



February 4, 2025

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 quotes to repair two (2) blowers at the Wastewater Treatment Plant from Zone Industries, utilizing BuyBoard Cooperative Purchasing Contract 672-22, in a total not-to-exceed amount of \$51,897.75. (Director of Public Works)
 - B. Consider approval of a resolution for street closures related to the annual Nacogdoches Wine Swirl Event hosted by the City of Nacogdoches Main Street Department in Downtown Nacogdoches. (Community Services Director)
 - C. Consider approval of a resolution for street closures related to the Nacogdoches Blueberry Festival hosted by the Nacogdoches Chamber of Commerce in Downtown Nacogdoches. (Community Services Director)
 - D. Receive the 2024 Racial Profiling Report. (Chief of Police)

- E. Consider approval of minutes for the January 23, 2025, City Council Rescheduled Regular meeting. (City Secretary)
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. Consider approval of a resolution calling the May 3, 2025, General Election of City Council Members for Northeast Ward, Northwest Ward, and Mayor at Large, in and for the City of Nacogdoches, Texas. (City Secretary)
 - B. Consider approval of the January Boards and Commissions appointments, namely, the Airport Advisory Board; Building Standards Commission; Health Code Advisory Board; Industrial Development Authority; Nacogdoches Cemetery Board; and Main Street Advisory Board. (Mayor)
 - C. Consider approval of a contract by and between the City of Nacogdoches and KSA Engineers for professional engineering services for Storm Drainage Improvement Projects in a not-to-exceed amount of \$538,300.00 (Director of Public Works).
 - D. Consider approval of a contract by and between the City of Nacogdoches and Two Fifteen Consulting for professional engineering services for Storm Drainage Improvement Projects in a not-to-exceed amount of \$465,990.00 (Director of Public Works).
 - E. Discuss and consider a donation from the Parks Advocacy League in the amount of \$28,126.00 for park benches and picnic tables. (Community Services Director)
 - F. Consider approval of proposed updates to the ordinance of the City of Nacogdoches, Texas, Amending Chapter 106 – “Utilities”, Article VIII – “Extension of Water and Sanitary Sewer Systems”, 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. (Director of Public Works)
 - G. Consider approval of an ordinance for the electric franchise with Oncor Electric Delivery and the City of Nacogdoches. (City Manager)
 - H. Discuss and consider possible action to approve a contract between the City of Nacogdoches and The Goodman Corporation for professional services related to downtown project planning, development, funding, and implementation in the total amount not to exceed \$249,724.00.
 - I. Discuss and consider possible action to adopt a Resolution appointing an ad hoc Downtown Technical Advisory Committee to advise the City of Nacogdoches on downtown project planning, development, funding, and implementation. (City Manager)

7. 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 75961, on January 31, 2025, by 5:00 p.m., pursuant to Chapter 551 of the Texas Government Code.

Rhonda Lewis, City Secretary

PRESENTER: Case Opperman, Director of Public Works

ITEM/SUBJECT: Consider approval of quotes to repair two (2) blowers at the Wastewater Treatment Plant from Zone Industries, utilizing BuyBoard Cooperative Purchasing Contract 672-22, in a total not-to-exceed amount of \$51,897.75. (Director of Public Works)

SUMMARY/BACKGROUND: There are seven (7) blowers for the Orbal unit at the Wastewater Treatment Plant (WWTP) which aerate wastewater in the treatment process to maintain dissolved oxygen (DO) levels in the basin, allowing the microorganisms that break down wastewater to survive. Without the necessary oxygen levels, the plant would become septic. Two (2) of the blowers are currently down and have been evaluated by Zone Industries for necessary repairs. With the repair needs identified, the cost to repair these blowers like new are \$25,645.23 and \$26,252.52, respectively, for a total repair cost of \$51,897.75. New blowers can cost in the range of \$60,000-\$65,000 each.

Zone Industries (Precision Pump Systems) is under a BuyBoard cooperative purchasing contract (672-22) which is exempt from the competitive bidding process under Texas Local Government Code Section 252.022(a)(12)(D). There is an available budget for these repairs in the FY24-25 budget.

FINANCIAL:

Item is budgeted:

Account No.: 30.39 620.35

Account Name: *Wastewater Treatment - Facility Maintenance*

Amount: \$ 51,897.75

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

Infrastructure

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

ATTACHMENTS: 1. WWTP Blower 1 Quote
2. WWTP Blower 2 Quote

ZONE INDUSTRIES, LLC
PO Box 73149
Houston, TX 77273
817-912-5151



QUOTATION

Order Number	
10018268	
Order Date	Page
12/18/2024 16:47:16	1 of 6
Quote Number	
Inside Sales	Ashley Dow
Email	adow@zoneindustries.com
Account Mgr	Danny Watson
Email	dwatson@zoneindustries.com

Quote Expires On: 12/23/2024

Bill To:

Nacogdoches, City of
City of Nacogdoches
PO Box 635070
Nacogdoches, TX 75963-5070

936-559-2500

Ship To:

Nacogdoches, City of
2996 FM 1275
Nacogdoches, TX 75961

Customer ID: 11837

PO Number					Ship Route	Inside Sales		
HOFFMAN 741-04 , s/n 466678 REPAIR QUOTE 24103						ASHLEY.DOW		
Quantities					Item ID Item Description	Pricing UOM	Unit Price	Extended Price
Ordered	Allocated	Remaining	UOM Unit Size	Disp.		Unit Size		

Order Note: **BuyBoard # 672-22 **

Order Note: HOFFMAN 741-04 , s/n 466678 REPAIR
QUOTE
Cause of failure ;
Outlet bearing was out of spec. worn.
SCOPE OF WORK:
1. Disassemble , clean, inspect
2. Sandblast. Clean inlet and outlet heads and
intermediate sections
3. Assemble rotor w/ new shaft . balance to OEM
specs
4. Assemble blower to OEM specs.
5. Paint , prepare for shipping.
REPLACEMENT PARTS
1- 741 Brg kit
2- 741 serral kit
3- HSG BRG 741 Open
4- Shaft 741 4 stage
5- 16V impeller
6- Impeller spacer
7- Oiler 9 oz. cap w/ sight glass
8- In/ outbound fgt.

ZONE INDUSTRIES, LLC
PO Box 73149
Houston, TX 77273
817-912-5151



QUOTATION

Order Number	
10018268	
Order Date	Page
12/18/2024 16:47:16	2 of 6
Quote Number	
Inside Sales	Ashley Dow
Email	adow@zoneindustries.com
Account Mgr	Danny Watson
Email	dwatson@zoneindustries.com

Quote Expires On: 12/23/2024

Quantities					Item ID	Pricing		
Ordered	Allocated	Remaining	UOM	Unit Size	Item Description	UOM	Unit Price	Extended Price
				Disp.		Unit Size		

Delivery Instructions: ALLOWED

1.00	0.00	1.00	EA		OUTSIDE SERVICE	EA	25,645.23	25,645.23
				1.0	Service Work	1.0		
					HOFFMAN 741-04 , s/n 466678 REPAIR			

Total Lines: 1

SUB-TOTAL: 25,645.23

TAX: 0.00

AMOUNT DUE: 25,645.23

U.S. Dollars

ZONE INDUSTRIES LLC - TERMS AND CONDITIONS

1. Construction and Legal Effect: Zone Industries, LLC shall hereinafter be referred to as “ZONE”, and the applicant shall be referred to as “CUSTOMER.” The CUSTOMER desires to purchase goods and/or services (collectively, the “Goods”) from ZONE, and CUSTOMER agrees in consideration thereof to be bound by the terms and conditions stated in this agreement. ZONE's sales to CUSTOMER are limited to and expressly made conditional on CUSTOMER's assent to these Terms and Conditions (“Terms”). The issuance of a purchase order by CUSTOMER or CUSTOMER's acceptance of the Goods and/or services or payment for the Goods and/or services shall operate as acceptance by CUSTOMER of these Terms. ZONE hereby objects to any terms or conditions at variance with, different from or additional to the Terms stated herein unless such terms and conditions are hereafter set forth in a writing signed by ZONE. Anything herein to the contrary notwithstanding, no amendment to, or waiver, modification or deletion of, any of the terms and conditions stated herein shall be deemed effective unless any such amendment, waiver, modification or deletion, as the case may be, shall have been approved and accepted in writing by an officer of ZONE.

2. Credit: ZONE reserves the right to approve, approve with conditions or disapprove any request for extension of credit in its sole discretion. Credit will be extended by ZONE to CUSTOMER based on the information provided in this application. CUSTOMER agrees that any financial documents provided ZONE are true and correct. ZONE is authorized to check CUSTOMER's credit background. The amount of credit extended to CUSTOMER will be determined by ZONE and may vary from time to time. CUSTOMER waives notice of any change in CUSTOMER's credit limit. All amounts charged to the open account are CUSTOMER's responsibility. CUSTOMER agrees to pay any and all invoices, charges, fees and costs which CUSTOMER or any authorized person incurs on CUSTOMER's account. Unless CUSTOMER notifies ZONE in writing within five (5) days of any unauthorized use of CUSTOMER's credit account, CUSTOMER agrees that any other person who incurs charges on CUSTOMER's account is authorized to do so. Notwithstanding the foregoing, any and all contracts, certificates, invoices and other writings signed on behalf of CUSTOMER by any employee of CUSTOMER shall be deemed to have been executed on behalf of CUSTOMER with full authority.

3. Payments: Payment of amounts due hereunder shall be made by CUSTOMER to ZONE net thirty (30) days after shipment date. ZONE, at its sole discretion, may offer early payment discounts to customers based on the customer's credit history and payment history with ZONE. ZONE reserves the right at any time to alter or suspend credit, or to change credit terms provided herein, when in its sole opinion CUSTOMER's financial condition so warrants. ZONE further reserves the right to amend the timing of payments if necessary due to vendor payment requirements. Failure to pay an invoice at due date, at ZONE's election, makes all subsequent invoices immediately due and payable, irrespective of terms, and ZONE may withhold all subsequent deliveries under all outstanding orders until full payment is received. Any payment not made when due shall be subject to interest to be paid by CUSTOMER at the lesser of 1.5% per month or the highest rate permissible under applicable law. CUSTOMER agrees to notify ZONE in writing, of any error in any invoice within ten (10) days after the date of that invoice. If not so noticed, the invoice shall be deemed to be correct, and accepted as rendered. In the event of insolvency of CUSTOMER, default in payment or repudiation by CUSTOMER, or any breach of the terms of this agreement, ZONE shall have the right to stop delivery of the Goods and CUSTOMER shall be liable to ZONE for any and all liabilities incurred by ZONE as a result thereof including, but not limited to liabilities to third parties, collection costs, attorneys' fees, and any associated costs incurred by ZONE.

4. Price: CUSTOMER shall purchase the Goods from ZONE at the price(s) (the “Price”) set forth in the purchase order or invoice issued by ZONE. All Prices are exclusive of all Federal, State or local sales, use and excise taxes, and any other similar taxes, duties and charges of any kind on any amounts payable by CUSTOMER. CUSTOMER shall be responsible for all such charges, costs, and taxes; provided, that, CUSTOMER shall not be responsible for any taxes imposed on, or with respect to, ZONE's income, revenue, gross receipts, or commercial activity.

5. Action for Breach: Any action by CUSTOMER arising out of or relating to this agreement must be commenced within one (1) year after the cause of action has accrued.

6. Warranty and Limitation of Liability: ZONE warrants solely to CUSTOMER only that Goods and services furnished hereunder shall conform to applicable specifications, and no other warranty, except of title, shall be implied. Provided that CUSTOMER gives notice in accordance with Article 13 below, if Goods sold hereunder fail to conform to applicable specifications, demonstrated to ZONE's satisfaction to have existed at the time of departure from ZONE's plant, ZONE, reserving the right to inspect Goods, shall, at ZONE's option, replace at ZONE's expense F.O.B. CUSTOMER's plant or give CUSTOMER credit for Goods determined by ZONE to be non-conforming. ZONE shall not be obligated to replace or provide credit for Goods that shall have been subjected to alteration, contamination, improper maintenance or storage, misapplication, misuse, negligence or accident during or after shipment from ZONE's plant or to Goods to which CUSTOMER's tests used an unrepresentative sample. The remedy set forth in this Article 5 shall be the sole and exclusive remedy available to CUSTOMER for breach of warranty. In no event shall CUSTOMER's remedy exceed the purchase price of the non- conforming Goods or services, plus any transportation costs paid by ZONE to supply replacement Goods to CUSTOMER as described above in this Article 5.

No employee or agent of ZONE is authorized to make any warranty, statement, promise or understanding other than that which is specifically set forth in this Article 5. The provisions in any Technical Data sheet issued by ZONE or attached hereto are descriptive only and are not warranties or representations.

THE WARRANTIES SET FORTH IN THIS ARTICLE 5 ARE THE ONLY WARRANTIES APPLICABLE TO THE GOODS AND SERVICES SOLD HEREUNDER. ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, ARE SPECIFICALLY DISCLAIMED AND SHALL NOT APPLY.

If the Goods sold hereunder are resold by CUSTOMER, without any alteration or processing by CUSTOMER or incorporation into any of CUSTOMER's products, CUSTOMER agrees to include in the agreement for resale provisions which limit recoveries against ZONE in accordance with this Article 5.

In no event shall ZONE be liable for any direct, indirect, special, consequential or incidental damages under this agreement (including but not limited to any such damages arising out of late, partial and/or non delivery, the sale, use, furnishing of Goods, or suitability for general or particular use). CUSTOMER is solely responsible for determining suitability for use and ZONE shall in no event be liable in this respect. The giving or failure to give advice, recommendations or safety warnings of any character by ZONE shall not impose any liability upon ZONE.

Should CUSTOMER breach any of the duties and warranties set forth within this Article 5, BUYER AGREES TO FULLY INDEMNIFY, DEFEND AND HOLD SELLER HARMLESS from and against any and all liability, claims, and suits of any third party including but not limited to employees or insurers of CUSTOMER, in any way, in whole or in part, alleged to have arisen out of exposure to or use of Goods supplied by ZONE. Further, upon acceptance of Goods and services supplied by ZONE or in the absence of any written notice of nonconformity of such Goods as set forth in Article 13 below, CUSTOMER AGREES TO FULLY RELEASE, INDEMNIFY, DEFEND AND HOLD SELLER HARMLESS from and against any and all liability, claims, and suits it may possess or that may be asserted against ZONE by any third party (including but not limited to contractors, subcontractors or property owners who have purchased, installed or otherwise used products or services of CUSTOMER or have had such products incorporated into their property or products, or insurers of any of such parties or of the CUSTOMER) in any manner arising in whole or in part, out of the production, marketing, distribution, sale, installation, use or deficiencies of any products of the CUSTOMER produced using the Goods supplied by ZONE. The provisions of this Article 5 shall survive the expiration, or earlier termination as provided herein, of this agreement.

7. Indemnity: CUSTOMER will release, hold harmless, indemnify and defend ZONE from any liability (including without limitation liability for negligence or strict liability) claims, losses, suits and costs resulting from the design of Goods supplied by ZONE

8. Delivery: Delivery and shipment dates are estimated dates only and are not guaranteed. In estimating such dates, no allowance has been made nor shall ZONE be liable for any damages, losses, penalties, whether direct, indirect, special, incidental or consequential, resulting from ZONE's failure or delay in performing, carriers' failure or delay in performing or delays from labor difficulties, shortages, strikes or stoppages of any sort, fires, accidents, failure or delay in obtaining Goods, acts of government affecting ZONE directly or indirectly, bad weather, or any causes beyond ZONE's control, or causes designated as acts of God or force majeure by any statute or court of law. In the event any failure or delay to ship Goods continues for a period of ninety consecutive days, CUSTOMER may cancel its order for the subject Goods upon three days' written notice to ZONE.

9. Shipping: Unless CUSTOMER specifies otherwise in writing: (a) Goods will be shipped as ZONE may deem proper, and (b) routing and manner of shipment will be at ZONE's discretion. If special routing instructions are given, CUSTOMER agrees to pay additional handling and transportation charges, if any. Title and risk of loss passes to CUSTOMER upon delivery of the Goods to CUSTOMER or when the Goods otherwise leave the care, custody and control of ZONE. CUSTOMER shall be solely responsible for maintaining any insurance against loss or damage in shipment. ZONE shall not be liable for loss, damage, detention, delay or completion of an order due to acts of God, acts of terrorism, war, riots, civil insurrection, strikes, work stoppages, fires, accidents, acts of civil or military authority including governmental laws, embargoes, orders, priorities, or regulations, delay in transportation, shortages, delay by suppliers of materials, or any other causes whatsoever beyond the reasonable control of ZONE.

10. Security Interest: ZONE reserves a purchase money security interest in the Goods sold hereunder and the proceeds thereof, in the amount of the Price. In the event of default by CUSTOMER on any of its payment obligations to ZONE, ZONE will have the right to repossess the Goods sold hereunder that have not been paid for without liability to CUSTOMER or any third party in possession of such Goods, if not CUSTOMER. In such event, CUSTOMER agrees to make the Goods available to ZONE so that ZONE can repossess them without a breach of the peace. This security interest will be satisfied by payment in full. ZONE may file a financing statement to perfect ZONE's security interest, provided that ZONE terminates any such financing statements once the Goods are paid for. CUSTOMER shall cooperate fully with ZONE to execute such other documents and to accomplish such filings and/or recordings thereof as ZONE may deem necessary for the protection of ZONE's interests in the Goods furnished hereunder.

11. Termination: ZONE may by written notice to CUSTOMER terminate the whole or any part of this agreement in any one of

the following circumstances: (1) if CUSTOMER fails to remit payment within the time specified herein or any extension thereof authorized by ZONE; or (2) if CUSTOMER fails to perform any of the other provisions of this agreement so as to endanger performance of this agreement in accordance with its terms; or (3) if CUSTOMER becomes insolvent, or engages in any act which reasonably causes the ZONE to deem itself insecure. ZONE shall not by reason of such termination be liable to CUSTOMER for any compensation, reimbursement, or damages including, in particular, but not limited to any direct, indirect, special, incidental or consequential damages or losses whatsoever, on account of expenditures, investments, or commitments.

12. Cancellations: CUSTOMER may not cancel any order of Goods without ZONE's express, written consent. Immediately upon the cancellation of an order, ZONE shall stop all performance hereunder and CUSTOMER must pay to ZONE an amount equal to those reasonable and documented costs incurred by ZONE prior to cancellation plus a cancellation fee equal to 25% of the purchase price; provided, however, that the above amount plus any prior payments shall in no event exceed the purchase price of the Goods. All Goods completed or partially completed prior to cancellation shall become the property of CUSTOMER, or at CUSTOMER's option, the salvage value of the Goods may be deducted from the amount due ZONE by reason of the cancellation. Unused Goods, processed material or specially manufactured Goods not normally carried in ZONE's inventory may not, under any circumstances, be returned for salvage value./

13. Assignment: The rights and obligations of CUSTOMER hereunder may not be assigned without the prior written consent of ZONE. Any purported assignment without ZONE's prior written consent shall be void and of no force and effect.

14. Non-Waiver: Any failure by ZONE to require full payment or strict performance by CUSTOMER of any of the provisions herein or to exercise any right or remedy hereunder, shall not waive or diminish ZONE's right thereafter to demand strict compliance therewith or with any other provision or to exercise any such right or remedy. Waiver of any default shall not waive any other default.

15. Applicable Law: This agreement shall be governed by and construed under the laws of the State of Texas, notwithstanding the principles, if any, that would otherwise govern the choice of applicable law. If legal action is brought to enforce this agreement, Harris County, Texas, shall be the exclusive jurisdiction and legal venue for said action, unless ZONE initiates said legal action is brought to enforce statutory remedies (such as mechanic's lien, stop notices, payment bonds, etc.) in connection with a debt incurred by CUSTOMER; in such case, the jurisdiction and legal venue will be determined by the requirements of the Texas Civil Code or Code of Civil Procedure in order for ZONE to enforce such statutory rights

16. Claims: It shall be the duty of CUSTOMER to thoroughly inspect the Goods purchased from ZONE. All claims of any nature relating to the Goods subject to this agreement, including but not limited to claims of defect in Goods, non-conformity or discrepancy in quantity or delivery date, shall be made in writing to ZONE within fifteen (15) days of receipt of such Goods by CUSTOMER. Failure to make any such written claim within the above-prescribed period shall constitute waiver of any such claims and shall be deemed acceptance of such Goods, quantities or delivery dates.

17. Nondisclosure: In consideration of the disclosure of Proprietary and Confidential information by the parties to each other, both parties agree that the information relating to requirements, processes, specifications, schedules, materials, financial data and pricing exchanged between parties is hereby designated as Proprietary and Confidential whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as "confidential" in connection with this Sales and may not be disclosed or copied unless authorized in advance by the other party in writing. Upon request, each party shall promptly return all Proprietary and Confidential materials received from the other party. Either party shall be entitled to injunctive relief for any violation of this Section. This Section does not apply to information that is: (a) in the public domain; (b) known to the other party at the time of disclosure; or (c) rightfully obtained by the other on a nonconfidential basis from a third party.

18. Force Majeure: ZONE will not be liable for failure in the performance of any of its obligations caused by accidents, labor disputes, shortages of labor, materials, fuel or power, or fires, floods or other acts of God, acts or omissions of CUSTOMER, priorities required, requested, or granted for the benefit of the national or any local government, restrictions imposed by national or local legislation or regulations, or any cause, whether similar or dissimilar to those enumerated in this section, including without limitation cease of production/operation by a vendor or other company due to economic hardship, which is beyond the control of ZONE.

19. Intellectual Property: ZONE shall retain sole ownership of all right, title, and interest in and to all its intellectual property, including, without limitation, ideas, methods, trademarks, service marks, trade names, symbols, logos, copyrights, patents, trade secrets, and know-how (collectively, the "Intellectual Property"), and no licenses to any Intellectual Property are created hereunder.

20. Relationship of the Parties: The relationship between ZONE and CUSTOMER is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment, or fiduciary relationship between the ZONE and CUSTOMER.

21. Authorized Representative: CUSTOMER hereby represents and warrants that its signatory to these Terms is a duly authorized representative with the authority to bind CUSTOMER to these Terms.

22. Electronic Signatures: An “electronic signature” is any electronic symbol or process attached to or logically associated with a document sent by electronic transmission and executed or adopted by a person with the intent to sign such document. The use of electronic signatures (including, without limitation, through DocuSign and AdobeSign) to execute these Terms shall be of the same legal effect, validity and enforceability as a manually executed signature to the fullest extent permitted by Texas law or other applicable law, including, without limitation, any state law based on the Uniform Electronic Transactions Act or the Uniform Commercial Code.

23. Acceptance / Enforceability of Copies: CUSTOMER agrees that ZONE may, at ZONE’S sole discretion, accept, utilize and rely upon a facsimile copy or photocopy of this agreement and the foregoing Continuing Personal Guaranty or Corporate Guaranty, in lieu of an original document. CUSTOMER acknowledges that, by transmitting a facsimile copy, electronic copy or photocopy of this document to ZONE, CUSTOMER, and the Guarantor (if applicable), agree to be bound by the terms and conditions contained in this document to the same extent as if an original were transmitted to ZONE. CUSTOMER, and Guarantor (if applicable), consent to ZONE’s use of this document and waive any right to object to the use of a copy in place of the original and any right to require Seller to subsequently produce an original document. This Credit Application and Agreement cannot be altered, amended, revised, or otherwise modified unless an officer of ZONE provides prior written consent thereto.

By signing and returning this Credit Application and Agreement, CUSTOMER certifies and agrees as follows: (i) The information contained herein is true and correct; (ii) CUSTOMER authorizes ZONE, at any time and from time to time so long as CUSTOMER does business with ZONE, to obtain credit reports about CUSTOMER and to obtain credit information from banks or others with whom CUSTOMER has dealt. CUSTOMER authorizes all references named herein to release credit information to ZONE. The authorized individual signing on behalf of CUSTOMER, recognizing that his or her individual credit history may be a factor In evaluation of the credit history of the CUSTOMER, hereby consents to and authorizes the use of a consumer credit report on such individual, from time to time, so long as CUSTOMER does business with ZONE; (iii) CUSTOMER agrees to furnish such additional information as ZONE may request to warrant future extensions of credit or to enable ZONE to perfect liens or to recover upon any bond issued for its protection; (iv) CUSTOMER agrees that all purchases will be made under the Terms and Conditions set out herein; and (v) CUSTOMER agrees that ZONE may, for any reason and at any time, elect to terminate any credit that is extended to the CUSTOMER or modify the conditions under which credit is to be extended. OFFICER, AUTHORIZED AGENT OR OWNER SIGNATURE IS REQUIRED.

CUSTOMER:

Print Name:

Signature:

Title:

Date:

ZONE INDUSTRIES, LLC
PO Box 73149
Houston, TX 77273
817-912-5151



QUOTATION

Order Number	
10018269	
Order Date	Page
12/18/2024 17:02:45	1 of 6
Quote Number	
Inside Sales	Ashley Dow
Email	adow@zoneindustries.com
Account Mgr	Danny Watson
Email	dwatson@zoneindustries.com

Quote Expires On: 12/23/2024

Bill To:

Nacogdoches, City of
City of Nacogdoches
PO Box 635070
Nacogdoches, TX 75963-5070

936-559-2500

Ship To:

Nacogdoches, City of
2996 FM 1275
Nacogdoches, TX 75961

Customer ID: 11837

PO Number					Ship Route	Inside Sales			
Job 24102 – GD 74104 AD01						ASHLEY.DOW			
Quantities					Item ID Item Description	Pricing UOM	Unit Price	Extended Price	
Ordered	Allocated	Remaining	UOM Unit Size	Disp.		Unit Size			

Order Note: : **BuyBoard # 672-22 **

Order Note: Job 24102 – GD 74104 AD01 .

Cause of failure :

Inlet bearing was locked up.

Scope of work:

1. Disassemble, clean, inspect
2. Sandblast/ clean inlet / and intermediate section
3. Assemble rotating , balance to OEM tolerance .
4. Assemble blower to OEM spec.
5. Paint prepare for shipping.

REPLACEMENT PARTS

1- BRG. RING , 741 OIL

2- SCR seal kit 741

3- HSG VRG 741 OPEN

4- Reservoir , DE 741 oil

5- Shaft 741 4- stage

6- 14V impeller

7- 16V Impeller

8- 11V impeller

9- Impeller spacer

10- 1" sight glass

11- Shipping in/out bound

ZONE INDUSTRIES, LLC
PO Box 73149
Houston, TX 77273
817-912-5151



QUOTATION

Order Number	
10018269	
Order Date	Page
12/18/2024 17:02:45	2 of 6
Quote Number	
Inside Sales	Ashley Dow
Email	adow@zoneindustries.com
Account Mgr	Danny Watson
Email	dwatson@zoneindustries.com

Quote Expires On: 12/23/2024

Quantities					Item ID	Pricing		
Ordered	Allocated	Remaining	UOM	Unit Size	Item Description	UOM	Unit Price	Extended Price
						Unit Size		
Delivery Instructions: ALLOWED								
1.00	0.00	1.00	EA		OUTSIDE SERVICE	EA	26,252.52	26,252.52
				1.0	Service Work	1.0		
					Job 24102 – GD 74104 AD01 REPAIR			

Total Lines: 1

SUB-TOTAL: 26,252.52
TAX: 0.00
AMOUNT DUE: 26,252.52
U.S. Dollars

ZONE INDUSTRIES LLC - TERMS AND CONDITIONS

1. Construction and Legal Effect: Zone Industries, LLC shall hereinafter be referred to as “ZONE”, and the applicant shall be referred to as “CUSTOMER.” The CUSTOMER desires to purchase goods and/or services (collectively, the “Goods”) from ZONE, and CUSTOMER agrees in consideration thereof to be bound by the terms and conditions stated in this agreement. ZONE's sales to CUSTOMER are limited to and expressly made conditional on CUSTOMER's assent to these Terms and Conditions (“Terms”). The issuance of a purchase order by CUSTOMER or CUSTOMER's acceptance of the Goods and/or services or payment for the Goods and/or services shall operate as acceptance by CUSTOMER of these Terms. ZONE hereby objects to any terms or conditions at variance with, different from or additional to the Terms stated herein unless such terms and conditions are hereafter set forth in a writing signed by ZONE. Anything herein to the contrary notwithstanding, no amendment to, or waiver, modification or deletion of, any of the terms and conditions stated herein shall be deemed effective unless any such amendment, waiver, modification or deletion, as the case may be, shall have been approved and accepted in writing by an officer of ZONE.

2. Credit: ZONE reserves the right to approve, approve with conditions or disapprove any request for extension of credit in its sole discretion. Credit will be extended by ZONE to CUSTOMER based on the information provided in this application. CUSTOMER agrees that any financial documents provided ZONE are true and correct. ZONE is authorized to check CUSTOMER's credit background. The amount of credit extended to CUSTOMER will be determined by ZONE and may vary from time to time. CUSTOMER waives notice of any change in CUSTOMER's credit limit. All amounts charged to the open account are CUSTOMER's responsibility. CUSTOMER agrees to pay any and all invoices, charges, fees and costs which CUSTOMER or any authorized person incurs on CUSTOMER's account. Unless CUSTOMER notifies ZONE in writing within five (5) days of any unauthorized use of CUSTOMER's credit account, CUSTOMER agrees that any other person who incurs charges on CUSTOMER's account is authorized to do so. Notwithstanding the foregoing, any and all contracts, certificates, invoices and other writings signed on behalf of CUSTOMER by any employee of CUSTOMER shall be deemed to have been executed on behalf of CUSTOMER with full authority.

3. Payments: Payment of amounts due hereunder shall be made by CUSTOMER to ZONE net thirty (30) days after shipment date. ZONE, at its sole discretion, may offer early payment discounts to customers based on the customer's credit history and payment history with ZONE. ZONE reserves the right at any time to alter or suspend credit, or to change credit terms provided herein, when in its sole opinion CUSTOMER's financial condition so warrants. ZONE further reserves the right to amend the timing of payments if necessary due to vendor payment requirements. Failure to pay an invoice at due date, at ZONE's election, makes all subsequent invoices immediately due and payable, irrespective of terms, and ZONE may withhold all subsequent deliveries under all outstanding orders until full payment is received. Any payment not made when due shall be subject to interest to be paid by CUSTOMER at the lesser of 1.5% per month or the highest rate permissible under applicable law. CUSTOMER agrees to notify ZONE in writing, of any error in any invoice within ten (10) days after the date of that invoice. If not so noticed, the invoice shall be deemed to be correct, and accepted as rendered. In the event of insolvency of CUSTOMER, default in payment or repudiation by CUSTOMER, or any breach of the terms of this agreement, ZONE shall have the right to stop delivery of the Goods and CUSTOMER shall be liable to ZONE for any and all liabilities incurred by ZONE as a result thereof including, but not limited to liabilities to third parties, collection costs, attorneys' fees, and any associated costs incurred by ZONE.

4. Price: CUSTOMER shall purchase the Goods from ZONE at the price(s) (the “Price”) set forth in the purchase order or invoice issued by ZONE. All Prices are exclusive of all Federal, State or local sales, use and excise taxes, and any other similar taxes, duties and charges of any kind on any amounts payable by CUSTOMER. CUSTOMER shall be responsible for all such charges, costs, and taxes; provided, that, CUSTOMER shall not be responsible for any taxes imposed on, or with respect to, ZONE's income, revenue, gross receipts, or commercial activity.

5. Action for Breach: Any action by CUSTOMER arising out of or relating to this agreement must be commenced within one (1) year after the cause of action has accrued.

6. Warranty and Limitation of Liability: ZONE warrants solely to CUSTOMER only that Goods and services furnished hereunder shall conform to applicable specifications, and no other warranty, except of title, shall be implied. Provided that CUSTOMER gives notice in accordance with Article 13 below, if Goods sold hereunder fail to conform to applicable specifications, demonstrated to ZONE's satisfaction to have existed at the time of departure from ZONE's plant, ZONE, reserving the right to inspect Goods, shall, at ZONE's option, replace at ZONE's expense F.O.B. CUSTOMER's plant or give CUSTOMER credit for Goods determined by ZONE to be non-conforming. ZONE shall not be obligated to replace or provide credit for Goods that shall have been subjected to alteration, contamination, improper maintenance or storage, misapplication, misuse, negligence or accident during or after shipment from ZONE's plant or to Goods to which CUSTOMER's tests used an unrepresentative sample. The remedy set forth in this Article 5 shall be the sole and exclusive remedy available to CUSTOMER for breach of warranty. In no event shall CUSTOMER's remedy exceed the purchase price of the non- conforming Goods or services, plus any transportation costs paid by ZONE to supply replacement Goods to CUSTOMER as described above in this Article 5.

No employee or agent of ZONE is authorized to make any warranty, statement, promise or understanding other than that which is specifically set forth in this Article 5. The provisions in any Technical Data sheet issued by ZONE or attached hereto are descriptive only and are not warranties or representations.

THE WARRANTIES SET FORTH IN THIS ARTICLE 5 ARE THE ONLY WARRANTIES APPLICABLE TO THE GOODS AND SERVICES SOLD HEREUNDER. ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, ARE SPECIFICALLY DISCLAIMED AND SHALL NOT APPLY.

If the Goods sold hereunder are resold by CUSTOMER, without any alteration or processing by CUSTOMER or incorporation into any of CUSTOMER's products, CUSTOMER agrees to include in the agreement for resale provisions which limit recoveries against ZONE in accordance with this Article 5.

In no event shall ZONE be liable for any direct, indirect, special, consequential or incidental damages under this agreement (including but not limited to any such damages arising out of late, partial and/or non delivery, the sale, use, furnishing of Goods, or suitability for general or particular use). CUSTOMER is solely responsible for determining suitability for use and ZONE shall in no event be liable in this respect. The giving or failure to give advice, recommendations or safety warnings of any character by ZONE shall not impose any liability upon ZONE.

Should CUSTOMER breach any of the duties and warranties set forth within this Article 5, BUYER AGREES TO FULLY INDEMNIFY, DEFEND AND HOLD SELLER HARMLESS from and against any and all liability, claims, and suits of any third party including but not limited to employees or insurers of CUSTOMER, in any way, in whole or in part, alleged to have arisen out of exposure to or use of Goods supplied by ZONE. Further, upon acceptance of Goods and services supplied by ZONE or in the absence of any written notice of nonconformity of such Goods as set forth in Article 13 below, CUSTOMER AGREES TO FULLY RELEASE, INDEMNIFY, DEFEND AND HOLD SELLER HARMLESS from and against any and all liability, claims, and suits it may possess or that may be asserted against ZONE by any third party (including but not limited to contractors, subcontractors or property owners who have purchased, installed or otherwise used products or services of CUSTOMER or have had such products incorporated into their property or products, or insurers of any of such parties or of the CUSTOMER) in any manner arising in whole or in part, out of the production, marketing, distribution, sale, installation, use or deficiencies of any products of the CUSTOMER produced using the Goods supplied by ZONE. The provisions of this Article 5 shall survive the expiration, or earlier termination as provided herein, of this agreement.

7. Indemnity: CUSTOMER will release, hold harmless, indemnify and defend ZONE from any liability (including without limitation liability for negligence or strict liability) claims, losses, suits and costs resulting from the design of Goods supplied by ZONE

8. Delivery: Delivery and shipment dates are estimated dates only and are not guaranteed. In estimating such dates, no allowance has been made nor shall ZONE be liable for any damages, losses, penalties, whether direct, indirect, special, incidental or consequential, resulting from ZONE's failure or delay in performing, carriers' failure or delay in performing or delays from labor difficulties, shortages, strikes or stoppages of any sort, fires, accidents, failure or delay in obtaining Goods, acts of government affecting ZONE directly or indirectly, bad weather, or any causes beyond ZONE's control, or causes designated as acts of God or force majeure by any statute or court of law. In the event any failure or delay to ship Goods continues for a period of ninety consecutive days, CUSTOMER may cancel its order for the subject Goods upon three days' written notice to ZONE.

9. Shipping: Unless CUSTOMER specifies otherwise in writing: (a) Goods will be shipped as ZONE may deem proper, and (b) routing and manner of shipment will be at ZONE's discretion. If special routing instructions are given, CUSTOMER agrees to pay additional handling and transportation charges, if any. Title and risk of loss passes to CUSTOMER upon delivery of the Goods to CUSTOMER or when the Goods otherwise leave the care, custody and control of ZONE. CUSTOMER shall be solely responsible for maintaining any insurance against loss or damage in shipment. ZONE shall not be liable for loss, damage, detention, delay or completion of an order due to acts of God, acts of terrorism, war, riots, civil insurrection, strikes, work stoppages, fires, accidents, acts of civil or military authority including governmental laws, embargoes, orders, priorities, or regulations, delay in transportation, shortages, delay by suppliers of materials, or any other causes whatsoever beyond the reasonable control of ZONE.

10. Security Interest: ZONE reserves a purchase money security interest in the Goods sold hereunder and the proceeds thereof, in the amount of the Price. In the event of default by CUSTOMER on any of its payment obligations to ZONE, ZONE will have the right to repossess the Goods sold hereunder that have not been paid for without liability to CUSTOMER or any third party in possession of such Goods, if not CUSTOMER. In such event, CUSTOMER agrees to make the Goods available to ZONE so that ZONE can repossess them without a breach of the peace. This security interest will be satisfied by payment in full. ZONE may file a financing statement to perfect ZONE's security interest, provided that ZONE terminates any such financing statements once the Goods are paid for. CUSTOMER shall cooperate fully with ZONE to execute such other documents and to accomplish such filings and/or recordings thereof as ZONE may deem necessary for the protection of ZONE's interests in the Goods furnished hereunder.

11. Termination: ZONE may by written notice to CUSTOMER terminate the whole or any part of this agreement in any one of

the following circumstances: (1) if CUSTOMER fails to remit payment within the time specified herein or any extension thereof authorized by ZONE; or (2) if CUSTOMER fails to perform any of the other provisions of this agreement so as to endanger performance of this agreement in accordance with its terms; or (3) if CUSTOMER becomes insolvent, or engages in any act which reasonably causes the ZONE to deem itself insecure. ZONE shall not by reason of such termination be liable to CUSTOMER for any compensation, reimbursement, or damages including, in particular, but not limited to any direct, indirect, special, incidental or consequential damages or losses whatsoever, on account of expenditures, investments, or commitments.

12. Cancellations: CUSTOMER may not cancel any order of Goods without ZONE's express, written consent. Immediately upon the cancellation of an order, ZONE shall stop all performance hereunder and CUSTOMER must pay to ZONE an amount equal to those reasonable and documented costs incurred by ZONE prior to cancellation plus a cancellation fee equal to 25% of the purchase price; provided, however, that the above amount plus any prior payments shall in no event exceed the purchase price of the Goods. All Goods completed or partially completed prior to cancellation shall become the property of CUSTOMER, or at CUSTOMER's option, the salvage value of the Goods may be deducted from the amount due ZONE by reason of the cancellation. Unused Goods, processed material or specially manufactured Goods not normally carried in ZONE's inventory may not, under any circumstances, be returned for salvage value./

13. Assignment: The rights and obligations of CUSTOMER hereunder may not be assigned without the prior written consent of ZONE. Any purported assignment without ZONE's prior written consent shall be void and of no force and effect.

14. Non-Waiver: Any failure by ZONE to require full payment or strict performance by CUSTOMER of any of the provisions herein or to exercise any right or remedy hereunder, shall not waive or diminish ZONE's right thereafter to demand strict compliance therewith or with any other provision or to exercise any such right or remedy. Waiver of any default shall not waive any other default.

15. Applicable Law: This agreement shall be governed by and construed under the laws of the State of Texas, notwithstanding the principles, if any, that would otherwise govern the choice of applicable law. If legal action is brought to enforce this agreement, Harris County, Texas, shall be the exclusive jurisdiction and legal venue for said action, unless ZONE initiates said legal action is brought to enforce statutory remedies (such as mechanic's lien, stop notices, payment bonds, etc.) in connection with a debt incurred by CUSTOMER; in such case, the jurisdiction and legal venue will be determined by the requirements of the Texas Civil Code or Code of Civil Procedure in order for ZONE to enforce such statutory rights

16. Claims: It shall be the duty of CUSTOMER to thoroughly inspect the Goods purchased from ZONE. All claims of any nature relating to the Goods subject to this agreement, including but not limited to claims of defect in Goods, non-conformity or discrepancy in quantity or delivery date, shall be made in writing to ZONE within fifteen (15) days of receipt of such Goods by CUSTOMER. Failure to make any such written claim within the above-prescribed period shall constitute waiver of any such claims and shall be deemed acceptance of such Goods, quantities or delivery dates.

17. Nondisclosure: In consideration of the disclosure of Proprietary and Confidential information by the parties to each other, both parties agree that the information relating to requirements, processes, specifications, schedules, materials, financial data and pricing exchanged between parties is hereby designated as Proprietary and Confidential whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as "confidential" in connection with this Sales and may not be disclosed or copied unless authorized in advance by the other party in writing. Upon request, each party shall promptly return all Proprietary and Confidential materials received from the other party. Either party shall be entitled to injunctive relief for any violation of this Section. This Section does not apply to information that is: (a) in the public domain; (b) known to the other party at the time of disclosure; or (c) rightfully obtained by the other on a nonconfidential basis from a third party.

18. Force Majeure: ZONE will not be liable for failure in the performance of any of its obligations caused by accidents, labor disputes, shortages of labor, materials, fuel or power, or fires, floods or other acts of God, acts or omissions of CUSTOMER, priorities required, requested, or granted for the benefit of the national or any local government, restrictions imposed by national or local legislation or regulations, or any cause, whether similar or dissimilar to those enumerated in this section, including without limitation cease of production/operation by a vendor or other company due to economic hardship, which is beyond the control of ZONE.

19. Intellectual Property: ZONE shall retain sole ownership of all right, title, and interest in and to all its intellectual property, including, without limitation, ideas, methods, trademarks, service marks, trade names, symbols, logos, copyrights, patents, trade secrets, and know-how (collectively, the "Intellectual Property"), and no licenses to any Intellectual Property are created hereunder.

20. Relationship of the Parties: The relationship between ZONE and CUSTOMER is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment, or fiduciary relationship between the ZONE and CUSTOMER.

21. Authorized Representative: CUSTOMER hereby represents and warrants that its signatory to these Terms is a duly authorized representative with the authority to bind CUSTOMER to these Terms.

22. Electronic Signatures: An “electronic signature” is any electronic symbol or process attached to or logically associated with a document sent by electronic transmission and executed or adopted by a person with the intent to sign such document. The use of electronic signatures (including, without limitation, through DocuSign and AdobeSign) to execute these Terms shall be of the same legal effect, validity and enforceability as a manually executed signature to the fullest extent permitted by Texas law or other applicable law, including, without limitation, any state law based on the Uniform Electronic Transactions Act or the Uniform Commercial Code.

23. Acceptance / Enforceability of Copies: CUSTOMER agrees that ZONE may, at ZONE’S sole discretion, accept, utilize and rely upon a facsimile copy or photocopy of this agreement and the foregoing Continuing Personal Guaranty or Corporate Guaranty, in lieu of an original document. CUSTOMER acknowledges that, by transmitting a facsimile copy, electronic copy or photocopy of this document to ZONE, CUSTOMER, and the Guarantor (if applicable), agree to be bound by the terms and conditions contained in this document to the same extent as if an original were transmitted to ZONE. CUSTOMER, and Guarantor (if applicable), consent to ZONE’s use of this document and waive any right to object to the use of a copy in place of the original and any right to require Seller to subsequently produce an original document. This Credit Application and Agreement cannot be altered, amended, revised, or otherwise modified unless an officer of ZONE provides prior written consent thereto.

By signing and returning this Credit Application and Agreement, CUSTOMER certifies and agrees as follows: (i) The information contained herein is true and correct; (ii) CUSTOMER authorizes ZONE, at any time and from time to time so long as CUSTOMER does business with ZONE, to obtain credit reports about CUSTOMER and to obtain credit information from banks or others with whom CUSTOMER has dealt. CUSTOMER authorizes all references named herein to release credit information to ZONE. The authorized individual signing on behalf of CUSTOMER, recognizing that his or her individual credit history may be a factor In evaluation of the credit history of the CUSTOMER, hereby consents to and authorizes the use of a consumer credit report on such individual, from time to time, so long as CUSTOMER does business with ZONE; (iii) CUSTOMER agrees to furnish such additional information as ZONE may request to warrant future extensions of credit or to enable ZONE to perfect liens or to recover upon any bond issued for its protection; (iv) CUSTOMER agrees that all purchases will be made under the Terms and Conditions set out herein; and (v) CUSTOMER agrees that ZONE may, for any reason and at any time, elect to terminate any credit that is extended to the CUSTOMER or modify the conditions under which credit is to be extended. OFFICER, AUTHORIZED AGENT OR OWNER SIGNATURE IS REQUIRED.

CUSTOMER:

Print Name:

Signature:

Title:

Date:



City Council Meeting

Date: February 4, 2025

Agenda Item: 5.B.

PRESENTER: Jessica Sowell, Community Services Director

ITEM/SUBJECT: Consider approval of a resolution for street closures related to the annual Nacogdoches Wine Swirl Event hosted by the City of Nacogdoches Main Street Department in Downtown Nacogdoches. (Community Services Director)

SUMMARY/BACKGROUND: The City of Nacogdoches holds several annual fundraising, holiday, and community events in Downtown Nacogdoches. These events attract visitors from all over the state, city, and county and in turn, boost our local economy in sales tax and hotel occupancy.

Several events, including the Nacogdoches Wine Swirl Event, require the closure of East Main Street. In order to close East Main Street (Highway 21), the City Council must pass a temporary closure resolution. If approved, a map of the street closures, the Agreement for Temporary Closure of State Right of Way with TxDOT, and the City Council resolution will all be sent to the regional TxDOT office for final approval.

FINANCIAL:

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

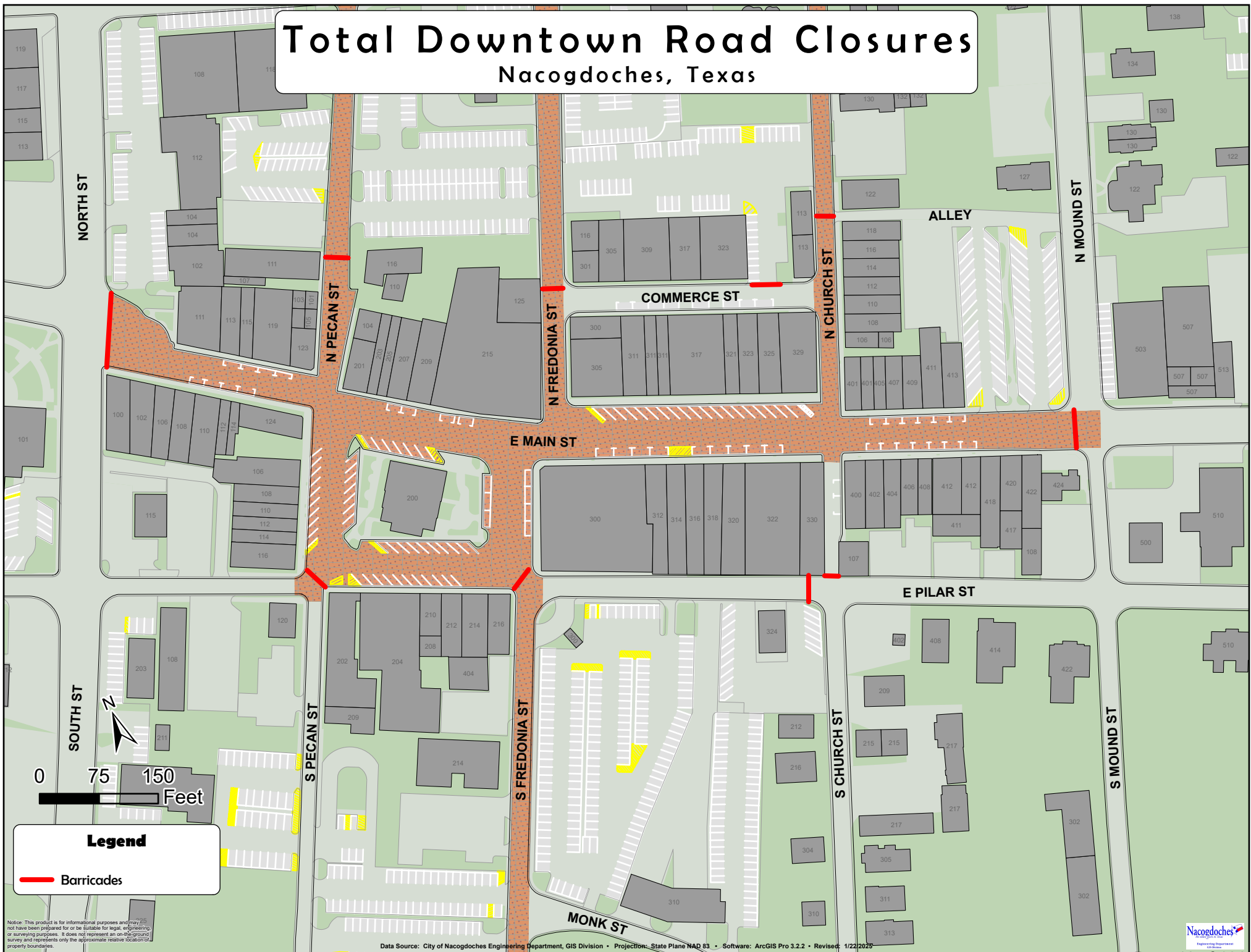
CITY CONTACT: Jessica Sowell, Community Services Director
sowellj@nactx.us
(936) 559-2935

ATTACHMENTS:

1. Wine Swirl - street closure map
2. Draft - Wine Swirl Resolution '25

Total Downtown Road Closures

Nacogdoches, Texas



RESOLUTION NO. 1382-02-25

WHEREAS, organizers of the 2025 Wine Swirl event desire to have a safe and successful event for all vendors and participants and

WHEREAS, organizers of the Wine Swirl event are requesting that the City of Nacogdoches close Main Street (SH 21) from its intersection with North Street eastward to its intersection at Mound Street from 12:00 p.m. Saturday, April 12, 2025, until 12:00 a.m. Sunday, April 13, 2025, in order to provide safety for the vendors and participants; and

WHEREAS, after duly considering such a request, it is the consent of the City Council that a resolution be adopted requesting the Texas Department of Transportation to allow the closing of Main Street for the 2025 Wine Swirl the event.

NOW, THEREFORE BE IT RESOLVED by the City Council of the City of Nacogdoches, Texas that this resolution be adopted requesting the Texas Department of Transportation to allow the closing of Main Street (SH 21) from its intersection with North Street eastwardly to its intersection at Mound Street from 12:00 p.m. Saturday, April 12, 2025, until 12:00 a.m. Sunday, April 13, 2025, for the 2025 Wine Swirl event.

BE IT FURTHER RESOLVED that Rick Beverlin, City Manager, be authorized to execute an agreement with the Texas Department of Transportation for the closing of Main Street (SH 21).

PASSED AND APPROVED this 4th day of February 2025

Mayor, Randy Johnson
City of Nacogdoches

ATTEST:

Rhonda Lewis, City Secretary



City Council Meeting

Date: February 4, 2025

Agenda Item: 5.C.

PRESENTER: Jessica Sowell, Community Services Director

ITEM/SUBJECT: Consider approval of a resolution for street closures related to the Nacogdoches Blueberry Festival hosted by the Nacogdoches Chamber of Commerce in Downtown Nacogdoches. (Community Services Director)

SUMMARY/BACKGROUND: The City of Nacogdoches holds several annual fundraising, holiday, and community events in Downtown Nacogdoches. These events attract visitors from all over the state, city, and county and in turn, boost our local economy in sales tax and hotel occupancy.

Several events, including the Nacogdoches Blueberry Festival, hosted by the Nacogdoches Chamber of Commerce, require the closure of East Main Street. In order to close East Main Street (Highway 21), the City Council must pass a temporary closure resolution. If approved, a map of the street closures, the Agreement for Temporary Closure of State Right of Way with TxDOT, and the City Council resolution will all be sent to the regional TxDOT office for final approval.

FINANCIAL:

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

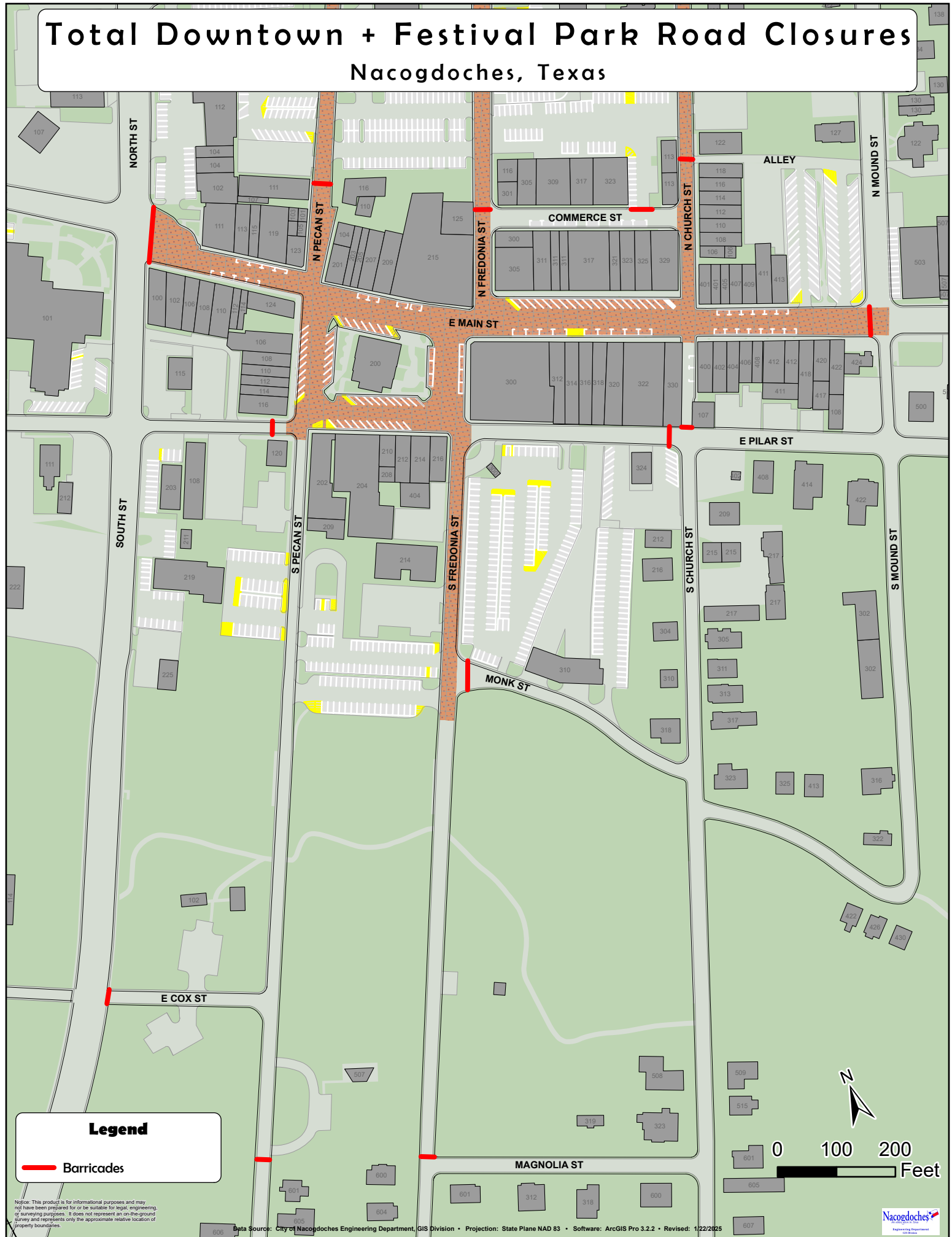
CITY CONTACT: Jessica Sowell, Community Services Director
sowellj@nactx.us
(936) 559-2935

ATTACHMENTS:

1. Blueberry Festival - street closure map
2. Draft - Blueberry Resolution '25 (1)

Total Downtown + Festival Park Road Closures

Nacogdoches, Texas



RESOLUTION NO. 1382-02-25

WHEREAS, organizers of the Texas Blueberry Festival desire to have a safe and successful event for all vendors and participants; and

WHEREAS, organizers of the Texas Blueberry Festival are requesting that the City of Nacogdoches close Main Street (SH 21) from its intersection with North Street eastward to its intersection at Mound Street from 6:00 p.m. June 13, 2025, until 8:00 p.m. June 14, 2025, in order to provide safety for the vendors and participants; and

WHEREAS, after duly considering such a request, it is the consent of the City Council that a resolution be adopted requesting the Texas Department of Transportation to allow the closing of Main Street for the Texas Blueberry Festival.

NOW, THEREFORE BE IT RESOLVED by the City Council of the City of Nacogdoches, Texas that this resolution be adopted requesting the Texas Department of Transportation to allow the closing of Main Street (SH 21) from its intersection with North Street eastward to its intersection at Mound Street from 6:00 p.m. June 13, 2025, until 5:30 p.m. June 15, 2025, in order to provide safety for the vendors and participants, for the Texas Blueberry Festival.

BE IT FURTHER RESOLVED that Richard B. Beverlin, City Manager, be authorized to execute an agreement with the Texas Department of Transportation for the closing of Main Street (SH 21).

PASSED AND APPROVED this 4th day of February, 2025.

Mayor, Randy Johnson
City of Nacogdoches

ATTEST:

Rhonda Lewis, City Secretary



City Council Meeting

Date: February 4, 2025

Agenda Item: 5.D.

PRESENTER: Scott Weems, Police Chief

ITEM/SUBJECT: Receive the 2024 Racial Profiling Report. (Chief of Police)

SUMMARY/BACKGROUND: The 2024 Racial Profiling is required by Texas Code of Criminal Procedure Art 2.132(b)(7) which states that the chief administrator of the agency is required to submit an annual report of the information collected under Subdivision (6) on motor vehicle stops to: (A) the Texas commission on Law Enforcement; and (B) the governing body of each county or municipality served by the agency, if the agency is an agency of a county, municipality, or other political subdivision of the state. This includes the full report containing data analyzed by this department utilizing the Brazos data system. This report was also submitted to the Texas Commission on Law Enforcement (TCOLE) on January 27, 2025.

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: Scott Weems, Chief of Police
weemss@nactx.us
(936) 559-2619

ATTACHMENTS: 1. Racial Profiling PPP 2024

Racial Profiling Report 2024

Mayor and Council Members,

- This 2024 Annual Racial Profiling report is required by **Texas Code of Criminal Procedure Art. 2.132 (b)(7)** which requires the chief administrator of the agency to submit an annual report of the information collected under Subdivision (6) on motor vehicle stops to:
 - (A) the **Texas Commission on Law Enforcement**; and
 - (B) the governing body of each county or municipality served by the agency, if the agency is an agency of a county, municipality, or other political subdivision of the state.
- This includes the full report containing data analyzed by this department utilizing the Brazos data system.
- This data has been sent to the Texas Commission on Law Enforcement (TCOLE) on January 27, 2025.

Demographics 2020 Census

- Nacogdoches population- 31,990 (July, 2023).

The racial and ethnic composition of Nacogdoches are defined by law and reported as follows:

- – 49.8% White,
- – 27.2% Black,
- – 0.5% Native American,
- – 1.5% Asian, Pacific Islander,
- – 8.7% reporting two or more races and
- – 19.7% Hispanic or Latino.
- * Total is more than 100% due to multi-race reporting

Racial Profiling 2024

Location of Stop	Total 7,978
City Street	7,532
US Highway	298
County Road	13
State Highway	55
Private Property	80

Race or Ethnicity	Total
Alaska Native/ American Indian	39 .49 %
Asian/Pacific Islander	41 .51 %
Black	2,542 31.86%
White	3,526 44.20%
Hispanic/ Latino	1,830 22.94%

Was Race or ethnicity known prior to stop?	Total
Yes	820 10.28%
No	7,158 89.72%

% of
total
stops

Gender - Race or Ethnicity

Female	Total
Alaska Native/ American Indian	8
Asian/Pacific Islander	14
Black	972
White	1,568
Hispanic/ Latino	562
TOTAL	3,124

Male	Total
Alaska Native/ American Indian	31
Asian/Pacific Islander	27
Black	1,570
White	1,958
Hispanic/ Latino	1,268
TOTAL	4,854

Reason for Stop

Violation of Law	Total Each
Alaska Native/ American Indian	2
Asian/Pacific Islander	0
Black	57
White	101
Hispanic/ Latino	40
TOTAL	200

Pre-Existing Knowledge	Total Each
Alaska Native/ American Indian	0
Asian/Pacific Islander	0
Black	17
White	10
Hispanic/ Latino	14
TOTAL	41

Reason for Stop

Moving Traffic Violation	Total Each
Alaska Native/ American Indian	33
Asian/Pacific Islander	38
Black	1,832
White	2,539
Hispanic/ Latino	1,347
TOTAL	5,789

Vehicle Traffic Violation	Total Each
Alaska Native/ American Indian	4
Asian/Pacific Islander	3
Black	636
White	876
Hispanic/ Latino	429
TOTAL	1,948

Was Search Conducted?

Was Search Conducted?	Yes	No
Alaska Native/ American Indian	0 0%	39 .54%
Asian/Pacific Islander	2 0.25 %	39 .54%
Black	397 48.77%	2,145 29.94%
White	219 26.90%	3,307 46.16%
Hispanic/ Latino	196 24.08%	1,634 22.81%
TOTAL	814 100%	7,164 100%

% of
total
searches

Reason for Search

% of
Search
Criteria

Total Searches 906	Consent	Probable Cause	Contraband Plainview	Inventory	Incident to Arrest
Alaska Native/ American Indian	0 0%	0 0%	0 0%	0 0%	0 0%
Asian/Pacific Islander	1 .45%	1 .20%	0 0%	0 0%	0 0%
Black	66 30%	303 60.84%	6 37.50%	14 24.56%	8 34.78%
White	88 40%	94 18.88%	3 18.75%	26 45.61%	8 34.78%
Hispanic/ Latino	65 29.55%	100 20.08%	7 43.75%	17 29.82%	7 30.43%
TOTAL	220 100%	498 100%	16 100%	57 100%	23 100%

Contraband Discovered/ Did the finding result in arrest?

Contraband Discovered?	Yes	No
Alaska Native/ American Indian	<i>0</i>	<i>0</i>
Asian/Pacific Islander	<i>2</i>	<i>0</i>
Black	<i>275</i>	<i>122</i>
White	<i>135</i>	<i>84</i>
Hispanic/ Latino	<i>128</i>	<i>68</i>
TOTAL	<i>540</i>	<i>274</i>

Did the finding result in arrest?	Yes	No
Alaska Native/ American Indian	<i>0</i>	<i>0</i>
Asian/Pacific Islander	<i>1</i>	<i>0</i>
Black	<i>51</i>	<i>37</i>
White	<i>20</i>	<i>50</i>
Hispanic/ Latino	<i>37</i>	<i>46</i>
TOTAL	<i>109</i>	<i>133</i>

Description of Contraband

Drugs		Currency		Weapons	
Alaska Native/ American Indian	0	Alaska Native/ American Indian	0	Alaska Native/ American Indian	0
Asian/Pacific Islander	2	Asian/Pacific Islander	0	Asian/Pacific Islander	0
Black	232	Black	1	Black	25
White	92	White	1	White	7
Hispanic/ Latino	88	Hispanic/ Latino	1	Hispanic/ Latino	9
TOTAL	414	TOTAL	3	TOTAL	41
Alcohol		Stolen Property		Other	
Alaska Native/ American Indian	0	Alaska Native/ American Indian	0	Alaska Native/ American Indian	0
Asian/Pacific Islander	0	Asian/Pacific Islander	0	Asian/Pacific Islander	0
Black	37	Black	0	Black	16
White	35	White	0	White	17
Hispanic/ Latino	35	Hispanic/ Latino	1	Hispanic/ Latino	13
TOTAL	107	TOTAL	1	TOTAL	46

RESULT OF STOP

Verbal Warning		Written Warning		Citation	
Alaska Native/ American Indian	29	Alaska Native/ American Indian	2	Alaska Native/ American Indian	8
Asian/Pacific Islander	28	Asian/Pacific Islander	3	Asian/Pacific Islander	9
Black	1,539	Black	271	Black	644
White	2,148	White	437	White	871
Hispanic/ Latino	1,079	Hispanic/ Latino	168	Hispanic/ Latino	500
TOTAL	4,823	TOTAL	881	TOTAL	2,032
Written Warning and Arrest		Citation and Arrest Total		Arrest	
Alaska Native/ American Indian	0	Alaska Native/ American Indian	0	Alaska Native/ American Indian	0
Asian/Pacific Islander	0	Asian/Pacific Islander	0	Asian/Pacific Islander	1
Black	3	Black	0	Black	85
White	0	White	2	White	68
Hispanic/ Latino	2	Hispanic/ Latino	1	Hispanic/ Latino	80
TOTAL	5	TOTAL	3	TOTAL	234

Percentages

% of
Total
Contacts

Race/ Ethnicity	All Contacts	Citations	Verbal Warning	Written Warning	Written Warning and Arrest	Citation and Arrest	Arrest
	Number / %	Number / %	Number / %	Number / %	Number / %	Number / %	Number / %
Alaska Native/ American Indian	39 .49 %	8 .39%	29 .60%	2 .23%	0 0%	0 0%	0 0%
Asian/Pacific Islander	41 .51 %	9 .44%	28 .58%	3 .34%	0 0%	0 0%	1 .43%
Black	2,542 31.86%	644 31.68%	1,539 31.90%	271 30.76%	3 60%	0 0%	85 36.64%
White	3,527 44.20%	872 42.89%	2,148 44.54%	437 49.60%	0 0%	2 66.67%	68 29.06%
Hispanic/ Latino	1,830 22.94%	500 24.59%	1,079 22.37%	168 19.07%	2 40%	1 33.33%	80 34.19%
Total	7,070	2,033	4,823	881	5	1	234

Arrest Based On

	Violation of Penal Code	Violation of Traffic Law	Violation of City Ordinance	Outstanding Warrant
Alaska Native/American Indian	0	0	0	0
Asian/Pacific Islander	1	0	0	0
Black	68	1	0	19
White	58	1	0	11
Hispanic/Latino	70	4	0	9
TOTAL	197	6	0	39

Was Physical Force Resulting in Bodily Injury Used During Traffic Stop?

	Yes	No
Alaska Native/ American Indian	0	39
Asian/Pacific Islander	0	41
Black	1	2,541
White	2	3,524
Hispanic/ Latino	1	1,829
TOTAL	4	7,974

Resulting in Bodily Injury to Suspect	1
Resulting in no Bodily Injury	1
Resulting in Bodily Injury to Both	2

Number of Complaints of Racial Profiling

TOTAL	0
Resulted in Disciplinary Action	0
Did not Result in Disciplinary Action	0

2024 Summary

This is to reaffirm the Nacogdoches Police Department's commitment to:

- unbiased policing in all its encounters between officers and any person;
- reinforce procedures that serve to ensure public confidence and mutual trust through the provision of services in a fair and equitable fashion; and
- protect our officers from unwarranted accusations of misconduct when they act within the dictates of departmental policy and the law.

The **Nacogdoches Police Department** is compliant with state law as required by statute and has shown a history of compliance.



City Council Meeting

Date: February 4, 2025

Agenda Item: 5.E.

PRESENTER: Rhonda Lewis, City Secretary

ITEM/SUBJECT: Consider approval of minutes for the January 23, 2025, City Council Rescheduled 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
lewisr@nactx.us
(936) 559-2506

ATTACHMENTS: 1. City Council Draft Meeting Minutes - 01.23.25



**Rescheduled Regular Session
Nacogdoches City Council
January 23, 2025 – 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 made in Open Forum.

4. ITEMS TO BE REMOVED FROM THE CONSENT AGENDA:

No items were 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. **Public Hearing:** Discuss and consider action regarding Special Use Permit Case SUP2024-07 for Stone, Sand, Gravel & Mineral Extraction in an R-4 Multi-Family district on one parcel of land approximately 28.2 acres $\pm$ in size, more particularly described by Nacogdoches Central Appraisal District Parcel 85393; and generally located north of Powers Street between North Sanders Street and Old Tyler Road

Interim City Planner, Juan Pollette, presented this request for a Special Use Permit in an R-4 Multi-Family district. Mr. Pollette stated the applicant is currently utilizing the property for dirt for commercial projects in the area and the proposed use would be temporary. There were no responses to the notices sent to the 39 property owners within the area. Mr. Pollette informed Council that the Planning and Zoning Commission unanimously approved the request for the SUP on January 13, 2025.

Mayor Johnson opened the public hearing, but there was no public input. The Mayor then closed the public hearing.

Councilwoman Belanger made a motion to approve the SUP with the conditions from Planning and Zoning, and Councilman Huckaby duly seconded the motion. The motion carried unanimously.

- B. **Public Hearing:** Discuss and consider action regarding Zoning Case ZON2024-05 to amend the current zoning of R-1 Single-Family to R-2 Single-Family on two parcels of land approximately 3.1 acres $\pm$ in size, more particularly described by Nacogdoches Central Appraisal District Parcels 31635 and 85292; and generally located north of the intersection of Tanglewood Circle and Tangleberry Street, Nacogdoches, Texas. (Interim City Planner) **[Withdrawn by applicant]**

Mayor Johnson announced the application was withdrawn by the applicant. A question was raised by Councilman Huckaby whether the applicant could resubmit the application if the Council took no action. City Attorney, Jerry Baker, responded that the Council could take action as this item could not be removed due to the notice requirements in the ordinance. The Council could also take no action, but the applicant would be able to refile the application. However, it

would have to be resubmitted to P&Z and City Council for approval and again meet all the notice requirements. The Council took no action.

- C. Discuss and consider a donation from the Parks Advocacy League in the amount of \$28,125.38 for park benches and picnic tables.

No action as this item would be postponed due to the inability of the Parks Advocacy League to be present at this rescheduled meeting.

7. **ADJOURNED:** 5:39 p.m.

A full recording of the Regular City Council Meeting for December 17, 2024, may be viewed here: [Regular City Council Meeting - 20250123](#)

ATTEST:

Mayor, Randy Johnson
City Council
City of Nacogdoches

Rhonda Lewis, City Secretary



City Council Meeting

Date: February 4, 2025

Agenda Item: 6.A.

PRESENTER:

ITEM/SUBJECT: Consider approval of a resolution calling the May 3, 2025, General Election of City Council Members for Northeast Ward, Northwest Ward, and Mayor at Large, in and for the City of Nacogdoches, Texas. (City Secretary)

SUMMARY/BACKGROUND: The Regular Election is Saturday, May 3, 2025, to elect Northeast Ward Council Member, Northwest Ward Council Member, and At-Large (Mayor).

The filing period for this election is January 15, 2025, through February 14, 2025. Early voting and Election Day voting will be held and conducted at Nacogdoches County Courthouse Annex in the Nacogdoches County Elections Office located at 203 West Main Street, Nacogdoches, Texas 75961. Early voting is April 22, 2025, through April 25, 2025, from 8:00 a.m. to 5:00 p.m., and Monday, April 28, 2025, through Tuesday, April 29, 2025, from 7:00 a.m. to 7:00 p.m. Election Day voting will be May 3, 2025, from 7:00 a.m. to 7:00 p.m.

The City of Nacogdoches will contract with the Nacogdoches County Elections Office to provide election services, which will include administrative services, scheduling election workers, polling places, and providing voting system/ballots.

FINANCIAL:

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

CITY CONTACT: Rhonda Lewis, City Secretary
lewisr@nactx.us
(936) 559-2506

ATTACHMENTS:

1. Resolution Calling Election 2025(Engl.)
2. Resolution Calling Election 2025 (Spanish)

RESOLUTION NO.

RESOLUTION CALLING FOR THE REGULAR ELECTION OF COUNCIL MEMBERS FOR NORTHEAST WARD, NORTHWEST WARD, AND MAYOR (AT LARGE) IN AND FOR THE CITY OF NACOGDOCHES, TEXAS.

BE IT RESOLVED BY THE CITY OF NACOGDOCHES, TEXAS:

I.

THAT a municipal election be held in the City of Nacogdoches, Texas, on Saturday, May 3, 2025 with polls open from 7:00 a.m. to 7:00 p.m. for the election of three (3) members of City Council, being Council Member Northeast Ward, Council Member Northwest Ward, and At Large Mayor, to succeed those Council Members whose terms expire when their successor is duly elected and qualified at a meeting of City Council following the date of the election.

II.

THAT applications shall be accepted in the office of the City Secretary, 202 E. Pilar Street, Room 320, beginning January 15, 2025, through February 14, 2025, from 8:00 a.m. to noon and 1:00 p.m. to 5:00 p.m. for said positions.

III.

THAT said election and early voting shall be held and conducted at Nacogdoches County Courthouse Annex in the Nacogdoches County Elections Office located at 203 West Main Street, Nacogdoches, Texas 75961 and the entire city shall constitute one (1) election precinct.

IV.

THAT Early Voting by personal appearance for this May 3, 2025, City Council Election, will be conducted Tuesday, April 22, 2025, through Friday, April 25, 2025, from 8:00 a.m. to 5:00 p.m. daily, and Monday, April 28, 2025, through Tuesday, April 29, 2025, from 7:00 a.m. to 7:00 p.m. daily at the Nacogdoches County Elections Office located at 203 West Main Street, Nacogdoches, Texas 75961.

V.

THAT notice of said election shall be given as required by law.

PASSED AND APPROVED this the 4th day of February 2025.

Randy Johnson, Mayor
City of Nacogdoches

ATTEST:

Rhonda Lewis, City Secretary

RESOLUCIÓN

UNA RESOLUCIÓN CONVOCANDO PARA UNA ELECCIÓN REGULAR DE COMISIONADOS PARA EL DISTRITO NORESTE (NORTHEAST), DISTRITO NOROESTE (NORTHWEST), Y UN COMISIONADO EN GENERAL, EN Y PARA LA CIUDAD DE NACOGDOCHES, TEXAS

RESUÉLVASE POR LA CIUDAD DE NACOGDOCHES, TEXAS:

I.

QUE una elección municipal sea llevada a cabo en la Ciudad de Nacogdoches, Texas, el sábado 3 de mayo, 2025, con las casillas electorales abiertas de 7:00 a.m. a 7:00 p.m. para la elección de tres (3) miembros de Comisionados de la Ciudad, siendo los puestos: Comisionado del Distrito Noreste (Northeast), Comisionado del Distrito Noroeste (Northwest) y un Comisionado en General (Alcalde) para suceder a aquellos comisionados cuyos términos expirarán cuando su sucesor sea debidamente elegido y calificado durante una reunión de los Comisionados de la Ciudad después de la fecha de elecciones.

II.

QUE las solicitudes para dichos puestos deberán ser recibidas en la Oficina de la Secretaria de la Ciudad, ubicada en el 202 E. Pilar Street, Sala 320, entre el 15 de enero y el 14 de febrero, 2025 de 8:00 AM a Mediodía y de 1:00 PM a 5:00 PM.

III.

QUE dicha elección y votación anticipada deberán ser llevadas a cabo y conducidas en el Anexo al Palacio Municipal del Condado Nacogdoches, en la Oficina de Elecciones del Condado Nacogdoches (Nacogdoches County Courthouse Annex Elections Office) ubicada en el 203 West Main Street, Nacogdoches, Texas 75961 y que la ciudad entera deberá ser constituida un (1) distrito electoral.

IV.

QUE la votación anticipada por presentación personal para esta Elección de Comisionados de Distrito de la Ciudad, este 3 de mayo, 2025 será llevada a cabo del martes 22 de abril, 2025 al viernes 25 de abril, 2025, cada día entre las 8:00 AM y 5:00 PM, y el lunes 28 de abril, 2025 al martes 29 de mayo, 2025, cada día de 7:00 AM a 7:00 PM en la Oficina de Elecciones del Condado Nacogdoches ubicada en el 203 West Main Street, Nacogdoches, Texas 75961.

V.

QUE aviso de dicha elección será dado según lo requiere la ley.

PASADA Y APROBADA este día 4 del mes de febrero 2025.

Randy Johnson, Alcalde
City of Nacogdoches

ATTEST:

Rhonda Lewis, Secretaria de la Ciudad



City Council Meeting

Date: February 4, 2025

Agenda Item: 6.B.

PRESENTER: Randy Johnson

ITEM/SUBJECT: Consider approval of the January Boards and Commissions appointments, namely, the Airport Advisory Board; Building Standards Commission; Health Code Advisory Board; Industrial Development Authority; Nacogdoches Cemetery Board; and Main Street Advisory Board. (Mayor)

SUMMARY/BACKGROUND: Twice per year, the City Board Interviews are conducted. The Interview Committee completed interviews for the above boards and will make recommendations to fill vacant and termed positions.

FINANCIAL:

No financial impact associated with this item.

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

Community Engagement

CITY CONTACT: Rhonda Lewis, City Secretary
lewisr@nactx.us
(936) 559-2506

ATTACHMENTS:

PRESENTER: Case Opperman, Director of Public Works

ITEM/SUBJECT: Consider approval of a contract by and between the City of Nacogdoches and KSA Engineers for professional engineering services for Storm Drainage Improvement Projects in a not-to-exceed amount of \$538,300.00 (Director of Public Works).

SUMMARY/BACKGROUND: On October 15, 2024, City Council approved selection of KSA Engineers as one of two engineering consultants for design of bond-funded storm drainage improvement projects. City staff has met several times with both of these firms to establish scope of services for these projects. KSA Engineers will provide engineering design, bidding and construction phase services, as well as part-time resident project representative (RPR) inspections on select project locations as shown in Exhibit A of the contract.

Fee breakdown for their services are as follows:

Preliminary Design	\$ 246,200.00
Final Design	\$ 164,100.00
Bidding Phase	\$ 5,000.00
Construction Phase	\$ 33,000.00 (Hourly)
Reimbursables	\$ 13,000.00 (Expense)
Part-time RPR	\$ 77,000.00 (Hourly)
Total	\$ 538,300.00 (Not to Exceed)

Preliminary Design would be on a 120-day schedule upon completion of design surveying by others, with the final design being completed 60 days after that. A budget is available for this contract.

FINANCIAL:

Item is budgeted:

Account No.: 42 680.37

Account Name: *Proposition C (Storm Drainage)*

Amount: \$ 538,300.00

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. KSA Contract
 2. PowerPoint Slide

**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 **KSA 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: **Storm Drainage Improvements Projects Engineering** (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 **Five Hundred Thirty-Eight Thousand Three Hundred and 00/100 Dollars (\$ 538,300.00)**.

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

- 3.01 The Consultant shall complete the professional services within the times set forth in **Exhibit B**. 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 include normal civil, structural, mechanical and electrical engineering services, plumbing, food service, acoustical and landscape services, and any other design services that are normally or customarily furnished and reasonably necessary for the Project. 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.

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 or the right to payment for such additional services shall be waived.** 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 **two (2)** sets of plans and specifications. It is hereby agreed that additional copies shall be provided to the City at the City's expense. The Consultant shall provide the City **one (1)** set 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 Consultant warrants that 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 defective 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, employees, agents, subcontractors, invitees, licensees, and other persons.
- 10.05 INDEMNITY. THE CONSULTANT SHALL INDEMNIFY, DEFEND, AND HOLD HARMLESS THE CITY, ITS OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, ASSIGNEES AND/OR DESIGNEES (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 OR OTHERWISE TO WHICH THE CITY HAS ACCESS AS A RESULT OF CONSULTANT'S PERFORMANCE UNDER THE CONTRACT.

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:
KSA Engineers, Inc.
320 North Street, Suite 205
Nacogdoches, Texas 75961
- 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.**

KSA ENGINEERS, INC.
320 North Street, Suite 205
Nacogdoches, Texas 75961

By: _____
Printed Name: _____
Title: _____
Date: _____
Firm Registration No.: _____

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

January 22, 2025

Mr. Case Opperman, P.E.
Director of Public Works/City Engineer
City of Nacogdoches
202 E Pilar Street
Nacogdoches, TX 75961

Re: *City Drainage Improvements*
Proposal for Professional Engineer Services

Mr. Opperman:

KSA Engineers, Inc. (KSA) is pleased to present this letter to serve as our proposal to provide engineering services associated with the above referenced project. The following is a general description of the project scope of work to be performed under this proposal.

Scope of Services

Provide professional services for the development of plans and technical specifications, bidding, construction administration, and part time project representative for drainage improvements at the locations below within the City of Nacogdoches consisting of the following items:

- Tudor Street: Install approximately 900 linear feet of 24-inch reinforced concrete pipe including junction box and asphalt repair.
- Oak Creek Drive (West): Remove existing concrete flume and install approximately 900 linear feet of 24-inch reinforced concrete pipe and tie into existing system.
- Oak Creek Drive (East): Install approximately 900 linear feet of 24-inch reinforced concrete pipe including curb inlets.
- Stewart Street: Install approximately 700 linear feet of 18-inch and approximately 800 linear feet of 24-inch reinforced concrete pipe, inlets, and asphalt repair.
- Hilltop Street: Install approximately 200 linear feet of 30-inch reinforced concrete pipe including area inlets and asphalt pavement repair.
- Lady Jennifer Drive: Install approximately 200 linear feet of 18-inch reinforced concrete pipe with curb inlets.
- Bostwick Street: Install approximately 600 linear feet of 60-inch reinforced concrete pipe including junction boxes and asphalt pavement repair.

All projects will include hydraulic design at the catchment level. Basin wide hydraulic study will not be included in this scope of work but can be provided as an additional service. The scope of services is based on the design of one (1) construction contract.

The following services are excluded from the scope by the Owner, but can be provided as additional services if approved by the Owner through a supplemental agreement:

- Hydraulic studies (Basin Wide)
- Construction material testing
- Surveying (currently proposed to be provided by others)
- Easements and plats (currently proposed to be provided by others)

KSA proposes to provide the services in accordance with a Professional Services Agreement (Agreement) which will be the source document to which this Proposal is attached as Exhibit A. The work phases include Preliminary Design, Final Design, Bidding, and Construction. The tasks under each of these phases are fully described in Exhibit A of the Agreement and generally include the following:

Preliminary Design Phase

1. Prepare preliminary design drawing and technical specifications. Contract documents to be prepared by the Owner.
2. On the basis of the preliminary design drawings, prepare an opinion of probable construction cost for the project and prepare an outline of the contract documents and specifications.
3. Submit preliminary design documents to the Owner (not to exceed two (2) copies) for review and approval.
4. Meet with the Owner to review the preliminary design documents to solicit comments on the design. (one meeting)
5. The drawings will be reviewed by the Owner's staff and approved prior to final design.

Final Design Phase

1. On the basis of the approved preliminary design documents, prepare detailed construction drawings and specifications for the project.
2. Prepare a revised opinion of probable construction cost for the final plans and specifications.
3. Submit final design documents to the Owner (not to exceed two (2) copies) for approval.

Bidding Phase

1. Provide plans and specifications for the Owner's use. Publish bid documents including plans and specifications on www.civcastusa.com for use by bidders.
2. Respond to questions from bidders during the bidding phase and prepare addenda to contract documents if needed through www.civcastusa.com.
3. Assist the Owner in conducting the bid opening and assist in the opening of the bids.
4. Prepare bid tabulation and analyze the bids.
5. Submit bid tabulation for award of the construction contract.

Construction Phase

1. Conduct a Preconstruction Conference and prepare a written record of the conference.
2. Review shop drawings and various items submitted by the contractor and approve those which comply with the requirements of the construction documents.
3. Make periodic site visits by the Project Manager to observe the progress and quality of the executed work and to determine in general if the work is proceeding in accordance with the plans, specifications, contract documents and construction schedule. (4 site visits per month)

4. Review the contractor's applications for payment and submit to the Owner for approval and payment.
5. Part time project representative to oversee the construction process.

Compensation

KSA Engineers, Inc. will perform the Scope of Service described above as shown below.

<u>Description</u>	<u>Fee</u>	<u>Fee Basis</u>
Preliminary Design Phase	\$246,200	Lump Sum
Final Design Phase	\$164,100	Lump Sum
Bidding Phase*	\$5,000	Lump Sum
Construction Administration*	\$33,000	Hourly & Reimbursable
Reimbursable (printing, mileage, postage, etc.)	\$13,000	Hourly & Reimbursable
Part Time RPR*	\$77,000	Hourly & Reimbursable
Total		\$538,300

*Bidding Phase, Construction Administration, and Part-Time RPR are based upon one (1), 6-month construction contract. Part time RPR is based on 20 hours per week. Should project construction extend beyond contract time, or additional construction contracts be procured, a supplemental agreement for additional fees may be requested. Hourly expenses are based off 2025 Schedule of Hourly Fees attached.

Schedule

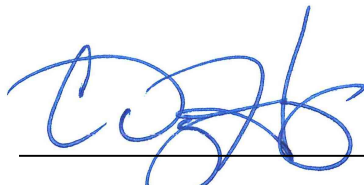
We propose to perform the scope of services per the schedule as shown below.

Preliminary Design Phase:	120 days from receipt of survey provided by others
Final Design Phase:	60 days
Bidding Phase:	60 days
Construction Phase:	180 days

If you have any questions regarding the scope of work and proposed fees, please feel free to contact me.

Sincerely,

KSA Engineers



C. Daniel "Danny" Hays, P.E.
Project Manager

Exhibit B
Payment Terms and Schedule

Payment is a fixed fee in the amount listed in paragraph 2.01 of this Contract. This amount shall be payable by the City pursuant to the schedule listed below and upon completion of the services and acceptance by the City. Construction Phase services shall be billed monthly at rates set forth in this section accompanied by an explanation of charges, professional fees, services and expenses. The City will pay invoices according to its normal payment procedures.

Schedule of Payment for each phase:

Preliminary Design	\$ 246,200.00
Final Design	\$ 164,100.00
Bidding Phase	\$ 5,000.00
Construction Phase	\$ 33,000.00 (Hourly)
Reimbursables	\$ 13,000.00 (Expense)
Part-time RPR	\$ 77,000.00 (Hourly)
Total	\$ 538,300.00



2025 SCHEDULE OF HOURLY FEES

Principal	\$370.00/hour
Senior Aviation Planner	\$260.00/hour
Aviation Planner	\$185.00/hour
Electrical Engineer	\$225.00/hour
Electrical Design Engineer	\$160.00/hour
Senior Project Manager	\$310.00/hour
Project Manager	\$235.00/hour
Senior Project Engineer	\$200.00/hour
Project Engineer	\$180.00/hour
Senior Design Engineer	\$160.00/hour
Design Engineer	\$140.00/hour
Senior Project Architect	\$285.00/hour
Project Architect	\$145.00/hour
Design Architect	\$110.00/hour
Senior Engineering Technician	\$230.00/hour
Engineering Technician	\$125.00/hour
Senior Design Technician	\$160.00/hour
Design Technician	\$100.00/hour
Safety Manager	\$145.00/hour
Safety Specialist	\$105.00/hour
Regulation Compliance Specialist	\$135.00/hour
Project Assistant	\$100.00/hour
Senior CAD Technician	\$115.00/hour
CAD Technician	\$ 90.00/hour
Senior Project Representative	\$130.00/hour
Project Representative	\$110.00/hour
Graphic Designer	\$ 85.00/hour
Administrative Assistant	\$100.00/hour
Secretary	\$ 60.00/hour
Three-Man Survey Crew	\$235.00/hour
Two-Man Survey Crew	\$190.00/hour
Senior Registered Surveyor	\$215.00/hour
Registered Surveyor	\$175.00/hour
Senior Survey Technician	\$125.00/hour
Survey Technician	\$110.00/hour
Mileage	\$ 0.70/mile
ATV (4-Wheeler)	\$100.00/day
GPS	\$100.00/day
Reimbursable Expenses (Travel, Lodging, Copies, Printing)	Actual Cost
Outside Consultants	Cost + 15%

NOTE: The Standard Hourly Rates and Reimbursable Expenses Schedule shall be adjusted annually to reflect equitable changes in the compensation payable to Engineer.

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

Storm Drainage Improvements – KSA Engineers Contract

- Bond-funded storm drainage improvements
- Selected by City Council on October 15, 2024 for services
- Engineering Design, Bidding and Construction Phase Services, Part-Time RPR:
 - Buckingham Drive/Tudor Drive
 - Oak Creek Drive (2 locations)
 - Stewart Street/Sweetgum Street
 - Hilltop Street
 - Lady Jennifer Drive
 - Bostwick Street



Photo: www.ncnewsonline.com

Storm Drainage Improvements – KSA Engineers Contract

- Fee Breakdown as follows:
 - Preliminary Design \$ 246,200.00
 - Final Design \$ 164,100.00
 - Bidding Phase \$ 5,000.00
 - Construction Phase \$ 33,000.00 (Hourly)
 - Reimbursables \$ 13,000.00 (Expense)
 - Part-time RPR \$ 77,000.00 (Hourly)

Total (Not to Exceed) \$ 538,300.00

Budget is available for contract



Photo: www.ncnewsonline.com

PRESENTER: Case Opperman, Director of Public Works

ITEM/SUBJECT: Consider approval of a contract by and between the City of Nacogdoches and Two Fifteen Consulting for professional engineering services for Storm Drainage Improvement Projects in a not-to-exceed amount of \$465,990.00 (Director of Public Works).

SUMMARY/BACKGROUND: On October 15, 2024, City Council approved the selection of Two Fifteen Consulting as one of two engineering consultants for the design of bond-funded storm drainage improvement projects. City staff has met several times with both of these firms to establish the scope of services for these projects. Two Fifteen will provide design surveying and easement documents (as needed) for all of the project sites, as well as engineering design, bidding, and construction phase services on select project locations as shown in Exhibit A of the contract.

The fee breakdown for their services are as follows:

Design Survey	\$ 196,425.00
Preliminary Design	\$ 38,255.00
Final Design	\$ 89,010.00
Bidding Phase	\$ 10,680.00 (Hourly)
Construction Phase	\$ 84,370.00 (Hourly)
Easement Docs (\$2,250/ea x 21)	\$ 47,250.00 (Total)
Total	\$ 465,990.00 (Not to Exceed)

Design surveying would be on a 120-day schedule, weather permitting, with preliminary and final design being completed over rolling 120-day periods once surveying is complete at each location. A budget is available for this contract.

FINANCIAL:

Item is budgeted:

Account No.: 42 680.37

Account Name: *Proposition C (Storm Drainage)*

Amount: \$ 465,990.00

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

Infrastructure

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

- ATTACHMENTS:**
1. Two Fifteen Contract
 2. PowerPoint Slide

**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 **Two Fifteen Consulting** (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: **Storm Drainage Improvement Projects Engineering** (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 **Four Hundred Sixty-Five Thousand Nine Hundred Ninety and 00/100 Dollars (\$ 465,990.00)**.

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

- 3.01 The Consultant shall complete the professional services within the times set forth in **Exhibit B**. 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 include normal civil, structural, mechanical and electrical engineering services, plumbing, food service, acoustical and landscape services, and any other design services that are normally or customarily furnished and reasonably necessary for the Project. 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.

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 or the right to payment for such additional services shall be waived.** 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 **two (2)** sets of plans and specifications. It is hereby agreed that additional copies shall be provided to the City at the City's expense. The Consultant shall provide the City **one (1)** set 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 Consultant warrants that 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 defective 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, employees, agents, subcontractors, invitees, licensees, and other persons.
- 10.05 INDEMNITY. THE CONSULTANT SHALL INDEMNIFY, DEFEND, AND HOLD HARMLESS THE CITY, ITS OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, ASSIGNEES AND/OR DESIGNEES (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 OR OTHERWISE TO WHICH THE CITY HAS ACCESS AS A RESULT OF CONSULTANT'S PERFORMANCE UNDER THE CONTRACT.

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:
Two Fifteen Consulting
412 North Street
Nacogdoches, Texas 75961
- 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.**

TWO FIFTEEN CONSULTING

412 North Street
Nacogdoches, Texas 75961

By: _____
Printed Name: _____
Title: _____
Date: _____
Firm Registration No.: _____

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

January 27, 2025

Mr. Case Opperman, P.E.
Director of Public Works/City Engineer
City of Nacogdoches
202 E. Pilar
Nacogdoches, Texas 75963

**Re: Proposal for Surveying & Civil Engineering Services
2025 Storm Drainage Infrastructure Repairs and Improvements Project**

Mr. Opperman,

Thank you for considering our firm for the design of the storm water drainage infrastructure repair and improvement projects located within the City of Nacogdoches. The specific project locations that you provided to us are listed below, along with a description of the scope for each location for which our proposal is based. After the project list you will find our proposed design surveying (for all locations), engineering design (for select locations) and construction bidding and administrative services (select locations) to which we refer to as the **BASIC SERVICES** portion of our proposal. We have also listed in our **BASIC SERVICES** surveying tasks related to preparation of the easement documents required for the project. *Please note that not all easements are known or identified at this time and preliminary engineering phases for each location will be required to determine the full list of easements required.*

Project Locations and Outlines of BASIC SERVICES within Two Fifteen Scope

1. Hilltop Street: Project requires the repair or replacement of approximately 250 linear feet of 30" RCP on lot south of Hilltop Street and the installation of new headworks to intercept and control the flow from the drainage swale east of the property.
 - Topo Limits: Approximately 1.1 acres consisting of ~200 linear feet Shawnee St./FM 2259 ROW, ~ 230 linear feet of Hilltop Street ROW, and Lots 41A, 41B, 42A, 42B of Block 51 supplemented with hi-res orthographic photo
 - SUE 'Level B' Limits: Shawnee Street and Hilltop Street ROW within topo limits.
 - *Design and Construction Services (by others)*
2. Woodbine Street: Project requires preliminary engineering analysis and design to mitigate street flooding near the intersection of Pettit Street and Woodbine Street.
 - Topo Limits: Approximately 0.45 acres consisting of ~250 linear feet of Woodbine ROW and ~150 linear feet x 50' swath east along existing swale
 - SUE 'Level B' Limits: Within Woodbine Street ROW and utility easements within topo limits.
 - Easement Survey Document preparation (2)
 - Preliminary Design
 - Final Design

- Bid Administration Services
 - Construction Administration and Observation
3. Buckingham Drive and Tudor Drive: Project requires preliminary engineering analysis and design to mitigate street flooding and erosion along Buckingham Drive and Tudor Drive.
 - Topo Limits: Approximately 4.0 acres consisting of 950 linear feet of Buckingham Drive ROW and 750 linear feet of Tudor Drive ROW supplemented with hi-res ortho photo.
 - SUE 'Level B' Limits: Within ROW of Buckingham and Tudor within topo limits.
 - Easement Survey Document preparation (3)
 - *Design and Construction Services (by others)*
 4. Stewart Street and Sweetgum Street: Project requires preliminary engineering analysis and design to mitigate street flooding along Stewart Street between the intersections of Sweetgum and Leroy Streets.
 - Topo Limits: Approximately 5.0 acres consisting of 1,200 linear feet of Sweetgum ROW and 550 linear feet of Stewart Street ROW supplemented with hi-res ortho photo.
 - SUE 'Level B' Limits: Within ROW of Sweetgum and Stewart Streets within topo limits.
 - Easement Survey Document preparation (3)
 - *Design and Construction Services (by others)*
 5. Oak Creek Drive: Project requires new storm drain connections from Mystic Lane to Oak Creek Drive at two(2) locations on the western half of the subdivisions. Project also requires additional inlet capacity and storm drain on the east end of Oak Creek Drive.
 - Topo Limits: Approximately 4.5 acres combined; consisting of two swaths varied in width from Mystic Lane to Oak Creek Drive, 550 linear feet of Oak Creek Drive ROW (western end) and another 1,000 linear feet of Oak Creek Drive ROW (eastern end) all supplemented with LiDAR point cloud data and hi-res ortho photos.
 - SUE 'Level B' Limits: Within ROW of Mystic Lane and Oak Creek Drive and utility easement(s) within topo limits.
 - Easement Survey Document preparation (5)
 - *Design and Construction Services (by others)*
 6. Perry Motors: Project requires repair of existing storm drain from Old Lufkin Road to an inlet near the west face of the main building of Mike Perry Motor Company (South Street location).
 - Topo Limits: Approximately 450 linear feet by 50 feet wide swath from Old Lufkin Road to west face of existing main building supplemented with hi-res ortho photo.
 - SUE 'Level B' Limits: 30' swath along existing storm drain route within topo limits.
 - Preliminary Design
 - Final Design
 - Bid Administration Services
 - Construction Administration and Observation

7. Cardinal Street: Project requires re-route of existing storm drain outfall to the east bank of La Nana Bayou.
 - Topo Limits: Approximately 1.2 acres consisting of 400 linear feet of Cardinal Street ROW and 200 linear feet of creek bank along La Nana Bayou supplemented by LiDAR point cloud data collection and hi-res ortho photo.
 - SUE 'Level B' Limits: Within Cardinal Street ROW of topo limits.
 - Easement Survey Document preparation (2)
 - Preliminary Design
 - Final Design
 - Bid Administration Services
 - Construction Administration and Observation
8. Railroad Street Crossing: Project requires upstream and downstream erosion protections at existing culvert crossing on Railroad Street east of Leroy Street to prevent impending street damage and ultimate failure.
 - Topo Limits: Approximately 0.7 acre consisting of 400 linear feet of Railroad Street and 150 linear feet of channel supplemented by hi-res ortho photo.
 - SUE 'Level B' Limits: Within Railroad Street ROW
 - Easement Survey Document preparation (2)
 - Preliminary Design
 - Final Design
 - Bid Administration Services
 - Construction Administration and Observation
9. Glen Hollow Drive: Project requires culvert repair and headwall replacement on upstream and downstream pipe ends to prevent catastrophic failure.
 - Topo Limits: Approximately 0.3 acre consisting of 200 linear feet of Glen Hollow Drive and 150 linear feet of channel supplemented by LiDAR point cloud data and hi-res ortho photo.
 - SUE 'Level B' Limits: Within Glen Hollow Drive ROW of topo limits.
 - Easement Survey Document preparation (2)
 - Preliminary Design
 - Final Design
 - Bid Administration Services
 - Construction Administration and Observation
10. Creekview Bend Drive: Project requires local improvements to outfall structure and channel, storm drain pipe repair and improved inlet efficiencies to mitigate property flooding, erosion and potential structural foundation damage.
 - Topo Limits: Approximately 0.3 acre consisting of the main outfall channel and area at the cul-de-sac of Creekview Bend Drive, upstream sections of the drain originating from the northwest behind the south lots of Sheffield Drive and a tie to the inlet at the end of Sheffield Drive.
 - SUE 'Level B' Limits: Limited to outfall area at the end of Creekview Bend.
 - Easement Survey Document preparation (2)
 - Preliminary Design
 - Final Design
 - Bid Administration Services
 - Construction Administration and Observation

11. Lady Jennifer Drive: Project requires additional inlet capacity along Lady Jennifer Drive to mitigate property flooding and erosion.
 - Topo Limits: Approximately 0.6 acres consisting of 450 linear feet of Lady Jennifer Drive with tie to downstream inlet on Lady Elaine Drive (no topo along easement from Lady Jennifer to Lady Elaine) supplemented with hi-res ortho photo.
 - SUE 'Level B' Limits: Lady Jennifer ROW within topo limits.
 - *Design and Construction Services (by others)*
12. Pecan Park: Project requires repair of pipe, headwall, and erosion controls at existing outfall pipe near the west boundary of Pecan Acres Park.
 - Topo Limits: Approximately 1.2 2acres encompassing the existing outfall location and downstream channel to the existing culvert/low water crossing on Lanana Creek Trail east of Old Goodman Bridge supplemented with LiDAR point cloud data and hi-res ortho photo.
 - SUE 'Level B' Limits: Within topo limits.
 - Preliminary Design
 - Final Design
 - Bid Administration Services
 - Construction Administration Services
13. Waterford Circle: Project requires repair to downstream outfall works, outfall pipe repair, culvert crossing repair to mitigate street flooding, street damage, and property damage due to erosion.
 - Topo Limits: Approximately 0.5 acres consisting of 150 linear feet of Water Circle ROW and an approximate 200 linear feet by 75 wide swath along the existing storm outfall including upstream and downstream cross sections of the channel supplemented with LiDAR point cloud data and hi-res ortho photo.
 - SUE 'Level B' Limits: Public utilities within topo limits. Private irrigation and private storm will only be shown where evident from the surface.
 - Preliminary Design
 - Final Design
 - Bid Administration Services
 - Construction Administration Services
14. Colonial Drive: Project requires repair and extension of an existing storm drain outfall, headwall and erosion protections behind residences located at 3007 and 2915 Colonial Drive to combat property damage and erosion.
 - Topo Limits: Approximately 0.6 acres consisting of the area of interest situated in the back yard of 2915 Colonial Drive supplemented with LiDAR point cloud data and hi-res ortho photo.
 - SUE 'Level B' Limits: Within public utility easements transversing the area of interest.
 - Preliminary Design
 - Final Design
 - Bid Administration Services
 - Construction Administration Services

15. Old Tyler Road: Project requires analysis of existing road crossing near 312 Old Tyler Road to determine possible improvements that could effectively improve the efficiency of the existing crossing and reduce the potential of overtopping in high frequency (common) rainfall events.
 - Topo Limits: Approximately 0.4 acres consisting of the culvert crossing and cross-sections along 400 linear feet of outfall channel between Old Tyler Road and Banita Creek supplemented with LiDAR point cloud data and hi-res ortho photo.
 - SUE 'Level B' Limits: Old Tyler Road ROW within topo limits.
 - Engineering Study and Hydraulic Analysis
 - Preliminary Design
16. Bostwick Street: Project requires the replacement of failing corrugated metal pipe along Bostwick Street, west of Raguet Street.
 - Topo Limits: Approximately 1.5 acres consisting of 750 linear feet of Bostwick Street ROW, and critical features adjacent to the ROW, supplemented with hi-res ortho photo.
 - SUE 'Level B' Limits: Bostwick Street ROW within topo limits.
 - *Design and Construction Services (by others)*

BASIC SERVICES

1. Perform a topographic survey of each project location listed above. We will produce a topographic background data CAD drawing with one (1) foot interval contours, visible and apparent evidence of existing utilities, and visible features pertinent to the design of the proposed facilities within the boundary of the project area. Trees on private property with a caliper (DBH) of 12" and greater will be tied and identified within the project limits. We will also identify existing Right-of-Way (ROW) and perform a cursory search for record easements where necessary and identifiable. Horizontal and vertical control monuments will also be set as part of this effort.

Perform a Subsurface Utility Engineering study up to Quality Level 'B' of each location. We will work with City staff to identify and locate underground utilities as part of our Subsurface Utility Engineering work. The data will be collected and documented in the background CAD files utilized in the design of the improvements. We propose to provide subsurface utility engineering services to attempt to identify underground utilities up to Utility Quality Level 'B' (QLB) where Geophysical Methods are obtainable within our professional judgement in accordance ASCE/UESI/CI 38-22.

At this time, we have not included QLA efforts for exposing utilities. However, if locations are identified through the design process that require a higher level of quality than the proposed 'B', this service can be provided under a separate proposal. We will need locations at which this effort is requested in order to determine a scope and fee estimate.

2. Prepare preliminary design schematics and plans sufficient for estimating opinions of probable construction costs. Drawings will be overlain on background topographic maps. We will also use this preliminary design effort to identify any additional ROW or easements that will be necessary for installation and maintenance of the proposed improvements. Under this preliminary effort we will prepare and perform the necessary hydraulic calculations for sizing the proposed improvements. Please be advised the calculations will be for

design support only. No detailed flood mapping, FEMA mapping or reporting will be provided as part of the scope of this project.

3. Prepare the necessary civil engineering design plans and details required for bidding and construction of each project listed above, to included:
 - a. Plan Sheets showing demolition of existing structures, proposed structures and improvements, and all dimensions and notes as necessary for construction.
 - b. Plan Details for appurtenances and devices as necessary for construction.
 - c. All specifications necessary for construction.
4. Prepare a Bid Package following the current procurement procedures as required by the City of Nacogdoches for each project listed above. Assist in the bid phases as needed by answering requests for information, preparing addenda (if any), reviewing and tabulating the bids, and subsequently awarding the construction contract. We would also assist in reviewing any material submittals and attending/administering a pre-construction conference.
5. Construction administration and observation, including the review of material submittals, processing of change orders as required by conditions found in the field, review pay requests and other administrative tasks. We will conduct periodic site visits to determine construction progress and conformance with the design plans on behalf of the City, however full-time inspection (RPR) is not included in our fee estimate.

Construction Observation, including multiple site visits per week while utility construction is underway and active. Documenting testing results of proposed improvements as required by the construction documents, reporting conflicts to the Engineer of Record (EoR), gather data required for field changes (if necessary), and document activity per each visit.

We have estimated our time for Item 5 based upon a 9-month construction schedule. If construction exceeds 9-months we reserve the right to request additional fees.

6. Conduct necessary survey field work and property research to properly locate any required easements on the ground. Prepare survey plats for permanent and temporary easements and field note descriptions for permanent easements to be included in the Easement Agreement documents prepared by the City (typically referred to as Exhibits A and B). Based upon our review of the proposed project scope we estimate that as many as twenty-one (21) permanent and temporary easements may be required.

Items excluded from the work scope and fees listed in this **Basic Services** portion of the proposal include:

1. Traffic studies or traffic control warrants
2. Boundary surveys, title research, easement acquisition, and rights-of-entry.
3. Construction phase surveying and staking (limited staking coordinates will be provided upon request)
4. Storm Water Pollution Prevention Plan and associated required site inspections and administration.
5. Nationwide NPDES Permitting and associated administrative requirements.
6. Construction phase inspection services (RPR).
7. Geotechnical investigations and recommendations.
8. TDLR TAS review fees for accessibility compliance.
9. Subgrade de-watering system design.

COMPENSATION

- ❖ We propose to provide **BASIC SERVICES ITEMS 1-3** above for the Lump Sum Fees as follows:

ITEM 1	\$196,425.00
ITEM 2	\$38,255.00
ITEM 3	\$89,010.00
TOTAL FIXED FEE	\$323,690.00

- ❖ We propose to provide **BASIC SERVICES ITEMS 4-5** above on a time and materials (T&M) basis in accordance with the attached hourly schedule NOT TO EXCEED the following:

ITEM 4	\$10,680.00
ITEM 5	\$84,370.00

- ❖ We propose to provide **BASIC SERVICES ITEM 6** above on a per each basis in the amount \$2,250 per each easement NOT TO EXCEED the following:

ITEMS 6 (\$2,250/ea x 21) **\$47,250.00**

TOTAL FEE **\$465,990.00**

We anticipate the topographic data collection, SUE study, and processing portion of the work to require 120 calendar days to complete from authorization to proceed. Data will be published upon completion of each location. Preliminary design for the locations within our scope will require 30 days upon completion of the topographic and SUE phases of the work at each site. This will most likely represent a rolling window of time over a 120-day period. Final design for the locations within our scope will require 60 days upon acceptance of the preliminary design for each location. Again, we anticipate this representing a rolling window of time schedule tied to the survey efforts over a 120-day period.

We understand the various locations will have differing schedules based upon priority and budget. We will work with you to determine a reasonable schedule for completing milestone tasks for selected locations that may require immediate attention. Progress billings (as applicable) will be invoiced monthly commensurate with the progress of work completed.

As always, please do not hesitate to contact us if you have any questions or need any additional information.

Sincerely,

Two Fifteen Consulting

(TBPE F-17461) (TBPLS 10194339)



Michael Delaney, PE
Principal Engineer

Encl: Hourly Rate and Expense Schedule (2024-25)

Exhibit B
Payment Terms and Schedule

Payment is a fixed fee in the amount listed in paragraph 2.01 of this Contract. This amount shall be payable by the City pursuant to the schedule listed below and upon completion of the services and acceptance by the City. Construction Phase services shall be billed monthly at rates set forth in this section accompanied by an explanation of charges, professional fees, services and expenses. The City will pay invoices according to its normal payment procedures.

Schedule of Payment for each phase:

Design Survey	\$ 196,425.00
Preliminary Design	\$ 38,255.00
Final Design	\$ 89,010.00
Bidding Phase	\$ 10,680.00 (Hourly)
Construction Phase	\$ 84,370.00 (Hourly)
Easement Docs (\$2,250/ea x 21)	\$ 47,250.00 (Total)
Total	\$ 465,990.00

TWO FIFTEEN CONSULTING

ENGINEERS + SURVEYORS

HOURLY RATE AND EXPENSE SCHEDULE ~2024~

CATEGORY	DESCRIPTION	CHARGE UNITS	CHARGE RATE
ENGINEERS	PRINCIPAL PROFESSIONAL ENGINEER	HOURLY	\$225
	SENIOR PROFESSIONAL ENGINEER	HOURLY	\$175
	DESIGN ENGINEER II/PROJECT MANAGER	HOURLY	\$150
	DESIGN ENGINEER I	HOURLY	\$125
	ENGINEER-IN-TRAINING II	HOURLY	\$110
	ENGINEER-IN-TRAINING I	HOURLY	\$95
SURVEYORS	SENIOR REGISTERED PROFESSIONAL LAND SURVEYOR (RPLS)	HOURLY	\$175
	PROJECT RPLS II/PROJECT MANAGER	HOURLY	\$150
	PROJECT RPLS I	HOURLY	\$125
	SURVEYOR-IN-TRAINING II	HOURLY	\$110
	SURVEYOR-IN-TRAINING I	HOURLY	\$95
	SURVEY CREW (TWO-MAN)	HOURLY	\$140
	SURVEY CREW (THREE-MAN)	HOURLY	\$175
	SURVEY CREW (ONE-MAN)	HOURLY	\$105
DESIGNERS, TECHNICIANS, INSPECTORS	SENIOR DESIGNER/PROJECT MANAGER	HOURLY	\$125
	CIVIL DESIGNER III	HOURLY	\$95
	CIVIL DESIGNER II	HOURLY	\$85
	CIVIL DESIGNER I	HOURLY	\$75
	SENIOR SURVEY TECHNICIAN	HOURLY	\$95
	CIVIL/SURVEY TECHNICIAN III	HOURLY	\$75
	CIVIL/SURVEY TECHNICIAN II	HOURLY	\$65
	CIVIL/SURVEY TECHNICIAN I	HOURLY	\$55
	CONSTRUCTION INSPECTOR II	HOURLY	\$75
	CONSTRUCTION INSPECTOR I	HOURLY	\$55
ADMINISTRATIVE	ADMINISTRATIVE PROFESSIONAL	HOURLY	\$55
DIRECT EXPENSES			
PLOTING, COPYING & SCANNING	NORMAL COPIES AND PLOTS ARE INCLUDED IN HOURLY RATES		
	HIGH VOLUME SMALL FORMAT	COST	COST
	HIGH VOLUME LARGE FORMAT	COST	COST
SUPPORT VEHICLES & EQUIPMENT	PASSENGER VEHICLE	MILE	GOVT RATE
	ALL TERRAIN VEHICLE	DAY	\$200
	BOAT (ALUMINUM FLAT BOTTOM)	DAY	\$150
	GPS – RTK AND STATIC (PER RECIEVER)	DAY	\$150
	LASER TERRESTRIAL SCANNER	DAY	\$1,000
	UAV PHOTOGRAMMETRY DATA COLLECTION	FLIGHT	\$500
	UAV LIDAR DATA COLLECTION	FLIGHT	\$1,750
HOTELS, LODGING, AND MEALS	HOTELS AND LODGING	PER DIEM	GOVT RATE
	MEALS	PER DIEM	GOVT RATE
OUTSIDE CONSULTANTS	SPECIALTY EXPERTISE CONSULTANTS, ARCHITECTS, ENGINEERS, ENVIRONMENTAL SCIENTISTS, GEOLOGISTS, ETC.	COST	COST X 1.15

NORMAL COPIES INCLUDE MAPS, EXHIBITS, LETTERS, AND PLAN SHEETS USUALLY ASSOCIATED WITH TYPICAL PROJECTS.

GOVT RATE = DOMESTIC MAXIMUM PER DIEM AND MILEAGE RATES FOR KEY OFFICIALS (TEXAS)

9/4/2024

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

Storm Drainage Improvements – Two Fifteen Contract

- Bond-funded storm drainage improvements
- Selected by City Council on October 15, 2024 for services
- Design Surveying and Easement Documents for all project sites
- Engineering Design, Bidding and Construction Phase Services:
 - Woodbine Street
 - Perry Motors
 - Cardinal Street
 - Railroad Street Crossing
 - Glen Hollow Drive
 - Creekview Bend Drive
 - Pecan Park
 - Waterford Circle
 - Colonial Drive (south of Austin)
 - Old Tyler Road (Engineering Study)



Photo: www.ncnewsonline.com

Storm Drainage Improvements – Two Fifteen Contract

- Fee Breakdown as follows:
 - Design Survey \$ 196,425.00
 - Preliminary Design \$ 38,255.00
 - Final Design \$ 89,010.00
 - Bidding Phase \$ 10,680.00 (Hourly)
 - Construction Phase \$ 84,370.00 (Hourly)
 - Easements \$ 47,250.00 (Total)

Total (Not to Exceed) \$ 465,990.00

Budget is available for contract



Photo: www.ncnewsonline.com



City Council Meeting

Date: February 4, 2025

Agenda Item: 6.E.

PRESENTER: Jessica Sowell, Community Services Director

ITEM/SUBJECT: Discuss and consider a donation from the Parks Advocacy League in the amount of \$28,126.00 for park benches and picnic tables. (Community Services Director)

SUMMARY/BACKGROUND: The Parks Advocacy League (PAL), formed in June 2014 with the goal of improving parks in Nacogdoches, has worked on several major park projects and has contributed to the ongoing improvements of all our city parks. Through multiple fundraisers and events, the Parks Advocacy League has raised \$28,126.00 to be donated to the City of Nacogdoches Parks Department. These funds will be used to purchase shaded benches at Robert McCrimmon Park and Ritchie Street Park and picnic tables for Robert McCrimmon Park.

FINANCIAL:

Item is not budgeted - Donation

Account No.: 24 559.70

Account Name:

Amount: \$28,126.00

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. PAL Donation -PPT

Parks Advocacy League Donation

Nacogdoches Parks & Recreation Divisions



Donation Details

The Parks Advocacy League (PAL), formed in 2014 with the goal of improving Parks in Nacogdoches and has been a staunch supporter of the Parks and Recreation Divisions for the past 10 years. After the completion of the Splashadoches project, PAL's annual fundraisers, including the very successful Community Heroes Hoops Basketball Tournament, have raised funds with the intent to improve Robert McCrimmon Park.

Donation will fund:

- 3 covered benches
 - 2 - McCrimmon Park, 1 - Ritchie Street Park
- 2 picnic tables (McCrimmon)

Donation Amount- \$28,125.38

Thank you PAL Nacogdoches!



PRESENTER: Case Opperman, Director of Public Works

ITEM/SUBJECT: Consider approval of proposed updates to the ordinance of the City of Nacogdoches, Texas, Amending Chapter 106 – “Utilities”, Article VIII – “Extension of Water and Sanitary Sewer Systems”, 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. (Director of Public Works)

SUMMARY/BACKGROUND: Pursuant to Chapter 552.001 et seq. of the Texas Local Government Code, the City of Nacogdoches has been authorized to operate and maintain a utility system inside or outside the municipal boundaries and regulate it in a manner that protects the interests of the municipality. Further, the City is also granted the authority to extend the lines of its utility systems outside the municipal boundaries; sell water and sewer service to any person outside its boundaries; and contract with persons outside its boundaries to permit them to connect with those utility systems on terms the municipality considers to be in its best interest.

The City of Nacogdoches is further authorized under Article II, §10 of its Charter to buy, own, or construct, and to maintain and operate, within or without the City limits, a water system, sewer system, or any other public service utility, and to demand and receive compensation for services furnished by the City for private purposes or otherwise, and to have the power to regulate, by ordinance, the collection of compensation for such services.

In accordance with such authority, the City Council has previously adopted Section 106-672 of the Code of Ordinances related to requests from property owners and developers seeking main line extensions of water and sanitary sewer for the purpose of development. The proposed amendment to Section 106-672 seeks to clarify the requirements for reimbursement from the City for these line extensions as provided in this section of the Code. Further, the amendment also seeks to clarify the requirements for any requests for extensions of water and sewer to property located outside of the city limits, either in whole or in part.

While anticipated later this fiscal year, no mainline extension reimbursement requests have been proposed as of January 2025. Total amounts from prior agreements executed for this purpose were \$170,073.75 in fiscal year 2024 and \$86,709.00 in fiscal year 2023. These agreements resulted in approximately 700 LF of sewer and 250 LF of water lines being added to the City's infrastructure.

FINANCIAL:

Item is budgeted:

Account No.: 30.36 680.97

Account Name: *Water Production - CIP*

Amount: \$ 250,000

Account No.: 30.39 680.97

Account Name: *Wastewater Treatment - CIP*

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
oppermanc@nactx.us
(936) 559-2515

ATTACHMENTS: 1. Ordinance_106-672_Main Extensions

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF NACOGDOCHES, TEXAS, AMENDING CHAPTER 106 – “UTILITIES”, ARTICLE VIII – “EXTENSION OF WATER AND SANITARY SEWER SYSTEMS”, 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, pursuant to Chapter 552.001 et seq. of the Texas Local Government Code, the City of Nacogdoches, among other powers granted, may purchase, construct, or operate a utility system inside or outside the municipal boundaries and may regulate the system in a manner that protects the interests of the municipality; and

WHEREAS, the City is also granted the authority to extend the lines of its utility systems outside the municipal boundaries; sell water and sewer service to any person outside its boundaries; and contract with persons outside its boundaries to permit them to connect with those utility systems on terms the municipality considers to be in its best interest; and

WHEREAS, the City of Nacogdoches is further authorized under Article II, §10 of its Charter to buy, own or construct, and to maintain and operate, within or without the City limits, a complete water system or systems...sewer systems...or any other public service utility, and to demand and receive compensation for services furnished by the City for private purposes or otherwise, and to have the power to regulate, by ordinance, the collection of compensation for such services; and

WHEREAS, the City Council of the City of Nacogdoches has adopted ordinances for the purpose of regulating the City’s water and sewer systems, to include the extension of water and sewer main service lines for purposes of development; and

WHEREAS, 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 106 – “UTILITIES”, ARTICLE VIII. – “EXTENSION OF WATER AND SANITARY SEWER SYSTEMS” of the Code of Ordinances of the City of Nacogdoches, Texas, is hereby amended, as set hereafter to read as follows:

Sec. 106-672. - Main extensions within the city limits.

(a) On-site extensions, totally within property to be developed.

(1) A developer shall be responsible for the design, construction and all related costs of extensions to the city water and sewer systems that lie totally within a development, except that the city may refund the oversize cost as established in this article.

(b) Along-site extensions, lying along one or more sides or street frontages of a property to be developed and serving property other than the tract for which the extensions are made.

(1) A developer shall be responsible for the design, construction and all related costs of extensions to the city water and sewer systems that lie ~~along side~~ alongside the property being developed. Such extension shall be required to extend at least to the mid-point of the developer's frontage along a dedicated, improved public street. The developer may be refunded any oversize cost as established in this article.

(c) Off-site extensions, totally outside of and not along-site of property to be developed.

(1) A developer shall be responsible for the design, construction and all related costs of line extensions to the city water and sewer systems that lie outside the boundaries and frontages (off-site) of the property being developed. Such extension shall be required to extend at least to the mid-point of the developer's frontage.

(2) The city shall be responsible for the design, construction and related costs of line extensions to the city water and sewer systems that are within the boundaries of city-owned property other than street rights-of-way, dependent upon city priorities and funding availability.

(d) ~~Exemption-Reimbursement~~ for ~~the first 100/500 feet of~~ along-site and off-site line extensions.

~~(1) To~~ Upon the request of an owner or developer seeking to provide new water or sewer service to a development, the city may consider reimbursement be responsible for of a portion of the design, construction and related costs of ~~the first 100 feet~~ a line extension, subject to the requirements specified in this subsection; ~~To provide new service to a commercial, industrial, institutional, multi-family or subdivision (two or more lots) development, the city may be responsible for the design, construction and related costs of the first 500 feet of a line extension. Such~~

(2) Approval and potential reimbursement for any ~~Such such~~ extensions shall be accomplished solely at the discretion of and in an order of priority set by the city council; ~~and~~

(3) Reimbursements may be approved only if sufficient funds are available; ~~;~~

- (4) Any reimbursements for an individual lot within a zoning district restricted to single-family development shall be limited to 100 feet total of along-site or off-site line extension (water, sewer, or some combination thereof);
- (5) Any reimbursements for a residential subdivision (two or more lots), multi-family, or nonresidential development shall be limited to 500 feet total of along-site or off-site line extension (water, sewer, or some combination thereof);
- (6) Such extension shall be placed within public rights-of-way or in an easement to the city in a form acceptable to the city to be provided by the developer or owner-; and
- (7) Such extension reimbursement by the city shall be one time only for a particular developer or owner to serve a specific area, lot, or tract ~~of~~ located within the city.
- (e) Easements. If easements are necessary to extend a water or sewer main to the area, lot or tract of land to be developed, then the owner or developer of the property seeking a connection or extension shall secure the easements in accordance with city requirements. Minimum easement width shall be 20 feet. All easements shall be granted to the city in a form acceptable to the city and with satisfactory independent proof of fee title.
- (f) The provisions of this section shall apply only for the extension of a main to serve an area, lot or tract located entirely within the corporate limits of the city. If any portion of the subject area, lot, or tract is located outside the city limits, an application for a main extension must be submitted to the city as specified in subsection (g) below. With approval of the city, main extensions may be made to serve property outside the corporate limits, however, the developer or owner shall be responsible for all costs associated with the extension and must perform all design, construction and easement acquisition in accordance with city standards. There shall be no reimbursement or cost sharing provided by the city for extensions to serve property or facilities outside the corporate limits.
- ~~(f)~~(g) Applications for water and sewer line extensions to serve property located outside the city limits may be submitted to the city for review and consideration. An application must be accompanied by a written request for annexation of the applicant's property. Approval of such applications shall be granted solely at the discretion of the city council. If approved, an agreement shall be executed with the owner and/or developer specifying the terms for the proposed main extensions.
- ~~(g)~~(h) The intention of sections 106-671 through 106-679 shall not be defeated by an owner or developer of multiple lots or a large or subdivided tract making multiple requests or successive subdivision in a manner which results in multiple exceptions ~~for the first 100/500 feet of to city~~ line extension requirements or related reimbursements.

(Ord. No. 1392-11-05, 11-15-2005; Ord. No. 1535-11-09, § 3, 11-17-2009)

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 106 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 _____, 2025, 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:

Jerry Baker, City Attorney

APPROVED AS TO CONTENT:

Case Opperman, Director of Public Works



City Council Meeting

Date: February 4, 2025

Agenda Item: 6.G.

PRESENTER: Rick Beverlin, City Manager

ITEM/SUBJECT: Consider approval of an ordinance for the electric franchise with Oncor Electric Delivery and the City of Nacogdoches. (City Manager)

SUMMARY/BACKGROUND: The City of Nacogdoches electric franchise with Oncor Electric Delivery will expire on February 19, 2025. Enclosed is a proposed electric franchise renewal ordinance for the City of Nacogdoches. The proposed franchise has been prepared utilizing Oncor's standard franchise language and incorporates existing payment provisions as contained in the current franchise and franchise amendments. In addition, the franchise proposes a term of 20 years and expires on July 31, 2045.

FINANCIAL:

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

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

ATTACHMENTS:

1. Cover Letter_City of Nacogdoches (1)
2. Proposed Electric Franchise Agreement City of Nacogdoches (1)



Daniel Talamantez
Regulatory Manager,
External Affairs

Oncor Electric Delivery

1616 Woodall Rodgers Fwy
Suite 6A-011
Dallas, TX 75202-1234

Tel: 214-486-2012

Fax: 214-486-2180

Daniel.Talamantez@Oncor.com

September 24, 2024

Hon. Randy Johnson
Mayor
City of Nacogdoches
202 E. Pillar St.
Nacogdoches, TX 75963

Dear Mayor Johnson:

As you are aware, the City of Nacogdoches electric franchise with Oncor Electric Delivery will expire on February 19, 2025. Enclosed is a proposed electric franchise renewal ordinance for the City of Nacogdoches. The proposed franchise has been prepared utilizing our standard franchise language and incorporates existing payment provisions as contained in the current franchise and franchise amendments. In addition, the franchise proposes a term of 20 years, and expires on July 31, 2045.

We will be contacting you within the next few weeks to determine how you would like to proceed to finalize the franchise. If you have any questions or comments concerning the proposed franchise, please feel free to call me at 214-486-2012 or you may also reach me via e-mail at Daniel.Talamantez@Oncor.com.

Sincerely,

A handwritten signature in black ink, reading "Daniel Talamantez". The signature is written in a cursive, flowing style.

Enclosure
cc: Nolan Smith

ORDINANCE NO. _____

AN ORDINANCE GRANTING TO ONCOR ELECTRIC DELIVERY COMPANY LLC, ITS SUCCESSORS AND ASSIGNS, AN ELECTRIC POWER FRANCHISE TO USE THE PRESENT AND FUTURE STREETS, ALLEYS, HIGHWAYS, PUBLIC UTILITY EASEMENTS, PUBLIC WAYS AND PUBLIC PROPERTY OF THE CITY OF NACOGDOCHES, TEXAS, PROVIDING FOR COMPENSATION THEREFOR, PROVIDING FOR AN EFFECTIVE DATE AND A TERM OF SAID FRANCHISE, PROVIDING FOR WRITTEN ACCEPTANCE OF THIS FRANCHISE, PROVIDING FOR THE REPEAL OF ALL EXISTING FRANCHISE ORDINANCES TO ONCOR ELECTRIC DELIVERY COMPANY LLC, ITS PREDECESSORS AND ASSIGNS, AND FINDING THAT THE MEETING AT WHICH THIS ORDINANCE IS PASSED IS OPEN TO THE PUBLIC.

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

SECTION 1. GRANT OF AUTHORITY. That there is hereby granted to Oncor Electric Delivery Company LLC, its successors and assigns (herein called "Company"), the right, privilege and franchise to construct, extend, maintain and operate in, along, under and across the present and future streets, alleys, highways, easements held by the City to which the City holds the property rights in regard to use for utilities, public ways and other public property ("Public Rights-of-Way" or "Rights-of-Way") of the City of Nacogdoches, Texas (herein called "City") electric power lines, with all necessary or desirable appurtenances (including underground conduits, poles, towers, wires, transmission lines, telephone and communication lines, and other structures for Company's own use), (herein called "Facilities") for the purpose of delivering electricity to the City, the inhabitants thereof, and persons, firms and corporations beyond the corporate limits thereof, for the term set out in Section 7.

SECTION 2. Poles, towers and other structures shall be so erected as not to unreasonably interfere with traffic over streets, alleys and highways.

SECTION 3. The City reserves the right to lay, and permit to be laid, storm, sewer, gas, water, wastewater and other pipe lines, cables, and conduits, or other improvements and to do and permit to be done any underground or overhead work that may be necessary or proper in, across, along, over, or under Public Rights-of-Way occupied by Company. The City also reserves the right to change in any manner any curb, sidewalk, highway, alley, public way, street, utility lines (or in the case of utility line owned by Company, to require that change by Company), storm sewers, drainage basins, drainage ditches, and the like. City shall provide Company with at least thirty (30) days' notice when requesting Company to relocate facilities and shall specify a new

location for such facilities along the Public Rights-of-Way. Company shall, except in cases of emergency conditions or work incidental in nature, obtain a permit, if required by City ordinance, prior to performing work in the Public Rights-of-Way, except in no instance shall Company be required to pay fees or bonds related to its use of the Public Rights-of-Way, despite the City's enactment of any ordinance providing the contrary. Company shall construct its facilities in conformance with the applicable provisions of the National Electrical Safety Code. City-requested relocations of Company facilities in the Public Rights-of-Way shall be at the Company's expense; provided however, if the City is the end use Retail Customer (customer who purchases electric power or energy and ultimately consumes it) requesting the removal or relocation of Company Facilities for its own benefit, or the project requiring the relocation is solely aesthetic/beautification in nature, it will be at the total expense of the City. Provided further, if the relocation request includes, or is for, the Company to relocate above-ground facilities to an underground location, City shall be fully responsible for the additional cost of placing the facilities underground.

If any other corporation or person (other than City) requests Company to relocate Company facilities located in City Rights-of-Ways, the Company shall not be bound to make such changes until such other corporation or person shall have undertaken, with good and sufficient bond, to reimburse the Company for any costs, loss, or expense which will be caused by, or arises out of such change, alteration, or relocation of Company's Facilities. City may not request the Company to pay for any relocation which has already been requested, and paid for, by any entity other than City.

If City abandons any Public Rights-of-Way in which Company has facilities, such abandonment shall be conditioned on Company's right to maintain its use of the former Public Rights-of-Way and on the obligation of the party to whom the Public Rights-of-Way is abandoned to reimburse Company for all removal or relocation expenses if Company agrees to the removal or relocation of its facilities following abandonment of the Public Rights-of-Way. If the party to whom the Public Rights-of-Way is abandoned requests the Company to remove or relocate its facilities and Company agrees to such removal or relocation, such removal or relocation shall be done within a reasonable time at the expense of the party requesting the removal or relocation. If relocation cannot practically be made to another Public Rights-of-Way, the expense of any right-of-way acquisition shall be considered a relocation expense to be reimbursed by the party requesting the relocation.

SECTION 4.

A. In consideration of the granting of this Franchise, Company shall, at its sole cost and expense, indemnify and hold the City, and its past and present officers, agents and employees harmless against any and all liability arising from suits, actions or claims regarding injury or death to any person or persons, or damages to any property arising out of or occasioned by the intentional and/or negligent acts or omissions of Company or any of its officers, agents, or employees in connection with Company's construction, maintenance and operation of Company's Facilities in the City Public Rights-of-Way, including any court costs, reasonable expenses and reasonable defenses thereof.

B. This indemnity shall only apply to the extent that the loss, damage, death or injury is attributable to the negligence or wrongful act or omission of the Company or its officers, agents or employees, and does not apply to the extent such loss, damage, death or injury is attributable to the negligence or wrongful act or omission of the City or the City's officers, agents, or employees or any other person or entity. This provision is not intended to create a cause of action or liability for the benefit of third parties but is solely for the benefit of Company and the City.

C. In the event of joint and concurrent negligence or fault of both Company and the City, responsibility and indemnity, if any, shall be apportioned comparatively between the City and Company in accordance with the laws of the state of Texas without, however, waiving any governmental immunity available to the City under Texas law and without waiving any of the defenses of the parties under Texas law. Further, in the event of joint and concurrent negligence or fault of both Company and the City, responsibility for all costs of defense shall be apportioned between the City and Company based upon the comparative fault of each.

D. In fulfilling its obligation to defend and indemnify City, Company shall have the right to select defense counsel, subject to City's approval, which will not be unreasonably withheld. Company shall retain defense counsel within seven (7) business days of City's written notice that City is invoking its right to indemnification under this franchise. If Company fails to retain counsel within such time period, City shall have the right to retain defense counsel on its own behalf, and Company shall be liable for all reasonable defense costs incurred by City, except as otherwise provided in section 4.B. and 4.C.

SECTION 5. This franchise is not exclusive, and nothing herein contained shall be construed so as to prevent the City from granting other like or similar rights, privileges and franchises to any other person, firm, or corporation. Any Franchise granted by the City to any

other person, firm, or corporation shall not unreasonably interfere with this Franchise.

SECTION 6. In consideration of the grant of said right, privilege and franchise by the City and as full payment for the right, privilege and franchise of using and occupying the said Public Rights-of-Way, and in lieu of any and all occupation taxes, assessments, municipal charges, fees, easement taxes, franchise taxes, license, permit and inspection fees or charges, street taxes, bonds, street or alley rentals, and all other taxes, charges, levies, fees and rentals of whatsoever kind and character which the City may impose or hereafter be authorized or empowered to levy and collect, excepting only the usual general or special ad valorem taxes which the City is authorized to levy and impose upon real and personal property, sales and use taxes, and special assessments for public improvements, Company shall pay to the City the following:

- A. As authorized by Section 33.008(b) of PURA, the original franchise fee factor calculated for the City in 2002 was 0.002569 (the "Base Factor"), multiplied by each kilowatt hour of electricity delivered by Company to each retail customer whose consuming facility's point of delivery is located within the City's municipal boundaries for determining franchise payments going forward.

Due to a 2006 agreement between Company and City the franchise fee factor was increased to a franchise fee factor of 0.002697 (the "Current Factor"), multiplied by each kilowatt hour of electricity delivered by Company to each retail customer whose consuming facility's point of delivery is located within the City's municipal boundaries on an annual basis.

However, consistent with the 2006 agreement, should the Public Utility Commission of Texas at any time disallow Company's recovery through rates of the higher franchise payments made under the Current Factor as compared to the Base Factor, then the franchise fee factor shall immediately revert to the Base Factor of 0.002569 and all future payments, irrespective of the time period that is covered by the payment, will be made using the Base Factor.

1. The annual payment will be due and payable on or before August 1 of each year throughout the life of this franchise. The payment will be based on each kilowatt hour

of electricity delivered by Company to each retail customer whose consuming facility's point of delivery is located within the City's municipal boundaries during the preceding twelve month period ended June 30 (July 1 through June 30). The payment will be for the rights and privileges granted hereunder for the twelve calendar month period (August 1 through July 31) following the payment date.

2. The first payment hereunder shall be due and payable on or before August 1, 2025 and will cover the basis period of July 1, 2024 through June 30, 2025 for the privilege period of August 1, 2025 through July 31, 2026. The final payment under this franchise is due on or before August 1, 2044 and covers the basis period of July 1, 2043 through June 30, 2044 for the privilege period of August 1, 2044 through July 31, 2045; and
3. After the final payment date of August 1, 2044, Company may continue to make additional annual payments in accordance with the above schedule. City acknowledges that such continued payments will correspond to privilege periods that extend beyond the term of this Franchise and that such continued payments will be recognized in any subsequent franchise as full payment for the relevant annual periods.

B. A sum equal to four percent (4%) of gross revenues received by Company from services identified as DD1 through DD24 in Section 6.1.2 "Discretionary Service Charges," in Oncor's Tariff for Retail Delivery Service (Tariff), effective 1/1/2002, that are for the account and benefit of an end-use retail electric consumer. Company will, upon request by City, provide a cross reference to Discretionary Service Charge numbering changes that are contained in Company's current approved Tariff.

1. The franchise fee amounts based on "Discretionary Service Charges" shall be calculated on an annual calendar year basis, i.e. from January 1 through December 31 of each calendar year.
2. The franchise fee amounts that are due based on "Discretionary Service Charges" shall be paid at least once annually on or before April 30 each year based on the total "Discretionary Service Charges", as set out in Section 6.B., received during the preceding calendar year. The initial Discretionary Service Charge franchise fee amount will be paid on or before April 30, 2025 and will be based on the calendar year January 1 through December 31, 2024. The final Discretionary Service Charge franchise fee amount will be paid on or before April 30, 2046 and will be based on the calendar months of January 1, 2045 through July 31, 2045.

3. Company may file a tariff or tariff amendment(s) to provide for the recovery of the franchise fee on Discretionary Service Charges.
4. City agrees (i) to the extent the City acts as regulatory authority, to adopt and approve that portion of any tariff which provides for 100% recovery of the franchise fee on Discretionary Service Charges; (ii) in the event the City intervenes in any regulatory proceeding before a federal or state agency in which the recovery of the franchise fees on such Discretionary Service Charges is an issue, the City will take an affirmative position supporting the 100% recovery of such franchise fees by Company and; (iii) in the event of an appeal of any such regulatory proceeding in which the City has intervened, the City will take an affirmative position in any such appeals in support of the 100% recovery of such franchise fees by Company.
5. City agrees that it will take no action, nor cause any other person or entity to take any action, to prohibit the recovery of such franchise fees by Company.
6. In the event of a regulatory disallowance of the recovery of the franchise fees on the Discretionary Service Charges, Company will not be required to continue payment of such franchise fees.

SECTION 7. This Ordinance shall become effective upon Company's written acceptance hereof, said written acceptance to be filed by Company with the City within sixty (60) days after final passage and approval hereof by City. The right, privilege and franchise granted hereby shall expire on July 31, 2045; provided that, unless written notice of cancelation is given by either party hereto to the other not less than sixty (60) days before the expiration of this franchise agreement, it shall be automatically renewed for an additional period of six (6) months from such expiration date and shall be automatically renewed thereafter for like periods until canceled by written notice given not less than sixty (60) days before the expiration of any such renewal period.

SECTION 8. This Ordinance shall supersede any and all other franchises granted by the City to Company, its predecessors and assigns.

SECTION 9. The sections, paragraphs, sentences, clauses and phrases of this Ordinance are severable. If any portion of this Ordinance is declared illegal or unconstitutional by the valid final non-appealable judgment or decree of any court of competent jurisdiction, such illegality or unconstitutionality shall not affect the legality and enforceability of any of the remaining

portions of this Ordinance.

SECTION 10. In order to accept this franchise, Company must file with the City Secretary its written acceptance of this franchise ordinance within sixty (60) days after its final passage and approval by City.

SECTION 11. It is hereby officially found that the meeting at which this Ordinance is passed is open to the public and that due notice of this meeting was posted by City, all as required by law.

PASSED AND APPROVED at a regular meeting of the City Council of Nacogdoches, Texas, on this the ____ day of _____, 2024.

Mayor
The City of Nacogdoches

ATTEST:

City Secretary

STATE OF TEXAS §
COUNTY OF NACOGDOCHES §
CITY OF NACOGDOCHES §

PRESENTER: Mike Neu, Executive Director of Development and Infrastructure

ITEM/SUBJECT: Discuss and consider possible action to approve a contract between the City of Nacogdoches and The Goodman Corporation for professional services related to downtown project planning, development, funding, and implementation in the total amount not to exceed \$249,724.00.

SUMMARY/BACKGROUND: Staff is seeking Council approval to enter into a contract with The Goodman Corporation (TGC) to provide professional consulting services for developing Downtown Nacogdoches planning and implementation strategies. The contract scope of services will result in the following:

- Identification of funding opportunities critical for implementing each of the strategic projects.
- Further development of the strategic projects in preparation for the design phase.
- Analysis critical for defining downtown Nacogdoches' parking needs.
- Documentation critical for future funding pursuits specific to each strategic project.

The City desires to fulfill this scope of services within a six-month timeline. In doing so, TGC understands the currently identified strategic projects as (1) Development of a centralized parking facility; (2) Amenitization of Festival Park, including as the potential home for a Stephen F. Austin University sports facility; (3) Enhancing and adding amenities along Banita Creek; and (4) Review of the existing public property and buildings, their potential for repurposing, identification of their highest and best use, and identification of potential locations for administrative buildings.

The total amount for contracted services proposed is \$249,724.00 and would consist of monthly payments to TGC subject to the completion of tasks and progress reports described within the contract scope. Tasks also include engagement with a stakeholder committee and participation in public meetings.

Although this proposed item is not identified in the Fiscal Year 2025 adopted budget, General Fund savings are anticipated from within the City Manager departmental budget (vacant Chief of Staff position) as well as other areas. An amendment to reconcile budgetary changes upon approval of this contract will be brought to Council for future consideration.

FINANCIAL:

Item is not budgeted (*Budget Amendment required*):

Account No: 01

Account Name: *General Fund*

Amount: \$249,724.00

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

CITY CONTACT: Mike Neu, Executive Director of Development and Infrastructure
neum@nactx.us
(936) 559-2522

ATTACHMENTS: 1. Proposed Contract

**MASTER SERVICES AGREEMENT BETWEEN THE GOODMAN CORPORATION
AND THE CITY OF NACOGDOCHES**

THIS MASTER SERVICES AGREEMENT (“Agreement”) was made and originally entered into on the ____ day of _____, 2025 by and between **The Goodman Corporation, a Texas corporation, having an office at 3200 Travis Street Suite 200, Houston, Texas, 77006** (hereinafter referred to as “TGC”), and City of Nacogdoches , having its principal place of business address at 202 E. Pilar Street, Nacogdoches, Texas 75961 (hereinafter referred to as “Owner”).

WITNESSETH

WHEREAS, Owner has identified the need for professional services related to project planning, development, funding, and implementation.

WHEREAS, Owner has issues a Request for Qualification/Proposal for Downtown planning and implementation services

WHEREAS, Owner has selected Consultant to perform professional services as described within the Request for Qualification/Proposal;

WHEREAS, Owner desires to retain Consultant to perform various professional services in accordance with the Scope and Budget as described in Exhibit A;

WHEREAS, Consultant agrees to all requirements contained in Client’s Request for Proposal, and all representations contained with the Consultant’s response are specifically incorporated by reference as an integral part of this Contract, with equal legal effect;

NOW, THEREFORE, IT IS HEREBY AGREED that TGC and Owner should enter into an Agreement for performance of professional services pursuant to the following terms and conditions:

ARTICLE I: SCOPE OF SERVICES

TGC agrees to undertake, perform, and complete in an expedient, satisfactory, and proper manner all of the Services required by Owner set forth in Exhibit A attached hereto and made a part hereof.

ARTICLE II: CONTRACT PERIOD

This Agreement becomes effective when fully executed by all parties, and it will terminate on completion of all obligations of the Services by all parties.

ARTICLE III: COORDINATION AND REPORTS

A. Coordination. Data, analyses, findings, and recommendations prepared in the performance of this work shall be reviewed and coordinated with Owner during performance of the work program by TGC.

B. Inspection of Work. TGC shall permit Owner to inspect and review activities relating to its performance under this Agreement. TGC shall maintain complete and accurate records with respect to its performance under this Agreement. All such records shall be maintained in accordance with generally accepted accounting principles and shall be clearly identified and readily accessible at all reasonable times.

C. Brief Progress Reports. TGC shall submit monthly progress reports to Owner. These reports shall outline work accomplished by task during the previous month or since the last progress report. These reports shall include, but shall not be limited to, the percentage of completion of the overall work product, special problems or delays encountered or anticipated, changes in the estimated cost or the anticipated work activities for the next work period, and a brief description of work accomplished, methodologies used, and conclusions reached, if any. Progress reports shall be prepared according to a format approved by Owner.

ARTICLE IV: COMPENSATION

TGC shall be paid the sums set forth under Exhibit A attached hereto and made a part hereof. Any increase in compensation to Consultant shall be conditioned on amending this agreement.

ARTICLE V: METHOD AND SCHEDULE OF PAYMENT

A. Payment Requests. TGC shall submit monthly invoices for services rendered in accordance with the compensation method described in Exhibit A. Invoices shall be submitted to Owner accompanied by a progress report as described in ARTICLE III: Coordination and Reports.

B. Adjustments. In the event of a change in scope, complexity, or character of the work to be performed, and with the concurrence of Owner, the fees specified in ARTICLE IV: Compensation may be adjusted in accordance with the provision of ARTICLE VI: Changes of this Agreement by amending this original agreement.

C. Final Payment. TGC shall submit a final invoice, so designated, for the contracted work within thirty (30) days of the close of this Agreement.

ARTICLE VI: CHANGES

Owner, from time to time, may require changes in the Scope of Services to be performed hereunder, provided TGC agrees in writing. Changes, including any increase or decrease in the amount of TGC's compensation, which are mutually agreed upon by and between TGC and Owner, shall be incorporated in written Amendment to this Agreement.

ARTICLE VII: OWNERSHIP OF MATERIALS

All maps, drawings, documents, data, reports, research, graphic presentation materials, etc., developed by TGC as a part of its work under this Agreement, shall become the property of Owner upon completion of this Agreement, or in the event of termination or cancellation thereof, at the time of payment under ARTICLEIV: Compensation for work performed. All such data and material shall be furnished to Owner on request. All documents, including, but not limited to, drawings, specifications, and data or programs stored electronically, prepared by TGC pursuant to this Agreement are related exclusively to the services described herein. Any reuse without written verification of adaptation by Owner to specific purposes intended will be at Owner's sole risk and without liability or legal exposure to TGC.

ARTICLE VIII: TERMINATION

Owner may terminate this Agreement, in whole or in part, when it is in Owner's interest, by providing TGC a minimum of thirty (30) days prior written notice. If this Agreement is terminated, Owner shall be liable only for payment under the payment provisions of this Agreement for services rendered before the effective date of termination.

A. Procedure. In the event of such termination prior to completion of the Services provided for in Exhibit A, Owner agrees to pay TGC for work actually performed. TGC shall submit a final invoice, so designated, for the contracted work actually completed less payment of any compensation previously paid.

B. Default. Owner may, by written notice of default to TGC, terminate the whole or any part of this Agreement in any one of the following circumstances:

- 1) If TGC fails to perform the work called for by this Agreement within the time specified herein or any extension thereof; or
- 2) If TGC fails to perform any of the other provisions of this Agreement, or so fails to prosecute the work as to endanger performance of this Agreement in accordance with its terms, and in either of these two circumstances does not cure such failure

within a period of ten (10) days (or such extension as authorized by Owner in writing) after receiving notice of default.

In such event, TGC shall be paid for Services actually performed, based upon the judgment of Owner to the date of notification of default, less payment of any compensation previously paid.

ARTICLE IX: PROHIBITED INTEREST

No employee, officer, or agent of TGC shall participate in selection or in the award of administration of a contract if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when:

- the employee, officer, or agent;
- any member of his or her immediate family;
- his or her partner; or
- an organization which employs, or is about to employ, such individuals;

has a financial or other interest in the firm selected for award. TGC's officers, employees, or agents shall neither solicit nor accept gratuities, favors, or anything of monetary value potential Subconsultants, or parties of subcontracts with this Agreement.

ARTICLE X - ASSIGNABILITY

TGC may subcontract a portion of the services to be performed hereunder to firms with complementary disciplines to perform the Scope of Work defined in Exhibit A. All subconsultants retained by TGC shall adhere to the terms of this Agreement. If any portion of this Agreement is assigned, TGC shall not be relieved from any of the terms of this Agreement.

ARTICLE XI - SEVERABILITY

In the event that any one or more of the provisions contained in this Agreement shall be held to be invalid, illegal, or unenforceable in any respect, then such invalidity, illegality, or unenforceability shall not affect any other provisions of this Agreement, and all other provisions shall remain in full force and effect. If any provision of this Agreement is held to be excessively broad, then that provision shall be reformed and construed by limiting and reducing it to be enforceable to the maximum extent permitted by law.

ARTICLE XII – VENUE

Venue and jurisdiction of any suit, right, or cause of action arising under or in connection with the Agreement shall lie exclusively within Nacogdoches County, Texas.

ARTICLE XIII: COVENANT AGAINST CONTINGENT FEES

TGC warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for TGC, to solicit or secure this Agreement and that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for TGC, any fee, commission, percentage, brokerage fee, gift, or other consideration contingent upon or resulting from the award or making of this Agreement. For breach of violation of this warranty, Owner shall have the right to annul this Agreement without liability, or at its discretion to deduct from this Agreement, the price of consideration or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

ARTICLE XIV: INDEMNIFICATION

TGC SHALL INDEMNIFY AND HOLD HARMLESS OWNER, AND THEIR RESPECTIVE OFFICERS, AGENTS, AND EMPLOYEES AGAINST ANY AND ALL CLAIMS, DEMANDS, SUITS, AND JUDGMENTS OF SUMS OF MONEY TO ANY PARTY FOR LOSS OF LIFE OR INJURY OR DAMAGE TO PERSON OR PROPERTY GROWING OUT OF, RESULTING FROM, OR BY REASON OF ANY NEGLIGENT ACT OF OMISSION, OPERATION, OR WORK OF TGC, ITS AGENTS, SERVANTS, OR EMPLOYEES WHILE ENGAGED UPON OR IN CONNECTION WITH THE SERVICES REQUIRED OR PERFORMED BY TGC HEREUNDER.

ARTICLE XV: ACCESS TO RECORDS

TGC agrees that Owner shall have, until the expiration of three (3) years after termination or expiration of this Agreement, access to and right to examine any directly pertinent documents, papers, and records developed by TGC as a part of its work under this Agreement. TGC acknowledges that the requirements of Chapter 552, Texas Government Code, as amended, (the "Public Information Act"), and Chapters 201-205, Texas Local Government Code, as amended, (the "Local Government Records Act," and together with the Public Information Act, the "Acts"), each apply to all public information, as defined by the Public Information Act, and all local government records, as defined by the Local Government Records Act, related to the relationship between the Owner and TGC, and to any work carried out thereunder. TGC also acknowledges Owner's current order establishing a records management program and designating a records management officer, which may be amended by TGC, (the "Document Retention Policy"). TGC covenants that it will comply with all requirements of the Acts, the Document Retention Policy, and all applicable rules, regulations, policies, and retention schedules adopted thereunder. Upon termination, expiration, or other conclusion of this Agreement, TGC's records, documents, and

any other property shall be delivered within 14 days by TGC to Owner or the Owner's designee at no cost to Owner. Any such records, documents, or other property that is electronic, in a proprietary form, or stored on a computer shall be provided by TGC to the Owner in a manner specified by Owner.

ARTICLE XVI: FORCE MAJEURE EVENT

Unless otherwise agreed in the Agreement between the parties expressly or impliedly, where a party to a Agreement fails to perform one or more of its contractual duties, the consequences set out in this Clause will follow if and to the extent that that party proves: (a) that its failure to perform was caused by an impediment beyond its reasonable control; (b) that it could not reasonably have been expected to have taken the occurrence of the impediment into account at the time of the conclusion of the Agreement; and (c) that it could not reasonably have avoided or overcome the effects of the impediment.

A party invoking this Clause shall be presumed to have established the conditions described in the preceding paragraph in the case of the occurrence of one or more of the following impediments: war (whether declared or not), armed conflict or the serious threat of the same (including but not limited to hostile attack, blockade, military embargo), hostilities, invasion, act of a foreign enemy, extensive military mobilization; civil war, riot, rebellion, revolution, military or usurped power, insurrection, civil commotion or disorder, mob violence, act of civil disobedience; act of terrorism, sabotage or piracy; plague, epidemic, pandemic, outbreaks of infectious disease or any other public health crisis, including quarantine or other employee restrictions; act of authority whether lawful or unlawful, compliance with any law or governmental order, rule, regulation or direction, curfew restriction, expropriation, compulsory acquisition, seizure of works, requisition, nationalization; act of God or natural disaster such as but not limited to violent storm, cyclone, typhoon, hurricane, tornado, blizzard, earthquake, volcanic activity, landslide, tidal wave, tsunami, flood, damage or destruction by lightning, drought; explosion, fire, destruction of machines, equipment, factories and of any kind of installation, prolonged break-down of transport, telecommunication or electric current; general labor disturbance such as but not limited to boycott, strike and lock-out, go-slow, occupation of factories and premises; shortage or inability to obtain critical material or supplies to the extent not subject to the reasonable control of the subject Party ("Force Majeure Event").

This provision shall become effective only if the Party failing to perform notifies the other party within a reasonable time of the extent and nature of the Force Majeure Event, limits delay in performance to that required by the Event, and takes all reasonable steps to minimize damages and resume performance.

ARTICLE XVII: STATUTORY VERIFICATIONS

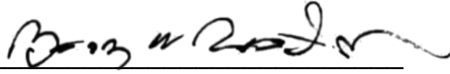
- (a) Anti-Boycott of Israel Verification. By signing and entering into the Agreement, TGC verifies, pursuant to Chapter 2271 of the Texas Government Code, it does not boycott Israel and will not boycott Israel during the term of this Agreement. The term “boycott Israel” has the meaning assigned to such term pursuant to Section 808.001 of the Texas Government Code.
- (b) Anti-Boycott of Energy Companies Verification. By signing and entering into the Agreement, TGC verifies, pursuant to Chapter 2276 of the Texas Government Code, it does not boycott energy companies and will not boycott energy companies during the term of this Agreement. The term “boycott energy companies” has the meaning assigned to such term pursuant to Section 809.001 of the Texas Government Code.
- (c) Anti-Discrimination of Firearm Entity or Firearm Trade Association Verification. By signing and entering into the Agreement, TGC verifies, pursuant to Chapter 2274 of the Texas Government Code, it does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and will not discriminate against a firearm entity or firearm trade association during the term of this Agreement. The terms “discriminates against a firearm entity or firearm trade association” and “discriminate against a firearm entity or firearm trade association” have the meaning assigned to the term “discriminate against a firearm entity or firearm trade association” in Section 2274.001(3) of the Texas Government Code.
- (d) Anti-Terrorism Verification. By signing and entering into the Agreement, TGC verifies neither TGC, nor any wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of TGC: (i) engages in business with Iran, Sudan, or any foreign terrorist organization pursuant to Subchapter F of Chapter 2252 of the Texas Government Code; or (ii) is a company listed by the Texas Comptroller pursuant to Sections 2270.0201 or 2252.153 of the Texas Government Code. The term “foreign terrorist organization” has the meaning assigned to such term pursuant to Section 2252.151 of the Texas Government Code.

ARTICLE XVII: SUPPLEMENTAL TERMS

No supplemental terms and conditions.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in duplicate originals and it shall be effective the _____ day of _____, 2025.

THE GOODMAN CORPORATION

BY: 
Barry M. Goodman
President

THE CITY OF NACOGDOCHES

BY: _____
Richard Beverlin, III
City Manager

EXHIBIT A – SCOPE OF SERVICES (as attached)

Downtown Nacogdoches Strategic Projects Implementation Strategy

January 2025

The Goodman Corporation (TGC) is pleased to submit this scope of services to develop a strategic projects implementation strategy for downtown Nacogdoches. In recent years, the City of Nacogdoches (City) has conducted master planning efforts for Downtown and seen increased investment from the private sector. Additionally, Stephen F. Austin State University is now part of the University of Texas system and undergoing its own space and facility master planning initiatives. These efforts have identified several strategic projects critical for the growth of downtown Nacogdoches. The proposed scope of services will result in the following:

- Identification of funding opportunities critical for implementing each of the strategic projects
- Further development of the strategic projects in preparation for the design phase
- Analysis critical for defining downtown Nacogdoches' parking needs
- Documentation critical for future funding pursuits specific to each strategic project

TGC understands the currently identified strategic projects as the following:

- 1) Development of a centralized parking facility
- 2) Amenitization of Festival Park, including as the potential home for a SFA sports facility
- 3) Enhancing and adding amenities along the edges of Banita Creek, for further planning development and funding opportunities. Amenities to be examined include waterfront development options and elements that include and/or complement a sports facility.
- 4) Review of the existing public property and buildings, their potential for repurposing, identification of their highest and best use, and identification of potential locations for administrative buildings. Efforts on this project will be limited to further planning development and funding opportunities.

Through its efforts to identify funding opportunities, TGC will focus its analysis on external funding, such as federal grants, and limit efforts to use local public dollars to advance these strategic projects.

The City desires to fulfill this scope of services within a six-month timeline. To accomplish this, TGC will focus on these specific strategic projects. The addition of more strategic projects will add cost and additional time to the scope. TGC will conduct an in-depth analysis assessing the readiness and feasibility of the identified top priority project – a parking garage – while identifying project details, funding opportunities, and implementation timelines for the other strategic projects.

Task 1 – Project Management and Coordination

Description: TGC will establish regular check-ins with the City and relevant parties, communicate via email and phone calls, and provide regular status reports through monthly invoices and other established procedures.

Deliverable: Bi-weekly project check-in calls, monthly progress reports detailing work completed per task

Task 2 – Review of Strategic Projects, Recent Efforts, and Funding Potential

Description: TGC will review the recent Downtown Master Plan and other recent engagement and planning efforts. During this task, TGC will coordinate with SFA and its consultants to gain an understanding of the forthcoming campus master plan and athletic facility needs. A high-level schedule of funding opportunities specific to the four strategic projects will be developed. This schedule can serve as a guide for future grant applications that can be completed during the scope's timeline and/or relevant to future funding pursuits for the strategic projects (Task 6).

During this task, TGC will conduct the following engagement activities:

- Stakeholder Committee Meeting #1

Deliverables:

- 1) Memo, summarizing review of strategic project and documenting each of the four strategic projects mentioned above
- 2) Expected funding opportunities schedule
- 3) Stakeholder Meeting and City Council Meeting

Task 3 – Parking and Parking Facility Analysis

Description: TGC will conduct an analysis evaluating a potential parking facility on the surface lot south of Pilar Street between S Fredonia Street and S Church Street. It is expected that any future parking facility concept will include a potential transit stop / transit center for the Brazos Transit District. TGC will evaluate three alternative development scenarios for repurposing the existing lot with additional parking spaces, including the following options:

1. Resurfacing and reconfiguration of surface lot (maximize number of parking spaces)
2. Parking Deck structure, with covered parking on the first level and open air second level
3. Parking Garage Structure, with multiple levels of covered parking

Analysis will include the following elements:

- Parking demand analysis for existing lot and nearby downtown area
- Parking demand projections from known development and redevelopment, including projections for a potential SFA sports facility
- Development of public transportation nexus to include purpose, need, and transit related utilization and demand analysis
- Conceptual rendering visualization for each parking option

- Planning-level cost estimate for each option, considering both transit and parking function components of the facility
- Projection of total parking spaces for each option
- Financial pro-forma for each option
- Environmental Analysis and Review
- Structural Engineering and Architectural Analysis

During this task, TGC will conduct the following engagement activities:

- Stakeholder Committee Meeting #2

Deliverable:

- 1) Technical memorandum documenting analysis, scenarios, and recommendations
- 2) Stakeholder Committee Meeting #2
- 3) City Council Update #1

Excluded tasks: Detailed cost estimates, Design phase services

Task 4 – Planning-Level Project Development and Funding Strategy

Description:

TGC will build off work completed in Task 2 to develop project profiles for each strategic project. Each project profile will have a general scope of work, limits, order of magnitude cost, potential funding opportunities, implementation steps, and a graphic rendering illustrating the project's vision. The work completed in this task encompasses the following:

- Project description
- Identification of Project Limits
- Purpose and Need Statements
- Identification of Qualitative Benefits
- Project by Project Funding Strategy
- Identification of Implementation Phases and Timelines
- Order of Magnitude Cost Estimates
- One graphic rendering per project
- Preliminary environmental review
- Strategic Projects Implementation Strategy Document

During this task, TGC will conduct the following engagement activities:

- Stakeholder Committee Meeting #3 & 4
- City Council Update #2
- Public Meeting #1

Deliverable: Downtown Nacogdoches Strategic Projects Implementation Strategy, inclusive of a project profile for each strategic project

Excluded tasks: Detailed cost estimates, Design phase services, Benefit-Cost Analysis

Task 5 – Prepare and Submit Two Grant Applications

Description:

TGC anticipates the availability of at least one discretionary funding opportunity during this process. TGC will utilize Task 5 to monitor suitable funding opportunities through the project schedule and if a suitable opportunity is identified, TGC will recommend pursuit. This task will accommodate the completion of two grant opportunities of moderate to medium complexity. The budget allocated for this task assumes a grant opportunity of moderate complexity without a required benefit-cost analysis. It is anticipated that TGC will present details of each grant application and funding commitment requirement for City Council resolution at one City Council meeting during this Task.

Deliverable: Two Grant Applications of moderate complexity; City Council presentation

Excluded tasks: Benefit-Cost Analysis

Project Schedule

Months						
Task	1	2	3	4	5	6
1						
2	*					
3		*	**			
4			*	***	*	**
5						

* Stakeholder Committee

** City Council Update

*** Public Meeting

Project Budget

Per task, progress payments will be provided monthly per the table below. Invoices, including progress reports, will be provided each month. The costs within this scope are inclusive of all direct and indirect costs (e.g., travel, overhead, printing).

Task	Description	Cost
1	Project Management and Coordination	\$12,415
2	Existing Document Review and Funding Opportunity Schedule	\$11,257
3	Parking and Parking Facility Analysis	\$90,249
4	Planning Level Project Development and Funding Strategy	\$100,803
5	Prepare and Submit Two Grant Applications	\$35,000
	Total Authorized	\$249,724

Level of Effort

Detailed cost exhibit attached.

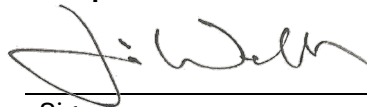
Accepted for The City of Nacogdoches

Signature

Date

Print

Accepted for The Goodman Corporation



January 17, 2025

Signature

Date

Jim Webb, AICP, ENV SP

Print

PRESENTER: Rick Beverlin, City Manager

ITEM/SUBJECT: Discuss and consider possible action to adopt a Resolution appointing an ad hoc Downtown Technical Advisory Committee to advise the City of Nacogdoches on downtown project planning, development, funding, and implementation. (City Manager)

SUMMARY/BACKGROUND: In 2024, City Council authorized the City Manager to negotiate with a professional consulting firm for the development of planning and implementation strategies for Downtown Nacogdoches. City staff is seeking Council's adoption of a resolution to appoint an ad hoc Downtown Technical Advisory Committee to advise the City's consultant and Council in support of these efforts.

Items of focus for Downtown Nacogdoches development planning and implementation may include parking, jobs, redevelopment of buildings, drainage and utility capacity, funding sources, and grant opportunities. The Council seeks to also engage stakeholders who have a firm and vested interest in Downtown Nacogdoches redevelopment including but not limited to, Stephen F. Austin State University, Texas Department of Transportation, Brazos Transit District, and the private sector.

A list of Technical Advisory Committee members is included with the proposed resolution. Member term limits will be for the duration of contracted services by the City's consultant for Downtown Nacogdoches development planning and implementation.

FINANCIAL:

No financial impact associated with this item.

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

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

ATTACHMENTS: 1. Proposed Resolution

RESOLUTION NO. 1383-02-25

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NACOGDOCHES, TEXAS TO ESTABLISH AN AD HOC TECHNICAL ADVISORY COMMITTEE FOR THE PURPOSE OF IDENTIFYING AND PRIORITIZING DOWNTOWN NACOGDOCHES PROJECTS; PROVIDING FOR THE COMMITTEE'S DUTIES, TERM, MEMBERSHIP, AND RULES OF PROCEDURE; PROVIDING FOR FINDINGS OF FACT AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, in December 2024, City Council authorized the City Manager to negotiate an agreement with The Goodman Corporation to provide professional consulting services as described in solicitation RFQ 25-10-106 for the development of planning and implementation strategies for Downtown Nacogdoches; and

WHEREAS, items of focus for Downtown Nacogdoches development planning and implementation may include parking, jobs, redevelopment of buildings, drainage and utility capacity, funding sources, and grant opportunities; and

WHEREAS, the City Council seeks to also engage stakeholders who have a firm and vested interest in Downtown Nacogdoches redevelopment to include, but is not limited to, Stephen F. Austin State University, Texas Department of Transportation, Brazos Transit District, and the private sector; and

WHEREAS, the City Council has determined that an ad hoc Technical Advisory Committee should be established to provide input to consultants and/or City Council.

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

SECTION 1. The Downtown Technical Advisory Committee is established as an ad hoc advisory committee created for the purpose of advising on Downtown Nacogdoches development and redevelopment projects of the City and making recommendations to City Council regarding prioritization. The Committee will work with City staff and consultants to accomplish the following:

- A. Identification of funding opportunities critical for implementing strategic projects.
- B. Further development of the strategic projects in preparation for the design phase.
- C. Analysis critical for defining downtown Nacogdoches' parking needs.
- D. Documentation critical for future funding pursuits specific to each strategic project.

Strategic projects for Downtown Nacogdoches planning and implementation are identified as the following:

- 1. Development of a centralized parking facility.
- 2. Amenitization of Festival Park.
- 3. Amenitization of Banita Creek waterfront.

4. Review of the existing public and private property and buildings, their potential for repurposing, and identification of their highest and best use.

SECTION 2. The Downtown Technical Advisory Committee shall consist of members appointed by the entire City Council. Term limits will be for the duration of contracted services by the City's consultant for Downtown Nacogdoches development planning and implementation. Any member of the Committee may be removed, for any reason, by majority vote of the City Council. The City Manager shall designate a staff member as Committee Liaison, who shall serve as an ex-officio member and secretary. The Downtown Technical Advisory Committee members are listed on Exhibit A to this resolution.

SECTION 3. The Downtown Technical Advisory Committee shall hold their meetings in accordance with the Texas Open Meetings Act, shall establish a time and date for meetings, and agree on meeting procedures. The Committee Liaison shall keep an accurate record of proceedings of the meetings. Copies of the minutes shall be provided to the City Council.

SECTION 4. The meeting at which this Resolution was approved was in all things conducted in compliance with the Texas Open Meetings Act, Texas Government Code, Chapter 551, and this Resolution shall be effective immediately upon its passage.

APPROVED AND ADOPTED at a regular meeting of the Nacogdoches City Council on this 4th day of February 2025.

CITY OF NACOGDOCHES

Randy Johnson, Mayor

ATTEST:

Rhonda Lewis, City Secretary

APPROVED AS TO FORM:

Jerry Baker, City Attorney

EXHIBIT A

Downtown Technical Advisory Committee members:

Shannon Conklin

Robert Flores

Suzanne Patterson *

Michael McBroom

Kurt Sutton

Greg Williams *

Mike Neu (Committee Liaison)

** Served on the Downtown Master Plan Advisory Committee established Dec. 7, 2021.*