. Rock check dams could be installed, as needed, within the swales in order to slow the velocity of the water and prevent off-site migration of sediment.	As an initial construction activity until final stabilization occurs. Swales will remain as a permanent control.
Stormwater Detention Area	If constructed, the stormwater detention area will be used in order to prevent off-site migration of sediment and potential pollutants before entering off-site drainage.	During initial construction and remaining as a permanent control.
Retaining Walls	If installed, retaining walls will be constructed along areas of higher relief, to divert stormwater and prevent sediment build-up. Sediment control fencing should be used, if necessary, to prevent sediment from leaving the property.	As construction begins and for the duration of the site.

Table 2. Types and Locations of Best Management Practices

Type of Stormwater BMP	Location and Purpose of BMP	Appropriate Timing of the BMP
Rock Rubble and Rip Rap at Discharge Outlets	As needed, stormwater discharge outlets will contain erosion protection devices such as paved slopes, rock rubble, rip rap, and/or erosion protection fabric, as needed. The purpose of the erosion protection devices is to reduce undercutting and erosion potential of stormwater flowing through each of the outlet flumes.	After installation of outlets until final stabilization has occurred.
Soil Stabilization	Stabilization practices implemented in previously disturbed areas may include planting temporary or permanent vegetation, sod stabilization, mulching, or hydro mulch seeding.	During construction, all disturbed areas of the site that will not be re-disturbed for fourteen (14) days or more must be stabilized immediately, or as soon as practical, following the last disturbance activity and upon completion of construction activities.
Post Construction Controls	Management of post-construction stormwater runoff will be provided by existing storm sewer system.	Existing controls will be protected with inlet protection during construction and will be maintained until final stabilization.

Accumulations of sediment will be removed from along the sediment control fencing by the Operator to ensure adequate sedimentation controls are maintained. At a minimum, sediment accumulations will be removed when fifty percent (50%) of the design capacity of the sediment control fencing has been exceeded. Upon completion of construction activities, final stabilization in all previously disturbed landscaped areas of the construction site will be achieved. All temporary BMPs will be removed, and the areas stabilized. Areas seeded, sodded, or planted for final stabilization will be watered as necessary, to promote permanent vegetative growth.

4.2 Good Housekeeping Measures

Good housekeeping measures will be taken to eliminate or reduce exposure of potential pollutant sources to precipitation and runoff. Typical good housekeeping measures are performed on a daily basis by employees during the course of normal work activities. The following table includes a list of typical good housekeeping measures conducted on-site.

Table 3. Good Housekeeping Measures Performed On-Site

Pollutant Source	Good Housekeeping Measures Performed on a Daily Basis
Solid Waste	All solid waste materials (litter or construction debris) will be collected and stored in trash bins or dumpsters and will be emptied as necessary or as frequently as required by local ordinance. No waste materials will be buried or burned on-site unless burning is in accordance with current state and local ordinances. Covering waste with a tarp or lid will minimize exposure of waste to stormwater.
Petroleum Products and Hazardous Waste Materials	Should petroleum products and hazardous waste materials be brought on-site, they will be properly handled and disposed of in the manner specified by local, state, or federal regulation, if applicable, or in the manner specified by the manufacturer. The Operator will ensure that all on-site construction personnel using petroleum products and hazardous waste materials are instructed in the proper practices and procedures for handling, storing, and safeguarding these materials and will ensure that these procedures are followed for the duration of construction activities. All spills or leaks should be promptly cleaned and disposed of properly.
Sanitary Waste	If necessary, portable sanitary waste units will be provided by the Operator for the duration of construction activities. The Operator will ensure that all sanitary waste is collected from the portable units by a licensed waste management contractor as often as needed or as often as required by local regulation or city ordinance.
Material Storage	If brought onsite, construction materials, construction chemicals, and stockpiled soils will be stored in designated storage areas in a manner that prevents the materials from becoming a pollutant source in stormwater discharges. Stockpiled soils will be protected using sediment control fencing or stabilized with temporary vegetation or mulching. Construction materials and construction chemicals will be stored off of the ground surface (i.e. on pallets) and under protective cover, if possible. In addition, all construction chemicals will be stored in the original manufacturer's containers with secured lids and clearly labeled.

Table 3. Good Housekeeping Measures Performed On-Site

Pollutant Source	Good Housekeeping Measures Performed on a Daily Basis
Off-site Vehicle Tracking	When necessary, the Operator will sweep and maintain adjacent streets to ensure excess dirt, mud, or rock tracked from the construction area is properly removed in a timely manner. Maintenance procedures used on adjacent streets will be in accordance with local, state, and federal transportation safety guidelines. Trucks hauling waste materials from the construction site will be covered to eliminate or minimize wind-blown litter and construction debris. The Operator, will ensure that all wind-blown litter and debris generated or originating from the construction site (including dust) is properly managed, controlled, and/or properly disposed.
Vehicle and Equipment Washing	Minimize the discharge of wash water from equipment and vehicle washing, wheel wash water, and other wash waters. Wash water must be treated in a sediment basin or alternative control. No soaps or solvents are allowed to be used in the washing process. No oil or grease may be co-mingled with wash water discharges.

4.3 Erosion and Sediment Control Requirements

Erosion and sediment controls must be designed, installed, and maintained to minimize the discharges of pollutants. These controls must:

- 1) control stormwater volume and velocity to minimize soil erosion,
- 2) control stormwater discharges to minimize channel and stream bank erosion and scour, at points of discharge,
- 3) minimize the amount of soil exposed,
- 4) minimize the disturbances of steep slopes,
- 5) minimize sediment discharges from the site by addressing the design installation of the controls,
- 6) if disturbance is located in close proximity of surface water, natural buffers must be provided and maintained, if feasible,
- 7) preserve the native top soil, and
- 8) minimize soil compaction.

4.4 Temporary Concrete Washout Facility

Prior to performing any concrete pouring activities, at least one (1) temporary concrete washout facility will be constructed and utilized at the site to contain concrete washout from mixer truck chutes or concrete mixing activities. If necessary, any temporary concrete washout facility will be constructed by the Operator, in accordance with the minimum design criteria provided on Plate B-3 in Appendix B, or in accordance with a suitable alternate method. The proper use of any designated washout facility will serve to prevent unpermitted discharges of concrete pollutants and wash water from leaving the construction site and entering surface waters of the state during the period covered by the TPDES Construction General Permit. (See Section 4.09 for conditions required to authorize the discharge of concrete truck washout.)

Any temporary concrete washout facility(s), if constructed, will be maintained for as long as needed during construction. When appropriate, any temporary washout facility will be removed by the Operator. Upon removal, all associated accumulations of concrete residue will be properly disposed of, and final stabilization of the area will be performed.

4.5 Concrete Truck Washout Requirements

If necessary, the discharge of concrete wash water within the site may be authorized under the TPDES Construction General Permit. This authorization is limited to the land disposal of washout water from concrete trucks that are associated with off-site production facilities and for on-site facilities provided certain requirements and conditions are met. The requirements and conditions for authorizing the disposal of concrete washout at the construction site include the following:

- 1) Discharge of concrete truck washout water to surface water in the state, including discharge to storm sewers, is prohibited.
- 2) Concrete truck washout shall be disposed in areas at the construction site where structural controls have been established to prevent discharge to surface waters of the state, or to areas that have a minimal slope that allow infiltration and filtering of wash water to prevent discharge to surface waters. Structural controls may consist of temporary berms, temporary

Section IV

shallow pits, temporary storage tanks with slow rate release, or other reasonable measures to prevent runoff from the construction site.

- 3) Wash out of concrete trucks during rainfall events shall be minimized. The discharge of concrete washout water is prohibited at all times, and the Operator shall insure that its BMPs are sufficient to prevent the discharge of concrete truck washout as a result of rainfall or snowmelt.
- 4) The disposal of washout water from concrete trucks, made under authorization of the permit, must not cause or contribute to groundwater contamination.
- 5) The SWP3 shall include the locations of the designated concrete wash out area on the SWP3 site map (pen and ink additions are permitted).

If the above conditions are not met, the disposal of concrete washout is not authorized under the TPDES Construction General Permit.

4.6 Recordkeeping of Scheduled Construction Activities

To ensure erosion and sediment controls are implemented in a timely manner and followed, the Operator will maintain the following records on the Record of Disturbance/Stabilization Activities form in Appendix C:

- 1) dates when major grading activities occur,
- 2) dates when construction activities temporarily or permanently cease on a portion of the construction site, and
- 3) dates when stabilization measures are initiated.

The Record of Disturbance/Stabilization Activities form will be retained in Appendix C of the site's SWP3 for a period of three (3) years following the date final stabilization is achieved. Upon request, the form will be made readily available to:

- 1) the TCEQ executive director,
- 2) a federal, state, or local agency approving sediment and erosion plans, grading plans, or stormwater management plans,

Section IV

- 3) local government officials, and
- 4) the Operator of any municipal separate storm sewer system (MS4) that may receive discharges from the construction site.

5.0 MAINTENANCE AND INSPECTIONS

5.1 Maintenance

All erosion and sediment control measures or other protective measures implemented at the construction site will be maintained in effective operating condition for the duration of construction activities and until the construction site has achieved final stabilization. The Operator will be responsible for implementing, maintaining, repairing, or modifying any ineffective or deficient erosion controls, sediment controls, or stormwater management controls implemented or installed at the construction site. Additionally, any deficiencies noted during the on-site inspections by the Operator, or its designated representative will be addressed and corrected before the next anticipated storm event or as soon as practicable.

If revisions to the site's SWP3 are deemed necessary, the Operator, or its designated representative will ensure these revisions are made.

If sediment escapes the construction area, the Operator will be responsible for removing off-site accumulations of sediment at a frequency sufficient to minimize off-site impacts.

The Operator will maintain previously installed sediment traps (i.e. sediment control fencing) to ensure the traps are providing adequate control for the duration of construction and until the construction area is finally stabilized. Along previously installed sediment control fencing, accumulations of sediment will be removed at a rate sufficient to maintain fifty percent (50%) or more of the sediment fencing's design capacity.

If applicable, previously installed inlet protection devices will be maintained by the Operator until the area drained by the inlet has been finally stabilized. Accumulations of sediment will be periodically removed from around all protected storm sewer inlets to ensure adequate drainage and sediment control is maintained.

Section V

The Operator will ensure all litter, construction debris, and construction chemicals exposed to stormwater at the site are prevented from becoming a pollutant source for stormwater discharges. In addition, the Operator will ensure proper disposal procedures are followed for all types of waste materials generated at the site during construction.

5.2 Inspections

An inspection of the construction site will be performed by a qualified representative of the Operator:

- 1) at least once every fourteen (14) calendar days and within twenty-four (24) hours following a storm event of 0.5 inches or greater, or
- 2) as an alternative to the above schedule, every seven (7) days.

The inspection schedule may be changed between the above two (2) options a maximum of one (1) time per month. Changes must be implemented at the beginning of the calendar month, and the reason for the change must be documented in the SWP3 (e.g. “wet” season, “dry” season). Inspections conducted using the seven (7) day option must be performed on the same day of each week. Inspection frequency must be conducted at least once every month in areas of construction sites that meet final or temporary stabilization while construction is still on-going.

Areas to be inspected will include:

- 1) disturbed areas that have not achieved final stabilization,
- 2) areas used for storage of materials that are exposed to precipitation,
- 3) structural controls for evidence of, or the potential for, pollutants entering the drainage system,
- 4) sediment and erosion control measures identified in the SWP3 to ensure that they are operating correctly, and

Section V

- 5) locations where vehicles enter or exit the construction site.

A Stormwater Construction Site Inspection Form, included in Appendix D, will be completed within 24 hours following an inspection. The construction inspection form will:

- 1) summarize the scope of the inspection,
- 2) contain the inspector's name and qualifications (qualifications for each inspector may be identified on a single page in Appendix D instead of repeating for each inspection),
- 3) contain the date of the inspection, and
- 4) identify major observations noted during the inspection.

Major observations noted during each inspection will include:

- 1) the location(s) of discharges of sediment or other pollutants from the construction site,
- 2) the location(s) of best management practices or controls that need to be maintained/repared,
- 3) the location(s) of best management practices or controls that failed to operate as designed or proved inadequate for a particular location, and
- 4) the location(s) where additional best management practices or controls are needed.

Additionally, each inspection form will include a discussion of any incidents of non-compliance. When an inspection does not identify any incidents of non-compliance, the form shall contain a certification that the facility is in compliance with the SWP3 and the associated TPDES permit.

Each inspection form will be signed for certification by the Operator, or if applicable, its delegated representatives. Copies of all inspection forms will be maintained in Appendix D of the site's SWP3 for a period of three (3) years following the date when final stabilization is completed.

6.0 NON-STORMWATER DISCHARGES

6.1 Permitted Non-Stormwater Discharges

The following permitted, non-stormwater discharges may occur at the construction site during the construction period:

- 1) discharges from firefighting activities (not included are: washing of trucks, runoff from training activities, test water from fire suppression systems, and similar activities),
- 2) uncontaminated fire hydrant flushings, which includes flushings from systems that use potable water, surface water, or groundwater that does not contain pollutants (excludes flushings of hyperchlorinated or reclaimed wastewater),
- 3) vehicle, external building, and pavement wash water where detergents and soaps are not used, where spills or leaks of toxic or hazardous materials have not occurred (unless spilled materials have been removed according to applicable local, state, or federal regulations), and where the purpose is to remove mud, dirt, and dust,
- 4) uncontaminated water used to control dust,
- 5) potable water sources including waterline flushings,
- 6) uncontaminated air conditioning condensate,
- 7) uncontaminated groundwater or spring water, including foundation or footing drains where flows are not contaminated with industrial materials such as solvents, and
- 8) lawn watering and similar irrigation drainage.

After appropriate erosion and sediment controls have been installed, the Operator, will ensure that all permitted, non-stormwater discharges are directed towards the site's installed erosion and sediment controls.

If necessary, the discharge of concrete wash water may be authorized under the TPDES Construction General Permit (Sections 4.4 and 4.5). If required, all concrete

Section VI

wash water will be directed towards the construction site's previously installed temporary concrete washout facilities.

6.2 Non-Permitted Non-Stormwater Discharges

The following non-permitted, non-stormwater discharges may not occur at the construction site during the construction period:

- 1) wastewater from washout concrete,
- 2) wastewater from wash out and cleanout of stucco, paint, form release oils, curing compound, and other construction materials,
- 3) fuels, oils, or other pollutant used in vehicle equipment operation and maintenance,
- 4) soaps or solvents used in vehicle and equipment washing,
- 5) toxic or hazardous substances from a spill or other release, and
- 6) discharges from dewatering activities.

7.0 AMENDING THE PLAN

The Operator will ensure that the site's SWP3 is revised, amended, or updated when:

- 1) there is a change in design, construction, operation, or maintenance that has a significant effect on the discharge of pollutants and that has not been previously addressed in the SWP3,
- 2) changing site conditions based on updated plans and specifications, new operators, new areas of responsibility, and changes in BMPs, or
- 3) results of inspections or investigations by the site personnel authorized by the permittee, operator of a municipal separate storm sewer system receiving the discharge, authorized TCEQ personnel, or a federal, state, or local agency approving sediment and erosion control plans indicate the SWP3 is proving ineffective in eliminating or significantly minimizing pollutants in discharges authorized under TPDES General Permit TXR150000.

If an authorized official notifies the Operator at any time that the SWP3 does not meet one or more of the minimum requirements for a SWP3 or if the results of any inspection indicate the necessity to modify the SWP3, then the appropriate modifications or changes will be made to the plan by the Operator no more than seven (7) days following the date of the authorized official's notice or the inspector's report.

8.0 PLAN AVAILABILITY, POSTED NOTICES, AND RECORD RETENTION

8.1 Plan Availability

During construction, a copy of the SWP3 and all related documents and inspection reports will be retained at the construction site at 2701 Sandia Drive Nacogdoches (Nacogdoches County), Texas or, if the site is inactive, in the office of James Woods Construction Company located at 724 East Main Street Nacogdoches (Nacogdoches County), TX. Upon request, the SWP3 will be made available to:

- 1) the TCEQ executive director,
- 2) a federal, state, or local agency approving erosion and sediment control plans, grading plans, or stormwater management plans, local government officials, and
- 3) the operator of a municipal separate storm sewer system receiving discharges from the construction site.

8.2 Posted Notices

A TPDES Construction Site Notice, included in Appendix F, will be posted near the site's main construction entrance/exit for the duration of construction activities. For a linear construction project, such as a pipeline or highway, the notice(s) must be placed in a publicly accessible location near where active construction is underway. The notice(s) will contain the following information:

- 1) the TPDES permit number for the project (if 5 acres or greater),
- 2) contact name and telephone number of a representative for both the primary and secondary operators,
- 3) physical address or a description and location of the project,
- 4) projected start and end dates, and
- 5) location of the SWP3.

8.3 Retention of Records

A copy of the SWP3 will be kept at the construction site from the time construction activities begin until final stabilization of the site has been achieved. Following completion of construction, a copy of the SWP3 and a copy of all reports and actions, which include signed inspections (Appendix D), records of the construction schedule activity (Appendix C), and a copy of the construction site notice(s) (Appendix F), will be retained in the office of James Woods Construction Company located at 724 East Main Street Nacogdoches, TX 75964. The SWP3, along with its associated records, will be retained for a period of three (3) years following the date that final stabilization is achieved. Records will include:

- 1) a copy of the SWP3,
- 2) all reports and actions required by the permit, including a copy of the construction site notice,
- 3) all data used to complete the Notice of Intent (NOI), if an NOI is required, and
- 4) all records of forms submitted to the operator of any MS4 receiving the discharge and to the secondary operator of a large construction site, if applicable.

9.0 COMPLIANCE WITH APPROVED STATE AND LOCAL PLANS

The Operator will ensure that the site's SWP3:

- 1) is consistent with requirements specified in applicable sediment and erosion site plans or site permits, or stormwater management site plans or site permits approved by federal, state or local officials, and
- 2) is updated as necessary to remain consistent with any changes applicable to protecting surface water resources in sediment and erosion site plans or permits, or stormwater management site plans or site permits approved by state or local officials for which the permittee receives written notice.

If the permittee is required to prepare a separate management plan, including but not limited to a Water Pollution Abatement Plan or Contributing Zone Plan in accordance with 30 TAC Chapter 213 (related to the Edwards Aquifer), then a copy of that plan must be either included in the SWP3 or made readily available upon request to authorized personnel of the TCEQ. The permittee shall maintain a copy of the approval letter for the plan in its SWP3.

10.0 REFERENCES

BarWin Consultants, 2002, *Typical Design Details for Erosion and Sediment Controls*.

Dolezel, Fuchs, Gray, Holt, and Steptoe, 1988, *Soil Survey of Angelina County, Texas*, United States Department of Agriculture, Soil Conservation Service.

ESRI, ArcGIS Online World Street Map, (Plate A-1).

Google, Ariel Photograph, 2024, (Plate A-4).

North Central Texas Council of Governments (NCTCOG), 1993, *Diagram of Filter Fabric Inlet Protection*.

National Resources Conservation Service (NRCS), Soil Data Map (Plate A-4).

Soil Survey Staff, Natural Resources Conservation Service, United States Department of Agriculture. Web Soil Survey. Available online at the following link: <https://websoilsurvey.sc.egov.usda.gov/App/HomePage.htm>.

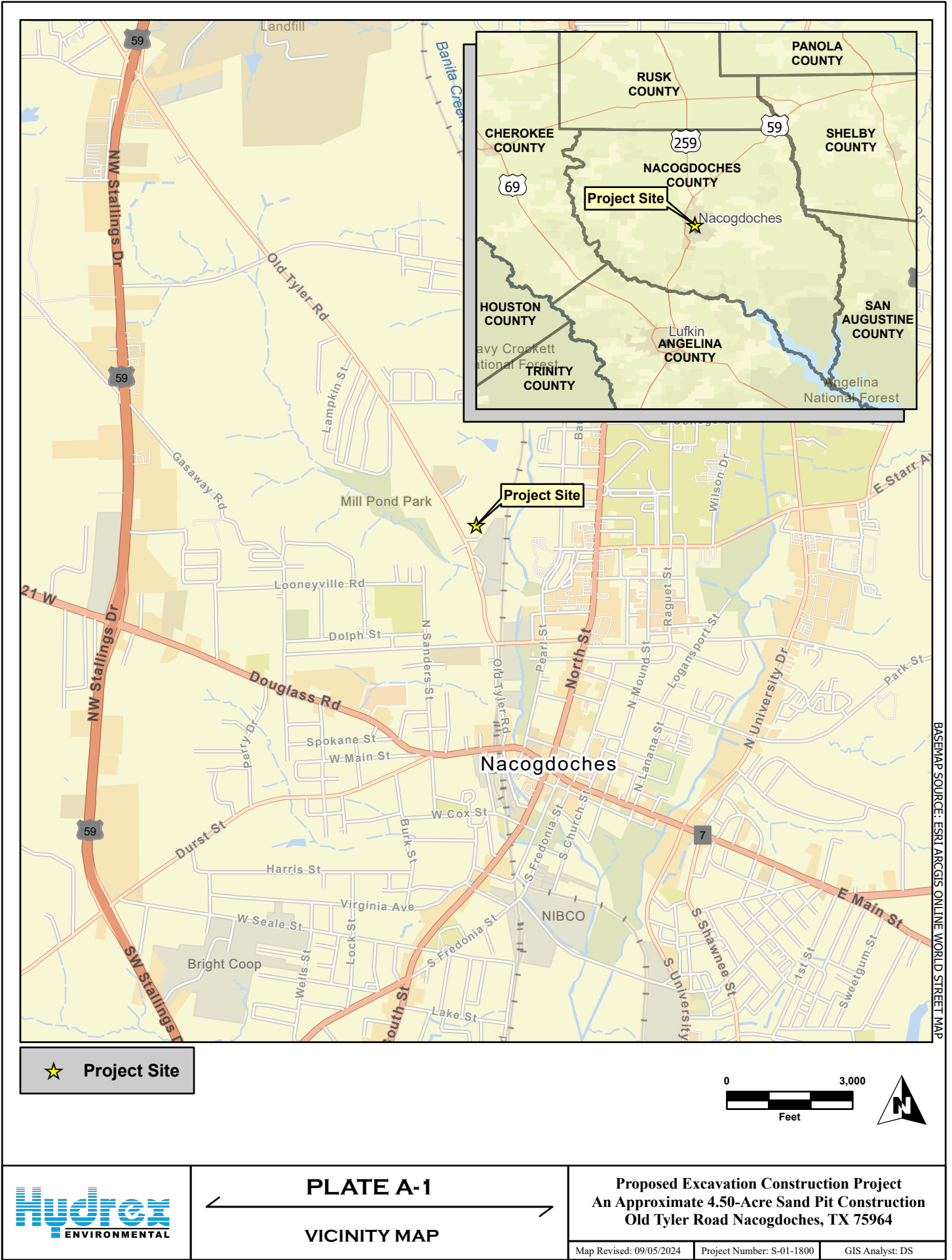
State of California, 2003, *Typical Design Details for Temporary Concrete Wash Out Facilities*, California Stormwater Best Management Practices Handbook.

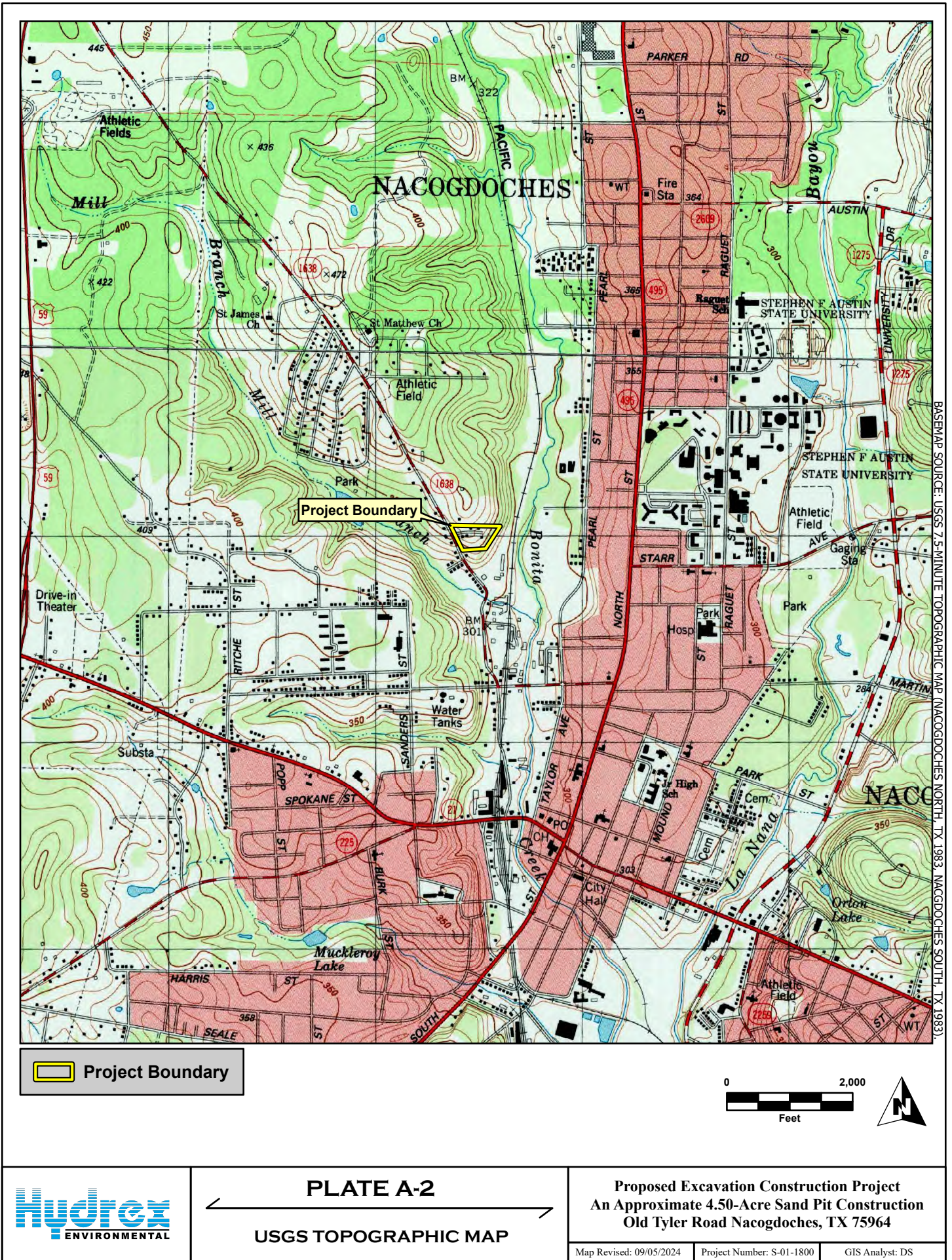
Texas Commission on Environmental Quality, 2023, Texas Pollutant Discharge Elimination System, *General Permit Number TXR150000, Relating to Stormwater Discharges Associated with Construction Activities*.

United States Geological Survey, 7-1/2 Minute Topographic Quadrangle Map, Nacogdoches South, Texas 1983 Sheet and Nacogdoches South, Texas 1983 (Plate A-2).

Appendix A

Plates







- Silk Fence
- Project Boundary
- Site Entrance

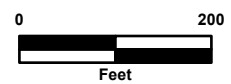


PLATE A-3

2024 AERIAL PHOTOGRAPH

Proposed Excavation Construction Project
An Approximate 4.50-Acre Sand Pit Construction
Old Tyler Road Nacogdoches, TX 75964

Map Revised: 09/05/2024

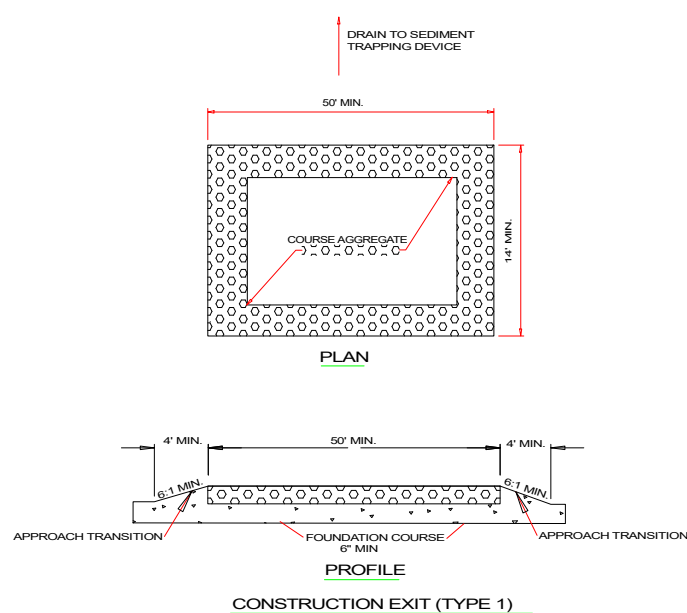
Project Number: S-01-1800

GIS Analyst: DS

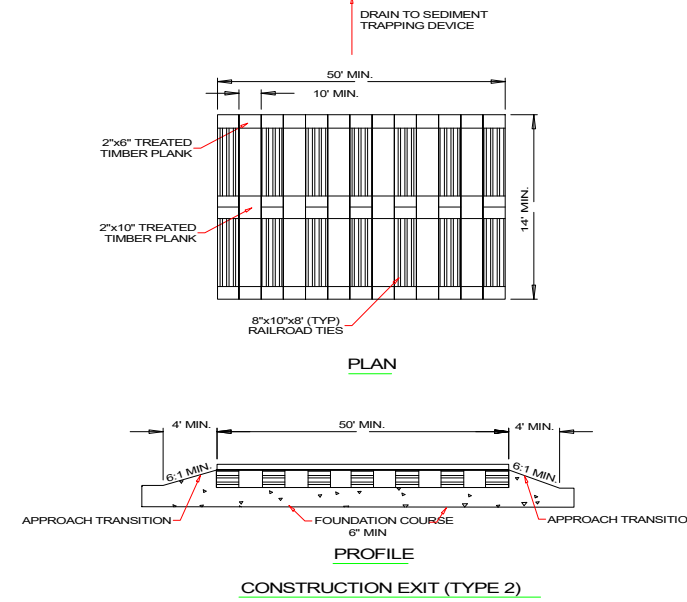


Appendix B

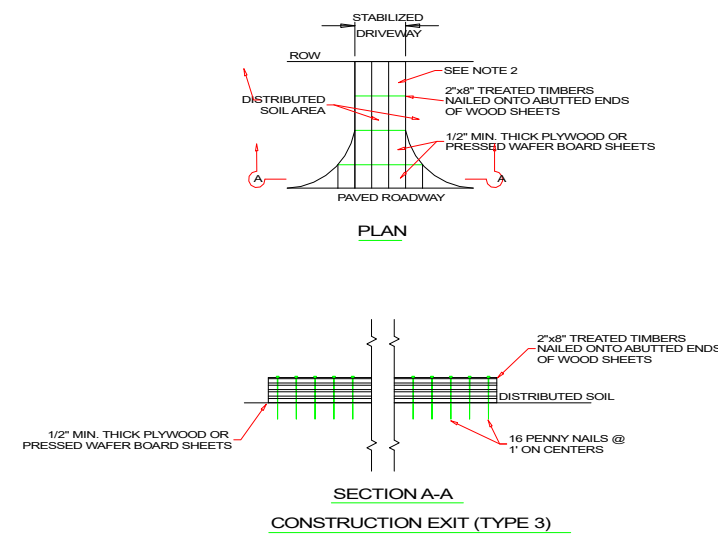
Stormwater Controls



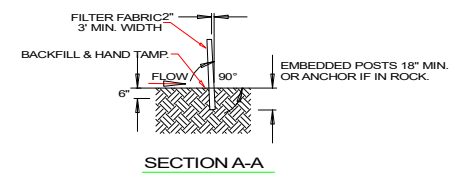
- GENERAL NOTES**
1. THE LENGTH OF THE TYPE 1 CONSTRUCTION EXIT SHALL BE AS INDICATED ON THE PLANS, BUT NOT LESS THAN 50'.
 2. THE COARSE AGGREGATE SHOULD BE OPEN GRADED WITH A SIZE 4" TO 8".
 3. THE APPROACH TRANSITIONS SHOULD BE NO STEEPER THAN 6:1 AND CONSTRUCTED AS DIRECTED BY THE ENGINEER.
 4. THE CONSTRUCTION EXIT FOUNDATION COURSE SHALL BE FLEXIBLE BASE, BITUMINOUS CONCRETE, PORTLAND CEMENT CONCRETE OR OTHER MATERIAL AS APPROVED BY THE ENGINEER.
 5. THE CONSTRUCTION EXIT SHALL BE GRADED TO ALLOW DRAINAGE TO A SEDIMENT TRAPPING DEVICE.
 6. THE GUIDELINES SHOWN HEREON ARE SUGGESTIONS ONLY AND MAY BE MODIFIED BY THE ENGINEER.



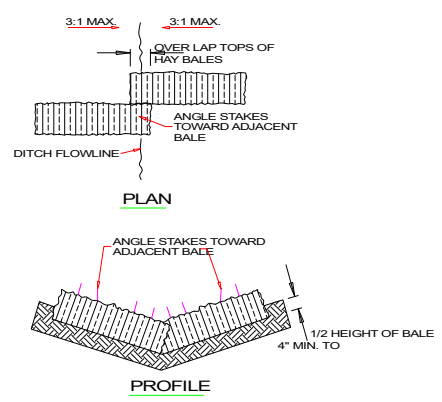
- GENERAL NOTES**
1. THE LENGTH OF THE TYPE 2 CONSTRUCTION EXIT SHALL BE AS INDICATED ON THE PLANS, BUT NOT LESS THAN 50'.
 2. THE TREATED TIMBER PLANKS SHALL BE ATTACHED TO THE RAILROAD TIES WITH 1/2"x6" MIN. 100 BOLTS. OTHER FASTENERS MAY BE USED AS APPROVED BY THE ENGINEER.
 3. THE TREATED TIMBER PLANKS SHALL BE #2 GRADE MIN., AND SHOULD BE FREE FROM LARGE AND LOOSE KNOTS.
 4. THE APPROACH TRANSITIONS SHALL BE NO STEEPER THAN 6:1 AND CONSTRUCTED AS DIRECTED BY THE ENGINEER.
 5. THE CONSTRUCTION EXIT FOUNDATION COURSE SHALL BE FLEXIBLE BASE, BITUMINOUS CONCRETE, PORTLAND CEMENT CONCRETE OR OTHER MATERIAL AS APPROVED BY THE ENGINEER.
 6. THE CONSTRUCTION EXIT SHOULD BE GRADED TO ALLOW DRAINAGE TO A SEDIMENT TRAPPING DEVICE.
 7. THE GUIDELINES SHOWN HEREON ARE SUGGESTIONS ONLY AND MAY BE MODIFIED BY THE ENGINEER.



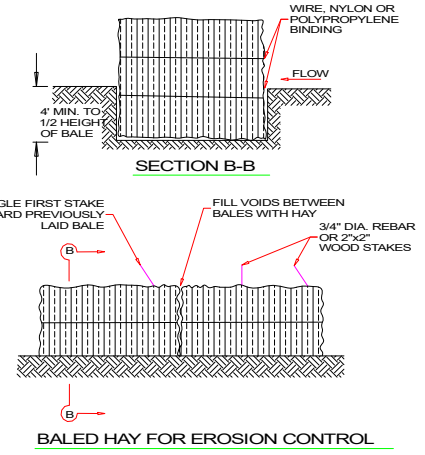
- GENERAL NOTES**
1. THE LENGTH OF THE TYPE 3 CONSTRUCTION EXIT SHALL BE AS SHOWN ON THE PLANS, OR AS DIRECTED BY THE ENGINEER.
 2. THE TYPE 3 CONSTRUCTION EXIT MAY BE CONSTRUCTED FROM OPEN GRADED CRUSHED STONE WITH A SIZE OF TWO TO FOUR INCHES SPREAD A MIN. OF 4" THICK TO THE LIMITS SHOWN ON THE PLANS.
 3. THE TREATED TIMBER PLANKS SHALL BE #2 GRADE MIN., AND SHOULD BE FREE FROM LARGE AND LOOSE KNOTS.
 4. THE GUIDELINES SHOWN HEREON ARE SUGGESTION ONLY AND MY BE MODIFIED BY THE ENGINEER.



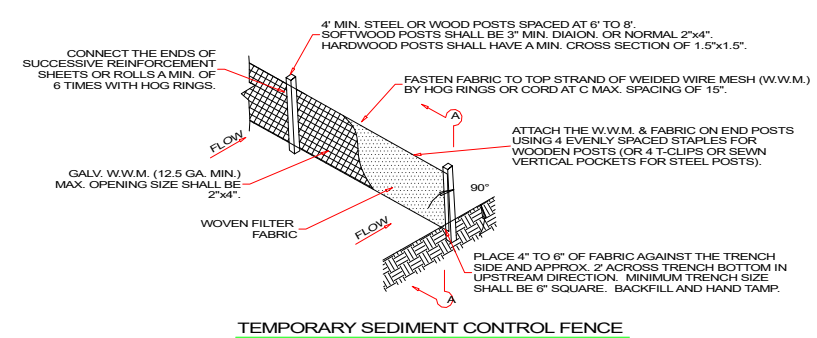
- SEDIMENT CONTROL FENCE USAGE GUIDELINES**
- A SEDIMENT CONTROL FENCE MAY BE CONSTRUCTED NEAR THE DOWNSTREAM PERIMETER OF A DISTURBED AREA ALONG A CONTOUR TO INTERCEPT SEDIMENT FROM OVERLAND RUNOFF. A 2 YEAR STORM FREQUENCY MAY BE USED TO CALCULATE THE FLOW RATE TO BE FILTERED.
- SEDIMENT CONTROL FENCE SHOULD BE SIZED TO FILTER A MAX. FLOW THROUGH RATE OF 100 GPM/FT². SEDIMENT CONTROL FENCE IS NOT RECOMMENDED TO CONTROL EROSION FROM A DRAINAGE AREA LARGER THAN 2 ACRES.
- GENERAL NOTES**
1. THE GUIDELINES SHOWN HEREON ARE SUGGESTIONS ONLY AND MAY BE MODIFIED BY THE ENGINEER.



- BALED HAY USAGE GUIDELINES**
- A BALED HAY INSTALLATION MAY BE CONSTRUCTED NEAR THE DOWNSTREAM PERIMETER OF A DISRUPTED AREA ALONG A CONTOUR TO INTERCEPT SEDIMENT FROM OVERLAND RUNOFF. A TWO YEAR STORM FREQUENCY MAY BE USED TO CALCULATE THE FLOW RATE TO BE FILTERED. THE INSTALLATION SHOULD BE SIZED TO FILTER A MAXIMUM FLOW THRU RATE OF 5 GPM/FT² OF CROSS SECTIONAL AREA. BALED HAY MAY BE USED AT THE FOLLOWING LOCATIONS.
1. WHERE THE RUNOFF APPROACHING THE BALED HAY FLOWS OVER DISTURBED SOIL FOR LESS THAN 100'. IF THE SLOPE OF THE DISTURBED SOIL EXCEEDS 10%, THE LENGTH OF SLOPE UPSTREAM THE BALED HAY SHOULD BE LESS THAN 50'.
 2. WHERE THE INSTALLATION WILL BE REQUIRED FOR LESS THAN 3 MONTHS.
 3. WHERE THE CONTRIBUTING DRAINAGE AREA IS LESS THAN 1/2 ACRE.
- FOR BALED HAY INSTALLATIONS IN SMALL DITCHES, THE ADDITIONAL FOLLOWING CONSIDERATIONS APPLY:
1. THE DITCH SIDESLOPES SHOULD BE GRADED AS FLAT AS POSSIBLE TO MAXIMIZE THE DRAINAGE FLOWRATE THRU THE HAY.
 2. THE DITCH SHOULD BE GRADED LARGE ENOUGH TO CONTAIN THE OVERTRAPPING DRAINAGE WHEN SEDIMENT HAS FILLED TO THE TOP OF THE BALED HAY.
- BALES SHOULD BE REPLACED USUALLY EVERY 2 MONTHS OR MORE OFTEN DURING WET WEATHER WHEN LOSS OF STRUCTURAL INTEGRITY IS ACCELERATED.



- GENERAL NOTES**
1. HAY BALES SHALL BE A MINIMUM OF 30" IN LENGTH AND WEIGH A MINIMUM OF 50 LBS.
 2. HAY BALES SHALL BE BOUND BY EITHER WIRE OR NYLON OR POLYPROPYLENE STRING. THE BALES SHALL BE COMPOSED ENTIRELY OF VEGETABLE MATTER.
 3. HAY BALES SHALL BE EMBEDDED IN THE SOIL A MINIMUM OF 4" AND WHERE POSSIBLE 1/2 THE HEIGHT OF THE BALE.
 4. HAY BALES SHALL BE PLACED IN A ROW WITH ENDS TIGHTLY ABUTTING THE ADJACENT BALES. THE BALES SHALL BE PLACED WITH BINDINGS PARALLEL TO THE GROUND.
 5. HAY BALES SHALL BE SECURELY ANCHORED IN PLACE WITH 3/8" DIA. REBAR OR 2"x2" WOOD STAKES, DRIVEN THROUGH THE BALES. THE FIRST STAKE SHALL BE ANGLED TOWARDS THE PREVIOUSLY LAID BALE TO FORCE THE BALES TOGETHER.
 6. THE GUIDELINES SHOWN HEREON ARE SUGGESTIONS ONLY AND MAY BE MODIFIED BY THE ENGINEER.



- GENERAL NOTES**
1. THE CONTRACTOR IS RESPONSIBLE FOR COMPLETELY IDENTIFYING AND LOCATING ALL UTILITIES WITHIN THE PROJECT AREA, AND FOR PROTECTING, REPAIRING AND REPLACING SUCH LINES, CABLES, PIPES AND APPURTENANCES. THE UTILITIES SHOWN ON THIS DRAWING ARE APPROXIMATE AND MAY NOT REPRESENT THE EXACT LOCATION OR MATERIALS OF EXISTING FACILITIES. NOT ALL UTILITIES THAT EXIST MAY BE REPRESENTED ON THE DRAWING.
 2. NOTIFY THE CITY ENGINEERING DEPT. (936-564-4693) FOR INSPECTION OF DRAINAGE IMPROVEMENTS PRIOR TO COVERING UNDERGROUND IMPROVEMENTS, BEFORE POURING BUILDING SLABS OR MAKING ANY UTILITY TAPS OR CURB CUTS.
 3. THIS IS NOT A BOUNDARY SURVEY.
 4. THE CONTRACTOR IS RESPONSIBLE FOR PROVIDING EROSION CONTROL (SILT FENCING) ON ALL DOWNHILL SLOPE AREAS OF THIS SITE.

DROP INLET PROTECTION FOR USE IN PAVED AREAS

BAGGED GRAVEL INLET FILTER

Sandbags filled with pea gravel can be used to construct a sediment barrier around curb and drain inlets. The sandbags should be filled with washed pea gravel and stacked to form a continuous barrier about 1 foot high around the inlets. The bags should be tightly abutted against each other to prevent runoff from flowing between the bags.

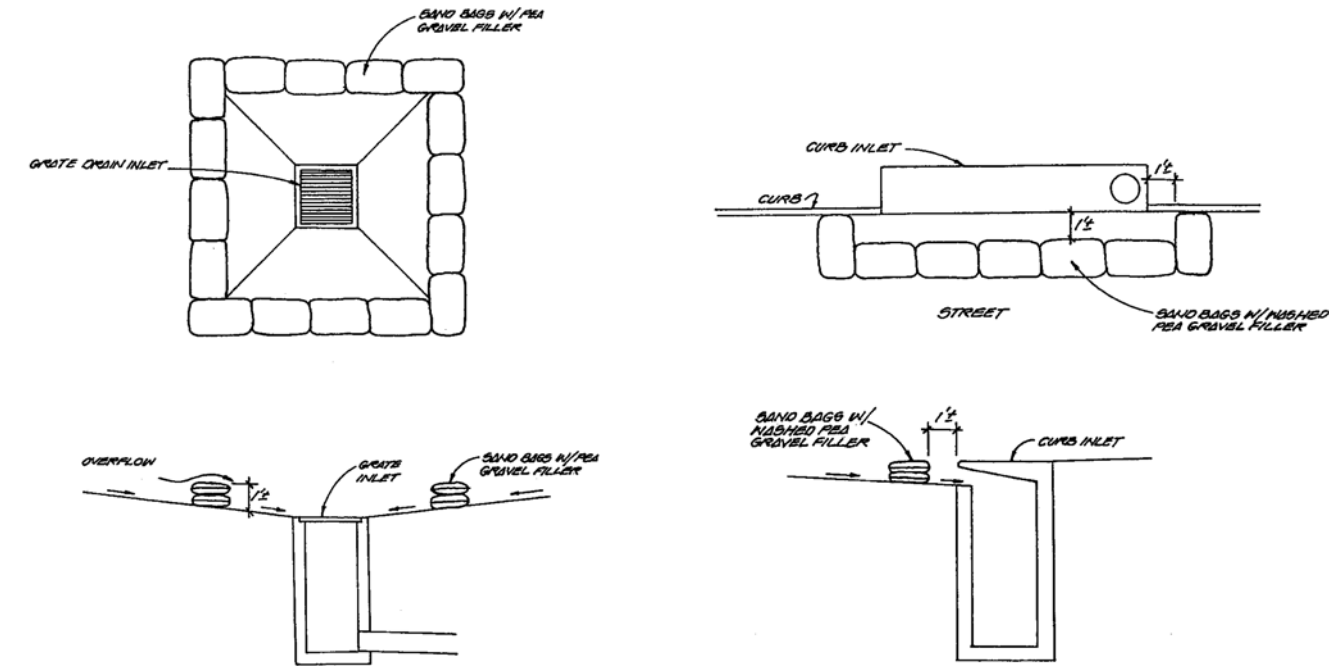


Diagram of Bagged Gravel Grate Inlet Protection (Pape-Dawson)

Diagram of Bagged Gravel Curb Inlet Protection (Pape-Dawson)

BAGGED GRAVEL INLET FILTER (ALTERNATE #1)

Inspection and Maintenance Guidelines

1. Inspection should be at the frequency specified in the Storm Water Pollution Prevention Plan. Repair or replacement should be made promptly as needed by the contractor.
2. Remove sediment when buildup reaches a depth of 3 inches. Removed sediment should be deposited in a suitable area and in such a manner that it will not erode.
3. Structures should be removed and the area stabilized only after the remaining drainage area has been properly stabilized.

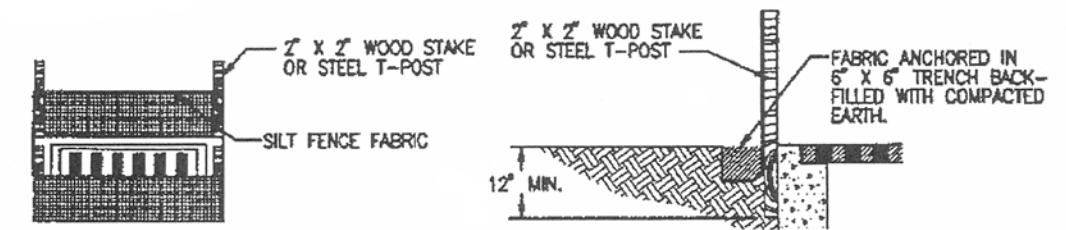
BAGGED GRAVEL INLET FILTER (ALTERNATE #2)

Inspection and Maintenance Guidelines

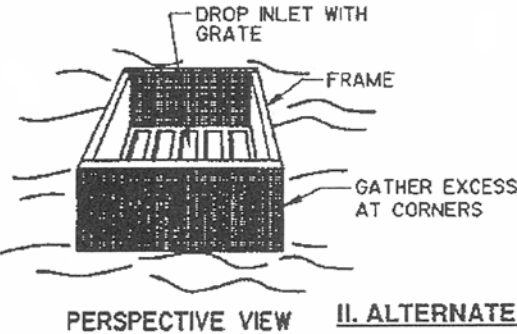
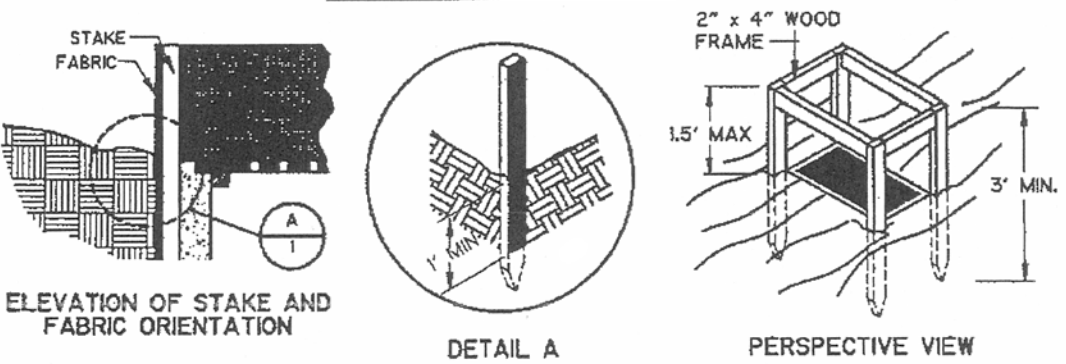
1. Inspection should be at the frequency specified in the Storm Water Pollution Prevention Plan. Repair or replacement should be made promptly as needed by the contractor.
2. Remove sediment when buildup reaches a depth of 3 inches. Removed sediment should be deposited in a suitable area and in such a manner that it will not erode.
3. Check placement of device to prevent gaps between device and curb.
4. Structures should be removed and the area stabilized only after the remaining drainage area has been properly stabilized.

DROP INLET PROTECTION FOR USE IN UNPAVED AREAS

SILT FENCE DROP INLET PROTECTION



I. STANDARD INSTALLATION



SPECIFIC APPLICATION

THIS METHOD OF INLET PROTECTION IS APPLICABLE WHERE THE INLET DRAINS A RELATIVELY FLAT AREA (SLOPE NO GREATER THAN 5%) WHERE THE INLET SHEET OR OVERLAND FLOWS (NOT TO EXCEED 1 C.F.S.) ARE TYPICAL. THE METHOD SHALL NOT APPLY TO INLETS RECEIVING CONCENTRATED FLOWS, SUCH AS IN STREETS OR HIGHWAY MEDIANS.

II. ALTERNATE INSTALLATION

FILTER FABRIC PROTECTION

N.T.S.

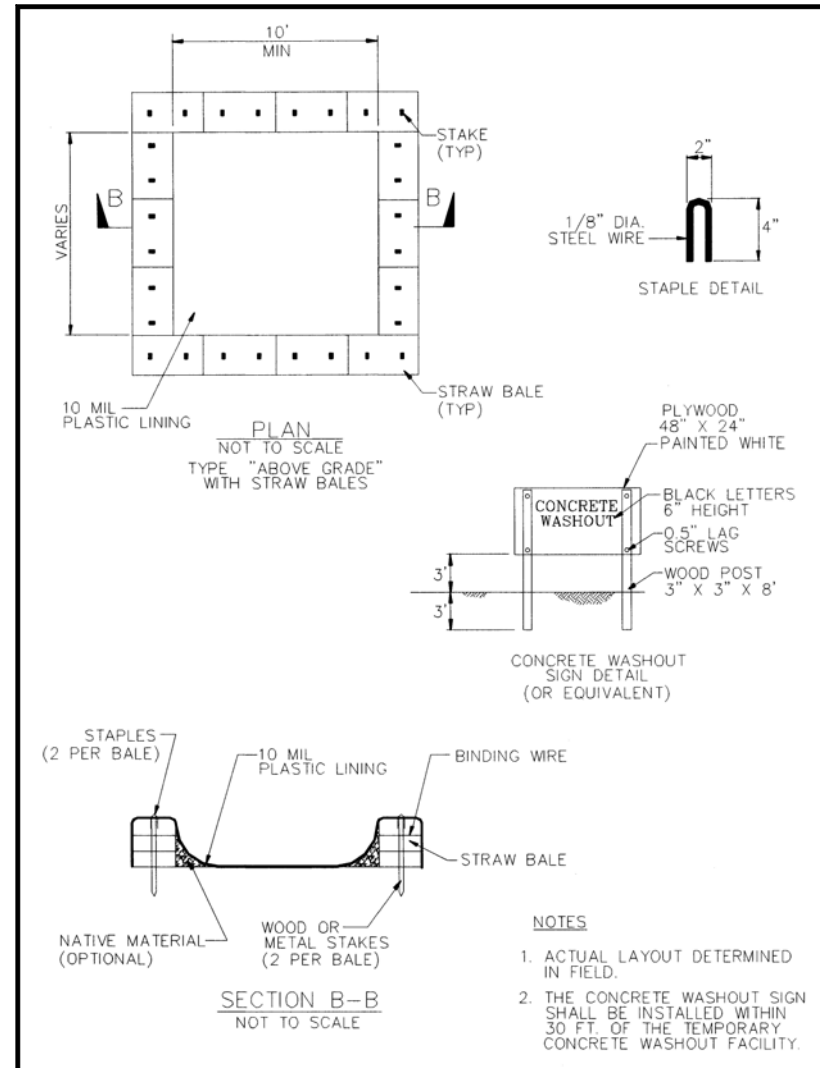
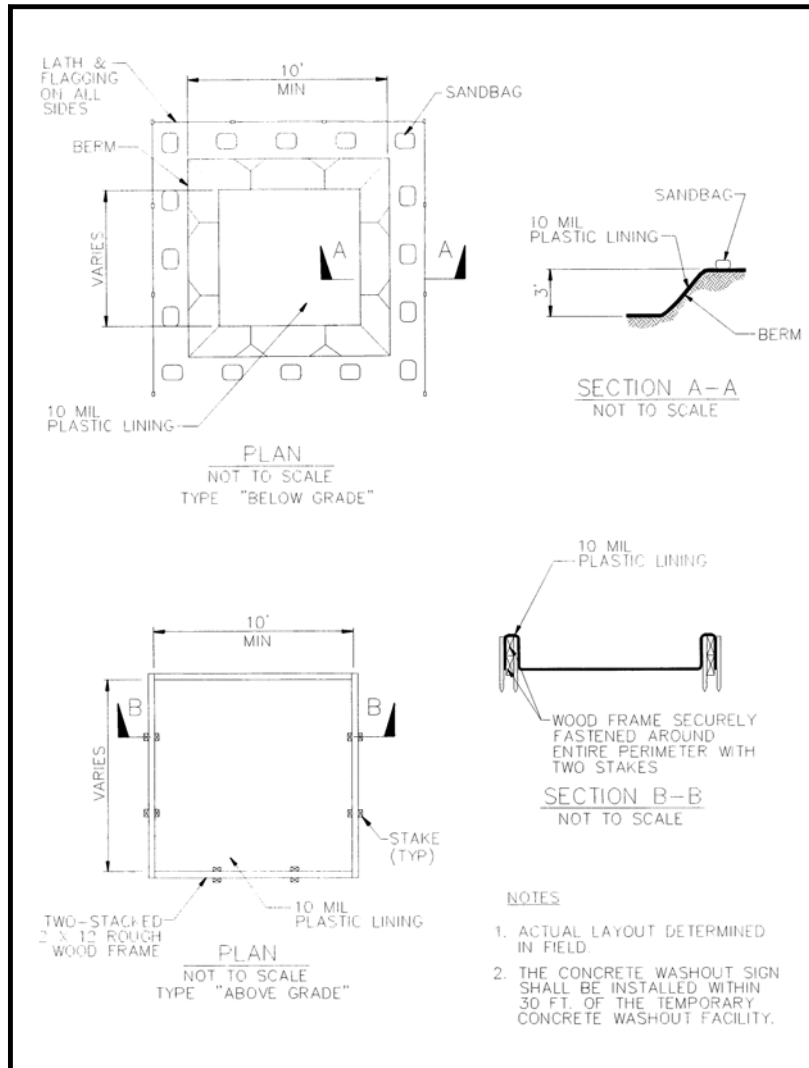
Diagram of Filter Fabric Inlet Protection (NCTCOG, 1993)

SILT FENCE DROP INLET PROTECTION

General Usage Guidelines

1. Silt fence should conform to the specifications listed for Sediment Control Fencing on Plate B-1.
2. The silt fence should be cut to fit from a continuous roll to avoid joints.
3. For stakes, use 2 x 4-inch wood or equivalent metal with a minimum length of 3 feet.
4. Space stakes evenly around the perimeter of the inlet a maximum of 3 feet apart, and securely drive them into the ground, approximately 18 inches deep.
5. To provide needed stability to the installation, a frame with 2 x 4-inch wood strips around the crest of the overflow area at a minimum of 1 1/2 feet above the drop inlet crest may be provided.
6. Place the bottom 12 inches of the fabric in a trench and backfill the trench with 12 inches of compacted soil.
7. Fasten fabric securely by staples or wire to the stakes and frame. Joints must be overlapped to the next stake.
8. It may be necessary to build a temporary dike on the down slope side of the structure to prevent bypass flow. If the drop inlet is above the finished grade, the grate may be completely covered with filter fabric (silt fence). The fabric should be securely attached to the entire perimeter of the inlet using 1 x 2-inch wood strips and appropriate fasteners.

* MODIFIED FROM NCTCOG, DIAGRAM OF FILTER FABRIC INLET PROTECTION, 1993



TAKEN FROM 2003 CALIFORNIA STORM WATER BMP HANDBOOK

Appendix C

Record of Construction Schedule Activities

Record of Disturbance/Stabilization Activities

(To be completed by the Operator during construction)

Description and Location of: Major Disturbance Activity or Erosion, Sediment, Stabilization Control Implemented	Date Activity/Control Initiated	Date Activity/Control Ceased

Record of Disturbance/Stabilization Activities

(continued)

Description and Location of: Major Disturbance Activity or Erosion, Sediment, Stabilization Control Implemented	Date Activity/Control Initiated	Date Activity/Control Ceased

Appendix D

Inspection Forms for Stormwater Controls

Stormwater Construction Site Inspection Report

General Information			
Project Name	Old Tyler Road Sand Pit Construction Project		
Location	Old Tyler Road Nacogdoches, TX		
Date of Inspection		Time	
Inspector's Name(s)			
Inspector's Title(s)			
Inspector's Contact Information			
Inspector's Qualifications			
Describe present phase of construction			
Type of Inspection: ☐ Regular ☐ Pre-storm event ☐ During storm event ☐ Post-storm event			
Weather Information			
Has there been a storm event since the last inspection? ☐ Yes ☐ No If yes, provide: Storm Start Date & Time: Storm Duration (hrs): Approximate Amount of Precipitation (in):			
Weather at time of this inspection? ☐ Clear ☐ Cloudy ☐ Rain ☐ Sleet ☐ Fog ☐ Snowing ☐ High Winds ☐ Other: Temperature:			
Have any discharges occurred since the last inspection? ☐ Yes ☐ No If yes, describe:			
Are there any discharges at the time of inspection? ☐ Yes ☐ No If yes, describe:			

Inspection of BMPs

	BMP	BMP Installed?	BMP Maintenance Required?	Corrective Action Needed and Notes
1	Entrance/Exit	☐ Yes ☐ No	☐ Yes ☐ No	
2	Sediment Control Fence	☐ Yes ☐ No	☐ Yes ☐ No	
3	Inlet Protection	☐ Yes ☐ No	☐ Yes ☐ No	

	BMP	BMP Installed?	BMP Maintenance Required?	Corrective Action Needed and Notes
4	Swales	☐ Yes ☐ No	☐ Yes ☐ No	
5	Rock Check Dams	☐ Yes ☐ No	☐ Yes ☐ No	
6	Stormwater Detention Area	☐ Yes ☐ No	☐ Yes ☐ No	
7	Retaining Walls	☐ Yes ☐ No	☐ Yes ☐ No	
8	Rock Rubble and Rip Rap at Discharge Outlets	☐ Yes ☐ No	☐ Yes ☐ No	
9	Soil Stabilization	☐ Yes ☐ No	☐ Yes ☐ No	
10		☐ Yes ☐ No	☐ Yes ☐ No	
11		☐ Yes ☐ No	☐ Yes ☐ No	
12		☐ Yes ☐ No	☐ Yes ☐ No	
13		☐ Yes ☐ No	☐ Yes ☐ No	
14		☐ Yes ☐ No	☐ Yes ☐ No	

Overall Site Issues

	BMP/Good Housekeeping activity	Implemented?	Maintenance Required?	Corrective Action Needed and Notes
1	Are all slopes and disturbed areas not actively being worked properly stabilized?	☐ Yes ☐ No	☐ Yes ☐ No	

	BMP/Good Housekeeping activity	Implemented?	Maintenance Required?	Corrective Action Needed and Notes
2	Are natural resource areas (e.g., streams, wetlands, mature trees, etc.) protected with barriers or similar BMPs?	☐ Yes ☐ No	☐ Yes ☐ No	
3	Are perimeter controls and sediment barriers adequately installed (keyed into substrate) and maintained?	☐ Yes ☐ No	☐ Yes ☐ No	
4	Are discharge points and receiving waters free of any sediment deposits?	☐ Yes ☐ No	☐ Yes ☐ No	
5	Are storm drain inlets properly protected?	☐ Yes ☐ No	☐ Yes ☐ No	
6	Is the construction exit preventing sediment from being tracked into the street?	☐ Yes ☐ No	☐ Yes ☐ No	
7	Is trash/litter from work areas collected and placed in covered dumpsters?	☐ Yes ☐ No	☐ Yes ☐ No	
8	Are washout facilities (e.g., paint, stucco, concrete) available, clearly marked, and maintained?	☐ Yes ☐ No	☐ Yes ☐ No	
9	Are vehicle and equipment fueling, cleaning, and maintenance areas free of spills, leaks, or any other deleterious material?	☐ Yes ☐ No	☐ Yes ☐ No	
10	Are materials that are potential stormwater contaminants stored inside or under cover?	☐ Yes ☐ No	☐ Yes ☐ No	
11	Are non-stormwater discharges (e.g., wash water, dewatering) properly controlled?	☐ Yes ☐ No	☐ Yes ☐ No	

	BMP/Good Housekeeping activity	Implemented?	Maintenance Required?	Corrective Action Needed and Notes
12	(Other)	☐ Yes ☐ No	☐ Yes ☐ No	

Non-Compliance

Describe any incidents of non-compliance not described above:

CERTIFICATION STATEMENT

“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 gathered and evaluated 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.”

Print name and title: _____

Signature: _____ **Date:** _____

QUALIFICATIONS OF THE INSPECTOR(S)

Inspectors must be knowledgeable of the following items:

- 1) Knowledgeable of the facility's SWP3,
- 2) Knowledgeable of the TPDES Permit (Appendix E), and
- 3) Knowledgeable of construction methods, erosion controls, BMPs and pollution prevention control measures developed for this site.

Inspector's Name:

Inspector's Name:

Inspector's Name:

Appendix E

Texas Pollutant Discharge Elimination System (TPDES)

General Permit No. TXR150000

Appendix F

Miscellaneous Documents



SMALL CONSTRUCTION SITE NOTICE

FOR THE
Texas Commission on Environmental Quality (TCEQ)
Stormwater Program
TPDES GENERAL PERMIT TXR150000

The following information is posted in compliance with **Part II.E.2.** of the TCEQ General Permit Number TXR150000 for discharges of stormwater runoff from small construction sites. Additional information regarding the TCEQ stormwater permit program may be found on the internet at:

http://www.tceq.state.tx.us/nav/permits/wq_construction.html

Operator Name:	James Wood Construction Company
Contact Name and Phone Number:	James Wood 936-560-1221
Project Description: <i>Physical address or description of the site's location, estimated start date and projected end date, or date that disturbed soils will be stabilized</i>	Located along Old Tyler Road Nacogdoches, TX 75964 September, 2024 to October 30, 2024
Location of Stormwater Pollution Prevention Plan:	James Wood Construction Co 724 E Main St. Nacogdoches TX

For Small Construction Activities Authorized Under Part II.E.2. (Obtaining Authorization to Discharge) the following certification must be completed:

I James Wood (Typed or Printed Name Person Completing This Certification) certify under penalty of law that I have read and understand the eligibility requirements for claiming an authorization under Part II.E.2. of TPDES General Permit TXR150000 and agree to comply with the terms of this permit. A stormwater pollution prevention plan has been developed and will be implemented prior to construction, according to permit requirements. A copy of this signed notice is supplied to the operator of the MS4 if discharges enter an MS4. I am aware there are significant penalties for providing false information or for conducting unauthorized discharges, including the possibility of fine and imprisonment for knowing violations.

Signature and Title _____ Date _____

_____ Date Notice Removed

_____ MS4 operator notified per Part II.F.3.

REQUIRED ACTIVITIES TO PERFORM

- 1) Post Construction Site Notice (Appendix F) by main entrance/exit to be visible by the public. The site notice must be maintained for the duration of the construction and final stabilization.
- 2) Record and date major disturbance activities on the Record of Disturbance /Stabilization Activities form (Appendix C).
- 3) Pen and ink changes can be made to any part of the SWP3 as long as no TPDES Permit requirements are deleted or omitted.
- 4) Identify the location of every concrete washout facility on the Sediment and Erosion Control site map (Appendix A, Plate A-3) by marking its location and labeling it.
- 5) Complete the Qualifications of the Inspector(s) sheet for each person performing the site inspections (Appendix D).
- 6) Perform site inspections as per Section 5.2 of the SWP3 for the duration of soil disturbing construction activities. Record and date these inspections on the Stormwater Construction Site Inspection Forms (Appendix D).



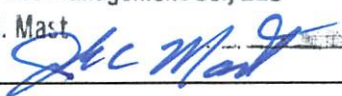
PROPERTY OWNER CONSENT LETTER FOR SPECIFIC USE PERMIT

I John C Mast, am the owner of the property located at
(Property owner)
_____, Nacogdoches, Texas. I have granted
(Property address)
James Wood of James Wood Construction consent to
(Applicant) (Applicant's business name)
open and operate a Sand / Dirt Pit at this
(Type of operation requiring permit)
location.

Solely for the purposes of the application for a Specific Use Permit, I
designate James Wood as my authorized representative
(Name of applicant)

as provided under the City of Nacogdoches Zoning Ordinance Section

~~118-137~~ John Mast Separate Property Partnership, LP
By: John Mast Management Co., LLC
By: John C. Mast



Property Owner Signature

8-27-24

Date

PRESENTER: Juan Pollette, Interim City Planner

ITEM/SUBJECT: Public Hearing: Consider approval of a Zone Change from I-2, Heavy Industrial to R-4, Multi-Family for approximately 2.87 acres, on Lot 78-S-5, City Block 56, located at 808 East Lane Drive and 2924 Hunter Street. This request has been submitted by the property owners, Lee and Tracy Saenz. Case File ZON2024-03. (Interim City Planner)

SUMMARY/BACKGROUND: The request is for a zone change from I-2, Heavy Industrial to R-4, Multi-Family for Lot 78-S-5, City Block 56, located at 808 E. Lane Drive and 2924 Hunter Street. The R-4, Multi Family district is intended for higher-density residential areas which may contain a mixture of single-family, two-family, and multiple-family dwellings.

The property is developed as a church with a parsonage where the pastor and family live. The church is addressed off of Hunter Street and the house is addressed off of East Lane Street. The purpose of the request is to subdivide the property into two lots, separating the church from the parsonage (single-family home) without creating a non-conformity.

ADJACENT LAND USES:

See attached exhibit. The subject property is zoned I-2, Heavy Industrial, developed with a church and a parsonage on the same parcel. The surrounding zoning and land uses are as follows:

Direction	Comprehensive Plan	Zoning	Land Use
North	Rural Development	R-4, Multi-Family	Residential
South	Commercial	I-2, Heavy Industrial	Commercial
East	Rural Development	R-4, Multi-Family B-2, General Business	Residential
West	Rural Development	I-2, Heavy Industrial	Commercial

The subject property is adjacent to a mix of residential, industrial, and commercial uses. The majority of the properties to the north, east and west of the subject property, except for the adjacent property to the west which is zoned heavy industrial, are all zoned R-4 and developed primarily with single-family homes. The adjacent property to the south is zoned heavy industrial and is developed as a heavy equipment rental company. The rest of the commercial properties to the south along South Stallings Drive are zoned for general business.

REVIEW CRITERIA:

In accordance with Nacogdoches Code of Ordinances Sec. 118.139, the following conditions shall be considered when reviewing an application for zoning change:

Compatibility: *The specific use will be compatible with and not injurious to the use and*

enjoyment of other property in the immediate vicinity, nor significantly diminish or impair property values within the immediate vicinity;

The property is adjacent to R-4, Multi-Family zoning with similar residential structures to the north and east, and a vacant strip of heavy industrial land to the west. The proposed R-4 zoning is compatible with surrounding land uses, serving as a transition from residential to commercial areas. The proposed zone change would not adversely impact adjacent uses.

Orderly Growth and Development: *The establishment of the specific use will not impede the normal and orderly development and improvement of surrounding vacant property;*

The approval of this zone change would not impede the normal development of the surrounding properties.

Supporting Facilities: *Adequate utilities, access roads, drainage and other necessary supporting facilities have been or will be provided;*

The subject property takes direct access from East Lane Drive and Hunter Street. They are both two-lane local streets that function as the primary access to the property and both have approximately 40 foot right of way widths. This is adequate to accommodate the nature and volume of traffic typically generated by the uses permitted under the R-4, Multi-Family zoning district. The property has access to public utilities, with an 8-inch water main located on Hunter Street and East Lane Drive and a 6-inch sewer main located along Hunter Street.

Drives and Parking: *The design, location and arrangement of all driveways and parking spaces provide for the safe and convenient movement of vehicular and pedestrian traffic without adversely affecting the general public or adjacent developments;*

The property is already developed and any future development will meet all required driveway distancing and parking requirements.

Nuisances: *Adequate nuisance-prevention measures have been or will be taken to prevent or control offensive odor, fumes, dust, noise and vibration;*

Future development will comply with City regulations regarding the prevention of offensive odor, fumes, dust, noise, and vibrations and must be mitigated.

Lighting: Any lighting to be provided will be directional so as not to disturb or adversely affect neighboring properties;

If the zone change request is approved, any new outdoor lighting would be subject to the City's current performance standards, which require light fixtures to be designed or retrofitted to shield or direct light so it does not directly project light off the property.

Landscaping: *Sufficient landscaping and screening to ensure harmony and compatibility with adjacent property exists or will be provided;*

This rezoning does not trigger any landscaping requirements. However, any changes, remodeling or expansions are subject to the R-4 landscaping scrutiny.

Comprehensive Plan: *The proposed use is in accordance with the comprehensive plan.*

The 2003 Comprehensive Plan designates this area as *Rural Development* in the Future Land Use Plan (FLUP). This Land Use category is defined as "... Sparsely-populated areas with limited development that are still distinct from more urbanized areas. This typically encompasses relatively large tracts of un-subdivided land used for agriculture, forestry, resource extraction, widely-scattered homesteads and business establishments, natural open space, or activities not requiring permanent structures or improvements. It also includes areas that are gradually transitioning into urban uses and development ..." While the proposed change does not fit into the proposed future land use, it is compatible with surrounding area

zoning and land uses.

Land Use Policies, Goals & Objectives

Staff finds that the zoning request is in compliance with the intent of the FLUP and the stated Goals and Objectives of the 2003 Comprehensive Plan. This request furthers the Land Use Policies of the 2003 Comprehensive Plan, specifically:

- Compatibility with existing uses should be maintained. Well-planned, mixed uses which are compatible are to be encouraged.
- Plan for mixing and/or separation of land use types based on desire, location, density, and pattern of development.
- Promote growth where adequate infrastructure exists.

PUBLIC ENGAGEMENT:

- September 24, 2024 - Staff mailed 14 notices to property owners within a 200-foot radius of the subject property. Staff did not receive any responses in support or opposition as of October 30, 2024.
- September 29, 2024 - Staff published a legal ad in the Daily Sentinel newspaper.

This zoning application is subject to additional notification procedures approved by Council in January 2021, including: signage posted on the subject property; notices on the city website and social media pages; and courtesy notices mailed to property owners within 500 feet of the subject property. Note: Neighborhood meetings are not required if the proposed zoning reduces a more intense land use to a less intense one.

P&Z ACTION:

The Planning & Zoning Commission heard this item on October 14, 2024, and voted unanimously (5-0) to recommend approval.

FINANCIAL:

No financial impact is associated with this item.

COUNCIL PRIORITIES: THIS AGENDA ITEM IS CONSISTENT WITH THE FOLLOWING CITY COUNCIL PRIORITIES

Not Applicable

CITY CONTACT: Juan Pollette, Interim City Planner
pollettej@nactx.us
(936) 559-2559

ATTACHMENTS:

1. Ordinance
2. Aerial Map
3. Zoning Map
4. Future Land Use Map
5. Notification Map
6. Proposed Subdivision
7. Site Photos

ORDINANCE NO.

AN ORDINANCE OF THE CITY OF NACOGDOCHES, TEXAS, AMENDING THE BOUNDARIES OF A ZONING DISTRICT WITHIN THE CITY OF NACOGDOCHES FROM I-2, HEAVY INDUSTRIAL TO R-4, MULTI-FAMILY LEGALLY DESCRIBED APPROXIMATELY 2.87 ACRES OF LAND, BEING LOT 78-S-5, CITY BLOCK 56, LOCATED AT 808 EAST LANE DRIVE AND 2924 HUNTER STREET, LOCATED IN NACOGDOCHES, TEXAS; CONTAINING FINDINGS; PROVIDING A REPEAL CLAUSE; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Zoning Ordinance of the City of Nacogdoches allows the City Council to amend the official zoning map; and

WHEREAS, the property described above and depicted in “**Exhibit A**” is currently zoned I-2, Heavy Industrial; and

WHEREAS, the property owner has requested the zoning classification of said property to be changed to R-4, Multi-Family; and

WHEREAS, the City Council of the City has conducted, in the time and manner and after the notice required by law and the Zoning Ordinance of the City, a public hearing on such request for change in zoning classification; and

WHEREAS, the City Council now deems it appropriate to grant such a requested change in classification.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF NACOGDOCHES, TEXAS:

SECTION I

Findings.

The facts and matters set forth in the preamble of this Ordinance are hereby found to be true and correct, and same are deemed to be in furtherance of a public purpose.

SECTION II

Approval of Zoning Change

Pursuant to the requirements of Chapter 118 of the Code of Ordinances of the City of Nacogdoches, Texas, a change in Zoning Classification from I-2, Heavy Industrial to R-4, Multi-Family is hereby approved by the City Council.

SECTION III

Repeal

This Ordinance shall in no manner repeal, amend, change, supplement, or revise any provision of any ordinance of the City, save and except the granting change in Zoning Classification as herein provided.

SECTION IV
Effective Date

This Ordinance shall take effect following its passage and publication as may be required by governing law.

SECTION V
Severability

If any word, article, phrase, paragraph, sentence, clause, or provision of this Ordinance shall be adjudged by a court of competent jurisdiction to be invalid, the invalidity shall not affect other provisions or applications of this Ordinance which can be given effect without the invalid provision, and to this end, the provisions of this Ordinance are declared to be severable.

SECTION VI
Proper Notice and Open Meetings

It is hereby officially found and determined that the meeting at which this Ordinance was 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 of the Texas Government Code.

SECTION VII
Filing

The City Secretary is hereby authorized and instructed to file a signed and sealed copy of this Ordinance in and among the records of the City of Nacogdoches, Texas.

PASSED AND APPROVED, this the ____ day of November 2024, by a vote of ____ (ayes) to ____ (nays) of the City Council of the City of Nacogdoches, Texas.

CITY OF NACOGDOCHES

By: _____
RANDY JOHNSON, Mayor

ATTEST:

APPROVED AS TO FORM:

RHONDA LEWIS, City Secretary

JERRY BAKER, City Attorney

APPROVED AS TO CONTENT:

JUAN POLLETTE, Interim City Planner

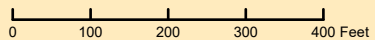
EXHIBIT "A"



Legend

- Streets
- Buildings
- City Limit
- Parcels
- Area of Interest

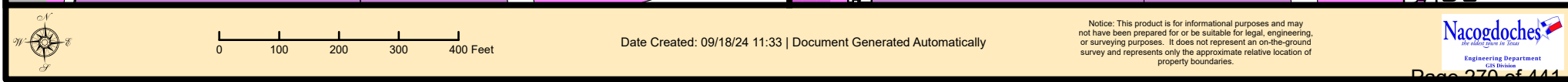
ZON2024-03 Aerial Map



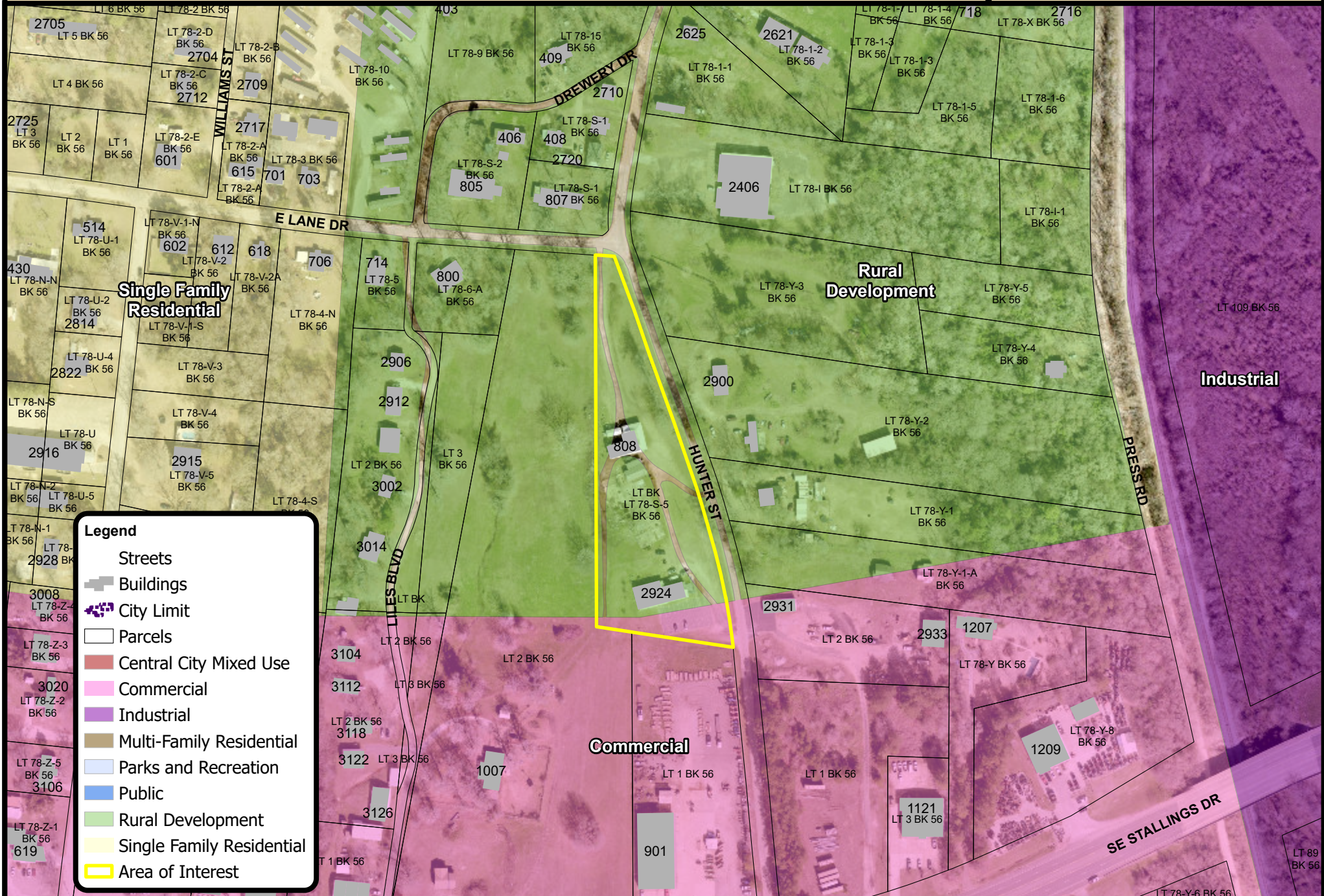
Date Created: 09/18/24 11:25 | Document Generated Automatically

Notice: This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries.

Proposed Zoning



ZON2024-03 Future Land Use Map



Notice: This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries.

200 Foot Notification Map

ZON2024-03: 808 E. Lane/ 2924 Hunter St.

Legend

 200 Foot Buffer

 Proposed SUP

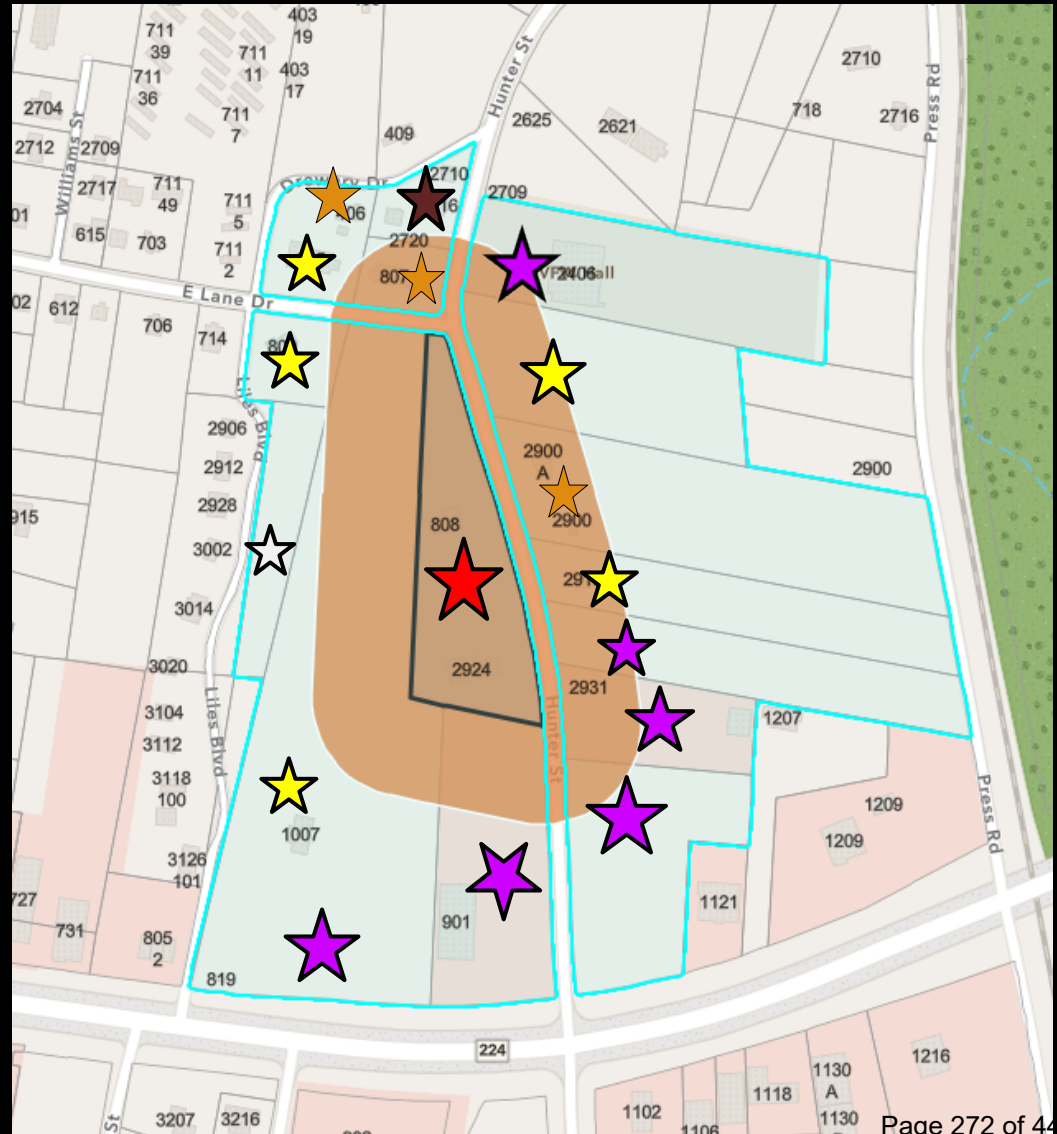
 Single-Family- Rental

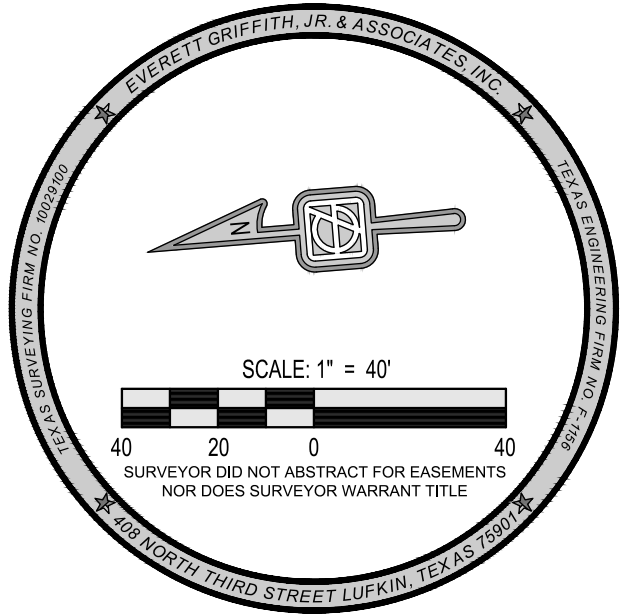
 Single-Family-
Owner Occupied

 Vacant

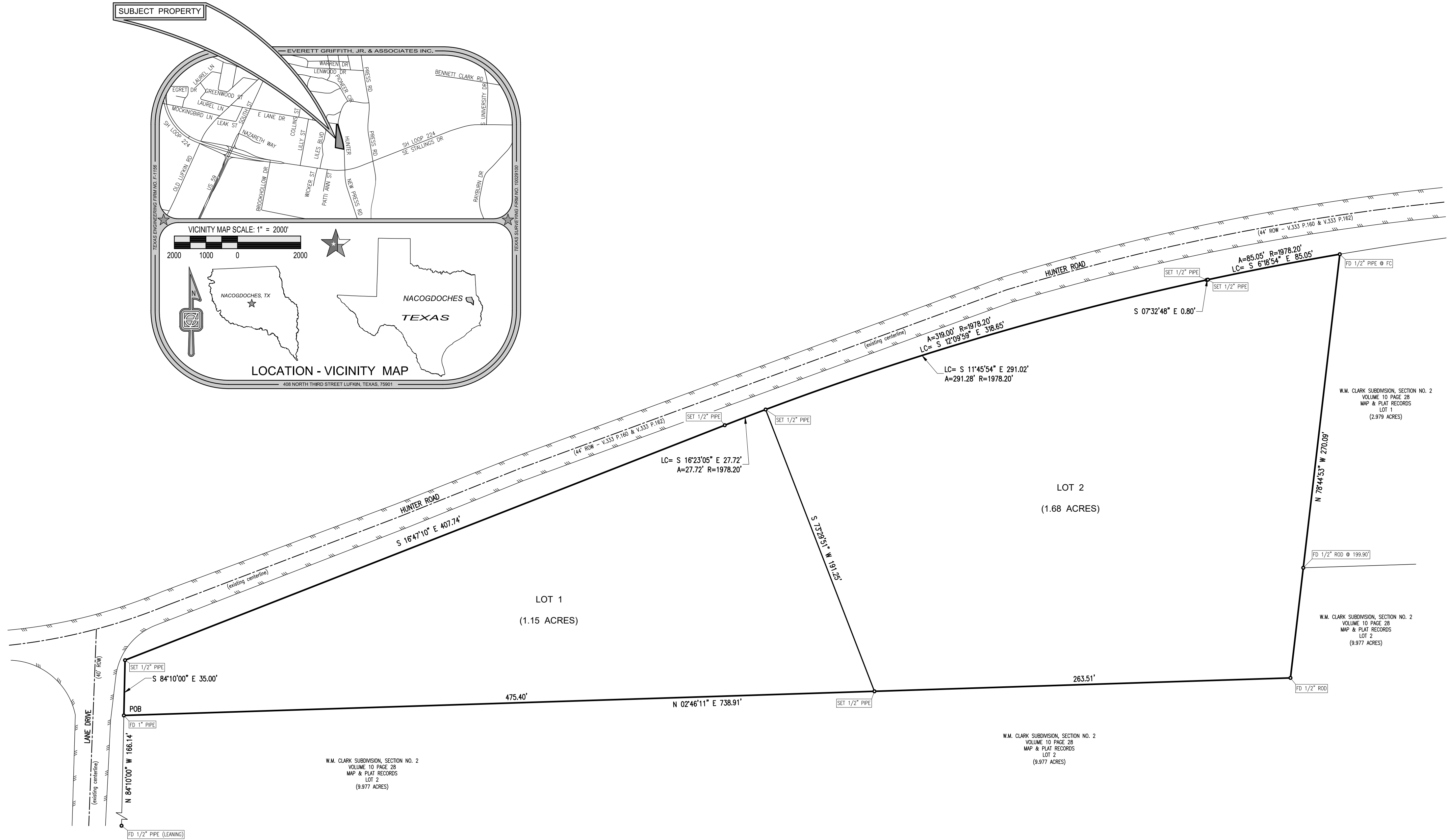
 Multi-Family

 Commercial





SAENZ HUNTER ROAD SUBDIVISION



FOR REVIEW PURPOSES ONLY

PRELIMINARY
THIS DOCUMENT SHALL NOT
BE RECORDED FOR ANY PURPOSE

R.F. (RICK) FREEMAN, R.P.L.S. 4202

DATE: MAY 13, 2024

CERTIFICATE OF REGISTRATION

STATE OF TEXAS
KNOWN ALL MEN BY THESE PRESENTS
COUNTY OF NACOGDOCHES

I, Sandra "Sandy" Yates, County Clerk of Nacogdoches County, Texas, do hereby certify that this foregoing instrument in writing, with its certificate of authentication, was filed and duly recorded in my office on this _____ day of _____, 2024 A.D., at _____ o'clock _____ M, in Clerks Document Number _____ of the Real Property Records for said County.

WITNESS my hand and seal of office, at Nacogdoches, Texas, the day and date last above written.

Sandra "Sandy" Yates, County Clerk,
Nacogdoches County, Texas

By: _____ Deputy Clerk

Certificate of Approval by the City Planner and City Engineer

This is to certify that the City Planner and City Engineer of the City of Nacogdoches, Texas, has approved this plat and subdivision of SAENZ HUNTER ROAD SUBDIVISION, as shown hereon.

IN TESTIMONY WHEREOF, witness the official signature of the City Planner and the City Engineer of the City of Nacogdoches, Texas, this _____ day of _____, 20____.

City Planner

City Engineer

OWNER'S CERTIFICATE

THE STATE OF TEXAS:
COUNTY OF ANGELINA:

WHEREAS Lee Saez and Tracy Saez are the owners of all that certain tract or parcel of land lying and situated in Nacogdoches County, Texas, out of the J.L. DE LA BEGA SURVEY, ABSTRACT NO. 7 and being all of that certain 2.873 acre tract described in a deed from Alex Franco et al, Trustees of the Centro de Vida Cristiana to Lee Saez et al, dated November 2, 2020 and recorded in Instrument No. 2020-7638 of the Deed Records of Nacogdoches County, Texas, to which reference is hereby made for any and all purposes and the said tract or parcel being described by metes and bounds as follows, to wit:

BEGINNING at the Northwest corner of the aforesaid referred to 2.873 acre tract and the Northernmost Northeast corner of Lot 2 of the W.M. Clark Subdivision, Section No. 2, a subdivision of record in Volume 10 on Page 28 of the Map and Plat Records of Nacogdoches County, Texas in the South right-of-way line of Lane Drive (40 feet wide right-of-way), a 1" pipe found for corner, said corner witnessed by a 1/2" pipe (leaning) found for the Northwest corner of the said Lot 2 bearing N 84° 10' 00" W 166.14 feet;

THENCE S 84° 10' 00" E with the North boundary line of the said 2.873 acre tract and the South right-of-way line of Lane Drive, at 35.00 feet the Northeast corner of the said 2.873 acre tract in the West right-of-way line of Hunter Road (44 feet wide right-of-way), a 1/2" pipe set for corner;

THENCE four calls with the East boundary line of the said 2.873 acre tract and the West right-of-way line of Hunter Road as follows:

- (1) S 16° 47' 10" E, at 407.74 feet the beginning of a curve to the right, a 1/2" pipe set for corner;
- (2) Southeasterly with the said curve to the right (Central Angle = 09° 14' 22", Radius = 1978.20 feet and Long Chord Bearing and Distance = S 12° 09' 59" E 318.65 feet), at 319.00 feet the end of said curve, a 1/2" pipe set for corner;
- (3) S 07° 32' 48" E, at 0.80 feet the beginning of a curve to the right, a 1/2" pipe set for corner;
- (4) Southeasterly with the said curve to the right (Central Angle = 02° 27' 48", Radius = 1978.20 feet and Long Chord Bearing and Distance = S 06° 18' 54" E 85.05 feet), at 85.05 feet the Southeast corner of the said 2.873 acre tract and the Northeast corner of Lot 1 of the said W.M. Clark Subdivision, Section No. 2, a 1/2" rod found for corner at a fence corner;

THENCE N 78° 44' 53" W with the South boundary line of the said 2.873 acre tract and in part with the North boundary line of the said Lot 1 and the Southernmost North boundary line of the aforesaid Lot 2, at 199.90 feet pass on line a 1/2" rod found for the Northwest corner of the said Lot 1 and the Southernmost Northeast corner of the said Lot 2, at 270.09 feet the Southwest corner of the said 2.873 acre tract and on an ell corner of the said Lot 2, a 1/2" rod found for corner;

THENCE N 02° 46' 11" E with the West boundary line of the said 2.873 acre tract and with the Northernmost East boundary line of the said Lot 2, at 738.91 feet the point and place of beginning and containing 2.83 acres of land, more or less.

Basis of Bearings: The Northernmost East boundary line of Lot 2 of the W.M. Clark Subdivision, Section No. 2, a subdivision of record in Volume 10 on Page 28 of the Map and Plat Records of Nacogdoches County, Texas - (Plat call of S 02° 46' 11" W 738.73 feet - found 1" pipe and 1/2" rod 738.91 feet apart)

That Lee Saez and Tracy Saez are the owners of the property subdivided in the above and foregoing map of SAENZ HUNTER ROAD SUBDIVISION do hereby make subdivision of said property according to the lines, lots, and easements thereon shown, and designate said subdivision as SAENZ HUNTER ROAD SUBDIVISION in the J.L. DE LA BEGA SURVEY, ABSTRACT NO. 7, Nacogdoches County, Texas, and dedicate to public use, as such, the parks and easements shown thereon forever, and do hereby bind ourselves, our successors and assigns, to warranty and forever defend the title to the land so dedicated.

Witness my hand in Nacogdoches, Nacogdoches County, Texas, this _____ day of _____, 2024.

Lee Saez

STATE OF TEXAS
COUNTY OF NACOGDOCHES

BEFORE ME, the undersigned authority, on this day personally appeared Lee Saez known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that she executed the same for the purposes and considerations therein set forth.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this _____ day of _____, 2024.

Notary Public, in and for
Nacogdoches County, Texas

Witness my hand in Nacogdoches, Nacogdoches County, Texas, this _____ day of _____, 2024.

Tracy Saez

STATE OF TEXAS
COUNTY OF NACOGDOCHES

BEFORE ME, the undersigned authority, on this day personally appeared Tracy Saez known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and considerations therein set forth.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this _____ day of _____, 2024.

Notary Public, in and for
Nacogdoches County, Texas

I, R.F. (Rick) Freeman, a Registered Professional Land Surveyor in the State of Texas, hereby certify that the above plat and field note description of the SAENZ HUNTER ROAD SUBDIVISION in the J.L. DE LA BEGA SURVEY, ABSTRACT NO. 7, is true and correct, and were prepared from a survey made by me, on the ground, on the 4th day of April 2024.

R.F. (Rick) Freeman
Registered Professional Land Surveyor No. 4202

STATE OF TEXAS
COUNTY OF ANGELINA

BEFORE ME, the undersigned authority, on this day personally appeared R.F. (Rick) Freeman, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and considerations therein set forth.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this _____ day of _____, 2024.

Notary Public, in and for
Angolina County, Texas

 ENGINEERS - SURVEYORS Everett Griffith, Jr. & Associates Inc. 408 NORTH THIRD STREET LUFKIN, TEXAS, 75901 TEXAS ENGINEERING FIRM NO. F-1156 936-634-5528 TEXAS SURVEYING FIRM NO. 10029100	SAENZ HUNTER ROAD SUBDIVISION A SUBDIVISION OF 2.83 ACRES OWNERS: LEE SAENZ AND TRACY SAENZ J. L. DE LA BEGA SURVEY, ABSTRACT NO. 7 NACOGDOCHES COUNTY, TEXAS	Sheet 1 of 1
--	--	---

Site Photos: ZON2024-3

View of the church on subject property from Hunter Rd.





View of parsonage
from E. Lane Dr.

View of parsonage
from Hunter Rd.



Adjacent homes
along Hunter Rd.





Adjacent homes
along E. Lane St.



Commercial Property south
of subject property



VFW Post north of
subject property



PRESENTER: Juan Pollette, Interim City Planner

ITEM/SUBJECT: Public Hearing: Consider approval of a Zone Change from R-2, Single Family to R-3, Two Family for approximately 1 acre, on Lot(s) 1&2, of the Larry Wade Subdivision and Lot(s) 6, 7, 8, 9, & 10, City Block 47, generally located on the north side of Powers Street, approximately 350 feet east of the Ritchie Street and Powers Street intersection. This request has been submitted by the owner, Clifton White. Case File ZON2024-04. (Interim City Planner)

SUMMARY/BACKGROUND: The request is for a zone change from R-2, Single Family to R-3, Two Family for seven lots totaling approximately 1 acre, located on the north side of Powers Street just east of Ritchie Street. The R-3, Duplex Dwelling District creates a residential district that is appropriate for both single-family housing and two-family housing. Lots in the R-3 district must be 5,000 square feet and larger. The applicant owns the subject properties and intends to develop the vacant lots with two-family (duplex) residences.

ADJACENT LAND USES:

The subject property is zoned R-2, Single Family and is currently undeveloped. The surrounding zoning and land uses are as follows:

Direction	Comprehensive Plan	Zoning	Land Use
North	Single-Family Residential	R-2, Single-Family	Single-Family
South (Across Powers Street)	Single-Family Residential	R-2, Single-Family	Single-Family
East	Single-Family Residential	R-2, Single-Family	Single-Family
West	Single-Family Residential	R-2, Single-Family	Single-Family

The area is primarily zoned R-2 and developed with single-family residences along with several two-family district zoning lots which were previously approved in 2022 just east of this location. The lots in this area are similar in size and configuration.

REVIEW CRITERIA:

In accordance with Nacogdoches Code of Ordinances Sec. 118.139, the following conditions shall be considered when reviewing an application for zoning change:

Compatibility: *The specific use will be compatible with and not injurious to the use and enjoyment of other property in the immediate vicinity, nor significantly diminish or impair property values within the immediate vicinity;*

The area is zoned and developed with single-family detached residences. Staff believes duplex housing would not significantly impact the overall density or character of the neighborhood while providing more affordable housing in close proximity to a public school. Similar duplexes were constructed last year one block east of the subject properties after the approval of a zone change from single-family to two-family (duplex) zoning in 2022.

Orderly Growth and Development: *The establishment of the specific use will not impede the normal and orderly development and improvement of surrounding vacant property;*

The surrounding properties are mostly developed except for a few vacant lots located south of Powers St. The rezoning would not impede the orderly growth of adjacent properties.

Supporting Facilities: *Adequate utilities, access roads, drainage and other necessary supporting facilities have been or will be provided;*

The subject properties take direct access from Powers Street, which is a two-lane asphalt road with a ROW of approximately 36 feet and a street width of approximately 24 feet. The properties have access to public utilities, with 6-inch water and 6-inch sewer mains located along Powers Street.

Drives and Parking: *The design, location and arrangement of all driveways and parking spaces provides for the safe and convenient movement of vehicular and pedestrian traffic without adversely affecting the general public or adjacent developments;*

Future development will meet all current driveway and parking requirements.

Nuisances: *Adequate nuisance-prevention measures have been or will be taken to prevent or control offensive odor, fumes, dust, noise and vibration;*

Future development will comply with City regulations regarding the prevention of offensive odor, fumes, dust, noise, and vibrations.

Lighting: *Any lighting to be provided will be directional so as not to disturb or adversely affect neighboring properties;*

If the zone change request is approved, any new outdoor lighting would be subject to the City's current standards, which require light fixtures to utilize a down lighting design and prohibits fixtures that directly project light in all directions.

Landscaping: *Sufficient landscaping and screening to ensure harmony and compatibility with adjacent property exists or will be provided;*

Single-family construction is not subject to commercial district landscaping requirements.

Comprehensive Plan: *The proposed use is in accordance with the comprehensive plan.*

Future Land Use Plan (FLUP): Per the 2003 Nacogdoches Comprehensive Plan, the FLUP designates the subject property as *Single Family Residential*. This category is described as, "Conventional one-family detached dwellings (also includes duplexes)." Thoroughfare Plan: Powers Street is a paved asphalt local street that serves as direct access for residential uses in the area. This two-lane roadway is adequate to accommodate the nature and volume of traffic typically generated by the proposed use.

Land Use Policies, Goals & Objectives

This request supports one or more goals of the Comprehensive Plan. *Growth Inward – Long-term growth in appropriate areas to achieve an efficient, diverse, and balanced pattern of land uses both within the City and urbanizing portions of its extraterritorial jurisdiction.* Some of the targeted objectives include:

- Encourage infill development where appropriate (utilities, compatibility, etc.).
- Plan for mixing and/or separation of land use types based on desire, location, density, and pattern of development.
- Promote growth where adequate infrastructure exists.

This request also furthers the Land Use Policies of the 2003 Comprehensive Plan, specifically:

- Compatibility with existing uses should be maintained. Well-planned, mixed uses which are compatible are to be encouraged.
- Schools, parks, and community facilities should be located close to or within residential neighborhoods.

PUBLIC ENGAGEMENT:

- September 18, 2024 - Staff coordinated a neighborhood meeting on behalf of the applicant for property owners within 500 feet to discuss and answer questions about the request. One person attended and expressed support for the proposed development.
- September 24, 2024 - Approximately 25 notices were mailed to property owners within a 200-foot radius of the subject property. As of October 30, 2024, Staff received one written response in opposition stating concerns about density, onsite parking, impacts on water runoff and water/sewer infrastructure demands.
- September 29, 2024 - Staff published a legal ad in the Daily Sentinel newspaper.

This zoning application is subject to additional notification procedures approved by Council in January 2021, including: signage posted on the subject property; notices on the city website and social media pages; and courtesy notices mailed to property owners within 500 feet of the subject property.

P&Z ACTION:

The Planning & Zoning Commission heard this item on October 14, 2024, and voted unanimously (5-0) to recommend approval. Staff responded to questions about density by stating the maximum number of duplexes possible across all lots, if built in accordance with city regulations, would be five duplexes. Staff also confirmed with the Engineering Department that water and sewer infrastructure is adequate for the proposed development.

FINANCIAL:

No financial impact is associated with this item.

COUNCIL PRIORITIES: THIS AGENDA ITEM IS CONSISTENT WITH THE FOLLOWING CITY COUNCIL PRIORITIES

Not Applicable

CITY CONTACT: Juan Pollette, Interim City Planner
pollettej@nactx.us
 (936) 559-2559

ATTACHMENTS: 1. Ordinance

2. Location Map
3. Aerial Map
4. Zoning Map
5. Future Land Use Map
6. Notification Map
7. Response Form
8. Site Photos

ORDINANCE NO.

AN ORDINANCE OF THE CITY OF NACOGDOCHES, TEXAS, AMENDING THE BOUNDARIES OF A ZONING DISTRICT WITHIN THE CITY OF NACOGDOCHES FROM R-2, SINGLE-FAMILY TO R-3, TWO-FAMILY LEGALLY DESCRIBED APPROXIMATELY 1 ACRE OF LAND, BEING LOT(S) 6, 7, 8, 9, & 10, CITY BLOCK 47 AND LOTS 1 & 2 OF THE LARRY WADE SUBDIVISION, LOCATED AT 808 EAST LANE DRIVE AND 2924 HUNTER STREET, GENERALLY LOCATED ON THE NORTH SIDE OF POWERS STREET, APPROXIMATELY 350 FEET EAST OF THE RITCHIE STREET AND POWERS STREET INTERSECTION, LOCATED IN NACOGDOCHES, TEXAS; CONTAINING FINDINGS; PROVIDING A REPEAL CLAUSE; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Zoning Ordinance of the City of Nacogdoches allows the City Council to amend the official zoning map; and

WHEREAS, the property described above and depicted in “**Exhibit A**” is currently zoned R-2, Single-Family; and

WHEREAS, the property owner has requested the zoning classification of said property to be changed to R-3, Two-Family; and

WHEREAS, the City Council of the City has conducted, in the time and manner and after the notice required by law and the Zoning Ordinance of the City, a public hearing on such request for change in zoning classification; and

WHEREAS, the City Council now deems it appropriate to grant such a requested change in classification.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF NACOGDOCHES, TEXAS:

SECTION I

Findings.

The facts and matters set forth in the preamble of this Ordinance are hereby found to be true and correct, and same are deemed to be in furtherance of a public purpose.

SECTION II

Approval of Zoning Change

Pursuant to the requirements of Chapter 118 of the Code of Ordinances of the City of Nacogdoches, Texas, a change in Zoning Classification from R-2, Single-Family to R-3, R-3, Two-Family is hereby approved by the City Council.

SECTION III

Repeal

This Ordinance shall in no manner repeal, amend, change, supplement, or revise any provision of any ordinance of the City, save and except the granting change in Zoning Classification as herein provided.

SECTION IV

Effective Date

This Ordinance shall take effect following its passage and publication as may be required by governing law.

SECTION V

Severability

If any word, article, phrase, paragraph, sentence, clause, or provision of this Ordinance shall be adjudged by a court of competent jurisdiction to be invalid, the invalidity shall not affect other provisions or applications of this Ordinance which can be given effect without the invalid provision, and to this end, the provisions of this Ordinance are declared to be severable.

SECTION VI

Proper Notice and Open Meetings

It is hereby officially found and determined that the meeting at which this Ordinance was 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 of the Texas Government Code.

SECTION VII

Filing

The City Secretary is hereby authorized and instructed to file a signed and sealed copy of this Ordinance in and among the records of the City of Nacogdoches, Texas.

PASSED AND APPROVED, this the ____ day of November 2024, by a vote of ____ (ayes) to ____ (nays) of the City Council of the City of Nacogdoches, Texas.

CITY OF NACOGDOCHES

By: _____
RANDY JOHNSON, Mayor

ATTEST:

APPROVED AS TO FORM:

RHONDA LEWIS, City Secretary

JERRY BAKER, City Attorney

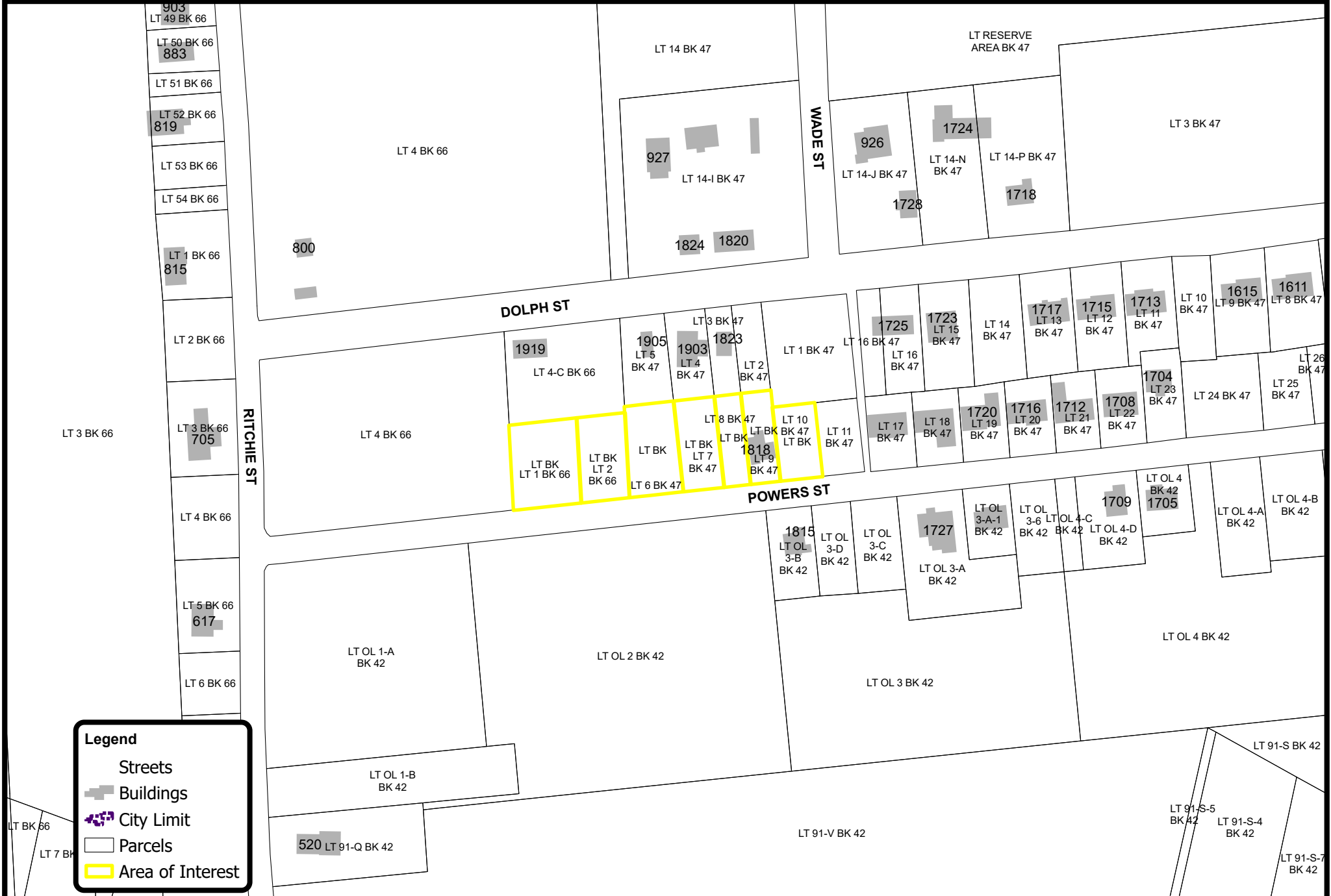
APPROVED AS TO CONTENT:

JUAN POLLETTE, Interim City Planner

EXHIBIT "A"



ZON2024-04 Location Map



A horizontal number line with a light blue background. It has five major tick marks labeled 0, 70, 140, 210, and 280 Feet. The line is black, and the labels are in a black serif font.

Date Created: 09/18/24 16:46 | Document Generated Automatically

Notice: This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries.

ZON2024-04 Aerial Map

This aerial map displays land parcels, streets, and buildings. The map includes a legend, scale bar, north arrow, and metadata.

Legend:

- Streets
- Buildings
- City Limit
- Parcels
- Area of Interest

Scale: 0 to 280 Feet

Date Created: 09/18/24 16:49 | Document Generated Automatically

Notice: This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries.

Nacogdoches Engineering Department

Page 288 of 441

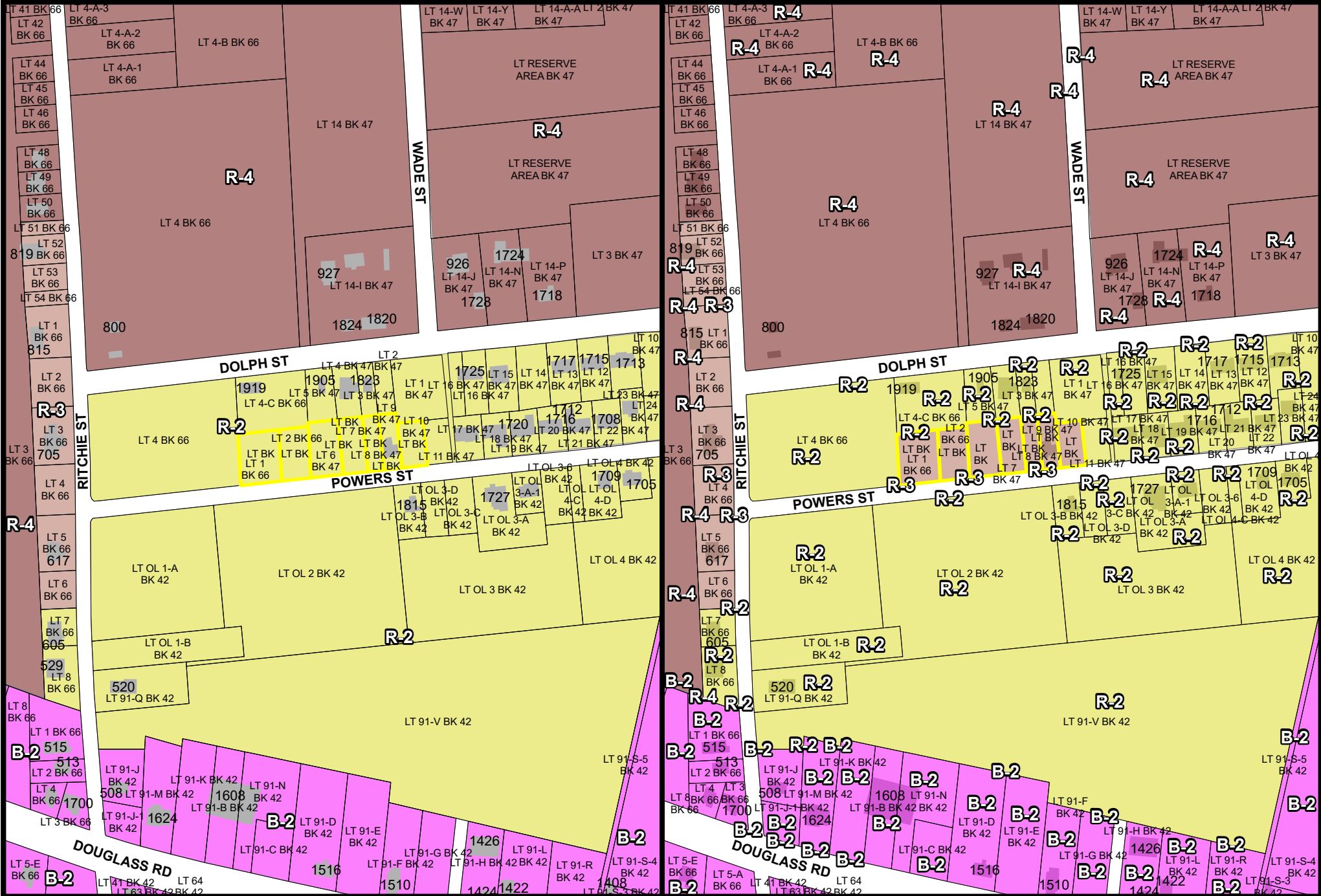
Nacogdoches
the oldest town in Texas

Engineering Department
GIS Division

Existing Zoning

ZON2024-04

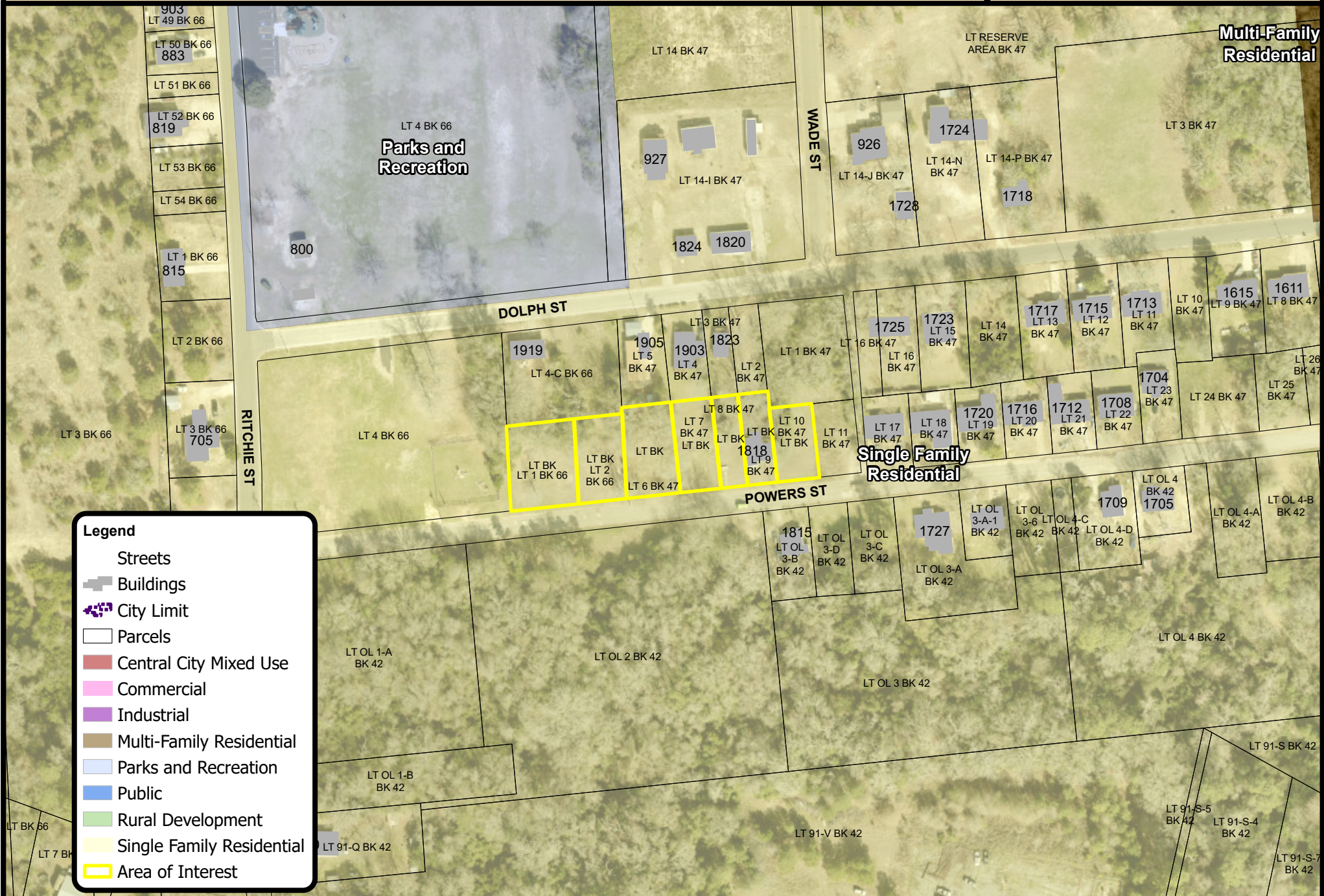
Proposed Zoning



Notice: This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries.

Nacogdoches
Engineering Department
City of Nacogdoches

ZON2024-04 Future Land Use Map



200 Foot Notification Map

Legend

 200 Foot Buffer

 Proposed Zone Change

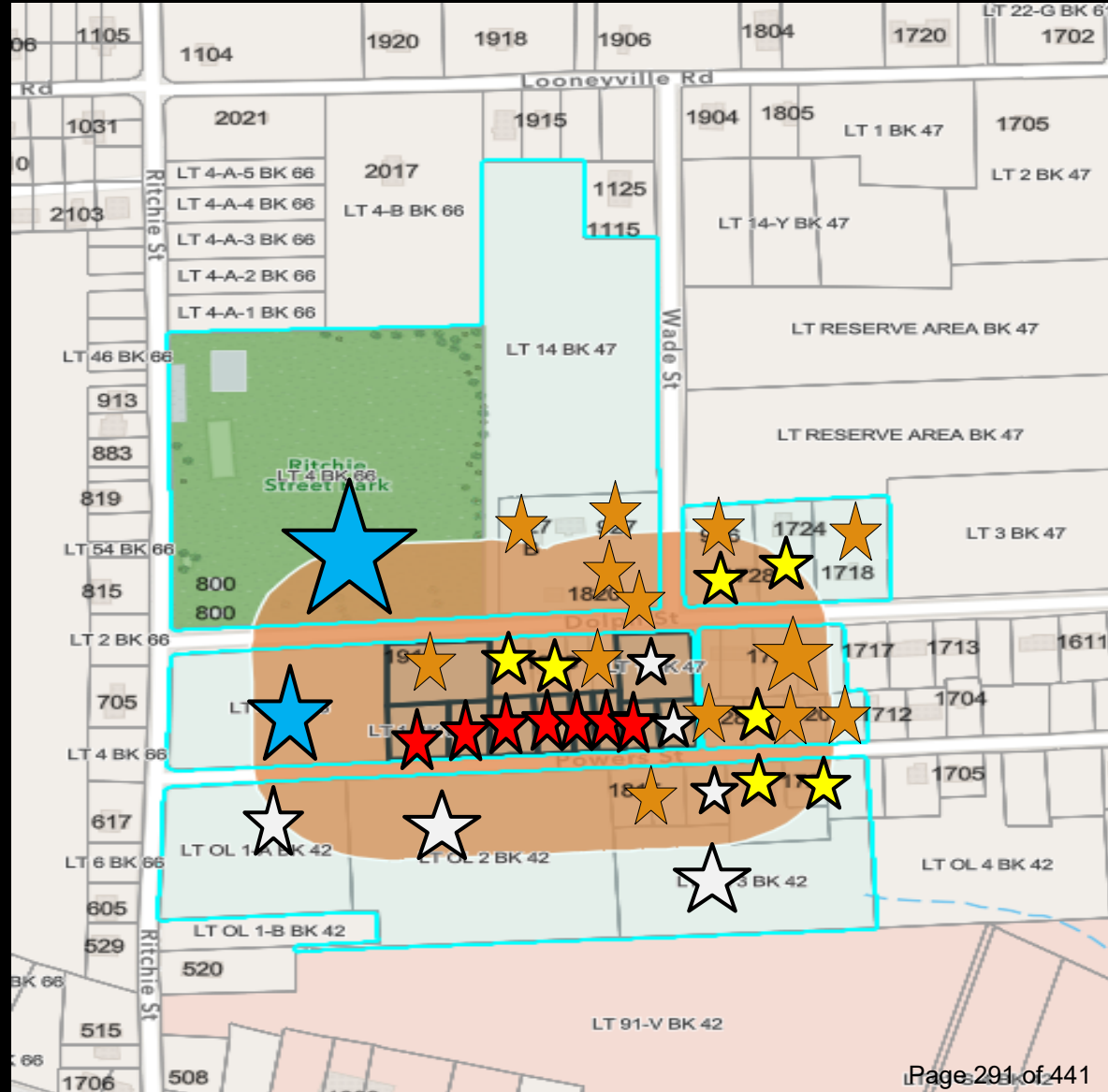
 Single-Family- Rental

 Single-Family-
Owner Occupied

 Vacant

 Park

ZON2024-04: Powers Street



Nacogdoches

the oldest town in Texas

Response Form

Project Number: ZON2024-04

1800 AND 1900 BLOCK OF POWERS ST.

You may make your views known by completing this form and returning it to the Planning & Zoning Department. You may also make your views known in person by attending the public hearings. **All response forms and written protests must be submitted no later than Monday, October 14, 2024, by 12:00 p.m. Protests and responses submitted after this deadline will not be accepted.**

Please complete and return the form to:

City of Nacogdoches Planning & Zoning Department

Attn: Aimee Cloutier

PO Drawer 635030

Nacogdoches, TX 75963

You may also email a copy to Aimee Cloutier at pz@nactx.us

Project Number: ZON2024-04

Please circle one:

☐ In favor of request

☒ Opposed to request

Comments: We STRONGLY OPPOSE approval of the requested zoning change from R2 to R3. We support the building of Single Family Residence for which these lots are zoned. The addition of many two-family units, in limited space and lot size will increase the number of people in an area for less population density and may exceed density ranges for number of proposed 2-Family units and onsite parking. Will there be impacts to water runoff, water/sewer infrastructure/demand? We feel any new development should fit/match the existing/surrounding Single Family homes within this community. We DO NOT support this zoning change of R2 to R3!

Signature:

Stacey D. Freeman

Printed Name:

Stacey D. Freeman

Street Address:

752 CR 508

City, State and Zip Code:

Nacogdoches, Texas 75961

Phone Number:

760 805 1668

Email Address:

doches04@yahoo.com

Physical Address of Property within 200 Feet:

1728 Powers Street, Nacogdoches TX 75961

City of Nacogdoches

202 E. Pilar – PO Drawer 635030 – Nacogdoches, TX 75963

936-559-2574 Fax 936-559-2910 www.nactx.us

Home of Stephen F. Austin State University www.sfasu.edu

Site Photos: ZON2024-04

View of subject property
from Powers St.





View of SFR's along Powers St.





Street view looking east
Along Powers St.

View of City Property on
corner of Powers and
Ritchie St.



Newly constructed
duplex's along Powers
and Dolph St.



PRESENTER: Mike Neu, Executive Director of Development and Infrastructure

ITEM/SUBJECT: Public Hearing: Consider amending the Code of Ordinances of the City of Nacogdoches, Texas, Chapter 78 – “Signs”, Article I. – “In General”, Article IV – “Permits”, and Article V. – “Regulations for On-Premises Signs by District”, to define feather-type signs and allow for further control of placement, maintenance, and the number of times these signs can be used throughout the year. (Executive Director of Development and Infrastructure)

SUMMARY/BACKGROUND: Staff may propose changes to local ordinances in response to Council direction, or to comport with current state or federal law, to address various needs within and around the municipality. On August 22, 2024, members of the Council and Planning and Zoning Commission held a workshop to discuss possible zoning ordinance updates.

During the workshop, Council requested proposed regulations for on-premises feather flags since these sign types are not currently defined by ordinance. Concerns included the deteriorating condition, placement in proximity to rights-of-way, and the number of signs on existing commercial properties. Staff also researched how surrounding cities regulate similar signage. Some jurisdictions allowed signs with specific exceptions, while others prohibited them entirely.

This agenda item includes proposed code amendments to allow for the enforcement of feather sign standards that specify limited uses, proper maintenance, and strategic placement. Code sections include:

- Sec. 78-1. Definitions
- Sec. 78-4. Signs prohibited
- Sec. 78-79. Permit Fees and Licenses
- Sec. 78-97. Signs permitted in R-3, R-4, and "A" zoning districts
- Sec. 78-98. Signs permitted in B-1, B-3, and “M” zoning districts

Planning & Zoning Commission. On October 21, 2024, the Commission recommended approval of the proposed amendments with the condition that feather signs also be permitted on apartment properties in R-4 zoning districts (see Sec. 78-97), since changes would permit feather signs on apartment properties in B-2, B-3, and M districts.

FINANCIAL:

No financial impact associated with this item

COUNCIL PRIORITIES: THIS AGENDA ITEM IS CONSISTENT WITH THE FOLLOWING CITY COUNCIL PRIORITIES

Not Applicable

CITY CONTACT: Mike Neu, Executive Director of Development & Infrastructure
neu@nactx.us
(936) 559-2522

ATTACHMENTS: 1. Redlined ordinance amendment

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF NACOGDOCHES, TEXAS, AMENDING CHAPTER 78 – “SIGNS”, ARTICLE I. – “IN GENERAL”, ARTICLE IV. – “PERMITS”, AND ARTICLE V – “REGULATIONS FOR ON-PREMISES SIGNS BY DISTRICT”, OF THE CODE OF ORDINANCES OF THE CITY OF NACOGDOCHES, TEXAS; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A CONTINUATION CLAUSE; PROVIDING A REPEAL CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

RECITALS:

WHEREAS, the City of Nacogdoches is authorized under Chapter 216 of the Texas Local Government Code to license, regulate, control, or prohibit the erection of signs or billboards within the corporate limits of the City of Nacogdoches by charter or ordinance; and

WHEREAS, the City Council of the City of Nacogdoches has adopted such ordinances to encourage aesthetically pleasing design of such signs consistent with the standards of the adopted comprehensive plan, and in order to establish uniform standards for the placement of such signs; and

WHEREAS, the objectives of the sign ordinances, as stated in Chapter 78 of the Code of Ordinances, are to balance the rights of individuals to convey their messages through signs and the right of the public to be protected from potential harm; promote the health, safety, welfare, convenience and enjoyment of the public; protect the public from damage or injury caused or attributable to distractions and destructions caused by improperly designed or located signs; protect and promote property values; promote community environmental setting and appearance, especially where scenic beauty is important; and to support the objectives of the individual zoning districts; and

WHEREAS, in order to further these objectives, the City Council has determined the need to amend certain portions of these Sign ordinances as set forth herein;

NOW, THEREFORE BE IT ORDAINED BY THE CITY OF NACOGDOCHES:

SECTION I

All above premises are hereby found to be true and correct legislative and factual findings.

SECTION II

CHAPTER 78 - SIGNS, ARTICLE I. - IN GENERAL, of the Code of Ordinances of the City of Nacogdoches, Texas, is hereby amended, as set hereafter to read as follows:

Sec. 78-1. Definitions.

All words used in the present tense shall include the future.

All words in the singular number include the plural number and all words in the plural number include the singular number.

The word “person” includes “corporation”, “co-partnership”, “association”, and “individual”.

The word “shall” is mandatory and not discretionary.

Terms not herein defined shall have the meaning assigned to them in the Building Codes of the City of Nacogdoches. Terms not defined herein or in the building codes shall have the customary meaning assigned to them.

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:

Abandoned sign means a sign which no longer identifies or advertises a bona fide business, lessor, service, owner, product, or activity, and/or for which no legal owner can be found.

Advertising means to convey information, to seek the attraction of or to direct the attention of the public to any location, event, person, activity, goods, services, or merchandise.

Authority having jurisdiction means knowledgeable and qualified employees of the city who have backgrounds which will enable them to understand easily and quickly the issues presented in relation to rendering of interpretations of this chapter. The authority having jurisdiction is responsible for reviewing sign applications, issuing sign permits, and accepting variance requests and is responsible in enforcing all aspects of this chapter.

Awning means a shelter projecting from and supported by the exterior wall of a building constructed of nonrigid materials on a supporting framework (compare “marquee”).

Awning sign means a sign painted on, printed on, or attached flat against the surface of an awning.

Balloon or inflatable signs mean any form of advertisement in the form of or attached to a balloon or other inflatable, inflated or floating device, which is larger than two feet in diameter.

Banner sign means a strip of durable fabric on which a sign is printed; paper or reinforced cardboard type signs are not considered banner signs.

Billboard. See “off-premises sign.”

Board of sign control and appeals. See section 78-33.

Building means any structure that encloses a space used for sheltering any occupancy. Each portion of a building separated from other portions by a fire-wall shall be considered as a separate building.

Building official means the officer or other designated authority or his duly authorized representative, charged with the administration and enforcement of the construction codes.
Cabinet means a sign component that houses the other components of a sign.

Changeable copy sign (automatic) means a sign on which the copy changes automatically on a lamp bank or through mechanical means, e.g., electrical or electronic time and temperature units.

Changeable copy sign (manual) means a sign on which copy is changed manually in the field, e.g., reader boards with changeable letters.

City-owned property means property owned or controlled by the City of Nacogdoches, Texas.

Clearance (of a sign) means the smallest vertical distance between the grade of the adjacent street or street curb and the lowest point of any sign, including framework and embellishments, extending over that grade.

Community support signs mean on-premise signs not consisting of a portable sign as defined by this chapter, which promote community spirit and support public or semi-public organizations; but do not advertise a commercial product or service or special event. Examples include, but are not limited to “Home of a Nacogdoches Dragon” signs or “SFA Game today” signs.

Construction sign means a temporary sign identifying an architect, contractor, subcontractor, and/or material supplier participating in construction on the property on which the sign is located.

Copy means the wording on a sign surface in either permanent or removable letter form.

Curbline means an imaginary line drawn along and parallel to the outermost part or back of the curb and gutter on either side of a public street; or, if there is no curb and gutter, along and parallel to the outermost portion of the paved street; or, if there is no paved street, along and parallel to the outermost edge of the traveled portion of the street.

Day means the portion of one calendar day from sunrise to sunset.

Directional/information sign means an on-premises sign giving directions, instructions, or facility information and which may not contain the name or logo of an establishment and which may contain no advertising copy, e.g., parking or exit and entrance signs.

District means any section of the city for which the regulations governing the use of land and the use, density, bulk, height, and coverage of buildings and other structures are uniform for each class or kind of building therein. Also see “zoning district.”

Double-faced sign means a sign with two faces.

Early voting period as defined in V.T.C.A., Election Code § 85.001.

Electioneering as defined in V.T.C.A., Election Code § 85.036.

Electrical sign means a sign or sign structure in which electrical wiring, connections, or fixtures are used.

Electronic message centers means a sign or portion of a sign, that displays an electronic image or video, which may or may not include text, including any sign or portion of a sign that uses changing lights or similar form of electronic display such as LED to form a sign message or messages with text and or images wherein the sequence of messages and the rate of change is electronically programmed and can be modified by electronic processes. This definition includes without limitation television screens, plasma screens, digital screens, flat screens, LED displays, video boards, and holographic displays.

Facade means the entire building front including the parapet.

Face of sign means the area of a sign on which the copy is placed.

Feather sign (aka tear drop) means a sign in a feather, flutter, square, teardrop and half drop shape usually self-supported or supported by a flexible pole(s) and firmly affixed to the ground.

Festoons means a string of ribbons, tinsel, small flags, or pinwheels.

Flag, corporate. The official flag of a company including logo flags.

Flag, spirit. School flags or flags that contain crests, pictures and such but contain no advertising.

Flashing sign means a sign which contains an intermittent or sequential flashing light source used primarily to attract attention, utilizing a lighting source such as an incandescent or fluorescent light bulb, LED or other source of illumination. The term does not include changeable copy signs, animated signs, or signs which, through reflection or other means, create an illusion of flashing of intermittent light (compare “animated sign” and “changeable copy sign”).

Freestanding sign means a sign supported upon the ground by poles or braces and not attached to any building.

Frontage means the length of the property line of any one premises along a public right-of-way on which it borders.

Frontage (building) means the length of an outside building wall on a public right-of-way.

Government sign means any temporary or permanent sign erected and maintained by the city, county, state, or federal government for traffic direction or for designation of or direction to any school, hospital, historical site, or public service, property, or facility.

Height (of a sign) means the vertical distance measured from the highest point of the sign, excluding decorative embellishments, to the grade of the adjacent street or the surface grade beneath the sign, whichever is less (compare “clearance”).

Holiday signs means temporary signs containing only holiday messages and no commercial advertising.

Home occupation means any occupation or activity conducted within a dwelling unit which is clearly incidental and subordinate to the use of the premises for dwelling purposes (see chapter 118, zoning).

Identification sign means a sign whose copy is limited to the name and address of a building, institution, or person and/or to the activity or occupation being identified.

Illegal sign means a sign which does not meet the requirements of this chapter and any applicable state laws or which has not received exempt status.

Illuminated sign means a sign with an artificial light source incorporated internally or externally for the purpose of illuminating the sign.

Incidental sign means a small sign, emblem, or decal informing the public of goods, facilities, or services available on the premises, e.g., a credit card sign or a sign indicating hours of business, and not exceeding two square feet. The term means any sign located within the confines of a project which is not legible from any public right-of-way.

LED means light emitting diode.

Lot means a parcel of land legally defined on a subdivision map recorded with the appraisal district, or a parcel of land defined by a legal record or survey map.

Low profile sign means a sign having a maximum height of 11 feet and a maximum sign area of 60 square feet or less.

Maintenance means the cleaning, painting, repair, or replacement of defective parts of a sign in a manner that does not alter the basic copy, design, or structure of the sign.

Mansard means a permanent roof-like structure or canopy of rigid materials supported by and extending from the facade of a building (compare “awning”).

Marquee means a permanent canopy, awning, or roof-like structure of rigid materials supported by and extending from the facade of a building. A marquee is considered to be part of the building.

Marquee sign means any sign attached to or supported by a marquee structure.

Nameplate means a nonelectric on-premises identification sign giving only the name, address, and/or occupation of an occupant or group of occupants.

Night means the portion of two calendar days from sunset to sunrise.

Nits means candela per meter square used as a measurement of brightness.

Occupancy means the portion of a building or premises owned, leased, rented, or otherwise occupied for a given use.

Office, retail, downtown, (B-1, B-2, B-3) means an identification of city zoning districts; refer to the zoning map for the location of districts.

Off-premises sign means a sign advertising an establishment, merchandise, service, or entertainment which is not sold, produced, manufactured, or furnished at the property on which the sign is located, e.g., billboards or outdoor advertising.

On-premises sign means a sign which pertains to the use of the premises on which it is located. Refer to chapter 118, zoning.

Owner means a person recorded as such on official records or the on-premises person in control of the premises. For the purposes of this chapter, the owner of property on which a sign is located is presumed to be the owner of the sign unless facts to the contrary are officially recorded or otherwise brought to the attention of the building official, e.g., a sign leased from a sign company.

Painted wall sign means any sign which is applied with paint or similar substance on the face of a wall.

Parapet means the extension of a false front or wall above a roofline.

Pennant means a triangular-shaped or other shaped ribbon or device which is greater than one inch in length and used either singularly or in groups on a line or pole for advertising purposes or for attracting the attention of the public.

Person means any individual, corporation, association, firm, partnership, or similarly defined interest.

Point of purchase display means advertising of a retail item accompanying its display, e.g., an advertisement on a product dispenser.

Pole covers means covers enclosing or decorating poles or other structural supports of a sign.

Pole banners mean banners located on private light standards and poles, not to exceed 24 total square feet per pole.

Political sign means a temporary sign used in connection with a local, state, or national election or referendum.

Portable sign means any sign designed or constructed to be easily moved from one location to another and not permanently affixed to the ground or to a structure or building, including signs mounted upon or designed to be mounted upon a trailer, bench, wheeled carrier, or other nonmotorized mobile structure. A portable sign which has its wheels removed shall still be considered a portable sign under this definition.

Premises means a tract of land with buildings or part of a building, with its appurtenances.

Prohibited area is the area within which V.T.C.A., Election Code § 85.036(a) prohibits electioneering during the time an early voting or voting place is open for the conduct of early voting or voting.

Projecting sign means a sign, other than a flat wall sign, which is attached to and projects from a building wall or other structure not specifically designed to support the sign.

Public property means property owned or controlled by a public entity.

Public right-of-way (public street) means that land dedicated for public use commonly as a street, roadway, alley, bridge, or thoroughfare, and most often extends the entire width between property lines of any roadway, street, alley, bridge, or other similar thoroughfare, not privately owned or controlled, when any part thereof is open to the public for vehicular traffic, is the responsibility of the city or other similar public agency to maintain, and over which the city has legislative jurisdiction under its police power.

Real estate sign means a temporary sign advertising the real estate upon which the sign is located as being for rent, lease, or sale.

Roof sign means any sign erected over or on the roof of a building (compare “wall signs”).

Roofline means the top edge of a roof or building parapet, whichever is higher, excluding any cupolas, pylons, chimneys, or minor projections.

Rotating sign means a sign in which the sign itself or any portion of the sign moves in a revolving or similar manner. Such motion does not refer to methods of changing copy.

Searchlight means an apparatus containing a strong light source and a reflector for projecting a bright beam of light, usually truck or trailer mounted.

Shopping center. See “strip center.”

Sign includes but is not limited to any device, structure, fixture, or placard using graphics, symbols, and/or written copy designed specifically for the purpose of advertising or identifying any person, persons, political party, event, establishment, product, goods, or services.

Sign, area of, means the area determined as follows:

- (1) *Projecting and freestanding signs.* The area of the sign shall be measured as follows:
 - a. If the sign is composed of one or two individual cabinets, the area around and enclosing the perimeter of each cabinet or module shall be summed and then totaled to determine total area. The perimeter of measurable area shall not include embellishments such as pole covers, framing, decorative roofing, etc., provided that there is not written advertising copy on such embellishments.
 - b. If the sign is composed of more than two sign cabinets or modules, the area enclosing the entire perimeter of all cabinets and/or modules within a single, continuous geometric figure shall be the area of the sign. Pole covers and other embellishments shall not be included in the area of measurement if they do not bear advertising copy.
 - c. Only one face of a double-faced sign will be used to figure the total square footage.
- (2) *Wall signs.* The area shall be within a single, continuous perimeter composed of any straight line geometric figure which encloses the extreme limits of the advertising message. If the sign is composed of individual letters or symbols using the wall as the background with no added decoration, the total sign area shall be calculated by measuring the area within the perimeter of each symbol or letter. The combined areas of the individual figures shall be considered the total sign area.

Snipe sign means a temporary sign or poster affixed to a tree, fence, etc. (such as a garage sale sign), less than four square feet.

Special event or public announcement signs mean a sign or notice posted to announce public information concerning special events, bazaars, rallies, or other similar activities. These special events, bazaars, rallies, or other similar activities must be sponsored by charitable, religious, philanthropic, educational or civic institutions.

State-maintained highway means any state-owned or state-maintained roadway within the city or its extraterritorial jurisdiction.

Strip center (shopping center) means a building plot developed or ultimately to be developed with three or more stores, shops, or commercial enterprises, and which has shared parking facilities or access.

Subdivision identification sign means a freestanding or wall sign identifying a recognized subdivision, condominium complex, or residential development.

Temporary changeable advertisement means a promotional placard such as, but not limited to signs between pumps at service stations. Such signs are constructed of cardboard, wallboard, plastic, or metal, not to exceed six square feet in size and not intended for long term use. A portable sign shall not be considered a temporary sign.

Under-canopy sign means a sign suspended beneath a canopy, ceiling, roof, or marquee.

Use means the purpose for which a building, lot, sign, or structure is intended, designed, occupied, or maintained.

Wall sign means a sign attached parallel to and extending not more than 12 inches from the wall of a building. This definition includes painted, individual letter, and cabinet signs, and signs on a mansard.

Window sign means a sign installed inside a window and intended to be viewed from the outside, made of wood, paper, paint, or vinyl and not illuminated.

Zoning district means A (agricultural-open space), R-1, R-2, (single-family residential), R-3, R-4 (multifamily residential), B-1, B-2, B-3 (commercial district), I (industrial), M (medical district), and PD (planned development). Also see “district.”

(Ord. No. 1361-4-05, 4-5-2005; Ord. No. 1463-8-07, 8-7-2007; Ord. No. 1649-10-13, § 2, 10-1-2013; Ord. No. 1662-3-14, § 2, 3-4-2014)

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

...

Sec. 78-4. Signs prohibited.

The following types of signs are prohibited in all districts:

- (1) Abandoned signs.
- (2) Banners, except allowed in sections 78-98 and 78-100.

- (3) Signs imitating or resembling official traffic or government signs or signals.
- (4) Snipe signs or signs attached to trees, utility poles, public benches, or streetlights.
- (5) Signs placed on vehicles or trailers which are parked or located for the primary purpose of displaying the sign. This does not apply to signs or lettering on buses, taxis, or vehicles operating during the normal course of business. Vehicles or trailers must have a current license and inspection. Also see section 78-77(6) for approval of motor vehicles.
- (6) Off-premises signs except as allowed in subsection (10)a and b of this section.
- (7) Portable and trailer signs.
- (8) Signs on public rights-of-way, as follows:
 - a. With the passage of the ordinance creating this chapter, it shall be unlawful to place a sign upon a public street, public sidewalk, public alley, public right-of-way, public curb or other public improvement in any public street or grounds, on any public bridge or part of same or utility pole, or on any public building or structure of any kind belonging to the city, or in any public place or on any public improvement unless express consent therefore shall have been first granted by the city manager. However, coin-operated devices used to display and vend newspapers may be so placed, so long as they are not placed to impede vehicular or pedestrian traffic. This subsection (8)a does not apply to public property leased for private business purposes.
 - b. Any unlawful sign found within a public right-of-way of a public street, public sidewalk, or public alley shall be seized and the removal thereof is authorized. The authority having jurisdiction, police officer and the department of inspection services are authorized to impound any unauthorized signs found on a public street, public sidewalk, or public alley and transport or cause the same to be transported to a location to be designated by the authority having jurisdiction for storage. The custodian of the storage area shall maintain records of where such signs were located when they were so impounded and the date on which they were so impounded and shall hold the signs in the storage area for a period of not more than 30 days. Any sign so held may be redeemed by the owner thereof upon the payment of a fee to the city through the custodian thereof for hauling the same to storage plus a per-day storage fee for each day the sign is stored. Such fees are on file in the city secretary's office and shall be in addition to and not in lieu of any fine imposed upon such owner for violation of this chapter.

- c. Signs permitted under subsection 78-77(23) are not prohibited by this section.
- (9) Balloon signs except as allowed in sections 78-98 through 78-100.
 - (10) Off-premises signs, both commercial and noncommercial, except on public property, where there has been a determination of the authority having jurisdiction that the display of the sign:
 - a. Promotes a positive image of the city for the attraction of business or tourism; and
 - b. Depicts an accomplishment of an individual or group.

Upon such determination, the city can authorize, upon approved construction plans, a sign to be located on city right-of-way. The sign shall be displayed for a period ordered by the authority having jurisdiction.
 - (11) Off-premises commercial signs and portable signs within the extraterritorial jurisdiction of the city.
 - (12) Signs painted on rooftops.
 - (13) Flashing signs.
 - (14) Any sign which emits sound, odor, or visible matter.
 - (15) Pennants and festoons except as allowed in sections 78-98 through 78-100.
 - (16) Searchlights.
 - (17) Temporary changeable advertisements except as allowed in sections 78-98 through 78-100.
 - (18) Pole banners except as allowed in sections 78-98 through 78-100.
 - (19) Feather signs except as allowed in sections 78-97 through 78-100.

(Ord. No. 1361-4-05, 4-5-2005; Ord. No. 1463-8-07, 8-7-2007; Ord. No. 1649-10-13, § 2, 10-1-2013; Ord. No. 1662-3-14, § 2, 3-4-2014)

...

CHAPTER 78 - SIGNS, ARTICLE IV. - PERMITS, of the Code of Ordinances of the City of Nacogdoches, Texas, is hereby amended, as set hereafter to read as follows:

Sec. 78-79. - Permit and license fees.

- (a) Sign permit fees shall be as follows, and all fees shall be continued in full force and effect as the same may be amended from time to time:

Banner signs \$10.00

Temporary changeable advertisements \$25.00

Pole banners \$25.00

Balloon or inflatable signs \$25.00

Pennants and festoons \$25.00

Feather signs \$25.00

- (b) All temporary portable sign permits will expire on December 31, 2007.
- (c) Fees for electronic message center permits will be determined by their valuation and corresponding fee in the current adopted building code.

(Ord. No. 1361-4-05, 4-5-2005; Ord. No. 1388-9-05, 10-1-2005; Ord. No. 1463-8-07, 8-7-2007)

...

CHAPTER 78 – SIGNS, ARTICLE V. - REGULATIONS FOR ON-PREMISES SIGNS BY DISTRICT, of the Code of Ordinances of the City of Nacogdoches, Texas, is hereby amended, as set hereafter to read as follows:

Sec. 78-97. - Signs permitted in R-3, R-4, and "A" zoning districts.

- (a) Signs are allowed as follows in R-3, R-4, and "A" zoning districts:
- (1) All signs as permitted in section 78-96.
 - (2) Two subdivision identification signs per neighborhood, subdivision, or development entrance not to exceed 60 square feet per sign in sign area if the entrance has a median. One entrance sign per neighborhood, subdivision, or development entrance not to exceed 60 square feet in sign area if the entrance does not have a median.
 - (3) One entrance identification sign per apartment complex, mobile home park, or condominium complex, not to exceed 60 square feet in sign area. A second entrance sign may be permitted where a second entrance to the complex is located on another street.

- (4) For permitted nonresidential uses, including churches and synagogues, one low-profile sign not to exceed 60 square feet in sign area, and one wall sign not to exceed 60 square feet in sign area.

(b) The following regulations apply to R-3 and R-4 zoning districts only:

- (1) All allowed low-profile signs shall have a maximum height limit of five feet and shall have a setback of 12 feet from any public right-of-way and are not to exceed one square foot in sign area for each linear foot of main street frontage to a maximum of 60 square feet.
- (2) No sign may be illuminated except subdivision, apartment, mobile home park, or condominium complex identification signs, or signs for churches and synagogues, which may utilize indirect lighting or internal lighting where the copy only uses translucent light. (See Ch. 34 Article VI. "Outdoor Lighting".)

(c) The following regulations apply only to multifamily (apartments) dwelling units located in R-4 zoning districts:

(1) Feather signs may be used, subject to the following regulations:

- a. Securely attached to the ground by an approved mounting system designed for its specific purpose and to ensure the safety of the sign and citizens.
- b. Shall not be so located in an area so as create a visual obstruction/traffic hazard to motorists. It may not be located on the public right of way.
- c. Maximum area of 20 square feet.
- d. Maximum height of 12 feet measured from ground to top of the sign.
- e. Shall be maintained in good repair, and should the sign become tattered or torn, it shall be replaced or removed.
- f. Shall not be illuminated.
- g. Spacing shall be no closer than fifty (50) feet between feather signs.
- h. Permits must be obtained before the placement of feather signs.
- i. Each permit will be valid for thirty (30) days.
- j. Each occupancy may obtain no more than (4) feather sign permits per year.

k. Shall not be located in the historic district-downtown historic district.

(Ord. No. 1361-4-05, 4-5-2005)

Sec. 78-98. Signs permitted in B-1, B-3, and "M" zoning districts.

Signs are allowed as follows in B-1, B-3, historic and "M" zoning districts:

- (1) All signs as permitted in sections 78-96 and 78-97.
- (2) For the historic district-downtown historic district, see article VI of this chapter.
- (3) One freestanding sign shall be allowed subject to the requirements set forth in table 2 in section 78-101.
- (4) Wall signage for each occupancy shall not exceed one and one-half square feet in sign area for each linear foot of that occupancy's building frontage on each street frontage up to a maximum of 300 square feet.
- (5) Where an occupancy is on a corner or has more than one street frontage, one additional freestanding sign will be allowed on the additional frontage, not to exceed the size allowed in section 78-101.
- (6) Strip centers and malls may place additional freestanding signs with a minimum 200 feet of separation on two acres or larger or have multiple signs on a single freestanding sign subject to the requirements set forth in table 1 in section 78-101.
- (7) Signage on freestanding gas station canopies shall not exceed 30 total square feet in area. The lettering and logo shall not be more than two feet in height. This signage shall not be computed in the number of allowable freestanding or wall signs.
- (8) On-premises banner signs and may be used only during business or activity opening, or special promotions, subject to the following:
 - a. Banners must be mounted on a building face. All four corners and at least three sides of the banner must be secured to the building.
 - b. Banners must be maintained in a good condition. Torn, frayed, or tattered banners must be removed.

- c. Each occupancy is allowed one banner per each building face that is visible from the right-of-way. There may be no more than one banner mounted on each building face at any given time.
- d. All banners must be placed at least 12 feet from the back of the curb, or property line, whichever is greater.
- e. Permits must be obtained before the placement of banners.
- f. Each occupancy may obtain eight banner permits per year, for a period of 30 days for each permit.
- g. The total area of banner signage allowed at each occupancy is based on table 1 below:

Table 1

Frontage (Feet)	Max Area (Square Feet)
0—100	25
101—200	50
201—300	75
301—400	100
401—500	125
501—600	150

- (9) Only one under-canopy sign per elevation not to exceed 40 percent of the total elevation area shall be allowed.
- (10) Awning signs not more than 30 percent of the surface area of the awning.
- (11) Temporary changeable advertisements may be used, subject to the following:
 - a. Permits must be obtained before the placement of temporary changeable advertisements
 - b. Each occupancy may display no more than one temporary changeable advertisement at the same time.
 - c. Each occupancy may obtain two temporary changeable advertisements per year, and each permit is valid for six months.
 - d. All temporary changeable advertisements must be at least 12 feet from the back of the curb or property line, whichever is greater.
 - e. All temporary changeable advertisements must be securely fastened to a permanent structure such as a building, a privately owned light pole, a gas

pump, etc. No signs may be attached to public utility poles or public street lights.

(12) Pole banners may be used, subject to the following regulations:

- a. Limited to not more than two pole banners on any pole.
- b. Limited to no more than 24 total square feet of banners per pole.
- c. Minimum height of 14 feet as measured from adjacent grade to the bottom of the pole banner.
- d. Maximum height of 20 feet to the top of the pole banner.
- e. Pole banners shall be maintained in good repair, should they become tattered or torn, they shall be replaced or removed.
- f. Pole banners shall not be illuminated, except for indirect lighting associated with the main lamp of the pole to which it is mounted.
- g. Pole banners shall be placed on privately owned poles within the interior of the property, and may not be placed on utility poles or street light poles.
- h. Spacing shall be no closer than 80 feet between pole banners.
- i. The number of banners shall not exceed one per 50 vehicle parking spaces.
- j. Such pole banners shall be allowed in addition to site signage otherwise allowed by this article.
- k. Permits must be obtained before the placement of pole banners.
- l. Permits must be obtained once a year or each time the pole banners are changed, whichever is sooner.
- m. Fees for pole banner permits shall be based on the overall pole banner package, not on a per-banner basis.
- n. The following types of pole banners shall be allowed:
 - i. Pole banners on perimeter of private property.
 - ii. Pole banners may be installed along the periphery within 12 feet of property lines fronting public or private streets.

- iii. Pole banners on the interior of the property.
 - iv. Pole banners within the interior of the parking lot, and may advertise products and services on the site.
- (13) Balloon or inflatable signs may be used, subject to the following regulations:
- a. The following specific types of balloon or inflatable signs are allowed to be permitted:
 - i. Lighter than air devices. Anchorage for devices of this type must be adequate to keep the device in the desired location with the anchorage device remaining stationary.
 - ii. Air filled devices. No device of this type may be filled with any explosive or flammable gas.
 - iii. Air powered devices. This type of device must be located in a place so as to not interfere with any vehicles or pedestrians or enter onto public or other private property if the air supply fails.
 - b. The following regulations apply to all such balloon or inflatable signs:
 - i. No device shall be tethered or anchored in or on public right-of-way.
 - ii. No device shall be tethered or anchored so that it may blow into or onto a public right-of-way.
 - iii. No device shall be placed closer than 12 feet from the back of the curb, or property line, whichever is greater.
 - iv. No device shall be placed on public property without the written consent of the governing agency.
 - v. The tethering or anchorage shall be such that if part of the tethering or anchorage becomes unattached, the remaining anchorage or tethering will prevent the device from interfering with vehicles or pedestrians or enter onto public or private property.
 - vi. No device shall be located so that it interferes with or removes the use of the required parking of an occupancy.
 - vii. The device shall be displayed for no more than 18 consecutive hours in any 24-hour period and for no more than ten consecutive days.

- c. Permits must be obtained prior to the placement of balloon or inflatable signs.
- d. Each occupancy may obtain one balloon or inflatable sign permit per year.
- e. Each permit will be valid for ten days.

(14) Pennants and festoons may be used, subject to the following regulations:

- a. Pennants and festoons may only be strung from buildings or privately owned poles.
- b. No devices may be strung from poles located on the public right-of-way.
- c. No such devices may be nearer to the ground than 14 feet.
- d. No such devices may be attached to any temporary pole or structure.
- e. Any device missing ten percent or more of the flags, by the determination of the authority having jurisdiction, must be removed or replaced.
- f. All pennants and festoons must be permitted prior to their placement.
- g. Permits must be obtained once per year for each occupancy or each time new pennants or festoons are installed, whichever is sooner.
- h. Fees for pennant and festoon permits shall be based on the overall pennant and/or festoon package, not on a per pennant and/or festoon basis.

(15) Feather signs, subject to the regulations stated in section 78-97(c).

(Ord. No. 1361-4-05, 4-5-2005; Ord. No. 1587-2-12, 2-7-2012)

SECTION III

Severability. If any word, article, phrase, paragraph, sentence, clause, or provision of this Ordinance shall be held to be invalid or unconstitutional, such holding shall in no way affect other provisions or applications of this Ordinance which can be given effect without the invalid provision, and to this end provisions of this Ordinance are declared to be severable.

SECTION IV

Continuation. All provisions of Chapter 78 of the Code of Ordinances existing prior to the date of passage of this Ordinance remain in full force and effect.

SECTION V

Repeal. This Ordinance shall be and is hereby declared to be cumulative of all other ordinances of the City of Nacogdoches, and this Ordinance shall not operate to repeal or affect any such other ordinances except insofar as the provisions thereof might be inconsistent or in conflict with provisions of this Ordinance, in which such conflicting provisions, if any, in such other ordinance or ordinances are hereby repealed.

SECTION VI

Effective Date. This Ordinance shall take effect ten (10) days from its passage and publication as may be required by governing law.

SECTION VII

Proper Notice & Open Meeting. It is hereby officially found and determined the meeting at which this Ordinance was passed was open to the public as required and public notice of time, place, and purpose of said meeting was given as required by the Open Meetings Act, Chapter 551 of the Texas Government Code.

SECTION VIII

Official Public Records. The City Secretary is hereby authorized and instructed to file a signed and sealed copy of this Ordinance in and among the records of the City of Nacogdoches.

PASSED AND APPROVED this the ____ day of _____, 2024, by a vote of ____ (ayes) to ____ (nays) of the City Council of the City of Nacogdoches.

ATTEST:

CITY OF NACOGDOCHES

Rhonda Lewis, City Secretary

BY: _____
Randy Johnson, Mayor

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:

Jerry Baker, City Attorney

Juan Pollette, Interim City Planner

PRESENTER: Mike Neu, Executive Director of Development and Infrastructure

ITEM/SUBJECT: Public Hearing: Consider amending the Code of Ordinances of the City of Nacogdoches, Texas, including Chapter 46 – “Health and Sanitation”, Article III. – “Smoking Pollution Control”, and Chapter 118 – “Zoning”, Article I – “In General”, Article III. – “District Regulations”, and Article IV. – “Supplementary District Regulations” to allow for additional clarification and requirements for tobacco and vape stores in the city of Nacogdoches. (Executive Director of Development and Infrastructure)

SUMMARY/BACKGROUND: Staff may propose changes to local ordinances in response to Council direction, or to comport with current state or federal law, to address various needs within and around the municipality. On August 22, 2024, members of the Council and Planning and Zoning Commission held a workshop to discuss possible zoning ordinance updates.

During the workshop, Council requested proposed zoning regulations for retail tobacco/vapor/smoke stores with concerns focused on minimizing their proximity to certain other buildings where public health interests are especially sensitive, including schools, hospitals, churches, and childcare facilities. According to the Texas Department of State Health Services, vaping reached epidemic status among teens in 2018, only about a decade after the devices hit the market. Some teens developed severe lung illness after vaping for a short time, while others have suffered burns, seizures and the effects of nicotine addiction. Currently, an individual in Texas must be at least 21 years old to legally buy or own tobacco products, including e-cigarettes or vape devices.

This agenda item includes proposed code amendments to allow for retail tobacco/vapor/smoke stores by right in certain zoning districts and by Special Use Permit (SUP) in other zoning districts. Changes also would prohibit the establishment of new retail tobacco/vapor/smoke stores within 1,000 feet of schools, hospitals, churches, childcare facilities, and other retail tobacco/vapor/smoke stores. Code sections include:

- Sec. 46-101. Definitions
- Sec. 46-106. Where smoking not regulated
- Sec. 118-1. Definitions
- Sec. 118-273. Land use schedule
- Sec. 118-326. Retail tobacco/vapor/smoke store

Note: Retail tobacco/vapor/smoke stores currently permitted and operating within the city limits of Nacogdoches would not be affected by these proposed changes.

Planning & Zoning Commission. On October 21, 2024, the Commission recommended approval of the proposed amendments.

FINANCIAL:

No financial impact associated with this item

COUNCIL PRIORITIES: THIS AGENDA ITEM IS CONSISTENT WITH THE FOLLOWING CITY COUNCIL PRIORITIES

Not Applicable

CITY CONTACT: Mike Neu, Executive Director of Development & Infrastructure
neu@nactx.us
(936) 559-2522

ATTACHMENTS:

1. Redlined ordinance amendments
2. Comparison of other ordinances
3. Location map

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF NACOGDOCHES, TEXAS, AMENDING CHAPTER 46 – “HEALTH AND SANITATION”, ARTICLE III. – “SMOKING POLLUTION CONTROL”, AND CHAPTER 118 – “ZONING”, ARTICLE I – “IN GENERAL”, ARTICLE III. – “DISTRICT REGULATIONS”, AND ARTICLE IV. – “SUPPLEMENTARY DISTRICT REGULATIONS”, OF THE CODE OF ORDINANCES OF THE CITY OF NACOGDOCHES, TEXAS; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A CONTINUATION CLAUSE; PROVIDING A REPEAL CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

RECITALS:

WHEREAS, the City of Nacogdoches is authorized under Article II, §22 its Charter to promulgate regulations for health and sanitation; and

WHEREAS, the City of Nacogdoches is further authorized under Chapter 211 of the Texas Local Government Code to adopt zoning regulations for the purpose of promoting the public health, safety, morals, or general welfare, and protecting and preserving places and areas of historical, cultural, or architectural significance; and

WHEREAS, the City Council of the City of Nacogdoches has adopted ordinances for the purpose of promoting health, safety, and the general welfare of the City, with reasonable consideration of the character of each zoning district, its suitability for particular uses, and with a view of conserving the value of buildings and encouraging the most appropriate use of land throughout the City; and

WHEREAS, the City Council of the City of Nacogdoches has also adopted ordinances in order to promote public health by decreasing exposure to secondhand smoke and creating smoke-free environments; and

WHEREAS, in order to further these objectives, the City Council has determined the need to amend certain portions of these ordinances as set forth herein;

NOW, THEREFORE BE IT ORDAINED BY THE CITY OF NACOGDOCHES:

SECTION I

All above premises are hereby found to be true and correct legislative and factual findings.

SECTION II

CHAPTER 46 – “HEALTH AND SANITATION”, ARTICLE III – “SMOKING POLLUTION CONTROL” of the Code of Ordinances of the City of Nacogdoches, Texas, is hereby amended, as set hereafter to read as follows:

Sec. 46-101. Definitions.

The words, terms, and phrases used in this article shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning. Terms not defined herein shall have the meaning assigned to them in the City of Nacogdoches Building and Zoning Codes and Ordinances.

Business means any sole proprietorship, partnership, joint venture, corporation, or other business entity formed for nonprofit or profit-making purposes, including retail establishments where goods or services are sold as well as professional corporations and other entities where legal, medical, dental, engineering, architectural, or other professional services are delivered.

Electronic smoking device. Any electronic oral device, such as one composed of a heating element, battery, and/or electronic circuit, which provides a vapor of nicotine or any other substances, and the use or inhalation of which simulates smoking. The term shall include any such device, whether manufactured, distributed, marketed, or sold as an electronic cigarette, electronic cigar, electronic pipe, or electronic cigarillo, electronic hookah or under any other product name or descriptor.

Employee means any person who is employed by any employer in the consideration for direct or indirect monetary wages or profit, and any person who volunteers his or her services for a nonprofit entity.

Employer means any person, partnership, corporation, including a municipal corporation, or nonprofit entity who employs the services of one or more individual persons.

Enclosed area means all space between a floor and ceiling which is enclosed on all sides by solid walls or windows (exclusive of door or passageways) which extend from the floor to the ceiling, including all space therein screened by partitions which do not extend to the ceiling or are not solid, office landscaping, or similar structures.

Fraternal organization means a nonprofit organization that:

- a. Is chartered by a national organization;
- b. Is tax exempt under section 501(C)(8), (10), or (19) of the Internal Revenue Code;
- c. Operates under a lodge system with a representative form of government; and is organized for the exclusive benefit of the members of the organization and their dependents.

Night club or dance hall means an establishment operated as a place of entertainment, characterized by any of the following as a principal use of the establishment:

- a. Live, recorded or televised entertainment, including, but not limited to performances by magicians, musicians or comedians;
- b. Dancing; or
- c. Any combination of a. and b.

Outdoor venue means city property where seating is provided for spectators by city or its agents.

Place of employment means any enclosed area under the control of a public or private employer which employees normally frequent during the course of employment, including but not limited to work areas, employee lounges and restrooms, conference and classrooms, employee cafeterias, and hallways. A private residence used as a permissible home occupation is not considered a place of employment for the purposes of this article unless it is used as a child care, bed and breakfast or health care facility.

Private residence means any household unit or special unit type including but not limited to single-family detached and attached dwellings, two-family dwellings, apartments, condominiums, manufactured homes, or other residential dwelling units.

Private club where liquor by the drink is served means any establishment that serves liquor by the drink for on premises consumption. This shall include all porch, patio, and outside areas prohibiting unobstructed public access.

Public place means any enclosed area to which the public is invited or in which the public is allowed, including but not limited to banks, educational facilities, health facilities, laundromats, public transportation facilities, reception areas, restaurants, retail food production and marketing establishments, tattoo parlors, retail service establishments, retail stores, theaters, and waiting rooms. A private residence is not a "public place."

Restaurant means any coffee shop, cafeteria, sandwich stand, private or public school cafeteria, and any other eating establishment which gives or offers for sale food to the public, guests, or employees, as well as kitchens in which food is prepared on the premises for serving elsewhere, including catering facilities. This shall include all porch, patio and outside seating areas.

~~*Retail electronic smoking device store* means a retail store utilized primarily for the sale of electronic smoking devices and accessories and in which the sale of other products is merely incidental.~~

Retail tobacco/vapor/smoke store means a retail store utilized primarily for the sale of: (1) any organic or synthetic products intended, designed, or marketed for the purpose of smoking, including tobacco, plants, herbs, or similar substances; tobacco products (2) electronic smoking devices; and/or (3) any and paraphernalia, equipment, or accessories intended, designed, or marketed for the purpose of smoking. Grocery stores, department stores, or convenience stores in which the sale of tobacco/vapor/smoke products, paraphernalia, and accessories are ancillary sales are not included in this definition. and in which the sale of other products is merely incidental.

Service line means any indoor line at which one or more persons are waiting for or receiving service of any kind, whether or not such service involves the exchange of money.

Smoking means inhaling, exhaling, or burning of any organic or synthetic products, including tobacco product, plants, herbs, or similar substances in any manner or any form. This term "Smoking" also includes the use of an electronic smoking device which creates a vapor, in any manner or in any form, or the use of any oral smoking device for

the purpose of circumventing the prohibition of smoking in this chapter, including, but not limited to, pipes, bongs, hookahs, and similar devices for holding burning material.

Sports arena means sports pavilions, gymnasiums, health spas, boxing arenas, swimming pools, roller and ice rinks, bowling alleys, and other similar places where members of the general public assemble either to engage in physical exercise, participate in athletic competition, or witness sports events.

(Ord. No. 1489-4-08, 4-15-2008; Ord. No. 1793-03-19 , § II, 3-5-2019)

...

Sec. 46-106. Where smoking not regulated.

(a) Notwithstanding any other provision of this article to the contrary, the following areas shall not be subject to the smoking restrictions of this article:

(1) Private residences, except when used as childcare or health care facilities;

(2) A facility operated by a fraternal organization for a charitable, benevolent, or educational function if the premises are controlled by the organization;

(3) Retail tobacco/vapor/smoke store utilized primarily for the sale of tobacco products and accessories and in which the sale of other products is merely incidental;

~~(4) Retail electronic smoking device store utilized primarily for the sale of electronic smoking devices and accessories and in which the sale of other products is merely incidental.~~

~~(5)~~(4) A hotel, motel or bed and breakfast room designated as a smoking room and rented to a person, provided the hotel, motel or bed and breakfast may not designate more than 25 percent of its rooms that are rented for temporary overnight occupation by the public as a smoking rooms;

~~(6)~~(5) A private or semi-private room in a nursing home or long-term care facility that is occupied by individuals who smoke and have requested in writing to be placed in a room where smoking is permitted.

(b) Notwithstanding any other provision of this section, any owner, operator, manager, or other person who controls any establishment described in this section may declare the entire establishment as a nonsmoking establishment.

(Ord. No. 1489-4-08, 4-15-2008; Ord. No. 1793-03-19, § III, 3-5-2019)

...

CHAPTER 118 – “ZONING”, ARTICLE I – “IN GENERAL” of the Code of Ordinances of the City of Nacogdoches, Texas, is hereby amended, as set hereafter to read as follows:

Sec. 118-1. Definitions.

(a) *Word interpretations.* Interpretations of certain words used in this chapter shall be as follows:

- (1) All words used in the present tense shall include the future.
- (2) All words in the singular number include the plural number, and all words in the plural number include the singular number.
- (3) The term "structure" includes the word "building," and the term "dwelling" includes the terms "residence" and "place of habitation."
- (4) The term "person" includes corporation, copartnership, association, and individual.
- (5) The term "shall" is mandatory and not discretionary.

(b) *Undefined terms.* Terms not defined in this section shall have the meanings assigned to them in the city building codes. Terms not defined in this section or in the building codes shall have the customary meaning assigned to them.

(c) *Words and terms defined.* The definitions in this subsection supplement, restrict, and define the meaning and intent of the use regulations as set forth in this chapter. The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:

Accessory apartment means an accessory dwelling for the use and occupancy by any person employed on the premises on a full-time basis for domestic or medical help or family members to the second degree of consanguinity and affinity. Such dwelling shall not have separate utility services or meters. This may also include an accessory dwelling located in a commercial or industrial district for the use of any person employed by the business or property owner to provide management, maintenance or security for the property.

Accessory use means a structure or use that:

- (1) Is clearly incidental to and customarily found in connection with a principal building or use.
- (2) Is subordinate to and serves a principal building or a principal use; is subordinate in area, extent, or purpose to the principal building or principal use served.
- (3) Is located on the same lot as the principal building or use served.

Accessory use (residential) means a subordinate use which is detached from the main building and used for purposes customarily incidental to the residential occupancy of the main building and not involving the conduct of a business or the sale of a service.

Accessory buildings include but are not limited to an automobile storage garage, laundry room, garden shelter, hobby room and mechanical room.

Airport or landing field means a landing facility for fixed wing aircraft containing a minimum of 60 acres.

All-weather surface means a hard smooth paved surface of either hot-mixed asphaltic concrete (HMAC) or Portland cement concrete (PCC) and the appropriate base material, meeting the following minimum specifications:

(1) Hot-mixed asphaltic concrete:

- a. Surface: 1.5 inches of type D or type C material.
- b. Base: six inches of compacted iron ore gravel or the equivalent flexible base, or four inches of compacted hot sand asphaltic base.

(2) Portland cement concrete:

- a. Surface: five inches of class A, 3,000 psi concrete, reinforced with WWF 6 × 6, W 2.9 - 2.9.
- b. Base: four inches of compacted granular material.

Material shall conform to city and state department of transportation specifications. Other possible types of paved surfaces will be considered on a case-by-case basis by the city's planning and engineering departments.

Amusement, commercial (indoor) means an amusement enterprise wholly enclosed in a building, including but not limited to a bowling alley, bingo parlor or amusement arcade, but not including a billiard parlor or pool hall.

Amusement, commercial (outdoor) means any amusement enterprise offering entertainment or games of skill to the general public for a fee or charge wherein any portion of the activity takes place in the open, including but not limited to a golf driving range, archery range, and miniature golf course.

Animal hospital or clinic means a facility for the treatment or care of domestic animals, which includes a veterinarian's office, and may include overnight stays, but does not include outside pens.

Animal pound. See *Animal hospital or clinic* with outside pens.

Antique shop means an establishment offering for sale articles such as glass, china, furniture or similar furnishing and decorations which have value and significance as result of age, design or sentiment; and when all such items displayed or offered for sale are housed within a building and there is no exterior display except the usual sign or advertising.

Apartment means a dwelling unit in a multiple-family dwelling or apartment house arranged, designed or occupied as a place of residence by a single family. See *Multifamily; (apartments)*.

Area of lot means the square-foot area of a lot within the bounding property lines and exclusive of dedicated streets or alleys.

Artificial lot means an area within a platted lot, for the purpose of satisfying the requirements of this chapter, that is delineated on the building site plan and the landscape plan and approved by the city planner.

Arts school or studio means a school for instruction and practice of the performing, visual or martial arts.

Banks and financial institutions means activities and institutions for the extension of credit and the custody, loan or exchange of money.

Bed and breakfast establishment means a private single-family residence in which lodging for one or more nights and breakfast is provided by the resident owner for compensation.

Billiard parlor or pool hall means a facility for the playing of billiards and pool. Food service may be allowed as an ancillary use.

Block means an area enclosed by streets, or if such word is used as a term of measurement, it shall mean the distance along a side of a street between two intersecting streets, or if the street is of a dead-end type, a block shall be considered to be measured between the nearest street and the end of such dead-end street.

Board means the board of adjustment as provided for in division 3 of article II of this chapter.

Boardinghouse or roominghouse means a building, other than a hotel or multiple-family dwelling, where lodging is provided for five or more persons for compensation, where meals may or may not be served and where facilities for food preparation are not provided in the individual rooms. Where meals are served, they shall be served only to the residents of the boardinghouse.

Building means any structure designed, built or intended for the shelter or enclosure of persons, animals, chattels or movable property of any kind or for an accessory use. When separated by an absolute fire separation, each portion of such structure so separated shall be deemed a separate building. This definition includes structures wholly or partly enclosed with an exterior wall.

Building line means a line established, in general, parallel to the front property line, over which no part of a building shall project, except as otherwise provided in this chapter.

Building and landscape materials and lumber sales (outside sales) means a facility for the sale of home, lawn and garden supplies and construction materials such as brick, lumber and other similar materials. The facility may include outside sales.

Cabinet and woodwork shop (custom) means a shop for the repair or creation of individual items of furniture and wooden home furnishings on a custom basis, not a factory, planing mill or similar woodworking plant.

Carnival or circus (temporary) means a temporary traveling show or exhibition usually housed in tents, and which has no permanent structure or installation.

Carwash means a facility or area for the cleaning or steam cleaning, washing, polishing or waxing of passenger vehicles by machine or hand-operated facilities. A carwash may

be a single unit, multiple single washing units, or a tunnel type which can wash several vehicles in tandem.

Cemetery means a land use intended to be used for the burial of the dead and dedicated for cemetery purposes, including columbariums, crematories, mausoleums, and mortuaries when operated in conjunction with and within the boundaries of such cemetery.

Chemical and allied products includes the manufacturing of industrial inorganic and organic chemicals, plastics materials, and synthetic resins, synthetic rubber, synthetic and other manmade fibers; drugs; soap, detergents, cleaning preparations, perfumes, and other toilet preparations; paints, varnishes, lacquers, enamels, and allied products; gum and wood products; agricultural chemicals; and other chemical and allied products.

Church or place of worship means a facility or area for people to gather together for public worship, religious training, or other religious activities including a temple, mosque, synagogue or other structure, together with its customary accessory structures and uses, including a parsonage or rectory. This does not include home meetings or other religious activities conducted in a privately occupied residence.

City council means the official governing body of the City of Nacogdoches.

Club, private means a clubroom or suite of rooms or a building available to restricted membership for meetings, dining and entertainment. Such facilities may include a private tennis court, swimming pool or similar recreation facilities, none of which are available to the general public.

College or university means an institution of higher learning beyond the level of a secondary school.

Community center (private) means:

- (1) A building or group of rooms designed and used as an integral part of a residential or apartment project by the tenants of such a project for a place of meeting, recreation or social activity and under the management and unified control of the operators of the project.
- (2) A private nonprofit community center operated as a boys' or girls' club or similar use. A private community center shall not be operated as a place of public meetings, or as a business.

Community center (public) means a building and grounds owned and operated by a governmental body for the social, recreational, health or welfare of the surrounding community.

Convenience store means any retail establishment offering for sale prepackaged food products, household items, and other goods commonly associated with such and having a gross floor area of less than 7,500 square feet.

Convent or monastery means the living quarters or dwelling units for a religious order or for the congregation of persons under religious vows.

Contractor or maintenance yard means an open storage yard for supplies and operational equipment, including buildings, but not constituting a junkyard, wrecking yard or salvage yard.

Country club (private membership) means an area of 20 acres or more containing a golf course and a clubhouse and available only to a private specific membership. Such a club may contain as adjunct facilities a private club and dining room, swimming pool, tennis courts and similar recreation facilities.

Coverage means the percent of a lot area which is covered by a roof, floor or other structure and is not open to the sky. Roof eaves to the extent of two feet, and ordinary projections from the building not exceeding 12 inches, shall not be counted in computing coverage.

Custom sewing and millinery means custom making of items of apparel and millinery, by a seamstress, but not involving a factory.

Day care means a facility or area used regularly to provide daytime care, training, education, custody, treatment or supervision to more than four children, adults or elderly in other than a family setting for less than 24 hours a day, whether for compensation or not. This definition includes preschools, private kindergartens, nurseries and other similar uses not listed elsewhere in this chapter.

Density means as follows:

- (1) *Residential density* means the relationship of dwelling units or rooms to the area of the lot or tract upon which a residential structure is located or erected, and is expressed in "units per acre."
- (2) *Nonresidential density* means the ratio of the area of the building to the area of the site. See *Floor area ratio (FAR)*.

Dwelling unit means a building or portion of a building which is arranged, occupied or intended to be occupied as a single living quarters and includes facilities for food preparation and sleeping.

Eating place with drive-in or curb service means an establishment offering food for sale to customers in automobiles and wherein the food for sale is to customers in automobiles and wherein the food service is to the automobile.

Eating place without drive-in or curb service means any eating establishment, cafeteria, restaurant or inn where food service is offered to the customers not in automobiles.

Emergency ambulance service means a facility for the operation and dispatch of emergency medical vehicles. Typically this operation is ancillary to a hospital or a fire station, but it may also be a primary use on a property.

Escort agency means a person or business association that furnishes, offers to furnish or advertises to furnish escorts as one of its primary business purposes for fee, tip or other consideration.

Fabricated metal products includes the manufacturing of ordnance and accessories; machinery, equipment and supplies; transportation equipment; and other fabricated metal products.

Fairground means a specific facility that hosts special indoor and outdoor events including exhibits or competitions of agricultural products, livestock, machinery, etc.; a large exhibition or show of products from various countries; an exhibition or sale of fancywork or other items for the benefit of some cause; or a gathering of buyers or sellers of some product or service.

Family means any number of individuals living together as a single housekeeping unit, in which not more than two individuals are unrelated by blood, marriage or adoption.

Family home and *family group home* means a community-based residential home licensed by the state department of mental health and mental retardation providing food and shelter, personal guidance, care, rehabilitation services, or supervision. Family homes shall have a maximum of six clients plus two staff members residing in a house. Family group homes shall have a minimum of seven and a maximum of 15 clients plus staff residing in a house.

Farm, ranch, garden or orchard means an area of three acres or more which is used for growing of usual farm products, vegetables, fruits, trees and grain for the raising thereon of the usual farm poultry and farm animals such as horses, cattle and sheep, including a private stable and also including the necessary accessory uses for raising, treating, and storing products raised on the premises, but not including the commercial feeding of offal or garbage to swine or other animals and not including any type of agriculture or husbandry specifically prohibited by city ordinance or law.

Farmers' market means the retail sale of farm products by individual vendors either within a building or outside. Items sold may include fruits, vegetables, herbs, spices, edible seeds, nuts, live plants, flowers and honey. The sale of new and used household goods, personal effects, tools, artwork, small household appliances and similar merchandise are not included.

Feed store, retail (livestock, no mill) means an establishment for the sale of grain, prepared feed and forage for pets, livestock and fowl, but not involving the grinding, mixing or commercial compounding of such items.

Flea market means a building or open area in which stalls or sales areas are set aside and rented, or otherwise provided, and which are intended for the sale of articles that are either homemade, homegrown, hand-crafted, old, obsolete, or antique and may include the retail selling of goods by businesses or individuals who are generally engaged in retail trade. This does not include garage sales.

Floor area means the total square-foot area of all floors in the building measured to the outside faces of exterior walls or to the line of an omitted wall, whichever includes the largest area.

Floor area ratio (FAR) means the ratio between the total square feet of floor area in the building to the total square feet of land in the lot or tract; e.g., "2:1" means that the building contains twice the amount of area as there is in the lot.

Foster home means a facility or area providing full-time parental care for six or more unrelated minor children for which compensation or fee is received in return for such services. This must comply with statutory licensing requirements.

Fraternity/sorority house means any building occupied and maintained by a social association of college students, or where organization-sponsored functions are regularly held.

Garage or estate sale: means a sale for the purpose of offering clothing, household furniture or appliances belonging to the residents may be conducted as home occupation provided that no such sale may be held on any lot or premise more often than twice in each calendar year, and not to exceed three days during each sale.

Garden shop and plant sales (display or greenhouse) means an enclosed or open area for the retail sale of plants and gardening products, including fertilizers, soil and gardening implements.

Golf course (public or private) means a golf course owned or controlled publicly or privately. This includes such uses as a clubhouse, food service, retail, and other customary accessory uses.

Golf driving range means a facility for the organized practice of golf techniques. It may include a practice green for putting, a clubhouse and other minor ancillary uses.

Government facility means a facility for public purposes, owned or operated by the city, county, state or federal government. These typically include city hall, courthouse, police and fire stations, public library or museum.

Grain mill products includes the manufacturing of flour and other grain mill products, feeds for animals and fowl, cereal preparations, rice milling, blending and preparing flour, and wet corn milling.

Guesthouse (detached) means a secondary structure on a lot or tract containing dwelling accommodations but excluding kitchen facilities and separate utility services or meters and intended for the temporary occupancy by guests and not rented or used for permanent occupancy.

Halfway house (criminal) means a facility for the housing, rehabilitation, and training of persons on probation or parole from correctional institutions, or other persons found guilty of criminal offenses.

Health club or studio means a wholly enclosed facility for fitness training and practice.

Height means the vertical distance from the average grade of the finish ground level at the center of all walls to the highest finished roof surface for flat roofs; to the deck line of mansard roofs; and to the average height between eaves and the ridge for gable, hip and gambrel roofs. In measuring the height of a building, the following structures shall be excluded: chimneys, cooling towers, elevator penthouses, tanks, water towers, radio and television towers, ornamental cupolas, domes or spires, and parapet walls not exceeding four feet in height.

Home occupation means an occupation carried on in the home by a member of the occupant's family, being incidental to the primary occupancy of the home as a dwelling;

without the display or advertising of any commodity or service for sale on the premises; without the employment of any persons other than members of the immediate family; without the use of any sign, lighting or display; without the use of other than domestic or household equipment or appliances; and the conduct of which does not generate noise, odor, fumes, vibration, additional vehicle traffic or any other condition visible, obnoxious or detrimental to abutting or adjacent properties.

Hospice means a facility for the terminally ill, where patients are under the supervision of a doctor, but undergo limited curative treatment, and which is licensed by the state.

Hospital (chronic care) means an institution where those persons suffering from generally permanent types of illnesses, injury, deformity, deficiency or age are given care and treatment on a prolonged or permanent basis and which is licensed by the state.

Hospital (general acute care) means an institution where sick or injured patients are given medical or surgical treatment intended to restore them to health and an active life, and which is licensed by the state.

Hotel or motel means a building or group of buildings designed and occupied as a temporary abiding place of individuals. To be classified as a hotel or motel, an establishment shall contain a minimum of 20 individual guestrooms or units and shall furnish the customary hotel services such as linen, maid service, telephone, use and upkeep of furniture, and the accommodations shall not be designed as permanent dwelling units.

Household appliance and equipment repair means a shop for the repair of household and home equipment, such as electrical appliances, lawn mowers, tools, and similar items, where all such items are stored within a building or a storage area surrounded by a solid fence, wall or screen.

Ice or roller skating rink means a facility for the practice of ice or roller skating. Accessory uses may include food service and other indoor amusements, contained entirely within the primary structure.

Industrialized housing means a residential structure that is designed for the use and occupancy of one or more families, that is constructed according to the rules of the state department of labor and standards in one or more modules, or constructed using one or more modular components built at a location other than the permanent residential site, and that is designed to be used as a permanent residential structure when the modules or modular components are transported to the permanent residential site and are erected or installed on a permanent foundation. The term includes the plumbing, heating, air conditioning, and electrical systems.

Laundry or dry cleaning, self-service, means an establishment providing facilities for washing or dry cleaning garments and similar items and where the customer may personally supervise and handle the cleaning operation.

Legal height means the maximum height of a building imposed by the Federal Aviation Administration for the airport, this chapter, the building code, or any other legal ordinance or code.

Library, art gallery or museum (public) means any institution for the loan or display of books, objects of art or science which is sponsored by a public or responsible quasipublic agency and which institution is open and available to the general public.

Livestock auction pens or sheds means a facility or area for the auction of livestock. Accessory uses may include but are not limited to feed pens, stalls, and outside pens or runs.

Lot means a platted parcel of land intended to be separately owned, developed, and otherwise used as a unit.

Lot, corner, means a lot situated at the intersection of two dedicated streets and having frontage along both streets extending from the intersection.

Lot, double frontage, means a lot having frontage on two or more dedicated streets other than a corner lot.

Lot lines means the property or lease lines bounding a lot or tract.

Lot line, interior, means a lot line delineating the division between two contiguous lots on the interior of a block and not adjacent to a street.

Lot of record means a lot which is part of a subdivision plat which has been recorded in the office of the county clerk or a tract of land described by metes and bounds, the description of which is recorded in the office of the county clerk.

Lot width means the width of a lot at the required front yard line or at the building line if such is established at a greater distance from the street than the required front yard line.

Lumber and wood products manufacturing includes logging camps and contractors; sawmills and planing mills; and the manufacturing of millwork, veneer, plywood, prefabricated structural wood products, wood furniture; and other lumber and wood products.

Main building means the building on a lot which is occupied by the primary use.

Manufactured home means a structure, constructed on or after June 15, 1976, according to the rules of the United States Department of Housing and Urban Development, transportable in one or more sections, which, in the traveling mode, is eight body feet or more in width or 40 body feet in length, or, when erected on site, is 320 or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air conditioning, and electrical systems.

Manufactured home park means a unified development of manufactured home sites, plots, or stands as arranged on a large tract under single ownership, meeting the area and setback requirements of this chapter, and designed to accommodate manufactured homes for permanent duration.

Meat products processing or manufacturing includes meat, poultry, and small game packing and the manufacturing of sausages and other prepared meat products, but not including the slaughtering of animals or poultry.

Microbrewery means a business which:

- (1) Operates under a manufacturer's license, as described in V.T.C.A., Alcoholic Beverage Code, ch. 62, issued by the Texas Alcoholic Beverage Commission ("T.A.B.C.");
- (2) May operate, but is not required to operate under a brewer's permit as described in V.T.C.A., Alcoholic Beverage Code, ch. 12, issued by T.A.B.C.;
- (3) Has a total maximum production per year of beer, malt liquor and ale of not more than 15,000 barrels (or 465,000 standard gallons); and
- (4) Does not produce or generate any generally obnoxious odors.

Mobile home means a structure that was constructed before June 15, 1976, or one constructed after this date that does not meet the rules of the United States Department of Housing and Urban Development, transportable in one or more sections which, in the traveling mode, is eight body feet or more in width or 40 body feet or more in length, or, when erected on site, is 320 or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air conditioning and electrical systems.

Mobile home park means a unified development of mobile home sites, plots or stands as arranged on a large tract under single ownership, meeting the area and setback requirements of this chapter, and designed to accommodate mobile homes for a permanent duration.

Multifamily (apartments) means any building or portion thereof which is designed, built, rented, leased or let to be occupied as three or more dwelling units or apartments or which is occupied as a home or residence of three or more families.

Nightclub or dancehall means an establishment operated as a place of entertainment, characterized by any of the following as a principal use of the establishment:

- (1) Live, recorded or televised entertainment, including but not limited to performances by magicians, musicians or comedians;
- (2) Dancing; or
- (3) Any combination of subsections (1) and (2) of this definition.

This does not include theaters, auditoriums and stadiums with fixed row seating; private clubs; bars; teen clubs; or any establishment defined elsewhere in this chapter as an adult entertainment establishment.

Nursing and convalescent homes means an establishment which furnishes, in single or multiple facilities, food and shelter to five or more persons who are not related by blood, marriage, or adoption to the owner or proprietor of the establishment and, in addition, provides minor treatment under the direction and supervision of a physician, or services which meet some need beyond the basic provision of food, shelter and laundry.

Office (general and professional) means a facility for the regular transaction of business, wherein services are performed involving predominantly administrative, professional or clerical operations not specifically listed elsewhere in this chapter.

Open space means an area on a lot that is open and unobstructed to the sky except for the ordinary projections of cornices and eaves, and is exclusive of driveways or parking areas.

Open storage (no enclosure) means storage in the open of vehicles, machinery or any equipment or commodity where permitted as a primary use of land and accessory storage in the open of commercial and industrial products where such storage is not enclosed by a fence, wall or building.

Open storage with visual screen means the permitted storage of any equipment or commodity in an open area which is enclosed by a fence or wall, as defined in this chapter, or surrounded by a building so as to create an effective visual screening of the storage from the adjacent property.

Orphanage means an institution for the care of orphans or other abandoned children.

Paper and allied products manufacturing includes the manufacture of pulp, paper, paperboard, converted paper and paperboard products, paperboard containers and boxes, building paper and building board.

Pawnshop means a building or premises, other than a bank, savings and loan or mortgage banking company, used for the business of lending money on the security of pledged goods, or for the business of the purchase of tangible personal property on condition that it may be redeemed or repurchased by the seller for a certain price within a certain period of time, and licensed by the state to conduct such a business.

Pet shop means a place for the display and sale of small animals and birds as pets, such as dogs, cats, parakeets or canaries, but not involving the boarding or treating of dogs or similar pets.

Petroleum refining and related industries includes the refining of petroleum and the manufacturing of paving and roofing materials; lubricating oils and greases and other petroleum and coal products.

Piercing studio means any establishment that performs any type of body piercing.

Pool house (detached) means a secondary structure on a lot with a swimming pool, excluding separate utility services or meters, and intended for temporary recreation use and not used as a permanent occupancy.

Poultry hatchery means a commercial facility for the hatching and raising of domestic fowl, including a research facility for such activity.

Primary metal products manufacturing includes blast furnaces, steel works and the rolling and finishing of ferrous metals; iron and steel foundries; primary smelting and refining of nonferrous metals and alloys, rolling, drawing and extruding of nonferrous metals; and nonferrous foundries.

Professional, scientific and controlling instruments; photographic and optical goods; watches and clocks manufacturing includes the manufacturing of engineering, laboratory and scientific and research instruments and associated equipment; instruments for measuring, controlling, and indicating physical characteristics; optical instruments and lenses; surgical, medical, and dental instruments and supplies; ophthalmic goods;

photographic equipment and supplies; and watches, clocks, clockwork-operated devices and parts.

Psychiatric hospital or institution means a facility or area for providing health services primarily for inpatient medical care for alcoholic, narcotic, or psychopathic patients, and which may include related facilities such as laboratories, outpatient departments, training facilities, central service facilities, and staff offices that are an integral part of the facilities. This includes a substance abuse and rehabilitation facility.

Racetrack means an indoor or outdoor facility for the recreational or competitive racing of horses, canines, or motor vehicles, including the necessary accessory uses such as retail sales, automobile maintenance, veterinarian supplies and shops, exercise areas and stables.

Radio or television transmission station (commercial) means a facility used for the production and transmission of programming by radio or television to the general public. Included are commercial, religious, educational and other stations.

Radio, television, microwave or cellular communication tower (commercial) means structures supporting antennae for transmitting or receiving any portion of the radio spectrum, but excluding noncommercial antennae installations for home use of radio or television.

Radio tower (noncommercial) means a radio tower located on a residential property which is for home use, only, and which is not taller than 15 feet above the maximum building height allowed in the district.

Recreation club or area (private) means a building, park or recreation area, the use of which is restricted to private membership such as by a church, neighborhood association, fraternal or social organization, and which may contain the normal active and passive facilities as provided in a park or playground, or public recreation facility.

Recreation facility (public) means a facility or area sponsored by a public entity and devoted to sports, entertainment, games of skill or recreations to the general public. This may include swimming pools, tennis courts, playgrounds, community clubhouses, park facilities and other similar uses.

Retail tobacco/vapor/smoke store has the same meaning as stated in chapter 46, section 46-101 of this Code.

Retirement home means a residential facility principally designed for persons 55 years of age or older. Dwelling units may include full kitchen facilities, and recreational, social, nursing or other services may be available. This does not include a nursing or convalescent home.

Rubber and miscellaneous plastics manufacturing includes the reclaiming of rubber and the manufacture of tires and innertubes; rubber footwear; plastic products; and other fabricated rubber products.

Satellite dish means the dish and its structural elements that is commonly used in the reception of television signals from orbiting satellites.

School, K—12, public or private, means a school and customary accessory uses under the sponsorship of a public or religious agency having a curriculum generally equivalent to public, elementary or secondary schools, but not including private, trade or commercial schools.

School, vocational means a business operating for profit and offering instruction and training in a service or art, such as a secretarial school, barber college, commercial art school; or offering instruction and training in a trade such as welding, bricklaying, machinery operation and other similar manual trades. This does not include truck or heavy equipment driving schools.

Service station means any facility where gasoline and other petroleum products are sold and/or light maintenance activities such as engine tuneups, lubrication, minor repairs, and carburetor cleaning are conducted. Service stations shall not include facilities where heavy automobile maintenance activities such as engine overhauls, automobile painting, and body or fender work are conducted.

Single-family dwelling (attached) means a dwelling unit on a separately owned lot which is joined to another dwelling unit on one or more sides by a party wall or abutting separate walls and occupied by not more than one family.

Single-family dwelling (detached) means a detached building having a single dwelling unit and occupied by not more than one family.

Single-family dwelling (zero lot line) means a dwelling unit on a separately owned lot on which one wall of the principal dwelling is located within one foot of the side property line of an adjacent residential lot, and the other side yard meets or exceeds the minimum required side yard for the district.

Stable, commercial, means a facility housing horses or mules which are boarded or rented to the public or any stable other than a private stable; but not including a sales barn, auction, or similar trading activity.

Stable, private, means a facility or area for keeping horses, mules or other domestic animals for the private use of the property owner.

Stone, clay, glass and concrete products manufacturing includes the manufacturing of glass; flat glass and glassware; cement; structural clay products; pottery and related products; concrete, gypsum and plaster products; cut stone and stone products; and abrasive, asbestos and other nonmetallic mineral products.

Studio (art, drama, speech, or dance) means a building or rooms in a building used for the instructing, coaching or counseling in drama, speech, dance or similar personal skills or arts.

Tattoo salon means an establishment or facility in which tattooing is performed.

Teen club means a nightclub that caters to teenage patrons.

Tennis court (lighted) means an outside tennis court with elevated lighting for nighttime play.

Tennis court (no lights) means an outside tennis court without elevated lighting for nighttime play.

Textile mill products manufacturing includes the manufacturing of woven fabrics, knit goods, rugs, carpets, yarns, and threads, and other textile goods; and the dyeing and finishing of textiles.

Theater, movie or live (enclosed) means a facility with fixed seats for the viewing of movies or live presentations of musicians or other performing artists.

Tobacco products manufacturing includes the manufacturing of cigarettes, cigars, chewing and smoking tobacco, snuff; tobacco stemming and redrying.

Travel trailer/RV park means any lot upon which two or more travel trailer or other recreational vehicle sites are located, established or maintained for occupancy by recreational vehicles of the general public as temporary living quarters for recreation or vacation purposes. The area is intended for use on a shortterm basis by campers, vacationers, and travelers.

Truck or heavy equipment driving school means a type of vocational school where education is provided behind the wheel of trucks or heavy equipment.

Two-family dwelling means a detached building having two dwelling units and occupied by not more than two families.

Use, nonresidential, means any use other than a one- or two-family residence, or a roominghouse or boardinghouse, and their bona fide accessory uses.

Use, residential, means a one- or two-family residence, or a roominghouse or boardinghouse, together with bona fide accessory uses.

Utility facilities (major) includes such uses as electrical substations, wastewater treatment plants, elevated water storage and water treatment plants.

Utility lines and transmission includes local utilities such as electric power, telephone, gas, water, sewer, and air monitoring stations. It also includes inline facilities such as gas regulating stations and water wells or pumping stations; sewage pumping stations; telephone exchange, switching and transmitting equipment; and electrical transmission lines operated by a municipality or a franchised utility company. It does not include major utility facilities.

Veterinary office (no hospital or clinic) means a facility for the diagnosis and treatment of animals, without an overnight stay.

Warehouse/storage (inside) means a building or group of buildings providing enclosed shelter and protection for commodities stored therein. No open or unenclosed storage shall be classified as a warehouse.

Wrecking yard, junkyard, salvage yard or reclamation yard means a yard or building where automobiles, machinery, appliances or other used commodities and equipment are stored, dismantled, and/or offered for sale as whole units or as salvaged parts.

Yard means an open space on the lot on which a building is situated and which is open and unobstructed to the sky.

Yard, front, required, means a yard facing and abutting a street and extending across the front of the lot between the side lot lines and having a minimum horizontal depth

measured from the street equal to the depth of the minimum front yard specified for the district in which the lot is located. The required front yard line represents the line in front of which no building or structure may be erected.

Yard, rear, required, means a yard extending across the rear of the lot between side lot lines and having a minimum depth measured from the rear lot line as specified for the district in which the lot is located.

Yard, side, required, means a yard located on a lot and extending from the required front yard to the required rear yard and having a minimum width measured from the side lot line as specified for the district in which the lot is located. Any lot line which is not a rear or front line shall be deemed a side lot line.

Zoning district map means the official, certified map upon which the boundaries of the various zoning districts are shown and which are an integral part of this chapter and, together with the zoning text in this chapter, make up the zoning ordinance for the city.

Zoo, zoological park, animal park, or aviary means an institution which owns and maintains captive wild animals and under the direction of a professional staff, provides its collection with appropriate care and exhibits them in an aesthetic manner to the public on a regularly scheduled basis for the purposes of education, conservation, scientific study and recreation.

(Ord. No. 1130, art. III, 11-3-1998; Ord. No. 1185-12-99, 12-7-1999; Ord. No. 1350-2-04, 2-3-2004; Ord. No. 1351-2-04, 2-3-2004; Ord. No. 1439-10-06, 10-3-2006; Ord. No. 1516-5-09, 5-5-2009; Ord. No. 1535-11-09, § 3, 11-17-2009; Ord. No. 1626-5-13, 5-7-2013; Ord. No. 1708-6-16, § 2, 6-21-2016)

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

...

CHAPTER 118 – “ZONING”, ARTICLE III. – “DISTRICT REGULATIONS” of the Code of Ordinances of the City of Nacogdoches, Texas, is hereby amended, as set hereafter to read as follows:

Sec. 118-273. Land use schedule.

(a) *Use of land and buildings*. Buildings, structures and land shall be used only in accordance with the uses permitted in the following land use schedule, subject to all other applicable requirements of this chapter. The following symbols are used in the land use schedule:

- (1) The symbol "P" shall mean that the use is permitted as a principal use in that zoning district by right.
- (2) The symbol "S" shall mean that the principal use is permitted in that zoning district only after first obtaining a specific use permit.
- (3) The symbol "A" shall mean that this use is specifically permitted as an accessory use to a principal use in the district. This does not exclude other land uses which are generally considered ancillary to the primary use.

- (4) An asterisk (*) indicates that the use has special standards or requirements listed in this section, which it must meet in order to be allowed.
- (5) A blank square shall mean that the use is not allowed in that zoning district.
- (6) Italicized words are defined in article IV of this chapter or under section 118-1 containing definitions.
- (b) *Organization of land use schedule; category grouping.* Uses are grouped into general categories such as "agriculture" and "residential," and then further organized into subcategories. This organization of land uses is for ease of reference only.

LAND USE SCHEDULE											
(*) Signifies Uses with Special Guidelines <i>(Italic)</i> Signifies a Defined Term											
Residential					Permitted Use P=Permitted, A=Accessory Use, S=SUP	Commercial				Industrial	
AG	R-1	R-2	R-3	R-4		B-1	B-2	B-3	MD	I-1	I-2
					AGRICULTURAL USES						
P	P	P	P	P	Farm, Ranch, Garden or Orchard		S			P	P
P	P	P	P	P	Farm or Ranch for live stock and Animal Specialties		S			P	P
P					Feed Store and Tack for live Stock - No Mill		P			P	P
S					Livestock Auction Pens or Sheds						P
S					Poultry Hatchery						P
S					Stables (Commercial)						P
					RESIDENTIAL USES						
					Household Units						
P	P	P	P	P	Home Occupation	P	P	P	P		
				P	Multifamily - Apartments	S	P	P	P		

			P	P	Single Family Attached						
P	P	P	P	P	Single Family Detached						
			P	P	Single Family Zero Lot Line						
			P	P	Two Family Dwelling						
A	A	A	P	P	Pool House (Detached)*	P	P	P	P		
					Special Unit Types						
P	P	P	P	P	Industrialized Housing*						
					Manufactured Home						
				S	Manufactured Home Park		S				
					Mobile Home (House Trailer, Camp)						
				S	Mobile Home Park		S				
				S	Travel Trailer/ RV Park	S	S			S	
					Lodging/Group Quarters						
S	S	S	S	P	Bed and Breakfast* - 4 or Less Patrons	P	P	P	P		
				P	Bed and Breakfast* - 5-8 Patrons	S	P	P	P		
				P	Boarding or Rooming House	S	P	P	S		
S	S	S	S	P	Accessory Apartment*	P	P	P	P		
S	S	S	S	P	Convent or Monastery	S	P	P	S		
S				P	Family Group Home	S	P	P	P		
P	P	P	P	P	Family Home	P	P	P	P		
P	P	P	P	P	Foster Home	P	P	P	P		
P	A	A	P	P	Guest House (Detached)	P	P	P	P		
S			S	S	Half-way House - Criminal	S	P	P	S		
					Hotel or Motel	S	P	P	P	P	

S				P	Orphanage	S	P	P	S		
				P	Retirement Home	P	P	P	P		
					AMUSEMENT /RECREATION USES						
					General Recreation						
					Amusement, Commercial - Indoors*		P	P		P	
					Amusement, Commercial - Outdoors		S	S			
					Billiard Parlor or Pool Hall*		P	P		P	
S					Carnival or Circus (Temporary)		S	S		S	S
S	S	S	S	S	Country Club (Private Membership)	S	P	P		P	S
S					Fairground*		P			P	P
P	S	S	S	S	Golf Course (Public or Private)	P	P			P	P
P	S	S	S	P	Golf Driving Range	P	P			P	P
				A	Health Club or Studio	P	P	P	P	P	A
					Ice or Roller Skating Rink*	S	P	P		P	P
					Night Club or Dance Hall*		P	P		P	
S					Race Track		S			P	
S	S	S	S	A	Recreation Club or Area (Private)*		P	P		P	
S	S	S	S	A	Recreation Facility (Public)	P	P	P	P	P	
					Teen Club*	S	P	P			
				A	Tennis Court (Lighted)	S	P	P		P	
A	A	A	A	P	Tennis Court (No Lights)	P	P	P		P	
					Theater - Movie or Live (Enclosed)	S	P	P		P	
S					Zoo, Zoological Park, Animal Park, or Aviary		S				

					Adult Recreation						
					Adult Arcade*						P
					Adult Book Store or Video Store*						P
					Adult Cabaret*						P
					Adult Motel*						P
					Adult Motion Picture Theater*						P
					Adult Theater*						P
					Escort Agency*						P
					Nude Model Studio*						P
					Sexual Encounter Center*						P
					INTITUTIONAL, UTILITY and GOVERNMENTAL USES						
					Government / Utility						
P	P	P	P	P	Government Facility	P	P	P	P	P	P
P				P	Library, Art Gallery or Museum (Public)	P	P	P	P	P	
					Post Office	S	P	P	P	P	
					Postal Distribution Facility		P			P	P
S					Radio or TV Trans. Station (Commercial)	S	P	P	P	P	P
S	S	S	S	S	Radio Tower (Non-Commercial)*	P	P	P	P	P	P
S	S	S	S	S	Radio, TV, Microwave, or Cellular Transmission Tower (Comm.)*	P	P	P	P	P	P
A	A	A	A	A	Satellite Dish*	P	P	P	P	P	P
P	S	S	S	S	Utility Facilities (Major)	S	P	P	P	P	P
P	P	P	P	P	Utility Lines and Transmission	P	P	P	P	P	P

					Schools / Organizations						
P	S	S	S	S	College or University	S	P	P	P	S	S
P	P	P	P	P	Daycare - 3 or less Attendees	P	P	P	P	P	
S	S	S	P	P	Daycare - 4-6 Attendees	P	P	P	P	P	
S			S	S	Daycare Center - 7 or more Attendees	S	P	P	P	P	
S					School - Vocational	S	P	P	P		
P	P	P	P	P	School, K-12 (Public or Private)	P	P	P	P	S	
P	P	P	P	P	Church or Place of Worship	P	P	P	P	P	
S					Club, Private	P	P	P	P	P	S
	S	S	S	P	Community Center - Private	P	P	P	P	P	
P	S	S	P	P	Community Center - Public	P	P	P	P	P	
				S	Fraternity / Sorority House	S	S				
					Lodge or Fraternal Organization	S	P	P	S	P	P
					OFFICE AND PROFESSIONAL						
					Office - General						
					Advertising Agency		P	P	P		
					Architectural / Engineering Services	P	P	P	P	P	
					Banks and Financial Institutions	P	P	P	P	P	
					Banks with Drive In Facilities	S	P	P	P	P	
					Legal Services	P	P	P	P		
					Offices - General or Professional	P	P	P	P	P	P

					Medical/Healthcare						
S					Animal Hospital or Clinic		P	P		P	P
S					Animal Hospital or Clinic w/Outside Pens					S	P
					Animal Pound (Public or Private)					S	P
					Emergency Ambulance Service		P	P	P	P	
				S	Hospice	P	P	P	P	S	
					Hospital - Acute Care	S	P	P	P	P	
					Hospital - Chronic Care	S	P	P	P		
					Medical or Dental Office or Clinic	P	P	P	P	P	
				P	Nursing/Convalescent Home	S	P	P	P		
					Psychiatric Hospital or Institution		S		P		
S					Veterinary Office (No Hosp. or Clinic)	P	P	P	P	P	P
					Business or Personal Services						
S					Auction - Goods & Equipment (Indoors)		P	P		P	P
					Beauty Parlor/Barbershop	P	P	P	P	P	
					Cabinet and Woodwork Shop (Custom)	S	P	P		P	
P				P	Caretaker/Security Quarters	P	P	P	P	A	A
S	S	S	S	S	Cemetery or Mausoleum	P	P	P	P	P	P
					Communications/Electronics Equipment - Installation and Repair	S	P	P		P	
					Conventions, Trade Shows or Exhibits	S	P	P	S	S	
					Exterminator Service	S	P			P	P
					Exterminator Service Storage					P	P
					Household Appliance and Equipment Repair	S	P	P		P	P
					Information Processing		P	P	P	P	

					Laundry/Dry Cleaning - <3,000 s.f. w/ Customer Service		P	P	P	P	
					Laundry/Dry Cleaning - >3,000 s.f.				A	P	P
					Laundry/Dry Cleaning - Drop Off/Pick Up	P	P	P	P	P	
				A	Laundry/Dry Cleaning -Self Service	P	P	P	P	P	
					Locksmith	P	P	P		P	P
					Mailing Service (Private)	P	P	P	P	P	
					Mortuary or Funeral Home		P	P	P	P	P
					Photocopying or Duplicating Services	S	P	P	P	P	P
					Photographic Studio	P	P	P		P	
					Sewing and Millinery (Custom)	P	P	P		P	
					Shoe Repair	P	P	P		P	
					Studio - Art, Drama, Dance, Music - Performing Arts	P	P	P		P	
					Tailor Shop	P	P	P	S	P	
					Tattoo Salon/Piercing Studio	S	S	S	S	P	
					Taxidermist		S	S		P	P
P	P	P	P	P	Temporary Field or Construction Office	P	P	P	P	P	P
					Temporary Retail Use	S	S	S	S	S	
					Travel Agency	P	P	P	P		
					Upholstery Shop or Furniture Repair (non-Auto)		P	P		P	P
					Food and Beverage Services						
					Club (Private)*	S	P	P	S	S	P
					Catering Service	S	P	P	P	P	P
					Eating Place w/ Drive-thru	S	P	S		P	P

					Eating Place w/o Drive-thru	P	P	P	P	P	P
					Food Preparation or Food Service	P	P	P	P	P	P
					Liquor By the Drink*	S	P	P	S	S	P
					Retail						
					Alcohol Sales - Off Premise Consumption	P	P	P		P	P
					Antique Shop	P	P	P		P	
					Art Dealer	P	P	P			
					Art Gallery	P	P	P			
					Bait or Tackle Shop	S	P	P		P	
					Bakery Shop	P	P	P	P	P	
					Bicycle Sales or Repair	P	P	P		P	
					Book or Stationery Shop	P	P	P	P		
					Building Material Sales (Outside Storage)		P			P	P
					Camera or Photographic Supply Shop	P	P	P	P	P	
					Cloth or Fabric Store	S	P	P			
					Clothing Store	P	P	P	P		
					Confectionery Shop	P	P	P	P		
					Consignment Shop	P	P	P		P	
					Convenience Store	P	P	P			
					Department Store		P	P			
					Drapery Shop	S	P	P			
					Drug Store or Pharmacy	P	P	P	P		

					Farmers Market - Outdoor	S	P	P		P	P
					Flea Market - Outdoor	S	P	P		P	P
					Florist Shop	P	P	P	P		
					Furniture Sales - New (Indoor Only)	S	P	P		P	
P					Garden Shop & Plant Sales - Display or Greenhouse	S	P	P		P	P
					Grocery	P	P	P			
					Hardware Store	S	P	P		P	
					Hobby, Handicraft or Art Supplies	P	P	P	P		
					Lawnmower Sales or Repair	S	P	P		P	
					Major Appliance Sales (Indoor)	S	P	P		P	
					Mobile/Manufactured Home Dealer (Sales Only)		S			P	P
					Monument Sales Yard		P	P		P	P
					Optical Shop	P	P	P	P		
					Paint and Wallpaper Store	P	P	P	S	P	
					Pawn Shop*		P			P	
					Pet Shop	S	P	P		P	
					Plumbing Shop (Retail & Wholesale)		P	P		P	P
					Retail or Convenience Store with Gasoline	P	P	P	P	P	P
					<u>Retail Tobacco/Vapor/Smoke Store*</u>	<u>S</u>	<u>S</u>	<u>S</u>		<u>P</u>	<u>P</u>
					Sporting Goods		P	P			

					Swimming Pool Sales & Supply		P	P		P	P
					Used Merchandise - Furniture, Rummage, Second Hand Store (Inside)	S	P	P		P	
					TRANSPORTATION, AUTOMOBILE and MARINE USES & SERVICES						
					Automobile Related						
					Auto Brake, Muffler, Glass, Seat Covers or Tire Sales & Service		P			P	P
					Auto Dealer - Primarily New/Used Autos		P			P	
					Auto Dealer - Primarily Used Autos		P			P	
					Auto Interior Shop		P			P	
					Auto Paint/Body Repair		S			P	P
					Auto Rental		P	P		P	
					Auto Repair - General		P			P	P
					Auto Storage or Auction					P	P
					Auto Supply - Used Parts Store with no On-Site Salvage		P	S		P	P
					Auto Supply Store for New and Rebuilt Parts		P	P		P	
					Auto Wrecker Service		A	A		P	
					Auto/Truck Parts and Accessories		P	P		P	
					Car Wash		P			P	P
					Drag Strip or Commercial Racing						P
					Parking - Accessory to Another Use		A	A	A	A	A

					Parking - Commercial Lot or Garage		P	P	P	P		
					Lube/Oil Change		P			P	P	
					Service Station	S	P		P	P	P	
					State Vehicle Inspection		P			P	P	
					Bus or Truck Related							
					Bus or Truck Parking or Storage		S	S		P	P	
					Bus Station and Terminal		S	S		S		
					Truck Stop, Including Gas Sales		P			P	P	
					Truck/Heavy Equipment Driving School		S			P	P	
					Truck/Recreational Vehicle Sales		S			P	P	
					Truck/Trailer Rental		P			P	P	
					Trucking Company		S			P	P	
					Railroad or Airport Related							
					Airport or Landing Field		S			S	S	
					Railroad Freight Depot		S			P	P	
					Railroad Passenger Station		P			P		
					Railroad Yard & Shops					P	P	
					Vehicle - General							
					Boat Dealer - Sales Only		P			P		
					Boat Repair or Storage		P			P		
					Go Cart Track					S	P	
					Motorcycle Sales or Service		P			P		

					Transfer/Storage Terminal		S			P	P
					Vehicle Maintenance - Private		A	A		P	P
					Vehicle Wash - Private		A	A		P	P
					WHOLESALE TRADE and STORAGE USES						
					Wholesale Trade						
					Apparel, Piece Goods, Notions - Wholesale		P	P		P	
					Groceries/Related Products - Wholesale		P	P		P	
					Heavy Machinery Sales					P	P
					Lumber Sales - Wholesale					P	P
					Paper or Paper Products - Wholesale		P	P		P	P
					Petroleum Products Storage & Wholesale					P	P
					Tool or Equipment Rental - Indoor		P	P		P	P
					Tool or Equipment Rental - Outdoor		P	S		P	P
					Storage						
					Contractor or Maintenance Yard		P			P	P
					Hazardous Gases/Chemicals Storage					S	P
					Mini Warehouse	S	S			P	P
					Open Storage (No Enclosure)					P	P
					Open Storage (Screened)		P	S		P	P
					Petroleum Products Storage and Warehouse		S			P	P
					Warehouse/Storage (Inside)		P	P	P	P	P
					Wrecking, Junk, Salvage or Reclamation Yard					S	S

					MANUFACTURING and MINING USES							
					Food-Related Products							
					Animal or Poultry Slaughtering						P	
					Bakery Products; Manufacturing					P	P	
					Beverage Manufacturing						P	
					Bottling or Canning of Soft Drinks & Carbonated Water					P	P	
					Bottling Works					P	P	
					Canned, Frozen, and Preserved Fruits, Vegetables and Other Foods						P	
					Dairy Products - Processing or Manufacturing					P	P	
					Fats and Oils Manufacturing or Processing					S	P	
					Grain Mill Products; Processing and Manufacturing						P	
					Ice Manufacturing					P	P	
					Meat Products; Processing or Manufacturing - Not Including Slaughtering					P	P	
					Microbrewery		S	S		P	P	
					Sugar and Confectionery Products, Manufacturing					P	P	
					Sugar Manufacturing						P	
					Articles and Equipment							
					Apparel Manufacturing					P	P	

					Broom & Brush Manufacturing					P	P
					Cabinet & Woodworking Manufacturing		P			P	P
					Chemical and Allied Products Manuf.						P
S					Concrete or Asphalt Batch Plant - Temp.	S	S			S	P
					Costume Jewelry, Novelties, Buttons & Misc. Notions Mfg.					P	P
					Fabricated Metal Products Manufacturing					S	P
					Fur Dressing & Dying						P
					Jewelry, Silverware & Plateware Mfg.					P	P
					Laboratory - Medical or Dental		P	P	P	P	P
					Laboratory - Scientific Testing		P	P	P	P	P
S					Land Fill (Private or Municipal)						S
					Light Manufacturing/Assembly		S	S		P	P
					Linoleum, Asphalt - Felt Base & Other Hard Surfaced Floor Covering Mfg.						P
					Machine Shop					P	P
					Match Manufacturing						P
					Musical Instruments & Parts Mfg.					P	P
					Paper and Allied Products Manufacturing						P
					Pens, Pencils & Other Office & Artists' Materials Mfg.					P	P
					Printing Publishing and Allied Industries		P	P		P	P

					Professional, Scientific & Controlling Instruments; Photographic & Optical Goods; Watches & Clocks Mfg.					P	P
					Rubber and Misc. Plastics Manufacturing						P
					Salvage and Reclamation (Enclosed)					P	P
					Sign & Advertising Display Manufacturing					P	P
					Textile Mill Product Manufacturing						P
					Tobacco Products Mfg.						P
					Toys, Amusement, Sporting & Athletic Goods Mfg.						P
					Welding Shop					P	P
					Natural Resources						
					Lumber and Wood Products Manufacturing						P
S	S	S	S	S	Oil & Gas Extraction	S	S		S	S	P
S	S	S	S	S	Oil & Gas Field Services	S	S		S	S	P
					Petroleum Refining and Related Industries						P
					Primary Metal Products Manufacturing						P
					Stone, Clay, Glass & Concrete Products Manufacturing						P
S	S	S	S	S	Stone, Sand, Gravel & Mineral Extraction	S	S		S	S	S
					Stone, Sand, Gravel or Earth Sales and Storage					S	P

(Ord. No. 1130, art. III, § 1, 11-3-1998; Ord. No. 1184-12-99, 12-7-1999; Ord. No. 1185-12-99, 12-7-1999; Ord. No. 1204-5-00, 5-16-2000; Ord. No. 1329-9-03, 9-2-2003; Ord. No. 1350-2-04, 2-3-2004; Ord. No. 1431-8-06, 8-1-2006; Ord. No. 1439-10-06, 10-3-2006; Ord.

No. 1516-5-09, 5-5-2009; Ord. No. 1560-10-10, 10-19-2010; Ord. No. 1626-5-13, 5-7-2013; Ord. No. 1676-7-14, 7-15-2014; Ord. No. 1721-10-16 , § 2, 10-18-2016

...

CHAPTER 118 – “ZONING”, ARTICLE IV. – “SUPPLEMENTARY DISTRICT REGULATIONS” of the Code of Ordinances of the City of Nacogdoches, Texas, is hereby amended, as set hereafter to read as follows:

Sec. 118-326. - Retail tobacco/vapor/smoke store.

- a) A retail tobacco/vapor/smoke store may not be located within 1000 feet of a church/place of worship, school, public park, or hospital, or another retail tobacco/vape/smoke store.
- b) Measurement of distance as required in section 118-326 shall be made in a straight line, without regard to intervening structures or objects, from the nearest portion of the building or structure used as a part of the premises where a retail tobacco/vapor/smoke store is located, to the nearest property line of the premises of a church/place of worship, school, public park, hospital, or other retail tobacco/vape/smoke store.

SECTION III

Severability. If any word, article, phrase, paragraph, sentence, clause, or provision of this Ordinance shall be held to be invalid or unconstitutional, such holding shall in no way affect other provisions or applications of this Ordinance which can be given effect without the invalid provision, and to this end provisions of this Ordinance are declared to be severable.

SECTION IV

Continuation. All provisions of Chapters 46 and 118 of the Code of Ordinances existing prior to the date of passage of this Ordinance remain in full force and effect.

SECTION V

Repeal. This Ordinance shall be and is hereby declared to be cumulative of all other ordinances of the City of Nacogdoches, and this Ordinance shall not operate to repeal or affect any such other ordinances except insofar as the provisions thereof might be inconsistent or in conflict with provisions of this Ordinance, in which such conflicting provisions, if any, in such other ordinance or ordinances are hereby repealed.

SECTION VI

Effective Date. This Ordinance shall take effect ten (10) days from its passage and publication as may be required by governing law.

SECTION VII

Proper Notice & Open Meeting. It is hereby officially found and determined the meeting at which this Ordinance was passed was open to the public as required and public notice of time, place, and purpose of said meeting was given as required by the Open Meetings Act, Chapter 551 of the Texas Government Code.

SECTION VIII

Official Public Records. The City Secretary is hereby authorized and instructed to file a signed and sealed copy of this Ordinance in and among the records of the City of Nacogdoches.

PASSED AND APPROVED this the ____ day of _____, 2024, by a vote of ____ (ayes) to ____ (nays) of the City Council of the City of Nacogdoches.

ATTEST:

CITY OF NACOGDOCHES

Rhonda Lewis, City Secretary

BY: _____
Randy Johnson, Mayor

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:

Jerry Baker, City Attorney

Juan Pollette, Interim City Planner

City of Nacogdoches:

Sec. 46-101. - Definitions.

Electronic smoking device. Any electronic oral device, such as one composed of a heating element, battery, and/or electronic circuit, which provides a vapor of nicotine or any other substances, and the use or inhalation of which simulates smoking. The term shall include any such device, whether manufactured, distributed, marketed, or sold as an electronic cigarette, electronic cigar, electronic pipe, or electronic cigarillo, electronic hookah or under any other product name or descriptor.

Retail electronic smoking device store means a retail store utilized primarily for the sale of electronic smoking devices and accessories and in which the sale of other products is merely incidental.

Retail tobacco store means a retail store utilized primarily for the sale of tobacco products and accessories and in which the sale of other products is merely incidental.

Smoking means inhaling, exhaling, or burning of any tobacco product or similar substance in any manner or any form. "Smoking" also includes the use of an electronic smoking device which creates a vapor, in any manner or in any form, or the use of any oral smoking device for the purpose of circumventing the prohibition of smoking in this chapter.

*** No current zoning regulations specific to "Retail electronic smoking device store" or "Retail tobacco store"**

City of Garland:

SMOKE SHOP: (x) A commercial establishment to which the public is admitted or invited which: (i) as its principal business purpose, offers for sale, distribution or exchange, for any form of consideration, any items, instruments, devices, equipment, accessories, or products that are intended, designed or marketed for use in the smoking or inhaling of any substance, including but not limited to tobacco, salts, incense, marijuana, hashish, hashish oil, cocaine or other controlled substances as defined in the Texas Health and Safety Code; and (ii) holds itself out, taking into account its business operations, its general inventory, and its commercial promotions whether on or off-premise, as encouraging or promoting the use of cannabis, illegal or controlled substances, or on which controlled substances are sold, marketed, or displayed even if marked as being sold for “novelty” or not for human consumption purposes. This definition does not include, and categorically excludes, commercial establishments that derive more than seventy-five percent of their revenue from the sale of the following tobacco products contained in the original manufacturer package: cigarettes, cigars, pipe tobacco, snuff, or chewing tobacco.

*** “Smoke Shop” SUP required and limited to Industrial District**

City of San Antonio:

means a retail store utilized primarily for the sale of tobacco products, smoking implements, or smoking accessories for on-premises consumption and in which the sale of other products is merely incidental, which shall include but not be limited to cigar bars and humidors.

Smoking means inhaling, exhaling, burning, or carrying any lighted or heated cigar, cigarette, pipe, or any other lighted or heated tobacco or plant product intended for inhalation, in any manner or in any form.

Sec. 35-377. - Head Shops.

(a) Spacing. Notwithstanding any other provisions of this chapter, no head shop shall be established or maintained within one thousand (1,000) feet of any of the following uses:

- (1) Property which is temporarily or permanently zoned residential.
- (2) Churches.
- (3) Hospitals.
- (4) Community centers.
- (5) Museums.
- (6) Parks.
- (7) Schools.

(b) Measurement of Spacing. Measurement shall be made in a straight line from the nearest boundary of property so zoned to the nearest part of the building in which such use is made, if the same commercial activity occupies an entire building; provided, that the case of a building

which is divided into separate rental or ownership spaces devoted to different uses or enterprises, measurement shall be made to such space or unit of the building in which such use is made.

(c) Registration and Amortization of Nonconforming Uses. Any properties devoted to such use which are so located due to zoning, rezoning, or annexation may be registered as nonconforming uses at the department of planning and development services within sixty (60) days from the date of becoming nonconforming with this chapter, by the owners or any other interested party and upon such registration, such use may thereafter be continued for a period not to exceed three (3) years. After termination of the three-year period, such operation and use must cease.

Head shop. Any retail establishment having a substantial or significant portion of its stock in trade in or which has as its main purpose the offering for sale paraphernalia or items designed or marketed for use with illegal cannabis or drugs.

*** "Retail tobacco store" permitted in several non-residential zoning districts**

*** "Head Shops" require SUP for non-residential districts**

City of Abilene:

Electronic cigarette means any electronic oral device, such as one composed of a heating element, battery, and/or electronic circuit, which provides a vapor of nicotine or any other substance, and the use or inhalation which simulates the smoking of a tobacco cigarette, pipe or cigars. "Electronic cigarette" includes any such device, whether manufactured, distributed, marketed, or sold as an electronic cigarette, an electronic cigar, an electronic cigarillo, an electronic pipe, electronic hookah, or under any other similar product name or descriptor. The term electronic cigarette does not include any asthma inhaler or other device that may be specifically approved by United States U.S. Food and Drug Administration as a nicotine delivery device.

Retail tobacco store means a retail store utilized primarily for the sale of tobacco products and accessories and in which the sale of other products is merely incidental. For purposes of this division, other products that are merely incidental means not exceeding ten (10) percent of gross sales. Sales of incidental products shall not include the sale of alcohol regardless of percentage of total gross sales.

Smoking means inhaling, exhaling, burning or carrying any lighted cigar, cigarette, pipe, weed, or plant in any manner or in any form.

HEAD SHOP: Any retail establishment open to the public that presents, displays, or offers for sale paraphernalia, items, equipment, or products commonly used, intended to be used, or commonly known to be used, for the ingestion, inhalation, preparation, or injection of illegal substances, to include any device which has been fabricated, constructed, altered, adjusted, or marked especially for use in the smoking or ingestion of marijuana, hashish, cocaine, methamphetamine, any other "controlled

substance," "controlled substance analogue," "synthetic controlled substance," or substance or chemical that mimics the effect of THC such as synthetic cannabinoids or other controlled substances, or any other substance that violates local, State, or Federal law, and is adapted to that purpose by virtue of a distinctive feature or combination of features associated with drug paraphernalia, notwithstanding that it might also be possible to use the device for some other purpose.

Section 2.4.3.3 All Other Uses With Specific Requirements

- (a) Specific Requirements. The City has established standards for certain land uses that shall apply to such uses regardless of the zoning district in which they are developed, unless otherwise stated within the standards.

...

(28) HEAD SHOP:

- (a) All structures housing a head shop (as defined in Chapter 5 of this LDC) shall be located as follows:

- (1) At least six hundred feet (600') from the property boundary line of any lot in a College University zoning district;
- (2) At least six hundred feet (600') from the property boundary line of any residentially zoned lot or any lot used for church, park, or hospital purposes;
- (3) At least one thousand feet (1,000') of another structure housing a head shop; and
- (4) At least two thousand five hundred feet (2,500') from any lot used for school purposes.

Measurements are to be in a straight line in all directions from the structure housing the head shop to the nearest property line on any lot in the College-University zoning district, any residentially zoned district, any lot used for church, school, or hospital purposes, any park, or any structure housing a head shop.

- (b) The measurements for a structure shall be taken from the furthest point that a structure extends in any direction, including overhanging roofs and all other projections or portions of said structure.
- (c) Should a head shop be located in conjunction with other buildings in a manner where the head shop is clearly separated from other portions of the structure, (for example, a head shop store in a shopping center) the head shop's measurements shall be taken from the boundaries of the space in which the store is housed or confined (not the entire shopping center, motel, or structure).
- (d) Should a head shop be located in conjunction with other buildings in a manner where the store is situated above the ground level of a multi-story structure and is clearly separate from other activities within the structure (for example, an head shop store on an upper level of

an office tower or hotel), the head shop's measurements shall be taken from the entry to that portion of the structure housing the store, thence to the nearest point of egress (elevator or stairs), thence to the nearest ground floor exit, thence in a straight line to the nearest point on any lot in a residential district or a College University district, or any lot or tract used for church, school, hospital or park purposes, and any structure housing a head shop.

(e) Each applicant for a head shop must submit a Site Plan setting out the dimension and locations for such store. The applicant shall sign a certified and notarized statement attached to the Site Plan that the proposed head shop store complies with the requirements set forth herein above. It shall be the duty of the applicant to prepare the Site Plan and to assure compliance with the distance requirements.

(f) Amortization: A head shop in operation prior to the effective date of this ordinance which does not conform to the regulations pertaining to head shops shall be considered to be a nonconforming use that may continue for four (4) months from the effective date of this ordinance.

*** “Head Shops” permitted in Heavy Commercial, Light Industrial, and Heavy Industrial Districts**

City of Tyler:

Tobacco/Vape/Smoke Store - A commercial establishment specializing in the retail sale of tobacco, cigarettes, cigars, vapes, paraphernalia and associated items, including the small scale blending of tobaccos. A grocery store or similar retail use that sells tobacco and vape products, paraphernalia and associated items as an ancillary sale is not included in this definition. (Ord. No. 0-2023-115; 12/13/23)

Sec. 10-77. Tobacco/Vape/Smoke Stores

a) Location Requirements

1. Tobacco/vape/smoke stores as defined by this code shall be at least 300 feet from a public or private elementary or secondary school, City park, child care or day care center, hospital or place of worship, measured in a direct line from the property line of the place of business to the property line of a public or private elementary or secondary school, City park, child care or day care center, hospital or place of worship.

2. Tobacco/vape/smoke stores as defined by this code shall be at least 1,000 feet from another tobacco/vape/smoke store measured in a direct line from the property line of each and every applicable place of business. (Ord. No. 0-2023-115; 12/13/23)

*** “Tobacco/Vape/Smoke Stores” permitted in the 2 Planned Mixed Use Districts and the Planned Commercial Development District. Placement in the Light Commercial District requires SUP**

City of Longview:

Smoke or smoking. Means and includes the carrying or holding of a lighted pipe, cigar or cigarette of any kind, or any other lighted smoking equipment or device, and the lighting, emitting or exhaling the smoke of a pipe, cigar or cigarette of any kind.

Tobacco. Any tobacco, cigarette, cigar, pipe tobacco, smokeless tobacco, snuff or any other form of tobacco, which may be utilized for smoking, chewing, inhalation or other means of ingestion or absorption.

Tobacco shop. Any commercial establishment that derives more than fifty percent (50%) of its annual gross sales receipts from the sale of tobacco and tobacco accessories.

*** No current zoning regulations specific to “Tobacco shop”**

City of Lufkin:

E-cigarette. Any electronic oral device, such as one composed of a heating element, battery, and/or electronic circuit, which provides a vapor of nicotine or any other substances, and the use or inhalation of which simulates smoking. The term shall include any such device, whether manufactured, distributed, marketed, or sold as an e-cigarette, e-cigar, e-pipe, or under any other product name or descriptor.

Smoking. Inhaling, exhaling, burning, or carrying any lighted or heated cigar, cigarette, or pipe, or any other lighted or heated tobacco or plant product intended for inhalation, in any manner or in any form.

“Smoking” also includes the use of an e-cigarette which creates a vapor, in any manner or in any form, or the use of any oral smoking device for the purpose of circumventing the prohibition of smoking in this division.

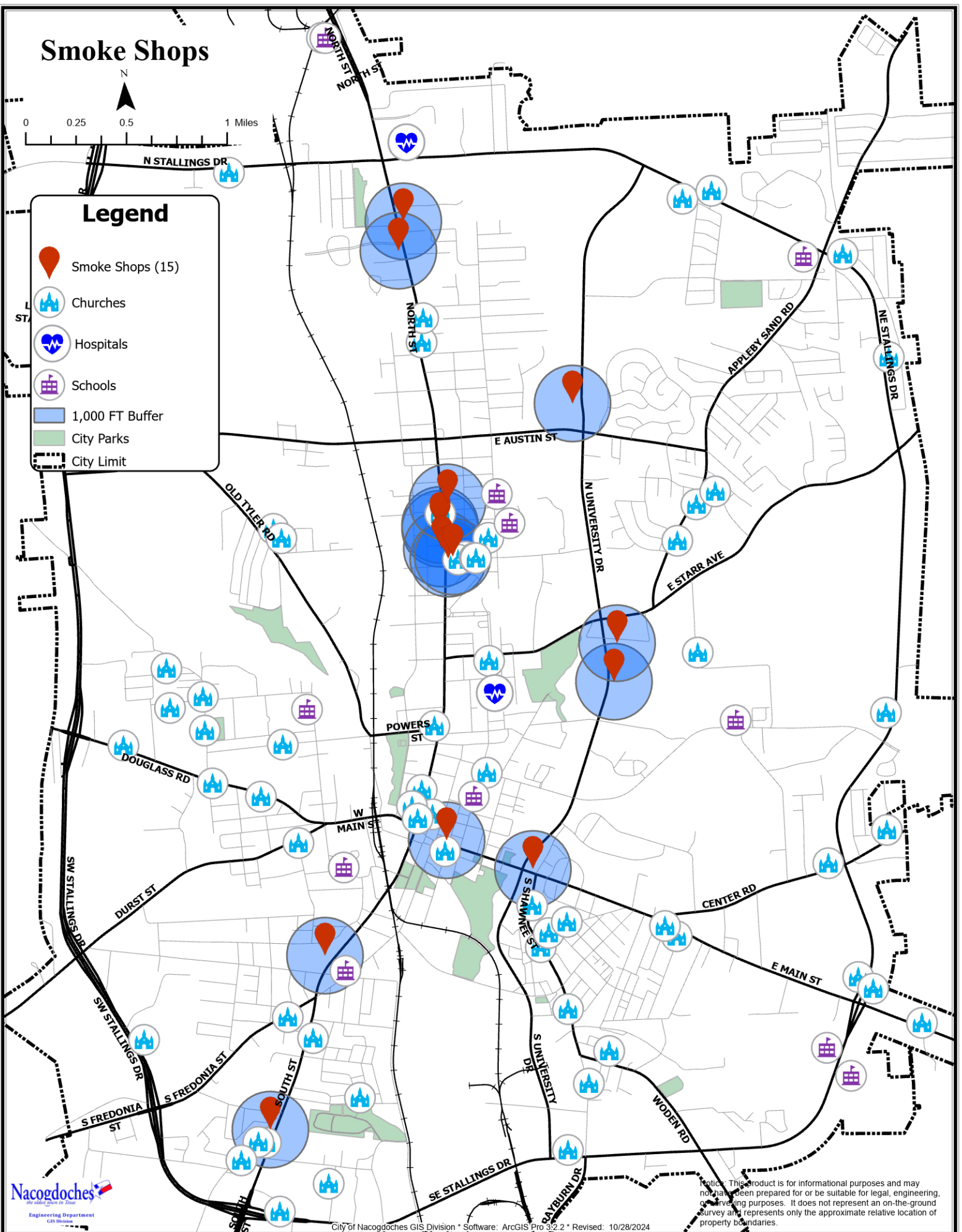
*** “Candy, Cigars, Tobacco (Retail Only)” permitted as a secondary use in Restrictive Professional Office District, and allowed by right in Neighborhood Retail, Local Business, Central Business, Commercial, Light Manufacturing, and Heavy Manufacturing Districts**

Smoke Shops



Legend

- Smoke Shops (15)
- Churches
- Hospitals
- Schools
- 1,000 FT Buffer
- City Parks
- City Limit



PRESENTER: Mike Neu, Executive Director of Development and Infrastructure

ITEM/SUBJECT: Public Hearing: Consider amending the Code of Ordinances of the City of Nacogdoches, Texas, Chapter 118 – “Zoning”, Article II – “Administration”, Division 4 – “Amendment Procedure”, to allow for the change of designation of the controlling board for protests of zoning changes. (Executive Director of Development and Infrastructure)

SUMMARY/BACKGROUND: Staff may propose changes to local ordinances in response to Council direction, or to comport with current state or federal law, to address various needs within and around the municipality. On August 22, 2024, members of the Council and Planning and Zoning Commission held a workshop to discuss possible zoning ordinance updates.

This agenda item proposes code amendments to clarify the controlling board for protests of zoning changes. The Texas Local Government Code (TLGC) outlines procedures for adoption of zoning regulations. In particular, if a proposed change to a regulation or boundary is protested in accordance with the TLGC, the proposed change must receive, in order to take effect, the affirmative vote of at least three-fourths of all members of the governing body. Since Council is the governing authority for zoning changes, this proposed amendment would change the local governing body from "Commission" to "City Council" to align with the TLGC. Code sections include:

- Sec. 118-141. Protest of proposed change in zoning

Planning & Zoning Commission. On October 21, 2024, the Commission recommended approval of the proposed amendments.

FINANCIAL:

No financial impact associated with this item

COUNCIL PRIORITIES: THIS AGENDA ITEM IS CONSISTENT WITH THE FOLLOWING CITY COUNCIL PRIORITIES

Not Applicable

CITY CONTACT: Mike Neu, Executive Director of Development & Infrastructure
neum@nactx.us
(936) 559-2522

ATTACHMENTS: 1. Redlined ordinance amendment

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF NACOGDOCHES, TEXAS, AMENDING CHAPTER 118 – “ZONING”, ARTICLE II – “ADMINISTRATION”, DIVISION 4 – “AMENDMENT PROCEDURE”, OF THE CODE OF ORDINANCES OF THE CITY OF NACOGDOCHES, TEXAS; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A CONTINUATION CLAUSE; PROVIDING A REPEAL CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

RECITALS:

WHEREAS, the City of Nacogdoches is authorized under Chapter 211 of the Texas Local Government Code to adopt zoning regulations for the purpose of promoting the public health, safety, morals, or general welfare, and protecting and preserving places and areas of historical, cultural, or architectural significance; and

WHEREAS, the City Council of the City of Nacogdoches has adopted ordinances for the purpose of promoting health, safety, and the general welfare of the City, with reasonable consideration of the character of each zoning district, its suitability for particular uses, and with a view of conserving the value of buildings and encouraging the most appropriate use of land throughout the City; and

WHEREAS, in order to further these objectives, the City Council has determined the need to amend certain portions of these ordinances as set forth herein;

NOW, THEREFORE BE IT ORDAINED BY THE CITY OF NACOGDOCHES:

SECTION I

All above premises are hereby found to be true and correct legislative and factual findings.

SECTION II

CHAPTER 118 – “ZONING”, ARTICLE II. – “ADMINISTRATION”, DIVISION 4 – “AMENDMENT PROCEDURE” of the Code of Ordinances of the City of Nacogdoches, Texas, is hereby amended, as set hereafter to read as follows:

Sec. 118-141. - Protest of proposed change in zoning.

- (a) Property owners adjacent to and within a distance of 200 feet of a property for which a change in zoning is being considered have the right to file a written protest against the request. The land area of this 200-foot distance includes streets, alleys and other public rights-of-way.
- (b) Whenever such written protest is signed by the owners of 20 percent or more of the area of the lots or land included in such zoning change or of the lots or land immediately adjoining such and within the 200-foot distance, such change in zoning

shall not become effective except by a favorable vote of three-fourths of all the members of the ~~commission~~City Council.

- (c) For purposes of determining representation on such written protest, the written protest of any one owner of land owned by two or more persons shall be presumed to be the protest of all owners.

(Ord. No. 1130, art. VII, § 9, 11-3-1998)

SECTION III

Severability. If any word, article, phrase, paragraph, sentence, clause, or provision of this Ordinance shall be held to be invalid or unconstitutional, such holding shall in no way affect other provisions or applications of this Ordinance which can be given effect without the invalid provision, and to this end provisions of this Ordinance are declared to be severable.

SECTION IV

Continuation. All provisions of Chapter 118 of the Code of Ordinances existing prior to the date of passage of this Ordinance remain in full force and effect.

SECTION V

Repeal. This Ordinance shall be and is hereby declared to be cumulative of all other ordinances of the City of Nacogdoches, and this Ordinance shall not operate to repeal or affect any such other ordinances except insofar as the provisions thereof might be inconsistent or in conflict with provisions of this Ordinance, in which such conflicting provisions, if any, in such other ordinance or ordinances are hereby repealed.

SECTION VI

Effective Date. This Ordinance shall take effect ten (10) days from its passage and publication as may be required by governing law.

SECTION VII

Proper Notice & Open Meeting. It is hereby officially found and determined the meeting at which this Ordinance was passed was open to the public as required and public notice of time, place, and purpose of said meeting was given as required by the Open Meetings Act, Chapter 551 of the Texas Government Code.

SECTION VIII

Official Public Records. The City Secretary is hereby authorized and instructed to file a signed and sealed copy of this Ordinance in and among the records of the City of Nacogdoches.

PASSED AND APPROVED this the ____ day of _____, 2024, by a vote of ____ (ayes) to ____ (nays) of the City Council of the City of Nacogdoches.

ATTEST:

CITY OF NACOGDOCHES

Rhonda Lewis, City Secretary

BY: _____
Randy Johnson, Mayor

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:

Jerry Baker, City Attorney

Juan Pollette, Interim City Planner

PRESENTER: Mike Neu, Executive Director of Development and Infrastructure

ITEM/SUBJECT: Public Hearing: Consider amending the Code of Ordinances of the City of Nacogdoches, Texas, Chapter 118 – “Zoning”, Article II – “Administration”, Division 3 – “Board of Adjustment”, to amend the number of days to file an appeal to the Board of Adjustment and who may appeal Board of Adjustment decisions. (Executive Director of Development and Infrastructure)

SUMMARY/BACKGROUND: Staff may propose changes to local ordinances in response to Council direction, or to comport with current state or federal law, to address various needs within and around the municipality. On August 22, 2024, members of the Council and Planning and Zoning Commission held a workshop to discuss possible zoning ordinance updates.

This agenda item proposes to amend Chapter 118 “Zoning”, Article II “Administration”, Division 3 “Board of Adjustment” of the local Code of Ordinances to address procedures for Board of Adjustment appeals. Some amendments are intended to provide clarification, while others are intended to align more closely with Texas Local Government Code Sec. 211.010 "Appeal to Board" last amended by the Texas Legislature in 2019 (see [H.B. 2497](#)). Proposed amendments include:

- Appeals are specific to city planner decisions.
- Only certain people may file appeals.
- Appeals must be filed no later than 20 days from the date of the decision.
- Hearings must be conducted no later than 60 days from the filing.

FINANCIAL:

No financial impact associated with this item

COUNCIL PRIORITIES: THIS AGENDA ITEM IS CONSISTENT WITH THE FOLLOWING CITY COUNCIL PRIORITIES

Not Applicable

CITY CONTACT: Mike Neu, Executive Director of Development & Infrastructure
neum@nactx.us
(936) 559-2522

ATTACHMENTS:

1. Redlined ordinance amendment
2. Texas Local Govt Code 211.010 snippet

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF NACOGDOCHES, TEXAS, AMENDING CHAPTER 118 – “ZONING”, ARTICLE II – “ADMINISTRATION”, DIVISION 3. – “BOARD OF ADJUSTMENT”, OF THE CODE OF ORDINANCES OF THE CITY OF NACOGDOCHES, TEXAS; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A CONTINUATION CLAUSE; PROVIDING A REPEAL CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

RECITALS:

WHEREAS, the City of Nacogdoches is authorized under Chapter 211 of the Texas Local Government Code to adopt zoning regulations for the purpose of promoting the public health, safety, morals, or general welfare, and protecting and preserving places and areas of historical, cultural, or architectural significance; and

WHEREAS, the City Council of the City of Nacogdoches has adopted ordinances for the purpose of promoting health, safety, and the general welfare of the City, with reasonable consideration of the character of each zoning district, its suitability for particular uses, and with a view of conserving the value of buildings and encouraging the most appropriate use of land throughout the City; and

WHEREAS, in order to further these objectives, the City Council has determined the need to amend certain portions of these ordinances as set forth herein;

NOW, THEREFORE BE IT ORDAINED BY THE CITY OF NACOGDOCHES:

SECTION I

All above premises are hereby found to be true and correct legislative and factual findings.

SECTION II

CHAPTER 118 – “ZONING”, ARTICLE II. – “ADMINISTRATION”, DIVISION 3. – “BOARD OF ADJUSTMENT” of the Code of Ordinances of the City of Nacogdoches, Texas, is hereby amended, as set hereafter to read as follows:

Sec. 118-100. - Appeal of decisions made by city ~~officers~~planner.

(a) Appeal of city planner's decision. Appeals to the board of adjustment may be ~~taken by any person aggrieved, or by any officer, department or board of the city affected by any filed concerning a~~ decision of the city planner in the enforcement of this chapter. Such appeal shall be taken within a reasonable time, not to exceed ~~90-20~~ days from the date of the decision, by filing with the city planner ~~and with the board of adjustment~~ a notice of appeal, which shall specify the grounds thereof. The city planner shall forthwith transmit to the board all of the papers constituting the record upon which the action appealed was taken. An appeal may be initiated as follows:

(1) The following persons may appeal to the board of adjustment a decision made by the city planner that is not related to a specific application, address, or project:

(i) a person aggrieved by the decision; or

(ii) any officer, department, board, or bureau of the municipality affected by the decision.

(2) The following persons may appeal to the board of adjustment a decision made by the city planner that is related to a specific application, address, or project:

(i) a person who:

(A) filed the application that is the subject of the decision;

(B) is the owner or representative of the owner of the property that is the subject of the decision; or

(C) is aggrieved by the decision and is the owner of real property within 200 feet of the property that is the subject of the decision; or

(ii) any officer, department, board, or bureau of the municipality affected by the decision.

~~(a)~~(b) *Appeal stays city planner ~~and building official~~ action.* An appeal from the action of the city planner shall stay all proceedings in furtherance of such action unless the city planner certifies to the board that a stay would, in his opinion, cause imminent peril to life or property. If the city planner shall make and file such certificate, that action shall not be stayed unless by a restraining order which may be granted by the board, or by a court of record, upon application of the party aggrieved by the action of the city planner, and after notice to the city planner.

~~(b)~~(c) *Hearing.* The board of adjustment shall fix a reasonable time for the hearing of the appeal, give public notice thereof, as well as due notice to the parties in interest, and may authorize city staff to do such. The board of adjustment shall decide such appeal within a reasonable time, but no later than 60 days from the filing of the appeal. Upon hearing of such appeal, any interested party may appear in person or by an agent or attorney.

~~(e)~~(d) *Powers.* In exercising the powers set out in this section, the board of adjustment may, in conformity with the provisions of state law, reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or determination as ought to

be made, and to that end shall have all the powers of the city planner from whose action the appeal is taken.

~~(d)~~(e) *Decision.* Decisions of the board of adjustment shall be as follows:

- (1) *Required vote.* A reversal by the board of any order, requirement, decision, or determination of the city planner against the applicant, and a finding in favor of the applicant by the board, shall require the concurring vote of four members of the board of adjustment.
- (2) *Lapse of order.* Any reversal by the board of adjustment shall lapse after the expiration of 90 days where action by the appellant is not taken pursuant thereto within such period. This subsection shall not apply when the applicant has presented to the board of adjustment a development plan which requires a length of time greater than 90 days, in which event the board of adjustment may grant a greater length of time. In no event, however, shall such time granted exceed two years.

(Ord. No. 1130, art. X, § 4, 11-3-1998)

SECTION III

Severability. If any word, article, phrase, paragraph, sentence, clause, or provision of this Ordinance shall be held to be invalid or unconstitutional, such holding shall in no way affect other provisions or applications of this Ordinance which can be given effect without the invalid provision, and to this end provisions of this Ordinance are declared to be severable.

SECTION IV

Continuation. All provisions of Chapter 118 of the Code of Ordinances existing prior to the date of passage of this Ordinance remain in full force and effect.

SECTION V

Repeal. This Ordinance shall be and is hereby declared to be cumulative of all other ordinances of the City of Nacogdoches, and this Ordinance shall not operate to repeal or affect any such other ordinances except insofar as the provisions thereof might be inconsistent or in conflict with provisions of this Ordinance, in which such conflicting provisions, if any, in such other ordinance or ordinances are hereby repealed.

SECTION VI

Effective Date. This Ordinance shall take effect ten (10) days from its passage and publication as may be required by governing law.

SECTION VII

Proper Notice & Open Meeting. It is hereby officially found and determined the meeting at which this Ordinance was passed was open to the public as required and public notice of time, place, and purpose of said meeting was given as required by the Open Meetings Act, Chapter 551 of the Texas Government Code.

SECTION VIII

Official Public Records. The City Secretary is hereby authorized and instructed to file a signed and sealed copy of this Ordinance in and among the records of the City of Nacogdoches.

PASSED AND APPROVED this the ____ day of _____, 2024, by a vote of ____ (ayes) to ____ (nays) of the City Council of the City of Nacogdoches.

ATTEST:

CITY OF NACOGDOCHES

Rhonda Lewis, City Secretary

BY: _____
Randy Johnson, Mayor

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:

Jerry Baker, City Attorney

Juan Pollette, Interim City Planner

TEXAS LOCAL GOVERNMENT CODE
TITLE 7. REGULATION OF LAND USE, STRUCTURES, BUSINESSES, AND RELATED
ACTIVITIES

SUBTITLE A. MUNICIPAL REGULATORY AUTHORITY

CHAPTER 211. MUNICIPAL ZONING AUTHORITY

SUBCHAPTER A. GENERAL ZONING REGULATIONS

Sec. 211.010. APPEAL TO BOARD. (a) Except as provided by Subsection (e), any of the following persons may appeal to the board of adjustment a decision made by an administrative official that is not related to a specific application, address, or project:

- (1) a person aggrieved by the decision; or
- (2) any officer, department, board, or bureau of the municipality affected by the decision.

(a-1) Except as provided by Subsection (e), any of the following persons may appeal to the board of adjustment a decision made by an administrative official that is related to a specific application, address, or project:

- (1) a person who:
 - (A) filed the application that is the subject of the decision;
 - (B) is the owner or representative of the owner of the property that is the subject of the decision; or
 - (C) is aggrieved by the decision and is the owner of real property within 200 feet of the property that is the subject of the decision; or
- (2) any officer, department, board, or bureau of the municipality affected by the decision.

(b) The appellant must file with the board and the official from whom the appeal is taken a notice of appeal specifying the grounds for the appeal. The appeal must be filed not later than the 20th day after the date the decision is made. On receiving the notice, the official from whom the appeal is taken shall immediately transmit to the board all the papers constituting the record of the action that is appealed.

(c) An appeal stays all proceedings in furtherance of the action that is appealed unless the official from whom the appeal is taken certifies in writing to the board facts supporting the official's opinion that a stay would cause imminent peril to life or property. In that case, the proceedings may be stayed only by a restraining order granted by the board or a court of record on application, after notice to the official, if due cause is shown.

(d) The board shall set a reasonable time for the appeal hearing and shall give public notice of the hearing and due notice to the parties in interest. A party may appear at the appeal hearing in person or by agent or attorney. The board shall decide the appeal at the next meeting for which notice can be provided following the hearing and not later than the 60th day after the date the appeal is filed.

(e) A member of the governing body of the municipality who serves on the board of adjustment under Section [211.008](#)(g) may not bring an appeal under this section.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1997, 75th Leg., ch. 363, Sec. 2, eff. Sept. 1, 1997.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 820 (H.B. [2497](#)), Sec. 2, eff. September 1, 2019.



City Council Meeting

Date: November 5, 2024

Agenda Item: 6.H.

PRESENTER: Scott Weems, Police Chief

ITEM/SUBJECT: Consider approval of the purchase of 65 body-worn cameras and approval of a contract by and between Nacogdoches Police Department and Motorola Solutions. (Chief of Police)

SUMMARY/BACKGROUND: Consider approval of the purchase of 65 body-worn cameras to replace the current ones that are no longer under warranty. This will also include cloud-based storage that will replace the current on premise servers that we are currently using. This purchase is not to exceed \$379,420.00 over a 5-year period. The Watchguard body camera system is a video camera system and evidence management software for law enforcement that includes body-worn cameras and an in-car video system.

Consider approval of a contract by and between the City of Nacogdoches Police Department and Motorola Solutions for 65 body-worn cameras and the transition to a cloud-based storage system not to exceed \$379,420.00.

FINANCIAL:

Item is budgeted:

Account No.: 01.15.620.10

Account Name: *Office Equipment & IT Maintenance*

Amount: 379,420.00

COUNCIL PRIORITIES: THIS AGENDA ITEM IS CONSISTENT WITH THE FOLLOWING CITY COUNCIL PRIORITIES

Not Applicable

CITY CONTACT: Scott Weems, Chief of Police

weemss@nactx.us

(936) 559-2619

ATTACHMENTS:

1. Motorola Customer Agreement (2)
2. Motorola signed contract (1)

Motorola Solutions Customer Agreement

This Motorola Solutions Customer Agreement (the "**MCA**") is entered into between Motorola Solutions, Inc., with offices at 500 W. Monroe Street, Suite 4400, Chicago, IL 60661 ("**Motorola**") and the entity set forth in the signature block below ("**Customer**"). Motorola and Customer will each be referred to herein as a "**Party**" and collectively as the "**Parties**". This Agreement (as defined below) is effective as of the date of the last signature (the "**Effective Date**").

Section 1. Agreement.

- 1.1. Scope: Agreement Documents.** This MCA governs Customer's purchase of Products and Services (as each are defined below) from Motorola. Additional terms and conditions applicable to specific Products and Services are set forth in one or more Motorola prepared or agreed upon addenda attached to this MCA (each an "**Addendum**", and collectively the "**Addenda**"). This MCA, the Exhibits, Addenda, and Motorola-provided Proposal collectively form the Parties' "**Agreement**".
- 1.2. Attachments.** The Exhibits listed below will be attached hereto and incorporated into and made a part of this Agreement:
- Exhibit A "Payment" (Communications System purchase only)
 - Exhibit B Motorola Proposal dated 09/11/2024
 - Exhibit C "System Acceptance Certificate" (Communications System only)
- 1.3. Order of Precedence.** In interpreting this Agreement and resolving any ambiguities: 1) the main body of this Agreement takes precedence over the exhibits (unless otherwise specified in an exhibit), and any inconsistency between Exhibits A through C will be resolved in their listed order, and 2) Each Addendum will control with respect to conflicting terms in the Agreement, but only as applicable to the Products and Services described in such Addendum.

Section 2. Definitions.

"Authorized Users" means Customer's employees, full-time contractors engaged for the purpose of supporting the Products and Services that are not competitors of Motorola, and the entities (if any) specified in a Proposal or otherwise approved by Motorola in writing (email from an authorized Motorola signatory accepted), which may include affiliates or other Customer agencies.

"Change Order" means a written amendment to this Agreement after the effective date that alters the work, the contract sum, the contract time, or other change mutually decided between the Parties.

"Communications System" is a solution that includes at least one radio Product, whether devices, software, or infrastructure, and requires Integration Services to deploy such radio Product at a Customer Site or onto any Customer-Provided Equipment or Equipment provided to Customer.

"Contract Price" means the price for the Communications System and implementation Services, excluding applicable sales or similar taxes and freight charges. Further, unless otherwise stated in Exhibit A "Payment" or the pricing pages of the Proposal, recurring fees for maintenance, SUA, or Subscription Software are included in the Contract Price.

"Confidential Information" means any and all non-public information provided by one Party to the other that is disclosed under this Agreement in oral, written, graphic, machine recognizable, or sample form, being clearly designated, labeled or marked as confidential or its equivalent or that a reasonable business person would consider non-public and confidential by its nature. With respect

to Motorola, Confidential Information will also include Products and Services, and Documentation, as well as any other information relating to the Products and Services.

“Customer Contact Data” has the meaning given to it in the DPA.

“Customer Data” has the meaning given to it in the DPA.

“Customer-Provided Equipment” means components, including equipment and software, not provided by Motorola which may be required for use of the Products and Services.

“Data Processing Addendum” or **“DPA”** means the Motorola Data Processing Addendum applicable to processing of Customer Data for US customers, as updated, supplemented, or superseded from time to time. The DPA is located at https://www.motorolasolutions.com/content/dam/msi/docs/msi-standards_terms-conditions/motorola_solutions_united_states_data_processing_addendum_online_version.pdf and is incorporated into and made a part of this Agreement for all purposes pertaining to the contents of the DPA. Where terms or provisions in the Agreement conflict with terms or provisions of the DPA, the terms or provisions of the DPA will control with respect to the contents of the DPA.

“Documentation” means the documentation for the Equipment, software Products, or data, that is delivered with the Products and Services that specifies technical and performance features, capabilities, users, or operation, including training manuals, and other deliverables, such as reports, specifications, designs, plans, drawings, analytics, or other information.

“Equipment” means hardware provided by Motorola.

“Equipment Lease-Purchase Agreement” means the agreement by which Customer finances all or a portion of the Contract Price.

“Feedback” means comments or information, in oral or written form, given to Motorola by Customer or Authorized Users, including their end users, in connection with or relating to the Products or Services;

“Fees” means charges applicable to the Products and Services.

“Integration Services” means the design, deployment, and integration Services provided by Motorola in order to design, install, set up, configure, and/or integrate the applicable Products as agreed upon by the Parties.

“Licensed Software” means licensed software which is either preinstalled on Equipment or installed on Customer-Provided Equipment and licensed to Customer by Motorola for a perpetual or other defined license term.

“Maintenance and Support Services” means the break/fix maintenance, technical support, or other Services (such as software integration Services) described in the applicable statement of work.

“Motorola Data” means data owned or licensed by Motorola and made available to Customer in connection with the Products and Services;

“Motorola Materials” means proprietary software, tools, data, and other materials, including designs, utilities, models, methodologies, systems, and specifications, which Motorola has developed or licensed from third parties (including any corrections, bug fixes, enhancements, updates, modifications, adaptations, translations, de-compilations, disassemblies, or derivative

works of the foregoing, whether made by Motorola or another party). Products and Services, Motorola Data, Third-Party Data, and Documentation, are considered Motorola Materials

“Non-Motorola Materials” means collectively, Customer or third-party software, services, hardware, content, and data that is not provided by Motorola.

“Proposal” means solution descriptions, pricing, equipment lists, statements of work (“SOW”), schedules, technical specifications, quotes, and other documents setting forth the Products and Services to be purchased by Customer and provided by Motorola. The Proposal may also include an ATP, Acceptance Test Plan, depending on the Products and Services purchased by Customer.

“Products” or **“Product”** is how the Equipment, Licensed Software, and Subscription Software being purchased by the Customer will collectively be referred to in this Agreement (collectively as “Products”, or individually as a “Product”).

“Professional Services” are Services provided by Motorola to Customer under this Agreement the nature and scope of which are more fully described in the Proposal and Section 2.2.5 of this Agreement.

“Prohibited Jurisdiction” means any jurisdiction in which the provision of such Products and Services is prohibited under applicable laws or regulations.

“Process” or **“Processing”** have the meaning given to them in the DPA

“Services” means services related to purchased Products as described in the Proposal.

“Service Completion Date” means the date of Motorola’s completion of the Services described in a Proposal.

“Service Use Data” has the meaning given to it in the DPA.

“Site” or **“Sites”** means the location where the Integration Services or Maintenance and Support Services will take place.

“Software System” means a solution that includes at least one software Product and requires Integration Services to deploy such software Product at a Customer Site or onto any Customer-Provided Equipment or Equipment provided to Customer.

“SUA” or **“SUA II”** means Motorola’s Software Upgrade Agreement program.

“Subscription Software” means licensed cloud-based software-as-a-service products and other software which is either preinstalled on Equipment or installed on Customer-Provided Equipment, but licensed to Customer by Motorola on a subscription basis.

“Third-Party Data” has the meaning given to it in the DPA.

“Term” means the term of this MCA which will commence on the Effective Date and continue until six (6) months after the later of (a) the termination, expiration, or discontinuance of services under the last Proposal in effect, or (b) the expiration of all applicable warranty periods, unless the MCA is earlier terminated as set forth herein.

Section 3. Products and Services.

3.1. Products. Motorola will (a) sell Equipment, (b) Licensed Software, and (c) Subscription Software to Customer, to the extent each is set forth in this Agreement. At any time during the Term (as defined below), Motorola may substitute any Products at no cost to Customer, if the substitute is substantially similar to the Products set forth in this Agreement.

3.2. Services.

3.2.1. Motorola will provide Services, to the extent set forth in this Agreement.

3.2.2. Integration Services; Maintenance and Support Services. Motorola will provide (a) Integration Services at the applicable Sites, agreed upon by the Parties or (b) Maintenance and Support Services, each as further described in the applicable statement of work. Maintenance, Support Services and Integration Services will each be considered "Services", as defined above.

3.2.3. Service Proposals. The Fees for Services will be set forth in Motorola's Quote or Proposal. A Customer point of contact will be set forth in the applicable statement of work for the Services. For purposes of clarity, each statement of work will be incorporated into, and form an integral part of, this Agreement.

3.2.4. Service Completion. Services described in a Proposal will be deemed complete upon the Service Completion Date, or as Services are renewed or terminated.

3.2.5. Professional Services

3.2.5.1. Assessment of Systems & Operations. If Customer is purchasing Professional Services to evaluate or assess networks, systems or operations, Customer acknowledges and agrees that the equipment provided by or used by Motorola to facilitate performance of the Services may impact or disrupt information systems. Except as specifically set forth in the Agreement, Motorola disclaims responsibility for costs in connection with any such disruptions of and/or damage to Customer's or a third party's information systems, equipment, voice transmissions, and data, including, but not limited to, denial or access to a legitimate system user, automatic shut-down of information systems caused by intrusion detection software or hardware, or failure of the information system resulting from the provision or delivery of the Service. Motorola agrees to cooperate with Customer to schedule any such potential damage or disruption around Customer's voice or information technology traffic and use patterns so as to reduce the risk of disruption during working hours.

3.2.5.2. Network Security. If Customer is purchasing network security assessment of network monitoring Professional Services, Customer acknowledges and agrees that Motorola does not guarantee or warrant that it will discover all of Customer's system vulnerabilities or inefficiencies. Customer agrees not to represent to third parties that Motorola has provided such guarantee. Motorola disclaims any and all responsibility for any and all loss or costs of any kind associated with vulnerabilities or security events, whether or not they are discovered by Motorola.

3.2.5.3. Application Development. If Customer purchases software application development as part of the Professional Services, the deliverables will be licensed as described in Section 2.5 - Documentation.

3.2.6. Transport Connectivity Services. Certain Communications Systems may include one or more transport connectivity services as specified in the Proposal. In addition to the terms of this MCA, transport connectivity services shall also be governed by the terms of Motorola's

standard Transport Connectivity Addendum, a copy of which is available here: https://www.motorolasolutions.com/en_us/about/legal/transport-connectivity-addendum.html.

- 3.3. Non-Preclusion.** If, in connection with the Products and Services provided under this Agreement, Motorola performs assessments of its own, or related, products or makes recommendations, including a recommendation to purchase other products or services, nothing in this Agreement precludes such efforts nor precludes Motorola from participating in a future competitive bidding process or otherwise offering or selling the recommended products or other services to Customer. Customer represents that this paragraph does not violate its procurement standards or other laws, regulations, or policies.
- 3.4. Customer Obligations.** Customer represents that information Customer provides to Motorola in connection with receipt of Products and Services are accurate and complete in all material respects. If any assumptions in the Proposals or information provided by Customer prove to be incorrect, or if Customer fails to perform any of its obligations under this Agreement, Motorola's ability to perform its obligations may be impacted and changes to the Agreement, including the scope, Fees, and performance schedule may be required.
- 3.5. Documentation.** Products and Services may be delivered with Documentation. Documentation is and will be owned by Motorola, unless otherwise expressly agreed in an Addendum or Proposal that certain Documentation will be owned by Customer. Motorola hereby grants Customer a limited, royalty-free, worldwide, non-exclusive license to use the Documentation solely for its internal business purposes in connection with the Products and Services.
- 3.6. Motorola Tools and Equipment.** As part of delivering the Products and Services, Motorola may provide certain tools, equipment, models, and other materials of its own. Such tools and equipment will remain the sole property of Motorola unless they are to be purchased by Customer as Products and are explicitly listed on the Proposal. The tools and equipment may be held by Customer for Motorola's use without charge and may be removed from Customer's premises by Motorola at any time without restriction. Customer will safeguard all tools and equipment while in Customer's custody or control, and be liable for any loss or damage. Upon the expiration or earlier termination of this Agreement, Customer, at its expense, will return to Motorola all tools and equipment in its possession or control.
- 3.7. Authorized Users.** Customer will ensure its employees and Authorized Users comply with the terms of this Agreement and will be liable for all acts and omissions of its employees and Authorized Users. Customer is responsible for the secure management of Authorized Users' names, passwords and login credentials for access to Products and Services.
- 3.8. Export Control.** Customer, its employees, and any other Authorized Users will not access or use the Products and Services in any Prohibited Jurisdiction), and Customer will not provide access to the Products and Services to any government, entity, or individual located in a Prohibited Jurisdiction. Customer represents and warrants that (a) it and its Authorized Users are not named on any U.S. government list of persons prohibited from receiving U.S. exports, or transacting with any U.S. person; (b) it and its Authorized Users are not a national of, or a company registered in, any Prohibited Jurisdiction; (c) Customer will not permit its Authorized Users to access or use the Products or Services in violation of any U.S. or other applicable export embargoes, prohibitions or restrictions; and (d) Customer and its Authorized Users will comply with all applicable laws regarding the transmission of technical data exported from the U.S. and the country in which Customer, its employees, and the Authorized Users are located.
- 3.9.** To obtain any additional Services, Customer will issue a purchase order referring to this Agreement and the separate proposal document. Omission of reference to this Agreement in

Customer's purchase order will not affect the applicability of this Agreement. Motorola's proposal may include a cover page entitled "Service Agreement" or "Installation Agreement", as applicable, and other attachments. These cover pages and other attachments are incorporated into this Agreement by this reference.

- 3.10. Change Orders.** Unless a different change control process is agreed upon in writing by the Parties, a Party may request changes to an Addendum or a Proposal by submitting a Change Order to the other Party. If a requested change in a Change Order causes an increase or decrease in the Products or Services, the Parties by means of the Change Order will make appropriate adjustments to the Fees, project schedule, or other matters. Change Orders are effective and binding on the Parties only upon execution of the Change Order by an authorized representative of both Parties.

Section 4. Term and Termination.

- 4.1. Term.** The applicable Addendum or Proposal will set forth the Term for the Products and Services governed thereby.

- 4.1.1. Subscription Terms.** The duration of Customer's subscription commences upon delivery of the first Subscription Software (and recurring Services, if applicable) ordered under this Agreement and will continue for a twelve (12) month period or such longer period identified in a Proposal (the "**Initial Subscription Period**") and will automatically renew for additional twelve (12) month periods (each, a "**Renewal Subscription Year**"), unless either Party notifies the other of its intent not to renew at least thirty (30) days before the conclusion of the then-current Subscription Term. (The Initial Subscription Period and each Renewal Subscription Year will each be referred to herein as a "**Subscription Term**".) Motorola may increase Fees prior to any Renewal Subscription Year. In such case, Motorola will notify Customer of such proposed increase no later than thirty (30) days prior to commencement of such Renewal Subscription Year.

Unless otherwise specified in writing, additional Subscription Software or recurring Services purchased under this Agreement will (a) commence upon delivery of such Subscription Software or recurring Service, and continue until the conclusion of Customer's then-current Subscription Term (a "**Partial Subscription Year**"), and (b) automatically renew for Renewal Subscription Years thereafter, unless either Party notifies the other of its intent not to renew at least thirty (30) days before the conclusion of the then-current Subscription Term. Unless otherwise specified in writing, the Subscription Terms for all Subscription Software and recurring Services hereunder will be synchronized.

- 4.2. Termination.** Either Party may terminate the Agreement or the applicable Addendum or Proposal if the other Party breaches a material obligation under the Agreement and does not cure such breach within thirty (30) days after receipt of notice of the breach or fails to produce a cure plan within such period of time. Each Addendum and Proposal may be separately terminable as set forth therein.
- 4.3. Termination for Non-Appropriation.** In the event any identified funding is not appropriated or becomes unavailable, the Customer reserves the right to terminate this Agreement for non-appropriation upon thirty (30) days' advance written notice to Motorola. In the event of such termination, Motorola shall be entitled to compensation for all conforming goods delivered and for all services performed prior to the effective date of termination date.
- 4.4. Suspension of Services.** Motorola may promptly terminate or suspend any Products or Services under a Proposal if Motorola determines: (a) the related Product license has expired or has

terminated for any reason; (b) the applicable Product is being used on a hardware platform, operating system, or version not approved by Motorola; (c) Customer fails to make any payments when due; or (d) Customer fails to comply with any of its other obligations or otherwise delays Motorola's ability to perform.

- 4.5. Wind Down of Subscription Software.** In addition to the termination rights in this Agreement, Motorola may terminate any Subscription Term, in whole or in part, in the event Motorola plans to cease offering the applicable Subscription Software or Service to customers.
- 4.6. Effect of Termination or Expiration.** Upon termination for any reason or expiration of this Agreement, an Addendum, or a Proposal, Customer and the Authorized Users will return or destroy (at Motorola's option) all Motorola Materials and Motorola's Confidential Information in their possession or control and, as applicable, provide proof of such destruction, except that Equipment purchased by Customer should not be returned. If Customer has any outstanding payment obligations under this Agreement, Motorola may accelerate and declare all such obligations of Customer immediately due and payable by Customer. Notwithstanding the reason for termination or expiration, Customer agrees to pay Motorola for Products and Services already delivered. Customer has a duty to mitigate any damages under this Agreement, including in the event of default by Motorola and Customer's termination of this Agreement.
- 4.7. Equipment as a Service.** In the event that Customer purchases any Equipment at a price below the published list price for such Equipment in connection with Customer entering into a fixed- or minimum required-term agreement for Subscription Software, and Customer or Motorola terminates the Agreement prior to the expiration of such fixed- or minimum required-term, then Motorola will have the right to invoice Customer for, and Customer will pay, the amount of the discount to the published list price for the Equipment or such other amount set forth in writing. This Section will not limit any other remedies Motorola may have with respect to an early termination.

Section 5. Payment, Invoicing, Delivery and Risk of Loss

- 5.1.** Customer affirms they have signatory authority to execute this contract. The Contract Price of \$_____, excluding taxes, is fully committed and identified, including all subsequent years of contracted services, if applicable. The Customer will pay all invoices as received from Motorola subject to the terms of this Agreement and any changes in scope will be subject to the change order process as described in this Agreement.

Motorola acknowledges the Customer may require the issuance(s) of a purchase order or notice to proceed as part of the Customer's procurement process. However, Customer agrees that the issuance or non-issuance of a purchase order or notice to proceed does not preclude the Customer from its contractual obligations as defined in this Agreement.

- 5.2. Fees.** Fees and charges applicable to the Products and Services will be as set forth in the applicable Addendum or Proposal. Changes in the scope of Services described in a Proposal that require an adjustment to the Fees will be set forth in the applicable pricing schedule. Unless otherwise specified in the applicable Proposal, the Fees for any Services exclude expenses associated with unusual and costly Site access requirements (e.g., if Site access requires a helicopter or other equipment), and Customer will reimburse Motorola for these or other expenses incurred by Motorola in connection with the Services. The annual subscription Fee for Subscription Software and associated recurring Services may include certain one-time Fees, such as start-up fees, license fees, or other fees set forth in a Proposal. Motorola may suspend

the Subscription Software and any recurring Services if Customer fails to make any payments within thirty (30) days of invoice due date when due.

- 5.3. Taxes. The Fees do not include any excise, sales, lease, use, property, or other taxes, assessments, duties, or regulatory charges or contribution requirements (collectively, "Taxes"), all of which will be paid by Customer, except as exempt by law, unless otherwise specified in a Proposal. If Motorola is required to pay any Taxes, Customer will reimburse Motorola for such Taxes (including any interest and penalties) within thirty (30) days after Customer's receipt of an invoice therefore. Customer will be solely responsible for reporting the Products for personal property tax purposes, and Motorola will be solely responsible for reporting taxes on its income and net worth.
- 5.4. Invoicing. Motorola will invoice Customer as described in this Agreement and Customer will pay all invoices within thirty (30) days of the invoice date or as otherwise specified in writing. In the event Customer finances the purchase of the Motorola Products and Services contemplated herein via Motorola Solutions Credit Corporation ("MSCC"), invoices for such purchase will be paid via the disbursement of the financing proceeds pursuant to the Equipment Lease - Purchase Agreement executed between the parties and the payment schedule enclosed therein shall control payment of the related invoices. Late payments will be subject to interest charges at the maximum rate permitted by law, commencing upon the due date. Motorola may invoice electronically via email, and Customer agrees to receive invoices via email at the email address set forth in a Proposal. Customer acknowledges and agrees that a purchase order or other notice to proceed is not required for payment for Products or Services.
- 5.5. Payment. Customer will pay invoices for the Products and Services provided under this Agreement in accordance with the invoice payment terms set forth in Section 5.4. Generally, invoices are issued after shipment of Equipment or upon Motorola's delivery of Licensed Software, or upon System Completion Date of a Software System, as applicable, but if a specific invoicing or payment schedule is set forth in the Agreement, such schedule will determine the invoicing cadence.

Motorola will have the right to suspend future deliveries of Products and Services if Customer fails to make any payments when due.

- 5.6. INVOICING AND SHIPPING ADDRESSES. Invoices will be sent to the Customer at the following address:

Name: SCOTT WEEMS
Address: 312 W. Main St., Nacogdoches, TX 75961
Phone: 936-559-2602

E-INVOICE. To receive invoices via email:

Customer Account Number: 1000407032
Customer Accounts Payable Email: diazc@nactx.us
Customer CC (optional) Email: turnerj@nactx.us

The address which is the ultimate destination where the Equipment will be delivered to Customer is:

Name: SCOTT WEEMS
Address: 312 W. Main St., Nacogdoches, TX 75961

The Equipment will be shipped to the Customer at the following address (insert if this information is known):

Name: Scott Weems
Address: 312 W. Main St. , Nacogdoches, TX 75961
Phone: 936-559-2602

Customer may change this information by giving written notice to Motorola.

5.7. Delivery, Title and Risk of Loss. Motorola will provide to Customer the Products (and, if applicable, related Services) set forth in a Proposal, in accordance with the terms of the Agreement. Motorola will, using commercially reasonable practices, pack the ordered Equipment and ship such Equipment to the Customer address set forth in **Section 5.6** or otherwise provided by Customer in writing, using a carrier selected by Motorola.

Notwithstanding the foregoing and unless otherwise stated in a Equipment Lease - Purchase Agreement, delivery of Equipment (and any incorporated Licensed Software) will occur, and title and risk of loss for the Equipment will pass to Customer, upon shipment by Motorola in accordance with ExWorks, Motorola's premises (Incoterms 2020). Customer will pay all shipping costs, taxes, and other charges applicable to the shipment and import or export of the Products and Services, as applicable, and Customer will be responsible for reporting the Products for personal property tax purposes.

Delivery of Licensed Software for installation on Equipment or Customer-Provided Equipment will occur upon the earlier of (a) electronic delivery of the Licensed Software by Motorola, and (b) the date Motorola otherwise makes the Licensed Software available for download by Customer. If agreed upon in a Proposal, Motorola will also provide Services related to such Products. Title to Licensed Software and/or Subscription Software will not pass to Customer at any time.

5.8. Delays. Any shipping dates set forth in a Proposal are approximate, and while Motorola will make reasonable efforts to ship Products by any such estimated shipping date, Motorola will not be liable for any delay or related damages to Customer. Time for delivery will not be of the essence, and delays will not constitute grounds for cancellation, penalties, termination, or a refund.

5.9. Future Regulatory Requirements. The Parties acknowledge and agree that certain Services (i.e. cyber) are an evolving technological area and therefore, laws and regulations regarding Services may change. Changes to existing Services required to achieve regulatory compliance may be available for an additional fee. Any required changes may also impact the price for Services.

Section 6. Sites; Customer-Provided Equipment; Non-Motorola Materials.

6.1. Access to Sites. Customer will be responsible for providing all necessary permits, licenses, and other approvals necessary for the installation and use of the Products and the performance of the Services at each applicable Site, including for Motorola to perform its obligations hereunder, and for facilitating Motorola's access to the Sites. No waivers of liability will be imposed on Motorola or its subcontractors by Customer or others at Customer facilities or other Sites, but if and to the extent any such waivers are imposed, the Parties agree such waivers are void.

6.2. Site Conditions. Customer will ensure that (a) all Sites are safe and secure, (b) Site conditions meet all applicable industry and legal standards (including standards promulgated by OSHA or other governmental or regulatory bodies), (c) to the extent applicable, Sites have adequate physical space, air conditioning, and other environmental conditions, electrical power outlets, distribution, equipment, connections, and telephone or other communication lines (including

modem access and interfacing networking capabilities), and (d) Sites are suitable for the installation, use, and maintenance of the Products and Services. This Agreement is predicated upon normal soil conditions as defined by the version of E.I.A. standard RS-222 in effect on the Effective Date.

- 6.3. Site Issues.** Upon its request, which will not be unreasonably denied, Motorola will have the right to inspect the Sites and advise Customer of any deficiencies or non-conformities with the requirements of this **Section 6 – Sites; Customer-Provided Equipment; Non-Motorola Materials**. If Motorola or Customer identifies any deficiencies or non-conformities, Customer will promptly remediate such issues or the Parties will select a replacement Site. If a Party determines that a Site identified in a Proposal is not acceptable or desired, the Parties will cooperate to investigate the conditions and select a replacement Site or otherwise adjust the installation plans and specifications as necessary. A change in Site or adjustment to the installation plans and specifications may cause a change in the Fees or performance schedule under the applicable Proposal.
- 6.4. Customer-Provided Equipment.** Customer will be responsible, at its sole cost and expense, for providing and maintaining the Customer-Provided Equipment in good working order. Customer represents and warrants that it has all rights in Customer-Provided Equipment to permit Motorola to access and use the applicable Customer-Provided Equipment to provide the Products and Services under this Agreement, and such access and use will not violate any laws or infringe any third-party rights (including intellectual property rights). Customer (and not Motorola) will be fully liable for Customer-Provided Equipment damage, loss, change, or theft that may impact Motorola's ability to provide the Products and Services under this Agreement, and Customer acknowledges that any such events may cause a change in the Fees or performance schedule under the applicable Proposal.
- 6.5. Non-Motorola Materials.** In certain instances, Customer may be permitted to access, use, or integrate Non-Motorola Materials with or through the Products and Services. If Customer accesses, uses, or integrates any Non-Motorola Materials with the Products or Services, Customer will first obtain all necessary rights and licenses to permit Customer's and its Authorized Users' use of the Non-Motorola Materials in connection with the Products and Services. Customer will also obtain the necessary rights for Motorola to use such Non-Motorola Materials in connection with providing the Products and Services, including the right for Motorola to access, store, and process such Non-Motorola Materials (e.g., in connection with Subscription Software), and to otherwise enable interoperation with the Products and Services. Customer represents and warrants that it will obtain the foregoing rights and licenses prior to accessing, using, or integrating the applicable Non-Motorola Materials with the Products and Services, and that Customer and its Authorized Users will comply with any terms and conditions applicable to such Non-Motorola Materials. If any Non-Motorola Materials requires access to Customer Data (as defined below), Customer hereby authorizes Motorola to allow the provider of such Non-Motorola Materials to access Customer Data, in connection with the interoperation of such Non-Motorola Materials with the Products and Services.
- 6.6.** Customer acknowledges and agrees that Motorola is not responsible for, and makes no representations or warranties with respect to, the Non-Motorola Materials (including any disclosure, modification, or deletion of Customer Data resulting from use of Non-Motorola Materials or failure to properly interoperate with the Products and Services). If Customer receives notice that any Non-Motorola Materials must be removed, modified, or disabled within the Products or Services, Customer will promptly do so. Motorola will have the right to disable or remove Non-Motorola Materials if Motorola believes a violation of law, third-party rights, or

Motorola's policies is likely to occur, or if such Non-Motorola Materials poses or may pose a security or other risk or adverse impact to the Products or Services, Motorola, Motorola's systems, or any third party (including other Motorola customers).

- 6.7. Motorola may provide certain Non-Motorola Materials as an authorized sales representative of a third party as set out in a Proposal. As an authorized sales representative, the third party's terms and conditions, as set forth in the Proposal, will apply to any such sales. Any orders for such Non-Motorola Materials will be filled by the third party. Nothing in this Section will limit the exclusions set forth in **Section 8.2 – Intellectual Property Infringement**.
- 6.8. End User Licenses. Notwithstanding any provision to the contrary in the Agreement, certain Non-Motorola Materials software are governed by a separate license, EULA, or other agreement, including terms governing third-party equipment or software, such as open source software, included in the Products and Services. Customer will comply, and ensure its Authorized Users comply, with any such additional terms applicable to third-party equipment or software. Third party software flow-down terms applicable to Motorola products are located at the following site: https://www.motorolasolutions.com/en_us/about/legal/motorola-solutions-customer-terms/flow-down-terms.html
- 6.9. Prohibited Use. Customer will not integrate or use, or permit a third party or an Authorized User to integrate or use, any Non-Motorola Materials with or in connection with a Software System or other software Product provided by Motorola under this Agreement, without the express written permission of Motorola.
- 6.10. API Support. Motorola will use commercially reasonable efforts to maintain its Application Programming Interface ("API") offered solely in connection with any Software System. APIs will evolve and mature over time, requiring changes and updates. Motorola will use reasonable efforts to continue supporting any version of an API for 6 months after such version is introduced, but if Motorola determines, in its sole discretion, to discontinue support of an API for any reason, Motorola will provide reasonable advance notification to Customer. If an API presents a security risk, Motorola may discontinue an API without prior notice.
- 6.11. Support of Downloaded Clients. If Customer purchases any software Product that requires a client installed locally on any Customer-Provided Equipment or Equipment in possession of Customer, Customer will be responsible for downloading and installing the current version of such client, as it may be updated from time to time. Motorola will use reasonable efforts to continue supporting any version of a client for forty-five (45) days following its release, but Motorola may update the current version of its client at any time, including for bug fixes, product improvements, and feature updates, and Motorola makes no representations or warranties that any software Product will support prior versions of a client.

Section 7. Representations and Warranties.

- 7.1. Mutual Representations and Warranties. Each Party represents and warrants to the other Party that (a) it has the right to enter into the Agreement and perform its obligations hereunder, and (b) the Agreement will be binding on such Party.
- 7.2. Communications System Warranty. Motorola represents and warrants that, on the date of System Acceptance, (a) the Communications System will perform in accordance with the descriptions in the applicable Proposal in all material respects, and (b) if Customer has purchased any Equipment or Motorola Licensed Software (but, for clarity, excluding Subscription Software) as part of such Communications System, the warranty period applicable to such

Equipment and Motorola Licensed Software will continue for a period of one (1) year commencing upon System Acceptance (the "Warranty Period").

7.3. During the Warranty Period, in addition to warranty services, Motorola will provide Maintenance and Support Services for the Equipment and support for the Motorola Licensed Software pursuant to the applicable maintenance and support Proposal. Support for the Motorola Licensed Software will be in accordance with Motorola's established Software Support Policy ("SwSP"). Copies of the SwSP can be found at https://www.motorolasolutions.com/en_us/about/legal/motorola-solutions-customer-terms/software_policy.html, a copy of which is available to Customer upon written request. If Customer wishes to purchase (a) additional Maintenance and Support Services during the Warranty Period; or (b) continue or expand maintenance, software support, installation, and/or Motorola's Lifecycle Management Services ("LMS") after the Warranty Period, Motorola will provide the description of and pricing for such services in a separate proposal document and such terms will be agreed upon in a Proposal. Unless otherwise agreed by the Parties in writing, the terms and conditions in this Agreement applicable to maintenance, support, installation, and/or LMS, will be included in the Maintenance and Support Addendum, LMS Addendum, the applicable Proposals, and the proposal (if applicable). These collective terms will govern the provision of such Services.

7.4. On-Premises Software System Warranty. Motorola represents and warrants that, on the System Completion Date, or on the applicable Product Completion Date for a specific Product within such on-premises Software System, if earlier, (a) such Software System or Product will perform in accordance with the descriptions in the applicable Proposals in all material respects, and (b) if Customer has purchased any Equipment or Motorola Licensed Software (but, for clarity, excluding Subscription Software) as part of such on-premises Software System, the warranty period applicable to such Equipment and Motorola Licensed Software will continue for a period of one (1) year commencing upon the System Completion Date for the Software System that includes such Products, or on the applicable Product Completion Date, if earlier.

7.4.1. On-premises Software Systems as a service and cloud hosted Software Systems are provided as a service and accordingly do not qualify for the On-premises Software System Warranty. System completion, however, for each of these solutions is determined in accordance with **Section 12.2 Software System Completion** below.

7.5. Motorola Warranties - Services. Subject to the disclaimers and exclusions below, Motorola represents and warrants that (a) Services will be provided in a good and workmanlike manner and will conform in all material respects to the descriptions in the applicable Proposal; and (b) for a period of ninety (90) days commencing upon the Service Completion Date for one-time Services, the Services will be free of material defects in materials and workmanship. Other than as set forth in subsection (a) above, recurring Services are not warranted but rather will be subject to the requirements of the applicable Addendum or Proposal.

7.6. Motorola Warranties - Equipment. Subject to the disclaimers and exclusions set forth below, (a) for a period of one (1) year commencing upon the delivery of Motorola-manufactured Equipment under **Section 5.7 – Delivery, Title and Risk of Loss**, Motorola represents and warrants that such Motorola-manufactured Equipment, under normal use, will be free from material defects in materials and workmanship; and (b) The warranties applicable to Motorola-manufactured Equipment set forth in herein shall be applicable to all radio Equipment purchased hereunder whether or not such Equipment was manufactured by Motorola.

7.7. Motorola Licensed Software Warranty. Unless otherwise stated in the License Agreement, for a period of ninety (90) days commencing upon the delivery of Motorola-owned Licensed Software, Motorola represents and warrants that such Licensed Software, when used in accordance with the

Documentation and the Agreement, will be free from reproducible defects that prevent operation of features critical to the primary functionality or successful operation of the Motorola-developed Licensed Software (as determined by Motorola)

7.7.1. As Customer's sole and exclusive remedy for any breach of the Motorola Licensed Software Warranty, Motorola will use commercially reasonable efforts to remedy the material defect in the applicable Licensed Software; provided, however, that if Motorola does not remedy such material defect within a reasonable time, then at Motorola's sole option, Motorola will either replace the defective Licensed Software with functionally-equivalent software, provide substitute software to Customer, or terminate the applicable software license and refund any paid license fees to Customer on a pro-rata basis.

7.7.2. For clarity, the Motorola Licensed Software Warranty applies only to the most current version of the Licensed Software issued by Motorola, and issuance of updated versions of any Licensed Software does not result in a renewal or extension of the Motorola Licensed Software Warranty beyond the ninety (90) day warranty period.

7.8. ADDITIONAL WARRANTY EXCLUSIONS. NOTWITHSTANDING ANY PROVISION OF THE AGREEMENT TO THE CONTRARY, MOTOROLA WILL HAVE NO LIABILITY FOR (A) DEFECTS IN OR DAMAGE TO PRODUCTS RESULTING FROM USE OTHER THAN IN THE NORMAL AUTHORIZED MANNER, OR FROM ACCIDENT, LIQUIDS, OR NEGLIGENCE; (B) TESTING, MAINTENANCE, REPAIR, INSTALLATION, OR MODIFICATION BY PARTIES OTHER THAN MOTOROLA; (C) CUSTOMER'S OR ANY AUTHORIZED USER'S FAILURE TO COMPLY WITH INDUSTRY AND OSHA OR OTHER LEGAL STANDARDS; (D) DAMAGE TO RADIO ANTENNAS, UNLESS CAUSED BY DEFECTS IN MATERIAL OR WORKMANSHIP; (E) EQUIPMENT WITH NO SERIAL NUMBER; (F) BATTERIES OR CONSUMABLES; (G) FREIGHT COSTS FOR SHIPMENT TO REPAIR DEPOTS; (H) COSMETIC DAMAGE THAT DOES NOT AFFECT OPERATION; (I) NORMAL WEAR AND TEAR; (J) ISSUES OR OBSOLESCENCE OF LICENSED SOFTWARE DUE TO CHANGES IN CUSTOMER OR AUTHORIZED USER REQUIREMENTS, EQUIPMENT, OR SYSTEMS; (K) TRACKING AND LOCATION-BASED SERVICES; OR (L) BETA SERVICES.

7.9. Warranty Claims: Remedies. To assert a warranty claim, Customer must notify Motorola in writing of the claim prior to the expiration of any warranty period set forth in this Agreement. Unless a different remedy is otherwise expressly set forth herein, upon receipt of such claim, Motorola will investigate the claim and use commercially reasonable efforts to repair or replace any confirmed materially non-conforming Product or re-perform any non-conforming Service, at its option. Such remedies are Customer's sole and exclusive remedies for Motorola's breach of a warranty. Motorola's warranties are extended by Motorola to Customer only, and are not assignable or transferable.

7.10. Pass-Through Warranties. Notwithstanding any provision of this Agreement to the contrary, Motorola will have no liability for third-party software or hardware provided by Motorola; provided, however, that to the extent offered by third-party providers of software or hardware and to the extent permitted by law, Motorola will pass through express warranties provided by such third parties.

7.11. WARRANTY DISCLAIMER. EXCEPT FOR THE EXPRESS AND PASS THROUGH WARRANTIES IN THIS AGREEMENT, PRODUCTS AND SERVICES PURCHASED HEREUNDER ARE PROVIDED "AS IS" AND WITH ALL FAULTS. WARRANTIES SET FORTH IN THE AGREEMENT ARE THE COMPLETE WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, MOTOROLA DISCLAIMS ALL OTHER WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND QUALITY. MOTOROLA DOES NOT REPRESENT OR WARRANT THAT USE OF THE PRODUCTS AND SERVICES WILL BE UNINTERRUPTED, ERROR-FREE, OR FREE

OF SECURITY VULNERABILITIES, OR THAT THEY WILL MEET CUSTOMER'S PARTICULAR REQUIREMENTS.

Section 8. Indemnification.

- 8.1. General Indemnity.** Motorola will defend, indemnify, and hold Customer harmless from and against any and all damages, losses, liabilities, and expenses (including reasonable fees and expenses of attorneys) arising from any actual third-party claim, demand, action, or proceeding ("Claim") for personal injury, death, or direct damage to tangible property to the extent caused by Motorola's negligence, gross negligence or willful misconduct while performing its duties under this Agreement, except to the extent the claim arises from Customer's negligence or willful misconduct. Motorola's duties under this **Section 8.1 – General Indemnity** are conditioned upon: (a) Customer promptly notifying Motorola in writing of the Claim; (b) Motorola having sole control of the defense of the suit and all negotiations for its settlement or compromise to the extent allowed by applicable law; and (c) Customer cooperating with Motorola and, if requested by Motorola, providing reasonable assistance in the defense of the Claim.
- 8.2. Intellectual Property Infringement.** Motorola will defend Customer against any third-party claim alleging that a Motorola-developed or manufactured Product or Service (the "Infringing Product") directly infringes a United States patent or copyright ("Infringement Claim"), and Motorola will pay all damages finally awarded against Customer by a court of competent jurisdiction for an Infringement Claim, or agreed to in writing by Motorola in settlement of an Infringement Claim. Motorola's duties under this **Section 8.2 – Intellectual Property Infringement** are conditioned upon: (a) Customer promptly notifying Motorola in writing of the Infringement Claim; (b) Motorola having sole control of the defense of the suit and all negotiations for its settlement or compromise; and (c) Customer cooperating with Motorola and, if requested by Motorola, providing reasonable assistance in the defense of the Infringement Claim.
- 8.2.1.** If an Infringement Claim occurs, or in Motorola's opinion is likely to occur, Motorola may at its option and expense: (a) procure for Customer the right to continue using the Infringing Product; (b) replace or modify the Infringing Product so that it becomes non-infringing; or (c) grant Customer (i) a prorated refund of any amounts pre-paid for the Infringing Product (if the Infringing Product is a software Product, i.e., Licensed Software or Subscription Software) or (ii) a credit for the Infringing Product, less a reasonable charge for depreciation (if the Infringing Product is Equipment, including Equipment with embedded software).
- 8.2.2.** In addition to the other damages disclaimed under this Agreement, Motorola will have no duty to defend or indemnify Customer for any Infringement Claim that arises from or is based upon: (a) Customer Data, Customer-Provided Equipment, Non-Motorola Materials, or third-party equipment, hardware, software, data, or other third-party materials; (b) the combination of the Product or Service with any products or materials not provided by Motorola; (c) a Product or Service designed, modified, or manufactured in accordance with Customer's designs, specifications, guidelines or instructions; (d) a modification of the Product or Service by a party other than Motorola; (e) use of the Product or Service in a manner for which the Product or Service was not designed or that is inconsistent with the terms of this Agreement; or (f) the failure by Customer to use or install an update to the Product or Service that is intended to correct the claimed infringement. In no event will Motorola's liability resulting from an Infringement Claim extend in any way to any payments due on a royalty basis, other than a reasonable royalty based upon revenue derived by Motorola from Customer from sales or license of the Infringing Product.
- 8.2.3.** This **Section 8.2 – Intellectual Property Infringement** provides Customer's sole and exclusive remedies and Motorola's entire liability in the event of an Infringement Claim.

8.3. Customer Indemnity. To the extent allowed by applicable law, Customer will defend, indemnify, and hold Motorola and its subcontractors, subsidiaries and other affiliates harmless from and against any and all damages, losses, liabilities, and expenses (including reasonable fees and expenses of attorneys) arising from any actual or threatened third-party claim, demand, action, or proceeding arising from or related to (a) Customer-Provided Equipment, Customer Data, or Non-Motorola Materials, including any claim, demand, action, or proceeding alleging that any such equipment, data, or materials (or the integration or use thereof with the Products and Services) infringes or misappropriates a third-party intellectual property or other right, violates applicable law, or breaches the Agreement; (b) Customer-Provided Equipment's failure to meet the minimum requirements set forth in the applicable Documentation or match the applicable specifications provided to Motorola by Customer in connection with the Products or Services; (c) Customer's (or its service providers, agents, employees, or Authorized User's) negligence or willful misconduct; and (d) Customer's or its Authorized User's breach of this Agreement. This indemnity will not apply to the extent any such claim is caused by Motorola's use of Customer-Provided Equipment, Customer Data, or Non-Motorola Materials in violation of the Agreement. Motorola will give Customer prompt, written notice of any claim subject to the foregoing indemnity. Motorola will, at its own expense, cooperate with Customer in its defense or settlement of the claim.

Section 9. Limitation of Liability.

9.1. EXCEPT FOR PERSONAL INJURY OR DEATH, THE TOTAL AGGREGATE LIABILITY OF MOTOROLA, ITS AFFILIATES, AND ITS AND THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, SUBCONTRACTORS, AGENTS, SUCCESSORS, AND ASSIGNS (COLLECTIVELY, THE "MOTOROLA PARTIES"), WHETHER BASED ON A CLAIM IN CONTRACT OR IN TORT, LAW OR EQUITY, RELATING TO OR ARISING OUT OF THE AGREEMENT WILL NOT EXCEED THE FEES, OR PORTION OF FEES, RELATED TO THE PRODUCT OR INTEGRATION SERVICE UNDER WHICH THE CLAIM AROSE. WITH RESPECT TO ANY SUBSCRIPTION SOFTWARE OR ANY RECURRING SERVICES, THE MOTOROLA PARTIES' TOTAL AGGREGATE LIABILITY FOR ALL CLAIMS RELATED TO SUBSCRIPTION SOFTWARE OR RECURRING SERVICES WILL NOT EXCEED THE TOTAL FEES PAID FOR THE APPLICABLE SUBSCRIPTION SOFTWARE OR RECURRING SERVICE DURING THE CONSECUTIVE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT FROM WHICH THE FIRST CLAIM AROSE. EXCEPT FOR PERSONAL INJURY OR DEATH, THE MOTOROLA PARTIES WILL NOT BE LIABLE IN CONNECTION WITH THIS AGREEMENT (WHETHER UNDER MOTOROLA'S INDEMNITY OBLIGATIONS, A CAUSE OF ACTION FOR BREACH OF CONTRACT, UNDER TORT THEORY, OR OTHERWISE) FOR ANY INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE, OR CONSEQUENTIAL DAMAGES OR DAMAGES FOR LOST PROFITS OR REVENUES, EVEN IF MOTOROLA HAS BEEN ADVISED BY CUSTOMER OR ANY THIRD PARTY OF THE POSSIBILITY OF SUCH DAMAGES OR LOSSES AND WHETHER OR NOT SUCH DAMAGES OR LOSSES ARE FORESEEABLE.

9.2. EXCLUSIONS FROM LIABILITY. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, MOTOROLA WILL HAVE NO LIABILITY FOR DAMAGES ARISING OUT OF (A) CUSTOMER DATA, INCLUDING ITS TRANSMISSION TO MOTOROLA, OR ANY OTHER DATA AVAILABLE THROUGH THE PRODUCTS OR SERVICES; (B) CUSTOMER-PROVIDED EQUIPMENT OR SITES; NON-MOTOROLA MATERIALS; THIRD-PARTY EQUIPMENT, HARDWARE, SOFTWARE, DATA, OR CONTENT; OR UNKNOWN OR UNAUTHORIZED COMBINATION OF PRODUCTS AND SERVICES ; (C) LOSS OF DATA, HACKING, RANSOMWARE, THIRD-PARTY ATTACKS OR DEMANDS; (D) MODIFICATION OF PRODUCTS OR SERVICES NOT AUTHORIZED BY MOTOROLA; (E)

RECOMMENDATIONS PROVIDED IN CONNECTION WITH THE PRODUCTS AND SERVICES PROVIDED UNDER THIS AGREEMENT; (F) DATA RECOVERY SERVICES OR DATABASE MODIFICATIONS; OR (G) CUSTOMER'S OR ANY AUTHORIZED USER'S BREACH OF THIS AGREEMENT OR MISUSE OF THE PRODUCTS AND SERVICES.

IN ADDITION TO THE FOREGOING EXCLUSIONS FROM DAMAGES, AND NOTWITHSTANDING ANY PROVISION OF THE AGREEMENT TO THE CONTRARY, MOTOROLA WILL HAVE NO LIABILITY FOR (A) INTERRUPTION OR FAILURE OF CONNECTIVITY, VULNERABILITIES, OR SECURITY EVENTS; (B) DISRUPTION OF OR DAMAGE TO CUSTOMER'S OR THIRD PARTIES' SYSTEMS, EQUIPMENT, OR DATA, INCLUDING DENIAL OF ACCESS TO USERS, OR SHUTDOWN OF SYSTEMS CAUSED BY INTRUSION DETECTION SOFTWARE OR HARDWARE; (C) AVAILABILITY OR ACCURACY OF ANY DATA AVAILABLE THROUGH THE SUBSCRIPTION SOFTWARE OR SERVICES, OR INTERPRETATION, USE, OR MISUSE THEREOF; (D) TRACKING AND LOCATION-BASED SERVICES; OR (E) BETA SERVICES.

9.3 Statute of Limitations. Customer may not bring any claims against a Motorola Party in connection with this Agreement or the Products and Services more than one (1) year after the date of accrual of the cause of action.

Section 10. Confidentiality.

- 10.1. Confidential Information.** In order to be considered Confidential Information, information that is disclosed orally must be identified as confidential at the time of disclosure and confirmed by disclosing party ("Discloser") by submitting a written document to receiving party ("Recipient") within thirty (30) days after such disclosure. The written document must contain a summary of the Confidential Information disclosed with enough specificity for identification purpose and must be labeled or marked as confidential or its equivalent.
- 10.2. Obligations of Confidentiality.** During the Term and for a period of three (3) years from the expiration or termination of this Agreement, Recipient will (a) not disclose Confidential Information to any third party, except as expressly permitted in this **Section 10 - Confidentiality**; (b) restrict disclosure of Confidential Information to only those employees, agents or consultants who must access the Confidential Information for the purpose of providing Services and who are bound by confidentiality terms substantially similar to those in this Agreement and licenses; (c) not copy, reproduce, reverse engineer, decompile or disassemble any Confidential Information; (d) use the same degree of care as for its own information of like importance, but no less than reasonable care to safeguard against disclosure; (e) promptly notify Discloser upon discovery of any unauthorized use or disclosure of the Confidential Information and take reasonable steps to regain possession of the Confidential Information and prevent further unauthorized actions or other breach of this Section; and (f) only use the Confidential Information as needed to fulfill its obligations and secure its rights under this Agreement.
- 10.3. Exceptions.** Recipient may disclose Confidential Information to the extent required by law, or a judicial or legislative order or proceeding. Recipient is not obligated to maintain as confidential any information that Recipient can demonstrate by documentation (a) is publicly known or available prior to without breach of this Agreement; (b) is lawfully obtained; or (c) is independently known or developed by Recipient without the use of, or reference to, any of Discloser's Confidential Information or any breach of this Agreement.
- 10.4. Ownership of Confidential Information.** All Confidential Information is and will remain the property of Discloser, and will not be copied or reproduced without written permission. Within ten (10) days of receipt of Discloser's written request, Recipient will return or destroy all Confidential

Information to Discloser, or certify in writing that all such Confidential Information has been destroyed. However, Recipient may retain (a) one (1) archival copy for use only in case of a dispute concerning this Agreement, and (b) Confidential Information that has been automatically stored in accordance with Recipient's standard backup or recordkeeping procedures. Recipient will remain subject to the obligations of this Agreement with respect to any Confidential Information retained subject to clauses (a) or (b). No license, express or implied, in the Confidential Information is granted to the Recipient other than to use it in the manner, and to the extent authorized by this Agreement. Discloser represents and warrants that it is authorized to disclose any Confidential Information it discloses pursuant to this Agreement.

Section 11. Proprietary Rights; Data; Feedback.

11.1. Motorola Materials. Customer acknowledges that Motorola may use or provide Customer with access to "Motorola Materials". Except when Motorola has expressly transferred title or other interest to Customer by way of an Addendum, the Motorola Materials are the property of Motorola or its licensors, and Motorola or its licensors retain all right, title and interest in and to the Motorola Materials (including, all rights in patents, copyrights, trademarks, trade names, trade secrets, know-how, other intellectual property and proprietary rights, and all associated goodwill and moral rights).

This Agreement does not grant to Customer any shared development rights in or to any Motorola Materials or other intellectual property, and Customer agrees to execute any documents and take any other actions reasonably requested by Motorola to effectuate the foregoing. Motorola and its licensors reserve all rights not expressly granted to Customer, and no rights, other than those expressly granted herein, are granted to Customer by implication, estoppel or otherwise. Customer will not modify, disassemble, reverse engineer, derive source code or create derivative works from, merge with other software, distribute, sublicense, sell, or export the Products and Services or other Motorola Materials, or permit any third party to do so.

11.2. Ownership of Customer Data. Customer retains all right, title and interest, including intellectual property rights, if any, in and to Customer Data. Motorola acquires no rights to Customer Data except those rights granted under this Agreement including the right to Process and use the Customer Data as set forth in the DPA.

11.3. Data Retention and Deletion. Except as expressly provided otherwise under the DPA, Motorola will delete all Customer Data following termination or expiration of this MCA or the applicable Addendum or Proposal, with such deletion to occur no later than ninety (90) days following the applicable date of termination or expiration, unless otherwise required to comply with applicable law. Any requests for the exportation or download of Customer Data must be made by Customer to Motorola in writing before expiration or termination, subject to **Section 15.9 – Notices**. Motorola will have no obligation to retain such Customer Data beyond expiration or termination unless the Customer has purchased extended storage from Motorola through a mutually executed Proposal.

11.4. Service Use Data. Customer understands and agrees that Motorola may collect and use Service Use Data for its own purposes, and may disclose Service Use Data to third parties. It is Customer's responsibility to notify Authorized Users of Motorola's collection and use of Service Use Data and to obtain any required consents, provide all necessary notices, and meet any other applicable legal requirements with respect to such collection and use, and Customer represents and warrants to Motorola that it has complied and will continue to comply with this Section.

11.5. Third-Party Data and Motorola Data. Customer will not, and will use reasonable efforts to ensure its Authorized Users will not: (a) use the Motorola Data or Third-Party Data for any

purpose other than Customer's internal business purposes; (b) disclose the data to third parties; (c) "white label" such data or otherwise misrepresent its source or ownership, or resell, distribute, sublicense, or commercially exploit the data in any manner; (d) use such data in violation of applicable laws; (e) remove, obscure, alter, or falsify any marks or proprietary rights notices indicating the source, origin, or ownership of the data; or (f) modify such data or combine it with Customer Data or other data or use the data to build databases. Additional restrictions may be set forth in the applicable Addendum.

11.5.1. Any rights granted to Customer or Authorized Users with respect to Motorola Data or Third-Party Data will immediately terminate upon termination or expiration of the applicable Addendum, Proposal, or this MCA. Further, Motorola or the applicable Third-Party Data provider may suspend, change, or terminate Customer's or any Authorized User's access to Motorola Data or Third-Party Data if Motorola or such Third-Party Data provider believes Customer's or the Authorized User's use of the data violates the Agreement, applicable law or Motorola's agreement with the applicable Third-Party Data provider.

11.5.2. Upon termination of Customer's rights to use any Motorola Data or Third-Party Data, Customer and all Authorized Users will immediately discontinue use of such data, delete all copies of such data, and certify such deletion to Motorola. Notwithstanding any provision of the Agreement to the contrary, Motorola will have no liability for Third-Party Data or Motorola Data available through the Products and Services. Motorola and its Third-Party Data providers reserve all rights in and to Motorola Data and Third-Party Data not expressly granted in an Addendum or Proposal.

11.6. Feedback. Any Feedback provided by Customer is entirely voluntary, and will not create any confidentiality obligation for Motorola, even if designated as confidential by Customer. Motorola may use, reproduce, license, and otherwise distribute and exploit the Feedback without any obligation or payment to Customer or Authorized Users and Customer represents and warrants that it has obtained all necessary rights and consents to grant Motorola the foregoing rights.

11.7. Improvements; Products and Services. The Parties agree that, notwithstanding any provision of this Agreement to the contrary, all fixes, modifications and improvements to the Services or Products conceived of or made by or on behalf of Motorola that are based either in whole or in part on the Feedback, Customer Data, or Service Use Data (or otherwise) are the exclusive property of Motorola and all right, title and interest in and to such fixes, modifications or improvements will vest solely in Motorola. Customer agrees to execute any written documents necessary to assign any intellectual property or other rights it may have in such fixes, modifications or improvements to Motorola.

Section 12. Acceptance

12.1. Communications System Acceptance.

12.1.1. Any Communications System described in the Proposal hereunder (including the Products, Integration Services, and all other components thereof) will be deemed completed upon successful completion of the acceptance procedures ("Acceptance Tests") set forth in the Acceptance Test Plan ("System Acceptance"). Motorola will notify Customer at least ten (10) days before the Communications System testing commences. Upon System Acceptance, the Parties will memorialize this event by promptly executing a certificate documenting such System Acceptance as set forth in Exhibit C. If the Acceptance Test Plan includes separate tests for individual sub-Systems or phases of the Communications System, acceptance of the individual sub-System or phase will occur upon the successful completion of the Acceptance Tests for the sub-Communications System or phase, and the Parties will promptly execute an

acceptance certificate for the sub-Communications System or phase. If Customer believes the Communications System has failed the completed Acceptance Tests, Customer will provide to Motorola a written notice that includes the specific details of the failure. If Customer does not provide to Motorola a failure notice within thirty (30) days after completion of the Acceptance Tests, System Acceptance will be deemed to have occurred as of the completion of the Acceptance Tests. Minor omissions or variances in the Communications System that do not materially impair the operation of the Communications System as a whole will not postpone System Acceptance or sub-Communications System acceptance, but will be corrected according to a mutually agreed punch list schedule. This Section applies to Products purchased as part of a Communications System notwithstanding any conflicting delivery provisions within this Agreement and this Section will control over such other delivery provisions to the extent of a conflict.

12.1.2. Beneficial Use. Customer acknowledges that Motorola's ability to perform its implementation and testing responsibilities may be impeded if Customer begins using the Communications System before System Acceptance.

12.1.3. Customer shall not commence using the system before System Acceptance without Motorola's prior written authorization, which will not be unreasonably withheld. Motorola is not responsible for Communications System performance deficiencies that occur prior to System Acceptance or written authorized use. Upon the date Customer begins using the Communications System, Customer assumes responsibility for the use and operation of the Communications System.

12.2 Software System Completion. Any Software System described in the Proposal (including the Products, Integration Services, and all other components thereof) will be deemed completed upon Customer's (or the applicable Authorized User's) Beneficial Use of each Product that is included in the Software System (unless alternative acceptance procedures are set forth in the Proposal) (the "System Completion Date"). Customer will not unreasonably delay Beneficial Use of any Product within a Software System, and in any event, the Parties agree that Beneficial Use of a Product will be deemed to have occurred thirty (30) days after functional demonstration. For clarity, if a Software System is comprised of more than one Product, Motorola may notify Customer that all Integration Services for a particular Product within the Software System have been completed, and Customer may have Beneficial Use of such Product prior to having Beneficial Use of other Products in the Software System, or of the Software System as a whole. In such case, the Integration Services applicable to such Product will be deemed complete upon Customer's Beneficial Use of the Product ("Product Completion Date"), which may occur before the System Completion Date. As used in this Section, "Beneficial Use" means use by Customer or at least one (1) Authorized User of the material features and functionalities of a Product within a Software System, in material conformance with Product descriptions in the Proposal. This Section applies to Products purchased as part of a Software System notwithstanding any conflicting delivery provisions within this Agreement, and will control over such other delivery provisions to the extent of a conflict.

Section 13. Force Majeure; Delays Caused by Customer.

13.1. Force Majeure. Except for Customer's payment obligations hereunder, neither Party will be responsible for nonperformance or delayed performance due to events outside of its reasonable control. If performance will be significantly delayed, the affected Party will provide notice to the other Party, and the Parties will agree (in writing) upon a reasonable extension to any applicable performance schedule.

13.2. Delays Caused by Customer. Motorola's performance of the Products and Services will be excused for delays caused by Customer or its Authorized Users or subcontractors, or by failure

of any assumptions set forth in this Agreement (including in any Addendum or Proposal). In the event of a delay under this **Section 13.2 – Delays Caused by Customer**, (a) Customer will continue to pay the Fees as required hereunder, (b) the Parties will agree (in writing) upon a reasonable extension to any applicable performance schedule, and (c) Customer will compensate Motorola for its out-of-pocket costs incurred due to the delay (including those incurred by Motorola's affiliates, vendors, and subcontractors).

Section 14. Disputes. The Parties will use the following procedure to resolve any disputes relating to or arising out of this Agreement (each, a "Dispute"):

14.1. Governing Law. All matters relating to or arising out of the Agreement are governed by the laws of the State of Illinois, unless Customer is the United States Government (or an agency thereof) or a state government or state agency or local municipality within the United States, in which case all matters relating to or arising out of the Agreement will be governed by the laws of the State in which the Products and Services are provided. The terms of the U.N. Convention on Contracts for the International Sale of Goods and the Uniform Computer Information Transactions Act will not apply.

14.2. Negotiation; Mediation. The Parties will attempt to timely resolve the Dispute promptly through good faith negotiations. Either Party may initiate dispute resolution procedures by sending a notice of Dispute ("Notice of Dispute") to the other Party. The Parties will choose an independent mediator within thirty (30) days of such Notice of Mediation. Neither Party may unreasonably withhold consent to the selection of a mediator, but if the Parties are unable to agree upon a mediator, either Party may request that the American Arbitration Association nominate a mediator. Each Party will bear its own costs of mediation, but the Parties will share the cost of the mediator equally. Unless otherwise agreed in writing, all in person meetings under this **Section 14.2 – Negotiation; Mediation** will take place in Chicago, Illinois, and all communication relating to the Dispute resolution will be maintained in strict confidence by the Parties. Notwithstanding the foregoing, any Dispute arising from or relating to Motorola's intellectual property rights must be decided by a court of competent jurisdiction, in accordance with **Section 14.3 – Litigation, Venue, Jurisdiction** below.

14.3. Litigation. Venue. Jurisdiction. If the Dispute has not been resolved by mediation within sixty (60) days from the Notice of Mediation, either Party may submit the Dispute exclusively to a court in Cook County, Illinois, or in the case the Customer is the United States, a state agency, or local municipality, then the appropriate court in the State in which the Products and Services are provided. Each Party expressly consents to the exclusive jurisdiction of such courts for resolution of any Dispute and to enforce the outcome of any mediation.

Section 15. General.

15.1. Compliance with Laws. Each Party will comply with applicable laws in connection with the performance of its obligations under this Agreement, including that Customer will ensure its and its Authorized Users' use of the Products and Services complies with law (including privacy laws), and Customer will obtain any FCC and other licenses or authorizations (including licenses or authorizations required by foreign regulatory bodies) required for its and its Authorized Users' use of the Products and Services. Motorola may, at its discretion, cease providing or otherwise modify Products and Services (or any terms related thereto in an Addendum or Proposal), in order to comply with any changes in applicable law.

15.2. Audit; Monitoring. Motorola will have the right to monitor and audit use of the Products, including an audit of total user licenses credentialed by Customer for any Subscription Software, which may also include access by Motorola to Customer Data and Service Use Data.

Customer will provide notice of such monitoring to its Authorized Users and obtain any required consents, including individual end users, and will cooperate with Motorola in any monitoring or audit. Customer will maintain during the Term, and for two (2) years thereafter, accurate records relating to any software licenses granted under this Agreement to verify compliance with this Agreement. Motorola or a third party ("Auditor") may inspect Customer's and, as applicable, Authorized Users' premises, books, and records. Motorola will pay expenses and costs of the Auditor, unless Customer is found to be in violation of the terms of the Agreement, in which case Customer will be responsible for such expenses and costs. In the event Motorola determines that Customer's usage of the Subscription Software during the applicable Subscription Term exceeded the total number of licenses purchased by Customer, Motorola may invoice Customer for the additional licenses used by Customer, pro-rated for each additional license from the date such license was activated, and Customer will pay such invoice in accordance with the payment terms in the Agreement.

- 15.3. Assignment and Subcontracting.** Neither Party may assign or otherwise transfer this Agreement without the prior written approval of the other Party. Motorola may assign or otherwise transfer this Agreement or any of its rights or obligations under this Agreement without consent (a) for financing purposes, (b) in connection with a merger, acquisition or sale of all or substantially all of its assets, (c) as part of a corporate reorganization, or (d) to a subsidiary corporation. Subject to the foregoing, this Agreement will be binding upon the Parties and their respective successors and assigns. Motorola may subcontract any of the work, but subcontracting will not relieve Motorola of its duties under this Agreement.
- 15.4. Waiver.** A delay or omission by either Party to exercise any right under this Agreement will not be construed to be a waiver of such right. A waiver by either Party of any of the obligations to be performed by the other, or any breach thereof, will not be construed to be a waiver of any succeeding breach or of any other obligation. All waivers must be in writing and signed by the Party waiving its rights.
- 15.5. Severability.** If any provision of the Agreement is found by a court of competent jurisdiction to be invalid, illegal, or otherwise unenforceable, such provision will be deemed to be modified to reflect as nearly as possible the original intentions of the Parties in accordance with applicable law. The remaining provisions of this Agreement will not be affected, and each such provision will be valid and enforceable to the full extent permitted by applicable law.
- 15.6. Independent Contractors.** Each Party will perform its duties under this Agreement as an independent contractor. The Parties and their personnel will not be considered to be employees or agents of the other Party. Nothing in this Agreement will be interpreted as granting either Party the right or authority to make commitments of any kind for the other. This Agreement will not constitute, create, or be interpreted as a joint venture, partnership, or formal business organization of any kind.
- 15.7. Third-Party Beneficiaries.** The Agreement is entered into solely between, and may be enforced only by, the Parties. Each Party intends that the Agreement will not benefit, or create any right or cause of action in or on behalf of, any entity other than the Parties. Notwithstanding the foregoing, a licensor or supplier of third-party software included in the software Products will be a direct and intended third-party beneficiary of this Agreement.
- 15.8. Interpretation.** The section headings in this Agreement are included only for convenience. The words "including" and "include" will be deemed to be followed by the phrase "without limitation". This Agreement will be fairly interpreted in accordance with its terms and conditions and not for or against either Party.

- 15.9. Notices.** Notices required under this Agreement to be given by one Party to the other must be in writing and either personally delivered or sent to the address provided by the other Party by certified mail, return receipt requested and postage prepaid (or by a recognized courier service, such as FedEx, UPS, or DHL), and will be effective upon receipt.
- 15.10. Cumulative Remedies.** Except as specifically stated in this Agreement, all remedies provided for in this Agreement will be cumulative and in addition to, and not in lieu of, any other remedies available to either Party at law, in equity, by contract, or otherwise. Except as specifically stated in this Agreement, the election by a Party of any remedy provided for in this Agreement or otherwise available to such Party will not preclude such Party from pursuing any other remedies available to such Party at law, in equity, by contract, or otherwise.
- 15.11. Survival.** The following provisions will survive the expiration or termination of this Agreement for any reason: Section 3.4 – Customer Obligations; Section 4.6 – Effect of Termination or Expiration; Section 5 – Payment and Invoicing; Section 7.11 – Warranty Disclaimer; Section 8.3 – Customer Indemnity; Section 9 – Limitation of Liability; Section 10 – Confidentiality; Section 11 – Proprietary Rights; Data; Feedback; Section 13 – Force Majeure; Delays Caused by Customer; Section 14 – Disputes; and Section 15 – General.
- 15.12. Entire Agreement.** This Agreement, including all Exhibits, Addenda, and Proposals, constitutes the entire agreement of the Parties regarding the subject matter hereto, and supersedes all previous agreements, proposals, and understandings, whether written or oral, relating to this subject matter. This Agreement may be executed in multiple counterparts, and will have the same legal force and effect as if the Parties had executed it as a single document. The Parties may sign in writing or by electronic signature. An electronic signature, facsimile copy, or computer image of a signature, will be treated, and will have the same effect as an original signature, and will have the same effect, as an original signed copy of this document. This Agreement may be amended or modified only by a written instrument signed by authorized representatives of both Parties. The preprinted terms and conditions found on any Customer purchase order, acknowledgment, or other form will not be considered an amendment or modification or part of this Agreement, even if a representative of each Party signs such document.

The Parties hereby enter into this MCA as of the Effective Date.

Motorola Solutions, Inc.

Customer: _____

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Software License Addendum

This Software License Addendum (this "**SLA**") is subject to, and governed by, the terms of the Motorola Solutions Customer Agreement ("**MCA**") to which it is attached. Capitalized terms used in this SLA, but not defined herein, will have the meanings set forth in the MCA.

Section 1. Addendum. This SLA governs Customer's use of Licensed Software (and, if set forth in a Proposal, related Services) and Subscription Software from Motorola, as applicable, and is an integral part of the Parties' Agreement.

Section 2. Licensed Software License and Restrictions.

- 2.1. Licensed Software License.** Subject to Customer's and its Authorized Users' compliance with the Agreement (including payment terms), Motorola hereby grants Customer and its Authorized Users a limited, non-transferable, non-sublicensable, and non-exclusive license to use the Licensed Software identified in a Proposal, in object code form only, and the associated Documentation, solely in connection with the Equipment provided by Motorola or authorized Customer-Provided Equipment (as applicable, the "**Designated Products**") and solely for Customer's internal business purposes. Unless otherwise stated in an Addendum or the Proposal, the foregoing license grant will be limited to the number of licenses set forth in the applicable Proposal and will continue for the life of the applicable Designated Product. Except as otherwise permitted in an applicable Addendum or Proposal, Customer may install, access, and use Licensed Software only in Customer's owned or controlled facilities, including any authorized mobile sites; provided, however, that Authorized Users using authorized mobile or handheld devices may also log into and access the Licensed Software remotely from any location.
- 2.2. Subscription License Model.** If the Parties mutually agree that any Licensed Software purchased under this Agreement will be replaced with or upgraded to Subscription Software, then upon such time which the Parties execute the applicable Change Order or Proposal, the licenses granted under this **Section 2 Licensed Software License and Restrictions** will automatically terminate, and such Subscription Software will be governed by the terms of **Section 3 Subscription Software License and Restrictions**.
- 2.3. Customer Restrictions.** Customers and Authorized Users will comply with the applicable Documentation in connection with their use of the Products. Customer will not and will not allow others, including the Authorized Users, to: (a) make the Licensed Software available for use by unauthorized third parties, including via a commercial rental or sharing arrangement; (b) reverse engineer, disassemble, or reprogram the Licensed Software or any portion thereof to a human-readable form; (c) modify, create derivative works of, or merge the Licensed Software with other software or equipment; (d) copy, reproduce, distribute, lend, lease, or transfer the Licensed Software or Documentation for or to any third party without the prior express written permission of Motorola; (e) take any action that would cause the Licensed Software or Documentation to be placed in the public domain; (f) use the Licensed Software to compete with Motorola; or (g) remove, alter, or obscure, any copyright or other notice.

2.4. Copies. Customer may make one (1) copy of the Licensed Software solely for archival, back-up, or disaster recovery purposes during the term of the applicable Licensed Software license. Customer may make as many copies of the Documentation reasonably required for the internal use of the Licensed Software during such Licensed Software's license term. Unless otherwise authorized by Motorola in writing, Customer will not, and will not enable or allow any third party to: (a) install a licensed copy of the Licensed Software on more than one (1) unit of a Designated Product; or (b) copy onto or transfer Licensed Software installed in a unit of a Designated Product onto another device. Customer may temporarily transfer Licensed Software installed on a Designated Product to another device if the Designated Product is inoperable or malfunctioning, if Customer provides written notice to Motorola of the temporary transfer and identifies the device on which the Licensed is transferred. Temporary transfer of the Licensed Software to another device must be discontinued when the original Designated Product is returned to operation and the Licensed Software must be removed from the other device. Customer must provide prompt written notice to Motorola at the time the temporary transfer is discontinued.

2.5. Resale of Equipment. Equipment contains embedded Licensed Software. If Customer desires to sell its used Equipment to a third party, Customer must first receive prior written authorization from Motorola, which will not be unreasonably denied, and obtain written acceptance of the applicable Licensed Software license terms, including the obligation to pay relevant license fees, from such third party.

Section 3. Subscription Software License and Restrictions.

3.1. Subscription Software License. Subject to Customer's and its Authorized Users' compliance with the Agreement, including payment terms, Motorola hereby grants Customer and its Authorized Users a limited, non-transferable, non-sublicensable, and non-exclusive license to use the Subscription Software identified in a Proposal, and the associated Documentation, solely for Customer's internal business purposes. The foregoing license grant will be limited to use in the territory and to the number of licenses set forth in a Proposal (if applicable), and will continue for the applicable Subscription Term. Customer may access, and use the Subscription Software only in Customer's owned or controlled facilities, including any authorized mobile sites; provided, however, that Authorized Users using authorized mobile or handheld devices may also log into and access the Subscription Software remotely from any location. No custom development work will be performed under this Addendum.

3.2. Customer Restrictions. Customers and Authorized Users will comply with the applicable Documentation and the copyright laws of the United States and all other relevant jurisdictions (including the copyright laws where Customer uses the Subscription Software) in connection with their use of the Subscription Software. Customer will not, and will not allow others including the Authorized Users, to make the Subscription Software available for use by unauthorized third parties, including via a commercial rental or sharing arrangement; reverse engineer, disassemble, or reprogram software used to provide the Subscription Software or any portion thereof to a human-readable form; modify, create derivative works of, or merge the Subscription Software or software used to provide the Subscription Software with other software; copy, reproduce, distribute, lend, or lease the Subscription Software or Documentation for or to any third party; take any action that would cause the Subscription Software, software used to provide the Subscription Software, or Documentation to be placed in the public domain; use the Subscription Software to compete with Motorola; remove, alter, or obscure, any copyright or other notice; share user credentials (including among Authorized Users); use the Subscription Software to store or transmit malicious code; or attempt to gain unauthorized access to the Subscription Software or its related systems or networks.

- 3.3. User Credentials.** If applicable, Motorola will provide Customer with administrative user credentials for the Subscription Software, and Customer will ensure such administrative user credentials are accessed and used only by Customer's employees with training on their proper use. Customer will protect, and will cause its Authorized Users to protect, the confidentiality and security of all user credentials, including any administrative user credentials, and maintain user credential validity, including by updating passwords. Customer will be liable for any use of the Subscription Software through such user credential (including through any administrative user credentials), including any changes made to the Subscription Software or issues or user impact arising therefrom. To the extent Motorola provides Services to Customer in order to help resolve issues resulting from changes made to the Subscription Software through user credentials, including through any administrative user credentials, or issues otherwise created by Authorized Users, such Services will be billed to Customer on a time and materials basis, and Customer will pay all invoices in accordance with the payment terms of the MCA.

Section 4. Software Systems - Applicable Terms and Conditions

- 4.1. On-Premise Software System.** If Customer purchases an "on-premises Software System," where Licensed Software is installed at Customer Sites or on Customer-Provided Equipment, then, unless otherwise specified in writing that any software is being purchased as Subscription Software, the Licensed Software is subject to Section 2 of the SLA.

- 4.1.1. CAD and Records Products.** The terms set forth in this Section 4.1.1. apply in the event Customer purchases any Computer Aided Dispatch ("CAD") or Records Products under the Agreement.

4.1.1.1. Support Required. Customer acknowledges and agrees that the licenses granted by Motorola under this SLA to CAD and Records Products for on-premises Software Systems are conditioned upon Customer purchasing Maintenance and Support Services for such Products during the term of the applicable license. If at any time during the term of any such license, Customer fails to purchase associated Maintenance and Support Services (or pay the fees for such Services), Motorola will have the right to terminate or suspend the software licenses for CAD and Record Products.

4.1.1.2. CJIS Security Policy. Motorola agrees to support Customer's obligation to comply with the Federal Bureau of Investigation Criminal Justice Information Services ("CJIS") Security Policy and will comply with the terms of the CJIS Security Addendum for the term of the Addendum or Proposal for the applicable Product. Customer hereby consents to Motorola screened personnel serving as the "escort" within the meaning of CJIS Security Policy for unscreened Motorola personnel that require access to unencrypted Criminal Justice Information for purposes of Product support and development.

- 4.2. On-Premise Software System as a Service.** If Customer purchases an "on-premises Software System as a service," where software Products are installed at Customer Sites or on Customer-Provided Equipment, and generally licensed on a subscription basis (i.e., as Subscription Software), then such Subscription Software is subject to Section 3 of the SLA. The firmware preinstalled on Equipment included with an on-premises Software System as a service purchase, and any Microsoft operating system Licensed Software are subject to Section 2 of the SLA.

- 4.2.1. Transition to Subscription License Model.** If the Parties mutually agree that any on-premises Subscription Software purchased under this SLA as part of an "on-premises Software System as a service" solution will be replaced with or upgraded to Subscription Software hosted in a data center, then upon such time the Parties execute the applicable agreement, (a) the

licenses granted to such on-premises Subscription Software under this SLA will automatically terminate, (b) Customer and its Authorized Users will cease use of the applicable on-premises copies of Subscription Software, and (c) the replacement hosted Subscription Software provided hereunder will be governed by the terms of **Section 4.3 Cloud Hosted Software System**.

4.2.2. Transition Fee. Motorola will not charge additional Fees for Services related to the transition to hosted Subscription Software, as described in **Section 4.2.1 – Transition to Subscription License Model**. Notwithstanding the foregoing, subscription Fees may be greater than Fees paid by Customer for on-premises Subscription Software.

4.2.3. Software Decommissioning. Upon (a) transition of the on-premises Software System as a service to Subscription Software hosted in a data center or (b) any termination of the Subscription Software license for the on-premises Software System as a service, Motorola will have the right to enter Customer Sites and decommission the applicable on-premises Subscription Software that is installed at Customer's Site or on Customer-Provided Equipment. For clarity, Customer will retain the right to use Licensed Software that is firmware incorporated into Equipment purchased by Customer from Motorola and any Microsoft operating system Licensed Software.

4.3. Cloud Hosted Software System. If Customer purchases a "cloud hosted Software System," where the applicable software is hosted in a data center and provided to Customer as a service (i.e., as hosted Subscription Software), then such Subscription Software is subject to Section 3 of the SLA.

4.4. Additional Cloud Terms. The terms set forth in this **Section 4.4 – Additional Cloud Terms** apply in the event Customer purchases any cloud-hosted software Products.

4.4.1. Data Storage. Motorola will determine, in its sole discretion, the location of the stored content for cloud hosted software Products. All data, replications, and backups will be stored at a location in the United States for Customers in the United States.

4.4.2. Data Retrieval. Cloud hosted software Products will leverage different types of storage to optimize software, as determined in Motorola's sole discretion. For multimedia data, such as videos, pictures, audio files, Motorola will, in its sole discretion, determine the type of storage medium used to store the content. The type of storage and medium selected by Motorola will determine the data retrieval speed. Access to content in archival storage may take up to twenty-four (24) hours to be viewable.

4.4.3. Maintenance. Scheduled maintenance of cloud-hosted software Products will be performed periodically. Motorola will make commercially reasonable efforts to notify customers one (1) week in advance of any such maintenance. Unscheduled and emergency maintenance may be required from time to time. Motorola will make commercially reasonable efforts to notify customers of any unscheduled or emergency maintenance twenty-four (24) hours in advance.

Section 5. Term.

5.1. Term. The term of this SLA (the "**SLA Term**") will commence upon the Effective Date of the MCA.

5.2. Termination - Licensed Software License. Notwithstanding the termination provisions of the MCA, Motorola may terminate this SLA (and any Agreements hereunder) immediately upon notice to Customer if Customer breaches **Section 2 – Licensed Software License** and

Restrictions of this SLA, or any other provision related to Licensed Software license scope or restrictions set forth in a Proposal, EULA, or other applicable Addendum. Upon termination or expiration of the SLA Term, all Motorola obligations under this SLA (including with respect to Equipment and Licensed Software delivered hereunder) will terminate. If Customer desires to purchase additional Services in connection with such Equipment or Licensed Software, Customer may enter into a separate Addendum with Motorola, governing such Services.

- 5.3. Termination - Subscription Software License.** Notwithstanding the termination provisions of the MCA, Motorola may terminate this SLA, or suspend delivery of Subscription Software or Services, immediately upon notice to Customer if (a) Customer breaches **Section 3 – Subscription Software License and Restrictions** of this SLA, or any other provision related to Subscription Software license scope or restrictions set forth therein, or (b) it determines that Customer's use of the Subscription Software poses, or may pose, a security or other risk or adverse impact to any Subscription Software, Motorola, Motorola's systems, or any third party (including other Motorola customers).
- 5.4.** Customer acknowledges that Motorola made a considerable investment of resources in the development, marketing, and distribution of the Licensed Software, Subscription Software, and Documentation, and that Customer's breach of the SLA will result in irreparable harm to Motorola for which monetary damages would be inadequate. If Customer breaches this SLA, in addition to termination, Motorola will be entitled to all available remedies at law or in equity (including immediate injunctive relief).
- 5.5. Applicable End User Terms.** Additional license terms apply to third-party software included in certain software Products which are available online at www.motorolasolutions.com/legal-flow-downs. Customer will comply, and ensure its Authorized Users comply, with all such additional license terms.

Section 6. Copyright Notices. The existence of a copyright notice on any Licensed Software will not be construed as an admission or presumption of publication of the Licensed Software or public disclosure of any trade secrets associated with the Licensed Software.

Section 7. Survival. The following provisions will survive the expiration or termination of this SLA for any reason: Section 2 – Licensed Software License and Restrictions; Section 3 – Subscription Software License and Restrictions; Section 4 -- Software Systems -- Applicable Terms and Conditions; Section 5 – Term; Section 7 – Survival.

Mobile Video and Vigilant Addendum

This Mobile Video and Vigilant Addendum (this "**MVVA**") is subject to, and governed by, the terms of the Motorola Solutions Customer Agreement ("**MCA**") to which it is attached. Capitalized terms used in this MVVA, but not defined herein, will have the meanings set forth in the MCA.

Section 1. Addendum. This MVVA governs Customer's purchase of (a) any Motorola mobile video Products, including participation in Motorola's Video-as-a-Service Program ("**VaaS Program**"), and (b) Motorola's Vigilant automated license plate recognition software and hardware Products ("**LPR Products**"). This MVVA will control with respect to conflicting or ambiguous terms in the MCA or any other applicable Addendum, but only as applicable to the Mobile Video System or other Products purchased under this MVVA.

Section 2. Definitions.

"Mobile Video System" is a solution that includes at least one mobile video Product and requires Integration Services to deploy such mobile video Product or the associated evidence management Product at a Customer Site.

Camera License Key ("CLK") means an electronic key that will permit each camera (one CLK per camera) to be used with Vigilant CarDetector and/or Subscription Software

Commercial Booking Images refers to booking images collected by commercial sources and available on Vigilant VehicleManager with a paid subscription.

Commercial Data means both Commercial Booking Images and Commercial LPR Data.

Commercial LPR Data refers to LPR data collected by private sources and available on Vigilant VehicleManager with a paid subscription.

License Plate Recognition ("LPR") refers to the process of utilizing cameras, either stationary or mounted on moving vehicles, to capture and interpret images of vehicle license plates.

Section 3. Evidence Management Systems; Applicable Terms and Conditions.

3.1. On-Premise Evidence Management. If Customer purchases a Mobile Video System where Equipment and Licensed Software for evidence management is installed at Customer Sites (an "**On-Premises Evidence Management System**"), then, unless the Proposal specifies that any software is being purchased as Subscription Software, any (i) Equipment and (ii) Licensed Software installed at Customer Sites or on Customer-Provided Equipment purchased in connection with the On-Premises Evidence Management System is subject to the SLA. On-Premises Evidence Management Systems described in this Section qualify for the System Warranty as described in **Section 5 – On-Premises Evidence Management System Warranty** (the "**System Warranty**").

3.2. Cloud Hosted Evidence Management. If Customer purchases a Mobile Video System where the software for evidence management is hosted in a data center and provided to Customer as a service ("**Cloud Hosted Evidence Management System**"), then such software is subject to the SLA. Any Equipment purchased in connection with the Cloud Hosted Evidence Management System is subject to the MCA. System Warranty does not apply to Cloud Hosted Evidence Management Systems. System completion is determined in accordance with the provisions of **Section 12 –System Completion** below.

3.3. Services. Any Integration Services or Maintenance and Support Services purchased in connection with, or included as a part of, a Mobile Video System are subject to the MCA, and as described in the applicable Addendum.

Section 4. Payment. Customer will pay invoices for the Products and Services covered by this MVVA in accordance with the invoice payment terms set forth in the MCA. Fees for Mobile Video Systems will be invoiced as of the System Completion Date, unless another payment process or schedule is set forth in the Proposal.

Section 5. On-Premises Evidence Management System Warranty. Subject to the disclaimers in the MCA and any other applicable Addenda, Motorola represents and warrants that, on the System Completion Date (as defined below) for an On-Premises Evidence Management System described in **Section 3.1 – On-Premises Evidence Management** (a) such On-Premises Evidence Management System will perform in accordance with the descriptions in the applicable Proposal in all material respects, and (b) if Customer has purchased any Equipment or Motorola Licensed Software (but, for clarity, excluding Subscription Software) as part of such On-Premises Evidence Management System, the warranty period applicable to such Equipment and Motorola Licensed Software will continue for a period of one (1) year commencing upon the System Completion Date for the On-Premises Evidence Management System that includes such Products, or on the applicable Product Completion Date, if earlier.

Section 6. Additional Software and Video Terms and Conditions.

6.1. Unlimited Storage. Storage shall be specifically described in Proposal. "Unlimited Storage" related to Customer's purchase of a Cloud Hosted Evidence Management system means storage of all data captured using Equipment sold under this MVA, provided that (1) video recordings are recorded in an event-based setting where users are not recording an entire shift under one video footage and (2) Customer's data retention policies and practices do not result in the retention of data beyond the statutory minimums set forth by the State in which the Customer resides. In the event Customer does not comply with the preceding clauses (1) and (2), Motorola shall have the right to charge Customer for such excess data storage at the prevailing rates. Motorola also has the right to place any data that has not been accessed for a consecutive six (6) month period into archival storage, retrieval of which may take up to twenty-four (24) hours from any access request.

6.2. Applicable End User Terms. Described in Section 5.6 of the SLA.

6.3. License Plate Recognition Data Ownership and Retention. Motorola retains all title and rights to Commercial LPR Data and Commercial Booking Images. Customer shall not utilize Commercial LPR Data or Commercial Booking Images on the behalf of other local, state or Federal law enforcement agencies ("LEAs"). LPR data and where applicable, booking images, collected by the License plate recognition ("LPR") data collected by Customer is considered Customer Data (as defined in the MCA) and is therefore subject to the Customer's own retention policy. LPR data and/or booking images that has reached the end of the retention

period set by the Customer in ClientPortal or VehicleManager will be deleted in accordance thereof. Customer retains all rights to LPR data and booking images collected by Customer.

6.3.1 Data Sharing. Customer, at its option, may share its LPR data with other similarly situated LEAs which contract with Motorola to access Vigilant VehicleManager by selecting this option within Vigilant VehicleManager. Other similarly situated LEAs may similarly opt to share their LPR data with Customer using Vigilant VehicleManager. Such LPR data generated by other LEAs is considered Third-Party Data (as defined in the MCA), is governed by the retention policy of the respective LEA, and shall be used by Customer only in connection with its use of Vigilant VehicleManager.

6.3.2. Only individuals who are agents and/or sworn officers of Customer and who are authorized by Customer to access Vigilant VehicleManager on behalf of Customer through login credentials provided by Customer ("**User Eligibility Requirements**") may access Vigilant VehicleManager. Motorola in its sole discretion may deny access to Vigilant VehicleManager to any individual based on such person's failure to meet the User Eligibility Requirements. Customer will ensure no user logins are provided to agents or officers of other local, state, or Federal LEAs without the express written consent of Motorola. Customer will be responsible for all individuals' access to, and use of, Vigilant VehicleManager through use of Customer login credentials, including ensuring their compliance with this Agreement. Customer shall notify Motorola immediately if Customer believes the password of any of its Users has, or may have, been obtained or used by any unauthorized person(s). In addition, Customer must notify Motorola immediately if it becomes aware of any other breach or attempted breach of the security of any of its Users' accounts.

6.3.3 LEA Customers. If Customer is an LEA, other similarly situated LEAs that collect their own LPR data and booking images may opt to share such data with Customer using VehicleManager.

6.3.4. Non-LEA Customers. If Customer is a non-LEA Customer, other similarly situated ClientPortal customers that collect their own LPR data may opt to share such data with Customer using ClientPortal. Such LPR data generated by other ClientPortal customers is considered Third-Party Data (as defined in the MCA), is governed by the retention policy of the respective ClientPortal customer, and shall be used by Customer only in connection with its use of ClientPortal. Third-party LPR data that has reached its expiration date will be deleted from ClientPortal in accordance with the retention terms of the sharing entity.

6.4. Commercial Data Access. If Customer purchases a subscription to Commercial Data, then Customer shall execute and agree to the terms of Motorola's standard Data License Addendum, a copy of which is available upon request.

6.5. API Support. Described in the MCA.

6.6. Support of Downloaded Clients. Described in the MCA.

6.7. CJIS Security Policy. Described in the MCA.

Section 7. VaaS Program Terms. All hardware provided by Motorola to Customer under the VaaS Program will be considered Equipment, as defined in the MCA and constitutes a purchase of Equipment subject to the terms and conditions contained therein. In addition, the following terms and conditions apply to any Equipment purchased under the VaaS Program:

7.1. Technology Refresh. Body cameras and associated batteries purchased under the VaaS Program ("**Body Cameras**") may be eligible for a technology refresh as described in the Proposal. If included in the Proposal, and in the event the Body Camera is eligible for replacement applicable under this **Section 7.1 – Technology Refresh**, Customer must return the existing Body Camera to Motorola in working condition. The corresponding replacement Body Camera will be the then-current model of the Body Camera at the same tier as the Body Camera that is returned to Motorola. For clarity, any other Equipment received by Customer as part of the VaaS Program, other than Body Cameras, or associated batteries (if specified in the Proposal) will not be eligible for a technology refresh hereunder.

7.2. No-Fault Warranty. If specified in the Proposal, and subject to the disclaimers set forth in the Agreement, upon delivery of Equipment purchased as part of the VaaS Program, Motorola will provide a No-fault Warranty to Customer for such Equipment that extends until the end of the Commitment Term (as defined below) applicable to such Equipment; except that the No-fault Warranty will not apply to: (i) any Equipment with intentionally altered or removed serial numbers, (ii) any other damages disclaimed under the MCA, or (iii) any Equipment that Motorola determines was changed, modified, or repaired by Customer or any third party. The "**No-fault Warranty**" means that Motorola will repair or replace any Equipment components or parts that render the applicable Equipment unable to perform its intended purpose. With respect to any batteries in Body Cameras, a battery will be considered faulty and covered under this No-fault Warranty if it falls below sixty percent (60%) of rated capacity.

7.3. Commitment Term. Customer accepts that following the delivery of any Equipment under the VaaS Program, Customer commits to a five (5) year subscription term for such Equipment at the rate provided in the Proposal (the "**Initial Commitment Term**"). If Customer, for any reason, terminates any of its obligations to Motorola prior to expiration of the applicable Commitment Term (as defined below), Customer will be subject to the payments described in **Section 11.2 – Termination** hereunder.

Section 8. Additional Devices. Any additional Equipment, including any accessory items, ordered by Customer after Customers' initial purchase of Equipment hereunder may be subject to an incremental increase in Fees. In the event Customer orders additional Equipment under the VaaS Program within the ninety (90) days immediately following its initial purchase, such Equipment will be included in and subject to the Initial Commitment Term. Any additional Equipment purchased under the VaaS Program subsequent to such ninety (90) day period, will commence an additional subscription term commitment for such Equipment of five (5) years (a "**Subsequent Commitment Term**") with respect to the monthly Fee associated with such additional Equipment. For purposes of this Addendum, the Initial Commitment Term and each Subsequent Commitment Term are each also referred to herein as a "**Commitment Term**".

Section 9. Included Subscription Software.

9.1 VideoManager EL. Subject to **Section 11.1 – VaaS Term**, if the Equipment purchased under the VaaS Program provides Customer with a subscription to the Cloud Hosted Evidence Management System during the VaaS Term (as defined below), use of the Cloud Hosted Evidence Management System is subject to the MCA and SLA. Customer's subscription will include unlimited users, Unlimited Storage and unlimited sharing, provided any media or data uploaded to the Cloud Hosted Evidence Management System is done using Motorola Equipment actively enrolled in the VaaS Program. Following expiration of the applicable Commitment Term, Customer's continued use of expired Equipment with the Cloud Hosted Evidence Management System is subject to Customer's purchase of additional access at Motorola's prevailing rates, or Motorola may disconnect connectivity of any expired Equipment to the Cloud Hosted Evidence Management System.

9.2 CommandCentral. If specified and included in the Proposal, for each applicable Body Camera, in-car system or integrated system purchased, Customer will receive one user license for Motorola CommandCentral (CC), which provides access to CC Community, CC Capture, CC Vault and CC Records. Additional CC licenses may be purchased for an additional fee.

9.3 VideoManager EX: Subject to **Section 11.1 – VaaS Term**, if specified in the Proposal, Equipment purchased under the VaaS Program provides Customer with a single subscription to Video Manager EX during the VaaS Term (as defined below), the use of which is subject to the MCA and SLA. Following expiration of the applicable Commitment Term, Customer must purchase additional access to VideoManager EX, at Motorola's prevailing rates, to continue using expired Equipment with the VideoManager EX, or Motorola may disconnect connectivity of any expired Equipment.

9.4. Vigilant VehicleManager or Vigilant ClientPortal. The VaaS Program provides Customer with a subscription to Vigilant VehicleManager or Vigilant ClientPortal, as specified in the Proposal, during the VaaS Term (as defined below). Following expiration of the applicable Commitment Term, if Customer desires to continue use of expired Equipment with the Vigilant VehicleManager or Vigilant ClientPortal, Customer must purchase additional access to Vigilant VehicleManager or Vigilant ClientPortal based on Motorola's prevailing rates, or Motorola may disconnect connectivity of any expired Equipment to such software.

9.4.1. Access. Use and access to VehicleManager is strictly restricted to Law Enforcement Agencies ("LEAs") and their Authorized Users. Non-LEAs and their Authorized Users may purchase/access Client Portal.

9.5. CarDetector. Customer may purchase Vigilant CarDetector which is Subscription Software. For Customers subscribing to CarDetector, Customer is required to obtain a CLK for each Motorola-approved camera which uses CarDetector. A CLK can be obtained by Customer by going to Motorola's company support website and completing the online request form to Vigilant technical support staff.

Section 10. VaaS Program Payment.

10.1 Mobile Video System: Unless otherwise provided in a Proposal (and notwithstanding the provisions of the MCA), Customer will prepay a subscription Fee quarterly (each a "Subscription Quarter"), as set forth in a Proposal. If Customer orders any additional Product(s) under the VaaS Program subsequent to the initial purchase by Customer, Fees for such additional Product will be added to the quarterly subscription Fee, and will be payable on the same Fee payment schedule as the initial Product purchased under the VaaS Program; provided, however, that for the first Subscription Quarter during which such additional Product is purchased, the subscription Fee for the applicable additional Product will be prorated based on the applicable number of days remaining in the such initial Subscription Quarter.

10.2 LPR System: Unless otherwise provided in a Proposal (and notwithstanding the provisions of the MCA), Customer will prepay a subscription Fee yearly (each a "Subscription Year"), as set forth in a Proposal. If Customer orders any additional LPR Product(s) under the VaaS Program subsequent to Customer's initial purchase, the Fees for the additional LPR Product will be added to the yearly subscription Fee and will be payable on the same Fee payment schedule as the initial LPR Products purchased by the Customer; provided, however, that for the first Subscription Year during which such additional LPR Product(s) is purchased, the subscription Fee for the applicable additional LPR Product(s) will be prorated based on the applicable number of days remaining in such initial Subscription Year.

Section 11. VaaS Program Term and Termination.

11.1 VaaS Term. Customer's participation in the VaaS Program will commence upon the System Completion Date under this MVA, and will continue through the end of the final Commitment Term hereunder ("the **"VaaS Term"**"). Following the end of any Commitment Term, Customer's access to the Cloud Hosted Evidence Management System with respect to the Equipment purchased relative to that Commitment Term will expire, and Customer must download or transfer all Customer Data associated with the applicable Equipment within thirty (30) days following expiration unless Customer purchases extended access to the Cloud Hosted Evidence Management System from Motorola at the prevailing rates. Motorola has no obligation to retain Customer Data for expired Equipment beyond thirty (30) days following expiration of the applicable Commitment Term. For example, if Customer purchases 100 devices on January 1 of Year 1 of the VaaS Term or the Initial Commitment Term, and then 100 additional devices on January 1 of Year 3, on December 31 of Year 5 (i.e., the conclusion of the Initial Commitment Term), Customer's access to the Cloud Hosted Evidence Management System with respect to the first 100 devices will be discontinued, and Customer must purchase extended storage or transfer all Customer Data associated with the first 100 devices within thirty (30) days of expiration of the Initial Commitment Term. In the foregoing example, the Cloud Hosted Evidence Management System access and data storage for the second 100 devices purchase will extend until December 31 of Year 7.

11.2 Termination. The termination provisions applicable to the VaaS Program will be those set forth in the MCA and SLA, as applicable. If Customer's participation in the VaaS Program is terminated for any reason prior to the end of the Initial Commitment Term or any Subsequent Commitment Term, Customer will pay the prorated remainder of the aggregate Equipment list price (prevailing as of the time of delivery). This is calculated by multiplying the list price of all Equipment purchased under the VaaS Program by the percentage resulting from dividing the number of months remaining in the Commitment Term applicable to such Equipment by sixty (60). In the event Customer purchased Equipment on multiple dates, resulting in separate Commitment Terms, the preceding calculation will be made relative to the applicable Commitment Term for each Equipment order.

11.3 Post Termination Subscription Software Access. Upon completion of the VaaS Term, Customer may elect to purchase additional CLKs, at then current rates, for continued Vigilant CarDetector and/or Subscription Software access. If applicable, additional network costs, at then current rates, may apply. Any continued Software Subscription access shall continue to be governed by the MCA and SLA.

Section 12. System Completion. Any Mobile Video System sold hereunder will be deemed completed upon Customer's (or the applicable Authorized User's) Beneficial Use of the applicable Mobile Video System (the **"System Completion Date"**). Customer will not unreasonably delay Beneficial Use, and in any event, the Parties agree that Beneficial Use will be deemed to have occurred thirty (30) days after functional demonstration. As used in this Section, **"Beneficial Use"** means use by Customer or at least one (1) Authorized User of the material features and functionalities of Mobile Video System, in material conformance with Product descriptions in the applicable Proposal. Any additional Equipment sold in connection with the initial Mobile Video System shall be deemed delivered in accordance with the terms of the MCA. Any additional Subscription Software purchased under the VaaS Program will be deemed delivered upon Customer's receipt of credentials required for access to the Cloud Hosted Evidence Management System or upon Motorola otherwise providing access to the Cloud Hosted Evidence Management System. This Section applies to Products purchased

under the MVA notwithstanding any delivery provisions of the Agreement, and this Section will control over such other delivery provisions to the extent of a conflict.

Section 13. Additional Cloud Terms. The terms set forth in Section 4.4 Additional Cloud Terms of the SLA apply in the event Customer purchases any cloud hosted software Products, including a Cloud Hosted Evidence Management System.

Section 14. Survival. The following provisions will survive the expiration or termination of this MVVA for any reason: Section 1 – Addendum; 3 – Evidence Management Systems; Applicable Terms and Conditions; Section 4 – Payment; Section 6.2 – Applicable End User Terms; Section 9.1 – VideoManager EL Section 11 – VaaS Program Term and Termination; Section 14 – Survival.

MAINTENANCE, SUPPORT AND LIFECYCLE MANAGEMENT ADDENDUM

This Maintenance, Support and Lifecycle Management Addendum (this “**MSLMA**”) is subject to, and governed by, the terms of the Motorola Solutions Customer Agreement (“**MCA**”) to which it is attached. Capitalized terms used in this MSLMA, but not defined herein, will have the meanings set forth in the MCA.

Section 1. Addendum. This MSLMA governs Customer’s purchase of Maintenance, Support and Lifecycle Management (as defined below) services (and, if set forth in an Proposal related Services) from Motorola and will form part of the Parties’ Agreement. This MSMLA will control with respect to conflicting terms in the MCA or any other applicable Addendum, but only as applicable to the Maintenance, Support and Lifecycle Management services purchased under this MSMLA and not with respect to other Products and Services.

Section 2. Scope

Motorola will provide break/fix maintenance, technical support, or other Services (such as software integration Services) (“Maintenance and Support Services”) and/or upgrade services (“Lifecycle Management”) as further described in the applicable Proposal.

Section 3. Terms and conditions

3.1 Maintenance and Support services

3.1.1 Purchase Order Acceptance. Purchase orders for additional, continued, or expanded maintenance and software support, during the Warranty Period or after the Warranty Period, become binding only when accepted in writing by Motorola.

3.1.2 Start Date. The “Start Date” for Maintenance and Support Services will be indicated in the applicable Proposal.

3.1.3 Auto Renewal. Unless the applicable Proposal specifically states a termination date or one Party notifies the other in writing of its intention to discontinue the Maintenance and Support Services, this Agreement will renew for an additional one (1) year term on every anniversary of

the Start Date. At the anniversary date, Motorola may adjust the price of the Services to reflect the renewal rate.

3.1.4 Termination. Written notice of intent to terminate must be provided thirty (30) days or more prior to the anniversary date. If Motorola provides Services after the termination or expiration of this MSLMA, the terms and conditions in effect at the time of termination or expiration will apply to those Services and Customer agrees to pay for those services on a time and materials basis at Motorola's then effective hourly rates. This provision survives the expiration or termination of the Agreement and applies notwithstanding any contrary provision.

3.1.5 Equipment Definition. For maintenance and support services, Equipment will be defined to mean the hardware specified in the applicable Proposal.

3.1.6 Additional Hardware. If Customer purchases additional hardware from Motorola that becomes part of the Communications System, the additional hardware may be added to this MSLMA and will be billed at the applicable rates after the warranty period for that additional equipment expires. Such hardware will be included in the definition of Equipment.

3.1.7 Maintenance. Equipment will be maintained at levels set forth in the manufacturer's product manuals and routine procedures that are prescribed by Motorola will be followed. Motorola parts or parts of equal quality will be used for Equipment maintenance.

3.1.8 Equipment Condition. All Equipment must be in good working order on the Start Date or when additional equipment is added to the MSLMA. Upon reasonable request by Motorola, Customer will provide a complete serial and model number list of the Equipment. Customer must promptly notify Motorola in writing when any Equipment is lost, damaged, stolen or taken out of service. Customer's obligation to pay maintenance and support fees for this Equipment will terminate at the end of the month in which Motorola receives the written notice. If Equipment cannot, in Motorola's reasonable opinion, be properly or economically maintained for any reason, Motorola may modify the scope of Services related to that Equipment; remove that Equipment from the Agreement; or increase the price to maintain that Equipment.

3.1.9 Equipment Failure. Customer must promptly notify Motorola of any Equipment failure. Motorola will respond to Customer's notification in a manner consistent with the level of Service purchased as indicated in this MSLMA and applicable Proposal.

3.1.10 Intrinsically Safe. Customer must specifically identify any Equipment that is labeled intrinsically safe for use in hazardous environments.

3.1.11 Excluded Services.

a) Service excludes the repair or replacement of Equipment that has become defective or damaged from use in other than the normal, customary, intended, and authorized manner; use not in compliance with applicable industry standards; excessive wear and tear; or accident, liquids, power surges, neglect, acts of God or other force majeure events.

b) Unless specifically included in this MSLMA or the applicable Proposal, Service excludes items that are consumed in the normal operation of the Equipment, such as batteries or magnetic tapes.; upgrading or reprogramming Equipment; accessories, belt clips, battery chargers, custom or special products, modified units, or software; and repair or maintenance of any transmission line, antenna, microwave equipment, tower or tower lighting, duplexer, combiner, or multicoupler. Motorola has no obligations for any transmission medium, such as

telephone lines, computer networks, the internet or the worldwide web, or for Equipment malfunction caused by the transmission medium.

3.1.12 Time And Place. Service will be provided at the location specified in this MSLMA and/or the applicable Proposal. When Motorola performs maintenance, support, or installation at Customer's location, Customer will provide Motorola, at no charge, a non-hazardous work environment with adequate shelter, heat, light, and power and with full and free access to the Equipment. Waivers of liability from Motorola or its subcontractors will not be imposed as a site access requirement. Customer will provide all information pertaining to the hardware and software elements of any system with which the Equipment is interfacing so that Motorola may perform its Services. Unless otherwise stated in this MSLMA or applicable Proposal, the hours of Service will be 8:30 a.m. to 4:30 p.m., local time, excluding weekends and holidays. Unless otherwise stated in this MSLMA or applicable Proposal, the price for the Services exclude any charges or expenses associated with helicopter or other unusual access requirements; if these charges or expenses are reasonably incurred by Motorola in rendering the Services, Customer agrees to reimburse Motorola for those charges and expenses.

3.1.13 Customer Contact. Customer will provide Motorola with designated points of contact (list of names and phone numbers) that will be available twenty-four (24) hours per day, seven (7) days per week, and an escalation procedure to enable Customer's personnel to maintain contact, as needed, with Motorola.

3.1.14 Warranty. Motorola warrants that its Maintenance and Support Services under this section will be free of defects in materials and workmanship for a period of ninety (90) days from the date the performance of the Services are completed. In the event of a breach of this warranty, Customer's sole remedy is to require Motorola to re-perform the non-conforming Service or to refund, on a pro-rata basis, the fees paid for the non-conforming Service. MOTOROLA DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

3.2 Lifecycle Management Services

3.2.1 The License terms included in the MCA and its SLA Addendum apply to any Motorola Licensed Software provided as part of the Lifecycle Management transactions.

3.2.2 The term of this MSLMA is _____ years, commencing on _____, 202_. The Lifecycle Management Price for the _____ years of services is \$_____, excluding applicable sales or use taxes but including discounts as more fully set forth in the pricing pages. Because the Lifecycle Management is a subscription service as more fully described in the applicable Proposal, payment from Customer is due in advance and will not be in accordance with any Payment Milestone Schedule.

3.2.3 The Communications System upgrade will be scheduled during the subscription period and will be performed when Motorola's upgrade operation resources are available. Motorola may substitute any of the promised Equipment or Licensed Software so long as the substitute is equivalent or superior to the initially promised Equipment or Licensed Software.

3.2.4 Acceptance of a Lifecycle Management transaction occurs when the Equipment (if any)

and Licensed Software are delivered, in accordance with the MCA, and the Lifecycle Management services are fully performed.

3.2.5 The Warranty Period for any Equipment or Licensed Software provided under a Lifecycle Management transaction will commence upon shipment and is for a period of ninety (90) days. The ninety (90) day warranty for Lifecycle Management services is set forth in the applicable Proposal.

3.2.6 In addition to the description of the Lifecycle Management services and exclusions provided in the applicable Proposal, the following apply:

- a) Upon reasonable request by Motorola, Customer will provide a complete serial and model number list of the Equipment.
- b) Lifecycle Management services exclude the repair or replacement of Equipment that has become defective or damaged from use in other than the normal, customary, intended, and authorized manner; use not in compliance with applicable industry standards; excessive wear and tear; or accident, liquids, power surges, neglect, acts of God or other force majeure events.
- c) Unless specifically included in this MSLMA or the applicable Proposal, Lifecycle Management services exclude items that are consumed in the normal operation of the Equipment; accessories; and repair or maintenance of any transmission line, antenna, microwave equipment, tower or tower lighting, duplexer, combiner, or multicoupler. Motorola has no obligations for any transmission medium, such as telephone lines, computer networks, the internet, or for Equipment malfunction caused by the transmission medium.
- d) Customer will provide Motorola with designated points of contact (list of names and phone numbers) that will be available during the performance of the Lifecycle Management services.

3.2.7 The Lifecycle Management annualized price is based on the fulfillment of the two year cycle. If Customer terminates this service during a two year cycle, except for Motorola's default, then Customer will be required to pay for the balance of payments owed for the two year cycle if a major system release has been implemented before the point of termination.

3.2.8 If Customer terminates this Maintenance and Support or Lifecycle Management service and contractual commitment before the end of the ___ year term, for any reason other than Motorola's default, then the Customer will pay to Motorola a termination fee equal to the discount applied to the last three years of service payments related to the ___ year commitment. This provision survives the expiration or termination of the Agreement and applies notwithstanding any contrary provision.

Section 4. Payment

4.1 Unless alternative payment terms are stated in this MSLMA, Motorola will invoice Customer in advance for each payment period. All other charges will be billed monthly and the Customer

must pay each invoice in U.S. dollars within thirty (30) days of the invoice date. Customer will reimburse Motorola for all property taxes, sales and use taxes, excise taxes, and other taxes or assessments that are levied as a result of Services rendered under this Agreement (except income, profit, and franchise taxes of Motorola) by any governmental entity.

4.2 INFLATION ADJUSTMENT. For multi-year agreements, at the end of the Agreement's first year and each year thereafter, a CPI percentage change calculation shall be performed using the U.S. Department of Labor, Consumer Price Index, "All Items," Unadjusted Urban Areas (CPI-U). Should the annual inflation rate increase greater than 3% during the previous year, Motorola shall have the right to increase all future maintenance prices by the CPI increase amount exceeding 3%. The adjustment calculation will be based upon the CPI for the most recent twelve (12) month increment beginning from the most current month available posted by the U.S. Department of Labor (<http://www.bls.gov>) immediately preceding the new maintenance year. For purposes of illustration, if in Year 5 the CPI reported an increase of 8%, Motorola may increase the Year 6 price by 5% (8%-3% base).

Billing Address:
NACOGDOCHES POLICE DEPT,
CITY OF
312 W MAIN ST
NACOGDOCHES, TX 75963
US

Quote Date:09/11/2024
Expiration Date:12/10/2024
Quote Created By:
Blake Galloway
Regional Sales Manager
Blake.Galloway@
motorolasolutions.com
214-551-2709

End Customer:
NACOGDOCHES POLICE DEPT, CITY OF

Contract: Texas DIR-TSO-4101
Payment Terms:30 NET

Summary:

Any sales transaction resulting from Motorola's quote is based on and subject to the applicable Motorola Standard Terms and Conditions, notwithstanding terms and conditions on purchase orders or other Customer ordering documents. Motorola Standard Terms and Conditions are found at www.motorolasolutions.com/product-terms.

Line #	Item Number	APC	Description	Qty	Term	Sale Price	Ext. Sale Price	Refresh Duration
Video as a Service								
1	AAS-BWC-5YR-001	0894	BODY WORN CAMERA AND VIDEO MANAGER EL CLOUD - 5 YEARS VIDEO-AS-A-SERVICE	65	5 YEAR	\$4,140.00	\$269,100.00	
2	PSV00S03898A	0914	ON-SITE DEPLOYMENT, CONFIGURATION AND PROJECT MANAGEMENT	1		\$50,000.00	\$50,000.00	
3	WGB-0142AAS	0894	V300/V700, WIFI DOCK VHCL CHGR/UPLD KIT FOR 4RE VAAS	61		Included	Included	
4	AAS-BWC-XFS-DOC	0894	V300/V700 TRANSFER STATION - VIDEO-AS-A-SERVICE	8	5 YEAR	\$0.00	\$0.00	
5	SSV00S01450B	0217	LEARNER LXP SUBSCRIPTION*	65	5 YEAR	\$0.00	\$0.00	
6	WGC02001-VAAS	0897	VIDEOMANAGER EL CLOUD, ANNUAL UNLIMITED STORAGE PER BODY WORN CAMERA VAAS*	65	5 YEAR	Included	Included	



Any sales transaction following Motorola's quote is based on and subject to the terms and conditions of the valid and executed written contract between Customer and Motorola (the "Underlying Agreement") that authorizes Customer to purchase equipment and/or services or license software (collectively "Products"). If no Underlying Agreement exists between Motorola and Customer, then Motorola's Standard Terms of Use and Motorola's Standard Terms and Conditions of Sales and Supply shall govern the purchase of the Products.
Motorola Solutions, Inc.: 500 West Monroe, United States - 60661 - #: 36-1115800

Line #	Item Number	APC	Description	Qty	Term	Sale Price	Ext. Sale Price	Refresh Duration
7	WGB-0741A	0894	V700 BODY WORN CAMERA FIRSTNET READY	65		Included	Included	3 YEAR
8	LSV07S03512A	0898	ESSENTIAL SERVICE WITH ACCIDENTAL DAMAGE AND ADVANCED REPLACEMENT	65	5 YEAR	Included	Included	
9	SWV07S03593A	0897	SOFTWARE ENHANCEMENTS	65	5 YEAR	Included	Included	
10	WGP02798-KIT	0894	V700 MAGNETIC MOUNT WITH BWC BOX	65		Included	Included	
11	WGB-0138AAS	0894	TRANSFER STATION, 8 SLOTS, FOR V300/V700 VAAS	9		Included	Included	
12	AAS-BWC-WIF-DOC	0894	V300/V700 WIFI CHARGE/UPLOAD DOCK - VIDEO-AS-A-SERVICE	61	5 YEAR	\$300.00	\$18,300.00	
13	WGP02950	0894	V700 BATTERY, 3.8V, 4180MAH, REMOVABLE	65		\$0.00	\$0.00	
14	WGA00421-501	0851	UPLOAD APPLIANCE, SVR 1U, 60 CONCRNT DEV	1		Included	Included	
15	AAS-UPL-SVR-001	0899	UPLOAD APPLIANCE - 5 YEARS VIDEO-AS-A-SERVICE (\$100 PER MON)	1	5 YEAR	\$6,000.00	\$6,000.00	
16	WGW00140-100	0854	EXTENDED WARRANTY, UPLOAD SERVER EL.COM (WGA00421-501), FULL SERVICE ON SITE, 5-YEAR (MONTHS 37-60)	1	5 YEAR	Included	Included	
VideoManager EL or EX: Video Evidence Management								
17	WCM000111-020	0840	INTEGRATION VIDEOMANAGER EL WITH MOTOROLA CAD/RMS*	1		\$0.00	\$0.00	
18	SSV07S03605A	0854	MOBILE VIDEO SYSTEM ADMINISTRATOR - REMOTE - 50 HOURS*	1	5 YEAR	\$20,000.00	\$20,000.00	



Any sales transaction following Motorola's quote is based on and subject to the terms and conditions of the valid and executed written contract between Customer and Motorola (the "Underlying Agreement") that authorizes Customer to purchase equipment and/or services or license software (collectively "Products"). If no Underlying Agreement exists between Motorola and Customer, then Motorola's Standard Terms of Use and Motorola's Standard Terms and Conditions of Sales and Supply shall govern the purchase of the Products.
Motorola Solutions, Inc.: 500 West Monroe, United States - 60661 - #: 36-1115800



Line #	Item Number	APC	Description	Qty	Term	Sale Price	Ext. Sale Price	Refresh Duration
19	WGC01001	0696	VIDEOMANAGER EL CLOUD, SOFTWARE AND HOSTING, UNLIMITED ASSIGNED, ANNUALLY PER DEVICE*	65	5 YEAR	\$2,475.00	\$160,875.00	
20	Incentive		Motorola Legacy Customer Discount Expiration Date: 12/31/2024	1		-\$84,855.00	-\$84,855.00	
21	Incentive		Vista Hardware Trade In Credit Expiration Date: 12/31/2024	1		-\$60,000.00	-\$60,000.00	
Subtotal							\$593,751.25	
Total Discount Amount							\$214,331.25	
Grand Total						\$379,420.00(USD)		



Pricing Summary

	Sale Price
Upfront Costs for Hardware, Accessories and Implementation (If applicable)	\$150,000.00
Year 2 Subscription Fee	\$57,355.00
Year 3 Subscription Fee	\$57,355.00
Year 4 Subscription Fee	\$57,355.00
Year 5 Subscription Fee	\$57,355.00
Grand Total System Price (Inclusive of Upfront and Annual Costs)	\$379,420.00

**Upfront costs include the cost of Hardware, Accessories and Implementation, where applicable.*

- The Pricing Summary is a breakdown of costs and does not reflect the frequency at which you will be invoiced.



MOBILE VIDEO SYSTEM ADMINISTRATOR SOLUTION DESCRIPTION

Mobile Video System Administrator service is tailored to meet your specific needs and provides an experienced and knowledgeable technical operations resource to assist with the management of your Mobile Video solution while you focus your attention on meeting your organizational goals.

The role spans across the Mobile Video system by providing assistance and guidance on your video evidence solution as well as your body-worn cameras and in-car video systems, enabling you to upload video evidence quickly and securely. The System Administrator is a qualified and trained technical operations professional with in-depth knowledge of Motorola Mobile Video solutions.

CUSTOMIZABLE DELIVERY

Motorola tailors the System Administrator service to the needs of the customer. The customer has the ability to obtain a full-time on location technician or a remote technician. This allows for flexibility and customization based on the level of support needed to support your system.

Onsite System Administrator

Motorola Onsite System Administrator (OSA) provides customers with a dedicated full-time resource from Motorola global support and managed services organization. This resource is focused on administering and supporting your Mobile Video System to ensure optimum performance and availability. By partnering with the Customer, the OSA will develop an understanding of the customer's specific environment, specific requirements, and customizations. The OSA will act as the interface between Motorola technical support teams to achieve the goals outlined by the Customer.

Time Based System Administrator (Remote Delivery)

The time based / remote system administrator service provides the customer the opportunity to rely on a time-based and dedicated team from Motorola. The resource is available at the Customer's request, to assist with patches, changes, or other issues as they arise within the customers Mobile Video solution. Assistance will be provided via phone, email, or video conference. They are also available proactively to help provide guidance on best practices within your organization.

SUBSCRIPTION SERVICE

The System Administrator service is provided as an annual subscription service and is subject to Motorola's standard terms and conditions and applicable Addenda located at https://www.motorolasolutions.com/en_us/about/legal/video_security_terms.html. In addition to those terms, the Customer acknowledges that the System Administrator Service is an annual subscription that auto-renews annually. If the Customer would like to terminate the Service, they may do so in writing sixty (60) days prior to the upcoming renewal term. In the event the Customer terminates for convenience during the term, Customer acknowledges that no pro-rata refund of any prepaid fees will be provided.





VIDEOMANAGER EL CLOUD SOLUTION DESCRIPTION

VideoManager EL Cloud simplifies evidence management, automates data maintenance, and facilitates management of the Customer's cloud-based, off-premises storage solution.

It is compatible with V300/V700 body-worn cameras and M500 in-car video systems, as well as, legacy VISTA body-worn cameras and 4RE in-car video systems enabling the Customer to upload video evidence quickly and securely. VideoManager EL Cloud allows live streaming from the V300/V700 body-worn cameras and the M500 in-car video system to CommandCentral Aware.



VIDEO EVIDENCE MANAGEMENT

VideoManager EL Cloud delivers benefits to all aspects of video evidence administration. With this streamlined process, the Customer minimizes the amount of time spent manually managing evidence, allowing your team to spend more time in the field.

Simplified Evidence Review

VideoManager EL Cloud makes evidence review easier by allowing users to upload evidence into cloud storage from their in-field devices. This information includes a recording's date and time, device used to capture the evidence, event ID, officer name, and event type. This allows the Customer to view recordings of an incident that were taken from several devices simultaneously, eliminating the task of reviewing irrelevant footage. Its built-in media player includes a visual display for incident data, highlighting moments of interest when lights, sirens, or brakes are activated during the event timeline.

Other relevant files, such as PDFs, spreadsheets, reports, third-party videos, audio recordings, pictures, and drawings can also be grouped together and stored under a specific case entry, allowing all pertinent information to be stored together.

Easy Evidence Sharing

VideoManager EL Cloud allows you to easily share information by exporting evidence. Ways to export evidence include downloading to a PC, sharing evidence through a cloud-based service, or Rimage. Rimage is a robust tool responsible for exporting evidence to DVD/BR discs.

Automatic Data Maintenance

VideoManager EL Cloud can schedule the automatic purging of events based on recorded event category and age. It is user customizable.

Security

The Customer will sync security groups and users from the Azure Active Directory. In VideoManager EL Cloud, the Customer can grant groups access to the evidence on an as-needed basis.



**Integration with In-Car Video Systems and Body-Worn Cameras**

Video and audio captured by the integration of in-car video systems (4RE, M500) and body-worn cameras (VISTA, V300, V700) are automatically linked in VideoManager EL Cloud based on time, officer name, or group recordings. The Customer can utilize synchronized playback and export of video and audio from multiple devices in the same recording group.

DEVICE MANAGEMENT

The Customer can easily manage, configure, and deploy their in-car and body-worn cameras in VideoManager EL Cloud. Body-worn cameras are checked out to a given officer, where VideoManager EL Cloud keeps record of who last had the body-worn camera. In contrast, in-car video systems are configured with a list of officers who are authorized to use it. When an officer logs into the device, the officer is marked as the owner of any evidence that is created by the device. VideoManager EL Cloud does not display the officer's name who is currently associated with the in-car video system, but it does for body-worn cameras.

VideoManager EL Cloud's Rapid Checkout Kiosk feature allows agencies to take advantage of pooled body-worn cameras. The cameras can be checked out at the beginning of a shift using an easy-to-use interface. At the end of a shift, the body-worn camera will be returned to its dock, where video is automatically uploaded. The camera is then ready to be checked out for the next shift.

The in-car and body-worn cameras can also be configured to remember preference settings for each user, including volume level, screen brightness and camera aim. These settings are applied whenever a device is assigned to a specific user. There are other settings in VideoManager EL Cloud that will enable the Customer to configure devices to operate in alignment with your agency's policies and procedures.

REPORTING

VideoManager EL Cloud's Report Management allows the creation of reports that will give the Customer greater insight into the system. Reports are created to provide a specific type of data from a specified time period. Report types cover areas such as recorded event details, purged recorded events, recorded events with unknown metadata, body-worn camera assignments, device use, and case details.





MOBILE VIDEO PRODUCTS NEW SYSTEM STATEMENT OF WORK

OVERVIEW

This Statement of Work (SOW) outlines the responsibilities of Motorola Solutions, Inc. (Motorola) and the Customer for the implementation of body-worn camera(s) and/or in-car video system(s) and your digital evidence management solution. For the purpose of this SOW, the term "Motorola" may refer to our affiliates, subcontractors, or certified third-party partners. A third-party partner(s) (Motorola-certified installer) will work on Motorola's behalf to install your in-car video system(s) (if applicable).

This SOW addresses the responsibilities of Motorola and the Customer that are relevant to the implementation of the hardware and software components listed in the Solutions Description. Any changes or deviations from this SOW must be mutually agreed upon by Motorola and the Customer and will be addressed in accordance with the change provisions of the Contract. The Customer acknowledges any changes or deviations from this SOW may incur additional cost.

Motorola and the Customer will work to complete their respective responsibilities in accordance with the Project Schedule. Any changes to the Project Schedule must be mutually agreed upon by both parties in accordance with the change provisions of the Contract.

Unless specifically stated, Motorola will perform the work remotely. The Customer will provide Motorola personnel with access to their network and facilities so Motorola is able to fulfill its obligations. All work will be performed during normal business hours based on the Customer's time zone (Monday through Friday from 8:00 a.m. to 5:00 p.m.).

The number and type of software subscription licenses, products, or services provided by Motorola are specifically listed in the Contract and referenced in the SOW. Services provided under this SOW are governed by the mutually executed Contract between the parties, or Motorola's Master Customer Agreement and applicable addenda ("Contract").

AWARD, ADMINISTRATION, AND PROJECT INITIATION

Project Initiation and Planning will begin following the execution of the Contract between Motorola and the Customer. At the conclusion of Project Planning, Motorola's Project Manager (PM) will begin status meetings and provide status reports on a regular cadence with the Customer's PM. The status report will provide a summary of activities completed, activities planned, progress against the project schedule, items of concern requiring attention, as well as, potential project risks and agreed upon mitigation actions.

Motorola utilizes Google Meet as its teleconference tool. If the Customer desires to use an alternative teleconferencing tool, any costs incurred from the use of this alternate teleconferencing tool will be the responsibility of the Customer.

FBI-CJIS SECURITY POLICY – CRIMINAL JUSTICE INFORMATION

CJIS Security Policy Compliance

Motorola does not believe our Mobile Video offerings (i.e. in-car/body-worn cameras) require compliance with the FBI-CJIS Security Policy (CJISSECPOL) based on the definition in Section 4 of CJISSECPOL and how the FBI-CJIS defines Criminal Justice Information. However, Motorola does design its products with the CJISSECPOL



Any sales transaction following Motorola's quote is based on and subject to the terms and conditions of the valid and executed written contract between Customer and Motorola (the "Underlying Agreement") that authorizes Customer to purchase equipment and/or services or license software (collectively "Products"). If no Underlying Agreement exists between Motorola and Customer, then Motorola's Standard Terms of Use and Motorola's Standard Terms and Conditions of Sales and Supply shall govern the purchase of the Products. Motorola Solutions, Inc.: 500 West Monroe, United States - 60661 - #: 36-1115800



security controls as a guide. Motorola's Mobile Video system design and features support best practice security controls and policy compliance. In the event of a CJIS technical audit request, Motorola will support the Customer throughout this process.

Personnel Security – Background Screening

Motorola will assist the Customer with completing the CJIS Security Policy Section 5.12 Personnel Security related to authorized personnel background screening when requested to do so by the Customer. Based on Section 5.12, a Motorola employee is defined as someone who is required to be on the Customer's property with unescorted access. Motorola employees will also have access to the Customer's network(s) and stored information. Motorola has remote access tools to support virtual escorted access to on-premises customer assets.

Additionally, Motorola performs independent criminal background investigations including name based background checks, credential and educational vetting, credit checks, U.S. citizen and authorized worker identity verification on its employees.

Motorola will support the Customer in the event of a CJIS audit request to validate employees assigned to the project requiring CJIS Section 5.12 Personnel Security screening and determine whether this list is up to date and accurate. Motorola will notify the Customer within 24 hours or next business day of a personnel status change.

Security Awareness Training

Motorola requires all employees who will support the Customer to undergo Level 3 Security Awareness Training provided by Peak Performance and their CJIS online training platform. If the Customer does not have access to these records, Motorola can facilitate proof of completion. If the Customer requires additional and/or separate training, Motorola will work with the Customer to accommodate this request at an additional cost.

CJIS Security Addendum

Motorola requires all employees directly supporting the Customer to sign the CJIS Security Addendum if required to do so by the Customer.

Third Party Installer

The Motorola-certified third party installer will work independently with the Customer to complete the Section 5.12 Personnel Security checks, complete Security Awareness Training and execute the CJIS Security Addendum.

COMPLETION CRITERIA

The project is considered complete once Motorola has completed all responsibilities listed in this SOW. The Customer's task completion will occur based on the Project Schedule to ensure Motorola is able to complete all tasks without delays. Motorola will not be held liable for project delays due to incomplete Customer tasks.

The Customer must provide Motorola with written notification if they do not accept the completion of Motorola responsibilities. Written notification must be provided to Motorola within ten (10) business days of task completion. The project will be deemed accepted if no written notification is received within ten (10) business days.

In the absence of written notification for non-acceptance, beneficial use will occur thirty (30) days after functional demonstration of the system.



**SUBSCRIPTION SERVICE PERIOD**

If the contracted system includes a subscription, the subscription service period will begin upon the Customer's receipt of credentials for access. The provision and use of the subscription service is governed by the Contract.

PROJECT ROLES AND RESPONSIBILITIES OVERVIEW**Motorola Project Roles and Responsibilities**

The Motorola Project Team will be assigned to the project under the direction of the Motorola PM. Each team member will be engaged in different phases of the project as necessary. Some team members will be multi-disciplinary and may fulfill more than one role.

In order to maximize effectiveness, the Motorola Project Team will provide various services remotely by teleconference, web-conference, or other remote method in order to fulfill our commitments as outlined in this SOW.

Our experience has shown customers who take an active role in the operational and educational process of their system realize user adoption sooner and achieve higher levels of success with system operation. The subsections below provide an overview of each Motorola Project Team Member.

Project Manager (PM)

The PM will be the principal business representative and point of contact for Motorola. The PM's responsibilities may include but are not limited to:

- Manage Motorola responsibilities related to the delivery of the project.
- Maintain the Project Schedule, and manage assigned Motorola personnel, subcontractors, and suppliers as applicable.
- Coordinate schedules of assigned Motorola personnel, subcontractors, and suppliers as applicable.
- Conduct equipment inventory if applicable.
- Maintain project communications with the Customer.
- Identify and manage project risks.
- Coordinate collaboration of Customer resources to minimize project delays.
- Evaluate project status against Project Schedule.
- Conduct status meetings on mutually agreed upon dates to discuss project status.
- Provide timely responses to Customer inquiries and issues related to project progress.
- Conduct daily status calls with the Customer during Go-Live.

Post Sales Engineer

The Post Sales Engineer will work with the Customer's Project Team on:

- Discovery validation.
- System provisioning.
- Covers the IT portion of the Project Kickoff Call with the Customer.
- Contracted data migration between two disparate digital evidence management systems (if applicable).



**System Technologist (ST)**

The ST will work with the Customer's Project Team on:

- Configure Customer's digital evidence management system.
- Inspect installation and configure hardware devices.
- Provide instructions to the Customer on how to configure the hardware.
- Review Deployment Checklist with the Customer.
- Develop and submit a Trip Report.
- Update Customer IP Map.

Professional Services Engineer (if applicable)

The Professional Services Engineer is engaged on projects that include integration between Motorola's digital evidence management system and the Customer's third-party software application. Their responsibilities include:

- Delivery of the interface between Motorola's digital evidence management system and the Customer's third-party software (e.g. CAD).
- Work with the Customer to access required systems/data.

Application Specialist (if applicable)

The Application Specialist will work with the Customer Project Team on system provisioning and education. The Application Specialist's responsibilities include but are not limited to:

- Deliver provisioning education and guidance to the Customer for operating and maintaining their system.
- Provide product education as defined by this SOW and described in the Education Plan.
- Provide on-site training based on the products the Customer purchased.

Technical Trainer / Instructor

The Technical Trainer / Instructor provides training on-site or remote depending on the training topic and deployment services purchased.

Motorola-Certified Installer

The Motorola-certified installer is primarily responsible for installing in-car video systems (ICVs) into Customer vehicles. There are specific requirements the 3rd party partner must meet in order to be considered a Motorola-certified installer, and they include the following:

- **Required Training**
 - WTG0501 - M500 Vehicle Installation Certification (Remote) or WTG0503 - M500 Vehicle Installation Certification (Live)
 - Needs to be renewed yearly.
 - Needs to be submitted to the PM by the technician completing the installation no less than thirty (30) days prior to the installation.
 - Review of any previous Motorola Solutions Technical Notifications (MTNs).
- **Optional Training**
 - WGD00186 - M500 Installation Overview and Quick Start (NA)
 - Not required for installation. Available for the installing technician.
 - WGD00177 - M500 In-Car Video System Installation Guide
 - Not required for installation. Available for the installing technician.
 - MN010272A01 - M500 In-Car Video System Basic Service Manual





- Not required for installation. Available for the installing technician.

Other responsibilities the Motorola-certified installer may be involved in include the installation of cellular routers or Access Points. These activities will only be completed by Motorola if Motorola quotes these services; otherwise, the completion of these services are solely the responsibility of the Customer.

Customer Support Services Team

The Customer Support Services Team will provide on-going support to the Customer following Go-Live and final acceptance of the project.

Customer Project Roles and Responsibilities

Motorola has defined key resources that are critical to this project and must participate in all the activities defined in this SOW. During the Project Planning phase, the Customer will be required to provide names and contact information for the roles listed below. It is critical that these resources are empowered to make decisions based on the Customer's operational and administration needs. The Customer Project Team will be engaged from Project Initiation through Beneficial Use of the system. In the event the Customer is unable to provide the resources identified in this section, Motorola may be able to supplement these resources at an additional cost.

Project Manager

The PM will act as the primary point of contact for the duration of the project. In the event the project involves multiple locations, Motorola will work exclusively with the Customer's primary PM. The PM's responsibilities will include, but are not limited to:

- Communicate and coordinate with other project participants.
- Manage the Customer Project Team including subcontractors and third-party vendors. This includes timely facilitation of tasks and activities.
- Maintain project communications with the Motorola PM.
- Identify tasks required of Customer staff that are outlined in this SOW and the Project Schedule.
- Consolidate all project inquiries from Customer staff to present to Motorola PM.
- Approve a deployment date offered by Motorola.
- Review Project Schedule with the Motorola PM and finalize tasks, dates, and responsibilities.
- Measure and evaluate progress against the Project Schedule.
- Monitor project to ensure resources are available as required.
- Attend status meetings.
- Provide timely responses to issues related to project progress.
- Liaise and coordinate with other agencies, Customer vendors, contractors, and common carriers.
- Review and administer change control procedures, hardware and software certification, and all related project tasks required to meet the deployment date.
- Ensure Customer vendors' readiness ahead of the deployment date.
- Assign one or more personnel to work with Motorola staff as needed for the duration of the project, including one or more representatives from the IT department.
- Identify a resource with authority to formally acknowledge and approve milestone recognition certificates, as well as, approve and release payments in a timely manner.
- Provide Motorola personnel with access to all Customer facilities where system equipment is to be installed. Temporary identification cards are to be issued to Motorola personnel, if required for access.
- Ensure remote network connectivity and access for Motorola resources.





- Assume responsibility for all fees pertaining to licenses, inspections and any delays associated with inspections due to required permits as applicable to this project.
- Provide reasonable care to prevent equipment exposure from contaminants that may cause damage to the equipment or interruption of service.
- Ensure a safe working environment for Motorola personnel.
- Identify and manage project risks.
- Provide signature(s) of Motorola-provided milestone recognition certificate(s) within ten (10) business days of receipt.

IT Support

IT Support manages the technical efforts and ongoing activities of the Customer's system. IT Support will be responsible for managing Customer provisioning and providing Motorola with the required information for LAN, WAN, server and client infrastructure.

The IT Support Team responsibilities include but are not limited to:

- Participate in delivery and training activities to understand the software and functionality of the system.
- Participate with Customer Subject Matter Experts (SMEs) during the provisioning process and associated training.
- Authorize global provisioning decisions and be the Point of Contact (POC) for reporting and verifying problems.
- Maintain provisioning.
- Implement changes to Customer infrastructure in support of the proposed system.

Video Management Point of Contact (POC)

The Video Manager POC will educate users on digital media policy, participate in Discovery tasks, and complete the Video Management Administration training. The Customer is responsible for its own creation and enforcement of media protection policies and procedures for any digital media created, extracted, or downloaded from the digital evidence management system.

Subject Matter Experts (SMEs)

SMEs are a core group of users involved with the analysis, training and provisioning process, including making decisions on global provisioning. The SMEs should be experienced users in their own respective field (evidence, dispatch, patrol, etc.) and should be empowered by the Customer to make decisions based on provisioning, workflows, and department policies related to the proposed system.

Training POC

The Training POC will act as the course facilitator and is considered the Customer's educational monitor. The Training POC will work with Motorola when policy and procedural questions arise. They will be responsible for developing any agency specific training material(s) and configuring new users on the Motorola Learning eXperience Portal (LXP) system. This role will serve as the first line of support during Go-Live for the Customer's end users.



**General Customer Responsibilities (if applicable)**

In addition to the Customer responsibilities listed above, the Customer is responsible for the following:

- All Customer-provided equipment, including third-party hardware and software needed for the proposed system but not listed as a Motorola deliverable. Examples include end user workstations, network equipment, etc.
- Configure, test, and maintain third-party system(s) that will interface with the proposed system.
- Establish an Application Programming Interface (API) for applicable third-party system(s) and provide documentation that describes the integration to the Motorola system.
- Coordinate and facilitate communication between Motorola and Customer third-party vendor(s) as required.
- Motorola-certified installers must be certified through LXP for remote or in person installation training. The Customer is responsible for work performed by non-certified installers.
- Upgrades to Customer's existing system(s) in order to support the proposed system.
- Mitigate the impact of upgrading Customer third-party system(s) that will integrate with the proposed system. Motorola strongly recommends working with the Motorola Project Team to understand the impact of such upgrades prior to taking action.
- Active participation of Customer SMEs during the course of the project.
- Electronic versions of any documentation associated with business processes identified.
- Providing a facility with the required computer and audio-visual equipment for training and work sessions.
- Ability to participate in remote project meetings using Google Meet or a mutually agreed upon Customer-provided remote conferencing tool.

Motorola is not responsible for any delays that arise from Customer's failure to perform the responsibilities outlined in this SOW or delays caused by Customer's third-party vendor(s) or subcontractor(s).

NETWORK AND HARDWARE REQUIREMENTS

The following requirements must be met by the Customer prior to Motorola installing the proposed system:

- Provide network connectivity for the transfer and exchange of data for the proposed system.
- Provide Virtual Private Network (VPN) remote access for Motorola personnel to configure the system and conduct diagnostics.
- Provide Internet access to server(s).
- Provide devices such as workstations, tablets, and smartphones with Internet access for system usage. Chrome is the recommended browser for optimal performance. The workstations must support MS Windows 11 Enterprise.
- Provide and install antivirus software for workstation(s).
- Provide Motorola with administrative rights to Active Directory for the purpose of installation, configuration, and support.
- Provide all environmental conditions such as power, uninterruptible power sources (UPS), HVAC, firewall and network requirements.
- Ensure required traffic is routed through Customer's firewall.

Motorola is not responsible for any costs or delays that arise from Customer's failure to meet network and hardware requirements.





PROJECT PLANNING

A clear understanding of the needs and expectations of Motorola and the Customer is critical to fostering a collaborative environment of trust and mutual respect. Project Planning requires the gathering of specific information to set clear project expectations and guidelines, as well as lay the foundation for a successful implementation.

PROJECT PLANNING SESSION

A Project Planning Session will be scheduled after the Contract has been executed. The Project Planning Session is an opportunity for the Motorola and Customer PM to meet prior to the Project Kickoff Meeting and review key elements of the project and expectations. Depending on the items purchased, the agenda will typically include:

- A high level review of the following project elements:
 - Contract documents.
 - A summary of contracted applications and hardware as purchased.
 - Customer's involvement in project activities to confirm understanding of scope and required time commitments.
 - A high level Project Schedule with milestones and dates.
- Confirm CJIS background investigations and fingerprint requirements for Motorola employees and/or subcontractors.
- Determine Customer location for Motorola to ship their equipment for installation.

Motorola Responsibilities

- Schedule the remote Project Planning Session.
- Request the assignment of Customer Project Team and any additional Customer resources that are instrumental to the project's success.
- Provide the initial Project Schedule.
- Baseline the Project Schedule.
- Review Motorola's delivery approach and its reliance on Customer-provided remote access.
- Document mutually agreed upon Project Kickoff Meeting Agenda.
- Request user information required to establish the Customer in LXP.

Customer Responsibilities

- Identify Customer Project Team and any additional Customer resources that are instrumental to the project's success.
- Acknowledge the mutually agreed upon Project Kickoff Meeting Agenda.
- Provide approval to proceed with the Project Kickoff Meeting.

Motorola Deliverables

- Project Kickoff Meeting Agenda.

PROJECT KICKOFF

Motorola will work with the Customer to understand the impact of introducing a new solution and the preparedness needed for a successful implementation.





Note – The IT Questionnaire is completed during the pre-sales process and prior to Contract award. The IT Questionnaire is given to Motorola at the time of offer acceptance. Delay in completing the IT Questionnaire may delay shipment of equipment. Motorola will not be responsible for any delays associated with or related to the completion of the IT Questionnaire.

Motorola Responsibilities

- Review Contract documents including project delivery requirements as described in this SOW.
- Discuss the deployment start date and deliver the Deployment Checklist.
- Discuss vehicle equipment installation activities and responsibilities.
- Discuss the equipment inventory process (if applicable).
- Discuss project team participants and their role(s) in the project with fulfilling the obligations of this SOW.
- Review resource and scheduling requirements.
- Discuss Motorola remote system access requirements (24-hour access to a secured two-way Internet connection through the Customer's firewall for the purpose of deployment and maintenance).
- Discuss and deliver the Business Process Review (BPR) Workbook.
- Complete all necessary documentation (i.e. fingerprints, background checks, card keys, etc.) required for Motorola resources to gain access to Customer facilities.
- Discuss the LXP training approach.
- Provide designated Customer administrator with access to LXP.
- Review and agree on completion criteria and the process for transitioning to support.

Customer Responsibilities

- Provide feedback on project delivery requirements.
- Review the Deployment Checklist.
- Review the roles of project participants to identify decision-making authority.
- Provide VPN access to Motorola personnel to facilitate delivery of services described in this SOW.
- Validate non-disclosure agreements, approvals, and other related items are complete (if applicable).
- Provide all documentation (i.e. fingerprints, background checks, card keys, etc.) required for Motorola resources to gain access to Customer facilities.
- Provide Motorola with names and contact information to the designated LXP Administrator(s).

Motorola Deliverables

- Project Kickoff Meeting Minutes.
- BPR Workbook.
- Deployment Checklist.

DISCOVERY TELECONFERENCE

During the Discovery Teleconference, Motorola will meet with the Customer to define system configuration, as well as, agency recording and retention policies. This information will be documented in the Business Process Review (BPR) Workbook, which is used as a guide for configuration and provisioning decisions.

Motorola Responsibilities

- Facilitate Discovery Teleconference(s).
- Review and complete BPR Workbook with the Customer.



Any sales transaction following Motorola's quote is based on and subject to the terms and conditions of the valid and executed written contract between Customer and Motorola (the "Underlying Agreement") that authorizes Customer to purchase equipment and/or services or license software (collectively "Products"). If no Underlying Agreement exists between Motorola and Customer, then Motorola's Standard Terms of Use and Motorola's Standard Terms and Conditions of Sales and Supply shall govern the purchase of the Products. Motorola Solutions, Inc.: 500 West Monroe, United States - 60661 - #: 36-1115800



- Confirm Customer-provided configuration inputs.

Customer Responsibilities

- Gather and review information required to complete the BPR Workbook during the Discovery Teleconference.
- Schedule Customer Project Team and SMEs to attend the Discovery Teleconference. SMEs should be present to weigh-in on hardware, software and network components. Customer attendees should be empowered to convey policies and make modifications to policies as necessary.
- Return completed BPR Workbook no later than five (5) business days after the conclusion of the Discovery Teleconference.

Motorola Deliverables

- Completed BPR Workbook.





PROJECT EXECUTION

HARDWARE PROCUREMENT AND INSTALLATION

Motorola will procure contracted hardware as part of the ordering process. The hardware will be configured with a basic profile in line with the information provided by the IT Questionnaire or Discovery Teleconference for installation and configuration of the system. The Customer is responsible for providing an installation environment that meets manufacturer's specifications for the hardware, which includes but is not limited to:

- Power
- Heating and Cooling
- Network Connectivity
- Access and Security
- Conduit and Cabling

Motorola Responsibilities

- Procure contracted equipment and ship to the Customer's designated location.
- Inventory equipment after arrival at Customer location (if applicable).
- Install backend server in Customer's designated area (if applicable).
- Conduct a power-on test to validate the installed hardware and software are ready for configuration.
- Verify remote connection to hardware.
- For an on-site deployment, Motorola will be responsible for verifying the body-worn camera Transfer Stations are connected to the Customer's network. The Customer is responsible for ensuring Motorola has the correct IP address(es) for configuring the Transfer Stations, and the Customer's network is operational.
- The installer will be responsible for installing the Access Point(s) (APs) if provided by Motorola (if applicable).
- The ST will verify whether the AP(s) are properly installed and connected to the network (if applicable).
- Create a Trip Report outlining the activities completed during configuration and testing of system hardware.

Customer Responsibilities (if applicable)

- Procure Customer-provided equipment and make it available at the installation location.
- Confirm the server room complies with environmental requirements (i.e. power, uninterruptible power, surge protection, heating/cooling, etc.).
- Verify the server is connected to the Customer's network.
- Provide, install, and maintain antivirus software for server(s) and/or workstation(s).
- Enable outgoing network connection (external firewall) to the CommandCentral cloud by utilizing the Customer's Internet connection (if applicable).
- Install Customer-supplied APs (if applicable).
- Verify APs are properly installed and connected to the network (if applicable).
- For remote deployments, the Customer is responsible for verifying the body-worn camera Transfer Stations are connected to their network.
- Confirm access to installed software on Customer-provided workstation(s).
- For body-worn cameras, the Customer will verify whether the Transfer Station(s) are connected to their network.

Motorola Deliverables

- Contracted Equipment.



Any sales transaction following Motorola's quote is based on and subject to the terms and conditions of the valid and executed written contract between Customer and Motorola (the "Underlying Agreement") that authorizes Customer to purchase equipment and/or services or license software (collectively "Products"). If no Underlying Agreement exists between Motorola and Customer, then Motorola's Standard Terms of Use and Motorola's Standard Terms and Conditions of Sales and Supply shall govern the purchase of the Products. Motorola Solutions, Inc.: 500 West Monroe, United States - 60661 - # 36-1115800



- Equipment Inventory (if applicable).

In-Car Video System Configuration (if applicable)

The Motorola-certified installer will complete the installation of the in-car video (ICV) system(s) within the Customer-provided vehicle(s). The installer may also be responsible for installing cellular routers or WiFi radios inside the vehicle(s) for wireless upload of video to the Customer's digital evidence management system.

The Customer vehicles must be available for the ST to complete the configuration and testing of the contractual number of ICVs. If the Customer does not have all vehicles available during the agreed upon date and time, the Customer may opt to sign-off on the number of ICV configurations completed. If the Customer requires the ST to complete the full contractual number of ICVs at a later date and time, additional cost may be incurred. **Table 1-1** shows the number of ICVs an ST is contractually obligated to configure and test based on the number of ICVs purchased.

Table 1-1: Number of Contractual ICV Configurations

Number of ICV Purchased	Number of ICV to Test
1	1
2	2
3	3
4	4
5 - 25	5
26 - 50	10
51 - 75	15
76 - 100	20
101 - 150	30
151 - 200	40
201+	20%

Note – The Pricing Page will reflect in-car video installation services by Motorola if Motorola is responsible for the vehicle installations.

Motorola Responsibilities

- Setup server for ICV digital video recorder (DVR) configuration.
- Create configuration USB used to complete ICV hardware configuration and validation.
- Travel to the Customer site to conduct configuration and testing of ICVs.
- Complete ICV configuration on a single vehicle, and validate the configuration with the Customer.
- Receive Customer approval to proceed with remaining ICV configurations.
- Complete remaining contracted vehicle configurations.
- Test a subset of completed ICV hardware configurations.



Any sales transaction following Motorola's quote is based on and subject to the terms and conditions of the valid and executed written contract between Customer and Motorola (the "Underlying Agreement") that authorizes Customer to purchase equipment and/or services or license software (collectively "Products"). If no Underlying Agreement exists between Motorola and Customer, then Motorola's Standard Terms of Use and Motorola's Standard Terms and Conditions of Sales and Supply shall govern the purchase of the Products. Motorola Solutions, Inc.; 500 West Monroe, United States - 60661 - # 36-1115800



- For Motorola-certified installer, complete the installation of cellular router and confirm placement of antenna mounting with Customer (if applicable).
- The Motorola-certified installer will install Customer-provided SIM card into cellular router and connect cellular router to ICV (if applicable).
- Activities surrounding ICV (M500) interface to Automatic License Plate Recognition (ALPR) (if applicable).
 - Install Car Detector Mobile MDC Software on Customer-provided mobile data terminal (MDT) within the vehicle.
 - Configure MDC Network Card.

Customer Responsibilities

- Provide Motorola with remote connection and access credentials to complete ICV hardware configuration.
- Notify Motorola of the vehicle installation location.
- Coordinate and schedule date and time for ICV hardware configuration(s).
- Make ICV hardware available to Motorola for configuration and testing in accordance with the Project Schedule.
- Provide cellular SIM Card for Internet connectivity to the installer at time of vehicle installation.

Motorola Deliverables

- Complete Functional Validation Plan as it applies to the proposed solution.

NOTE - The Customer is responsible for having all vehicles and devices available for installation per the Project Schedule. All cellular data fees and Internet connectivity charges are the responsibility of the Customer. If a Motorola-certified installer is not used to install the ICV(s), Motorola is not responsible for any errors in hardware installation, performance or delays in the Project Schedule. In the event the Customer takes on the responsibility of installing the ICV(s) through a Motorola-certified installer, Motorola is also not responsible for any errors in hardware installation, performance or delays in the Project Schedule. For ALPR installations, an MDT is required for all vehicles (if applicable).

Body Worn Camera Configuration (if applicable)

The Transfer Station will be utilized to configure each body-worn camera according to the Business Process Review. In order for this process to be successfully completed, the Transfer Station must be connected to the Customer's digital evidence management system. The table below shows the number of body-worn cameras an ST is contractually obligated to configure and test based on the number of body-worn cameras purchased.

Table 1-2: Number of Contractual Body-Worn Camera Configurations

Number of BWC Purchased	Number of BWC to Test
1	1
2	2
3	3
4	4
5 - 25	5
26 - 50	10



Number of BWC Purchased	Number of BWC to Test
51 - 75	15
76 - 100	20
101 - 150	30
151 - 200	40
201+	20%

Motorola Responsibilities

- Configure Transfer Station(s) for connectivity to the digital evidence management system.
- Verify the Transfer Station(s) is configured properly and connected to the network.
- Configure body-worn camera(s) within the digital evidence management system.
- Check out body-worn camera(s) and create a test recording.
- Verify completion of upload from body-worn camera(s) after it is docked in a Transfer Station or USB dock.
- Install and provide a demonstration of client software as part of the same on-site engagement as Go-Live, unless otherwise outlined in this SOW.

Customer Responsibilities

- Select physical location(s) for Transfer Station(s).
- Provide and install workstation hardware.
- Complete installation of client software on remaining workstations and mobile devices.
- Validate functionality of components and solution utilizing the Deployment Checklist.
- Provide Motorola remote connection information and necessary credentials.

Automatic License Plate Recognition (ALPR) Commissioning (if applicable)

This section highlights the responsibilities of Motorola and the Customer when an in-car video system interfaces with the Law Enforcement Archival Report Network (LEARN) database.

Motorola Responsibilities

- Create a Customer account in the LEARN system with user emails.
- Verify the Customer has installed and launched the Vigilant Car Detector Mobile Software per the Vigilant LEARN Quickstart Guide.
- Provide Mobile LPR - Officer Safety Basic and Advanced Pre-Installation Checklist.
- Provide Agency Manager with Training Materials and Car Detector Mobile MDC software installation guide.
- Advise Agency Manager of different options available to add new users.
- Confirm Agency Manager is aware of registration required for Hotlists.
- Confirm Agency Manager understands how to set up data-sharing.

Customer Responsibilities

- Identify the Agency Manager.
- Register to receive access to Hotlists.



Any sales transaction following Motorola's quote is based on and subject to the terms and conditions of the valid and executed written contract between Customer and Motorola (the "Underlying Agreement") that authorizes Customer to purchase equipment and/or services or license software (collectively "Products"). If no Underlying Agreement exists between Motorola and Customer, then Motorola's Standard Terms of Use and Motorola's Standard Terms and Conditions of Sales and Supply shall govern the purchase of the Products. Motorola Solutions, Inc., 500 West Monroe, United States - 60661 - #: 36-1115800

**SOFTWARE INSTALLATION AND CONFIGURATION**

Motorola will install VideoManager Evidence Library (EL) software on a specified number of workstations dictated by the Contract. The Customer will be responsible for installing the software on the remaining workstations. Provisioning of VideoManager EL software will be done in accordance with the information contained in the BPR Workbook.

Installation of VideoManager EL software consists of the following activities:

- Delivery and installation of server hardware (if applicable).
- Network discovery.
- Operating system and software installation.
- Onboarding user / group identity set up.
- Provide access to the application.

VideoManager EL (if applicable)

The VideoManager EL software is an on-premises solution that requires an onsite server and supports both body worn cameras and in-car video systems.

Motorola Responsibilities

- Install software on a specified number of customer workstations and/or mobile devices.
- Use information provided in the BPR Workbook to configure VideoManager EL software.
- Test software using applicable portions of the Functional Validation Plan.
- Provide instruction on client software USB utility.

Customer Responsibilities

- Provide a network environment that conforms to the requirements presented in the Solution Description.
- Procure and install server and storage hardware at desired location in accordance with Solution Description requirements.
- Perform a power on test with Motorola.
- Provide assigned Motorola System Administrator with access to SQL database for installation purposes (Motorola's access will be revoked upon conclusion of the installation).
- For Active Directory integration, provide domain user (service account), security group (for application administrators including service account), and domain read access (if applicable).
- Provide workstation and/or mobile device hardware in accordance with specifications listed in the Solution Description.
- Complete online training.
- Complete installation of client software on remaining workstations and/or mobile devices.

VideoManager ELC (if applicable)

VideoManager ELC software is a cloud solution that does not require an onsite server and supports both body-worn cameras and in-car video systems.

Motorola Responsibilities

- Use information provided in BPR Workbook to configure VideoManager ELC software.
- Based on Customer feedback, perform the following activities:



Any sales transaction following Motorola's quote is based on and subject to the terms and conditions of the valid and executed written contract between Customer and Motorola (the "Underlying Agreement") that authorizes Customer to purchase equipment and/or services or license software (collectively "Products"). If no Underlying Agreement exists between Motorola and Customer, then Motorola's Standard Terms of Use and Motorola's Standard Terms and Conditions of Sales and Supply shall govern the purchase of the Products.

Motorola Solutions, Inc.: 500 West Monroe, United States - 60661 - #: 36-1115800

- Create users, groups, and setup permissions.
- Create event categories.
- Set retention policies.
- Test software using applicable portions of the Functional Validation Plan.
- Ensure training POC can access the system.

Customer Responsibilities

- Verify traffic can be routed through Customer's firewall and reaches end user workstations.

CloudConnect Installation and Configuration (applicable for CommandCentral Aware purchase)**Motorola Responsibilities**

- Verify remote access capability.
- Remotely configure CloudConnect Virtual Machine within the Cloud Anchor Server.
- Configure network connectivity and test connection to the CloudConnect Virtual Machine.
- Create an IPSEC tunnel.
- Provide Customer with the information for setting up the IPSEC tunnel.

Customer Responsibilities

- Provide Motorola with two static IP addresses, corresponding subnet masks/default gateway, and available NTP and DNS IP for the CloudConnect Virtual Machine and the Cloud Anchor Server.
- Confirm with Motorola the network performance requirements are met.
- Configure firewall to allow traffic from IPSEC tunnel.

Completion Criteria

- CloudConnect Virtual Machine configuration is complete and accessible throughout the network.

CommandCentral Evidence (if applicable)

Motorola will work with the Customer to determine best industry practices, current operations environment, and subsystem integration to ensure optimal configuration of your CommandCentral Evidence solution.

Motorola Responsibilities

- Use the CommandCentral Admin Portal to provision users, groups, and rules based on Customer Active Directory data.
- Guide the Customer in the configuration of CommandCentral Evidence.

Customer Responsibilities

- Supply access and credentials to Customer's Active Directory for the purpose of Motorola conducting CommandCentral Evidence provisioning.
- Respond to Motorola's inquiries regarding users, groups and agency mapping to CommandCentral Evidence.
- Provision policies, procedures, and user permissions.
- Configure evidence as directed by Motorola.



Any sales transaction following Motorola's quote is based on and subject to the terms and conditions of the valid and executed written contract between Customer and Motorola (the "Underlying Agreement") that authorizes Customer to purchase equipment and/or services or license software (collectively "Products"). If no Underlying Agreement exists between Motorola and Customer, then Motorola's Standard Terms of Use and Motorola's Standard Terms and Conditions of Sales and Supply shall govern the purchase of the Products. Motorola Solutions, Inc.: 500 West Monroe, United States - 60661 - #: 36-1115800

**DATA MIGRATION SERVICES (IF APPLICABLE)**

The Customer is responsible for partitioning data to be converted from a legacy or on-premises digital evidence management system to an on-cloud solution as part of this offer. The Customer will have ten (10) business days to provide feedback after Motorola validates the migrated data. If feedback is not received on or before ten (10) business days, Motorola will assume the migration is complete.

Motorola Responsibilities

- Receive access to Customer video data.
- Perform contracted data migration and validation.

Customer Responsibilities

- Provide remote access to partitioned data to be migrated.
- Validate migrated dataset, and provide Motorola with feedback within ten (10) business days.

Completion Criteria

- A migrated dataset as defined in the Contract.

DEMS INTEGRATIONS AND THIRD-PARTY INTERFACES (IF APPLICABLE)

The integration between Motorola's digital evidence management system and the Customer's third-party system may consist of an iterative series of activities depending on the complexity of accessing the third-party system. Interfaces will be installed and configured in accordance with the Project Schedule. The Customer is responsible for engaging third-party vendors as required to facilitate connectivity and testing of the interface(s).

Motorola Responsibilities

- Develop and configure interface(s) to support the functionality described in the Solution Description.
- Establish and validate connectivity between Motorola and third-party systems.
- Perform functional demonstration to confirm the interface(s) can transmit and receive data to the Customer's digital evidence management system.

Customer Responsibilities

- Act as liaison between Motorola and third-party vendor(s) as required to establish connectivity to the digital evidence management system.
- Provide personnel authorized to make changes to the network and third-party systems to support Motorola's integration efforts.
- Provide network connectivity between digital evidence management system and the third-party system(s).
- Provide information on API, SDKs, data scheme, and any documentation necessary to establish interfaces with all local and remote systems. This information should be provided to the Motorola PM within ten (10) business days of the Interface Engagement Meeting.

NOTE - At the time of initial design, unknown circumstances, requirements or anomalies may present difficulties with interfacing Motorola products to a third-party application. These difficulties could result in a poorly performing or a non-functional interface. By providing Motorola with this information early in the deployment process, will put us in the best position to mitigate these potential issues. If the resolution requires additional third-party integration, application upgrades, APIs, and/or additional software licenses, the Customer is responsible for addressing these issues at their cost. Motorola is not responsible for any delays or costs associated with third-party applications or Customer-provided third-party hardware or software.





SYSTEM TRAINING

The objective of this section is to prepare for and deliver training. Motorola training consists of computer-based (online) and instructor-led (on-site or remote) depending on what is purchased. Our training delivery methods will vary depending on course content. Training will be delivered in accordance with the Education Plan. As part of our training delivery, Motorola will provide user guides and training materials in an electronic format.

ONLINE TRAINING (IF APPLICABLE)

Online training is made available to the Customer through LXP. This subscription service provides customers with unlimited access to our online training content and provides users with the flexibility of learning the content at their own pace. Training content is added and updated on a regular basis to keep information current.

Through LXP, a list of available online training courses, Motorola User Guides, and Training Material are accessible in electronic format.

Motorola Responsibilities

- Designate a LXP Administrator to work with the Customer.
- Establish an accessible instance of LXP for the Customer.
- Configure a Customer-specific portal view.
- Organize content to align with Customer's selected technologies.
- Create initial Customer user accounts and a single Primary Administrator account.
- During onboarding, assist the Customer with LXP usage.
- Provide technical support for user account and access issues, LXP functionality, and Motorola managed content.
- Provide instruction to Customer LXP Administrator on building groups.

Customer Responsibilities

- Provide user information for the initial creation of accounts.
- Complete LXP Administrator training.
- Ensure network and Internet connectivity for Customer access to LXP.
- Customer's primary LXP Administrator is required to complete the following self-paced training: LXP Introduction (LXP0001), LXP Primary Site Administrator Overview (LXP0002), and LXP Group Administrator Overview (LXP0003).
- Advise users on the availability of training through LXP.
- Ensure users complete LXP training in accordance with the Project Schedule.
- Build groups as needed.

INSTRUCTOR-LED TRAINING (ON-SITE AND REMOTE, IF APPLICABLE)

Instructor-led courses are based on products purchased and the Customer's Education Plan.

Motorola Responsibilities

- Deliver User Guides and training materials in an electronic format.
- Perform training in accordance with the Education Plan.



Any sales transaction following Motorola's quote is based on and subject to the terms and conditions of the valid and executed written contract between Customer and Motorola (the "Underlying Agreement") that authorizes Customer to purchase equipment and/or services or license software (collectively "Products"). If no Underlying Agreement exists between Motorola and Customer, then Motorola's Standard Terms of Use and Motorola's Standard Terms and Conditions of Sales and Supply shall govern the purchase of the Products.

Motorola Solutions, Inc.: 500 West Monroe, United States - 60661 - #: 36-1115800



- Provide the Customer with training attendance rosters and summarize any pertinent information that may impact end user training.

Customer Responsibilities

- Supply classroom(s) based on the requirements listed in the Education Plan.
- Designate training representatives who will work with the Motorola trainer(s) to deliver the training content.
- Facilitate training of all Customer end users in accordance with the Customer's Education Plan.

Motorola Deliverables

- Electronic versions of User Guides and training materials.
- Attendance rosters.



Any sales transaction following Motorola's quote is based on and subject to the terms and conditions of the valid and executed written contract between Customer and Motorola (the "Underlying Agreement") that authorizes Customer to purchase equipment and/or services or license software (collectively "Products"). If no Underlying Agreement exists between Motorola and Customer, then Motorola's Standard Terms of Use and Motorola's Standard Terms and Conditions of Sales and Supply shall govern the purchase of the Products.

Motorola Solutions, Inc. - 500 West Monroe, United States - 60661 - #: 36-1115800

PROJECT GO-LIVE, CLOSURE, AND HANDOVER TO SUPPORT

Motorola will utilize the Deployment Checklist throughout the deployment process to verify features and functionality are in line with installation and configuration requirements. The Customer will witness the ST demonstrating the Deployment Checklist and provide feedback as features and functionality are demonstrated. The Customer is considered Live on the system after the equipment has been installed, configured, and made available for use, and training has been delivered or made available to the Customer.

Upon the conclusion of Go-Live, the project is prepared for closure. Project closure is defined as the completion of tasks and the Customer's receipt of contracted components. The Deployment Checklist serves as the artifact that memorializes a project closure. A System Acceptance Certificate will be provided to the Customer for signature to formally close out the project. The Customer has ten (10) business days to provide Motorola with a signed System Acceptance Certificate. If the Customer does not sign off on this document or provide Motorola written notification rejecting project closure, the project will be deemed closed. Upon project closure, the Customer will engage with Technical Support for on-going needs in accordance with the Customer's specific terms and conditions of support.

Motorola Responsibilities

- Provide the Customer with Motorola Technical Support engagement process and contact information.
- Provide Technical Support with the contact information of Customer users who are authorized to engage Technical Support.
- Ensure Deployment Checklist is complete.
- Obtain Customer signature on the System Acceptance Certificate.
- Provide Customer survey upon closure of the project.

Customer Responsibilities

- Within ten (10) business days of receiving the System Acceptance Certificate, provide signatory approval signifying project closure.
- Provide Motorola with the contact information of users who are authorized to engage Motorola's Technical Support.
- Engage Technical Support as needed.

Motorola Completion Criteria

Provide Customer with survey upon closure of the project.





ASSUMPTIONS

This SOW is based on the following list of assumptions (if applicable):

- Videomanager EL Cloud (VMELC) must be connected to the Microsoft Entra ID (formally known as Microsoft Azure Active Directory) for user authentication to the VMELC application. Microsoft Entra ID can be synchronized with the Customer's on-premises Active Directory using Azure AD Connect. If the Customer is using Microsoft Office 365, Motorola will be able to integrate with this Microsoft Entra ID.
- Must be 2003 or later for Microsoft Entra ID integration.
- Upload Speed Requirements for Hardware Devices
 - 5 Mbps + 3 Mbps per additional device.
 - This assumes it will take 8 hours to upload 5 GB of video on a device.
 - 40-50 Mbps per concurrent uploading device.
 - This assumes video is required to upload within 30-40 minutes with approximately 5 GB to upload.
- If the Customer is supplying an upload server to temporarily store video, please verify the server complies with the specifications provided in the Solutions Description.
- By default, M500 ICVs and V300/V700 BWCs do not need an upload server for cloud deployments. An upload server may be required depending on how many devices are uploading concurrently and the need for the Customer to upload video evidence at a given speed.
- Upload appliance required if using 4REs or VISTA body worn cameras connected to VideoManager EL Cloud
- Cellular upload of ICVs and BWCs (if applicable) requires an Ethernet connection to an LTE modem in the vehicle.
- If the Customer is supplying a server for VideoManager EL (On-premises) solution, the Customer must verify the server is not a Domain Controller.
- VideoManager EL for on-premises cannot be installed on a server running Active Directory or Exchange applications on the Customer's network.
- The ICVs are configured with a hidden SSID and WPA2-AES Security with a 128-bit Pre-shared Key. If another type of security is desired, the Customer will be responsible for configuring these security requirements into the ICVs. This information must be supplied through the IT Questionnaire in order for the factory to configure the correct security requirements.
- If the Customer is supplying their own Access Point, it must be 5 GHz 802.11n compatible.



Any sales transaction following Motorola's quote is based on and subject to the terms and conditions of the valid and executed written contract between Customer and Motorola (the "Underlying Agreement") that authorizes Customer to purchase equipment and/or services or license software (collectively "Products"). If no Underlying Agreement exists between Motorola and Customer, then Motorola's Standard Terms of Use and Motorola's Standard Terms and Conditions of Sales and Supply shall govern the purchase of the Products.

Motorola Solutions, Inc.: 500 West Monroe, United States - 60661 - #: 36-1115800

Date 10-22-2024

Re: QUOTE-2786663

Agency: Nacogdoches Police Department

Total Cost: \$379,420

Contract Reference: Nac PD VaaS Upgrade

Please be advised that the Nacogdoches Police Department will purchase the goods and/or services offered in your QUOTE-2786663 dated 9/11/2024. This constitutes a purchase pursuant to the terms of the specified contract below, including any applicable addenda. Terms are NET 30 unless otherwise agreed upon.

Specified Contract: Texas DIR-TSO-4101

Agency affirms that a purchase order or notice to proceed is not required for contract performance or for subsequent years of service, and acknowledges that pursuant to Nacogdoches City Council Approval, the funds for this purchase have been authorized. Customer agrees to appropriate funding in accordance with the contract.

Invoices shall be according to the milestone schedule included in the quote and services agreement, should reference QUOTE-2786663 And be sent to:

Nacogdoches Police Department

Attn: Scott Weems
312 W. Main St
Nacogdoches, TX 75961

The equipment will be shipped to the customer at the following address, and the ultimate destination where the equipment will be delivered to the customer is:

Nacogdoches Police Department

Attn: Scott Weems
312 W. Main St
Nacogdoches, TX 75961

Sincerely,

Signature:



Name:

Scott Weems

Title:

Chief of Police

Email:

weemss@nactx.us