



September 16, 2025

AMENDED

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 approving the minutes from the August 19, 2025, and September 2, 2025, Regular City Council Meeting. (City Secretary)
 - B. Consider approval of an ordinance amending Ordinance No. 2015-09-24 appropriating various amounts in accordance with the budget adopted for the ensuing fiscal year beginning October 1, 2024, and ending September 30, 2025. (Interim Director of Finance)
 - C. Consider the approval of a consulting services agreement between the City of Nacogdoches and Todd Simoneaux. For the purposes of providing financial management to the City. (City Manager)

- D. Consider approval of the purchase of new City of Nacogdoches police vehicles (Assistant Police Chief)
- E. Consider approving receipt of a donation from the Friends of the Nacogdoches Library in the amount of \$18,000.
- F. Consider approval of a Professional Services Contract between Cunningham Recreation and the City of Nacogdoches for playground design and construction at Mill Pond Park for an amount not to exceed \$240,000. (Community Services Director)
- G. Consider approval of the annual agreement between the City of Nacogdoches and Keep Nacogdoches Beautiful for essential services. (Community Services Director)
- H. Consider approval of two Indefinite Deliverables Indefinite Quantities contracts by and between the City of Nacogdoches and Saicam Electric, and the City of Nacogdoches and P&I Electric, for professional electrician services in the amount of \$75,000.00 for each contract, for a total amount of \$150,000.00. (Director of Public Works/City Engineer)
- I. Consider approval of an Indefinite Deliverable Indefinite Quantity contract by and between the City of Nacogdoches and Arq Purification, for the use of Activated Carbon in water treatment, in the amount of \$108,000.00. (Director of Public Works/City Engineer)
- J. Consider approval of an Indefinite Deliverable Indefinite Quantity contract by and between the City of Nacogdoches and Affinity Chemical LLC, for the use of Liquid Aluminum Sulfate in water treatment, in the amount of \$150,000.00. (Director of Public Works/City Engineer)
- K. Consider approval of an Indefinite Deliverable Indefinite Quantity contract by and between the City of Nacogdoches and Harcros Chemicals Inc., for the use of Caustic Soda in water treatment, in the amount of \$250,000.00. (Director of Public Works/City Engineer)
- L. Consider approval of an Indefinite Deliverable Indefinite Quantity contract by and between the City of Nacogdoches and PVS Chemicals, Inc., for the use of Chlorine Gas and Sulfur Dioxide in water and wastewater treatment, in the total amount of \$355,360.00. (Director of Public Works/City Engineer)
- M. Consider approval of an Indefinite Deliverable Indefinite Quantity contract by and between the City of Nacogdoches and Pencco, Inc., for the use of Hydrofluorosilicic Acid in water treatment, in the amount of \$25,000.00. (Director of Public Works/City Engineer)
- N. Consider approval of an Indefinite Deliverable Indefinite Quantity contract by and between the City of Nacogdoches and Shannon Chemical Corporation, for the use of Liquid Polyphosphate in water treatment, in the amount of \$10,000.00. (Director

of Public Works/City Engineer)

- O. Consider rejecting all bids received in response to Bid No. 25-10-135 for an Indefinite Deliverables Indefinite Quantities contract for Water Utilities Instrumentation Services. (Director of Public Works/City Engineer)
 - P. Consider approval of a Letter of Understanding by and between the City of Nacogdoches and Union Pacific Railroad for the purchase of multiple parcels of land approximately 2.95 acres $\pm$ in size, and generally located near Monk Street and Church Alley. (Director of Public Works/City Engineer)
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. Receive the annual report from the Boys and Girls Club of Deep East Texas. (Sheila Youngblood, President/CEO)
 - B. Receive the annual report from Keep Nacogdoches Beautiful (Ashley Villareal, Keep Nacogdoches Beautiful Director)
 - C. **Public Hearing:** Hold a public hearing and receive citizen input on FY 2025-2026 Proposed Tax Rate. (Interim Director of Finance)
 - D. Consider approval of an ordinance approving and adopting the annual budget for fiscal year beginning October 1, 2025 and ending September 30, 2026; providing that said expenditures for said fiscal year shall be made in accordance with said budget, unless otherwise authorized by an ordinance adopted by City Council; providing for a repeal clause; providing a severability clause; providing an effective date. (Interim Director of Finance)
 - E. Consider an ordinance ratifying and setting tax rate on all taxable property for the tax year 2025 at a rate of \$0.57596 per one hundred dollars (\$100.00) valuation on all taxable property within the corporate limits of the City of Nacogdoches as of January 1, 2025, the said tax rate having a maintenance and operations component and a debt service component; and providing an effective date. (Interim Director of Finance)
 - F. Consider approval of an Ordinance of the City of Nacogdoches, Texas amending Chapter 82 – "Solid Waste", and Appendix A – "Master Fee Schedule", of the Nacogdoches Code of Ordinances relative to sanitation collection and disposal fees; providing a severability clause; providing a continuation clause; providing a repeal clause; and providing an effective date. (Executive Director of Development and Infrastructure)
 - G. Discussion and possible action on changing the time of the City Council regular meeting for October 7, 2025. (Mayor)

7. EXECUTIVE SESSION: Executive Session are for City Council to receive information and deliberate on matters specified in Subchapter D of the Texas Open Meetings Act. Council may reconvene in open session to vote on the matter.
 - A. Consultation with City Attorney - Pursuant to Texas Government Code Section 551.071, deliberation regarding attorney's advice concerning pending or contemplated litigation or a settlement offer, or on a matter in which the duty of the attorney to the governmental body under Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas, clearly conflicts with this chapter. (City Attorney)
8. Open for action if any, on Executive Session item (s).
9. ADJOURN.



Karen Hadnot
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 September 10, 2025 by 5:30 pm pursuant to Chapter 551 of the Texas Government Code.

Karen Hadnot, City Secretary



City Council Meeting

Date: September 16, 2025

Agenda Item: 5.A.

PRESENTER:

ITEM/SUBJECT: Consider approving the minutes from the August 19, 2025, and September 2, 2025, Regular City Council Meeting. (City Secretary)

SUMMARY/BACKGROUND:

FINANCIAL:

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

CITY CONTACT:

ATTACHMENTS:

1. Minutes 08/19/2025 Regular Meeting
2. Minutes 09/02/2025 Regular Meeting



Regular Session
Nacogdoches City Council
August 19, 2025 – 5:30 p.m.
C.L. Simon Recreation Center
1112 North 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:

Celeste Farris, residing at 5317 Northway #108, expressed her concerns about safety issues at her apartment complex. She noted that there is no fire extinguisher in her unit. Ms. Farris mentioned that she spoke with the Fire Chief, who confirmed that the absence of an extinguisher in the apartment does not comply with city code. Additionally, Ms. Farris highlighted that many elderly residents live in the complex, and having a fire extinguisher is essential for their safety.

Ronald Rogers, residing at 310 Blue Street, expressed his concerns about the traffic light near Pilgrims Pride. Mr. Rogers mentioned that the area has experienced several accidents. He wanted to bring this issue to the attention of the Council.

4. **ITEMS TO BE REMOVED FROM THE CONSENT AGENDA:**

Councilmember Brad Maule stated that he would like to remove consent Item 5B and 5F from the consent agenda.

Mayor Johnson opened the floor for discussion for Consent agenda item 5B.

Councilman Maule inquired about whether there were any Texas firms available to handle the exhibit. Jessica Sowell confirmed that there were Texas firms, particularly one based in Dallas. However, due to cost considerations, they followed the standard bid posting process. Out of six responses, only one was from a Texas-based firm. Mrs. Sowell noted that not many companies provide the combination of design, writing, fabrication, and installation services that were required.

Councilwoman Belanger asked how priorities are set for using hotel occupancy tax revenue for parks and recreation projects. Jessie Sowell explained that the hotel occupancy tax funds are distributed in a specific manner. A portion goes to the Convention and Visitors Bureau (CVB), another amount is allocated to the county expo center, and \$25,000 is designated for the historic restoration grant fund. The remaining funds each year are utilized for either museum maintenance or for identified projects, such as the Zion Hill exhibits.

Councilman Maule read Article 5, which states that the consultant must meet with city staff and/or the city council to present the preliminary design of the project. He asked if the council could also view the design to understand what they would be receiving for the \$250,000 budget. Mrs. Sowell explained the process. Mr. Maule expressed concerns about potential change orders, questioning whether the project might exceed its budget. Mrs. Sowell clarified how the process works and acknowledged that while it is possible for costs to exceed the budget due to changes, the allocated budget of \$250,000 is firm. She mentioned that they have partnered with exhibit concepts that have never exceeded their budget, and there have not been any change orders with them.

Councilman Maule proposed removing the "Are" from Article 5 and approving Consent

Agenda Item 5B. Councilman Chad Huckaby seconded the motion, and it was unanimously approved.

Mayor Johnson opened the floor for discussion for Consent agenda item 5F.

Councilmember Maule expressed his curiosity regarding the budgeted amount of \$90,000 for the project, given that the tree service provided a bid of \$23,500. Mrs. Sowell clarified that the original estimate came from a completely different company, which outlined three distinct phases for the Pine Grove expansion project. She further explained the phases and pointed out that the initial estimate did not cover this particular project. Mrs. Sowell also mentioned the various estimates she received for the project. Councilmember Maule noted his appreciation for the use of local contractors.

Councilwoman Belanger then made a motion to approve Consent Item 5F. Councilmember Blane Williams seconded the motion, and it was unanimously approved.

5. CONSENT AGENDA:

Councilwoman Belanger made a motion to approve the remainder of the consent agenda. Councilman Blane Williams seconded the motion, and it was unanimously approved.

6. REGULAR AGENDA:

Mayor Johnson called the next item on the Regular Agenda.

- 6A. Presentation from Mark Schuster of Mid America League Baseball regarding the summer baseball team coming to Nacogdoches for the 2026 season.

Jessica Sowell, Director of Community Services, introduced Mark Schuster, who represented the agenda item. She noted that the City Council had already approved a lease agreement with Mid America to utilize the SFA baseball field located in the baseball complex.

Mark Schuster provided an overview of the Mid American League. Representing Ventura Sports Group, he shared that he has been involved in minor league baseball for forty years. Mr. Schuster expressed excitement about bringing the team to Nacogdoches and highlighted the current cities where Mid-American operates, as well as their plans for expansion. He also announced a contest to name the Nacogdoches team and presented a baseball bat to Mayor Johnson.

Mayor Johnson mentioned that Item 6G on the regular agenda would be addressed earlier in the meeting since the representatives from out of town needed to return to their destinations.

- 6G. Consideration of approving an ordinance following the discussion of the General Obligation Bonds, Series 2025.

Todd Simoneaux, the Interim Finance Director, stated that the first tranche of funds for the bonds was issued about 15 months ago, and we are now ready to issue the second tranche. He introduced our financial advisor from Hilltop Securities.

Michael Martin, the Hilltop representative, came forward to present to the Council. He expressed his satisfaction in reporting a successful bond sale for the City of Nacogdoches. Mr. Martin presented an in-depth book containing all pertinent information about the deal. He noted that he and John Martin are the leading financial advisors for the city and mentioned that other members of the firm were also present.

Mr. Martin then delivered a PowerPoint presentation to the Council, explaining each slide in detail.

Councilmember Huckaby made a motion to approve Item 6G of the regular agenda. Councilman Blane Williams seconded the motion, which was unanimously approved.

- 6B. Consider the following appointments for the City Boards and Commission: Convention and Visitors Bureau (CVB), Historic Landmark Preservation Committee (HLPC), Housing Authority Board, Mayor's Committee for People with Disabilities, Planning and Zoning Commission, and Zoning Board of Adjustment.

The following appointments were made for the City Boards and Commissions: Convention and Visitors Bureau (CVB), Historic Landmark Preservation Committee (HLPC), Housing Authority Board, Mayor's Committee for People with Disabilities, Planning and Zoning Commission, and Zoning Board of Adjustment.

Mayor Johnson announced the names of both new and reappointed members for the various boards.

Councilmember Huckaby made a motion to approve Item 6B on the regular agenda. Mayor Johnson seconded the motion, and it was unanimously approved.

- 6C. Consider approval of a resolution authorizing and approving the Certificate of Formation and Bylaws of the Type B Economic Development Corporation and granting further authorization to file the Certificate of Formation with the Texas Secretary of State.

Jerry Baker (City Attorney) came forward representing the request. Mr. Baker presented to the Council a proposed resolution related to the formation of the Type B Economic Development Corporation. City Attorney Baker presented a slide showing the city's status in the process with the Type B Economic Development Corporation. Mr. Baker stated that if you approve the certificate of formation and the bylaws, one aspect is to approve the board of directors. Mr. Baker stated that once the certificate of formation is approved, it will be filed with the Secretary of State. Mr. Baker reviewed the steps for incorporating a Type B in the state of Texas. Mr. Baker noted that Type B is governed by Chapter 505 of the Texas Local Government Code.

Mr. Baker noted that two important things for Type B are the name of the Corporation and that the name cannot be the same or similar to an existing corporation in the state of Texas. Mr. Baker also noted that at the Special meeting, the board of directors was formed. Mr. Baker also noted that the bylaws will need to be approved by Council.

Councilman Maule made a motion to approve item 6C of the regular agenda. Councilwoman Belanger seconded the motion, and it was unanimously approved.

- 6D. Public Hearing: Discuss and consider action regarding the use of a portion of the recreation area located at 600 E. Pilar Street, Nacogdoches, Texas for the purpose of locating a new municipal fire Station.

Fire Chief Scott Brown presented a request regarding the new fire station location. He proposed utilizing a portion of the Clint Dempsey soccer complex after acknowledging the challenges in finding a suitable site. Chief Brown explained the requirements necessary to meet ISO standards and noted that changing the designation of a park for another use necessitates a public hearing. The city must demonstrate that no reasonable or prudent alternatives exist and that reasonable planning has been undertaken to minimize harm to the recreational area. He mentioned that three public hearings were held on August 3rd, 10th, and 17th.

During his presentation, Fire Chief Brown provided a brief history of the decision to use part of the soccer complex for the new fire station. He highlighted that several meetings had taken place with city staff and representatives from the Nacogdoches Soccer Association, concluding that this is the ideal location for the fire station, which will meet all ISO requirements. Fire Chief Brown also pointed out the benefits of the city using property it already owns.

Jessica Sowell, the Community Services Director, also spoke in favor of the new station, stating it would significantly benefit the Clint Dempsey soccer complex. She expressed enthusiasm about the project's potential to allow for the relocation of the U6 fields to a

less busy area within the complex. Mrs. Sowell mentioned that this investment would enable them to apply for a Texas Parks and Wildlife grant and shared some of the planned improvements.

Mayor Johnson then opened the floor for public comments.

Brandi Cartwright raised concern about whether discussions had taken place regarding the station's location in a floodplain. Chief Brown responded that while most of the site is indeed in a floodplain, city ordinances prohibit construction within the floodway. Construction is permitted as long as it is at least one foot above the established elevation level.

George Ellis inquired about access to Main Street. Chief Brown explained that access, which includes collaboration with TxDOT, is being redesigned for the bridge and the approach at East Main Street, ensuring it will be functional for the fire station in the long term.

After closing public comments, Chief Brown addressed Councilman Maule's question regarding the savings from the acquisition. Chief Brown indicated that these savings would likely be used for future land acquisition.

Councilwoman Belanger made a motion to approve Item 6D of the regular agenda, which was seconded by Councilman Maule and unanimously approved.

- 6E. Public Hearing: Discuss and consider action on Planned Development Case PD2025-01 regarding a zone change from A, Agriculture to PD, Planned Development district on one(1) parcel of land approximately 9.5 acre $\pm$ in size more particularly described by Nacogdoches Central Appraisal District Parcel 203177; and generally located south of West Austin Street, approximately 250 feet west of the intersection of West Austin Street and Opal Drive, Nacogdoches, Texas.

Juan Pollette, the City Planner, presented a request for zoning approval. During his presentation, he utilized a PowerPoint to give an overview of the proposed project. Mr. Pollett explained that if the zoning is approved, a skilled nursing care and rehabilitation center will be constructed. He noted that the Planned Development (PD) request encompasses both the concept and development plan, as permitted under Section 118-392 of the zoning ordinance. If approved, this plan will govern land use and site layouts for the development.

The surrounding area features Agricultural Zoning, with a PD zoning district located to the east. This adjacent property was previously approved for an assisted living nursing home, which was never built. The current request aims to fulfill that original intention by introducing a similar senior care facility nearby.

Mr. Pollette detailed the layout of the proposed building, which will accommodate 110 beds. Additionally, a 15-foot landscape buffer will be established along the property line. Notices regarding the zone change were mailed to property owners, and no written responses were received. The Planning and Zoning Commission unanimously voted in favor of the zone change to Planned Development.

Mayor Johnson then opened the floor for comments; however, there were none.

Councilman Maule expressed confusion regarding a dotted area on the site plan. Mr. Pollett clarified that this area represents a detention pond. Councilman Maule also inquired about the sewer line. Mike from 215 Consulting explained that several options for the sanitary sewer are being evaluated and noted that the facility will include a grinder mechanism for the pump stations.

Councilman Maule made a motion to approve Item 6E of the regular agenda, which was seconded by Councilman Huckaby, the motion was unanimously approved.

- 6F. Consider approval of an Ordinance of the City of Nacogdoches, Texas, Amending Chapter 6 - "Animals", Article V- "Dangerous dogs" and Article VI.- "Animal Facilities; Breeders, Kennels, Pet Shops" 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.

Jerry Baker, the City Attorney, presented a request regarding a proposed amendment to our ordinance related to animals, specifically Article Five concerning the designation of dangerous dogs. He provided background on the reasons for this amendment, noting that the Municipal Court Judge and several members of animal control had met to review the procedures for handling dangerous dogs.

Mr. Baker explained that certain parts of our current code conflict with state law regarding the appeals process for the designation of dangerous dogs. He clarified how the process works: an animal control officer can designate a dog as dangerous according to the Health and Safety Code, and the owner has the right to appeal that designation. However, our ordinance currently does not specify the time frame in which an appeal can be filed before certain requirements must be met, including altering the dog and tattooing or ear-tipping it. This creates a conflict with the state code, which allows the owner to appeal the initial dangerous designation before adhering to these requirements.

To resolve this issue, we need to address it through an amendment to our ordinance. Mr. Baker provided a detailed explanation of both Chapters 6 Article5 and Article 6.

There being no questions.

Motion was made Councilman Huckaby to approve Item 6F of the regular agenda. Councilman Williams seconded the motion, and it was unanimously approved.

6H. Receive the proposed 2025-205 Budget.

Todd Simoneaux, the Interim Finance Director, stated that state law requires the city to submit a proposed budget to the City Clerk 15 days prior to a budget hearing and 30 days before adopting the tax rate. We have complied with this legal requirement. Therefore, we are asking for a motion to accept the budget and to schedule the public hearing for the budget. We propose that the public hearing be held on September 2, 2025.

Motion was made Councilwoman Belanger accept Item 6H of the regular agenda. Councilman Huckaby seconded the motion, and it was unanimously approved.

6I. Take a record vote on proposed tax Rate for the 2025-2026- fiscal year.

Mayor Johnson noted that a record vote means that each council member will vote individually, and their votes will be officially recorded. Todd Simoneaux, the Interim Finance Director, explained that when a proposed tax rate exceeds the no-new-revenue rate, it requires a record vote from the council, and a 60% approval rate is needed, which equates to five votes in favor. This agenda item is aimed at taking a record vote and setting a date for a public hearing. We propose holding the public hearing on September 16, 2025, during the regular council meeting.

Councilman Huckaby made a motion to approve the proposed tax rate of 0.5796 for the fiscal year 2025-2026. Mayor Johnson, Councilman Huckaby, Councilman Williams, Councilman Maule, and Councilwoman Belanger all voted in favor.

Additionally, Councilwoman Belanger made a motion to schedule the public hearing for the proposed tax rate adoption on September 16, 2025. Councilman Huckaby seconded the motion, which was unanimously approved.

7. **EXECUTIVE SESSION**

The Mayor and Council adjourned into Executive Session at 6:40pm

8. Open for action, if any, on Executive Session Items (s).

The City Council has returned from their Executive Session and took action on a decision regarding Personnel Matters.

Councilman Williams made a motion to accept Karen Hadnot as City Secretary. Councilman Maule seconded the motion, and it was unanimously approved.

9. **ADJOURNED:** 7:09 p.m.

A full recording of the Regular City Council Meeting for August 19, 2025, may be viewed here: [Regular City Council Meeting - 20250819](#)

ATTEST:

Randy Johnson, Mayor
City Council
City of Nacogdoches

Karen Hadnot, City Secretary



Regular Session
Nacogdoches City Council
September 2, 2025 – 5:30 p.m.
Council Chambers
202 E. Pilar, 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:

Gay Lazarine Thomas, who lives at 5825 County Road 302, raised concerns regarding town policy. Ms. Thomas expressed her worries about the towing company operating without insurance, noting that it is part of the guidelines that they must have insurance coverage. She emphasized that towing companies need to adhere to these guidelines. Additionally, Ms. Thomas raised concerns about how some local companies have been passing on low-level towing and are reluctant to handle it themselves. She stated that the guidelines need to be enforced to prevent any misuse of the system. Furthermore, she pointed out that the towing rates have not been updated since 2007.

Milton Moore, located at 616 Bostwick St, expressed his concerns regarding the Fire Station. He mentioned that an engineer has recommended the relocation of four fire stations. Mr. Moore suggested that the city's plan should be communicated to the Insurance Services Office (ISO) for their input. Additionally, he inquired about the credentials and reliability of the engineering firm employed by the city. Mr. Moore also raised concerns about building in a flood plain, stating that this could set a negative precedent for future projects.

4. **ITEMS TO BE REMOVED FROM THE CONSENT AGENDA:**

Mayor Johnson stated he would like to remove consent Item 5C from the consent agenda.

Mayor Johnson opened the floor for discussion for Consent agenda item 5C.

- 5C. Consider approval of Memorandum of Understanding between the City of Nacogdoches and the Martinsville ISD Police Department.

Councilman Huckaby recused himself from this agenda item.

Police Chief Weems came forward to present the request. He explained that this memorandum of understanding is between the City of Nacogdoches and Martinsville ISD. It primarily covers mutual aid, including the deployment of the SWAT team or other necessary responders, as well as support for Martinsville ISD.

Mayor Johnson inquired if this arrangement was a regular occurrence. Chief Weems confirmed that it was.

Councilman Williams asked how many officers are in Martinsville. Chief Weems replied that there is one Chief of Police. He noted that we would essentially serve as their police department; if they receive a critical call, such as an active shooter situation, we will respond.

Councilman Maule made a motion to approve Consent Agenda Item 5C. Councilman Williams seconded the motion, which was unanimously approved.

5. CONSENT AGENDA:

Councilman Huckaby made a motion to approve the remainder of the consent agenda items. Councilman Blane Williams seconded the motion, and it was unanimously approved.

6. REGULAR AGENDA:

Mayor Johnson called the next item on the Regular Agenda.

- 6A. Consider an ordinance of the City of Nacogdoches, Texas, closing, vacating, and abandoning a portion of street right-of-way street commonly known as Reedy Street; providing findings of fact; providing severability, effective date and open meetings clauses; and providing for related matters.

Michael Neu, the Executive Director of Infrastructure, presented a request related to the abandonment of the street. He explained that this matter involves two actions that will be addressed tonight. The abandonment resulted from communications with Bright Coop. Mr. Neu provided some background on previous actions and noted that the City no longer requires the street in its current state. He mentioned that Bright Coop intends to improve their site and develop the area around the Reedy Street section. The City has confirmed that there is no need for the street, and they have already moved a fire hydrant as part of this process. Bright Coop will be reimbursed for the cost of relocating the fire hydrant.

Councilman Maule inquired whether staff had spoken with residents living on the affected streets. Mr. Neu explained that a zone change was recently completed in the area, but they had not received any feedback from property owners. He assured that the road would remain open to maintain an active right-of-way. Councilman Maule then asked if property owners needed to be notified about the road abandonment. Mr. Neu responded, "No, that is not required for road abandonment."

Councilwoman Belanger made a motion to approve item 6A on the regular agenda. Councilman Huckaby seconded the motion, and it was unanimously approved.

- 6B. Consider approval of a quitclaim deed of property, approximately 0.30 acres ± in size, and situated in City Block 56 of the City of Nacogdoches, Nacogdoches County, Texas, from the City of Nacogdoches to Bright Coop, Inc.; and providing for related matters.

Michael Neu, the Executive Director of Infrastructure, presented a request regarding the abandoned portion of the street right-of-way, which was addressed in item 6A of the regular agenda. He explained that this portion will be deeded to Bright Coop and filed with the County.

Mayor Johnson then opened the floor for discussion, but there were no comments.

Councilman Huckaby made a motion to approve item 6B of the regular agenda. Councilman Williams seconded the motion, and it was approved unanimously.

- 6C. Public Hearing: Hold a public hearing and receive citizen input on the Proposed FY2025-2026 Budget.

Todd Simoneaux, the Interim Director of Finance, presented the request. He noted that the city is in compliance with the charter. Additionally, Mr. Simoneaux highlighted the increase in water and sewer rates, along with a 4 percent rise in sanitation collection services.

Mayor Johnson opened the floor for public comments.

Sammie Smith raised concerns regarding the city budget, specifically about service fees and the transfer of funds to the general fund. He detailed his discussions with the city regarding the transfer of money from the enterprise fund to the general fund, expressing his belief that this process has been ongoing for several years.

Upon reviewing the budget, Mr. Smith was shocked to find that \$7 million had been transferred from the enterprise funds into the general fund. He mentioned that the Texas Municipal League (TML) conducted a survey revealing that, on average, cities typically recognize only 7% of their enterprise fund as part of the total operating budget. This indicates that the maximum acceptable transfer should be 7%.

Additionally, Mr. Smith pointed out that in 2025, the Senate introduced a bill prohibiting any transfers to a city's general fund, although the bill ultimately did not pass. From his perspective, he believes the maximum amount that should be transferred is closer to \$2.2 million, which is significantly less than the \$7 million currently being transferred.

Mr. Smith also highlighted that it is not permissible to transfer funds if a bond has not yet been paid off. He stressed the need for transfers to be justifiable and reasonable. Furthermore, he advised the city council to establish a long-term plan aimed at reducing these transfers and proposed suggestions on how to limit them.

Todd Simoneaux, the Interim Finance Director, addressed Mr. Smith's concerns regarding the transfers, specifically their reasonableness and legality. Mr. Simoneaux presented a handout to the council that referenced Government Code 1502.059 and read the relevant portions of the code aloud. He mentioned that he has over 20 years of experience in this field and has audited many cities. Mr. Simoneaux expressed confidence that the actions taken were above board, but he also consulted with legal counsel regarding the matter. He then provided a detailed review of the slides he presented. Lastly, he confirmed that the bond counsel concluded that everything was legal.

Councilman Maule recalled a previous audit that highlighted the high volume of interdepartmental transfers. However, Mr. Simoneaux pointed out that this is his second audit, no mention was made of these transfers. He also noted that he used to be an auditor and that it was not their responsibility to evaluate the reasonableness of the transfer amounts. Instead, their role was to review the presentation of the financial statements, specifically examining the balance sheet and income statement.

6D. Action on the FY2025–2026 Proposed Budget in Compliance with City Charter.

Todd Simoneaux, the Interim Finance Director, presented the budget request. He explained that state law mandates action to be taken after holding a budget hearing. Mr. Simoneaux provided a more detailed overview of the budget approval process. He noted that since the proposed budget was published in the paper until August 24, approval cannot occur until after September 7. Therefore, the action taken tonight would be to postpone the approval of the budget until the meeting on September 16.

Councilman Huckaby proposed a motion to postpone the approval of the budget until the meeting on September 16, 2025. Councilman Williams seconded the motion, which was unanimously approved.

6E. Consider approval of an ordinance amending Chapter 14 "Buildings and Building Regulations," Article VIII "Minimum Urban Standards Code," Division 4 "Unsafe Structures," 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.

Michael Neu, the Executive Director of Infrastructure, presented the request. He explained that this item is a continuation of past agenda items from previous agendas updating our codes. Mr. Neu mentioned that this effort originated from our Building and Regulation department. During some recent demolitions, it was discovered that our code was not in compliance with state regulations. We took this opportunity to revise

and clean up this section of our code. A redline edit was made to eliminate redundant sections.

Mr. Neu displayed a slide to the Council that highlighted the changes to Ordinance Chapter 14. He noted that the Building Standards Commission approved these changes on August 26, 2025.

Councilman Maule inquired whether they were taking the control from the City Council. Jerry Baker, the City Attorney, responded that they were not and explained the process involved.

Councilman Huckaby made a motion to approve item 6E of the regular agenda. Councilman Williams seconded the motion, and it was approved unanimously.

7. **EXECUTIVE SESSION**

The Mayor and Council adjourned into Executive Session at 6:26pm

8. Open for action, if any, on Executive Session Items (s).

The City Council has returned from their Executive Session and took no action on a decision regarding Personnel Matters.

9. **ADJOURNED:** 7:19 p.m.

A full recording of the Regular City Council Meeting for September 2, 2025, may be viewed here: [Regular City Council Meeting – 20250902](#)

ATTEST:

Karen Hadnot, City Secretary

Randy Johnson, Mayor
City Council
City of Nacogdoches



City Council Meeting

Date: September 16, 2025

Agenda Item: 5.B.

PRESENTER: Todd Simoneaux, Interim Finance Director

ITEM/SUBJECT: Consider approval of an ordinance amending Ordinance No. 2015-09-24 appropriating various amounts in accordance with the budget adopted for the ensuing fiscal year beginning October 1, 2024, and ending September 30, 2025. (Interim Director of Finance)

SUMMARY/BACKGROUND: This allocation covers the receipt of funds, operational expenses, and capital outlays for the City of Nacogdoches. The budget breakdown is provided to inform the Council about how these funds will be distributed across various city departments and projects.

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: Todd Simoneaux, Interim Finance Director
simoneauxt@nactx.us
(936) 559-2529

ATTACHMENTS: 1. Ordinance 2062-09-25 (BA)

CITY OF NACOGDOCHES, TEXAS

ORDINANCE NO. 2062-09-25

AN ORDINANCE AMENDING ORDINANCE NO. 2015-09-24 APPROPRIATING VARIOUS AMOUNTS IN ACCORDANCE WITH BUDGET ADOPTED FOR THE ENSUING FISCAL YEAR BEGINNING OCTOBER 1, 2024 AND ENDING SEPTEMBER 30, 2025.

WHEREAS, the City Council of the City of Nacogdoches, Texas has approved and adopted the budget for said city for the ensuing fiscal year beginning October 1, 2024 and ending September 30, 2025.

WHEREAS, the City Manager of the City of Nacogdoches has submitted to the City Council a proposed budget amendment for the fiscal year ending September 30, 2025; and

WHEREAS, the City Council of the City of Nacogdoches desires to amend the approved Budget Ordinance of the 2024-2025 fiscal year; and

NOW, THEREFORE BE IT ORDAINED by the City Council of the City of Nacogdoches that sums of money as herein set forth in said budget are hereby appropriated and amended for the gross receipt of funds/payment of operations/capital outlays of the city government of the City of Nacogdoches as follows:

Fund	Dept	Acct.	Fund	Description	Amt.
				See attached	

PASSED AND APPROVED this the 16th day of September, 2025.

Randy Johnson, Mayor
City of Nacogdoches

ATTEST:

Karen Hadnot, Interim City Secretary

Approved as to form: _____
Jerry Baker, City Attorney

Approved as to content: _____
Todd Simoneaux, Interim Director of Finance



City Council Meeting

Date: September 16, 2025

Agenda Item: 5.C.

PRESENTER: Rick Beverlin, City Manager

ITEM/SUBJECT: Consider the approval of a consulting services agreement between the City of Nacogdoches and Todd Simoneaux. For the purposes of providing financial management to the City. (City Manager)

SUMMARY/BACKGROUND: Todd Simoneaux has been providing interim finance leadership and consulting services to maintain departmental operations and meet critical financial deadlines. This agreement extends his consulting services for FY 2026

FINANCIAL:

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

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

ATTACHMENTS: 1. FY 2026 Agreement Nacogdoches Simoneaux

AGREEMENT
FOR CONSULTING SERVICES
CITY OF NACOGDOCHES
STATE OF TEXAS
COUNTY OF NACOGDOCHES

This Agreement is entered into by the City of Nacogdoches, a Texas Municipal Corporation ("City"), acting by and through its City Manager, and Todd Simoneaux ("Contractor"), both of which may be referred to herein singularly as "Party" or collectively as the "Parties."

The Parties hereto severally and collectively agree, and by the execution hereof are bound, to the mutual obligations herein contained and to the performance and accomplishment of the tasks hereinafter described.

I. DEFINITIONS

As used in this Agreement, the following terms shall have meanings as set out below:

"City" is defined in the preamble of this Agreement and includes its successors and assigns.

"Contractor" is defined in the preamble of this Agreement.

"City Manager" shall mean the City Manager and/or his designee.

II. TERM

2.1 Unless sooner terminated in accordance with the provisions of this Agreement, City Charter, or City Ordinance, the term of this Agreement shall commence on October 1, 2025 at 7:00 a.m. and terminate on September 30, 2026 at 5:00 p.m. This agreement may be extended upon mutual agreement by both parties.

III. SCOPE OF SERVICES

Subject to the direction and supervision of the City Manager or his designee, Contractor agrees to provide the services described in this Article III entitled Scope of Services in exchange for the compensation described in Article IV. Compensation. Scope of Services are as follows:

- FY 2025 Annual Comprehensive Financial Report preparation
- Assessment of current staff and current processes
- Assist in professional development of finance staff
- Various financial policy review and/or preparation and implementation
- Presentations to Council as needed
- Assist in Finance Director search/mentor
- FY 2027 Budget
- Other projects as mutually agreed upon

IV. COMPENSATION TO CONSULTANT

4.1 In consideration of Contractor's performance in a satisfactory and efficient manner, as determined solely by City Manager or his designee, of all services and activities set forth in this Agreement, City agrees to pay Contractor an hourly rate of \$115.00.

4.3 Contractor is a temporary employee and will be paid as such through the bi-weekly payroll process (including all benefits) in accordance with agreed upon scope of work so long as Contractor works an average of 30 or more hours per week.

4.4 The City will reimburse Contractor for any expenses incurred including meals on a per diem basis and lodging for any work that requires overnight stay.

4.6 Contractor shall be paid at the appropriate hourly rate for travel time to and from city hall and any other travel required by the city.

V. OWNERSHIP OF DOCUMENTS

5.1 Any and all writings, documents or information in whatsoever form and character produced by Contractor pursuant to the provisions of this Agreement are the exclusive property of City; and no such writing, document or information shall be the subject of any copyright or proprietary claim by Contractor.

5.2 Contractor understands and acknowledges that as the exclusive owner of any and all such writings, documents and information, City has the right to use all such writings, documents and information as City desires, without restriction.

VI. RECORDS RETENTION

6.1 Contractor shall properly, accurately and completely maintain all documents, papers, and records, and other evidence pertaining to the services rendered hereunder (hereafter referred to as "documents"), and shall make such materials available to the City at their respective offices, at all reasonable times and as often as City may deem necessary during the Agreement period, including any extension or renewal hereof, for purposes of audit, inspection, examination, and making excerpts or copies of same by City and any of its authorized representatives.

6.3 Contractor shall notify City, immediately, in the event Contractor receives any requests for information from a third party, which pertain to the documentation and records referenced herein. Contractor understands and agrees that City will process and handle all such requests.

VII. TERMINATION

7.1 For purposes of this Agreement, "termination" of this Agreement shall mean termination by expiration of the Agreement term as stated in Article II. Term, or earlier termination pursuant to any of the provisions hereof.

7.2 *Termination Without Cause.* This Agreement may be terminated upon 15 calendar days' written notice from the City Manager or from the contractor.

7.4 Contractor shall be entitled to payment for services which were performed to the satisfaction of the City Manager prior to termination.

VIII. MISCELLANEOUS

8.1 This Agreement constitutes the entire understanding and agreement of the parties as to the matters set forth in this Agreement. No alteration of or amendment to this Agreement shall be effective unless given in writing and signed by the party or parties sought to be charged or bound by the alteration or amendment.

8.2 This Agreement shall be governed by and construed in accordance with the laws of the State of Texas. Venue for any action arising under this Agreement shall lie in the state district courts of Nacogdoches County, Texas.

CITY OF NACOGDOCHES

Todd Simoneaux

(Signature)

Printed Name: _____

Title: City Manager

Date: _____

(Signature)

Printed Name: _____

Title: _____

Date: _____

APPROVED AS TO FORM:

City Attorney

PRESENTER: Dan Taravella, Assistant Police Chief

ITEM/SUBJECT: Consider approval of the purchase of new City of Nacogdoches police vehicles (Assistant Police Chief)

SUMMARY/BACKGROUND: The Nacogdoches Police Department is requesting approval to purchase a total of five (5) new 2026 year model vehicles. Four to five vehicles have been the norm for the police department each year, depending on our needs and current pricing. This allows us to retire older, unrepairable, high mileage police cars each year. The increasing prices on vehicles and equipment have made fulfilling our vehicle needs more difficult each year.

This year we are asking for five (5) marked Chevy Tahoes. The Tahoes will be assigned to patrol and function as routine marked patrol vehicles.

The Tahoes will come from Lake Country Chevy in Jasper, Tx through the TIPS (The Interlocal Purchasing System) program for a total price of \$284,222.50

All 5 vehicles will be shipped directly to Defender Supply for all purchased equipment, such as emergency lights, sirens, radios, computer stations, cameras, flashlights and decals to be installed and outfitted.

The total amount we are requesting is \$454,374.10. This will allow us to purchase all 5 vehicles and all the equipment and installation of 4 of them. Upon completion, NPD will absorb an additional cost of \$25,702.90 through our regular vehicle maintenance budget to complete the outfitting of the 5th vehicle to alleviate burden on the city's vehicle capital fund.

This purchase will replace four patrol vehicles that the Police Department has recently retired, auctioned or given to other city departments.

FINANCIAL:

Item is budgeted:

Account No.: 60.60.680.20

Account Name: Vehicle Replacement/Vehicle Capital Fund

Amount:\$454,374.10

Item is budgeted:

Account No.: 01.15.620.20

Account Name: Vehicle Maintenance

Amount:\$25,702.90

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

Not Applicable

CITY CONTACT: Dan Taravella, Assistant Police Chief
taravellad@nactx.us
(936) 559-2610

ATTACHMENTS: 1. 2025-26 NPD Vehicle Purchase PP

FY 2026 PURCHASE REQUEST SUMMARY

**A TOTAL OF FIVE (5) MARKED CHEVY POLICE
TAHOES**

TOTAL VEHICLE COST	\$284,222.50
TOTAL EQUIPMENT AND OUTFITTING	
\$170,151.60	
GRAND TOTAL	\$454,374.10













City Council Meeting

Date: September 16, 2025

Agenda Item: 5.E.

PRESENTER: Jessica Sowell, Community Services Director

ITEM/SUBJECT: Consider approving receipt of a donation from the Friends of the Nacogdoches Library in the amount of \$18,000.

SUMMARY/BACKGROUND: The Friends of the Nacogdoches Library supports the Nacogdoches Public Library by providing volunteers, promoting the library and providing monetary funds to augment the library's regular budget for books and materials and library programs.

FINANCIAL:

Item is not budgeted (*Budget Amendment required – see attached*)

Account No.: 24.560.31

Account Name: Library Grant Revenue

Amount: \$18,000

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

CITY CONTACT: Jessica Sowell
Director of Community Services
sowellj@nactx.us
936-559-2960

ATTACHMENTS:

PRESENTER: Jessica Sowell, Community Services Director

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

SUMMARY/BACKGROUND: The Parks Department is requesting the approval of the Professional Services Contract between the City of Nacogdoches and Cunningham Recreation for the design and installation of a new playground at Mill Pond Park.

This playground project is a part of Bond Proposition E and is the second of the Parks Bond projects. Design ideas were presented to and discussed by the Parks Advisory Board on Monday, July 28th. The Advisory Board provided positive feedback to staff about potential ideas for the project. City staff have communicated with Cunningham Recreation about needs and wants for the project, and we have received an initial draft design. This draft design will be presented to the Parks Advisory Board at their next meeting on September 22nd.

The DRAFT design rendering is included in the packet and will be finalized and signed off on by October 15th, ensuring the City receives the very generous grant from Cunningham Recreation. The not-to-exceed amount includes design, materials and installation of a new playground at Mill Pond Park.

FINANCIAL:

Item is budgeted: Account No.: 44.680.37
Account Name: Project Construction
Project Code: BG-24-504
Amount: \$240,000

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

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

ATTACHMENTS:

1. Construction Contract Mill Pond Playground 9-16-25
2. Mill Pond DRAFT design
3. Excerpt from Parks Advisory Board Minutes - 7_28_25

CITY OF NACOGDOCHES CONSTRUCTION AGREEMENT

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

1. DEFINITIONS

- 1.01. Calendar Day. A "calendar day" is any day of the week or month, no days being excepted.
- 1.02. City. Whenever the word "City" is used, it shall mean and be understood as referring to the City of Nacogdoches, Texas.
- 1.03. City's Representative. Whenever the words "City's Representative" or "Representative" are used, it shall mean and be understood as referring to the City Manager or his delegate, who shall act as City's agent. The City's Representative may inspect and issue instructions but shall not directly supervise the Contractor.
- 1.04. Contract Amount. The term "Contract Amount" shall mean the amount of Contractor's lump sum base bid proposal, together with all alternates, as accepted by the City in accordance with the Contractor's Proposal. In the case of a unit price contract, Contract Amount shall mean the sum of the product of all unit prices times the respective estimated final quantities of work, for all base bid and alternates, as accepted by the City.
- 1.05. Contract Documents. The term "Contract Documents" shall mean those documents listed in Paragraph 2.01.
- 1.06. Contractor. Whenever the word "Contractor" is used, it shall mean the person(s), partnership, or corporation who has agreed to perform the work embraced in this Agreement and the other Contract Documents.
- 1.07. Extra Work. The term "Extra Work" shall mean and include work that is **not** covered or contemplated by the Contract Documents but that may be required by City's Representative and approved by the City in writing **prior** to the work being done by the Contractor.
- 1.08. Final Completion. The term "Final Completion" shall mean that all the work has been completed, all final punch list items have been inspected and satisfactorily completed, all payments to materialmen and subcontractors have been made, all documentation and warranties have been submitted, and all closeout documents have been executed and approved by the City.
- 1.09. Interpretation of Phrases. Whenever the words "directed", "permitted", "designated", "required", "considered necessary", "prescribed", or words of like import are used, it is understood that the direction, requirement, permission, order, designation, or prescription of City's Representative is intended. Similarly, the words "approved", "acceptable", "satisfactory", or words of like import shall mean approved by, accepted by, or satisfactory to City's Representative.

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

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

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

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

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

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

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

2. CONTRACT DOCUMENTS

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

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

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

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

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

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

3. AWARD OF CONTRACT

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

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

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

4. CITY'S REPRESENTATIVE

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

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

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

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

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

5. INDEPENDENT CONTRACTOR

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

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

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

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

6. DISORDERLY EMPLOYEES

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

7. HOURS OF WORK

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

8. NATURE OF THE WORK

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

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

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

9. POST-AGREEMENT AWARD MEETINGS

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

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

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

10. PROGRESS OF WORK

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

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

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

carry on the work with dates at which the Contractor will start the several parts of the work and the estimated dates of completion of the several parts.

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

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

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

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

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

11. SITE CONDITIONS AND MANAGEMENT

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

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

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

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

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

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

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

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

11.09. When two or more contractors, including Contractor, are employed on related or adjacent work or obtain materials from the same material source, or when work must be completed by one contractor before another can begin, each shall conduct his operations in such a manner as not to cause any unnecessary delay or hindrance to the other. Each contractor, including Contractor if applicable, shall be responsible to the

other for all damage to work, to persons, or to property caused to the other by his operations, and for loss caused the other due to unreasonable or unjustified delays or failure to finish the work or portions thereof, or furnish materials within the time requested. Should Contractor cause damage to the work or property of any separate contractor at the Project site, or should any claim arising out of Contractor's separate contractor at the Project site, or should any claim arising out of Contractor's performance of the Work at the Project site be made by any separate contractor against Contractor, City or other consultants, or any other person, Contractor shall promptly attempt to settle with such other contractor by agreement, or to otherwise resolve the dispute. **Contractor shall, to the fullest extent permitted by applicable laws, indemnify and hold City harmless from and against all claims, damages, losses and expenses (including, but not limited to, fees of architects, attorneys and other professionals and court costs) arising directly, indirectly or consequentially out of any action, legal or equitable, brought by any separate contractor against City to the extent based on a claim arising out of Contractor's negligence.**

12. MATERIALS

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

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

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

(a) Upon acceptance of the materials furnished or ordered by the City, the Contractor warrants that it shall properly handle, transport, store and safeguard the materials.

(b) Further, the Contractor shall repair, repaint or replace any and all materials or any part thereof damaged or stolen while in its possession. Such materials are considered to be in the Contractor's possession from the moment the Contractor either accepts delivery of the materials or

signs a receipt accepting delivery of said materials until the Subcontractor's work is completed and accepted by the City's Representative.

(c) Before transporting any of the materials furnished or ordered by the City, the Contractor shall establish to the City's satisfaction that it has obtained insurance against losses, theft, damage, equal to or greater than the amounts spent by the City in securing said materials. It shall be incumbent upon the Contractor to verify the cost of materials.

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

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

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

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

13. ENTRY, OBSERVATION, TESTING & POSSESSION

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

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

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

fails to do so, if the work is in accordance with the plans, specifications, and other Contract Documents, the City shall pay the costs of repair and restoration of the work.

13.04. City shall have the right to take possession of and use any completed or partially completed portions of the Project prior to the time for completing the entire Project or such portions which may not have expired. The parties agree and understand that possession and use shall not constitute an acceptance of any work not completed in accordance with this Agreement. Further, insurance changes required to keep Contractor's insurance in effect shall be the responsibility of Contractor.

14. REJECTED WORK

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

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

(a) The Contractor may be required, at the City's option, after notice from City's Representative, to remedy such work so that it shall be in full compliance with this Agreement. All rejected work or materials shall be immediately replaced in order to conform with this Agreement.

(b) If the City deems it inexpedient to correct work damaged or not done in accordance with this Agreement, an equitable deduction from the agreed sum may be made by the City at the City's sole discretion.

15. SUBCONTRACTING & SUBCONTRACTORS

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

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

16. PAYMENT

16.01. The City stipulates that it is an exempt organization as defined by the Limited Sales, Excise and Use Tax Act and, as such, is exempt from the payment of the sales tax on materials and supplies used in the performance of this Contract. The Contractor shall issue exemption certificates to its suppliers and Subcontractors in lieu of said sales tax for all such materials and supplies, and said exemption certificates must comply with the State Comptroller's Ruling No. 95-0.07 and shall be subject to the provision of the State Comptroller's Ruling No. 95-0.09, effective October 1, 1969.

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

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

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

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

16.06. Reduction in the scope or quantity of work on unit price items shall merely reduce the number of units. In the event that materials have been delivered prior to notice of such reduction, the City will have the option either to pay freight & transportation costs and any re-stocking charges actually incurred by the

Contractor or to purchase the materials. The Contractor shall never be entitled to anticipated or lost profits on the deleted or reduced portion of a job, whether bid on a unit price or lump sum basis.

16.07. The Contractor shall have the sole obligation to pay any and all charges or fees and give all notices necessary to and incidental to the lawful prosecution of the work hereunder. The Contractor shall not and shall have no authority whatsoever to obligate the City to make any payments to another party nor make any promises or representation of any nature on behalf of the City, without the specific written approval of the City.

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

16.09. Unless otherwise provided in the Contract Documents:

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

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

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

- (a) Defective work.
- (b) Claims made or reasonable evidence indicating probable filing of claims by unpaid vendors or other third parties.
- (c) Failure of the Contractor to make prompt payments to subcontractors for labor or material or materialmen.
- (d) Claims made or reasonable evidence indicating claims will be made for damage to another by the Contractor.
- (e) Claims made or reasonable evidence indicating claims will be made for damage to third parties, including adjacent property owners.

- (f) Claims made or reasonable evidence indicating claims will be made for unremedied damage to property owned by the City.
- (g) City's determination of an amount of liquidated damages.
- (h) Charges made for repairs to the Contractor's defective work or repairs made by the City to correct damage to other property.
- (i) Other amounts authorized under this Agreement or under any other agreement made between City and Contractor.

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

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

17. EXTRA WORK CHARGES

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

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

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

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

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

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

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

Method A - By agreed unit prices, or

Method B - By agreed lump sum, or

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

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

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

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

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

(g) **Method C - Actual Field Costs.** The actual field cost is hereby defined to include the cost of all applicable workmen and laborers, as well as materials, supplies, teams, trucks, rentals on machinery and equipment, for the time actually employed or used for such Extra Work, plus actual transportation charges necessarily incurred, together with other costs reasonably incurred directly on account of such Extra Work, including social security, old age benefits, maintenance bonds, public liability, property damage, worker's compensation, and all other insurance as may be required by law or ordinances or required and agreed to by the City or City's Representative. City's Representative

may direct the form in which accounts of the actual field costs shall be kept and records of these accounts shall be made available to City's Representative. Unless otherwise agreed upon, the prices for the use of machinery and equipment shall be determined by using one hundred percent (100%), unless otherwise specified, of the latest schedule of equipment and ownership expenses adopted by the Associated General Contractors of America. Where practical, the terms and prices for the use of machinery and equipment shall be incorporated in the written Extra Work order. Actual field costs shall not exceed the prevailing market price therefor within reasonable tolerances as determined by City's Representative. The amount due to Contractor for costs other than actual field costs shall be calculated in accordance with the following standards:

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

18. TIME OF COMPLETION

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

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

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

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

19. SUBSTANTIAL COMPLETION

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

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

(b) If the City Representative and City find that the work is Substantially Completed, the City shall issue to the Contractor its certificate of Substantial Completion.

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

20. FINAL COMPLETION

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

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

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

21. DELAYS

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

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

21.03. In the event of delays resulting from changes ordered in the work by the City or other delays caused by the City or for the City's convenience, the Contractor may apply to the City for recovery of incidental expenses resulting from increased storage costs or other costs necessary to protect the value of the work. In

no event shall any consequential or other damages be allowed or any other charges or claims be made by the Contractor for hindrances or delays resulting from any other cause.

22. EXTENSIONS OF TIME

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

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

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

23. LIQUIDATED DAMAGES

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

23.02. As a result of the difficulty in estimation, calculation and ascertainment of City's damages due to a failure of Contractor to achieve timely completion of the Work, if the Contractor should neglect, fail, or refuse to either Substantially Complete or Finally Complete the work within the time herein specified, or any

proper extension thereof granted by the City's Representative pursuant to the terms of Paragraph 22 of this Agreement, then the Contractor does hereby agree as part of the consideration for the awarding of this Agreement that the City may permanently withhold from the Contractor's total compensation the sum of **Five Hundred and no/100 DOLLARS (\$500.00)** for each and every calendar day that the Contractor shall be in default after the time stipulated for Substantial Completion and/or Final Completion, not as a penalty, but as liquidated damages for the breach of this Agreement. It being specifically understood that the assessment of liquidated damages may be made for any failure to meet either or both of the deadlines specified for Substantial Completion and/or Final Completion.

24. CHARGES FOR INJURY OR REPAIR

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

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

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

25. WARRANTY

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

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

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

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

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

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

25.06. **Defective Work Discovered During Warranty Period.** If any of the work is found or determined to be either defective, including obvious defects, or otherwise not in accordance with this Agreement within one (1) year after the date of the issuance of a certificate of Final Completion of the Work or a designated portion of the Work, whichever is longer, or within one (1) year after acceptance by the City of designated

equipment, or within such longer period of time as may be prescribed by law or by the terms of any applicable special warranty required by this Agreement, the Contractor shall promptly commence to correct the defective work at no cost to the City.

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

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

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

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

26. PAYMENT OF EMPLOYEES, SUBCONTRACTORS & SUPPLIERS

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

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

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

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

26.05. **Payment of Subcontractors.** The Contractor shall be solely and exclusively responsible for compensating any of the Contractor's employees, subcontractors, materialmen and/or suppliers of any type

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

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

27. INSURANCE

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

28. BOND PROVISIONS

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

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

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

29. SURETY

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

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

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

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

29.03. In the event the account shows that the cost to complete the work is less than that which would have been the cost to City had the work been completed by the Contractor under the terms of this

Agreement, or when the Contractor shall pay the balance shown to be due by them to the City, then all machinery, equipment, tools, materials, or supplies left on the site of the work shall be turned over to the Contractor.

30. COMPLIANCE WITH LAW

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

30.02. The Contractor shall perform and require all subcontractors to perform the work in accordance with applicable laws, codes, ordinances, and regulations of the State of Texas and the United States and in compliance with OSHA and other laws as they apply to its employees. In the event any of the conditions of the specifications violate the code for any industry, then such code conditions shall prevail.

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

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

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

31. SAFETY PRECAUTIONS

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

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

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

31.04. Contractor agrees that it shall not transport to, use, generate, dispose of, or install at the Project site any Hazardous Substance (as defined in Paragraph 31.07, except in accordance with applicable Environmental Laws. Further, in performing the Work, Contractor shall not cause any release of Hazardous

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

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

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

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

32. TRENCH SAFETY

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

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

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

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

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

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

33. INDEMNITY

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

33.02 Upon completion of the installation, this indemnification is not intended to cover, and the Contractor is not responsible for, any claims or damages resulting from any lack of maintenance; inadequate supervision; negligence; intentional acts of anyone other than the Contractor or their affiliates; inadequate surfacing; or vandalism. Regarding product liability, this indemnification and any insurance provided by Contractor is intended to indemnify for claims arising solely from the

negligent design or manufacture of the Playground Equipment. This clarification of the indemnification section of this contract supersedes any other section of this contract, regarding indemnification, which might be interpreted in any other way.

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

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

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

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

33.06. It is agreed with respect to any legal limitations now or hereafter in effect and affecting the validity or enforceability of the indemnification obligation under Paragraph 33.01, such legal limitations are made a part of the indemnification obligation and shall operate to amend the

indemnification obligation to the minimum extent necessary to bring the provision into conformity with the requirements of such limitations, and as so modified, the indemnification obligation shall continue in full force and effect.

34. RELEASE

The Contractor assumes full responsibility for the work to be performed hereunder, and hereby releases, relinquishes, and discharges the City, its officers, agents, and employees from all claims, demands, and causes of action of every kind and character, including the cost of defense thereof, for any injury to or death of any person (whether employees of either party or other third parties) and any loss of or damage to any property (whether property of either of the parties hereto, their employees, or of third parties) that is caused by or alleged to be caused by, arising out of, or in connection with the Contractor's work to be performed hereunder. This release shall apply regardless of whether said claims, demands, and causes of action are covered in whole or in part by insurance, and in the event of injury, death, property damage, or loss suffered by the Contractor, any subcontractor, or any person or organization directly or indirectly employed by any of them to perform or furnish work on the Project, this release shall apply regardless of whether such injury, death, loss, or damage was caused in whole or in part by the negligence of the City.

35. PERMITS AND LICENSES

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

36. ROYALTIES AND LICENSING FEES

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

37. BREACH OF CONTRACT & DAMAGES

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

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

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

38. TERMINATION FOR CAUSE

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

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

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

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

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

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

38.06. If the Contractor abandons the Work.

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

39. TERMINATION FOR CONVENIENCE

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

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

of law. In the event of termination for convenience, Contractor Waives and Releases any claim for lost profit, other than profit on Work performed prior to the effective date of such termination.

40. RIGHT TO COMPLETE

If this Agreement is terminated for cause, the City shall have the right but shall not be obligated to complete the work itself or by others; and to this end, the City shall be entitled to take possession of and use such equipment, without rental obligation therefor, and materials as may be on the job site, and to exercise all rights, options, and privileges of the Contractor under its subcontracts, purchase orders, or otherwise; and the Contractor shall promptly assign such rights, options, and privileges to City. If the City elects to complete the work itself or by others, pursuant to the foregoing, then the Contractor and/or Contractor's surety will reimburse City for all costs incurred by the City (including, without limitation, applicable, general, administrative expenses, field overhead, the cost of necessary equipment, materials, field labor, additional fees paid to architects, engineers, attorneys or others to assist the City in connection with the termination and liquidated damages) in completing and/or correcting work by the Contractor that fails to meet any requirement of this Agreement or the other Contract Documents.

41. CLOSE OUT

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

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

42. TERMINATION CONVERSION

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

43. HIRING

During the term of this Agreement and for a period of one (1) year thereafter, the Contractor agrees not to solicit for hire any employee or employees of the City that were associated with work specified under this Agreement. In the event that this provision is breached by the Contractor, the Contractor agrees to pay the City damages in the amount equal to twelve (12) months of the employee's total compensation plus any legal expenses associated with enforcement of this provision.

44. ASSIGNMENT

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

45. EFFECTIVE DATE

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

46. OTHER TERMS

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

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

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

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

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

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

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

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

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

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

- (a) Contractor has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with this Contract
- (b) Contractor represents and warrants that it has no actual or potential conflicts of interest in the goods and or services described in the scope of work to this contract.
- (c) **Antitrust.** Pursuant to 15 U.S.C. §1, et seq. and Tex. Bus. & Comm. Code §15.01, et seq. neither the contractor nor the firm, corporation, partnership, or institution represented by the contractor, or anyone acting for such a firm, corporation or institution has violated the antitrust laws of this

state, federal antitrust laws, nor communicated directly or indirectly the bid made to any competitor or any other person engaged in such line of business.

- (d) **Child Support.** Pursuant to §231.006(d), Texas Family Code, regarding child support, the Contractor certifies that the individual or business entity named in this Contract is not ineligible to receive the specified payment and acknowledges that the contract may be terminated, and payment may be withheld if this certification is inaccurate. Furthermore, any Contractor subject to §231.006, Gov't Code, must include names and Social Security numbers of each person with at least 25% ownership of the business entity submitting the bid. This information must be provided prior to award. Enter the Name & Social Security Numbers for each person below:

Name:	Social Security Number:
Name:	Social Security Number:
Name:	Social Security Number:

- (e) **Debarment.** Contractor certifies that Contractor and its principals are eligible to participate in this transaction and have not been subjected to suspension, debarment, or similar ineligibility determined by any federal, state or local governmental entity and that Contractor is in compliance with the State of Texas statutes and rules relating to procurement. Entities ineligible for state procurement are listed on the State of Texas Debarred Vendor List maintained by the Texas Comptroller of Public Accounts and the System for Award Management (SAM) maintained by the General Services Administration. Entities ineligible for federal procurement are listed at <http://www.sam.gov/content/exclusions>.
- (f) **Terrorism Watch List.** Contractor represents and warrants that it does not do business with Iran, Sudan or a foreign terrorist organization as prohibited by Texas Government Code 2252.152. Contractor certifies that it is not listed on the federal government's terrorism watch list as described in Executive Order 13224.
- (g) **Critical Infrastructure.** If Contractor will be granted direct or indirect access to a communication infrastructure system, cybersecurity system, electric grid, hazardous waste treatment system, or water treatment facility, Contractor certifies that neither it or its parent company, is (1) majority owned by citizens or governmental entities of China, North Korea, Russia or any other country designated by the Governor under Government Code 2274.0103, or (2) headquartered in any of those countries.
- (h) **Convictions.** Under Sections 2155.006, 23155.0061 and 2261.053 of the Texas Government Code, Contractor certifies that it is not ineligible to receive the specified contract and may be terminated and payment withheld if this certification is inaccurate. These sections prohibit contracts that include proposed financial participation by an individual or business entity who has been convicted in the past five years of (a) violating a federal law or assessed a penalty in connection with a contract involving relief for Hurricane Rita, Hurricane Katrina, or any other disaster, as defined by §418.004, Gov't Code, occurring after September 24, 2005; and (b) of any offense related to the direct support or promotion of human trafficking.
- (i) **COVID Vaccinations.** Contractor certifies that it does not require its customers to provide any documentation certifying the Customer's COVID-19 vaccination or post-transmission recovery on entry to, or to receive service from the Contractor's business.

- (j) **Boycotts.** (1) To the extent this Contract is considered a Contract for goods or services subject to § 2270.002 Texas Government Code, Contractor verifies that it: (i) does not boycott Israel; and (ii) will not boycott Israel during the term of this Contract. (2) To the extent this Contract has a value of \$100,000 or more and Contractor is an organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations, that exists to make a profit that employs 10 or more full time employees, Contractor certifies that it: (i) does not and will not boycott energy companies during the term of the contract (*See Texas Government Code 2274.002, et seq.*); and (ii) does not and will not discriminate against a firearm entity or firearm trade association (*See Texas Government Code 2274.002, et seq.*).

46.11. **Waiver.** Failure of any party, at any time, to enforce a provision of this Agreement shall in no way constitute a waiver of that provision nor in any way affect the validity of this Agreement, any part hereof, or the right of the City thereafter to enforce each and every provision hereof. No term of this Agreement shall be deemed waived or breach excused unless the waiver shall be in writing and signed by the party claimed to have waived. Furthermore, any consent to or waiver of a breach will not constitute consent to or waiver of or excuse of any other different or subsequent breach.

46.12. **Headings, Gender, Number.** The article headings are used in this Agreement for convenience and reference purposes only and are not intended to define, limit, or describe the scope or intent of any provision of this Agreement and shall have no meaning or effect upon its interpretation. Words of any gender used in this Agreement shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, and vice versa, unless the context requires otherwise.

46.13. **Agreement Read.** The parties acknowledge that they have had opportunity to consult with counsel of their choice, have read, understand and intend to be bound by the terms and conditions of this Agreement.

46.14. **Multiple Originals.** It is understood and agreed that this Agreement may be executed in a number of identical counterparts, each of which shall be deemed an original for all purposes.

46.15. **Notice of Indemnification.** City and Contractor hereby acknowledge and agree that this Agreement contains certain indemnification obligations and covenants.

**PLAYCORE WISCONSIN, INC.
DBA GAMETIME**

CITY OF NACOGDOCHES

By:_____

By:_____

Printed Name:_____

City Manager

Title:_____

Date: _____

Date:_____

APPROVED AS TO FORM:

City Attorney

Date: _____

Exhibit A
DAVIS BACON WAGE RATES

{Insert Appropriate Classification of Wage Rates
From
<https://www.wdol.gov/dba.aspx>}

Exhibit B
INSURANCE REQUIREMENTS

During the term of this Agreement Contractor's insurance policies shall meet the following requirements:

I. Standard Insurance Policies Required:

- A. Commercial General Liability
- B. Business Automobile Liability
- C. Umbrella / Excess Liability – required for contract amounts exceeding \$1,000,000
- D. Workers' Compensation
- E. Builder's Risk – provides coverage for contractor's labor and materials for a project during construction that involves a structure such as a building or garage. builder's risk policy shall be written on "all risks" form.

II. General Requirements Applicable to All Policies:

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

III. Commercial General Liability

- A. General Liability insurance shall be written by a carrier with a "A:VIII" or better rating in accordance with the current Best Key Rating Guide.

- B. Limit of \$500,000.00 per occurrence for bodily injury and property damage with an annual aggregate limit of \$1,000,000.00 which limits shall be endorsed to be per Project.
- C. Coverage shall be at least as broad as ISO form GC 00 01.
- D. No coverage shall be excluded from the standard policy without notification of individual exclusions being attached for review and acceptance.
- E. The coverage shall include but not be limited to the following: premises/operations with separate aggregate; independent contracts; products/completed operations; contractual liability (insuring the indemnity provided herein) Host Liquor Liability, Personal & Advertising Liability; and Explosion, Collapse, and Underground coverage.

IV. Business Automobile Liability

- A. Business Automobile Liability insurance shall be written by a carrier with a "A:VIII" or better rating in accordance with the current Best Key Rating Guide.
- B. Minimum Combined Single Limit of \$1,000,000.00 per occurrence for bodily injury and property damage.
- C. Coverage shall be at least as broad as auto form CNA 103809MT.
- D. The Business Auto Policy must show Symbol 1 in the Covered Autos Portion of the liability section in Item 2 of the declarations page.
- E. The coverage shall include owned autos, leased or rented autos, non-owned autos, any autos and hired autos.
- F. Pollution Liability coverage shall be provided on the certificate of insurance, with a limit of \$1,000,000.00.

V. Excess Liability

Umbrella form excess liability coverage following the form of the underlying coverage with a minimum limit of \$5,000,000.00 or the total value of the contract, whichever is greater, per occurrence/aggregate when combined with the lowest primary liability coverage, is required for contracts exceeding \$1,000,000 in total value.

- VI. Those policies set forth in Paragraphs III, IV, and V shall contain an endorsement naming the City as Additional Insured and further providing that the Contractor's policies are primary to any self-insurance or insurance policies procured by the City. The additional insured endorsement shall be in a form at least as broad as ISO form GC 2026. Waiver of subrogation in a form at least as broad as ISO form 2404 shall be provided in favor of the City on all policies obtained by the Contractor in compliance with the terms of this Agreement. Contractor shall be responsible for all deductibles which may exist on any policies obtained in compliance with the terms of this Agreement. All coverage for subcontractors shall

be subject to the requirements stated herein. All Certificates of Insurance and endorsements shall be furnished to the City's Representative at the time of execution of this Agreement, attached hereto as Exhibit D, and approved by the City before work commences.

VII. Workers Compensation Insurance

- A. Pursuant to the requirements set forth in Title 28, Section 110.110 of the Texas Administrative Code, all employees of the Contractor, all employees of any and all subcontractors, and all other persons providing services on the Project must be covered by a workers compensation insurance policy: either directly through their employer's policy (the Contractor's or subcontractor's policy) or through an executed coverage agreement on an approved Texas Department of Insurance Division of Workers Compensation (DWC) form. Accordingly, if a subcontractor does not have his or her own policy and a coverage agreement is used, contractors and subcontractors must use that portion of the form whereby the hiring contractor agrees to provide coverage to the employees of the subcontractor. The portion of the form that would otherwise allow them not to provide coverage for the employees of an independent contractor may not be used.
- B. Workers compensation insurance shall include the following terms:
1. Employer's Liability minimum limits of \$1,000,000.00 for each accident/each disease/each employee are required.
 2. "Texas Waiver of Our Right to Recover From Others Endorsement, WC 42 03 04" shall be included in this policy.
 3. Texas must appear in Item 3A of the Workers Compensation coverage or Item 3C must contain the following: All States except those listed in Item 3A and the States of NV, ND, OH, WA, WV, and WY.
- C. Pursuant to the explicit terms of Title 28, Section 110.110(c) (7) of the Texas Administrative Code, the bid specifications, this Agreement, and all subcontracts on this Project must include the following terms and conditions in the following language, without any additional words or changes, except those required to accommodate the specific document in which they are contained or to impose stricter standards of documentation:

"A. Definitions:

Certificate of coverage ("certificate") – An original certificate of insurance, a certificate of authority to self-insure issued by the Division of Workers Compensation, or a coverage agreement (DWC-81, DWC-83, or DWC-84), showing statutory workers' compensation insurance coverage for the person's or entity's employees providing services on a project, for the duration of the project.

Duration of the project - includes the time from the beginning of the work on the project until the Contractor's/person's work on the project has been completed and accepted by the governmental

entity.

Persons providing services on the project ("subcontractors" in § 406.096 [of the Texas Labor Code]) - includes all persons or entities performing all or part of the services the Contractor has undertaken to perform on the project, regardless of whether that person contracted directly with the Contractor and regardless of whether that person has employees. This includes, without limitation, independent Contractors, subcontractors, leasing companies, motor carriers, owner-operators, employees of any such entity, or employees of any entity which furnishes persons to provide services on the project. "Services" include, without limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other service related to a project. "Services" does not include activities unrelated to the project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.

- B. The Contractor shall provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, that meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all employees of the Contractor providing services on the project, for the duration of the project.*
- C. The Contractor must provide a certificate of coverage to the governmental entity prior to being awarded the contract.*
- D. If the coverage period shown on the Contractor's current certificate of coverage ends during the duration of the project, the Contractor must, prior to the end of the coverage period, file a new certificate of coverage with the governmental entity showing that coverage has been extended.*
- E. The Contractor shall obtain from each person providing services on a project, and provide to the governmental entity:*
 - (1) a certificate of coverage, prior to that person beginning work on the project, so the governmental entity will have on file certificates of coverage showing coverage for all persons providing services on the project; and*
 - (2) no later than seven calendar days after receipt by the Contractor, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project.*
- F. The Contractor shall retain all required certificates of coverage for the duration of the project and for one year thereafter.*
- G. The Contractor shall notify the governmental entity in writing by certified mail or personal delivery, within 10 calendar days after the Contractor knew or should have known, or any change that materially affects the provision of coverage of any person providing services on the project.*
- H. The Contractor shall post on each project site a notice, in the text, form and manner prescribed by the Division of Workers Compensation, informing all persons providing services on the project that they are required to be covered, and stating how a person may verify coverage and*

report lack of coverage.

I. The Contractor shall contractually require each person with whom it contracts to provide services on a project, to:

- (1) provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, that meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all of its employees providing services on the project, for the duration of the project;*
- (2) provide to the Contractor, prior to that person beginning work on the project, a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the project, for the duration of the project;*
- (3) provide the Contractor, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project;*
- (4) obtain from each other person with whom it contracts, and provide to the Contractor:*
 - (a) A certificate of coverage, prior to the other person beginning work on the project; and*
 - (b) A new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the project;*
- (5) retain all required certificates of coverage on file for the duration of the project and for one year thereafter;*
- (6) notify the governmental entity in writing by certified mail or personal delivery, within 10 calendar days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project; and*
- (7) Contractually require each person with whom it contracts to perform as required by paragraphs (a) - (g), with the certificates of coverage to be provided to the person for whom they are providing services.*

J. By signing this contract, or providing, or causing to be provided a certificate of coverage, the Contractor is representing to the governmental entity that all employees of the Contractor who will provide services on the project will be covered by workers' compensation coverage for the duration of the project; that the coverage will be based on proper reporting of classification codes and payroll amounts; and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the Commission's Division of Self-Insurance Regulation. Providing false or misleading information may subject the Contractor to administrative penalties, criminal penalties, civil penalties, or other civil actions.

- K. *The Contractor's failure to comply with any of these provisions is a breach of contract by the Contractor that entitles the governmental entity to declare the contract void if the Contractor does not remedy the breach within ten calendar days after receipt of notice of breach from the governmental entity."*

VIII. Certificates of Insurance shall be prepared and executed by the insurance company or its authorized agent, and shall contain the following provisions and warranties:

- A. The company is licensed and admitted to do business in the State of Texas.
- B. The insurance policies provided by the insurance company are underwritten on forms that have been provided by the Texas State Board of Insurance or ISO.
- C. All endorsements and insurance coverages according to requirements and instructions contained herein.
- D. The form of the notice of cancellation, termination, or change in coverage provisions to the City of Nacogdoches.
- E. Original endorsements affecting coverage required by this section shall be furnished with the certificates of insurance.

Exhibit C
PERFORMANCE AND PAYMENT BONDS

PERFORMANCE BOND

Project No. _____

THE STATE OF TEXAS

§
§

KNOW ALL MEN BY THESE PRESENTS:

THE COUNTY OF NACOGDOCHES

§

THAT WE, _____, as Principal, hereinafter called "Contractor" and the other subscriber hereto _____, as Surety, do hereby acknowledge ourselves to be held and firmly bound to the City of Nacogdoches, a municipal corporation, in the sum of _____ and /100 (\$, .) for the payment of which sum, well and truly to be made to the City of Nacogdoches and its successors, the said Contractor and Surety do bind themselves, their heirs, executors, administrators, successors, and assigns, jointly and severally.

THE CONDITIONS OF THIS OBLIGATION ARE SUCH THAT:

WHEREAS, the Contractor has on or about this day executed a Contract in writing with the City of Nacogdoches for **Construction Services for Mill Pond Playground** all of such work to be done as set out in full in said Contract Documents therein referred to and adopted by the City Council, all of which are made a part of this instrument as fully and completely as if set out in full herein.

NOW THEREFORE, if the said Contractor shall faithfully and strictly perform Contract in all its terms, provisions, and stipulations in accordance with its true meaning and effect, and in accordance with the Contract Documents referred to therein and shall comply strictly with each and every provision of the Contract, including all warranties and indemnities therein and with this bond, then this obligation shall become null and void and shall have no further force and effect; otherwise the same is to remain in full force and effect.

It is further understood and agreed that the Surety does hereby relieve the City of Nacogdoches or its representatives from the exercise of any diligence whatever in securing compliance on the part of the Contractor with the terms of the Contract, including the making of payments thereunder and, having fully considered its Principal's competence to perform the Contract in the underwriting of this Performance Bond, the Surety hereby waives any notice to it of any default, or delay by the Contractor in the performance of his Contract and agrees that it, the Surety, shall be bound to take notice of and shall be held to have knowledge of all acts or omissions of the Contractor in all matters pertaining to the Contract. The Surety understands and agrees that the provision in the Contract that the City of Nacogdoches shall retain certain amounts due the Contractor until the expiration of thirty days from the acceptance of the Work is intended for the City's benefit, and the City of Nacogdoches shall have the right to pay or withhold such retained amounts or any other amount owing under the Contract without changing or affecting the liability of the Surety hereon in any degree.

It is further expressly agreed by Surety that the City of Nacogdoches or its representatives are at liberty at any time, without notice to the Surety, to make any change in the Contract Documents and in the Work to be done thereunder, as provided in the Contract, and in the terms and conditions thereof, or to make any change in, addition to, or deduction from the work to be done thereunder; and that such changes, if made, shall not in any way vitiate the obligation in this bond and undertaking or release the Surety therefrom.

It is further expressly agreed and understood that the Contractor and Surety will fully indemnify and hold harmless the City of Nacogdoches from any liability, loss, cost, expense, or damage arising out of or in connection with the work done by the Contractor under the Contract. In the event that the City of Nacogdoches shall bring

TEXAS STATUTORY PAYMENT BOND

Project No. _____

THE STATE OF TEXAS

§
§

KNOW ALL MEN BY THESE PRESENTS:

THE COUNTY OF NACOGDOCHES

§

THAT WE, _____, as Principal, hereinafter called "Principal" and the other subscriber hereto _____, a corporation organized and existing under the laws of the State of _____, licensed to business in the State of Texas and admitted to write bonds, as Surety, herein after called "Surety", do hereby acknowledge ourselves to be held and firmly bound to the City of Nacogdoches, a municipal corporation, in the sum of _____ and /100 (\$ _____, _____) for payment whereof, the said Principal and Surety bind themselves, and their heirs, administrators, executors, successors and assigns jointly and severally.

THE CONDITIONS OF THIS OBLIGATION ARE SUCH THAT:

WHEREAS, Principal has entered into a certain contract with the City of Nacogdoches, dated the _____ day of _____, 20____, for **Construction Services for Mill Pond Playground** which contract is hereby referred to and made a part hereof as fully and to the same extent as if copied at length herein.

NOW THEREFORE, the condition of this obligation is such that if Principal shall pay all claimants supplying labor and material to him or a subcontractor in the prosecution of the work provided for in said contract, then, this obligation shall be null and void; otherwise to remain in full force and effect;

PROVIDED, HOWEVER, that this bond is executed pursuant to the provisions of Chapter 2253 of the Texas Government Code and all liabilities on this bond shall be determined in accordance with the provisions, conditions and limitations of said Code to the same extent as if it were copied at length herein.

IN WITNESS THEREOF, the said Principal and Surety have signed and sealed this instrument on the respective dates written below their signatures.

ATTEST and SEAL: (if a corporation) (SEAL)
WITNESS: (if not a corporation)

(Name of Contractor)

By: _____
Name:
Title:

By: _____
Name:
Title:
Date:

ATTEST/WITNESS (SEAL)

(Full Name of Surety)

By: _____
Name:
Title:
Date:

(Address of Surety for Notice)

By: _____
Name:
Title:
Date:

REVIEWED:

THE FOREGOING BOND IS ACCEPTED
ON BEHALF OF
THE CITY OF NACOGDOCHES, TEXAS:

City Attorney's Office

City Manager

NOTE: Date of bonds must be equal to or after the date of execution by City.

Exhibit D
CERTIFICATES OF INSURANCE AND ENDORSEMENTS

Exhibit E
PLANS, SPECIFICATIONS AND DRAWINGS

Mill Pond Park Nacogdoches, TX

Design



DRAFT DESIGN



Excerpt from Parks Advisory Board Minutes - 7/28/25

Discuss playground designs for Mill Pond Park.

Jessica Sowell gives update on Mill Pond Park Playground design ideas. Mill Pond Park is one of the parks that was included in the bond for a new playground. Game Time just announced that their fall grant is open. Applying for this grant will provide a very significant discount which allows for a much bigger playground, a very good use of our taxpayer dollars. The grant closes mid-October. Staff is looking for some feedback from the board to take to Game Time. At the September meeting we will have designs for the playground.

Mill Pond Park is very wooded and previously had a retention pond for the lumber mill. Staff is interested in a playground that fits with the environment, muted colors, but still vibrant, to keep it fun. Staff suggests 3 bays of swings and no fully enclosed elements. Our budget from the bond is not to exceed \$240,000. Just for reference, we spent \$223,000 for the Robert McCrimmon unit, and used the rest to put up the fence and for playground mulch. Staff picked out some items, units and elements for the board to offer feedback. Staff showed current pictures of Mill Pond Park.

Board members inquired if there is a restroom at this park? Staff responded there is not right now, but will get a new restroom as part of the bond. Staff explained where the playground and restroom would be located using current pictures.

Staff shows board staff picked playground units, Mount Carmel and Chase Creek along with some stand alone items. Elements and colors can be switched out for others. After pictures of options shown to board, staff requests feedback. Board's overall feedback is both options look great. Stover liked the Chase Creek a lot due to the naturalistic look. Board agreed they would like colors like brown and forest green to match the trees. Mark Sowell inquired if the units shown are within the budget? Jessica Sowell responded yes, the prices are without installation, but the second unit is about \$180,000 or so. This unit was also on sale, which provides an even deeper discount on the grant. The installation cost is approximately \$89,000 and about \$3,000 for the playground mulch. Rod Allen expressed concern for the tube slide in the Chase Creek option. Staff explained that any element can be changed out and staff would like to add a racing slide element. Board agrees that a racing slide would be a good element. Board discussed curved tube slide maintenance concerns with Stanley. Stanley explained the only related maintenance issue he has encountered was one portion of the Pioneer Park Slide, which had to be replaced. Board discussed some of the stand alone items. Board agrees that they like the swinging bench.

Molling inquired about park usage for Mill Pond Park. Staff would have to pull the numbers, we do have the numbers for pavilion rentals, but do not have trail or park counters, but we have asked Game Time for some demographics, which will tell us how many people live in the area, what the age range for the kids. Right now, we're operating on designing for ages 5 to 12, which is the most common range of playground structures, unless the demographics show otherwise. Molting inquired about the need for the Mill Pond Park playground. Staff responded that other

less utilized parks had more utilization after new amenities were offered. Staff believes there will be more attendance after new amenities are installed. Palmer gives personal account of knowledge of use of Mill Pond Park. Also, the bond states these locations will have playgrounds or restrooms and the directive from our city council is to follow what the voters voted on.

Rod Allen does not think money needs to be spent on the basketball court beyond making it usable. Staff explains they have no plans for the basketball court beyond making it a safe place to play.

Board inquired about parking, staff explained there is money in the budget for a parking lot at Mill Pond Park. Rod Allen explained that there is parking available on the street as well.

Board agrees they are interested in the Chase Creek option with a double slide instead of the tube slide. Playground will be one main playground unit with a few free standing items that the board can look at on the Game Time website if interested in providing more specific feedback.

Jessica Sowell explains next steps, the not to exceed contract will be on the council meeting agenda to approve the not to exceed amount. Once approved, staff will show the board the first rendering of the playground at the September board meeting which will give staff enough time to make any edits before the due date. Installation can occur about 8 weeks from time of order. Staff responded to Mark Sowell inquiring about the parking lot for Mill Pond, which is in the current year's budget, but will be rolled to the next year to make sure the playground can be installed first. The information discussed will be passed on to Game Time.



City Council Meeting

Date: September 16, 2025

Agenda Item: 5.G.

PRESENTER: Jessica Sowell, Community Services Director

ITEM/SUBJECT: Consider approval of the annual agreement between the City of Nacogdoches and Keep Nacogdoches Beautiful for essential services. (Community Services Director)

SUMMARY/BACKGROUND: The City of Nacogdoches and Keep Nacogdoches Beautiful (KNB) entered into an agreement on October 1, 2024, for a one-year term whereby KNB will provide necessary staff, volunteer support, and technical and education expertise to further recycling programs and beautification within the City. If the City Council approves the renewal of the agreement for an additional one-year term, the City would agree to collect and distribute to KNB all donations made to KNB for City sanitation and water bills and to supplement the above stated donations in the amount of \$2,000 per month.

KNB will remain an independent contractor and provide indemnification to the City. KNB will maintain appropriate insurance policies naming the City as an additional insured, maintain complete and accurate books and records of activities, and be made available to the City for review at any time. KNB will provide the City with an annual report concerning KNB's budget, accomplishments and efforts regarding general recycling and beautification.

If renewed, the contract will be for an additional 12 months beginning October 1, 2025, and ending on September 30, 2026.

FINANCIAL:

Item is budgeted:

Account No.: 31.75.630.99

Account Name: *KNB Services*

Amount: \$2,000 per month

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. Keep Nacogdoches Beautiful Contract_2024

**AGREEMENT BY AND BETWEEN THE CITY OF NACOGDOCHES AND KEEP
NACOGDOCHES BEAUTIFUL**

THIS AGREEMENT, hereinafter referred to as “AGREEMENT” is entered into by and between the City of Nacogdoches, a home-rule municipality, hereinafter referred to as “CITY” and Keep Nacogdoches Beautiful, hereinafter referred to as “KNB,” pertaining to the furnishing of essential services and the accomplishment of a public purpose in accordance with the terms and provisions set forth herein.

1. Term

This Agreement shall be effective and binding upon the parties beginning the 1st day of October, 2025, and shall remain in effect until the 30th day of September, 2026, subject to early termination as described below.

Either party may terminate this Agreement for any reason, with or without cause, by providing thirty (30) days’ written notice to the other party of said termination. Such right to terminate this Agreement shall be without prejudice to other legal and equitable rights of the parties.

2. Statement of Work and Obligations of KNB

The CITY is desirous of KNB providing necessary staff, volunteer support, and technical and educational expertise to further recycling programs of the CITY. Additionally, it is also the goal of this Agreement that KNB will further enhance beautification of the CITY. Specifically, KNB will provide essential services and satisfy the provision of requested reports related to same as set forth below:

- a) Provide litter abatement for at least two (2) public events. The City will notify KNB within a reasonable time, but no less than thirty (30) days, prior to a public event where litter abatement is being requested. If KNB is unable or unwilling to provide this service at said event, KNB will propose an alternative event which is agreeable to the City;
- b) Plan, promote and conduct recycling efforts for the city;
- c) Plan, promote and conduct activities which promote the general beautification of the City;
- d) Plan, promote and conduct educational activities for the general public in furtherance of recycling and beautification efforts;
- e) KNB shall provide the CITY an annual report, in writing or by presentation to the City Council, detailing efforts and accomplishments of KNB regarding general recycling and beautification efforts conducted by KNB within the CITY. Said report shall also provide budgetary information as it pertains to monies received from the CITY. Upon reasonable notice, KNB shall also be responsible for providing special reports to the CITY as required by the City Manager; and
- f) KNB shall maintain complete and accurate books and records of activities and finances which CITY may fully review at any time upon reasonable notice. Financial records shall be maintained on a regular basis in accordance with generally accepted accounting principles, subject to variations as are required by state and federal law, and as are agreed to in writing by CITY.

3. **Obligations of CITY**

In return for KNB providing the above-stated essential services and activities for the CITY, the CITY agrees to following:

- 1) Collect and distribute to KNB all donations made to KNB on CITY sanitation bills; and
- 2) CITY will supplement above-mentioned sanitation bill donations in the amount of \$2,000 per month.

Termination of this Agreement shall immediately extinguish any and all financial obligations of the CITY to KNB.

4. **Independent Contractor**

KNB is an independent entity, and the relationship between KNB and CITY is and shall remain that of independent contractors. CITY is not and shall not be liable for any of KNB's debts or obligations, including any operating deficit that may arise. KNB shall not hold itself out as an agent of CITY, nor in any way purport to bind CITY with respect to any contract or other obligation.

5. **Indemnification**

KNB shall defend, indemnify and hold harmless the City and its officer, agents, employees, representatives, contractors, assignees and/or designees from any and all liability, claims, demands, or suits and all related costs, attorney fees, and expenses arising out of or resulting from any acts or omissions of KNB or its agents, employees, contractors, subcontractors or suppliers in the execution or performance of the contract. The defense shall be coordinated with the City Attorney when the City is a named defendant in any lawsuit and the KNB may not agree to any settlement without first obtaining the concurrence of the City Attorney. KNB and the City agree to furnish timely written notice to each other of any such claim.

It is recognized KNB is solely and completely in charge of its operations and actions and that any specifications and/or requirements of the CITY are solely directed at assuring value to CITY for its payments in partial support of the operational costs of KNB.

6. **Insurance**

KNB shall carry insurance in the following types and amounts for the duration of this Agreement and shall furnish City Manager with Certificates of Insurance along with copies of policy declaration pages and all policy endorsements as evidence thereof for the following types and limits of insurance coverage:

- a) Statutory workers' compensation and employers' liability coverage with minimum policy limits for employers' liability of \$100,000 bodily injury to each accident, \$500,000 bodily injury by disease policy limit, and \$100,000 bodily injury by disease each employee;
- b) Commercial general liability insurance with a minimum bodily injury and property damage per occurrence limit of \$1,000,000. The policy shall provide contractual liability coverage for liability assumed under this contract, products and completed operations coverage and independent contractors coverage; and

- c) Business automobile liability insurance for all owned, non-owned and hired vehicles with a limit of \$500,000 per occurrence for bodily injury and property damage liability.

KNB shall not commence work under this Agreement until it has obtained all required insurance and the City Manager's office has been provided documentation acceptable to the City of such insurance coverage. Required insurance shall be written by company licensed to do business in the State of Texas at the time the policy is issued. In any event, Company must be rated A.M. Best at B+VII or better and acceptable to City. KNB shall produce an endorsement to each affected liability policy that names City as additional insured (except workers' compensation), with the right of subrogation against City waived and obligates insurance company to notify City at following address, of any non-renewal, cancellation or material changes to the policy, at least thirty (30) calendar days before change or cancellation.

City of Nacogdoches
City Manager
202 East Pilar Street
Nacogdoches, Texas 75961

7. Applicable Law

Claims by or against the parties shall be governed by the Texas Tort Claims Act or other appropriate statutes, ordinances, or laws of the State of Texas.

8. Non-Waiver

It is expressly understood and agreed that, in execution of this Agreement, no party waives, nor shall be deemed hereby to waive, any immunity or defense that would otherwise be available to it against claims arising in the exercise of governmental powers and functions.

9. Venue

Each party to this Agreement agrees that if legal action is brought under this Agreement, exclusive venue shall lie in Nacogdoches County, Texas.

10. Miscellaneous

This Agreement may not be amended without written consent of the parties. This Agreement is for the benefit of the CITY and KNB only, and no other party may seek to enforce it or assert any rights under it. KNB may not assign this Agreement without the prior written consent of CITY. Delay by a party in enforcing, or failure by such party to enforce, a right under this Agreement shall not be deemed a waiver of the same. A waiver of party's rights shall be effective only in writing and should be limited to the single event or occurrence specified. This Agreement represents the entire agreement between the parties regarding the subject matter hereof, and there are no other representations, understandings, or agreements between the parties relative to such subject matter.

[Signature Page Follows]

In Witness Whereof, the City of Nacogdoches and Keep Nacogdoches Beautiful have caused this Agreement to be executed and delivered by their duly authorized representatives as of the date specified below:

CITY OF NACOGDOCHES, TEXAS

Signature By: _____
Print Name: Richard Beverlin, III
Title: City Manager
Date: _____

KEEP NACOGODCHES BEAUTIFUL

Signature By: _____
Print Name: Jana Redfield
Title: Chair, Keep Nacogdoches Beautiful
Date: _____

ATTEST:

Karen Hadnot, City Secretary

APPROVED AS TO FORM:

Jerry Baker, City Attorney

PRESENTER: Case Opperman, Director of Public Works

ITEM/SUBJECT: Consider approval of two Indefinite Deliverables Indefinite Quantities contracts by and between the City of Nacogdoches and Saicam Electric, and the City of Nacogdoches and P&I Electric, for professional electrician services in the amount of \$75,000.00 for each contract, for a total amount of \$150,000.00. (Director of Public Works/City Engineer)

SUMMARY/BACKGROUND: The City utilizes electrical contractors within the Water Utilities Division to perform such work as wiring, breaker and motor installation, generator configuration and lighting installation under annual indefinite deliverables indefinite quantities (IDIQ) contracts to avoid any issues with procurement requirements, as well as to ensure quick response times.

The City received bids for an IDIQ contract for Water Utilities Electrician Services on August 28, 2025. See Bid No. 25-10-134 for reference. Bidders were given an example work order scenario to bid on and were to provide hourly rate schedules to accompany their bid. These rates will be held for a one-year duration. There is an optional renewal of this contract for up to two (2) additional one- (1) year extensions [three (3) years total].

Four (4) contractors submitted bids on the example work order scenario as follows:

<i>Saicam Electric</i>	<i>\$ 5,190.00</i>
<i>P&I Electric</i>	<i>\$ 5,947.00</i>
White Electric	\$ 6,440.00
Ludco, Inc.	\$ 7,808.85

The City has the ability to award multiple contracts of this type when it is deemed necessary.

Due to the on-call nature of the services, it is recommended that two (2) Water Utilities Electrician Services IDIQ contracts be awarded to Saicam Electric and P&I Electric to allow for either company to be contacted in the event of an urgent service need. These contracts are estimated at \$75,000.00 per year each.

FINANCIAL:

Item is budgeted:

Account No.: 30.36 620.35
Account Name: *Water Facility Maintenance*
Amount: \$ 75,000

Item is budgeted:

Account No.: 30.39 620.35
Account Name: *Wastewater Facility Maintenance*
Amount: \$ 75,000

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. Bid Tab



Bid Tabulation

FY25-26 Water Utilities Electricians
 Thursday, August 28, 2025 @ 10:00 PM
 Bid # 25-10-134

			Saicam Electric		P&I Electric		Ludco		White Electric	
Quan	Unit	Description	Unit Price*	TOTAL	Unit Price*	TOTAL	Unit Price*	Total	Unit Price*	Total
1	LS	Replacement of one (1) Westinghouse 150-Amp, 3-Phase, 480-Volt Breaker (Part #MCP431800C)	\$1,225.00	\$1,750.00	\$2,892.00	\$2,892.00	\$897.50	\$897.50	\$1,860.00	\$1,860.00
1	LS	Replacement of one (1) Westinghouse Size 4 Electric Motor Starter, 3-Phase, 480-Volt (Part#A200M4CAC)	\$2,800.00	\$3,120.00	\$2,763.00	\$2,762.00 (as submitted)	\$6,595.00	\$6,595.00	\$4,280.00	\$4,280.00
1	LS	Replacement of 15-feet of #3 THHN Wire	\$45.00	\$170.00	\$210.00	\$210.00	\$173.35	\$173.35	\$150.00	\$150.00
1	LS	Verify Rotation and Amp Load	---	\$150.00	\$82.00	\$82.00	\$140.00	\$140.00	\$150.00	\$150.00
TOTALS			\$5,190.00		\$5,947.00 (as tabulated from bid form totals)		\$7,808.85		\$6,440.00	

PRESENTER: Case Opperman, Director of Public Works

ITEM/SUBJECT: Consider approval of an Indefinite Deliverable Indefinite Quantity contract by and between the City of Nacogdoches and Arq Purification, for the use of Activated Carbon in water treatment, in the amount of \$108,000.00. (Director of Public Works/City Engineer)

SUMMARY/BACKGROUND: The City of Nacogdoches utilizes a number of different chemicals in the treatment of water and wastewater at various facilities across the City. On September 3, 2025, the City received bids for the purchase of annual bulk chemicals (Activated Carbon, Liquid Aluminum Sulfate, Anhydrous Ammonia, Caustic Soda, Chlorine Gas, Hydrofluorosilicic Acid, Liquid Polyphosphate and Sulfur Dioxide) which were not in a renewal period. See Bid No. 25-10-133 for reference.

Bidders were allowed to bid on one or all of the chemicals and the award of low bid contracts are considered individually for each chemical. Bids comprised individual unit prices (per pound, per ton, etc.) with no minimum or maximum quantity guaranteed. Due to the volatility of current markets, unit prices will be agreed upon quarterly and can be escalated or deescalated based on the Bureau of Labor Statistics' Producer Price Index.

The City uses Activated Carbon primarily for taste and odor control when treating surface water from Lake Nacogdoches. Four (4) suppliers submitted bids for Activated Carbon, as follows:

<i>Arq Purification</i>	<i>\$ 0.85/dry lb</i>
Norit Americas, Inc.	\$ 0.86/dry lb
Chemrite, Inc.	\$ 0.944/dry lb
Carbon Activated Corporation	\$ 1.00/dry lb

Staff recommends the award of an annual IDIQ contract to Arq Purification for Activated Carbon for Fiscal Year 2026.

FINANCIAL:

Item is budgeted:

Account No.: 30.36 610.80

Account Name: *Water Production Chemicals*

Amount: \$108,000

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

Infrastructure

CITY CONTACT: Case Opperman, PE - Director of Public Works
oppermanc@nactx.us

(936) 559-2515

ATTACHMENTS: 1. Bid Tab



Bid Tabulation

FY25-26 Water Utilities Bulk Chemicals
Wednesday, September 03, 2025 @ 2:00 PM

Vendor	Activated Carbon (\$/dry ton) (\$/dry lb)	Liquid Aluminum Sulfate (\$/dry lb)	Anhydrous Ammonia (\$/lb)*	Caustic Soda (\$/dry lb)	Chlorine Gas (\$/ton)	Hydrofluorosilicic Acid (\$/gallon)	Liquid Polyphosphate (\$/gallon)	Sulfur Dioxide (\$/ton)
PVS Chemicals, Inc.					2,174.00			2,083.00
Harcros Chemicals, Inc.				0.355				
Chemrite, Inc.	1,888.00 0.944							
Carbon Activated Corporation	2,000.00 1.00							
Univar Solutions		0.22		0.365		3.62		
VINEera Chemicals, LLC				0.419				
Norit Americas, Inc.	1,720.00 0.86							
Pencco, Inc.						2.40		
USALCO, LLC		0.2860						
Arq Purification	1,700.00 0.85							
Chemtrade Chemicals US, LLC		0.29						
Shannon Chemical Corporation							47.17	
Affinity Chemical, LLC		0.1905						
Chameleon Industries, Inc.		0.205						

*No bids received for Anhydrous Ammonia. Chemical will be rebid.

Low Bid	Activated Carbon (\$/dry lb)	Liquid Aluminum Sulfate (\$/dry lb)	Caustic Soda (\$/dry lb)	Chlorine Gas (\$/ton)	Hydrofluorosilicic Acid (\$/gallon)	Liquid Polyphosphate (\$/gallon)	Sulfur Dioxide (\$/ton)
Arq Purification	0.85						
Affinity Chemical, LLC		0.1905					
Harcros Chemicals, Inc.			0.355				
PVS Chemicals, Inc.				2,174.00			2,083.00
Pencco, Inc.					2.40		
Shannon Chemical Corporation						47.17	

PRESENTER: Case Opperman, Director of Public Works

ITEM/SUBJECT: Consider approval of an Indefinite Deliverable Indefinite Quantity contract by and between the City of Nacogdoches and Affinity Chemical LLC, for the use of Liquid Aluminum Sulfate in water treatment, in the amount of \$150,000.00. (Director of Public Works/City Engineer)

SUMMARY/BACKGROUND: The City of Nacogdoches utilizes a number of different chemicals in the treatment of water and wastewater at various facilities across the City. On September 3, 2025, the City received bids for the purchase of annual bulk chemicals (Activated Carbon, Liquid Aluminum Sulfate, Anhydrous Ammonia, Caustic Soda, Chlorine Gas, Hydrofluorosilicic Acid, Liquid Polyphosphate and Sulfur Dioxide) which were not in a renewal period. See Bid No. 25-10-133 for reference.

Bidders were allowed to bid on one or all of the chemicals and the award of low bid contracts are considered individually for each chemical. Bids comprised individual unit prices (per pound, per ton, etc.) with no minimum or maximum quantity guaranteed. Due to the volatility of current markets, unit prices will be agreed upon quarterly and can be escalated or deescalated based on the Bureau of Labor Statistics' Producer Price Index.

The City uses Liquid Aluminum Sulfate (Alum) to aid in binding solids in water so that they can settle out and be removed in the water treatment process. Five (5) suppliers submitted bids for Liquid Aluminum Sulfate, as follows:

<i>Affinity Chemical, LLC</i>	<i>\$ 0.1905/dry lb</i>
Chameleon Industries, Inc.	\$ 0.205/dry lb
Univar Solutions	\$ 0.22/dry lb
USALCO, LLC	\$ 0.2860/dry lb
Chemtrade Chemicals US, LLC	\$ 0.29/dry lb

Staff recommends the award of an annual IDIQ contract to Affinity Chemical, LLC for Liquid Aluminum Sulfate for FY 2026.

FINANCIAL:

Item is budgeted:

Account No.: 30.36 610.80

Account Name: *Water Production Chemicals*

Amount: \$150,000

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

Infrastructure

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

ATTACHMENTS: 1. Bid Tab



Bid Tabulation

FY25-26 Water Utilities Bulk Chemicals
Wednesday, September 03, 2025 @ 2:00 PM

Vendor	Activated Carbon (\$/dry ton) (\$/dry lb)	Liquid Aluminum Sulfate (\$/dry lb)	Anhydrous Ammonia (\$/lb)*	Caustic Soda (\$/dry lb)	Chlorine Gas (\$/ton)	Hydrofluorosilicic Acid (\$/gallon)	Liquid Polyphosphate (\$/gallon)	Sulfur Dioxide (\$/ton)
PVS Chemicals, Inc.					2,174.00			2,083.00
Harcros Chemicals, Inc.				0.355				
Chemrite, Inc.	1,888.00 0.944							
Carbon Activated Corporation	2,000.00 1.00							
Univar Solutions		0.22		0.365		3.62		
VINEera Chemicals, LLC				0.419				
Norit Americas, Inc.	1,720.00 0.86							
Pencco, Inc.						2.40		
USALCO, LLC		0.2860						
Arq Purification	1,700.00 0.85							
Chemtrade Chemicals US, LLC		0.29						
Shannon Chemical Corporation							47.17	
Affinity Chemical, LLC		0.1905						
Chameleon Industries, Inc.		0.205						

*No bids received for Anhydrous Ammonia. Chemical will be rebid.

Low Bid	Activated Carbon (\$/dry lb)	Liquid Aluminum Sulfate (\$/dry lb)	Caustic Soda (\$/dry lb)	Chlorine Gas (\$/ton)	Hydrofluorosilicic Acid (\$/gallon)	Liquid Polyphosphate (\$/gallon)	Sulfur Dioxide (\$/ton)
Arq Purification	0.85						
Affinity Chemical, LLC		0.1905					
Harcros Chemicals, Inc.			0.355				
PVS Chemicals, Inc.				2,174.00			2,083.00
Pencco, Inc.					2.40		
Shannon Chemical Corporation						47.17	

PRESENTER: Case Opperman, Director of Public Works

ITEM/SUBJECT: Consider approval of an Indefinite Deliverable Indefinite Quantity contract by and between the City of Nacogdoches and Harcros Chemicals Inc., for the use of Caustic Soda in water treatment, in the amount of \$250,000.00. (Director of Public Works/City Engineer)

SUMMARY/BACKGROUND: The City of Nacogdoches utilizes a number of different chemicals in the treatment of water and wastewater at various facilities across the City. On September 3, 2025, the City received bids for the purchase of annual bulk chemicals (Activated Carbon, Liquid Aluminum Sulfate, Anhydrous Ammonia, Caustic Soda, Chlorine Gas, Hydrofluorosilicic Acid, Liquid Polyphosphate and Sulfur Dioxide) which were not in a renewal period. See Bid No. 25-10-133 for reference.

Bidders were allowed to bid on one or all of the chemicals and the award of low bid contracts are considered individually for each chemical. Bids comprised individual unit prices (per pound, per ton, etc.) with no minimum or maximum quantity guaranteed. Due to the volatility of current markets, unit prices will be agreed upon quarterly and can be escalated or deescalated based on the Bureau of Labor Statistics' Producer Price Index.

The City uses Caustic Soda to control corrosion within water pipelines by raising the pH and preventing the formation of corrosive acids. Three (3) suppliers submitted bids for Caustic Soda, as follows:

<i>Harcros Chemicals, Inc.</i>	<i>\$ 0.355/dry lb</i>
Univar Solutions	\$ 0.365/dry lb
VINEera Chemicals, LLC	\$ 0.419/dry lb

Staff recommends the award of an annual IDIQ contract to Harcros Chemicals, Inc. for Caustic Soda for FY 2026.

FINANCIAL:

Item is budgeted:

Account No.: 30.36 610.80

Account Name: *Water Production Chemicals*

Amount: \$250,000

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

Infrastructure

CITY CONTACT: Case Opperman, PE - Director of Public Works

oppermanc@nactx.us
(936) 559-2515

ATTACHMENTS: 1. Bid Tab



Bid Tabulation

FY25-26 Water Utilities Bulk Chemicals
Wednesday, September 03, 2025 @ 2:00 PM

Vendor	Activated Carbon (\$/dry ton) (\$/dry lb)	Liquid Aluminum Sulfate (\$/dry lb)	Anhydrous Ammonia (\$/lb)*	Caustic Soda (\$/dry lb)	Chlorine Gas (\$/ton)	Hydrofluorosilicic Acid (\$/gallon)	Liquid Polyphosphate (\$/gallon)	Sulfur Dioxide (\$/ton)
PVS Chemicals, Inc.					2,174.00			2,083.00
Harcros Chemicals, Inc.				0.355				
Chemrite, Inc.	1,888.00 0.944							
Carbon Activated Corporation	2,000.00 1.00							
Univar Solutions		0.22		0.365		3.62		
VINEera Chemicals, LLC				0.419				
Norit Americas, Inc.	1,720.00 0.86							
Pencoco, Inc.						2.40		
USALCO, LLC		0.2860						
Arq Purification	1,700.00 0.85							
Chemtrade Chemicals US, LLC		0.29						
Shannon Chemical Corporation							47.17	
Affinity Chemical, LLC		0.1905						
Chameleon Industries, Inc.		0.205						

*No bids received for Anhydrous Ammonia. Chemical will be rebid.

Low Bid	Activated Carbon (\$/dry lb)	Liquid Aluminum Sulfate (\$/dry lb)	Caustic Soda (\$/dry lb)	Chlorine Gas (\$/ton)	Hydrofluorosilicic Acid (\$/gallon)	Liquid Polyphosphate (\$/gallon)	Sulfur Dioxide (\$/ton)
Arq Purification	0.85						
Affinity Chemical, LLC		0.1905					
Harcros Chemicals, Inc.			0.355				
PVS Chemicals, Inc.				2,174.00			2,083.00
Pencoco, Inc.					2.40		
Shannon Chemical Corporation						47.17	

PRESENTER: Case Opperman, Director of Public Works

ITEM/SUBJECT: Consider approval of an Indefinite Deliverable Indefinite Quantity contract by and between the City of Nacogdoches and PVS Chemicals, Inc., for the use of Chlorine Gas and Sulfur Dioxide in water and wastewater treatment, in the total amount of \$355,360.00.
(Director of Public Works/City Engineer)

SUMMARY/BACKGROUND: The City of Nacogdoches utilizes a number of different chemicals in the treatment of water and wastewater at various facilities across the City. On September 3, 2025, the City received bids for the purchase of annual bulk chemicals (Activated Carbon, Liquid Aluminum Sulfate, Anhydrous Ammonia, Caustic Soda, Chlorine Gas, Hydrofluorosilicic Acid, Liquid Polyphosphate and Sulfur Dioxide) which were not in a renewal period. See Bid No. 25-10-133 for reference.

Bidders were allowed to bid on one or all of the chemicals and the award of low bid contracts are considered individually for each chemical. Bids comprised individual unit prices (per pound, per ton, etc.) with no minimum or maximum quantity guaranteed. Due to the volatility of current markets, unit prices will be agreed upon quarterly and can be escalated or deescalated based on the Bureau of Labor Statistics' Producer Price Index.

The City uses Chlorine Gas in water and wastewater to kill pathogens that are harmful to humans when consumed, and Sulfur Dioxide is used to remove excess chlorine from wastewater at the end of the treatment process before it is released into the environment. One (1) supplier, PVS Chemicals, submitted bids for both Chlorine Gas and Sulfur Dioxide, as follows:

Chlorine Gas	\$ 2,174.00/ton
Sulfur Dioxide	\$ 2,083.00/ton

Staff recommends the award of an annual IDIQ contract to PVS Chemicals, Inc. for Chlorine Gas and Sulfur Dioxide for FY 2026.

FINANCIAL:

Item is budgeted:

Account No.: 30.36 610.80
Account Name: *Water Production Chemicals*
Amount: \$165,360

Item is budgeted:

Account No.: 30.39 610.80
Account Name: *Wastewater Treatment Chemicals*
Amount: \$190,000

COUNCIL PRIORITIES: THIS AGENDA ITEM IS CONSISTENT WITH THE

FOLLOWING CITY COUNCIL PRIORITIES

Infrastructure

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

ATTACHMENTS: 1. Bid Tab



Bid Tabulation

FY25-26 Water Utilities Bulk Chemicals
Wednesday, September 03, 2025 @ 2:00 PM

Vendor	Activated Carbon (\$/dry ton) (\$/dry lb)	Liquid Aluminum Sulfate (\$/dry lb)	Anhydrous Ammonia (\$/lb)*	Caustic Soda (\$/dry lb)	Chlorine Gas (\$/ton)	Hydrofluorosilicic Acid (\$/gallon)	Liquid Polyphosphate (\$/gallon)	Sulfur Dioxide (\$/ton)
PVS Chemicals, Inc.					2,174.00			2,083.00
Harcros Chemicals, Inc.				0.355				
Chemrite, Inc.	1,888.00 0.944							
Carbon Activated Corporation	2,000.00 1.00							
Univar Solutions		0.22		0.365		3.62		
VINEera Chemicals, LLC				0.419				
Norit Americas, Inc.	1,720.00 0.86							
Pencco, Inc.						2.40		
USALCO, LLC		0.2860						
Arq Purification	1,700.00 0.85							
Chemtrade Chemicals US, LLC		0.29						
Shannon Chemical Corporation							47.17	
Affinity Chemical, LLC		0.1905						
Chameleon Industries, Inc.		0.205						

*No bids received for Anhydrous Ammonia. Chemical will be rebid.

Low Bid	Activated Carbon (\$/dry lb)	Liquid Aluminum Sulfate (\$/dry lb)	Caustic Soda (\$/dry lb)	Chlorine Gas (\$/ton)	Hydrofluorosilicic Acid (\$/gallon)	Liquid Polyphosphate (\$/gallon)	Sulfur Dioxide (\$/ton)
Arq Purification	0.85						
Affinity Chemical, LLC		0.1905					
Harcros Chemicals, Inc.			0.355				
PVS Chemicals, Inc.				2,174.00			2,083.00
Pencco, Inc.					2.40		
Shannon Chemical Corporation						47.17	

PRESENTER: Case Opperman, Director of Public Works

ITEM/SUBJECT: Consider approval of an Indefinite Deliverable Indefinite Quantity contract by and between the City of Nacogdoches and Pencco, Inc., for the use of Hydrofluorosilicic Acid in water treatment, in the amount of \$25,000.00. (Director of Public Works/City Engineer)

SUMMARY/BACKGROUND: The City of Nacogdoches utilizes a number of different chemicals in the treatment of water and wastewater at various facilities across the City. On September 3, 2025, the City received bids for the purchase of annual bulk chemicals (Activated Carbon, Liquid Aluminum Sulfate, Anhydrous Ammonia, Caustic Soda, Chlorine Gas, Hydrofluorosilicic Acid, Liquid Polyphosphate and Sulfur Dioxide) which were not in a renewal period. See Bid No. 25-10-133 for reference.

Bidders were allowed to bid on one or all of the chemicals and the award of low bid contracts are considered individually for each chemical. Bids comprised individual unit prices (per pound, per ton, etc.) with no minimum or maximum quantity guaranteed. Due to the volatility of current markets, unit prices will be agreed upon quarterly and can be escalated or deescalated based on the Bureau of Labor Statistics' Producer Price Index.

Hydrofluorosilicic Acid (Fluoride) is an additive used in the City's drinking water system, which helps to prevent tooth decay. Two suppliers submitted bids for Fluoride, as follows:

<i>Pencco, Inc.</i>	<i>\$ 2.40/gallon</i>
Univar Solutions	\$ 3.62/gallon

Staff recommends the award of an annual IDIQ contract to Pencco, Inc. for Hydrofluorosilicic Acid for FY 2026.

FINANCIAL:

Item is budgeted:

Account No.: 30.36 610.80

Account Name: *Water Production Chemicals*

Amount: \$25,000

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

Infrastructure

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

ATTACHMENTS: 1. Bid Tab



Bid Tabulation

FY25-26 Water Utilities Bulk Chemicals
Wednesday, September 03, 2025 @ 2:00 PM

Vendor	Activated Carbon (\$/dry ton) (\$/dry lb)	Liquid Aluminum Sulfate (\$/dry lb)	Anhydrous Ammonia (\$/lb)*	Caustic Soda (\$/dry lb)	Chlorine Gas (\$/ton)	Hydrofluorosilicic Acid (\$/gallon)	Liquid Polyphosphate (\$/gallon)	Sulfur Dioxide (\$/ton)
PVS Chemicals, Inc.					2,174.00			2,083.00
Harcros Chemicals, Inc.				0.355				
Chemrite, Inc.	1,888.00 0.944							
Carbon Activated Corporation	2,000.00 1.00							
Univar Solutions		0.22		0.365		3.62		
VINEera Chemicals, LLC				0.419				
Norit Americas, Inc.	1,720.00 0.86							
Pencco, Inc.						2.40		
USALCO, LLC		0.2860						
Arq Purification	1,700.00 0.85							
Chemtrade Chemicals US, LLC		0.29						
Shannon Chemical Corporation							47.17	
Affinity Chemical, LLC		0.1905						
Chameleon Industries, Inc.		0.205						

*No bids received for Anhydrous Ammonia. Chemical will be rebid.

Low Bid	Activated Carbon (\$/dry lb)	Liquid Aluminum Sulfate (\$/dry lb)	Caustic Soda (\$/dry lb)	Chlorine Gas (\$/ton)	Hydrofluorosilicic Acid (\$/gallon)	Liquid Polyphosphate (\$/gallon)	Sulfur Dioxide (\$/ton)
Arq Purification	0.85						
Affinity Chemical, LLC		0.1905					
Harcros Chemicals, Inc.			0.355				
PVS Chemicals, Inc.				2,174.00			2,083.00
Pencco, Inc.					2.40		
Shannon Chemical Corporation						47.17	



City Council Meeting

Date: September 16, 2025

Agenda Item: 5.N.

PRESENTER: Case Opperman, Director of Public Works

ITEM/SUBJECT: Consider approval of an Indefinite Deliverable Indefinite Quantity contract by and between the City of Nacogdoches and Shannon Chemical Corporation, for the use of Liquid Polyphosphate in water treatment, in the amount of \$10,000.00. (Director of Public Works/City Engineer)

SUMMARY/BACKGROUND: The City of Nacogdoches utilizes a number of different chemicals in the treatment of water and wastewater at various facilities across the City. On September 3, 2025, the City received bids for the purchase of annual bulk chemicals (Activated Carbon, Liquid Aluminum Sulfate, Anhydrous Ammonia, Caustic Soda, Chlorine Gas, Hydrofluorosilicic Acid, Liquid Polyphosphate and Sulfur Dioxide) which were not in a renewal period. See Bid No. 25-10-133 for reference.

Bidders were allowed to bid on one or all of the chemicals and the award of low bid contracts are considered individually for each chemical. Bids comprised individual unit prices (per pound, per ton, etc.) with no minimum or maximum quantity guaranteed. Due to the volatility of current markets, unit prices will be agreed upon quarterly and can be escalated or deescalated based on the Bureau of Labor Statistics' Producer Price Index.

Liquid Polyphosphate is added to drinking water as a corrosion inhibitor and to prevent buildup in the lines. One (1) supplier submitted a bid for Liquid Polyphosphate, as follows:

Shannon Chemical Corporation \$ 47.17/gallon

Staff recommends the award of an annual IDIQ contract to Shannon Chemical Corporation for Liquid Polyphosphate for FY 2026.

FINANCIAL:

Item is budgeted:

Account No.: 30.36 610.80

Account Name: *Water Production Chemicals*

Amount: \$10,000

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

Infrastructure

CITY CONTACT: Case Opperman, PE - Director of Public Works

oppermanc@nactx.us

(936) 559-2515

ATTACHMENTS: 1. Bid Tab



Bid Tabulation

FY25-26 Water Utilities Bulk Chemicals
Wednesday, September 03, 2025 @ 2:00 PM

Vendor	Activated Carbon (\$/dry ton) (\$/dry lb)	Liquid Aluminum Sulfate (\$/dry lb)	Anhydrous Ammonia (\$/lb)*	Caustic Soda (\$/dry lb)	Chlorine Gas (\$/ton)	Hydrofluorosilicic Acid (\$/gallon)	Liquid Polyphosphate (\$/gallon)	Sulfur Dioxide (\$/ton)
PVS Chemicals, Inc.					2,174.00			2,083.00
Harcros Chemicals, Inc.				0.355				
Chemrite, Inc.	1,888.00 0.944							
Carbon Activated Corporation	2,000.00 1.00							
Univar Solutions		0.22		0.365		3.62		
VINEera Chemicals, LLC				0.419				
Norit Americas, Inc.	1,720.00 0.86							
Pencco, Inc.						2.40		
USALCO, LLC		0.2860						
Arq Purification	1,700.00 0.85							
Chemtrade Chemicals US, LLC		0.29						
Shannon Chemical Corporation							47.17	
Affinity Chemical, LLC		0.1905						
Chameleon Industries, Inc.		0.205						

*No bids received for Anhydrous Ammonia. Chemical will be rebid.

Low Bid	Activated Carbon (\$/dry lb)	Liquid Aluminum Sulfate (\$/dry lb)	Caustic Soda (\$/dry lb)	Chlorine Gas (\$/ton)	Hydrofluorosilicic Acid (\$/gallon)	Liquid Polyphosphate (\$/gallon)	Sulfur Dioxide (\$/ton)
Arq Purification	0.85						
Affinity Chemical, LLC		0.1905					
Harcros Chemicals, Inc.			0.355				
PVS Chemicals, Inc.				2,174.00			2,083.00
Pencco, Inc.					2.40		
Shannon Chemical Corporation						47.17	

PRESENTER: Case Opperman, Director of Public Works

ITEM/SUBJECT: Consider rejecting all bids received in response to Bid No. 25-10-135 for an Indefinite Deliverables Indefinite Quantities contract for Water Utilities Instrumentation Services. (Director of Public Works/City Engineer)

SUMMARY/BACKGROUND: The City utilizes instrumentation contractors within the Water Utilities Division to perform such instrumentation work as troubleshooting control panels and SCADA control under annual indefinite deliverables indefinite quantities (IDIQ) contracts to avoid any issues with procurement requirements, as well as to ensure quick response times.

On August 28, 2025, the City received proposals for an IDIQ contract for Water Utilities Instrumentation Services. See Bid No. 25-10-135 for reference. One proposal from AIC Automation was received and opened at the bid time. However, a second proposal, which was delivered by the due date and was addressed appropriately in accordance with the bid documents, was misplaced and not received by the Engineering Division until after the bid opening had taken place. In accordance with bid documents, staff returned the bid unopened to the bidder.

Since the bidder had followed the directions in the bid documents and the bid was delivered to the City prior to bid opening time, staff recommends dismissing bids received for this solicitation to ensure fairness in the City's bid process. Staff will then readvertise immediately and receive new bid proposals for this contract. Staff has communicated with AIC Automation about the issue and has informed them of staff's intent to propose dismissal of the current solicitation.

FINANCIAL:

No financial impact associated with this item

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:

PRESENTER: Case Opperman, Director of Public Works

ITEM/SUBJECT: Consider approval of a Letter of Understanding by and between the City of Nacogdoches and Union Pacific Railroad for the purchase of multiple parcels of land approximately 2.95 acres $\pm$ in size, and generally located near Monk Street and Church Alley.
(Director of Public Works/City Engineer)

SUMMARY/BACKGROUND: This item seeks Council authorization to conduct due diligence activities for the City's possible purchase of land currently owned by Union Pacific Railroad (UPRR). Several months ago, City staff requested permission from UPRR to make improvements to Monk Street and possibly Church Alley, which could impact approximately 2.95 acres of adjacent land owned by UPRR. In subsequent discussions, Staff and UPRR confirmed there was a mutual interest in considering the City's purchase of the referenced properties. Although not yet determined, the City's possible interests may include the widening and improvement of Monk Street, construction of additional vehicle parking, and/or improvements to the Clint Dempsey Soccer Complex.

Staff has obtained a broker's opinion of value for the UPRR properties in consideration, and UPRR has requested execution of the attached Letter of Understanding (LOU) pertaining to the potential sale of land. Upon approval of the LOU, staff will have the lots surveyed within the feasibility review period and submit a draft survey to UPRR for their review and approval prior to closing. Staff will also seek separate Council approval for the final purchase of property.

FINANCIAL:

No financial impact associated with this item.

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. Letter of Understanding
2. Letter of Understanding_City Edit
3. UPRR Parcels



September 8, 2025
Project: 0193615

DELVIERED VIA DOCUSIGN

CITY OF NACOGDOCHES, TEXAS
ATTN: RICHARD B. BEVERLIN, III
P.O. BOX 635030
NACOGDOCHES, TEXAS 75963

This letter ("Agreement") confirms our understandings covering the possible sale by Union Pacific Railroad Company ("Seller") to City of Nacogdoches, Texas ("Buyer") of Seller's interest in certain real property in Nacogdoches, Texas.

The undersigned will recommend to Seller's Management the sale of the Property on the following terms and conditions:

Article 1. Description of Property:

- A. The Property is approximately 2.947 acres as shown on the print attached hereto as Exhibit A and made a part hereof. The legal description of the Property will be determined by Seller.
- B. Before finalizing any survey, Buyer shall submit the draft survey to Seller for review and approval. Computer files of the survey and legal descriptions shall be sent via e-mail to cjkoory@up.com, with a subject line referencing the UPRR Project Number 0193615 assigned to this document. Buyer shall deliver a certified copy of the completed survey to Seller within ninety (90) days after Buyer's execution of this Agreement ("Survey Period"). Delay in obtaining or furnishing the survey to Seller shall in no event give Buyer the right to extend the Closing Date (as defined in the 'Closing – Default:' Article 8).

Article 2. Sale Price:

- A. The sale price ("Sale Price") for the Property shall be Fifty Thousand Dollars (\$50,000.00).

Article 3. Feasibility Review/Right of Entry:

- A. For One Hundred Twenty (120) days from the date of execution of this Agreement by Buyer ("Feasibility Review Period"), Buyer and its agents and contractors may enter upon the Property to perform environmental audits, soil tests, engineering and feasibility studies of the Property. If the results of such audits, tests or studies, or Buyer's review of title or any other matters relating to the Property are unsatisfactory, Buyer may terminate this Agreement by giving Seller written notice before the end of the Feasibility Review Period. If no such written notice of termination is given before the end of the Feasibility Review Period, the Property will be deemed suitable for Buyer's purposes. In the event of such termination by Buyer, then Buyer shall surrender to Seller copies of all audits, soils, engineering and any other reports prepared for Buyer pertaining to the Property and such reports will become the sole property of Seller without cost or expense of Seller and this Agreement will terminate without any further force and effect, and without further obligation of either party to the other.

- B. Buyer's right to enter upon the Property pursuant to Article 3-A is subject to the following:
- i) Buyer will indemnify, defend and save harmless Seller and/or Seller's affiliates (Seller's affiliates means any corporation which directly or indirectly controls or is controlled by or is under common control with Seller), their officers, agents and employees, against and from any and all liability, loss, costs and expense of whatsoever nature growing out of personal injury to or death of persons whomsoever, or loss or destruction of or damage to property whatsoever, where such personal injury, death, loss, destruction or damage arises in connection with the entry upon the Property by Buyer, its agents or contractors prior to Closing.
 - ii) Buyer and Buyer's agents and contractors (collectively "Contractors") will maintain in confidence all information, reports, and evaluations generated in connection with any environmental assessments and will not make disclosure without the prior written consent of Seller. If Buyer discovers hazardous or toxic substances or materials, Buyer will immediately notify Seller.
 - iii) Buyer will promptly deliver to Seller the results and copies of any and all reports, evaluations, tests and studies generated in connection with any environmental assessments. Prior to the issuance of any final environmental report, Seller will have the opportunity to make comments, pose questions and offer recommendations to the Contractor preparing the report.
 - iv) Buyer agrees to indemnify, defend and hold harmless Seller against and from any and all liens, claims, demands, costs and expenses of whatsoever nature in any way connected with or growing out of any work done, labor performed or materials furnished at the Property on behalf of Buyer prior to Closing.
 - v) If the sale of the Property does not close, Buyer will, as soon as possible and at Buyer's sole expense, restore the Property to the same condition it was in immediately prior to the time Buyer entered the Property, failing in which Seller may perform the work of restoration and Buyer will reimburse Seller within thirty (30) days after rendition of bill by Seller.
- C. Absence of markers is not a warranty by Seller of no subsurface installations. Fiber optic systems, pipelines, and other structures may be buried on the Property. Before any digging/drilling/excavation, the following procedures will be followed by Buyer and Buyer's Contractors:
- i) Protection of any fiber optic cable systems is of extreme importance since any break could disrupt service to users resulting in business interruption and loss of revenue and profits. Buyer shall visit www.up.com/CBUD to complete and submit the required form to determine if fiber optic cable is buried on the Premises. If it is determined that fiber optic cable is buried on the Property, Buyer shall promptly inform Seller, at the address at the bottom of the first page of this Agreement, of the results of its investigation.
 - ii) Before drilling or excavating with mechanized equipment, Buyer will explore with hand tools to a depth of at least eight (8) feet below the surface or will use suitable detection equipment.
- D. Notwithstanding any provisions in this Agreement to the contrary, if this Agreement is terminated for any reason whatsoever, Buyer will remain obligated to comply with the provisions of Article 3-A and 3-B and Seller will retain all of its remedies for Buyer's default under Article 3-A and 3-B.

Article 4. As Is Sale - Release - Indemnity:

- A. As Is. Buyer and its representatives, prior to the Closing Date, will have been afforded the opportunity to make such inspections of the Property and matters related thereto as Buyer and its representatives desire. Buyer acknowledges and agrees that the Property is to be sold and accepted by Buyer in an "as is" condition with all faults. Buyer further acknowledges that the Property was used for railroad, commercial and industrial purposes. Seller makes no representation or warranties of any kind whatsoever, either express or implied, with respect to the Property; in particular, but without limitation, Seller makes no representations or warranties with respect to the use, condition, title, occupation or management of the Property, or compliance with applicable statutes, laws, codes, ordinances, regulations, requirements, covenants, conditions and restrictions (whether or not of record). Buyer acknowledges that it is entering into this Agreement on the basis of Buyer's own investigation of the physical and environmental conditions of the Property, including the subsurface conditions, and Buyer assumes the risk that adverse physical and environmental conditions may not have been revealed by its investigation. Buyer acknowledges that notwithstanding any prior or contemporaneous oral or written representations, statements, documents or understandings, this Agreement constitutes the entire understanding of the parties with respect to the subject matter hereof and the purchase and sale of the Property and supersedes any such prior or contemporaneous oral or written representations, statements, documents or understandings.
- B. Release. BUYER, FOR ITSELF, ITS SUCCESSORS AND ASSIGNS, HEREBY WAIVES, RELEASES, REMISES, ACQUITS AND FOREVER DISCHARGES SELLER, ITS AFFILIATES, THEIR EMPLOYEES, AGENTS, OFFICERS, SUCCESSORS AND ASSIGNS, OF AND FROM ANY AND ALL CLAIMS, SUITS, ACTIONS, CAUSES OF ACTION, DEMANDS, RIGHTS, DAMAGES, COSTS, EXPENSES, PENALTIES, FINES OR COMPENSATION WHATSOEVER, DIRECT OR INDIRECT, WHICH BUYER NOW HAS OR WHICH BUYER MAY HAVE IN THE FUTURE ON ACCOUNT OF OR IN ANY WAY ARISING OUT OF OR IN CONNECTION WITH THE KNOWN OR UNKNOWN PHYSICAL OR ENVIRONMENTAL CONDITION OF THE PROPERTY (INCLUDING, WITHOUT LIMITATION, ANY CONTAMINATION IN, ON, UNDER OR ADJACENT TO THE PROPERTY BY ANY HAZARDOUS OR TOXIC SUBSTANCE OR MATERIAL), OR ANY FEDERAL, STATE OR LOCAL LAW, ORDINANCE, RULE OR REGULATION APPLICABLE THERETO, INCLUDING, WITHOUT LIMITATION, THE TOXIC SUBSTANCES CONTROL ACT, THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION AND LIABILITY ACT, AND THE RESOURCE CONSERVATION AND RECOVERY ACT. THE FOREGOING SHALL APPLY REGARDLESS OF ANY NEGLIGENCE OR STRICT LIABILITY OF SELLER, ITS AFFILIATES, THEIR EMPLOYEES, AGENTS, OFFICERS, SUCCESSORS OR ASSIGNS.
- C. Indemnity. FROM AND AFTER CLOSING, BUYER SHALL, TO THE MAXIMUM EXTENT PERMITTED BY LAW, INDEMNIFY, DEFEND AND SAVE HARMLESS SELLER, ITS AFFILIATES, THEIR EMPLOYEES, AGENTS, OFFICERS, SUCCESSORS AND ASSIGNS, FROM AND AGAINST ANY AND ALL SUITS, ACTIONS, CAUSES OF ACTION, LEGAL OR ADMINISTRATIVE PROCEEDINGS, CLAIMS, DEMANDS, FINES, PUNITIVE DAMAGES, LOSSES, COSTS,

LIABILITIES AND EXPENSES, INCLUDING ATTORNEY'S FEES, IN ANY WAY ARISING OUT OF OR CONNECTED WITH THE KNOWN OR UNKNOWN PHYSICAL OR ENVIRONMENTAL CONDITION OF THE PROPERTY (INCLUDING, WITHOUT LIMITATION, ANY CONTAMINATION IN, ON, UNDER OR ADJACENT TO THE PROPERTY BY ANY HAZARDOUS OR TOXIC SUBSTANCE OR MATERIAL), OR ANY FEDERAL, STATE OR LOCAL LAW, ORDINANCE, RULE OR REGULATION APPLICABLE THERETO, INCLUDING, WITHOUT LIMITATION, THE TOXIC SUBSTANCES CONTROL ACT, THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION AND LIABILITY ACT, AND THE RESOURCE CONSERVATION AND RECOVERY ACT. THE FOREGOING SHALL APPLY REGARDLESS OF ANY NEGLIGENCE OR STRICT LIABILITY OF SELLER, ITS AFFILIATES, THEIR EMPLOYEES, AGENTS, OFFICERS, SUCCESSORS OR ASSIGNS.

- D. General Allocation of Environmental Responsibility. With respect to any existing or future environmental contamination of the soil and/or groundwater in, on or under the Property, from and after Closing, Buyer, at no cost to Seller, agrees to be solely responsible for conducting any investigation, monitoring, remediation, removal, response or other action required by any governmental agency, court order, law or regulation or otherwise necessary to make the Property suitable for Buyer's use of the Property.
- E. Additional and Independent Consideration. The release, indemnity and general allocation of environmental responsibility by Buyer are additional and independent consideration to Seller for the sale and purchase of the Property, without which Seller would not sell the Property for the Sale Price.
- F. Survival. The provisions of this Article will survive the delivery of the Deed and will bind and inure to the benefit of the parties hereto, their heirs, successors and assigns.

Article 5. Escrow, Title Insurance and Abstract of Title:

- A. Seller will not furnish title insurance or an abstract of title to the Property. Buyer may, at its sole option and expense, obtain a preliminary title report ("PTR") in order to review the status of title to the Property during the Feasibility Review Period. If Buyer obtains a PTR, a copy will be delivered to Seller. Seller has no obligation to cure any title defects or to assist Buyer in obtaining title insurance.
- B. If Buyer desires title insurance, Buyer shall pay the cost of any title insurance and any endorsements or changes to the title policy desired by Buyer. If an escrow is used, Buyer shall pay any and all fees relating to the escrow, including, but not limited to, any City and/or County Transfer Taxes and recording fees.

Article 6. Form of Deed; Reservations:

- A. At Closing, Seller will transfer Seller's interest in the Property to Buyer by Quitclaim Deed, subject to all outstanding rights, whether or not of record.
- B. Seller will reserve from the transfer all minerals and mineral rights without right of surface entry.

C. Restriction On Use.

The Property is quitclaimed by Seller subject to the following covenant, condition and restriction which Buyer by the acceptance of this Deed covenant for itself, its heirs and assigns, faithfully to keep, observe and perform:

Restriction on Use. The Property must not be used for (i) residential, (ii) lodgings or accommodations (including, without limitation, hotels, motels, boarding houses, dormitories, hospitals, nursing homes, or retirement centers), or (iii) educational or child-care facilities (including, without limitation, schools, kindergartens or day-care centers).

The foregoing covenant, condition and restriction shall run with the Property, and a breach of the foregoing covenant, condition and restriction, or the continuance thereof, may, at the option of Seller, its successors or assigns, be enjoined, abated or remedied by appropriate proceedings.

Article 7. Existing Agreements:

- A. If any lease or "Use Rights" (license or other rights to use the Property) affects only the Property (whether identified by Seller before or after execution of this Agreement), Seller's rights and obligations under any such identified lease or Use Right will be assigned to and assumed by Buyer at or after Closing.
- B. Buyer acknowledges that the Property may be subject to unidentified Use Rights. It is the responsibility of Buyer to determine if any of these unidentified Use Rights exist.

Article 8. Closing - Default:

- A. Closing will occur on or before April 15, 2026 ("Closing Date"). The Closing will be deemed to occur upon payment of the Sale Price by wire transfer or a cashier's or certified check, and delivery of the deed. All Closing costs, including transfer taxes and excise taxes, will be paid by Buyer.
- B. If Closing fails to occur due to default by Seller, Buyer may terminate this Agreement as Buyer's sole remedy against Seller. In the event of such termination, neither Seller nor Buyer will have any further liability hereunder.
- C. If Closing fails to occur due to default by Buyer, Seller may terminate this Agreement and neither Seller nor Buyer shall have any further obligations or liability hereunder except for any of Buyer's surviving obligations pursuant to Article 3 (B) hereof. In no event shall Seller have any obligation whatsoever to extend the Closing Date for any reason if Buyer fails to perform.

Article 9. Restriction On Water.

Prohibition Against Use of Groundwater. Domestic, irrigation and other water wells of any type are prohibited on the Property, except for groundwater monitoring wells and temporary dewatering wells for construction purposes. Groundwater beneath the Property must not be used as a source of drinking water or for other direct contact purposes, or for fountains. No lakes or other surface impoundments are allowed on the Property.

Article 10. Eminent Domain.

The parties acknowledge that Buyer has the authority to condemn the Property under its power of eminent domain. Buyer represents that it will institute eminent domain proceedings in the event that Seller does not sell the Property upon the terms set forth in this Agreement. The parties further acknowledge that Seller intends to treat the sale of the Property as sold under imminent threat of condemnation, pursuant to Section 1033 of the Internal Revenue Code of 1986 (26 U.S.C.).

Article 11. Prorations:

Local property taxes, if any, and other assessments due and payable in the year of Closing, as well as rental under any leases or Use Rights that are being assigned, will be prorated as of the date of Closing. Buyer will assume any installments of assessments not yet due and payable.

Article 12. Subdivision/Platting Compliance:

It may be necessary to comply with local or state subdivision or platting laws or regulations prior to Closing. All necessary applications, maps and other requirements to comply with this requirement will be completed by Buyer at Buyer's sole cost and expense, and are subject to review and approval by Seller before filing. If Buyer fails to comply with subdivision requirements prior to the Closing Date, or if any proposed subdivision plat or parcel map contains conditions affecting Seller, the Property prior to Closing, or other real property owned by Seller, then Seller, in its sole and absolute discretion, may terminate this Agreement. Seller is not obligated to extend the Closing Date due to Buyer's failure to comply with subdivision or platting requirements prior to the Closing Date.

Article 13. Mortgage Release:

If the Property is subject to a blanket mortgage granted by Seller or a corporate predecessor of Seller, Seller will obtain a release within approximately six (6) months after Closing.

Article 14. Seller's Management Approval:

BUYER ACKNOWLEDGES THAT NEITHER THIS AGREEMENT NOR THE NEGOTIATIONS LEADING TO THIS AGREEMENT CREATE ANY OBLIGATION ON THE PART OF SELLER TO SELL THE PROPERTY TO BUYER UNLESS THIS AGREEMENT IS APPROVED IN ACCORDANCE WITH SELLER'S MANAGEMENT POLICY STATEMENT. IF SUCH APPROVAL IS NOT GIVEN AND COMMUNICATED TO BUYER BY THE CLOSING DATE, THIS AGREEMENT WILL TERMINATE AND NEITHER PARTY WILL HAVE ANY FURTHER OBLIGATION.

Article 15. Condemnation:

If, prior to Closing, a governmental agency commences or imminently threatens in writing to commence any eminent domain proceedings to take any material portion of the Property, Buyer and Seller shall each have the unilateral right, exercisable by giving notice of such decision to the other party within thirty (30) days after receiving written notice of such actual or threatened condemnation proceedings, to terminate this Agreement. In the event of such termination, this Agreement will be without any further force and effect and without further obligation of either party to the other. If neither party elects to terminate pursuant to this Article - Condemnation, the Sale Price will be determined as though such condemnation had not occurred, and the net proceeds of condemnation awards paid or payable to Seller by reason of such condemnation of the Property shall be paid or assigned to Buyer at Closing.

Article 16. Counterparts; Electronic Signatures:

This Agreement (or any amendments hereto) may be executed in any number of counterparts and in separate counterparts, each of which shall be deemed an original. The exchange of copies of this Agreement and of signature pages by facsimile or e-mail transmission shall constitute effective execution and delivery of this Agreement as to the parties and may be used in lieu of the original Agreement for all purposes. Signatures of the parties transmitted by facsimile or e-mail shall be deemed to be their original signatures for all purposes.

If you agree with the foregoing terms and conditions with respect to the possible purchase of the Property, please indicate your acceptance of these terms and conditions by signing in the acceptance space provided below and returning one copy to Collin J Koory at the address listed on the bottom of the first page of this letter or by electronic mail at cjkoory@up.com, in order that it is received by Seller no later than October 31, 2025. Please also indicate below how you wish to take title. If you should have any questions, please call Collin J Koory at (402) 544-6041.

Sincerely,

Director – Real Estate

ACCEPTED AND AGREED THIS ON : _____

CITY OF NACOGDOCHES, TEXAS

By: _____

Printed Name: _____

Title: _____

Title to the Property will be taken as follows:

If Corporation, State of incorporation: _____

Mailing Address: _____



LEGEND:

- SALE AREA..... 
- UPRRCO. R/W OUTLINED..... 

TOTAL SALE AREA: 2.947 ACRES +/-

NOTE: BEFORE YOU BEGIN ANY WORK, SEE AGREEMENT FOR FIBER OPTIC PROVISIONS.

EXHIBIT "A"

UNION PACIFIC RAILROAD COMPANY

NACOGDOCHES, NACOGDOCHES COUNTY, TX

M.P. 133 - TNO INDUSTRIAL LEAD

TNO/TX/V2/S36
SCALE: 1" = 100'

OFFICE OF REAL ESTATE
OMAHA, NEBRASKA DATE: 7-14-2025

DSK FILE: 0193615

CADD FILENAME	0193615
SCAN FILENAME	AERIAL PRINT



September 8, 2025
Project: 0193615

DELVIERED VIA DOCUSIGN

CITY OF NACOGDOCHES, TEXAS
ATTN: RICHARD B. BEVERLIN, III
P.O. BOX 635030
NACOGDOCHES, TEXAS 75963

This letter ("Agreement") confirms our understandings covering the possible sale by Union Pacific Railroad Company ("Seller") to City of Nacogdoches, Texas ("Buyer") of Seller's interest in certain real property in Nacogdoches, Texas.

The undersigned will recommend to Seller's Management the sale of the Property on the following terms and conditions:

Article 1. Description of Property:

- A. The Property is approximately 2.947 acres as shown on the print attached hereto as Exhibit A and made a part hereof. The legal description of the Property will be determined by Seller.
- B. Before finalizing any survey, Buyer shall submit the draft survey to Seller for review and approval. Computer files of the survey and legal descriptions shall be sent via e-mail to cjkoory@up.com, with a subject line referencing the UPRR Project Number 0193615 assigned to this document. Buyer shall deliver a certified copy of the completed survey to Seller within ninety (90) days after Buyer's execution of this Agreement ("Survey Period"). Delay in obtaining or furnishing the survey to Seller shall in no event give Buyer the right to extend the Closing Date (as defined in the 'Closing – Default:' Article 8).

Article 2. Sale Price:

- A. The sale price ("Sale Price") for the Property shall be Fifty Thousand Dollars (\$50,000.00).

Article 3. Feasibility Review/Right of Entry:

- A. For One Hundred Twenty (120) days from the date of execution of this Agreement by Buyer ("Feasibility Review Period"), Buyer and its agents and contractors may enter upon the Property to perform environmental audits, soil tests, engineering and feasibility studies of the Property. If the results of such audits, tests or studies, or Buyer's review of title or any other matters relating to the Property are unsatisfactory, Buyer may terminate this Agreement by giving Seller written notice before the end of the Feasibility Review Period. If no such written notice of termination is given before the end of the Feasibility Review Period, the Property will be deemed suitable for Buyer's purposes. In the event of such termination by Buyer, then Buyer shall surrender to Seller copies of all audits, soils, engineering and any other reports prepared for Buyer pertaining to the Property and such reports will become the sole property of Seller without cost or expense of Seller and this Agreement will terminate without any further force and effect, and without further obligation of either party to the other.

- B. Buyer's right to enter upon the Property pursuant to Article 3-A is subject to the following:
- i) To the extent permitted by law, Buyer will indemnify, defend and save harmless Seller and/or Seller's affiliates (Seller's affiliates means any corporation which directly or indirectly controls or is controlled by or is under common control with Seller), their officers, agents and employees, against and from any and all liability, loss, costs and expense of whatsoever nature growing out of personal injury to or death of persons whomsoever, or loss or destruction of or damage to property whatsoever, where such personal injury, death, loss, destruction or damage arises in connection with the entry upon the Property by Buyer, its agents or contractors prior to Closing.
 - ii) Buyer and Buyer's agents and contractors (collectively "Contractors") will maintain in confidence all information, reports, and evaluations generated in connection with any environmental assessments and will not make disclosure without the prior written consent of Seller. If Buyer discovers hazardous or toxic substances or materials, Buyer will immediately notify Seller.
 - iii) Buyer will promptly deliver to Seller the results and copies of any and all reports, evaluations, tests and studies generated in connection with any environmental assessments. Prior to the issuance of any final environmental report, Seller will have the opportunity to make comments, pose questions and offer recommendations to the Contractor preparing the report.
 - iv) To the extent permitted by law, Buyer agrees to indemnify, defend and hold harmless Seller against and from any and all liens, claims, demands, costs and expenses of whatsoever nature in any way connected with or growing out of any work done, labor performed or materials furnished at the Property on behalf of Buyer prior to Closing.
 - v) If the sale of the Property does not close, Buyer will, as soon as possible and at Buyer's sole expense, restore the Property to the same condition it was in immediately prior to the time Buyer entered the Property, failing in which Seller may perform the work of restoration and Buyer will reimburse Seller within thirty (30) days after rendition of bill by Seller.
- C. Absence of markers is not a warranty by Seller of no subsurface installations. Fiber optic systems, pipelines, and other structures may be buried on the Property. Before any digging/drilling/excavation, the following procedures will be followed by Buyer and Buyer's Contractors:
- i) Protection of any fiber optic cable systems is of extreme importance since any break could disrupt service to users resulting in business interruption and loss of revenue and profits. Buyer shall visit www.up.com/CBUD to complete and submit the required form to determine if fiber optic cable is buried on the Premises. If it is determined that fiber optic cable is buried on the Property, Buyer shall promptly inform Seller, at the address at the bottom of the first page of this Agreement, of the results of its investigation.
 - ii) Before drilling or excavating with mechanized equipment, Buyer will explore with hand tools to a depth of at least eight (8) feet below the surface or will use suitable detection equipment.
- D. Notwithstanding any provisions in this Agreement to the contrary, if this Agreement is terminated for any reason whatsoever, Buyer will remain obligated to comply with the provisions of Article 3-A and 3-B and Seller will retain all of its remedies for Buyer's default under Article 3-A and 3-B.

Article 4. As Is Sale - Release - Indemnity:

- A. As Is. Buyer and its representatives, prior to the Closing Date, will have been afforded the opportunity to make such inspections of the Property and matters related thereto as Buyer and its representatives desire. Buyer acknowledges and agrees that the Property is to be sold and accepted by Buyer in an "as is" condition with all faults. Buyer further acknowledges that the Property was used for railroad, commercial and industrial purposes. Seller makes no representation or warranties of any kind whatsoever, either express or implied, with respect to the Property; in particular, but without limitation, Seller makes no representations or warranties with respect to the use, condition, title, occupation or management of the Property, or compliance with applicable statutes, laws, codes, ordinances, regulations, requirements, covenants, conditions and restrictions (whether or not of record). Buyer acknowledges that it is entering into this Agreement on the basis of Buyer's own investigation of the physical and environmental conditions of the Property, including the subsurface conditions, and Buyer assumes the risk that adverse physical and environmental conditions may not have been revealed by its investigation. Buyer acknowledges that notwithstanding any prior or contemporaneous oral or written representations, statements, documents or understandings, this Agreement constitutes the entire understanding of the parties with respect to the subject matter hereof and the purchase and sale of the Property and supersedes any such prior or contemporaneous oral or written representations, statements, documents or understandings.
- B. Release. BUYER, FOR ITSELF, ITS SUCCESSORS AND ASSIGNS, HEREBY WAIVES, RELEASES, REMISES, ACQUITS AND FOREVER DISCHARGES SELLER, ITS AFFILIATES, THEIR EMPLOYEES, AGENTS, OFFICERS, SUCCESSORS AND ASSIGNS, OF AND FROM ANY AND ALL CLAIMS, SUITS, ACTIONS, CAUSES OF ACTION, DEMANDS, RIGHTS, DAMAGES, COSTS, EXPENSES, PENALTIES, FINES OR COMPENSATION WHATSOEVER, DIRECT OR INDIRECT, WHICH BUYER NOW HAS OR WHICH BUYER MAY HAVE IN THE FUTURE ON ACCOUNT OF OR IN ANY WAY ARISING OUT OF OR IN CONNECTION WITH THE KNOWN OR UNKNOWN PHYSICAL OR ENVIRONMENTAL CONDITION OF THE PROPERTY (INCLUDING, WITHOUT LIMITATION, ANY CONTAMINATION IN, ON, UNDER OR ADJACENT TO THE PROPERTY BY ANY HAZARDOUS OR TOXIC SUBSTANCE OR MATERIAL), OR ANY FEDERAL, STATE OR LOCAL LAW, ORDINANCE, RULE OR REGULATION APPLICABLE THERETO, INCLUDING, WITHOUT LIMITATION, THE TOXIC SUBSTANCES CONTROL ACT, THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION AND LIABILITY ACT, AND THE RESOURCE CONSERVATION AND RECOVERY ACT. THE FOREGOING SHALL APPLY REGARDLESS OF ANY NEGLIGENCE OR STRICT LIABILITY OF SELLER, ITS AFFILIATES, THEIR EMPLOYEES, AGENTS, OFFICERS, SUCCESSORS OR ASSIGNS.
- C. Indemnity. FROM AND AFTER CLOSING, BUYER SHALL, TO THE MAXIMUM EXTENT PERMITTED BY LAW, INDEMNIFY, DEFEND AND SAVE HARMLESS SELLER, ITS AFFILIATES, THEIR EMPLOYEES, AGENTS, OFFICERS, SUCCESSORS AND ASSIGNS, FROM AND AGAINST ANY AND ALL SUITS, ACTIONS, CAUSES OF ACTION, LEGAL OR ADMINISTRATIVE PROCEEDINGS, CLAIMS, DEMANDS, FINES, PUNITIVE DAMAGES, LOSSES, COSTS,

LIABILITIES AND EXPENSES, INCLUDING ATTORNEY'S FEES, IN ANY WAY ARISING OUT OF OR CONNECTED WITH THE KNOWN OR UNKNOWN PHYSICAL OR ENVIRONMENTAL CONDITION OF THE PROPERTY (INCLUDING, WITHOUT LIMITATION, ANY CONTAMINATION IN, ON, UNDER OR ADJACENT TO THE PROPERTY BY ANY HAZARDOUS OR TOXIC SUBSTANCE OR MATERIAL), OR ANY FEDERAL, STATE OR LOCAL LAW, ORDINANCE, RULE OR REGULATION APPLICABLE THERETO, INCLUDING, WITHOUT LIMITATION, THE TOXIC SUBSTANCES CONTROL ACT, THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION AND LIABILITY ACT, AND THE RESOURCE CONSERVATION AND RECOVERY ACT. THE FOREGOING SHALL APPLY REGARDLESS OF ANY NEGLIGENCE OR STRICT LIABILITY OF SELLER, ITS AFFILIATES, THEIR EMPLOYEES, AGENTS, OFFICERS, SUCCESSORS OR ASSIGNS.

- D. General Allocation of Environmental Responsibility. With respect to any existing or future environmental contamination of the soil and/or groundwater in, on or under the Property, from and after Closing, Buyer, at no cost to Seller, agrees to be solely responsible for conducting any investigation, monitoring, remediation, removal, response or other action required by any governmental agency, court order, law or regulation or otherwise necessary to make the Property suitable for Buyer's use of the Property.
- E. Additional and Independent Consideration. The release, indemnity and general allocation of environmental responsibility by Buyer are additional and independent consideration to Seller for the sale and purchase of the Property, without which Seller would not sell the Property for the Sale Price.
- F. Survival. The provisions of this Article will survive the delivery of the Deed and will bind and inure to the benefit of the parties hereto, their heirs, successors and assigns.

Article 5. Escrow, Title Insurance and Abstract of Title:

- A. Seller will not furnish title insurance or an abstract of title to the Property. Buyer may, at its sole option and expense, obtain a preliminary title report ("PTR") in order to review the status of title to the Property during the Feasibility Review Period. If Buyer obtains a PTR, a copy will be delivered to Seller. Seller has no obligation to cure any title defects or to assist Buyer in obtaining title insurance.
- B. If Buyer desires title insurance, Buyer shall pay the cost of any title insurance and any endorsements or changes to the title policy desired by Buyer. If an escrow is used, Buyer shall pay any and all fees relating to the escrow, including, but not limited to, any City and/or County Transfer Taxes and recording fees.

Article 6. Form of Deed; Reservations:

- A. At Closing, Seller will transfer Seller's interest in the Property to Buyer by Quitclaim Deed, subject to all outstanding rights, whether or not of record.
- B. Seller will reserve from the transfer all minerals and mineral rights without right of surface entry.

C. Restriction On Use.

The Property is quitclaimed by Seller subject to the following covenant, condition and restriction which Buyer by the acceptance of this Deed covenant for itself, its heirs and assigns, faithfully to keep, observe and perform:

Restriction on Use. The Property must not be used for (i) residential, (ii) lodgings or accommodations (including, without limitation, hotels, motels, boarding houses, dormitories, hospitals, nursing homes, or retirement centers), or (iii) educational or child-care facilities (including, without limitation, schools, kindergartens or day-care centers).

The foregoing covenant, condition and restriction shall run with the Property, and a breach of the foregoing covenant, condition and restriction, or the continuance thereof, may, at the option of Seller, its successors or assigns, be enjoined, abated or remedied by appropriate proceedings.

Article 7. Existing Agreements:

- A. If any lease or "Use Rights" (license or other rights to use the Property) affects only the Property (whether identified by Seller before or after execution of this Agreement), Seller's rights and obligations under any such identified lease or Use Right will be assigned to and assumed by Buyer at or after Closing.
- B. Buyer acknowledges that the Property may be subject to unidentified Use Rights. It is the responsibility of Buyer to determine if any of these unidentified Use Rights exist.

Article 8. Closing - Default:

- A. Closing will occur on or before April 15, 2026 ("Closing Date"). The Closing will be deemed to occur upon payment of the Sale Price by wire transfer or a cashier's or certified check, and delivery of the deed. All Closing costs, including transfer taxes and excise taxes, will be paid by Buyer.
- B. If Closing fails to occur due to default by Seller, Buyer may terminate this Agreement as Buyer's sole remedy against Seller. In the event of such termination, neither Seller nor Buyer will have any further liability hereunder.
- C. If Closing fails to occur due to default by Buyer, Seller may terminate this Agreement and neither Seller nor Buyer shall have any further obligations or liability hereunder except for any of Buyer's surviving obligations pursuant to Article 3 (B) hereof. In no event shall Seller have any obligation whatsoever to extend the Closing Date for any reason if Buyer fails to perform.

Article 9. Restriction On Water.

Prohibition Against Use of Groundwater. Domestic, irrigation and other water wells of any type are prohibited on the Property, except for groundwater monitoring wells and temporary dewatering wells for construction purposes. Groundwater beneath the Property must not be used as a source of drinking water or for other direct contact purposes, or for fountains. No lakes or other surface impoundments are allowed on the Property.

Article 10. Eminent Domain.

The parties acknowledge that Buyer has the authority to condemn the Property under its power of eminent domain. Buyer represents that it will institute eminent domain proceedings in the event that Seller does not sell the Property upon the terms set forth in this Agreement. The parties further acknowledge that Seller intends to treat the sale of the Property as sold under imminent threat of condemnation, pursuant to Section 1033 of the Internal Revenue Code of 1986 (26 U.S.C.).

Article 11. Prorations:

Local property taxes, if any, and other assessments due and payable in the year of Closing, as well as rental under any leases or Use Rights that are being assigned, will be prorated as of the date of Closing. Buyer will assume any installments of assessments not yet due and payable.

Article 12. Subdivision/Platting Compliance:

It may be necessary to comply with local or state subdivision or platting laws or regulations prior to Closing. All necessary applications, maps and other requirements to comply with this requirement will be completed by Buyer at Buyer's sole cost and expense, and are subject to review and approval by Seller before filing. If Buyer fails to comply with subdivision requirements prior to the Closing Date, or if any proposed subdivision plat or parcel map contains conditions affecting Seller, the Property prior to Closing, or other real property owned by Seller, then Seller, in its sole and absolute discretion, may terminate this Agreement. Seller is not obligated to extend the Closing Date due to Buyer's failure to comply with subdivision or platting requirements prior to the Closing Date.

Article 13. Mortgage Release:

If the Property is subject to a blanket mortgage granted by Seller or a corporate predecessor of Seller, Seller will obtain a release within approximately six (6) months after Closing.

Article 14. Seller's Management Approval:

BUYER ACKNOWLEDGES THAT NEITHER THIS AGREEMENT NOR THE NEGOTIATIONS LEADING TO THIS AGREEMENT CREATE ANY OBLIGATION ON THE PART OF SELLER TO SELL THE PROPERTY TO BUYER UNLESS THIS AGREEMENT IS APPROVED IN ACCORDANCE WITH SELLER'S MANAGEMENT POLICY STATEMENT. IF SUCH APPROVAL IS NOT GIVEN AND COMMUNICATED TO BUYER BY THE CLOSING DATE, THIS AGREEMENT WILL TERMINATE AND NEITHER PARTY WILL HAVE ANY FURTHER OBLIGATION.

Article 15. Condemnation:

If, prior to Closing, a governmental agency commences or imminently threatens in writing to commence any eminent domain proceedings to take any material portion of the Property, Buyer and Seller shall each have the unilateral right, exercisable by giving notice of such decision to the other party within thirty (30) days after receiving written notice of such actual or threatened condemnation proceedings, to terminate this Agreement. In the event of such termination, this Agreement will be without any further force and effect and without further obligation of either party to the other. If neither party elects to terminate pursuant to this Article - Condemnation, the Sale Price will be determined as though such condemnation had not occurred, and the net proceeds of condemnation awards paid or payable to Seller by reason of such condemnation of the Property shall be paid or assigned to Buyer at Closing.

Article 16. Counterparts; Electronic Signatures:

This Agreement (or any amendments hereto) may be executed in any number of counterparts and in separate counterparts, each of which shall be deemed an original. The exchange of copies of this Agreement and of signature pages by facsimile or e-mail transmission shall constitute effective execution and delivery of this Agreement as to the parties and may be used in lieu of the original Agreement for all purposes. Signatures of the parties transmitted by facsimile or e-mail shall be deemed to be their original signatures for all purposes.

If you agree with the foregoing terms and conditions with respect to the possible purchase of the Property, please indicate your acceptance of these terms and conditions by signing in the acceptance space provided below and returning one copy to Collin J Koory at the address listed on the bottom of the first page of this letter or by electronic mail at cjkoory@up.com, in order that it is received by Seller no later than October 31, 2025. Please also indicate below how you wish to take title. If you should have any questions, please call Collin J Koory at (402) 544-6041.

Sincerely,

Director – Real Estate

ACCEPTED AND AGREED THIS ON :

CITY OF NACOGDOCHES, TEXAS

By: _____

Printed Name: _____

Title:

Title to the Property will be taken as follows:

If Corporation, State of incorporation:

Mailing Address:



Page 127 of 195

City of Nacogdoches GIS



7/14/2025, 4:29:44 PM

 CAD Parcels

 City Limits

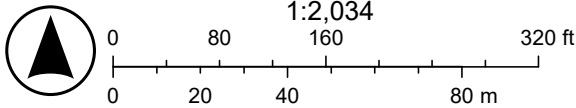
 Red: Red

 Blue: Blue

 Green: Green

Buildings

Image





City Council Meeting

Date: September 16, 2025

Agenda Item: 6.A.

PRESENTER:

ITEM/SUBJECT: Receive the annual report from the Boys and Girls Club of Deep East Texas.
(Sheila Youngblood, President/CEO)

SUMMARY/BACKGROUND:

FINANCIAL:

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

CITY CONTACT:

ATTACHMENTS: 1. Presentation BGCDDET

GREAT FUTURES START **HERE.**



BOYS & GIRLS CLUBS
OF DEEP EAST TEXAS

NACOGDOCHES CITY COUNCIL PRESENTATION

TUESDAY SEPTEMBER 16, 2025

5:30 P.M.

History:

The Boys & Girls Club of Nacogdoches originated in the late 1980's beginning at Mike Moses Junior High until a Capital Campaign helped build the club on Park Street in 1996.

The Boys & Girls Clubs of Deep East Texas, the City of Nacogdoches and the Nacogdoches Independent School District entered in to an agreement to build an aquatics center in 1998. After a capital campaign and a lead gift from the Lehmann family, the center opened in 2000.

The Aquatics center serves a number of roles in the community.

- Members of the Boys & Girls Club
- NISD Swim Team and Water Polo Team
 - High School and Middle School
- Citizens of the City of Nacogdoches
 - General Swim – 3 times a day for 1-3 hour time slots – M – F
 - General Swim – 2 hours on Saturdays/Closed Sundays
 - Available for Rental
- Lifeguard Trainings
- General Lifeguarding, CPR & First aid Classes
- Swim Lessons – Youth and Adults
- Collaboration with local Boy Scout troops and youth groups
- Water Aerobics

Pool Usage Data 2024-2025

General Open/Lap Swim

- 1500 Hours available during school year and summer
- 4001 total patrons
 - 3096 Adults
 - 905 Youth
- Birthday Parties
 - 43 total parties with approximately 870 guests

In the Fall of 2021, we received a 21st Century Grant

- Serving 6 additional school sites – underperforming students in underperforming schools
 - Three of those locations are in Nacogdoches
 - Fredonia (Now Mike Moses Elementary); BQJ; and Carpenter Elementary Schools
- 5 year grant – renewable annually
- An additional 405 children are served in these locations
- The program is offered afterschool and during the summer months
- Fall 2025, NISD is expanding to include two additional sites

- Total Membership – 2,338
 - School Year Members
 - 325 – Club Site
 - 251 – School Sites
 - Summer Members
 - 358 – Club Numbers
 - 218 – School Sites
 - Sports Programs
 - Football – 281 registered
 - Gymnastics – 282
 - Swim Team – 281
 - Swim Lessons – 342

Membership Demographics

- Boys 47% Girls 53%
- Ages
 - Under 12 Years Old – 91%
 - Over 13 Years Old – 9%
- Ethnicity
 - Caucasian – 32%
 - African American – 39%
 - Hispanic - 22%
 - Multiple Races – 7%

Club Hours

- School Year – Monday – Friday 3:00 – 7:00 p.m.
- Summer Months – Monday – Friday 8:00 a.m. – 5:00 p.m.

Fees

- School Year – August through May - \$100.00 per year
- Summer - June – August - \$100.00 per summer for first child
\$50.00 for additional
- Partnerships with Superior and Amerigroup – Medicaid
 - Will pay for either school year or summer registration fees

Revenue Streams

2024

Annual Campaign, Fundraising

36%

Grants and Foundations

34%

Annual Contracts and other

26%

Membership Fees and Dues

4%



City Council Meeting

Date: September 16, 2025

Agenda Item: 6.B.

PRESENTER:

ITEM/SUBJECT: Receive the annual report from Keep Nacogdoches Beautiful (Ashley Villareal, Keep Nacogdoches Beautiful Director)

SUMMARY/BACKGROUND: The City of Nacogdoches and Keep Nacogdoches Beautiful (KNB) entered into an agreement on October 1, 2024, for a one-year term whereby KNB will provide necessary staff, volunteer support, and technical and education expertise to further recycling programs and beautification within the City. As part of the agreement, KNB will provide the City with an annual report concerning KNB's budget, accomplishments and efforts regarding general recycling and beautification.

FINANCIAL:

No financial impact associated with this item

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. KNB Overview Presentation 2024-2025



KNB

KEEP NACOGDOCHES BEAUTIFUL

KEEP NACOGDOCHES BEAUTIFUL MISSION:

Enhancing the community by encouraging individual responsibility in the areas of litter prevention, waste reduction, and beautification

- The annual funding received from the City of Nacogdoches has allowed Keep Nacogdoches Beautiful to continue fulfilling our Mission.
- KNB's partnership with the city includes:
 - Providing volunteers for city events
 - Ongoing beautification and litter abatement efforts
 - Educate the community on environmental concerns

KEEP NACOGDOCHES BEAUTIFUL VOLUNTEER BOARD OF DIRECTORS



- | | |
|------------------|----------------------|
| • Jana Redfield | Chairman |
| • Alyssa Faykus | Vice Chair |
| • Jill Milem | Treasurer |
| • Brandi Derouen | Secretary |
| • Tyrone Curl | Immediate Past Chair |
| • Kelley Davis | Board Member |
| • Alyssa Faykus | Board Member |
| • Brent McLemore | Board Member |
| • Carrie Quigley | Board Member |
| • Jenny Rashall | Board Member |
| • Eric Rearwin | Board Member |
| • Dawn Stover | Board Member |

KEEP NACOGDOCHES BEAUTIFUL 2024- 2025 PROGRAMS & EVENTS

- TechCycle
- Adopt-A-Highway
- SFA's MLK Day of Service
- We  the Earth
- Waterway Cleanup
- SFA's The BIG Event
- Tire Recycle Day
- Community Cleanup Challenge
- Fall Sweep
- TX Arbor Day
- Festival Litter Management
- Christmas Lights Recycle

TECHCYCLE SATURDAYS



- Partner with STS Electronics in Jacksonville to collect recyclable electronics
- Quarterly collections throughout the year that is open and free to the public
- Reduces illegal dumping and the number of items going to landfill
- Next collection date is October 25th



ADOPT-A-HIGHWAY



- *DON'T MESS WITH TEXAS* Campaign through TXDOT
- Quarterly litter clean up for designated 2 mile site on Loop 224
- Next clean up is October 25th



SFASU MLK DAY OF SERVICE & BIG Event

SFASU events where student volunteers are assigned to different service projects throughout the community.

Both events in 2025 were cancelled due to weather, but KNB was able to hold techcycles at later dates.



We ❤️ The Earth Valentine's Day Event



- In February we hosted a free “Make your own Valentines” event
- We invited the public to come make Valentines out of recycled and repurposed materials
- It taught and encouraged people that you can reuse and repurpose many things, and you don't always have to buy brand new



Waterway Cleanup Event

- Every year, KNB hosts a waterway cleanup during the Month of March which is “Keep Texas Waterways Clean” Month and World Water Day is also in March
- In March 2025 we had 45 volunteers split into groups and cleaned up sections of Banita Creek



Tire Recycle Day



- We partnered with The City of Nacogdoches and Cook Tire and held our 5th annual tire recycle collection
- We were able to collect over 500 unwanted tires
- Collected tires were picked up from Liberty Tire in Beaumont to be recycled
- This event helps keep these unwanted tires from being illegally dumped and out of our landfills



Citywide Cleanup Challenge



- A new event that consisted of a friendly competition between the four wards in our city, to see who could pick up the most litter -SW Ward was the winner!
- This event was to inspire our community to continue to pick up trash in the areas that they live and work, and to educate the importance of preventing litter in the first place



TX Arbor Day

- Event with the Garden Capital of Texas
- On TX Arbor Day 2024, we gave away over 200 native trees
- This allowed people of the community to replace trees lost from the previous drought years



Christmas Lights Recycle



- Collection bins were set up in the lobby of the Nacogdoches Recreation Center & Public Library
- The community could drop off old strands of lights, free of charge
- STS Recycling picked up the collected lights to be recycled

Festival Litter Abatement

KNB volunteers
provide litter
abatement services
for the Texas
Blueberry Festival
and Dia de los
Muertos Festival



*thank
you*



Keep Nacogdoches Beautiful would like to thank the City of Nacogdoches Staff and City Council for supporting our organization and we are looking forward to continuing this partnership in the future.



City Council Meeting

Date: September 16, 2025

Agenda Item: 6.C.

PRESENTER: Todd Simoneaux, Interim Finance Director

ITEM/SUBJECT: Public Hearing: Hold a public hearing and receive citizen input on FY 2025-2026 Proposed Tax Rate. (Interim Director of Finance)

SUMMARY/BACKGROUND: Chapter 26 of the Property Tax Code requires taxing units to comply with truth-in-taxation laws in adopting their tax rate. A public hearing is required if the proposed tax rate exceeds the lower of the no new revenue tax rate or the voter approval tax rate. The proposed tax rate exceeds the no new revenue tax rate. A Notice of Proposed Tax Rate is required to be published in the newspaper, on the city website, and on a television channel, if applicable. The notice was posted as required.

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: Todd Simoneaux, Interim Finance Director
simoneauxt@nactx.us
(936) 559-2529

ATTACHMENTS: 1. Tax Rate Hearing Powerpoint 09.16.2025

2025-2026 Tax Rate Hearing

Presented September 16, 2025

Todd Simoneaux, CPA

Interim Finance Director



Tax Rate Change

	2024	2025	Change
Total tax rate (per \$100 of value)	2024 adopted tax rate 0.52877	2025 proposed tax rate 0.57596	Increase of 0.04719 per \$100, 8.9%
Average homestead Taxable value	2024 average taxable value of residence homestead \$162,148	2025 average taxable value of residence homestead \$180,118	Increase of 11.1%
Total tax levy on all properties	2024 levy \$12,581,479	(2025 proposed rate x current total value)/100 \$14,229,186	Increase of \$1,647,707, or 13.1%





City Council Meeting

Date: September 16, 2025

Agenda Item: 6.D.

PRESENTER: Todd Simoneaux, Interim Finance Director

ITEM/SUBJECT: Consider approval of an ordinance approving and adopting the annual budget for fiscal year beginning October 1, 2025 and ending September 30, 2026; providing that said expenditures for said fiscal year shall be made in accordance with said budget, unless otherwise authorized by an ordinance adopted by City Council; providing for a repeal clause; providing a severability clause; providing an effective date. (Interim Director of Finance)

SUMMARY/BACKGROUND: Section 102.007 of the Government Code requires the vote to adopt a budget to be a record vote. In addition, the adopted budget will contain a cover page that includes the statement on whether the budget will raise more, less or the same amount of property taxes as the prior year, the record vote of each member of council by name, property tax rates for the preceding and current fiscal years with the no new revenue tax rate, the no new revenue maintenance and operations tax rate, the voter approval tax rate, and the debt rate, along with the amount of debt secured by property taxes. This information is required to be posted on the city's website and remain there for one year after adoption of the budget.

Appropriations for all funds will be as follows:

GENERAL FUND	\$ 34,834,952
UTILITY FUND	\$ 51,624,939
SANITATION FUND	\$ 15,150,338
AIRPORT FBO FUND	\$ 895,657
SPECIAL REVENUE FUND	\$ 3,112,510
HOTEL/MOTEL FUND	\$ 1,202,850
DEBT SERVICE FUND	\$ 2,222,970
EQUIPMENT REPLACEMENT FUND	\$ 1,490,000
SELF INSURANCE FUND	\$ 3,741,752
BOND CONSTRUCTION FUND	\$ 24,081,000

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: Todd Simoneaux, Interim Director of Finance
simoneauxt@nactx.us
936-559-2526

ATTACHMENTS: 1. Ordinance 2061-09-25 (Budget)

CITY OF NACOGDOCHES, TEXAS

ORDINANCE NO. 2061-09-25

AN ORDINANCE OF THE CITY OF NACOGDOCHES, TEXAS APPROVING AND ADOPTING ANNUAL BUDGET FOR FISCAL YEAR BEGINNING OCTOBER 1, 2025 AND ENDING SEPTEMBER 30, 2026; PROVIDING THAT SAID EXPENDITURES FOR SAID FISCAL YEAR SHALL BE MADE IN ACCORDANCE WITH SAID BUDGET, UNLESS OTHERWISE AUTHORIZED BY AN ORDINANCE ADOPTED BY CITY COUNCIL; PROVIDING FOR A REPEAL CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING AN EFFECTIVE DATE.

WHEREAS, in accordance with the City Charter and State law, the City Manager of the City of Nacogdoches, Texas ("City") has heretofore filed with the City Secretary a proposed budget for the City covering the fiscal year beginning October 1, 2025 and ending September 30, 2026; and

WHEREAS, the City, in accordance with law, posted the proposed budget on its internet website and made the same available for inspection by any person, and held a public hearing regarding the proposed budget and provided notice of such public hearing, and during the public hearing on the budget, all interested persons were given the opportunity to be heard for or against any item contained in said budget, and all said persons were heard, after which each of said public hearing was closed; and

WHEREAS, the City Council, upon full consideration of the matter, is of the opinion that the budget hereinafter set forth is proper and should be approved and adopted; and

WHEREAS, the adoption of the said budget will require raising more revenue from property taxes than in the previous year, and the City Council will ratify, by separate vote, the property tax rate reflected in the said budget; and

WHEREAS, Appropriations for all funds will be as follows:

GENERAL FUND	\$ 34,834,952
UTILITY FUND	\$ 51,624,939
SANITATION FUND	\$ 15,150,338
AIRPORT FBO FUND	\$ 895,657
SPECIAL REVENUE FUND	\$ 3,112,510
HOTEL/MOTEL FUND	\$ 1,202,850
DEBT SERVICE FUND	\$ 2,222,970
EQUIPMENT REPLACEMENT FUND	\$ 1,490,000
SELF INSURANCE FUND	\$ 3,741,752
BOND CONSTRUCTION FUND	\$ 24,081,000

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

SECTION 1. That the budget for the City of Nacogdoches, Texas for the Fiscal Year beginning October 1, 2025 and ending September 30, 2026, a true and correct copy of which is attached to this Ordinance as Exhibit A, is hereby adopted and approved. As set forth in the said budget, the budget expenditures are hereby appropriated and that expenditures during the fiscal year shall be made in accordance with the budget approved by this Ordinance unless

otherwise authorized by a duly enacted ordinance of the City.

SECTION 2. The budget as adopted hereby shall be deemed the official budget for the City of Nacogdoches, Texas for the said fiscal year and a copy of the same attached hereto and marked as "Exhibit A" shall be filed and kept on file with the City Secretary, shall be posted on the City's internet website, and shall be open to inspection by any interested persons. In addition, the record vote of each member of the City Council by name voting on the adoption of the budget shall be posted on the City's internet website until the first anniversary of the date the budget is adopted.

SECTION 3. The cover page for the budget attached to this Ordinance, that includes the property tax rates for the current fiscal year, including (a) the property tax rate, (b), the no-new-revenue tax rate, (c) the no-new-revenue maintenance and operations tax rate, (d) the voter approval tax rate, and (e) the debt rate, shall be and is hereby filed with the City Secretary and shall be posted on the City's internet website.

SECTION 4. That all ordinances of the City in conflict with the provisions of this Ordinance be, and the same are hereby repealed and all other ordinances of the City not in conflict with the provisions of this Ordinance shall remain in full force and effect.

SECTION 5. The sections, paragraphs, sentences, phrases, and words of this Ordinance are severable, and if any section, paragraph, sentence, phrase, or word in this Ordinance or application thereof to any person or circumstance is held invalid, void, unlawful or unconstitutional by a Court of competent jurisdiction, such holding shall not affect the validity of the remaining portions of this Ordinance, and the City Council hereby declares that it would have passed such remaining portions of this Ordinance despite such invalidity, voidness, unlawfulness or unconstitutionality, which remaining portions shall remain in full force and effect.

SECTION 6. Any requirement that this Ordinance be read at more than one reading be hereby suspended and that this Ordinance shall become effective immediately upon its passage, approval, and publication.

PASSED AND APPROVED this, the 16th day of September 2025, by a vote of ___(ayes) to ___ (nays) to ___ (abstentions) of the City Council of Nacogdoches, Texas.

Randy Johnson, Mayor

ATTEST:

By:_____
Karen Hadnot, City Secretary

APPROVED AS TO FORM:

By:_____
Jerry Baker, City Attorney

APPROVED AS TO CONTENT:

By:_____
Todd Simoneaux, Interim
Director of Finance



City Council Meeting

Date: September 16, 2025

Agenda Item: 6.E.

PRESENTER: Todd Simoneaux, Interim Finance Director

ITEM/SUBJECT: Consider an ordinance ratifying and setting tax rate on all taxable property for the tax year 2025 at a rate of \$0.57596 per one hundred dollars (\$100.00) valuation on all taxable property within the corporate limits of the City of Nacogdoches as of January 1, 2025, the said tax rate having a maintenance and operations component and a debt service component; and providing an effective date. (Interim Director of Finance)

SUMMARY/BACKGROUND: The tax rate would be apportioned \$0.49183/\$100 assessed valuation to the General Fund and \$0.08413/\$100 assessed valuation to the Debt Service Fund.

As required by Section 26.05 of the Tax Code, the tax rate consists of two components, each of which must be approved separately by a record vote and at least 60 percent of the governing body must vote in favor of the ordinance.

Section 102.007 of the Local Government Code includes the following: "Adoption of a budget that will require raising more revenue from property taxes than in previous years requires a separate vote of the governing body to ratify the property tax increase reflected in the budget." A vote under this subsection is in addition to and separate from the vote to adopt the budget or a vote to set the tax rate required by Chapter 26, Tax Code, or other law.

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: Todd Simoneaux, Interim Director of Finance
simoneauxt@nactx.us
(936) 559-2526

ATTACHMENTS: 1. Ordinance 2060-09-25 (Tax Rate)

CITY OF NACOGDOCHES, TEXAS

ORDINANCE NO. 2060-09-25

AN ORDINANCE RATIFYING AND SETTING TAX RATE ON ALL TAXABLE PROPERTY FOR YEAR 2025 AT A RATE OF \$0.57596 PER ONE HUNDRED DOLLARS (\$100.00) VALUATION ON ALL TAXABLE PROPERTY WITHIN THE CORPORATE LIMITS OF THE CITY OF NACOGDOCHES AS OF JANUARY 1, 2025, THE SAID TAX RATE HAVING A MAINTENANCE AND OPERATIONS COMPONENT AND A DEBT SERVICE COMPONENT; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, pursuant to Texas Tax Code Sections 26.04 through 26.06, the Tax Assessor-Collector for the City of Nacogdoches, Texas (the "City") has calculated the tax rate for the fiscal year 2025-2026 which cannot be exceeded without requisite publications and public hearings; and

WHEREAS, the tax rate for the fiscal year 2025-2026 as initially contemplated (proposed) by the City Council did, and as adopted herein, does not exceed the said rate calculated by the Tax Assessor-Collector; and

WHEREAS, the City of Nacogdoches made required publications and held a public hearing as required by State Law; and

WHEREAS, Section 26.05(a), Tex. Tax Code, provides that the tax rate consists of two components (one of which will impose the amount of taxes needed to pay debt service, and the other of which will impose the amount of taxes needed to fund maintenance and operation expenses for the next year), and each of such components must be approved separately, the tax rate set forth herein consists of those two components and are approved separately; and

WHEREAS, this tax rate is equal to the calculated voter approval tax rate. THIS TAX RATE WILL RAISE MORE TAXES FOR MAINTENANCE AND OPERATIONS THAN LAST YEAR'S TAX RATE. THE TAX RATE WILL EFFECTIVELY BE RAISED BY 8.92% AND WILL RAISE TAXES FOR MAINTENANCE AND OPERATIONS ON A \$100,000 HOME BY APPROXIMATELY \$47.19.

WHEREAS, upon full review and consideration of the matter, the City Council is of the opinion that the tax rate for the fiscal year 2025-2026 set, ratified and adopted herein below is proper.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Nacogdoches, Texas that the tax rate for 2025 for the City of Nacogdoches be set at \$0.57596 per \$100.00 valuation, with the following distribution:

Operation and Maintenance	\$	0.49183
I & S Debt Service	\$	0.08413
	\$	0.57596

BE IT FURTHER ORDAINED that any requirement that this Ordinance be read at more than one reading be hereby suspended and that this Ordinance shall become effective immediately upon its passage, approval, and publication, with the tax rate to become effective October 1, 2025.

PASSED AND APPROVED this, the 16th day of September 2025, by a vote of ____ (ayes) to ____ (nays) to ____ (abstentions) of the City Council of Nacogdoches, Texas.

Randy Johnson, Mayor
City of Nacogdoches

ATTEST:

Karen Hadnot, Interim City Secretary

Approved as to form: _____
Jerry Baker, City Attorney

Approved as to content: _____
Todd Simoneaux, Interim Director of Finance

PRESENTER: Mike Neu, Executive Director of Development and Infrastructure

ITEM/SUBJECT: Consider approval of an Ordinance of the City of Nacogdoches, Texas amending Chapter 82 – "Solid Waste", and Appendix A – "Master Fee Schedule", of the Nacogdoches Code of Ordinances relative to sanitation collection and disposal fees; providing a severability clause; providing a continuation clause; providing a repeal clause; and providing an effective date. (Executive Director of Development and Infrastructure)

SUMMARY/BACKGROUND: This item proposes Solid Waste Utility rate changes for fiscal year 2026, beginning October 1, 2025, as well as subsequent fiscal years. The primary authority for municipal regulation and provision of solid waste services is found in Chapters 363 and 364 of the Texas Health and Safety Code. A periodic review of City rates is necessary to ensure that utility revenues can sufficiently support the ongoing service costs and capital investments needed for City-managed solid waste collections and landfill operations. The current Solid Waste Utility rates were last approved in September 2018.

The City contracted with NewGen Strategies and Solutions LLC (NewGen) in September 2024 to perform remaining tasks associated with the Utility Rate Study, which comprised financial analyses of City water, sewer, and solid waste utility rates. See contracts 24-10-136 and 22-10-105 for reference. The Capital Needs Advisory Committee (CNAC) received a presentation from NewGen on the initial Solid Waste Utility rate study findings on Jan. 9, 2025, and City Council received a [final presentation](#) on April 1, 2025.

The proposed Solid Waste Utility rates are reflective of the rate study's revenue requirement forecast, particularly:

- Utility expenses are forecast to increase from \$8.2 million in FY 2025 to \$9.0 million by FY 2029.
- Utility equipment and rolling stock purchases totaling \$7.2 million between FY 2025 and FY2029 will be funded with annual transfers to capital funds.
- Utility will spend \$6.8 million on major landfill capital improvements between FY 2025 and FY 2029 using a combination of available balances in the capital reserve and annual transfers.
- Utility must maintain a minimum cash reserve of 25% of annual operating expenses to maintain liquidity and cover day-to-day operating and maintenance costs.

Depending on the future needs of landfill capital projects or collection operations, the rate study also recommended the City should continue periodic review and adjustment of future rates as needed.

FINANCIAL:

Item is estimated to generate \$300,000 in additional Solid Waste Utility revenue relative to expenses in FY 2026.

COUNCIL PRIORITIES: THIS AGENDA ITEM IS CONSISTENT WITH THE

FOLLOWING CITY COUNCIL PRIORITIES

Infrastructure

CITY CONTACT: Mike Neu, Executive Director of Development and Infrastructure

ATTACHMENTS:

1. Ordinance clean
2. Solid Waste Rate Study presentation

ORDINANCE NO. 2063-09-25

AN ORDINANCE AMENDING CHAPTER 82 “SOLID WASTE”, AND APPENDIX A “MASTER FEE SCHEDULE”, OF THE NACOGDOCHES CODE OF ORDINANCES RELATIVE TO SANITATION COLLECTION AND DISPOSAL FEES; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A CONTINUATION CLAUSE; PROVIDING A REPEAL CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council of the City of Nacogdoches has determined that sanitation and disposal fees as fixed in Ordinance No. 1779-09-18, adopted September 18, 2018, is, at this time, inadequate to cover all operation and maintenance costs for sanitation collection and disposal services; and

WHEREAS, in its March 18, 2025 Regular Meeting, the City Council adopted a “Master Fee Schedule”, identifying the current fees being charged by the City of Nacogdoches, and incorporating it as an Addendum the Code of Ordinances; and

WHEREAS, in order to implement changes necessary, Chapter 82 “Solid Waste” and Appendix A “Master Fee Schedule” of the Code of Ordinances should be amended to reflect an increase in certain sanitation collection and disposal fees each year beginning in fiscal year 2026 and continuing through fiscal year 2029.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF NACOGDOCHES, THAT:

SECTION I

All the above premises are hereby found to be true and correct legislative and factual findings.

SECTION II

CHAPTER 82 – “SOLID WASTE”, ARTICLE III – “RATES, CHARGES AND BILLING PROCEDURE”, of the Code of Ordinances of the City of Nacogdoches, Texas, is hereby amended so that henceforth same shall read as follows:

Sec. 82-131. - Service collection and disposal fees and standards.

- (d) *Commercial, industrial, institutional and similar nonresidential waste.* Service collection and disposal fees and standards for commercial, industrial, institutional and similar nonresidential waste is as follows:
- (1) The city shall have the right to require any of the classes who generate more than four 96-gallon roll out containers per pickup to have approved containerized collection service. A minimum charge will be assessed for roll out carts. Charges for minimum customers who desire multi-weekly collections will be based on the fee schedule set forth in the Master Fee Schedule. Number of collections per week shall be determined by the city manager.
 - (2) Multiple carts/collections. Cart collections will be charged at the rates set forth in the Master Fee Schedule. Note: Tax will be charged on garbage rates.
 - (3) The collection rate for dumpster service shall cover only one collection per week. Charges for minimum customers who desire multi-weekly collections will be based on the number of

collection times the minimum charge. The number of collections per week shall be determined by the city manager.

- a. Front load dumpsters - One to six collections per week.
 - b. After the city has made two separate attempts to collect waste from sites where dumpster is blocked, customers will be billed as if collection was made. To return and empty dumpster will be classified as an extra collection and appropriate fee charged.
 - c. Roll-off rates – City owned roll-off dumpsters may be rented at the rates set forth in the Master Fee Schedule. Each additional three-day period, or part of, for an additional fee. A disposal rate will also be assessed at the rate set forth in the Master Fee Schedule. Note: Tax will be charged on garbage rates.
- (4) Regularly scheduled privately owned roll-off. The collection rate for regular scheduled service is set forth in the Master Fee Schedule. Note: Tax will be charged on garbage rates.
 - (5) Garbage collection service will be provided to tenants and/or commercial enterprises located on city owned property outside the city limits of Nacogdoches at a rate of one and one-half times the rate charged for commercial garbage collection inside the city limits. All such tenants and enterprises shall be considered commercial and shall abide by the collection standards contained in this section.
 - (6) The city manager, shall have the right to set the schedule of frequency of pickup, specify the type of container, location of container, and refuse any waste based on volume, weight, dimension, hazard, state (liquid or solid), or type based on any city ordinance, state or federal law, regulations or permit pertaining to same including refusal based on health, air or water safety concerns. Under no circumstances will the city collect waste/refuse from any enclosed area, fenced yard.
 - (7) Special waste collection fee based on type of waste requested for collection shall be assessed at the rate set forth in the Master Fee Schedule. The city manager shall have the right to determine equipment and personnel needed for collection. Note: All services are charged one-hour minimum. In addition to collection fee, current landfill gate rate disposal fee shall also apply.

SECTION III

APPENDIX A – “MASTER FEE SCHEDULE”, of the Code of Ordinances of the City of Nacogdoches, Texas, is hereby amended and attached hereto as Exhibit “A”.

SECTION IV

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 V

Continuation. All provisions of Chapter 82 and Appendix A of the Code of Ordinances existing prior to the date of passage of this Ordinance remain in full force and effect.

SECTION VI

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 VII

Effective Date. This Ordinance shall take effect ten (10) days from its passage and publication as may be required by governing law.

SECTION VIII

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 IX

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.

CITY OF NACOGDOCHES

Randy Johnson, Mayor

ATTEST:

APPROVED AS TO FORM:

Karen Hadnot, City Secretary

Jerry Baker, City Attorney

APPROVED AS TO CONTENT:

Michael Neu, Executive Director of
Development and Infrastructure

Exhibit A

CODE OF ORDINANCES CITY OF NACOGDOCHES, TEXAS
Appendix A – Master Fee Schedule

Chapter 82 – SOLID WASTE

Ordinance Reference	Description	Fee
Sec. 82-4	Hauling permit fee	\$24.00/year
Sec. 82-131	FY 2026 (begins October 1, 2025)	
	Residential waste collection: (Note: fuel adjustments shall be added to the fee amounts below)	
	One container	\$25.76/month
	Two containers	\$43.05/month
	Three containers	\$65.60/month
	Dumpster service	\$20.69/month
	Containerized collection	\$5.49/cubic yard, per collection
	Commercial, industrial, institutional and similar non-residential waste collection: (Note: fuel adjustments shall be added to the fee amounts below)	
	Minimum charge	\$29.79
	Multiple carts/collections:	
	One cart	\$29.79/day of collection
	Two carts	\$29.79/day of collection
	Three carts	\$45.87/day of collection
	Four carts	\$62.06/day of collection
	Dumpster service:	
	Front load dumpsters	\$5.49/cubic yard, per collection
	City-owned roll-off dumpsters:	
	Initial 3-day rental period	\$145.90
	Each additional 3-day rental period	\$72.96
	Disposal rate	\$14.02/cubic yard, per dumpster, per collection
	Privately-owned roll-off dumpsters:	
	Non-compacted waste/refuse	\$5.49/cubic yard, per collection

	Compacted waste/refuse	\$5.77/cubic yard, per collection
	FY 2027 (begins October 1, 2026)	
	Residential waste collection: (Note: fuel adjustments shall be added to the fee amounts below)	
	One container	\$26.53/month
	Two containers	\$44.34/month
	Three containers	\$67.57/month
	Dumpster service	\$21.31/month
	Containerized collection	\$5.77/cubic yard, per collection
	Commercial, industrial, institutional and similar non-residential waste collection: (Note: fuel adjustments shall be added to the fee amounts below)	
	Minimum charge	\$30.68
	Multiple carts/collections:	
	One cart	\$30.68/day of collection
	Two carts	\$30.68/day of collection
	Three carts	\$47.25/day of collection
	Four carts	\$63.92/day of collection
	Dumpster service:	
	Front load dumpsters	\$5.77/cubic yard, per collection
	City-owned roll-off dumpsters:	
	Initial 3-day rental period	\$150.28
	Each additional 3-day rental period	\$75.14
	Disposal rate	\$14.44/cubic yard, per dumpster, per collection
	Privately-owned roll-off dumpsters:	
	Non-compacted waste/refuse	\$5.77/cubic yard, per collection
	Compacted waste/refuse	\$5.95/cubic yard, per collection
	FY 2028 (begins October 1, 2027)	
	Residential waste collection: (Note: fuel adjustments shall be added to the fee amounts below)	
	One container	\$27.33/month
	Two containers	\$45.67/month
	Three containers	\$69.60/month

	Dumpster service	\$21.95/month
	Containerized collection	\$5.94/cubic yard, per collection
	Commercial, industrial, institutional and similar non-residential waste collection: (Note: fuel adjustments shall be added to the fee amounts below)	
	Minimum charge	\$31.60
	Multiple carts/collections:	
	One cart	\$31.60/day of collection
	Two carts	\$31.60/day of collection
	Three carts	\$48.66/day of collection
	Four carts	\$65.84/day of collection
	Dumpster service:	
	Front load dumpsters	\$5.94/cubic yard, per collection
	City-owned roll-off dumpsters:	
	Initial 3-day rental period	\$154.79
	Each additional 3-day rental period	\$77.40
	Disposal rate	\$14.87/cubic yard, per dumpster, per collection
	Privately-owned roll-off dumpsters:	
	Non-compacted waste/refuse	\$5.94/cubic yard, per collection
	Compacted waste/refuse	\$6.12/cubic yard, per collection
	FY 2029 and later (begins October 1, 2028)	
	Residential waste collection: (Note: fuel adjustments shall be added to the fee amounts below)	
	One container	\$28.15/month
	Two containers	\$47.04/month
	Three containers	\$71.69/month
	Dumpster service	\$22.60/month
	Containerized collection	\$6.12/cubic yard, per collection
	Commercial, industrial, institutional and similar non-residential waste collection: (Note: fuel adjustments shall be added to the fee amounts below)	
	Minimum charge	\$32.55
	Multiple carts/collections:	

	One cart	\$32.55/day of collection
	Two carts	\$32.55/day of collection
	Three carts	\$50.12/day of collection
	Four carts	\$67.81/day of collection
	Dumpster service:	
	Front load dumpsters	\$6.12/cubic yard, per collection
	City-owned roll-off dumpsters:	
	Initial 3-day rental period	\$159.43
	Each additional 3-day rental period	\$79.72
	Disposal rate	\$15.32/cubic yard, per dumpster, per collection
	Privately-owned roll-off dumpsters:	
	Non-compacted waste/refuse	\$6.12/cubic yard, per collection
	Compacted waste/refuse	\$6.31/cubic yard, per collection
	FY 2026 and later (begins October 1, 2025)	
	Special waste collection fee:	
	Personnel	
	1 man	\$29.58/hour
	2 men	\$40.71/ hour
	Truck with operator	
	Pick-up	\$20.75/ hour
	Dump truck	\$37.51/ hour
	Loader/backhoe	
	With operator	\$45.37/ hour
	City landfill fees:	
	Appliances:	
	Large	\$14.82
	Small	\$8.25
	Small dead animals (no larger than a dog)	\$14.82 each
	Large dead animals	\$76.43 each
	Special waste:	
	City resident	\$14.82/cubic yard
	Non-resident	\$27.08/cubic yard
	Tires	Assessed in accordance with the State's recycling fee schedule

	Household garbage, rubbish, waste and brush:	
	City resident:	
	Non-compacted	\$6.77 /cubic yard (\$14.82 minimum)
	Compacted	\$7.44/cubic yard (\$14.82 minimum)
	Non-resident (brush not accepted):	
	Non-compacted	\$13.36/cubic yard (\$29.53 minimum)
	Compacted	\$14.65 /cubic yard (\$29.53 minimum)
	Commercial brush/yard waste	\$8.01/cubic yard (\$18.03 minimum)
Sec. 82-158	Commercial recyclable waste hauler permit	\$250.00



April 1, 2025

CITY OF NACOGDOCHES, TEXAS SOLID WASTE RATE STUDY RESULTS PRESENTATION TO CITY COUNCIL



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AGENDA

- **Introductions**
- **Objectives of Rate Study & Methodology**
- **Projected Revenue Requirement**
- **Summary of Collection and Landfill Customers**
- **Projected Rates**
- **Next Steps**

NEWGEN AND PROJECT TEAM



Matthew Garrett, MBA, CGFO, CPM

Partner and Managing Director of Client Relations and Services

Project Manager

- Project coordination
- Rate design strategy
- Presentations to Staff / Council



Erik Felthous

Senior Manager

Lead Analyst

- Rate model development
- Cost allocations
- Rate Adjustments

OBJECTIVES - BUSINESS FUNDAMENTALS



Revenue Sufficiency

Revenues must match or exceed expenses



Reserves

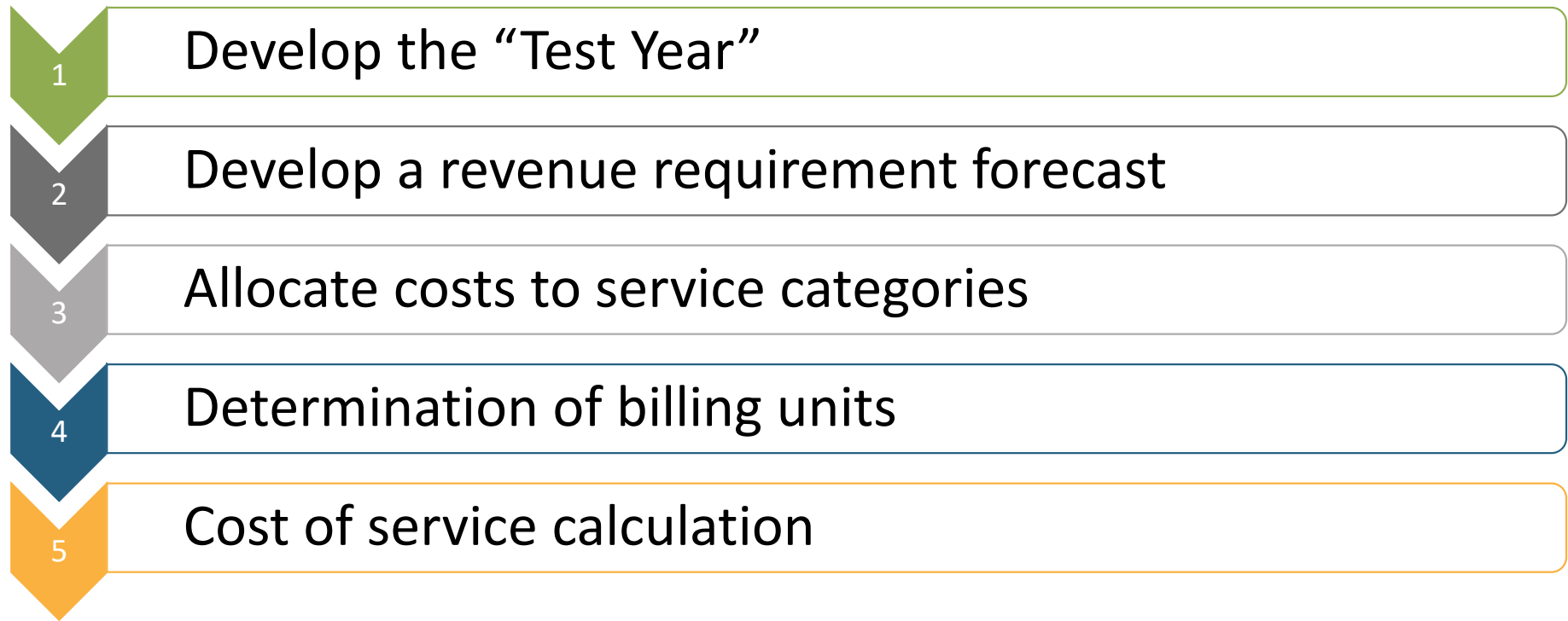
Must plan for future needs and liabilities



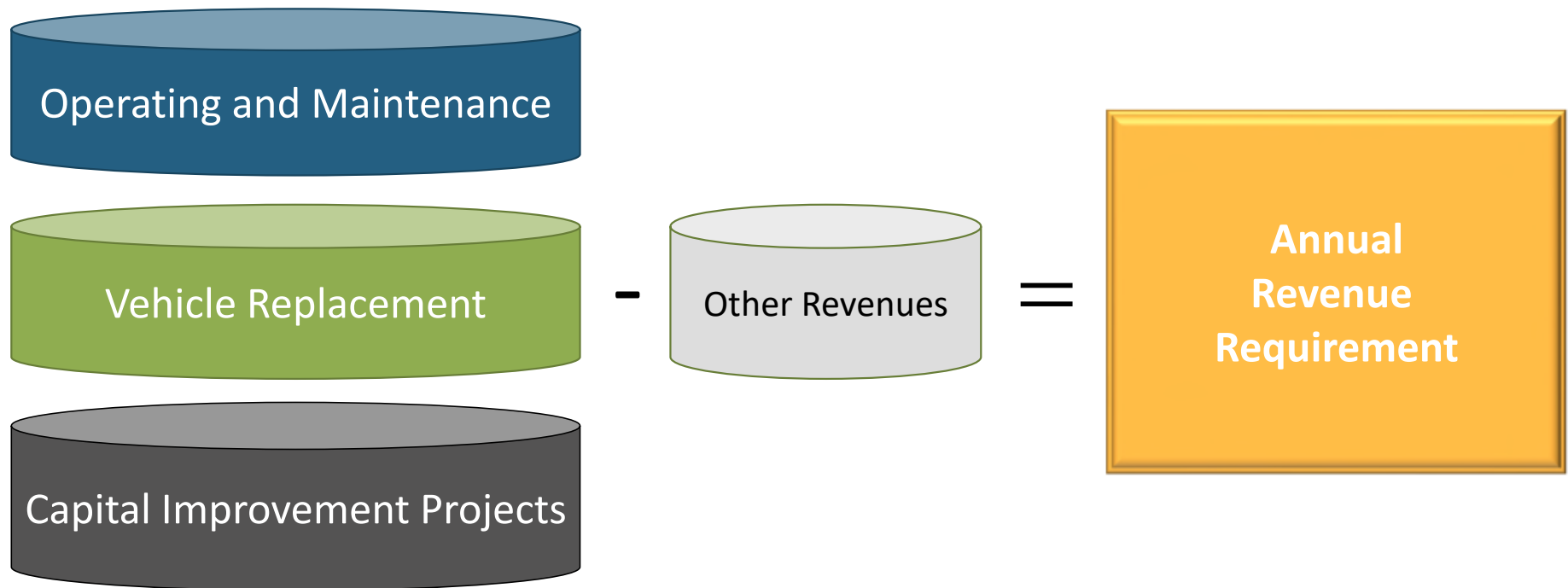
Reinvestment

We must repair, expand, and reinvest in infrastructure

COST OF SERVICE METHODOLOGY



WHAT IS THE “REVENUE REQUIREMENT”



DEVELOPMENT OF REVENUE REQUIREMENT

The development of the revenue requirement forecast includes the following items:

- Solid Waste Utility expenses are forecasted to increase from \$8.2 million in FY 2025 to \$9.0 million by FY 2029.
- New equipment and rolling stock purchases totaling \$7.2 million between FY 2025 – FY 2029 will be funded with annual transfers to capital funds.
- Between FY 2025 and FY 2029, the Utility will spend \$6.8 million in major capital improvements at the landfill funded using a combination of available balances in the capital reserve and annual transfers

CAPITAL IMPROVEMENT PROJECTS

Project	FY 2025	FY 2026	FY 2027	FY 2028	FY 2029
Construct New Landfill Block Cell	\$3.00M	\$1.00M	\$ -	\$ -	\$ -
Landfill Major Permit/Construction	0.75M	-	1.32M	-	-
Central Garbage Sites	0.06M	-	-	-	-
Landfill Water Line Installation	0.70M	-	-	-	-
TOTAL	\$4.51M	\$1.00M	\$1.32M	-	-

SERVICE CATEGORIES

- **Residential**

- Refuse Curbside Cart Collection
- Brushy Collection
- Recycling Drop Off

- **Commercial**

- Refuse Curbside Cart Collection
- Front-Load Dumpsters

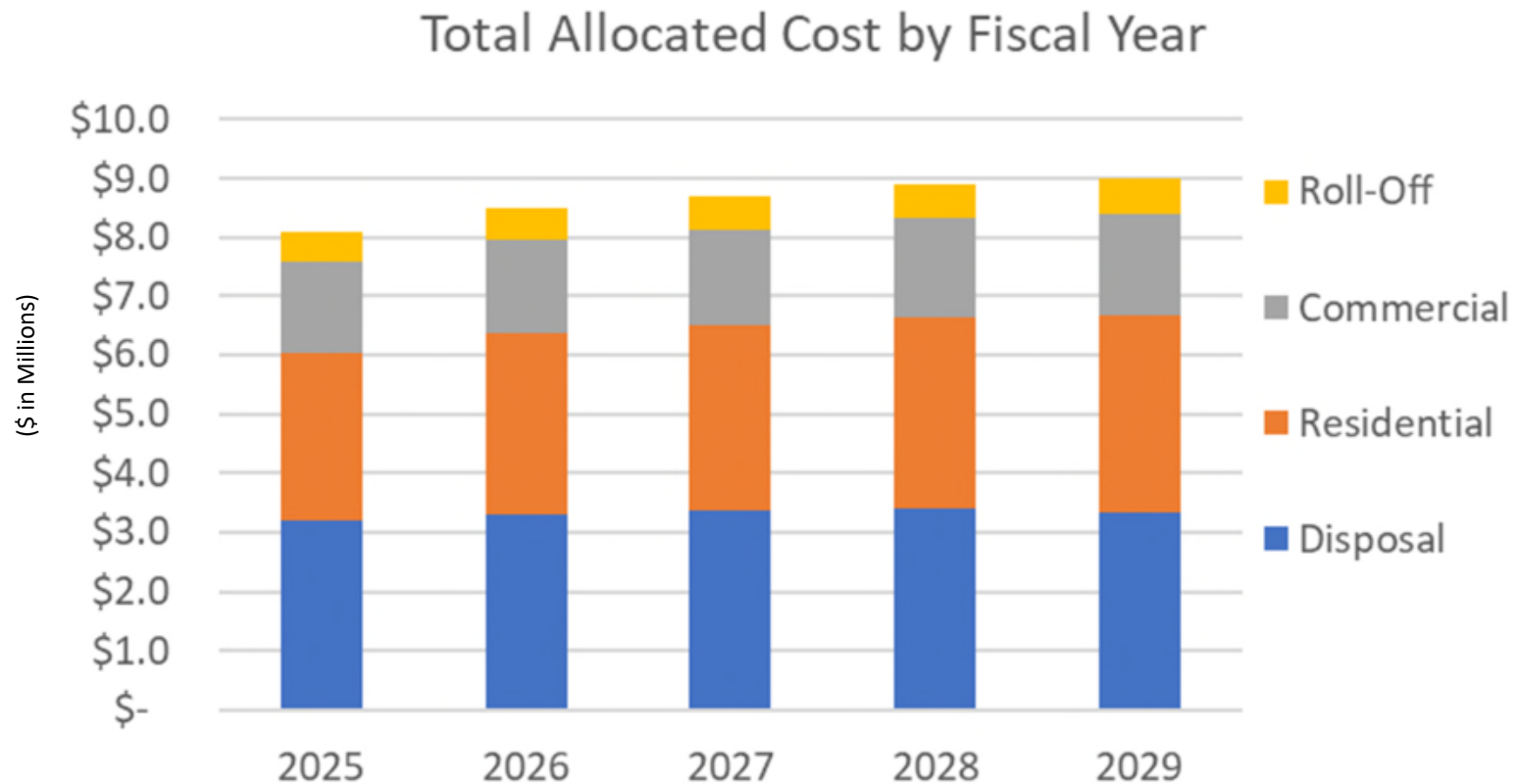
- **Roll-Off Dumpsters**

- **Landfill**

- Disposal
- Grounds Maintenance
- Cell Development

- **Administration**

FIVE-YEAR FORECAST



RESIDENTIAL RATE COST BREAKDOWN

FY 2025 Rate:

\$24.77

(Last revised in 2018)

Brush/Limb Collection

\$6.54

Recycling

\$2.12

46%

\$11.32

Garbage Collection

26%

19%

\$4.78

Disposal

9%

Any minor arithmetic differences are due to rounding.

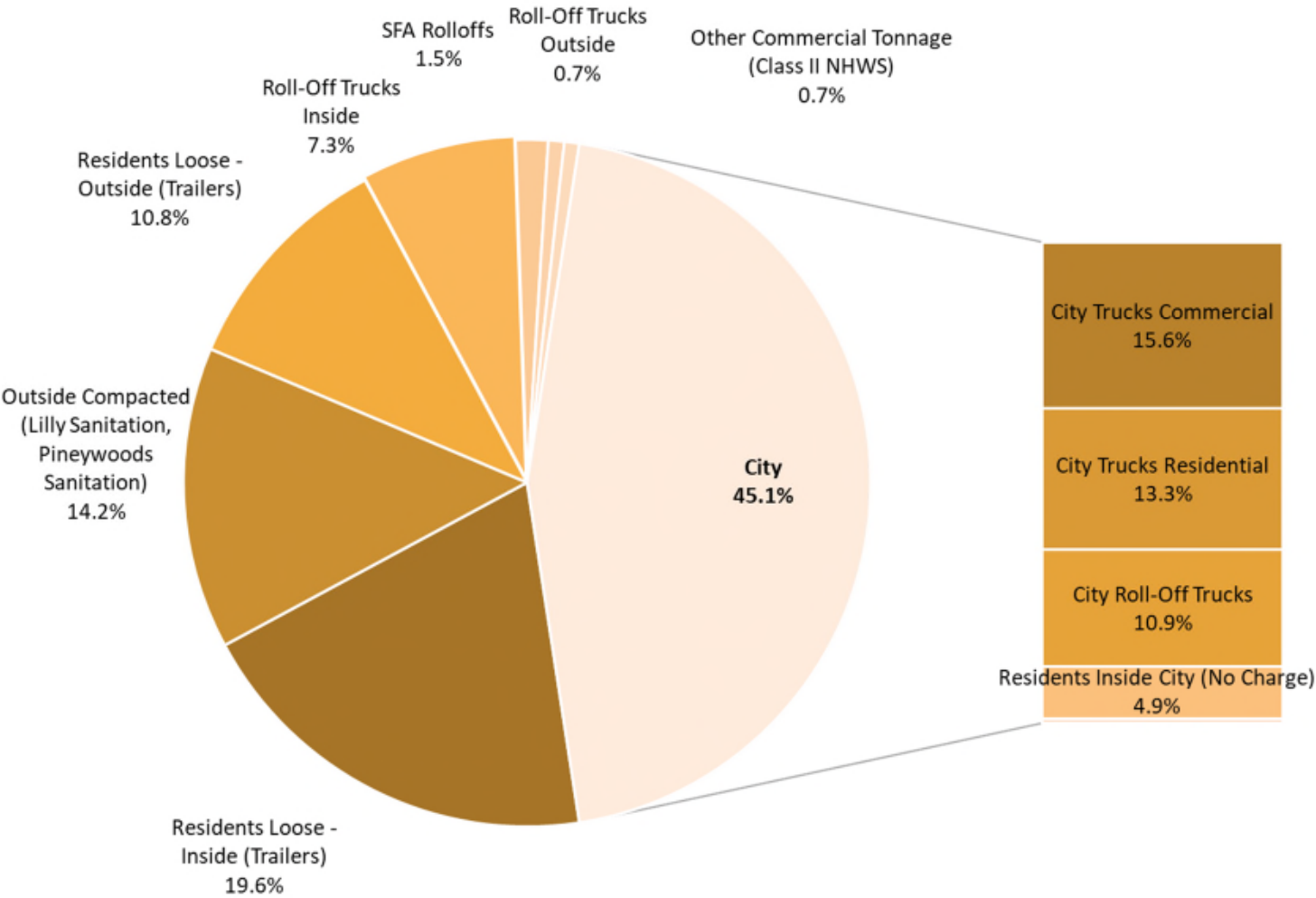
COMMERCIAL CART AND DUMPSTER EXAMPLE RATES

- Once per Week Collection Examples
 - 1 or 2 Carts - \$28.64
 - 3 Cubic Yard Dumpster Collected Once per Week - \$64.95
 - 40 Cubic Yard Open Top Rolloff Dumpster – \$872.80 (\$5.04/CY/Collection)
 - 40 Cubic Yard Rolloff Compactor - \$961.20 (\$5.55/CY/Collection)

Dumpster and Rolloff customers have many options for container size and collection frequency. Only a few examples for each style of service are shown here.

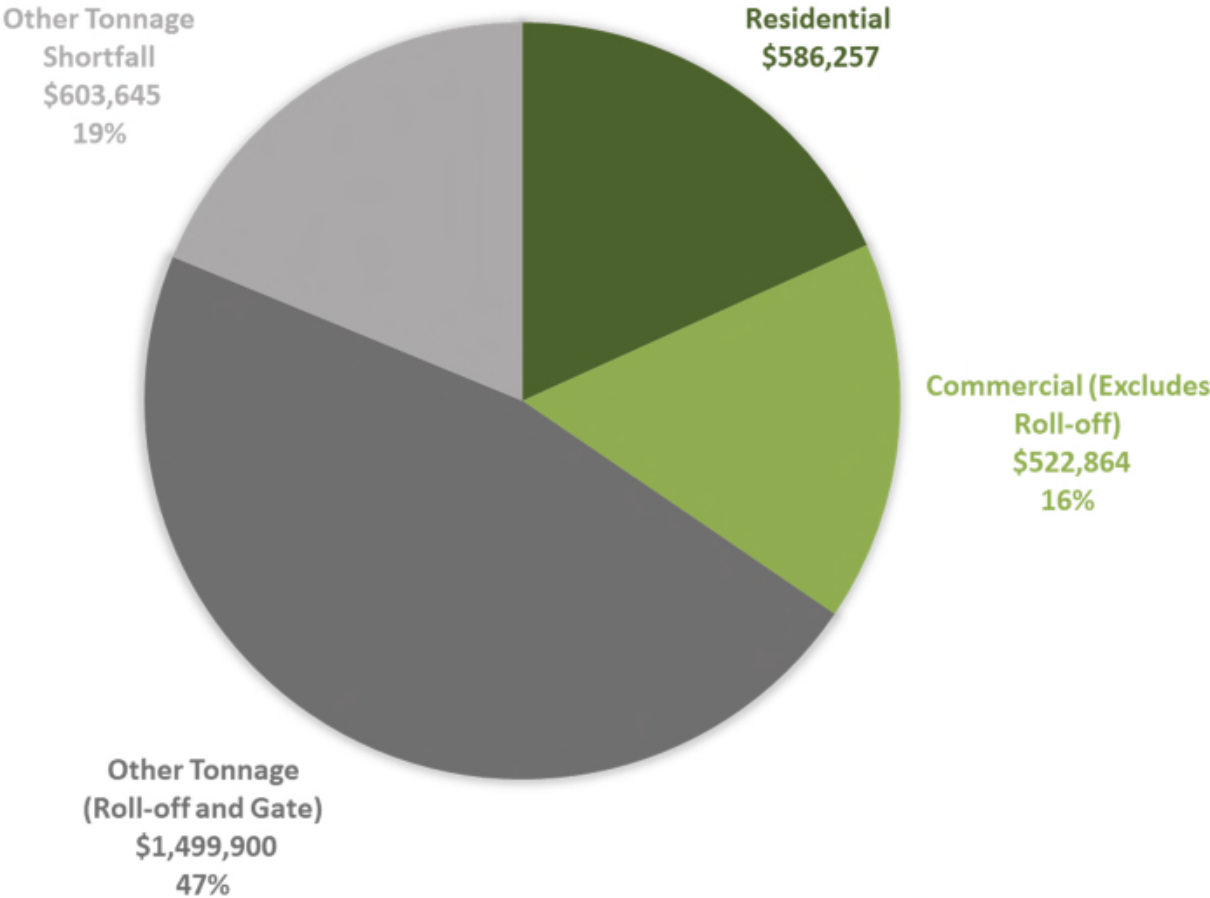
LANDFILL TONNAGE BY SOURCE

From September 2023
To August 2024



LANDFILL ALLOCATION OF COST/FUNDING BY SOURCE

CURRENTLY FUNDED FROM
SURPLUS REVENUES FROM
OTHER CUSTOMER CLASSES
AND FUND BALANCES

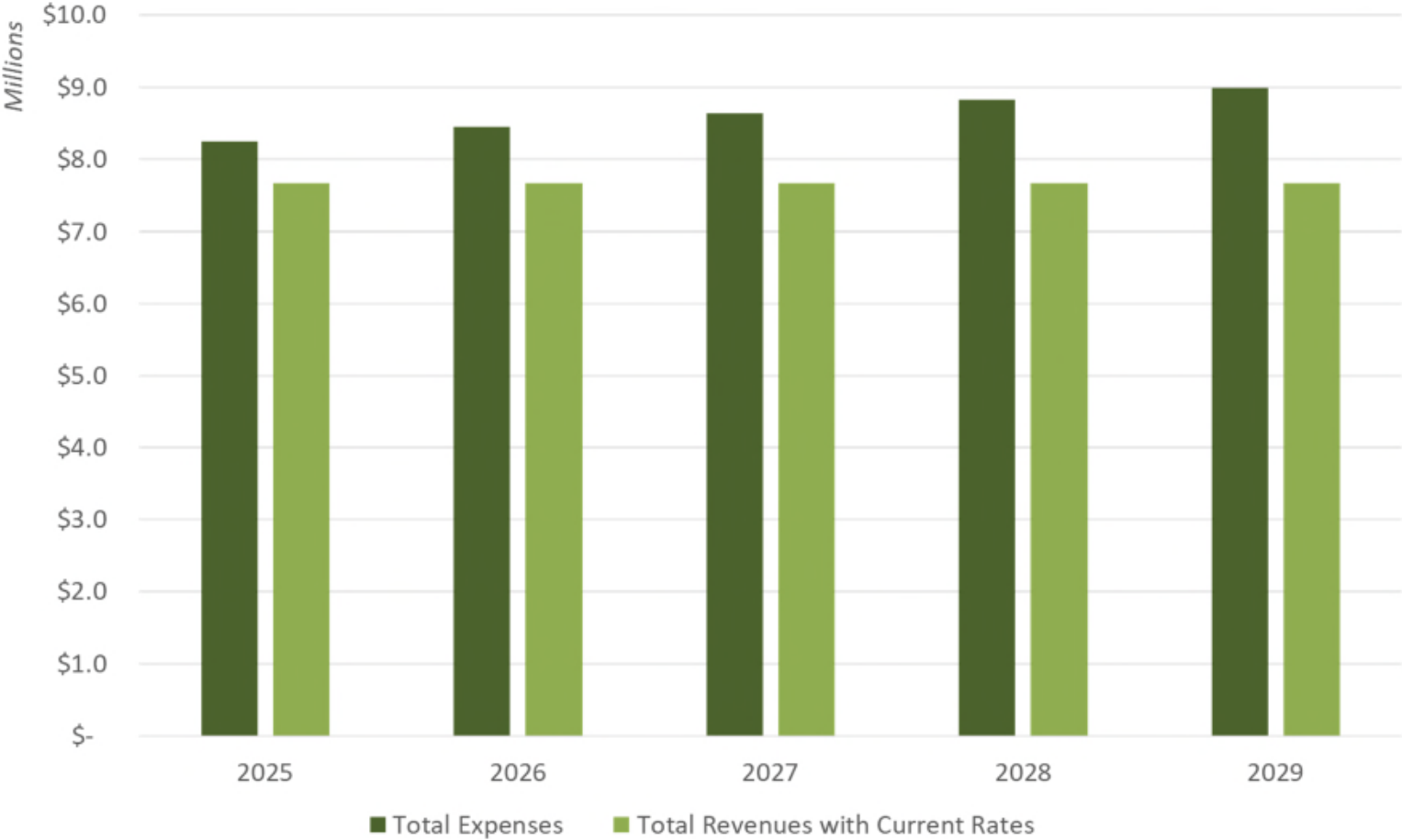


Reflects budgeted amount of only \$1.5M for landfill revenues against a disposal cost allocation of \$2.1M.

This is largest need for rate increases and shows importance of ensuring all loads are fully charged as applicable.

ANTICIPATED FINANCIAL PERFORMANCE UNDER CURRENT RATES

(\$ Millions)



MONTHLY BILL IMPACT - RESIDENTIAL RATE

	Current Rate	FY 2025	FY 2026	FY 2027	FY 2028	FY 2029
Residential Rate	\$24.77	\$24.77	\$25.76	\$26.53	\$27.33	\$28.15
Monthly Residential Rate Increase			 \$0.99	 \$0.77	 \$0.80	 \$0.82
% Change in Disposal Rates			4%	3%	3%	3%

Commercial carts and dumpsters would have the same percentage adjustment as residential for FY 2026 - FY 2029.

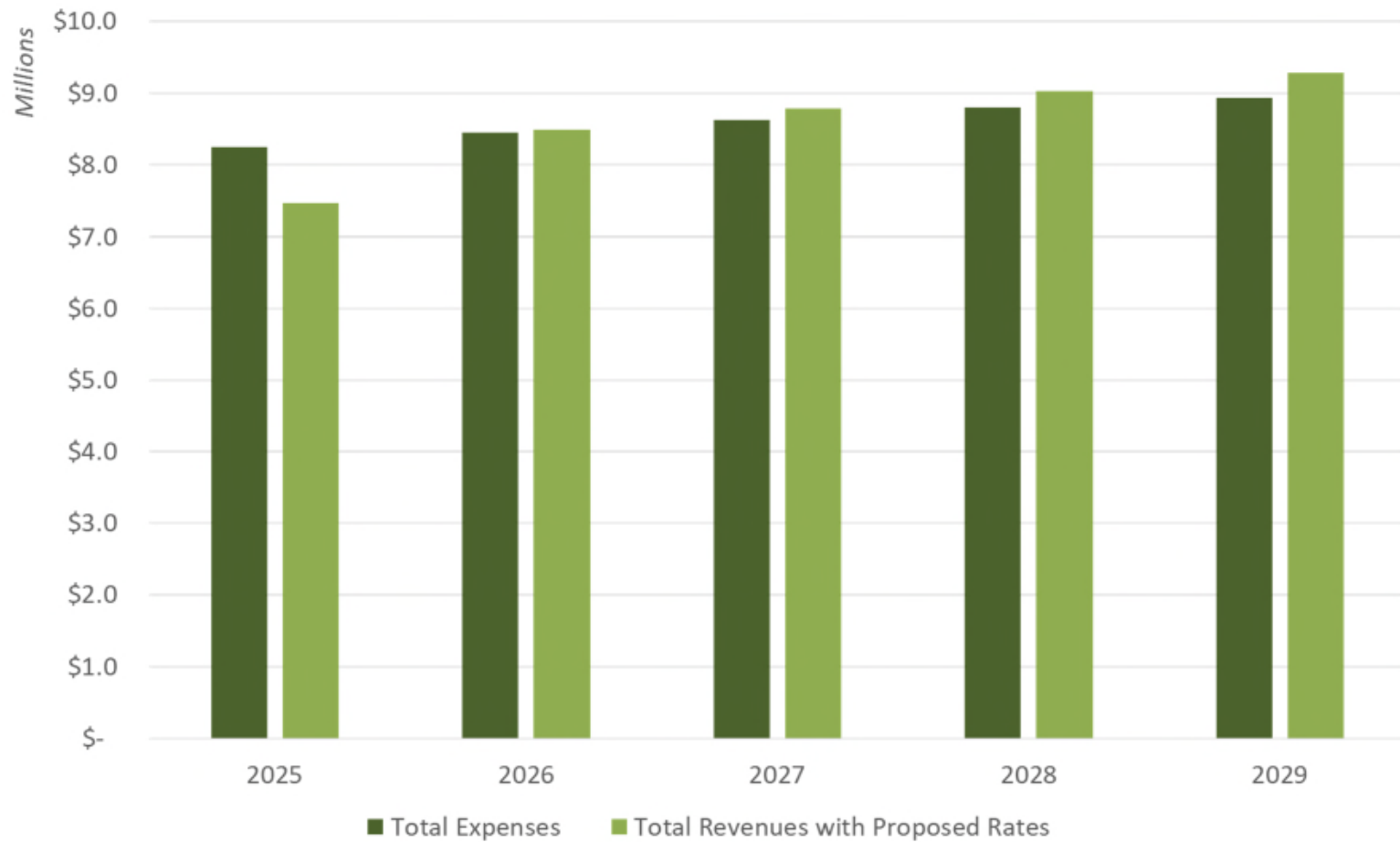
PER CUBIC YARD BILL IMPACT – DISPOSAL RATES

	Current Rate	FY 2025	FY 2026	FY 2027	FY 2028	FY 2029
Dumpster / CY	\$5.04	\$5.04	\$5.49	\$5.77	\$5.94	\$6.12
Compacted / CY	\$5.55	\$5.55	\$6.05	\$6.35	\$6.54	\$6.74



ANTICIPATED FINANCIAL PERFORMANCE UNDER PROJECTED RATES

(\$ Millions)



PATH FORWARD



- CNAC recommended support of rate action in its January 8 meeting.
- NewGen recommends rate action be taken no later than October 2025 to meet the needs of the solid waste utility.
 - It is currently assumed this will be done as part of the FY 2026 budget and fee setting process.
- Depending on changing needs of the landfill capital projects or collection operations, NewGen recommends the city review and adjust future rates as needed.



THANK YOU

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City Council Meeting

Date: September 16, 2025

Agenda Item: 6.G.

PRESENTER:

ITEM/SUBJECT: Discussion and possible action on changing the time of the City Council regular meeting for October 7, 2025. (Mayor)

SUMMARY/BACKGROUND: City Council regular meetings are typically held on the first and third Tuesday of each month. This year, National Night Out, an annual community-building event aimed at fostering stronger police-community partnerships and creating safer neighborhoods, will also be held on the first Tuesday of October, which is October 7, 2025. This item seeks Council's consideration of an alternate meeting start time to allow City officials to participate in the National Night Out annual event.

FINANCIAL:

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

CITY CONTACT:

ATTACHMENTS: