



December 7, 2021

Notice is hereby given of a Regular Meeting of Nacogdoches City Council to be held on the above date via videoconference, with the opportunity to appear in person in the City Council Chamber of City Hall, 202 East Pilar Street, Nacogdoches, Texas, beginning at 4 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 either by teleconference or in person in Council Chambers.

Members of the public who wish to submit comments by telephone on a listed agenda item must contact the City Secretary's office by email at vinsonj@nactx.us or by calling 936-559-2506 and providing their name, telephone number and relevant agenda item upon which they wish to speak. All requests to make comments by telephone must be received by 12:00 p.m. on December 7, 2021. For all timely requests received, staff will call the submitted phone numbers directly during the meeting when the corresponding item comes up for comment. NOTE: The incoming phone call from City staff will be an unfamiliar number.

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

1. Call to order.
2. Pledge of Allegiance.

Council may conduct Executive Session deliberation, reconvening open session for action, if any, on Executive Session items. Regular Session agenda items appropriate for Executive Session consideration may be moved into Executive Session for deliberation, but not action, upon proper announcement at the meeting by presiding officer.

3. **EXECUTIVE SESSION:** Executive Sessions are for City Council to receive information and deliberate on matters specified in Subchapter D of the Texas Open Meetings Act. Council may reconvene in open session to vote on the matter.
 - A. Pursuant to Texas Government Code Section 551.072, deliberations regarding the purchase, exchange, lease, or value of real property if deliberation in an open meeting would have a detrimental effect on the position of the governmental body in negotiations with a third person.
4. **WORK SESSION:** Council will not take formal action on matters presented at a work session, but may direct staff to place items relating to the matter on future agendas for formal consideration.
 - A. Receive a report, hold a discussion, and give staff direction regarding Capital Improvement Program planning for the City of Nacogdoches. (Finance Director)

5. Open Forum: Open Forum is an opportunity for citizens to speak about items not listed on the agenda. In order to address City Council please complete the Open Forum Form and submit it to the City Secretary prior to the start of the meeting. In accordance with the Texas Open Meetings Act, City Council shall not discuss, deliberate, or make any decisions on items discussed during Open Forum. Comments are limited to 3 minutes per person. Open Forum is limited to the first 5 citizens who submit an Open Forum Form.
6. Items to be removed from Consent Agenda.
7. **CONSENT AGENDA:** Items included under Consent Agenda require little or no deliberation by Council. Approval of Consent Agenda authorizes the City Manager or his designee to proceed with conclusion of each in accordance with staff recommendations as reflected in the minutes of this meeting.
 - A. Consider approval of minutes from November 8, 2021 and November 9, 2021 special meetings and November 16, 2021 regular meeting. (City Secretary)
 - B. Consider purchasing one (1) Police Department lake patrol boat. (Finance Director/Assistant Police Chief)
 - C. Consider award of contract for Payroll Timekeeping and Scheduling software. (Finance Director)
 - D. Consider Approval of Historic Restoration Grant (HRG) budget for FY2022. (Community Services Director)
 - E. Consider granting a 10-foot-wide utility easement and Right-of-Way to Oncor Electric at the Nacogdoches A.L. Mangum Airport. (Public Works Director)
8. **REGULAR AGENDA:**
 - A. Discuss, consider, and adopt a resolution designating an administration/project delivery service provider to complete project implementation for the American Rescue Plan Act (ARP Act) funding administered by the US Department of the Treasury, other Federal or State agency. (Finance Director)
 - B. Discuss and consider a donation from Pilgrim's Pride, agree upon acceptance of \$215,000 and authorize City Manager to execute agreement. (Community Services Director)
 - C. Consider approval of a resolution for establishing and appointing members to an advisory Comprehensive Plan Review Committee and Downtown Master Plan Review Committee. (City Manager)
9. **EXECUTIVE SESSION** Executive Sessions are for City Council to receive

information and deliberate on matters specified in Subchapter D of the Texas Open Meetings Act. Council may reconvene in open session to vote on the matter.

- A. Deliberation regarding Economic Development negotiations under Government Code Section 551.087 as follows:
1. Discuss or deliberate regarding commercial or financial information the City has received from business projects the City body seeks to have locate in the City of Nacogdoches and with which the City is conducting economic development negotiations; and
 2. Deliberate offer of financial or other incentive to business prospects described by Subdivision 1 above.

10. Open for action on Executive Session item(s).

- A. Consider approval of Resolution No. 1286-12-21 amending a Chapter 380 Economic Development Program agreement by and between the City of Nacogdoches and HCH Aviation, LLC regarding development of a flight school at A.L. Mangham, Jr. Regional Airport. (Economic Development Director)
- B. Consider approval of Resolution No. 1287-12-21 amending a Chapter 380 Economic Development Program agreement by and between the City of Nacogdoches and Kingdom Perspectives-Nacogdoches, LTD. (Economic Development Director)

11. Adjourn.



Jan Vinson, 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

I certify the notice of meeting was posted in the directory outside of City Hall, 202 E. Pilar Street, Nacogdoches, Texas on December 2, 2021 at 7 p.m. and remained posted until meeting convened.

Jan Vinson, City Secretary



City Council Meeting

Date: December 7, 2021

Agenda Item: 3.A.

PRESENTER:

ITEM/SUBJECT: Pursuant to Texas Government Code Section 551.072, deliberations regarding the purchase, exchange, lease, or value of real property if deliberation in an open meeting would have a detrimental effect on the position of the governmental body in negotiations with a third person.

SUMMARY/BACKGROUND:

FINANCIAL:

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

CITY CONTACT:

ATTACHMENTS:



City Council Meeting

Date: December 7, 2021

Agenda Item: 4.A.

PRESENTER: Pam Curbow, Finance Director

ITEM/SUBJECT: Receive a report, hold a discussion, and give staff direction regarding Capital Improvement Program planning for the City of Nacogdoches. (Finance Director)

SUMMARY/BACKGROUND: Staff will present a summary of the Capital Improvement Program (CIP) items discussed in recent Special City Council meetings, as well as some potential funding options and the need for the further review of debt service and utility rate structures to support future CIP funding. City Council direction is needed to move the CIP program forward in the near future.

FINANCIAL:

No financial impact associated with this item

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

Infrastructure

CITY CONTACT: Pamela Curbow, Director of Finance
curbowp@nactx.us
936-559-2526

ATTACHMENTS:



City Council Meeting

Date: December 7, 2021

Agenda Item: 7.A.

PRESENTER: Jan Vinson, City Secretary

ITEM/SUBJECT: Consider approval of minutes from November 8, 2021 and November 9, 2021 special meetings and November 16, 2021 regular meeting. (City Secretary)

SUMMARY/BACKGROUND:

FINANCIAL:

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

CITY CONTACT: Jan Vinson, City Secretary
vinsonj@nactx.us
36-559-2506

ATTACHMENTS:

1. 110821 Minutes
2. 110921 Minutes
3. 111621 Minutes



Special Session
Nacogdoches City Council
November 8, 2021 – 4:00 p.m.
C.L. Simon Recreation Center
1112 North Street

DRAFT

City Council present: Mayor Jimmy Mize, Council Members Roy Boldon, Jay Anderson, Amelia Fischer and Kathleen Belanger.

1. Called to order at 4 p.m.
2. Pledge of Allegiance.
3. No one spoke during Open Forum.

4. **WORK SESSION:**

- A. Receive a report, hold a discussion, and give staff direction regarding the City's Capital Improvement Projects. Fire Stations (Fire Chief), Airport (Airport Manager)

Fire Chief Keith Kiplinger reviewed the process and results of the fire station location study that was completed this year. The study recommended merging Station 2 and Station 5 into one new fire station, building new facilities for Stations 1 and 3 north of where they are located currently and keeping Station 4 where it is located just adding additional space and remodeling. The study also included a new training facility. The total estimated cost is \$19.97 million dollars.

City Council discussed I-69, demographics, priorities, response times, ISO ratings and funding.

Airport Manager Joe Cefalu discussed the Terminal Area Plan Phase I (\$7.825 million), Phase II (\$4.5 million) and Phase III (\$2.250 million). He stated the most pressing issue is Runway 18-36 Resurfacing Plan with a project cost of approximately \$1.5 million.

City Council discussed funding sources which include grants, private donations and infrastructure bill. They also discussed charter services at the airport in the future.

3. Adjourned 5:09 p.m.

ATTEST:

Mayor Jimmy Mize
City Council
City of Nacogdoches

Jan Vinson, City Secretary

Minutes unofficial until approved by City Council



Special Session
Nacogdoches City Council
November 9, 2021 – 4:00 p.m.
C.L. Simon Recreation Center
1112 North Street

DRAFT

City Council present: Mayor Jimmy Mize, Council Members Roy Boldon, Jay Anderson, Amelia Fischer and Kathleen Belanger.

1. Called to order at 4:02 p.m.
2. Pledge of Allegiance.
3. No one spoke during Open Forum

4. **WORK SESSION:**

- A. Receive a report, hold a discussion, and give staff direction regarding the City's Capital Improvement Projects. Wastewater and Water (Public Works Director)

Steve Bartlett, Public Works Director, stated previous CIP items were mostly cash funded, staff prioritized the projects, maintenance has been deferred for a long time and staff has been reactive and not proactive. He also explained how staff assigned priority tiers based on need, Tier 1 being the most urgent and Tier 3 being the least urgent. Mr. Bartlett reviewed water system projects which included Central Heights Water System, water line replacement, repairs and additions, water wells and tanks, interconnectivity, SCADA upgrade, transmission lines, filter replacements and AMI replacement. He also discussed wastewater projects which included Banita and Lanana Creek sewer line replacements, sewer line additions and repairs, sewer plant upgrades, clarifier rebuild, sludge thickener system, SCADA upgrade, digester upgrade and belt press building needs.

City Council discussed tracking revenue and expenses of Central Heights Water System, project funding, ARPA funds, grants, maintenance costs, water rate study, technology changes and the City's ability to sell water

5. Adjourned 5:47 p.m.

ATTEST:

Mayor Jimmy Mize
City Council
City of Nacogdoches

Jan Vinson, City Secretary

Minutes unofficial until approved by City Council



Regular Session
Nacogdoches City Council
November 16, 2021 – 4 p.m.
City Council Room – City Hall
202 East Pilar Street

DRAFT

City Council present in person: Mayor Jimmy Mize, Council Members Roy Boldon, Amelia Fischer, Jay Anderson and Kathleen Belanger.

1. Called to order at 4 p.m.

2. Pledge of Allegiance.

3. **WORK SESSION:**

A. Discuss and consider development of redistricting plans for the City Council wards.

The City contracted with Bickerstaff Heath Delgado Acosta LLP to provide redistricting services. Phillip Arnold, attorney with Bickerstaff Heath Delgado Acosta LLP, was present to discuss the initial assessment. He discussed population of each ward, ideal size of each ward and deviation percentages. Mr. Arnold presented two draft plans to redraw the wards creating balance in all four wards. The Southeast and Southwest Wards will see the most change.

City Council discussed proposed ward changes.

City Council recessed at 4:52 p.m. and returned at 5:30 p.m.

4. Anne Keehnan (609 East Hospital Street) spoke during Open Forum about climate change. Ms. Keehnan requested that City Council consider the effects of climate change when making decisions. She also suggested City Council appoint a Mayor's Committee on Sustainability to review these types of issues.

5. Council Member Fischer requested that Consent Agenda Item 6.D be pulled for discussion. Mayor Mize requested that Consent Agenda Item 6.F be pulled for discussion.

6. **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. Minutes from November 2, 2021 regular meeting.

B. Quarterly Investment Report for quarter ended September 30, 2021.

C. Consider confirmation of hiring Bonita Hall as the Human Resource Director.

D. Consider tax resale authorization for Lot 18-2, Block 43 outlet, in the City of Nacogdoches, as described in warranty deed, Record Volume 104, Page 547, on instrument filed May 14, 1927, in Nacogdoches County, Texas under Parcel Number 23669. (17-043-1018-020000).

E. Consider approval o City of Nacogdoches Boards/Commissions Handbook amendment.

F. Consider purchase of six (6) fleet vehicles.

G. Consider approval of an interlocal agreement between the City of Nacogdoches, the County of Nacogdoches and Stephen F. Austin State University to allow SFA's University Police Department to share servers and data.

Council Member Jay Anderson moved approval of Consent Agenda Items 6A, 6B, 6C, 6E and 6G; motion duly seconded by Council Member Roy Boldon and carried by unanimous vote.

Item 6.D - City Attorney Steve Kirkland spoke regarding Consent Agenda Item 6D which was pulled by Council Member Amelia Fischer. Mr. Kirkland stated the bid for Lot 18-2, Block 43 outlet was a very low

Minutes unofficial until approved by City Council

bid at \$900. This property is appraised at \$8,000 and the past due taxes are \$11,000. He stated that staff needs more time to fully vet this tax resale therefore asked City Council to defer consideration.

Mayor Mize tabled Item 6.D.

Item 6.F – Mayor Mize asked staff about what is being done to involving local dealerships when purchasing City fleet vehicles. Finance Director Pam Curbow stated that staff has been working with the fleet manager at Tipton Ford on a process to purchase locally. Due to budget and time constraints the City will need to purchase six vehicles through state contract now and a bid process will follow where local vendors can submit bids for the additional vehicles.

Council Member Kathleen Belanger moved approval of Consent Agenda Items 6.F; motion duly seconded by Council Member Jay Anderson and carried by unanimous vote.

7. REGULAR AGENDA:

- A. Consider a resolution casting votes for the Nacogdoches Central Appraisal District Board of Directors.

City Manager Mario Canizares discussed the process for casting votes for the City's representative on the Board of Directors. Council Member Jay Anderson was nominated at a previous City Council meeting to be the City of Nacogdoches representative for a two-year term beginning January 1, 2022.

Council Member Roy Boldon moved approval to cast all 750 votes for Jay Anderson; motion duly seconded by Council Member Amelia Fischer and carried by unanimous vote.

- B. **Public Hearing:** Consider a resolution directing City staff to file an application under Code of Ordinance 118-137(c)(1) to amend the boundaries of a zoning district within the City of Nacogdoches from R-4 Multi-Family to R-2 Single Family, for Lot 12 City Block 41 located at 1102 Logansport Street which was previously considered by the City Council at the request of R.J. Bohac, on August 18, 2020. **(AT THE OCTOBER 12, 2021 MEETING THIS ITEM DELAYED TO THE NOVEMBER 16, 2021 MEETING).**

Mayor Mize opened the Public Hearing.

Council Member Kathleen Belanger stated she requested this public hearing to represent the residents of Logansport Street, her constituents and other citizens who were opposed to the rezoning of 1102 Logansport Street. Council Member Belanger discussed the timeline and summary of the original rezoning from R-2 Single Family to R-4 Multi-Family, conflict of interest, preferential treatment, comprehensive plan, staff report, adverse impact and spot zoning. Council Member Belanger is requesting City Council to restore the zoning of this property back to R-2.

R.J. Bohac, property owner, stated he offered compromise which included Planned Development and R-3 but was met with opposition each time. He discussed why R-4 rezoning was originally requested, what he plans to build on the property and who might rent the units. He stated he is not willing to go through the rezoning process again.

City Council discussed possibility of going through the rezoning process again and what structures would be built on the property.

Betty Shinn spoke during public comment stating she is concerned the City is going against the comprehensive plan and that Logansport Street should remain R-2.

Pat Castella, who lives at 1009 Logansport Street, spoke in favor of rezoning the property back to R-2. She also spoke about Planning and Zoning Commission processes which she believes were done incorrectly during the initial rezoning. Ms. Castella stated the residents of Logansport will not compromise on this matter.

Diana Walker stated she worked on the current comprehensive plan and the two previous comprehensive plans. She believes Logansport Street should remain residential and historic neighborhoods should be kept intact.

Ron Johnson stated he lives within the 200 foot notice area of this property. Mr. Johnson discussed preliminary plans for the property and increased traffic. He stated that the charm of the street would be affected.

Sammy Smith stated he is appalled at the process taken to rezone this property to R-4 and that based on the presentation Council Member Belanger gave there could be civil action brought against the City. He suggested the City pay Mr. Bohac for the property and make it part of Pecan Park.

Zeke Martinez lives on the corner of King and Logansport Streets, and spoke in favor of changing the zoning back to R-2. Mr. Martinez discussed traffic and safety issues.

Nancy Collins discussed City Council voting to rezone the property back to R-2.

Varon McLemore spoke stated the property should remain R-4 allowing Mr. Bohac to build what he intended on the property.

George Barham is concerned that rezoning properties like this would happen to others. He stated a decision was made and it should be honored. He also discussed City Council Members who currently on Logansport Street.

David Connelly suggested that Mr. Bohac could divide the property and create two or three R-1 or R-2 homes.

Ron Collins stated changing this rezoning will set a terrible precedence and asked City Council to stand firm in their original decision.

Philip Blackburn stated he offered to buy the property at 1102 Logansport Street but was giving an unfair price by the owner. He also stated the process to rezone the property was not done correctly and if City Council allows the rezoning to stand it would be a disgrace.

Maggie Forbes stated the property should be rezoned back to R-2.

Susie Lower stated that people come to Nacogdoches for the history. She believes the Planning and Zoning Commission should make sure they do their job carefully and judiciously. She also stated the zoning should be corrected back to R-2.

Council Member Kathleen Belanger moved approval; motion duly seconded by Council Member Amelia Fischer.

City Council discussed deficiencies in Planning and Zoning processes, R-3 versus R-4 zoning, zoning of other lots on Logansport Street, legality of the original rezoning to R-4 and compromise between landowners.

Motion failed by the following vote:

Ayes – Council Members Belanger and Fischer

Nays – Mayor Mize, Council Members Boldon and Anderson

Mayor Mize closed the Public Hearing.

- C. **Public Hearing**: Consider an ordinance establishing a PD, Planned Development District and approving a Concept Plan for Lots 1, 1-A & 1-B, City Block 64, located at 2827 Railroad Street. This request has been submitted by Warren Sparks. Case File PD2021-04.

Mayor Mize opened the Public Hearing.

City Planner Alaina Helton discussed the request for a Planned Development District and the associated concept plan for approximately 27 acres submitted by Warren Sparks. This property is currently zones R-1 Single Family and R-3 Two Family, and has been used as a single family residence and a contractor's yard for over ten years.

Ms. Helton stated the proposed land uses will be limited to the existing single family residence, existing workshop and office, and contractor yard. Ms. Helton stated no new commercial buildings or expansions will be allowed, equipment and materials will be relocated to the north side of the existing shop, the outdoor storage area will be screened, there will be a limit on equipment and materials stored on the property, and the property owner will assist with maintenance of Railroad Street. The applicant is proposing that the development will be phased out over a ten year period.

Planning and Zoning Commission recommended approval of the Planned Development District and Concept Plan at their meeting on November 8, 2021 with the following added conditions: 1) As part of the shared maintenance agreement of Railroad Street, the applicant will repair the hump (or raised mass) located in the right of way immediately in front of the residence located at 2620 Railroad Street. 2) A 6-foot mesh screening fence will be installed along the southern boundary of the property to block the views of commercial activity from the existing residents located on the south side of Railroad Street. Additional staff recommendations include that the Planned Development expire on January 1, 2032 and upon expiration the zoning of the property will revert back to R-1 Single Family and R-3 Two Family zoning.

Warren Sparks, property owner, discussed improvements he has made on the property and he spoke in favor of the ten year phase out.

David Connelly, who lives on Railroad Street, discussed excessive noise made by the trucks operated by Mr. Sparks' business.

Council Member Amelia Fischer moved approval of the ordinance establishing a PD, Planned Development District and approving a Concept Plan for Lots 1, 1-A & 1-B, City Block 64, located at 2827 Railroad Street including the Planning and Zoning Commission conditions and City staff recommendations; motion duly seconded by Council Member Roy Boldon.

City Council discussions included reducing the number of years for phase out, owner leasing another property for his business and consequences of violating the Planned Development.

Council Member Kathleen Belanger made a motion to amend the original motion to limit the phase out from ten years to seven years; motion duly seconded by Mayor Jimmy Mize.

Motion passes by the following vote:
Ayes – Mayor Mize and Council Members Belanger and Anderson
Nays – Council Members Fischer and Boldon

Council Member Fischer made a motion to amend the phase out term to ten years; motion duly seconded by Council Member Kathleen Belanger and carried by unanimous vote.

Mayor Mize closed the Public Hearing.

8. No Executive Session was held.

9. Adjourned 8:40 p.m.

ATTEST:

Mayor Jimmy Mize
City Council
City of Nacogdoches

Jan Vinson, City Secretary



City Council Meeting

Date: December 7, 2021

Agenda Item: 7.B.

PRESENTER: Pam Curbow, Finance Director

ITEM/SUBJECT: Consider purchasing one (1) Police Department lake patrol boat. (Finance Director/Assistant Police Chief)

SUMMARY/BACKGROUND: The Nacogdoches Police Department is requesting approval to purchase one (1) police lake patrol boat. The purchase is for a Majek Xtreme 22 with a Mercury 250 HP motor at a cost of \$77,018. The proposed amount required a sealed bid process, and that process was completed on November 24. The sole bidder was Ron Hoover of Galveston.

Funds to purchase this boat will come from federal forfeiture funds. These are funds that have accumulated over time from illegal monies seized from criminal enterprises such as drug traffickers, bulk currency money laundering operations, etc. and awarded to the police department by the courts. The law is very specific on what these funds can be used for and this purchase falls within these parameters.

After the purchase, the Police Department would still need to purchase some essential items for the boat, such as police lights, life jackets, fire extinguishers, etc. A covered shelter would need to be purchased and placed at the City Water Treatment Plant near Lake Nacogdoches, as the current shelter is too small for this taller boat.

This purchase will replace a 2003 Bay Boat with a 70 HP motor that is woefully underpowered and in constant need of repairs.

FINANCIAL:

Item is budgeted:

Account No.: 15.57.680.25

Account Name: *Federal Forfeiture Fund Reserves*

Amount: \$80,000

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

Not Applicable

CITY CONTACT: Pamela Curbow, Director of Finance
curbowp@nactx.us
936-559-2526

ATTACHMENTS:

1. Invitation to Bid
2. PowerPoint Presentation



INVITATION TO BID

**ITB # 21-10-143 – (POLICE BOAT) - REBID
MAJEK 22 XTREME WITH SPECIFIC SPECIFICATIONS**

Bids must be received before:

Wednesday – November 24, 2021

2:00 p.m. central time

City of Nacogdoches, Texas
City Hall – Finance Department
202 E. Pilar Street, Suite 344
Nacogdoches, Texas 75961
936-559-2516

Refer Inquiries To:

Lt. Nick Stewart

City of Nacogdoches

936-559-2688

Email: stewartn@nactx.us

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INTRODUCTION

Bids are solicited for (Police Boat) Majek 22 Xtreme with Specific Specifications with the following definitions, term, and conditions of bidding. Upon award by the City, this Bid shall become the working contract for the Parties.

A. **NOTICE**

Sealed bids are due at **2:00 p.m. on November 24, 2021**, after which time all qualified bids will be opened and publicly read aloud at 202 East Pilar Street, Nacogdoches, Texas 75961. Bids received after the specified deadline will be returned unopened.

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

Hand-deliver to:

City of Nacogdoches-Finance Department
202 E. Pilar St. Suite 344
Nacogdoches, TX 75961

Ship to (FedEx, UPS, DHL):

City of Nacogdoches-Finance Department
202 E. Pilar St. Suite 344
Nacogdoches, TX 75961

Vendors may receive notice of bids from the City of Nacogdoches from a variety of channels. Approved methods of dissemination include City of Nacogdoches website or the City of Nacogdoches Finance Department. The receipt of solicitations through any other means may result in the receipt of incomplete specifications or addenda which could ultimately render your bid non-compliant. The City of Nacogdoches accepts no responsibility for the receipt or notification of solicitations through any other source.

B. **QUESTIONS and INQUIRIES**

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

Lt. Nick Stewart
stewartn@nactx.us

The deadline for written questions is **Thursday, 11/18/2021 at @ 2:00 p.m.**

C. **SCHEDULE OF IMPORTANT DATES**

The tentative schedule for this Solicitation is as follows:

Release ITB to Vendors	11/10/2021
Advertisement Dates	11/10/2021 & 11/17/2021
Deadline for Questions and Inquiries	11/18/2021
ITB Due Date	11/24/2021
Earliest Award by City	12/07/2021 (<i>Tentative</i>)

DEFINITIONS

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

A. AGREEMENT/CONTRACT

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

B. BID/RESPONSE/OFFER/QUOTATION

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

C. BIDDER/RESPONDENT/OFFERER

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

D. CITY

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

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

F. PIGGYBACK CONTRACT

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

G. PURCHASE ORDER

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

H. SOLICITATION/INVITATION TO BID

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

I. VENDOR/CONTRACTOR

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

INSTRUCTION TO BIDDERS

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

A. **FORMS**

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

B. **RECEIPT OF BIDS**

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

C. **CERTIFICATION**

This Solicitation includes a certification page. Respondent must:

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

D. **EXCEPTIONS**

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

E. **TAX EXEMPT**

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

F. **DISCLOSURE OF INTERESTED PARTIES**

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

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

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

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

STANDARD TERMS and CONDITIONS

A. ACCEPTANCE

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

B. ABSENCE of PURCHASE ORDER or AGREEMENT

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

C. ADDENDA

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

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

D. ADVERTISING and PUBLICITY

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

E. ASSIGNMENTS

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

F. AWARD of CONTRACT

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

- a. conformity to specifications;
- b. the purchase price, including payment discount terms;
- c. the reputation of the bidder and of the bidder's goods or services;
- d. the quality of the bidder's goods or services;
- e. the extent to which the goods or services meet the City's needs;
- f. the bidder's past relationship with the City;
- g. the impact on the ability of the City to comply with laws and rules relating to contracting with historically underutilized businesses and nonprofit organizations employing persons with disabilities;
- h. delivery or pick up terms;
- i. payment terms;

- j. availability of repair and maintenance parts;
- k. financial condition;
- l. products or services that have a lesser or reduced effect on human health and the environment when compared with competing products and services that serve the same purpose. This comparison may consider raw materials acquisition, product, manufacturing, packaging, distribution, reuse, operation, maintenance, or disposal of the product or service;
- m. the total long-term cost to the City to acquire the bidder's goods or services; and
- n. any relevant criteria specifically listed in this request for bid.

Although the cost of products to be provided is an essential part of the Bid, the City is not obligated to award a contract on the sole basis of cost.

G. BUSINESS PRACTICES

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

H. CANCELLATION or TERMINATION

1. Termination For Cause:

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

2. Termination Without Cause:

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

3. Non-Appropriation:

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

4. Cancellation:

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

I. CLAIMS

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

J. CODES, PERMITS, LICENSES

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

K. COLLUSION

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

L. COMMUNICATION

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

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

M. CONFIDENTIALITY

In order to provide the deliverables to the City, Vendor may require access to certain of the City's and/or its licensors' confidential information (including, but not limited to, inventions, employee information, trade secrets, confidential knowledge, confidential business information and other information which the City or its licensors consider confidential) (collectively, "Confidential Information"). Vendor acknowledges and agrees that the Confidential Information is the valuable property of the City and/or its licensors, and any unauthorized use, disclosure, dissemination, or other release of the Confidential Information will substantially injure the City and/or its licensors. The Vendor (including its employees, subcontractors, agents or representatives) agrees that it will maintain the Confidential Information in strict confidence and shall not disclose, disseminate, copy, divulge, recreate or otherwise use the Confidential Information without the prior written consent of the City, or in a manner not expressly permitted under this Agreement, unless the Confidential Information is

required to be disclosed by law or as a result of an order of any court or other governmental authority with proper jurisdiction, provided the Vendor promptly notifies the City prior to disclosing such information so as to permit the City reasonable time to seek an appropriate protective order. The Vendor agrees to use protective measures no less stringent than the Vendor uses within its own business to protect its own most valuable information, which protective measures shall under all circumstances be at least reasonable measures to ensure the continued confidentiality of the Confidential Information.

N. DEFAULT

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

A Vendor who abandons or defaults the work on the Agreement and causes the City to purchase the products elsewhere may be charged the difference in cost of products, if any, and may not be considered in the re-advertisement of the service and may be rejected as an irresponsible bidder and not considered in future Solicitations for the same type of service unless the scope of work is significantly modified.

O. DELAYS

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

P. DISCLOSURE OF PENDING LITIGATION:

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

Q. DISPUTE RESOLUTION

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

R. EFFECTIVE DATE and TERM

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

S. FORCE MAJEURE

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

T. FRAUD

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

U. GRATUITIES

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

V. INDEPENDENT CONTRACTOR

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

W. INDEMNITY

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

X. INFRINGEMENT

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

Y. INSURANCE REQUIREMENTS

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

Z. INTERLOCAL AGREEMENT

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

AA. INTERPRETATION

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

BB. INVALIDITY

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

CC. LIABILITY

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

DD. LIENS

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

EE. MANAGEMENT

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

FF. NOTICES

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

GG. OVERCHARGES

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

HH. PAYMENT TERMS

1. Tax Exempt Status:

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

2. Invoicing Requirements:

Unless otherwise specified, all invoices shall be submitted to the City of Nacogdoches, Accounts Payable, PO Box 635070, Nacogdoches, TX 75963-5070, and issued as required by the Purchase Order or Agreement. Each invoice must reference the unique Purchase Order number and include the Vendor's complete name and remit to address. If applicable, transportation and delivery or pick up charges must be itemized on each invoice. A copy of the bill of lading and the freight waybill must be submitted with the invoice if applicable.

3. Payment Terms:

All payments will be processed in accordance with Texas Prompt Payment Act, *Texas Government Code*, Subtitle F, Chapter 2251. The City will pay Vendor within thirty days after acceptance of goods or materials delivered, or the day of receipt of a correct invoice, whichever is later. The Vendor may charge a late fee (fee shall not be greater than that permitted under the Texas Prompt Payment Act) for payments not made in accordance with this prompt payment policy; however, the policy does not apply to payments made by the City in the event: (a) there is a bona fide dispute between the City and Vendor concerning the good delivered, that causes the payment to be late; (b) the terms of a federal agreement, grant, regulation or statute prevents the City from making a timely payment with Federal funds; (c) there is a bona fide dispute between the Vendor and a subcontractor and its suppliers concerning deliveries made, which caused the payment to be late; or (d) the invoice is not mailed to the City in strict accordance with instructions on the Purchase Order or Agreement, or other such contractual agreement.

4. Right To Audit:

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

5. Firm Pricing:

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

6. Price Warranty:

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

7. Travel Expenses:

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

II. PERSONAL INTEREST

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

JJ. PRIORITY OF DOCUMENTS

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

KK. PUBLIC INFORMATION

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

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

LL. REIMBURSEMENTS

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

MM. RESERVATIONS

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

NN. RESPONSES BECOME PROPERTY OF THE CITY:

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

OO. RIGHT TO ASSURANCES

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

PP. SEVERABILITY

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

QQ. SURVIVABILITY OF OBLIGATIONS

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

RR. VENDOR'S OBLIGATION:

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

SS. VENUE

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

TT. WAIVER

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

UU. WITHDRAWAL

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

SPECIAL TERMS and CONDITIONS

A. BID LITERATURE

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

B. COMMODITIES/EQUIPMENT

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

C. DELIVERY OR PICKUP

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

D. REGULATIONS and STANDARDS

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

E. SAMPLES

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

F. VENDORS SALES TERRITORY

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

G. WORKMANSHIP

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

TECHNICAL SPECIFICATIONS

The City of Nacogdoches is currently accepting bids for the following Police Boat with these specific specifications – this will be a purchase for a **NEW** Police Boat, the City of Nacogdoches we will not except anything used or pre-owned:

Majek Xtreme 22'

75-gal Tank, Tall extreme console, standard leaning post with four (4) rod holders, fold down footrest and permanent backrest. Majek gray hull, with tandem axle aluminum trailer. Battery kill switch with Engine gauges and accessory gauges installed.

Mercury Pro XS 250

20" shaft, Hydraulic steering, remote mechanical controls

Blue Streak T-top

Law enforcement model T top with Light bar mount, rigid bar light mounts, cup holders, and radio and equipment box. 2 Rigid A series Dome lights built into the bottom of the radio box.

Hamby's Protector beaching bumper

Price to include installation

Jack Plate

Bob's machine eight (8") setback action series jack plate SKU: 100-108001

Trim Tabs

Lenco 12"x12" standard mount complete kit installed

Depth finder

Hummingbird Solix 12 Mega SI+ G3: Item # 411550-1. Installed

Please make sure that all prices include installation when applicable.

This is clarifying that if your company cannot meet the above specific specifications, please fill free to turn in a NO BID proposal.

The City of Nacogdoches will be buying this package **ONLY**

Contact: Lt. Nick Stewart

stewartn@nactx.us

936-559-2688

QUOTATION FORM

A. DELIVERY OR PICK UP REQUIREMENTS

Response should show the estimated number of days or weeks required to build and make ready for delivery or pick up. Due to this type of purchase the City may need to negotiate an expectation of delivery or pick up time before the award.

FOB: NACOGDOCHES, TX

DELIVERY OR PICK UP DATE: 6/1/2022 (calendar days)

B. DISCOUNTS

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

C. QUANTITIES

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

D. UNIT PRICES

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

E. VALIDITY OF PRICING

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

F. QUOTATION

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

<u>Item #</u>	<u>Quantity</u>	<u>Description</u>	<u>Total Price</u>
1.	1	Majek 22 Xtreme with the approved specifications	\$ <u>77,018⁰⁰</u>

CERTIFICATION and ACKNOWLEDGMENT

The undersigned affirms that they are duly authorized to execute this contract, that this bid has not been prepared in collusion with any other bidder, and that the contents of this bid have not been communicated to any other bidder prior to the official opening of this bid. To the extent this Contract is considered a Contract for goods or services subject to § 2270.002 Texas Government Code, Bidder certifies that it: i) does not boycott Israel; and ii) will not boycott Israel during the term of the Agreement. Additionally, the undersigned affirms that the firm is willing to sign the enclosed Standard Form of Agreement (if applicable).

Signed By: Michael Johnson Title: Sales Manager
Typed Name: Michael Johnson Company Name: Ron Hoover Marine
Phone No.: 409 935 7101 Fax No.: 409 572 2479

Email: mjohnson@ronhoovergalveston.com

Bid Address: 8126 Broadway Galveston TX 77554
P.O. Box or Street City State Zip

Order Address: 8126 Broadway Galveston TX 77554
P.O. Box or Street City State Zip

Remit Address: 8126 Broadway Galveston TX 77554
P.O. Box or Street City State Zip

Federal Tax ID No.: 1-74-2738438-7

DUNS No.: _____

Date: 11/11/2021

FOR CITY USE ONLY

Approved By: _____ Date: _____

CURRENT NPD BOAT



PROPOSE D NPD BOAT



PRESENTER: Pam Curbow, Finance Director

ITEM/SUBJECT: Consider award of contract for Payroll Timekeeping and Scheduling software. (Finance Director)

SUMMARY/BACKGROUND: ExecuTime ERP time and attendance software is offered by Tyler Technologies, the parent company of our provider of New World ERP software. New World ERP is currently utilized by the City as our financial software. ExecuTime will work with our existing software to simplify payroll processing, time tracking, managing overtime, and benefits accrual. This automation of time keeping will allow departmental time keepers additional time to work on other departmental projects, reducing future staffing needs. Automation of timekeeping will also reduce errors in time entry, overtime, and FLSA calculations. ExecuTime allows departments to track and manage time and attendance as well as advanced scheduling options. It offers employees self-service functionality, allowing employees to review their time prior to the time being posted for payroll. The implementation of this software will modernize the way city payroll is done and increase transparency and traceability of employee hours.

Tyler Technologies ExecuTime Software is available on Sourcewell's state contract which includes purchase, implementation and training for a total cost of \$97,513.

FINANCIAL:

Item is budgeted:

Account No.: 01.86.680.10

Account Name: *General Fund Reserves Office Equip Capital*

Amount:\$100,000

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

Not Applicable

CITY CONTACT: Pamela Curbow, Director of Finance
curbowp@nactx.us
936-559-2526

ATTACHMENTS: 1. Sourcewell Executime Tyler Tech Contract
2. Executime Quote



Tyler Technologies

Public Administration Software

#090320-TTI

Maturity Date: 11/02/2024

Products & Services



Products & Services

Sourcewell contract 090320-TTI gives access to the following types of goods and services:

- Appraisal & tax software
- Courts & justice software
- ERP & financial software
- Planning, regulatory, & maintenance software
- Public safety software
- Records & documents software
- School ERP — student information & student transportation
- Civic services
- Corrections
- Data & insights
- Disability & benefits
- Cybersecurity

Additional information can be found on the vendor provided, non-government website at:
tylertech.com

Become a Member

Simply complete the online application or contact the Client Development team at service@sourcewell-mn.gov or 877-585-9706.

Search Vendors & Contracts

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[ezIQC Contracts](#)

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[Sourcewell for Vendors →](#)

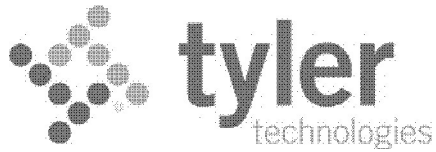
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Quoted By: Brian Baker
 Quote Expiration: 04/19/22
 Quote Name: City of Nacogdoches, TX - ExecuTime(n)
 Quote Description: on-Premise Sourcewell #090320-TTI

Sales Quotation For:

City of Nacogdoches
 PO Box 635030
 Nacogdoches TX 75963-5030
 Phone: +1 (936) 559-2501

Tyler Software and Related Services

Description	Qty	License	Hours	Module Total	Year One Maintenance
Human Resources Management					
ExecuTime Advance Scheduling Mobile Access	1	\$ 3,975	0	\$ 3,577	\$ 795
ExecuTime Advanced Scheduling - Up to 150 Employees	1	\$ 17,038	64	\$ 15,334	\$ 3,408
ExecuTime Time & Attendance - Up to 350 Employees	1	\$ 21,065	128	\$ 18,958	\$ 4,213
ExecuTime Time & Attendance Import	1	\$ 5,145	0	\$ 4,630	\$ 1,029
ExecuTime Time & Attendance Mobile Access	1	\$ 5,075	0	\$ 4,567	\$ 1,015
		<i>Sub-Total</i>		\$ 47,066	\$ 10,460
		<i>Less Discount</i>		\$ 5,232	\$ 5,232
		TOTAL	192	\$ 47,066	\$ 5,228

Professional Services

Description	Quantity	Unit Price	Extended Price	Maintenance
Remote Implementation	192	\$ 163	\$ 31,296	\$ 0

TOTAL

\$ 31,296

\$ 0

3rd Party Hardware, Software and Services

Description	Qty	Unit Price	Unit Discount	Total Price	Unit Maint/SaaS	Unit	Total
						Maint/SaaS Discount	
Touchscreen 10: No Reader	6	\$ 2,210	\$ 0	\$ 13,260	\$ 1,326	\$ 663	\$ 663
TOTAL				\$ 13,260			\$ 663

Summary

One Time Fees

Recurring Fees

Total Tyler Software

\$ 47,066

\$ 5,228

Total Annual

\$ 0

\$ 0

Total Tyler Services

\$ 31,296

\$ 0

Total Third-Party Hardware, Software, Services

\$ 13,260

\$ 663

Summary Total

\$ 91,622

\$ 5,891

Contract Total

\$ 97,513

Unless otherwise indicated in the contract or amendment thereto, pricing for optional items will be held
For six (6) months from the Quote date or the Effective Date of the Contract, whichever is later.

Customer Approval: _____

Date: _____

Print Name: _____

P.O.#: _____

All Primary values quoted in US Dollars

Comments

Client agrees that items in this sales quotation are, upon Client's signature or approval of same, hereby added to the existing agreement ("Agreement") between the parties and subject to its terms. Additionally, payment for said items, as applicable but subject to any listed assumptions herein, shall conform to the following terms:

- License fees for Tyler and third party software are invoiced upon the earlier of (i) deliver of the license key or (ii) when Tyler makes such software available for download by the Client;
- Fees for hardware are invoiced upon delivery;
- Fees for year one of hardware maintenance are invoiced upon delivery of the hardware;
- Annual Maintenance and Support fees, SaaS fees, Hosting fees, and Subscription fees are first payable when Tyler makes the software available for download by the Client (for Maintenance) or on the first day of the month following the date this quotation was signed (for SaaS, Hosting, and Subscription), and any such fees are prorated to align with the applicable term under the Agreement, with renewals invoiced annually thereafter in accord with the Agreement.
- Fees for services included in this sales quotation shall be invoiced as indicated below.
 - Implementation and other professional services fees shall be invoiced as delivered.
 - Fixed-fee Business Process Consulting services shall be invoiced 50% upon delivery of the Best Practice Recommendations, by module, and 50% upon delivery of custom desktop procedures, by module.
 - Fixed-fee conversions are invoiced 50% upon initial delivery of the converted data, by conversion option, and 50% upon Client acceptance to load the converted data into Live/Production environment, by conversion option. Where conversions are quoted as estimated, Tyler will invoice Client the actual services delivered on a time and materials basis.
 - Except as otherwise provided, other fixed price services are invoiced upon complete delivery of the service. For the avoidance of doubt, where "Project Planning Services" are provided, payment shall be invoiced upon delivery of the Implementation Planning document. Dedicated Project Management services, if any, will be invoiced monthly in arrears, beginning on the first day of the month immediately following initiation of project planning.
 - If Client has purchased any change management services, those services will be invoiced in accordance with the Agreement.
 - Notwithstanding anything to the contrary stated above, the following payment terms shall apply to services fees specifically for migrations: Tyler will invoice Client 50% of any Migration Fees listed above upon Client approval of the product suite migration schedule. The remaining 50%, by line item, will be billed upon the go-live of the applicable product suite. Tyler will invoice Client for any Project Management Fees listed above upon the go-live of the first product suite. Unless otherwise indicated on this Sales quotation, annual services will be invoiced in advance, for annual terms commencing on the date this sales quotation is signed by the Client. If listed annual service(s) is an addition to the same service presently existing under the Agreement, the first term of the added annual service will be prorated to expire coterminous with the existing annual term for the service, with renewals to occur as indicated in the Agreement.
- Expenses associated with onsite services are invoiced as incurred.

Tyler's quote contains estimates of the amount of services needed, based on our preliminary understanding of the scope, level of engagement, and timeline as defined in the Statement of Work (SOW) for your project. The actual amount of services required may vary, based on these factors.

Tyler's pricing is based on the scope of proposed products and services contracted from Tyler. Should portions of the scope of products or services be altered by the Client, Tyler reserves the right to adjust prices for the remaining scope accordingly.

Unless otherwise noted, prices submitted in the quote do not include travel expenses incurred in accordance with Tyler's then-current Business Travel Policy.

Tyler's prices do not include applicable local, city or federal sales, use excise, personal property or other similar taxes or duties, which you are responsible for determining and remitting. Installations are completed remotely but can be done onsite upon request at an additional cost.

In the event Client cancels services less than two (2) weeks in advance, Client is liable to Tyler for (i) all non-refundable expenses incurred by Tyler on Client's behalf; and (ii) daily fees associated with the cancelled services if Tyler is unable to re-assign its personnel.

Implementation hours are scheduled and delivered in four (4) or eight (8) hour increments.

Tyler provides onsite training for a maximum of 12 people per class. In the event that more than 12 users wish to participate in a training class or more than one occurrence of a class is needed, Tyler will either provide additional days at then-current rates for training or Tyler will utilize a Train-the-Trainer approach whereby the client designated attendees of the initial training can thereafter train the remaining users.

If a Tyler client desires clocks that do not have direct connectivity back to the network server ExecuTime resides on, then a VPN device installation, to be provided at Tyler's then-current prices, will be needed for every location where a clock may reside. Clocks will be shipped upon receipt of a signed quote or addendum. Clock prices include Tyler instruction regarding clock configuration and connection to the ExecuTime software. Client is responsible for clock installation and connection to applicable network. If annual maintenance is purchased at the same time as the applicable clock is purchased, the maintenance period for the clock will begin when the clocks is shipped. Annual maintenance will automatically renew upon the expiration date of the then current term (with each renewal being a "Renewal Term" unless either party indicates its decision to not renew at least thirty (30) days in advance of a Renewal Term. If annual maintenance for a clock is added at a future date, the annual maintenance term will begin upon receipt of a signed quote unless indicated otherwise. The maintenance plan includes direct replacement of the clock if it cannot be fixed through the standard helpdesk process provided, however, clocks that have been damaged due to neglect or misuse, vandalism, electrical surges, terrorism, or alterations done by other than a Tyler representative are not provided at no charge. Upon request, Tyler will provide a quote for such clock replacements. Further, it is Client's responsibility is to promptly return the failed unit using the preaddressed and prepaid mailer and reusable container provided with the replacement clock. If Client fails to ship the defective clock within one (1) week of receiving replacement, Client shall be liable for the costs associated with the replacement clock. Replacements clocks will be shipped for overnight delivery. Orders placed before Noon Eastern time will ship the same day. Orders placed after

Tyler Software Discount Detail (Excludes Optional Products)

Description	License	Liense Discount	License Net	Maintenance Basis	Year One Maint Discount	Year One Maint Net
Human Resources Management						
ExecuTime Advance Scheduling Mobile Access	\$ 3,975	\$ 398	\$ 3,577	\$ 795	\$ 398	\$ 397
ExecuTime Advanced Scheduling - Up to 150 Employees	\$ 17,038	\$ 1,704	\$ 15,334	\$ 3,408	\$ 1,704	\$ 1,704
ExecuTime Time & Attendance - Up to 350 Employees	\$ 21,065	\$ 2,107	\$ 18,958	\$ 4,213	\$ 2,107	\$ 2,106
ExecuTime Time & Attendance Import	\$ 5,145	\$ 515	\$ 4,630	\$ 1,029	\$ 515	\$ 514
ExecuTime Time & Attendance Mobile Access	\$ 5,075	\$ 508	\$ 4,567	\$ 1,015	\$ 508	\$ 507
TOTAL	\$ 52,298	\$ 5,232	\$ 47,066	\$ 10,460	\$ 5,232	\$ 5,228



City Council Meeting

Date: December 7, 2021

Agenda Item: 7.D.

PRESENTER: Brian Bray, Community Services Director

ITEM/SUBJECT: Consider Approval of Historic Restoration Grant (HRG) budget for FY2022.
(Community Services Director)

SUMMARY/BACKGROUND: Historic Restoration Grants have been awarded by the Historic Landmark Preservation Committee since 1989. The grants are designed to aid with the exterior preservation of historic structures in Nacogdoches and are available to those with properties inside a designated historic district or those with properties that are individually designated as historic.

This year we had 18 applications for projects totaling \$326,134.00. The City had \$89,842.61 available funds to award to applicants this year.

The Historic Landmark Preservation Committee met on Monday, November 22nd and voted to award \$84,554.72 in grant funds, which is reflected in the 2022 HRG Budget.

FINANCIAL:

Item is budgeted:

Account No.: 16.48.630.70

Account Name: Historic Restoration Grant Fund

Amount: \$84,554.72

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

Downtown Entertainment and Destination District Infrastructure

CITY CONTACT: Brian Bray, Community Services Director
brayb@nactx.us
936-559-2935

ATTACHMENTS: 1. HRG Budgets 2022

HRG #	Project Address	Project Estimate	% Awarded	Amount Granted	FY 2022 Amount Awarded	Grant Score	Project Description
2022-001	704 Virginia Ave	\$ 43,585.00	16.00%	\$ 6,973.60		24	New roof and full exterior repaint
2022-002	107/111 N. Pecan	\$ 75,239.00	18.00%	\$ 13,543.02		28	Rebuild hand-drawn elevator, patch concrete and remove/replace roof over elevator
2022-003	201 E. Main	\$ 16,280.00	14.00%	\$ 2,279.20		21	Repair broken windows
2022-004	500 Forbes	\$ 15,920.00	12.00%	\$ 1,910.40		19	Roof replacement
2022-005	222 N. Mound St.	\$ 8,491.00	10.00%	\$ 849.10		10	Replace gutters and face boards
2022-006	536 E. Pilar	\$ 13,000.00	14.00%	\$ 1,820.00		21	Replace roof
2022-007	724 E. Main ST	\$ 24,139.75	12.00%	\$ 2,896.77		16	Replace roof
2022-008	720 Bois d'ARc	\$ 21,900.00	16.00%	\$ 3,504.00		24	Replace roof
2022-009	520 E. Pilar St.	\$ 36,499.00	14.00%	\$ 5,109.86		21	New roof, paint exterior and level the house
2022-011	523 Virginia Ave	\$ 19,450.00	12.00%	\$ 2,334.00		16	Replace deck, repair retaining wall and shore up foundation
2022-012	610 Park St	\$ 10,000.00	12.00%	\$ 1,200.00		19	Paint all exterior trim
2022-013	203 E. Main	\$ 9,500.00	14.00%	\$ 1,330.00		22	Repair 2 windows on east and north side
2022-014	315 N. Church St.	\$ 54,030.00	16%	\$ 8,644.80		24	Repair and paint rotten flooring, railings and ceiling of front porch and roof. Also removing back door, replacing door and repainting.
2022-015	522 E. Main	\$ 11,450.00	14.00%	\$ 1,603.00		22	Full exterior repaint
2022-016	120 East Main	\$ 127,250.00	19.00%	\$ 24,177.50		32	Repair and replace all exterior wood windows and doors and repair beam over pocket park
2022-017	110 S. Pecan	\$ 11,100.00	14.00%	\$ 1,554.00		22	Paint awning, regROUT brick and replace front windows
2022-018	1801 North St	\$ 10,212.31	12.00%	\$ 1,225.47		19	Repair driveway brick and improve site drainage
2022-019	106 N. Lanana	\$ 30,000.00	12.00%	\$ 3,600.00		20	Roof replacement and siding repair/paint
	TOTAL	\$326,134		\$ 84,554.72			
	AVERAGE	\$27,178	14%	\$ 7,046.23		20	

Funding Key			
Score	%	Score	%
0-15	10%		
16-20	12%		
21-22	14%		
23-25	16%		
26-30	18%		
31-35	19		

Total available funds **\$89,842.61**
 Total unallocated funds **\$5,287.89**



City Council Meeting

Date: December 7, 2021

Agenda Item: 7.E.

PRESENTER: Steve Bartlett, Public Works Director

ITEM/SUBJECT: Consider granting a 10-foot-wide utility easement and Right-of-Way to Oncor Electric at the Nacogdoches A.L. Mangum Airport. (Public Works Director)

SUMMARY/BACKGROUND: City of Nacogdoches has requested a 10-foot-wide Easement and Right-of-Way located over and across a portion of the A.L. Mangum Airport to provide underground electrical power to a new transformer that will serve several future hangars in the area, including HCH Aviation hosting the SFA flight school.

Staff has determined that the alignment of this easement is not in conflict with the latest Terminal Area Plan and will facilitate future development of the airport. Agreement to be executed upon review and approval by the City Attorney.

FINANCIAL:

No financial impact associated with this item

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

Economic Development

CITY CONTACT: Joe Cefalu, Airport Manager
cefaluj@nactx.us
936-560-9567

ATTACHMENTS:

1. Oncor Easement - Airport
2. Exhibit A
3. Airport Oncor Easement

PT #: _____
District: Lufkin
WR #: 3573371
ER #: _____

EASEMENT AND RIGHT OF WAY

STATE OF TEXAS §
COUNTY OF NACOGDOCHES §

KNOW ALL MEN BY THESE PRESENTS:

That **City of Nacogdoches**, hereinafter called "Grantor," whether one or more, for and in consideration of Ten Dollars (\$10.00) and other valuable consideration to Grantor in hand paid by **Oncor Electric Delivery Company LLC, a Delaware limited liability company**, 1616 Woodall Rodgers Freeway, Dallas, Texas 75202-1234, hereinafter referred to as "Grantee," has granted, sold and conveyed and by these presents does grant, sell and convey unto said Grantee, its successors and assigns, an easement and right-of-way for overhead and/or underground electric supply and communications facilities, consisting of a variable number of wires and cables, supporting structures, surface mounted equipment, conduits and all necessary or desirable appurtenances over, under, through, across and upon Grantor's land described as follows:

SEE EXHIBIT "A" (ATTACHED)

Grantor recognizes that the general course of said lines, or the metes and bounds as described above, is based on preliminary surveys only, and Grantor hereby agrees that the easement and right-of-way and its general dimensions hereby granted shall apply to the actual location of said lines when constructed.

Together with the right of ingress and egress along and upon said easement and right-of-way and over and across Grantor's adjoining properties for the purpose of and with the right to construct, maintain, operate, repair, remove, replace, reconstruct, abandon in place, and to change the size and capacity of said facilities; the right to relocate said facilities in the same relative direction of said facilities; the right to relocate said facilities in the same relative position to any adjacent road if and as such is widened in the future; the right to lease wire space for the purpose of permitting others to string or lay wire or cable along said facilities; the right to prevent excavation within the easement area; the right to prevent construction of, within the easement area, any and all buildings, structures or other obstructions which, in the sole judgment of Grantee, may endanger or interfere with the efficiency, safety, and/or convenient operation of said facilities and their appurtenances and the right to trim or remove trees or shrubbery within, but not limited to, said easement area, including by use of herbicides or other similar chemicals approved by the U.S. Environmental Protection Agency, to the extent in the sole judgment of Grantee, as may be necessary to prevent possible interference with the operation of said facilities or to remove possible hazard thereto. Grantor shall not make changes in grade, elevation or contour of the land or impound water within the easement area as described above without prior written consent of Grantee.

Grantor reserves the right to use the land within the above described easement area for purposes not inconsistent with Grantee's use of such property, provided such use shall not, in the sole judgment of Grantee, interfere with the exercise by Grantee of the rights hereby granted.

TO HAVE AND TO HOLD the above described easement and right-of-way unto the said Grantee, its successors and assigns, until all of said electric lines and facilities shall be abandoned, and in that event said easement and right-of-way shall cease and all rights herein granted shall terminate and revert to Grantor or Grantor's heirs, successors or assigns, and legal representatives; and Grantor hereby binds Grantor and Grantor's heirs, successors, assigns, and legal representatives, to warrant and forever defend the above described easement and right-of-way unto Grantee, its successors and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof.

EXECUTED this _____ day of _____, 20____.

By:_____

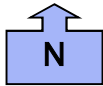
Printed Name of **Mario Canizares, City Manager**

STATE OF TEXAS §
 §
COUNTY OF NACOGDOCHES §

BEFORE ME, the undersigned authority, on this day personally appeared **Mario Canizares, City Manager**, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he/she executed the same for the purposes and consideration therein expressed.

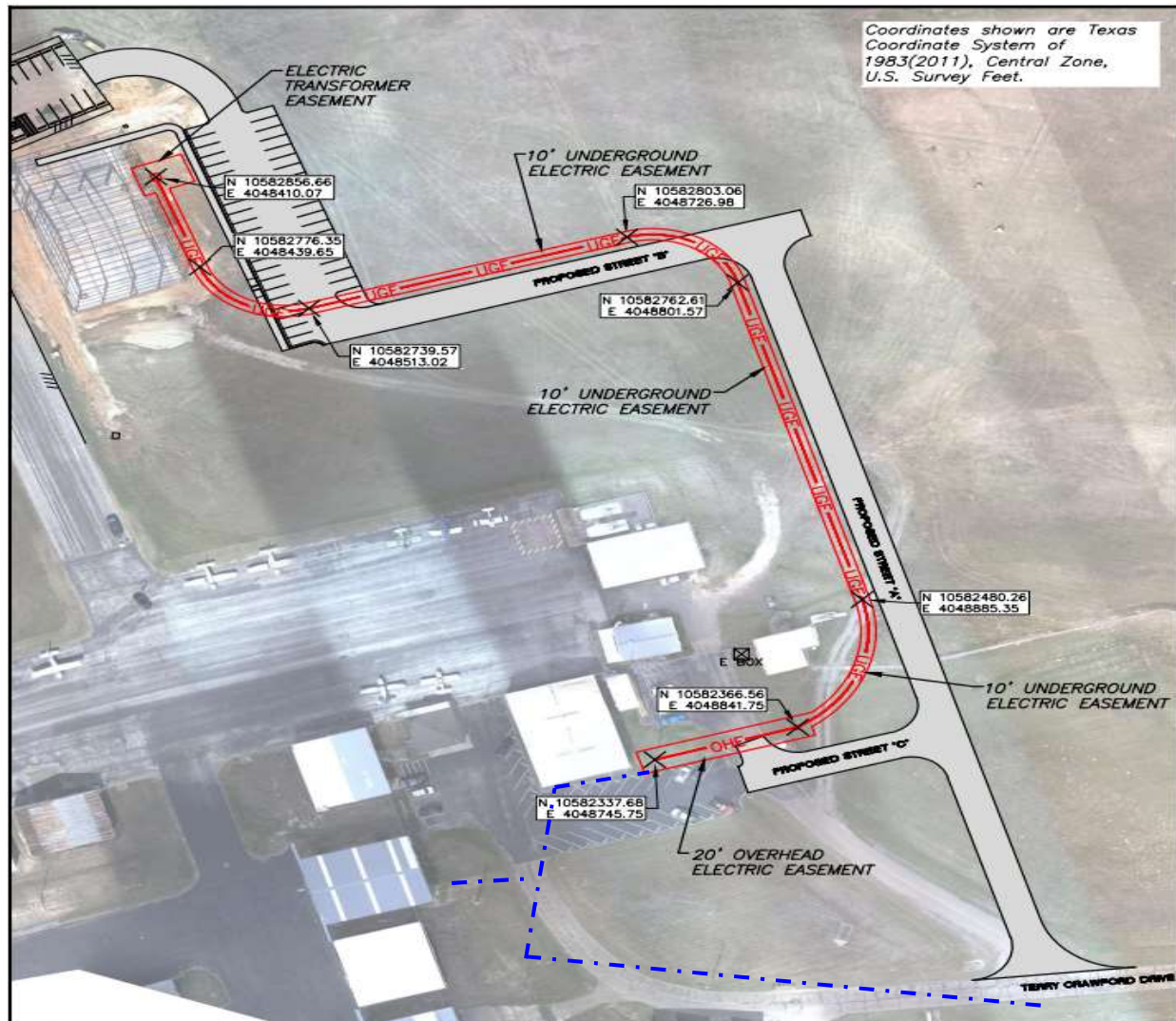
GIVEN UNDER MY HAND AND SEAL OF OFFICE this _____ day of _____, A.D. 20____.

Notary Public in and for the State of Texas



ONCOR ELECTRIC DELIVERY

“EXHIBIT A”



Legend

-  Existing Power Line
-  Boundary Line
-  Denotes Easement
Easement Width 20 Feet

The intent of this Exhibit is to pictorially show the approximate location of the easement. It is not Intended as an actual survey. Calls shown are references only. No Statement is made to the validity of these calls.

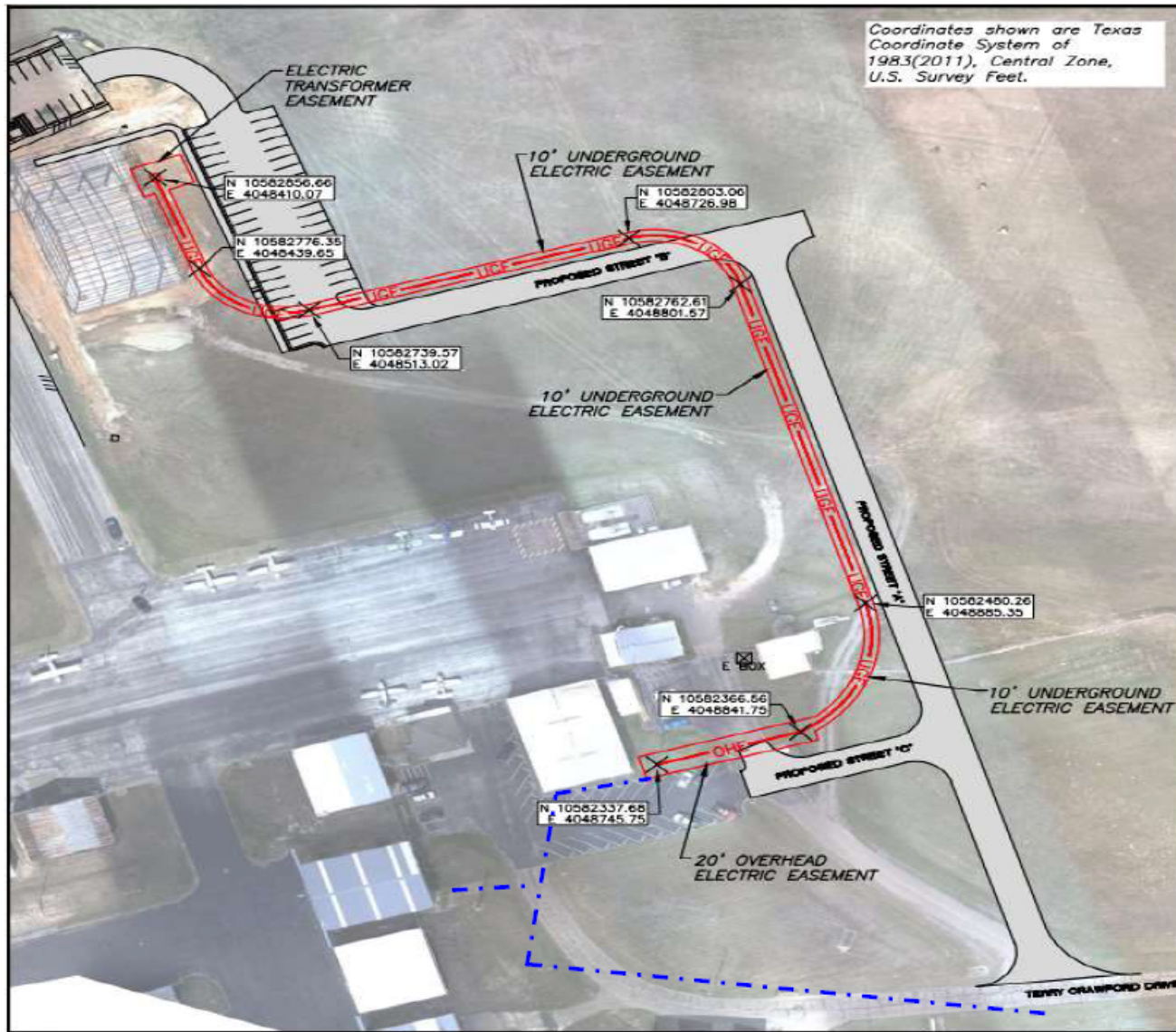
GRANTOR: City of Nacogdoches

Volume: 1502 Page: 307 County: Nacogdoches

Survey: J R Chevano. Abstract: 16

District: Lufkin WR#: 3573371

Airport - Oncor Electrical Easement



PRESENTER: Pam Curbow, Finance Director

ITEM/SUBJECT: Discuss, consider, and adopt a resolution designating an administration/project delivery service provider to complete project implementation for the American Rescue Plan Act (ARP Act) funding administered by the US Department of the Treasury, other Federal or State agency. (Finance Director)

SUMMARY/BACKGROUND: Recent Federal legislation created the American Rescue Plan Act of 2021 which in part will distribute more than \$360 billion in emergency funding for state, local, territorial, and Tribal governments to ensure that they are in a position to keep front line public workers on the job and paid, while also effectively distributing the vaccine, scaling testing, reopening schools, and maintaining other vital services. State and local employment has fallen by around 1.4 million jobs since the pandemic began including layoffs of 1 million educators, compared to around 750,000 job losses during the Great Recession. The allocation of funds is based on population and Nacogdoches' portion totaled \$8,146,458 of which \$4,073,229 was received on August 30, 2021 with the second tranche scheduled for release on August 30, 2022.

Due to the extreme complexities of the regulations on the use of these funds, the City determined that there was a need for an experienced Grant Administrator to help guide staff through the procurement and construction process as well as provide reporting and administrative support.

An RFP for Administrative Services was released and we received responses from three vendors. After an extensive review and scoring process by the Review Committee comprised of Mayor Mize, City Manager Canizares, Finance Director Curbow, Purchasing Specialist Flores and Engineer in Training Cramer, GrantWorks, Inc. was chosen to provide grant administration services for ARPA funding.

As part of the legislative guidelines, the cost of these services are an eligible use of ARPA funds so there will be no budgetary impact for the City.

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: Pam Curbow, Finance Director
curbowp@nactx.us
936-559-2526

ATTACHMENTS: 1. American-Rescue-Plan-Fact-Sheet

2. Resolution ARPA Admin
3. ARPA Admin RFP Scoring Totals



The American Rescue Plan

The COVID-19 pandemic and the corresponding economic crisis have undermined the health and economic wellbeing of American workers. Millions of Americans, many of whom are people of color, immigrants, and low-wage workers, continue to put their lives on the line every day to keep the country functioning through the pandemic. And more than 9.5 million workers have lost their jobs in the wake of COVID-19, with 4 million out of work for half a year or longer. Without additional government assistance, the economic and public health crises could drag on and our national vaccination program will be hobbled at a critical moment.

The American Rescue Plan will change the course of the pandemic and deliver immediate relief for American workers. The plan will build a bridge to an equitable economic recovery and immediately [reduce child poverty](#). In fact, a Columbia University study found that passing the plan will lift more than 5 million children out of poverty this year, cutting the poverty rate by 50%. The bill is one of the most progressive pieces of legislation in history, with more than two thirds of its tax cuts and direct payments going to families making less than \$90,000 per year. It will:

Mount a national vaccination program, contain COVID-19, and safely reopen schools. American workers should not have to lie awake at night wondering if they'll make it home from work safely the next day, or if they'll bring home the virus to their loved ones and communities. President Biden has a comprehensive plan to address the pandemic that will:

- Invest about \$160 billion to provide the supplies, emergency response, testing, and public health workforce to stop the spread of COVID-19, while distributing vaccines as quickly as possible and addressing racial disparities in COVID-19 outcomes. These emergency measures will help combat the heavy toll this virus is exacting, and will deliver community-based and culturally competent care.
- Provide \$130 billion to help schools serve all students, no matter where they are learning, and help achieve President Biden's goal to safely open the majority of K-8 schools within the first 100 days of his Administration. These investments include set asides at the local and state level to ensure states and districts address the learning loss and social and emotional needs of students disproportionately impacted by COVID-19, including students of color, English learners, and students with disabilities.

Deliver immediate relief to American families bearing the brunt of this crisis. The American Rescue Plan devotes about \$1 trillion towards building a bridge to economic recovery for working families. All told, a single parent with one young child making the minimum wage could see her income increase from the equivalent of \$7.25 to around \$11 per hour. The plan will:

- **Give working families a \$1,400 per-person check**, bringing their total relief payment from this and the December down payment to \$2,000. More than 85% of households will receive a check and checks in this bill are bigger than the checks in the CARES Act or in the December bill. And, for the first time, adult dependents are entitled to a check as well. This means a lower or middle-income family of four will see an additional \$5,600 in their pockets.
- **Extend current unemployment insurance benefits and eligibility to September 6 (saving 11 million Americans from losing benefits starting in about a week)**, provide a \$300 per week supplement, and help protect Americans from surprise tax bills on unemployment insurance they received last year.

- **Help Americans stay in their homes** by providing emergency aid to cover back rent. In addition, the bill provides assistance to help struggling homeowners catch up with their mortgage payments and utility costs through the Homeowners Assistance Fund. And, it provides additional funding for families and individuals who are recovering from or at risk of homelessness.
- **Increase the value of Supplemental Nutrition Assistance Program (SNAP) benefits**. The American Rescue Plan will increase SNAP benefits by 15 percent through September 2021. The bill also funds partnerships with restaurants to feed American families and keep workers in the restaurant industry on the job. And, it provides U.S. territories like Puerto Rico additional nutrition assistance funding, in addition to funding to make sure women, infants and children get the food they need to help address food insecurity.
- **Increase the Child Tax Credit** from \$2,000 per child to \$3,000 per child (\$3,600 for a child under age 6) and make 17-year-olds qualifying children for the year. This means a typical family of four with two young children will receive an additional \$3,200 in assistance to help cover costs associated with raising children. The families of more than 66 million kids will benefit.
- **Increase the Earned Income Tax Credit** for 17 million workers by as much as \$1,000. The top occupations that will benefit are cashiers, food preparers and servers, and home health aides – frontline workers who have helped their communities get through the crisis.
- **Expand child care assistance**, help hard-hit child care providers cover their costs, and increase tax credits to help cover the cost of childcare. This is the single biggest investment in child care since World War II.
- **Give families an additional tax credit to help cut child care costs**. Families will get back as a refundable tax credit as much as half of their spending on child care for children under age 13, so that they can receive a total of up to \$4,000 for one child or \$8,000 for two or more children.
- Provide an additional \$1 billion for states to cover the additional cash assistance that **Temporary Assistance to Needy Families** (TANF) recipients needed as a result of the crisis.
- **Lower or eliminate health insurance premiums for millions of lower- and middle-income families enrolled in health insurance marketplaces**. A family of four making \$90,000 could see their monthly premium come down by \$200 per month. This will help well over a million uninsured Americans gain coverage. The plan also subsidizes premiums for continuation health coverage (COBRA).

Support communities that are struggling in the wake of COVID-19. Millions of American workers reside in communities that suffered disproportionately in recent months. The Plan provides critical support to these communities. It will:

- Provide emergency grants, lending, and investment to hard-hit small businesses so they can rehire and retain workers and purchase the health and sanitation equipment they need to keep workers safe. This includes a Small Business Opportunity Fund to provide growth capital to main street small businesses in economically disadvantaged areas, including minority-owned businesses.
- Distribute more than \$360 billion in emergency funding for state, local, territorial, and Tribal governments to ensure that they are in a position to keep front line public workers on the job and paid, while also effectively distributing the vaccine, scaling testing, reopening schools, and maintaining other vital services. State and local employment has fallen by around 1.4 million jobs since the pandemic began including layoffs of 1 million educators, compared to around 750,000 job losses during the Great Recession.
- Help hard-hit public transit agencies avoid layoffs and service reductions, which disproportionately harm workers who are more likely to be dependent on public transportation.

RESOLUTION NO. 1285-12-21

A RESOLUTION OF THE CITY OF NACOGDOCHES, TEXAS, AUTHORIZING PROFESSIONAL SERVICE PROVIDER(S) SELECTION FOR AMERICAN RESCUE PLAN ACT (ARP ACT) PROGRAM(S).

WHEREAS, participation in American Rescue Plan Act (ARP Act) program(s) requires implementation by professionals experienced in the administration of federally-funded projects; and

WHEREAS, in order to identify qualified and responsive providers for these services a Request for Proposals (RFP) process for administration services has been completed in accordance with the federal requirements; and

WHEREAS, the proposals received by the due date have been reviewed to determine the most qualified and responsive providers for each professional service giving consideration to the ability to perform successfully under the terms and conditions of the proposed procurement, integrity, compliance with public policy, record of past performance, and financial and technical resource.

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

Section 1.	That GrantWorks, Inc. is selected to provide project-related administration services for ARP Act program(s).
Section 2.	That any and all project-related services contracts or commitments made with the above-named service provider(s) are dependent on the successful negotiation of a contract with the service provider(s).

PASSED AND APPROVED THIS 7TH DAY OF DECEMBER, 2021.

Mayor Jimmy Mize
City of Nacogdoches

ATTEST:

Jan Vinson, City Secretary

Approved as to form: _____
Steven Kirkland, City Attorney

ARPA Administrative Services RFP
Committee Scoring Totals

		MAX POINTS	GrantWorks	Gary Traylor & Assoc	Langford
<i>Experience</i>					
1	Related Firm Experience/Federal projects	50	49	48	41
2a	Admin, construction management	25	25	24	21
2b	Admin, non-construction management	25	24	25	21
2c	Procurement of serv & construction	25	25	24	21
2d	Financial Duties	25	25	25	18
	Subtotal	150	148	146	122
<i>Prior Work Perf</i>					
1	Related Work Performance	50	49	46	39
2	References for prior work	50	48	44	44
	Subtotal	100	97	90	83
<i>Capacity</i>					
1	Understanding of scope of the ARP Act projects	25	25	24	20
2a	Qualifications of Staff - Resumes	25	25	24	22
2b	Organization Chart	25	25	21	7
3	Strategy to Implement projects	25	25	22	14
4	Current & Projected Workloads	25	22	15	12
5	Financial Capacity	25	25	22	14
	Subtotal	150	147	128	89
<i>Proposed Cost</i>					
1	Calculated Pricing	100	95	90	100
	Experience	150	148	146	122
	Prior Work Perf	100	97	90	83
	Capacity	150	147	128	89
	Proposed Cost	100	95	90	100
	Total Score	500	487	454	394

RFP Review Committee:

Chair Pamela Curbow Director of Finance
Jimmy Mize Mayor
Mario Canizares City Manager
Drew Flores Purchasing Specialist
Samuel Cramer Engineer in Training

Scores compiled, reviewed and approved by Committee Chair Pamela Curbow:

Pamela Curbow
11/30/2021



City Council Meeting

Date: December 7, 2021

Agenda Item: 8.B.

PRESENTER: Brian Bray, Community Services Director

ITEM/SUBJECT: Discuss and consider a donation from Pilgrim's Pride, agree upon acceptance of \$215,000 and authorize City Manager to execute agreement. (Community Services Director)

SUMMARY/BACKGROUND: In February of this year the City accepted \$478,000 from Pilgrim's Pride for improvements to the Sportsplex Complex and agreed to rename it the Pilgrim's Sportsplex. These improvements included a restroom, improved fencing, safety lighting, field netting, a scoreboard and improvements to the parking area. Several of these improvements have already been completed and the others are awaiting bids or in the design phase.

Staff recently received another grant award in the amount of \$215,000 for additional improvements to the Pilgrim's Sportsplex. This round of funding would cover adding ADA compliant sidewalks around the fields, improving field drainage and purchasing new soccer goals and nets. If City Council accepts the donation, staff will begin the coordination with various contractors to ensure these projects are completed in a timely manner while ensuring the facility is open for the adult soccer program.

FINANCIAL:

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

Account No.: 24.23.680.40

Account Name: *Special Grant Fund Parks Capital*

Amount: \$215,000

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

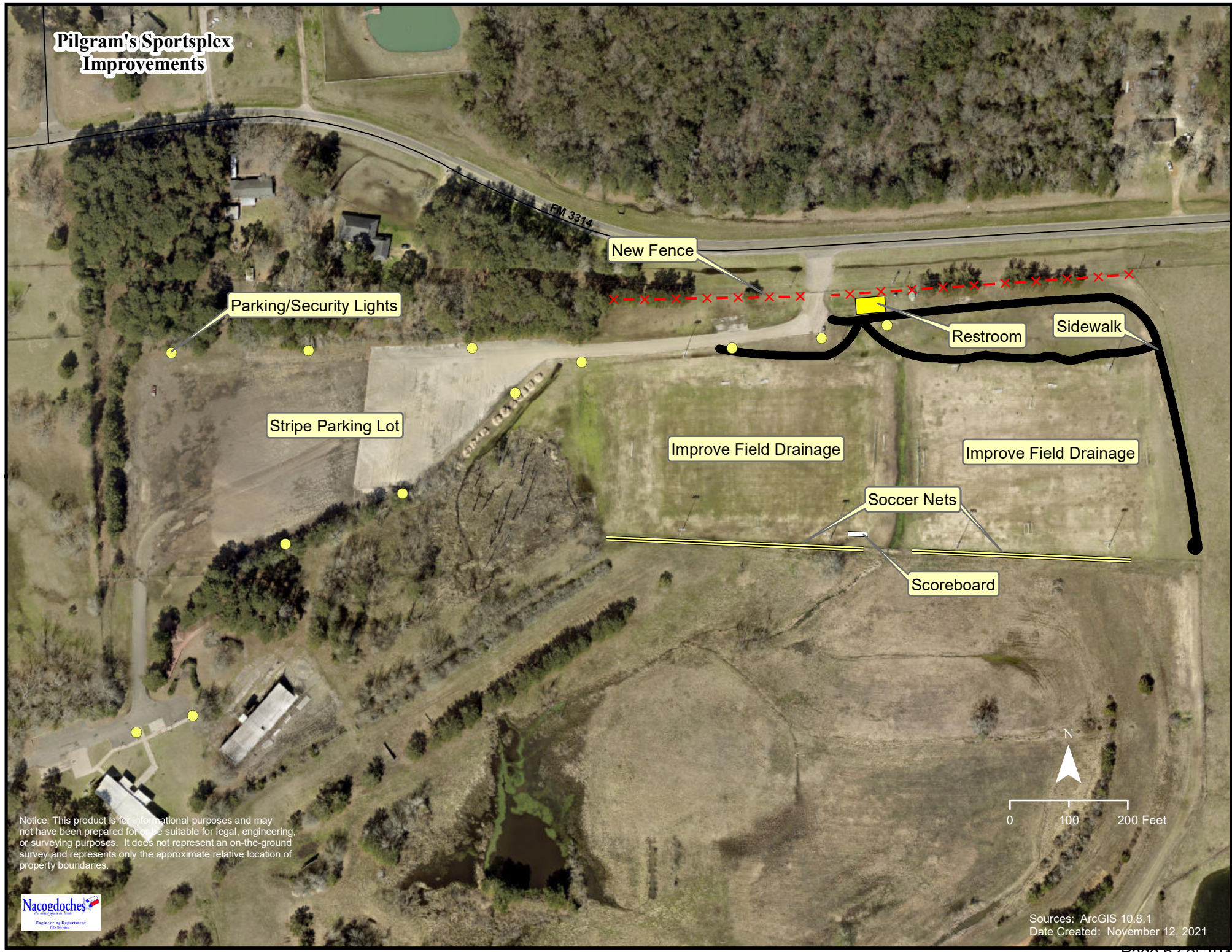
Infrastructure

CITY CONTACT: Brain W. Bray, Community Services Director
brayb@nactx.us
936-559-2935

ATTACHMENTS:

1. Map of Improvements
2. Pilgrim's-Donation Agreement
3. Budget Amendment Ordinance

Pilgram's Sportsplex Improvements



DONATION AGREEMENT

1. **PARTIES.** This Donation Agreement (the "Agreement") is made and entered into this [REDACTED] day of [REDACTED], 2021, by and between [REDACTED], located at [REDACTED] ("Donee") and Pilgrim's Pride Corporation, a Delaware corporation located at 1770 Promontory Circle, Greeley, Colorado ("Donor") (each a "Party," collectively, the "Parties").

2. RECITALS AND PURPOSE.

- 2.1. The Donor commits to provide the Donee with the Donation Funds set forth in **Exhibit A** for sole purpose set forth in **Exhibit A**; and
- 2.2. The Donee, in recognition of Donor's commitment, wishes to provide Donor with the Benefits set for in **Exhibit B**.

Accordingly, in consideration of the mutual promises set forth in this Agreement, the parties covenant and agree to the terms and conditions set forth in the following paragraphs.

- 3. **FUNDS.** The Donor agrees to disburse to the Donee those funds indicated on the attached **Exhibit A** ("Donation Funds" or "Gift") in accordance with the Fund Disbursement Schedule set forth therein. The Donation Funds shall be used for the sole purpose(s) set forth in **Exhibit A**.
- 4. **RECOGNITION.** In recognition of the Donor's commitment set forth in Section 3 of this Agreement, Donee shall provide Donor's with the Benefits ("Benefits") set forth in **Exhibit B**.
- 5. **RECEIPT.** Within five (5) business days of receiving the Donation Funds or Gift (of the first installment thereof) listed in **Exhibit A** the Donee shall provide the Donor with a receipt. The receipt must be written on the official letterhead of the Donee and contain the following information: a) the name of the Donee as listed in Section 1 of this Agreement, b) the date the Donation Funds or Gift (of the first installment thereof) was given, c) the amount of the Donation Funds as set forth in **Exhibit A**, d) a description of any non-monetary Gift set forth in **Exhibit A**, and e) either a statement that no goods or services were provided by the Donee in exchange for the Donation Funds or the Gift, or description and good faith estimate (no estimate is need for naming rights) of the value of goods or services set forth in **Exhibit B**.
- 6. **DONEE TAX STATUS.** The Donee is either a) state, a possession of the United States, or any of their political subdivisions, the United States, or the District of Columbia, or b) a corporation, trust, fund, or foundation organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes. The Parties desire that the Gift made by this Agreement to be made in compliance with all of the applicable provisions of the Internal Revenue Code of 1986, as amended (the "Code"), the accompanying Treasury Regulations governing charitable organizations formed in accordance with the Code, and any other applicable laws governing charitable donations.
- 7. **LICENSE.** The Donor grants to the Donee a nonexclusive, non-transferable, non-sublicensable license to use certain "Donor Trademarks" owned by the Donor solely in connection with this Agreement. "Donor Trademarks" shall mean solely the Donor trade names, marks and logos specified in **Exhibit C** hereto; provided, however, that the Donor in its sole discretion from time to time, may change the appearance and/or style of the Donor Trademarks or add or subtract from the list in **Exhibit C**, provided that, unless required earlier by a court order or to avoid potential infringement liability, Donee shall have 30 days' notice to implement any such changes. Donee

hereby acknowledges and agrees that, (i) the Donor has represented to Donee that the Donor Trademarks are owned solely and exclusively by the Donor, (ii) except as set forth herein, the Donee has no rights, title or interest in or to the Donor Trademarks and (iii) all use of the Donor Trademarks by the Donee shall inure to the benefit of the Donor. Donee agrees not to apply for registration of the Donor Trademarks (or any mark confusingly similar thereto) anywhere in the world. Notwithstanding the foregoing, any use of the Donor Trademarks pursuant to this license shall require the prior consent of the Donor.

7.1. Ownership. Donee acknowledges and agrees that the presentation and image of the Donor Trademarks should be uniform and consistent with respect to all services, activities and products associated with the Donor Trademarks. Accordingly, Donee agrees to use the Donor Trademarks solely in the manner that the Donor shall specify from time to time in the Donor's sole discretion. All usage by Donee of the Donor Trademarks shall include the appropriate trademark symbol. No use of the Donor Trademarks shall be permitted without the prior consent of the Donor.

8. TERMINATION. Donor may immediately terminate this Agreement with no further liability to Donee if Donee at any time breaches its obligations under this Agreement, and Donee does not cure such failure within thirty (30) days after receipt of written notice from the Donor.

9. RELATIONSHIP. Notwithstanding any provision to the contrary in this Donation Agreement, the Parties agree that their relationship with respect to the Gift contemplated herein is one of donor and donee only, and no provision of this Donation Agreement shall be construed to create any other type of status or relationship between the Parties with respect to such Gift. Neither Party nor its agents or employees are the representatives of the other Party for any purpose and neither Party has the power or authority as agent, employee or any other capacity to represent, act for, bind or otherwise create or assume any obligation on behalf of the other Party for any purpose whatsoever.

10. LIMITATION OF LIABILITY. Neither Party shall be liable to the other or any third party for any consequential, indirect, incidental, special, or punitive damages. The aggregate liability of each Party under this agreement shall be one-thousand dollars (\$1,000).

11. FORCE MAJEURE. Neither Party shall be deemed to have defaulted or failed to perform under this Agreement if that Party's ability to perform or default shall have been caused by an event or events beyond the control and without the fault of that Party, including fire, flood, explosion, act of God or a public enemy, strike, labor dispute, civil riot, pandemic, or the ability of Donor to provide the Gift is impacted by any of the foregoing ("Force Majeure Event"). Upon the occurrence of the Force Majeure Event, the Party claiming the Force Majeure Event shall promptly notify the other Party in writing of such event. Notwithstanding the foregoing, in the event of a Force Majeure Event, each Party agrees to make a good faith effort to perform its obligations hereunder.

12. ASSIGNMENT. The provisions of this Agreement will be binding on the Parties' successors and assigns. Upon notice to the other party, either party may assign this Agreement in whole or in part to any affiliate or subsidiary, or any party acquiring substantially all of the stock or assets of that party. Any other assignment shall require the prior written consent of the other party. Such consent not to be unreasonably withheld.

13. NOTICES. Any notice required or permitted by this Agreement shall be in writing and shall be deemed to have been sufficiently given for all purposes if sent by certified or registered mail, postage and fees prepaid, addressed to the party to whom such notice is intended to be given at

the address set forth in Section 1 of this Agreement. Such notice shall be deemed to have been given when deposited in the U.S. Mail.

- 14. EXHIBITS.** All exhibits referred to in this Agreement are, by reference, incorporated in this Agreement for all purposes.
- 15. PARAGRAPH CAPTIONS.** The captions of the paragraphs are set forth only for convenience and reference, and are not intended in any way to define, limit, or describe the scope or intent of this Agreement.
- 16. ADDITIONAL DOCUMENTS OR ACTION.** The parties agree to execute any additional documents and to take any additional action necessary to carry out this Agreement.
- 17. INTEGRATION AND AMENDMENT.** This Agreement represents the entire agreement between the parties and there are no oral or collateral agreements or understandings. This Agreement may be amended only by an instrument in writing signed by the parties.
- 18. WAIVER OF BREACH.** The waiver by any party to this Agreement of a breach of any term or provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach by any party.
- 19. GOVERNING LAW.** The construction and interpretation of this Agreement and any disputes arising hereunder (whether for breach of contract, tortious conduct or otherwise) shall be governed by and construed in accordance with the internal laws of the State of Colorado without giving reference to its conflict of laws principles. In the event any suit, action or proceeding is brought by either party with respect to this Agreement or the matters contemplated herein, such action, suit or proceeding shall be brought in the state courts located in Weld County, Colorado and both Parties hereby accept, consent and submit to the exclusive jurisdiction of such court for the purpose of any such action, suit or proceeding.
- 20. SEVERABILITY.** If any provision of this Agreement is declared to be invalid, void or unenforceable by a court of competent jurisdiction, such provision shall be deemed to be severable, and all other provisions of this Agreement shall remain fully enforceable, and this Agreement shall be interpreted in all respects as if such provision were omitted.
- 21. AUTHORITY.** The Donee represents that it has full power and authority to execute this Agreement and to carry out the transactions contemplated hereby, and that all corporate action on the part of the Donee, its officers, directors and shareholders and all consents, approvals, orders, authorizations or filings with any federal or state governmental agency necessary for the authorization, execution, delivery and performance of this Agreement by the Donee and the consummation of the transactions contemplated herein by the Donee has been taken or obtained, and that this Agreement constitutes the legal, valid and binding obligation of such entity.
- 22. ELECTRONIC SIGNATURE & COPIES.** electronic signatures shall constitute original signatures for all purposes of this Agreement. Any and all electronic copies of the Agreement shall be treated as an original version.
- 23. PUBLICITY.** Neither party shall publish any press release, make any other public announcement, communicate with any third party, or otherwise publish any statement(s) (each a "Disclosure") concerning this Agreement or the transactions contemplated hereby without the prior written consent of the other Party. If any Party wishes to make a Disclosure with respect to this Agreement or the contemplated transactions, such Party will provide the other with a draft

of the Disclosure for review at least ten (10) business days prior to the time that such Disclosure is to be made. The Parties will attempt in good faith to expeditiously reach agreement on such Disclosure and the contents thereof. All draft Disclosures requiring written consent by Donor shall be sent solely to Nikki.Richardson@jbssa.com.

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

Donor:

Pilgrim's Pride Corporation

Donee:

By: _____

Name: _____ Chris Gaddis _____

Title: _____

By: _____

Name: _____

Title: _____

EXHIBIT A

Donation Fund Amount: \$215,000

Fund Disbursement Schedule: Upon completion of project paperwork.

Sole Purpose of the Funds: Partner with the City and County of Nacogdoches to fund further development of the current sports plex area. This would include adding ADA compliant sidewalks around the fields, improve field drainage and purchase new soccer goals and nets.

Non-monetary Gift (if applicable): N/A

EXHIBIT B

Benefits: Donee shall grant Donor life-long naming rights of the Sportsplex as “Pilgrim’s Sportsplex”. If, at any time, Donor requests an update to the name(s) or logo(s) set forth in Exhibit C and subsequently used in or on the Sportsplex, Donee shall work with Donor, at Donor’s cost, to effectuate such change.

EXHIBIT C

Donor Trademarks:



Pilgrim's Pride Corporation

Pilgrim's

AN ORDINANCE AMENDING ORDINANCE NO. 1881-09-21 APPROPRIATING VARIOUS AMOUNTS IN ACCORDANCE WITH BUDGET ADOPTED FOR THE ENSUING FISCAL YEAR BEGINNING OCTOBER 1, 2021 AND ENDING SEPTEMBER 30, 2022.

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, 2021 and ending September 30, 2022.

WHEREAS, the City of Nacogdoches applied for the Pilgrim's Pride Hometown Strong Grant; and

WHEREAS, these funds would be used to improve the Pilgrim's Sportsplex through construction of ADA compliant sidewalks around the fields, improvements to the field drainage, and new soccer goals and nets; and

WHEREAS, with the adoption of this ordinance, the Community Services Department is authorized to expend \$215,000 for facility improvements to the Nacogdoches Sportsplex.

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 receipt of funds /payment of capital outlays of the city government of the City of Nacogdoches as follows:

Fund	Dept.	Acct.	Department	Description	Amt.
24		560.00	Special Grant Fund Revenue	Pilgrims Hometown Strong Grant #2	\$215,000
24	23	680.40	Special Grant Fund Parks Capital	Sportsplex Facility Improvements	\$215,000

PASSED AND APPROVED this the 7th day of December 2021.

Jimmy Mize, Mayor
City of Nacogdoches

ATTEST:

Jan Vinson, City Secretary

Approved as to form: _____
Steven Kirkland, City Attorney

Approved as to content: _____
Pamela Curbow, Director of Finance

PRESENTER: Mario Canizares, City Manager

ITEM/SUBJECT: Consider approval of a resolution for establishing and appointing members to an advisory Comprehensive Plan Review Committee and Downtown Master Plan Review Committee. (City Manager)

SUMMARY/BACKGROUND: Since December 2020, the staff has presented a list of long-range studies and strategies that would assist the City in creating long-term, strategic action-plans to help further current and future planning, engineering and economic development efforts. Based on input received from City Council in January 2021, staff was provided direction to move forward with the advancement of these initiatives, including conducting the procurement process of the following two proposals: hiring a consultant to create a Downtown Master Plan; and, hiring a consultant to update the City's Comprehensive Plan.

The Downtown Master Plan would create a vision for downtown Nacogdoches and act as a framework for future ordinances and initiatives with strategies to help reinvigorate the downtown area. This plan would also include a market analysis to explore how much, and what type of new retail, entertainment, and housing exists, and might be needed in the years ahead. A strategic plan for downtown was last completed in 1974.

The Comprehensive Plan update would include a review of current conditions of land uses, recommend future land uses, a future infrastructure and transportation plan, and implementation strategies. The update would include a study of the proposed I-69 Corridor which would include more specific future land use, utility, and design suggestions. The update would also incorporate a housing needs assessment, which would include a review of the City's current housing stock and project housing needs for the near and long term. The Comprehensive Plan was last updated in 2003.

On May 18th, City Council recommended that the City establish two committees to work on the studies. The committees would work directly with the staff and the consultant at the beginning and throughout the study period. Public forum sessions were held on Monday, June 7, 2021 and Tuesday, June 8, 2021. The attendance at the meetings drew approximately 165 and 155 people respectively. Many good questions were presented by the attendees. A survey was also created to allow for additional input from the community. The survey and committee application were made available on the City's website. On June 15th, staff presented the City Council with the survey results and feedback received from the public forums. Based on feedback from the public forums, it was recommended that an additional five people were added to each committee, which increased the total to 10 more individuals. This brought the Comprehensive Plan Committee to 16 people and the Downtown Master Plan Committee to 15 people.

On August 24, 2021, a special called meeting of the City Council was held to introduce the selected consultant, DTJ Design, for both long range studies. During this meeting, staff also presented some information regarding the committee process. On November 2, City Council

provided input to staff on the committee's responsibilities, the committee's governance, the committee makeup, and draft resolution. The consensus from the City Council was to increase the size of the committee by adding two representatives from the Bright Foundation, the Parks Advocacy League, the Federation of Women's Club, and a student from SFA.

The staff is recommending that the City Council approve a resolution at the December 7 meeting appointing the committee members, the Chairpersons, and the Vice-Chairpersons for the strategic studies.

FINANCIAL:

No financial impact associated with this item

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

Downtown Entertainment and Destination District, Neighborhood Revitalization and Attainable Housing, Community Engagement/Diverse Environment, Infrastructure, I-69 Development, and Economic Development.

CITY CONTACT: Mario Canizares, City Manager
canizaresm@nactx.us
936-559-2501

ATTACHMENTS: 1. PowerPoint Presentation
2. Resolution



**Appointment of Advisory Committees for:
Downtown Master Plan
&
Comprehensive Land Use Plan
December 7, 2021**

Committee Responsibilities

- Maintain regular attendance at meetings, staying engaged, and being participatory.
- Represent and stay connected with the community in the planning process.
- Provide guidance and direction to staff and consultant at crucial steps in the process.
- Reviewing and making recommendations on plan elements.
- Serve as hosts and facilitate at public events when needed.
- Recruit hard-to-reach populations to share input and participate in the engagement process.
- Maintain decorum at all times.

Committee Governance

- City Council appoints the Members, a Chair and a Vice Chair of each committee.
- Meetings are open to the public.
- A quorum is a simple majority to conduct business.
- Council members serve as resources and are voting members of the committees.
- Consensus is used to move forward recommending policy or plan elements to the next level.
- Final drafts are forwarded to the respective Advisory Boards (i.e. Planning & Zoning Commission and/or Main Street Committee)
- Committees may remain to track progress of implementation of plan elements.

Committee Makeup:

Comprehensive Plan Review Committee – 20 persons

- Up to 2 City Council Members, NISD Rep, Planning & Zoning Commission Member, SFA Rep, NEDCO Board Rep, Bright Foundation Rep, PAL Rep, Federation of Women's Rep, SFA Student, and 10 from the community.

Downtown Master Plan Review Committee– 19 persons

- Up to 2 City Council Members, Nac Main Street Rep, NHLPC Rep, CVB Board Rep, Bright Foundation Rep, PAL Rep, Federation of Women's Rep, SFA Student, and 10 from the community.

- All committee meetings would be open to the public
- All committee members appointed by City Council

Comprehensive Plan Review Committee

- Council Members: Roy Boldon and Kathleen Belanger
- Jimmy Mize: Ed Pool and Juan Gonzales
- Roy Boldon: James Montoya and Mable Cannings
- Amelia Fischer: Denise McDonald and Michara DeLaney-Fields
- Jay Anderson: Paul Jackson and Sydney Register
- Kathleen Belanger: Brad Maule and Larry King
- SFASU Rep: Carrie Charley
- NISD Rep: Jacob Lusk
- P&Z Commission: *Ken Deppisch, recommended Chair*
- NEDCO Rep: *Steele Wright, recommended Vice-Chair*
- Bright Foundation: Kurt Sutton
- Parks Advocacy League: Nicole Ivancic
- Federation of Women's Club: Marilyn Walton
- SFA Student Rep: Name to be determined.

Downtown Master Plan Review Committee

- Council Members: Amelia Fischer and Jay Anderson
- Jimmy Mize: Susie Patterson and Ramsey Parr
- Roy Boldon: Mario Torres and G.W. Neal
- Amelia Fischer: Evelyn Saucedo and Anne Kelly
- Jay Anderson: John Anderson and Jeff Abt
- Kathleen Belanger: Ben Sullivan and Laura Culpepper
- Main Street Rep: *Miles McCall, recommended Chair*
- HLPC Rep: Perky Beisel
- CVB Rep: Chay Runnels
- Bright Foundation: *Greg Williams, recommended Vice-Chair*
- Parks Advocacy League: Brandi Cartwright
- Federation of Women's Club: Betty Shinn
- SFA Student Rep: Name to be determined.

Action and Next Steps

- Recommend to City Council to approve resolution that:
 - Establishes both Committees
 - Appoints the Chair and Vice-Chair for both Committee

Next Steps:

- Downtown Master Plan Committee to meet on: 12/8 for kickoff
- Comprehensive Land Use Plan Committee to meet on 12/9 for kickoff.
- Have committees meet with consultant on 12/13.
- Consultant contract brought to Council on 1/17/2022.



Q&A
Thank You!

A RESOLUTION OF THE CITY OF NACOGDOCHES, TEXAS, PROVIDING FOR THE CREATION OF TWO AD HOC ADVISORY COMMITTEES TO GUIDE THE CITY IN THE PLANNING PROCESS REGARDING UPDATES FOR COMPREHENSIVE PLAN AND THE DOWNTOWN MASTER PLAN; ESTABLISH VOTING STANDARDS FOR THE COMMITTEES RELATED TO THIS REVIEW PROCESS; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council wishes to appoint two ad hoc, advisory committees called the Comprehensive Plan Review Committee and the Downtown Master Plan Review Committee (the “Committees”) to guide the city in the planning process regarding the Comprehensive Plan (the “Comprehensive Plan”) and the Downtown Master Plan (the “Downtown Plan”) during the current Plan review process; and

WHEREAS, the City Council wishes to members to serve on each committee, with each council member and the mayor appointing two members to each committee as shown on Exhibit A; and

WHEREAS, the City Council wishes to appoint chairs for the Committees and accepts the recommendations for Chair from the City Manager and Planner as shown on Exhibit A; and

WHEREAS, the Committee liaison will be a qualified consultant in city planning, who will work to facilitate the Comprehensive Plan Review and Downtown Master Plan Review process in collaboration with city staff. The consultant and staff will report regularly to the City Council and interact with the Planning & Zoning Commission (the “P&Z”) and the Main Street Advisory Committee (“Main Street”) on Review related issues; and

WHEREAS, the Committees will act as a community sounding board for the Plans and provide input and feedback on policy recommendations from the Planning & Zoning Commission and the Main Street Advisory Committee. The Committees will also act as advisors and ambassadors of the planning process; and

WHEREAS, it is the intent that all policies are reached by consensus prior to moving forward; and

WHEREAS, the work of the Committees is complex and knowledge is cumulative, regular attendance and continuity of Committee members is critical to the effective performance of each member; and

WHEREAS, the Committees and this resolution will sunset at the conclusion of the associated planning process, as determined by the City Council.

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

Section I. The City Council hereby forms two ad hoc committees of the city of Nacogdoches called the Comprehensive Plan Review Committee and the Downtown Master Plan Review Committee to guide the city during the current plan review and amendment process, and appoints such members and the Chairs of each Committee as listed in the attached exhibit A.

Section II. Any member of the Committees may be removed with or without cause by the appointing council member. Committee meeting attendance shall be reported to the City Council.

After the first meeting date of the Committee, if a Committee member is no longer willing to serve, or is removed, that Committee member shall not be replaced.

Section III. The Committee members shall act as a community sounding board for the Plan and provide input and feedback on policy recommendations to the Planning & Zoning Commission, the Main Street Advisory Committee and the City Council. The Committee will also act as advisors to and ambassadors of the planning process.

Section IV. All policies of the Plans must be supported by a consensus of the responsible committee before the policy moves forward as a recommendation to the Planning & Zoning Commission for the Comprehensive Plan and the Main Street Advisory Committee for the Downtown Master Plan. The Planning & Zoning Commission and the Main Street Advisory Committee will follow their customary procedures to advance a policy recommendation to the City Council.

Section V. The Committees and this Resolution will sunset at the conclusion of the planning process associated with this Resolution, as determined by the City Council.

Section VI. This Resolution is effective upon adoption.

DULY PASSED AND APPROVED THE __ DAY of _____ 2021

Jimmy Mize, MAYOR

ATTEST:

Jan Vinson, CITY SECRETARY

APPROVED AS TO FORM:

Steven Kirkland, CITY ATTORNEY

Exhibit A:

Comprehensive Plan Review Committee:

- **P&Z Commission:** *Ken Deppisch, Chair*
- **NEDCO Representative:** *Steele Wright, Vice-Chair*
- Council Members: Roy Boldon and Kathleen Belanger
- Jimmy Mize appointment: Ed Pool and Juan Gonzales
- Roy Boldon appointment: James Montoya and Mable Cannings
- Amelia Fischer appointment: Denise McDonald and Michara DeLaney-Fields
- Jay Anderson appointment: Paul Jackson and Sydney Register
- Kathleen Belanger appointment: Brad Maule and Larry King
- SFASU Representative: Carrie Charley
- NISD Representative: Jacob Lusk
- Bright Foundation Representative: Kurt Sutton
- Parks Advocacy League Representative: Nicole Ivancic
- Federation of Women's Club Representative: Marilyn Walton
- SFA Student Representative: *Name to be determined.*

Downtown Master Plan Review Committee:

- **Main Street Representative:** *Miles McCall, Chair*
- **Bright Foundation Representative:** *Greg Williams, Vice-Chair*
- Council Members: Amelia Fischer and Jay Anderson
- Jimmy Mize appointment: Susie Patterson and Ramsey Parr
- Roy Boldon appointment: Mario Torres and G.W. Neal
- Amelia Fischer appointment: Evelyn Saucedo and Anne Kelly
- Jay Anderson appointment: John Anderson and Jeff Abt
- Kathleen Belanger appointment: Ben Sullivan and Laura Culpepper
- HLPC Representative: Perky Beisel
- CVB Representative: Chay Runnels
- Parks Advocacy League Representative: Brandi Cartwright
- Federation of Women's Club Representative: Betty Shinn
- SFA Student Representative: *Name to be determined.*



City Council Meeting

Date: December 7, 2021

Agenda Item: 9.A.

PRESENTER:

ITEM/SUBJECT: Deliberation regarding Economic Development negotiations under Government Code Section 551.087 as follows:

1. Discuss or deliberate regarding commercial or financial information the City has received from business projects the City body seeks to have locate in the City of Nacogdoches and with which the City is conducting economic development negotiations; and
2. Deliberate offer of financial or other incentive to business prospects described by Subdivision 1 above.

SUMMARY/BACKGROUND:

FINANCIAL:

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

CITY CONTACT:

ATTACHMENTS:

PRESENTER: Larissa Philpot, Economic Development Director

ITEM/SUBJECT: Consider approval of Resolution No. 1286-12-21 amending a Chapter 380 Economic Development Program agreement by and between the City of Nacogdoches and HCH Aviation, LLC regarding development of a flight school at A.L. Mangham, Jr. Regional Airport. (Economic Development Director)

SUMMARY/BACKGROUND: City Council entered into a Chapter 380 agreement with HCH Aviation, LLC on August 3, 2021. That agreement allowed for reimbursement of expenses related to capital infrastructure improvements at A.L. Mangham, Jr. Regional Airport which would benefit the airport.

The schedule of improvements in the agreement approved in August had a total value of \$688,000. The previously approved schedule of improvements can be seen in the chart below:

Item	Approximate Qualified Expenditure Not to Exceed
On-site Sewer System	\$8,000
Water Distribution System	\$100,000
Storm Drainage	\$30,000
Driveway and Parking, Paving, and Striping	\$550,000

HCH Aviation has requested the storm drainage project be replaced with a qualified expenditure for an equivalent amount, dedicated to electrical infrastructure. Their request is to remove the storm drainage item and replace it with electrical infrastructure, keeping the City's total liability the same.

FINANCIAL:

*Note: This requested amendment will not affect the previously approved budget categories or amounts.

Item is budgeted:

Account No.: 30.179.02

Account Name: CIP Misc Water Line Additions/Replacements

Amount: \$100,000

Item is budgeted:

Account No.: 30.179.03

Account Name: CIP Misc Sewer Line Additions/Replacements

Amount: \$8,000

Item is budgeted:

Account No.: 12.75.680.30

Account Name: Economic Development Fund

Amount: \$580,000

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

Infrastructure, Economic Development, Value-Driven Education and Job Training

CITY CONTACT: Larissa Philpot, Economic Development Director
lphilpot@nedco.org
936-559-1255

ATTACHMENTS: 1. Amended 380 Agreement
2. Resolution

CITY OF NACOGDOCHES, TEXAS

AND

HCH Aviation, LLC

AMENDED CHAPTER 380 ECONOMIC DEVELOPMENT AGREEMENT

This **AMENDED CHAPTER 380 ECONOMIC DEVELOPMENT AGREEMENT** (hereinafter referred to as the "Amendment") is made and entered into by and between the **CITY OF NACOGDOCHES, TEXAS**, a Texas home-rule municipality (the "City"), and **HCH Aviation, LLC**, a Texas limited liability company, its successors and assigns ("Developer").

RECITALS:

- A.** In the original Chapter 380 Economic Development Agreement (the "Agreement"), the City and Developer agreed to construct or cause to be constructed, improvements to include an approximate 10,000 square foot hangar and classroom building and associated infrastructure, (the "Improvements") located at the A.L. Mangham, Jr. Regional Airport.
- B.** Developer has agreed to operate an FAR Part 141 and 61 flight school in association with Stephen F. Austin's Aviation Bachelor's Degree initiative (the "Project").
- C.** The City and Developer now desire to amend the Agreement to substitute portions of the Improvements that may be reimbursed pursuant to the Agreement. These substitutions do not change the intent of the Agreement, expand the obligations of the Developer or increase the grant of public funds to the Developer but will aid in the orderly progress of the Project.
- D.** The City desires and agrees to enter into this Amendment with Developer in order to implement the economic development program described the Agreement and shall follow all applicable rules and procedures prescribed by the City's Charter and the laws of the State in providing Developer the economic development incentives described herein.
- E.** Developer desires and agrees to enter into this Amendment with City in order to construct and operate the Project described the Agreement and to create well-paying jobs and shall follow the laws of the State of Texas.

NOW, THEREFORE, for and in consideration of the agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and Developer agree as follows:

SECTION 1. RECITALS INCORPORATED.

The foregoing Recitals are hereby incorporated into the body of this Agreement and shall be considered part of the mutual covenants and consideration that bind the parties.

SECTION 2. Amended Sections

Table 1 in Section 4 (a)(i) is amended to read as follows:

Table 1

Item	Approximate Qualified Expenditure Not to Exceed
------	---

On-site Sewer System (as detailed on Exhibit B)	\$8,000
Water Distribution System (as detailed on Exhibit B)	\$100,000
Electrical Components (as detailed on Exhibit B)	\$30,000
Paving (as detailed on Exhibit B)	\$550,000

Exhibit B is also revised to show the location of the electrical components and attached.

SECTION 2. NO OTHER CHANGES.

All other portions of the Agreement are unchanged.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be duly executed.

CITY

CITY OF NACOGDOCHES, TEXAS

a Texas home-rule municipality

By: _____
Jimmy Mize, Mayor

Date: _____

ATTEST:

Jan Vinson, City Secretary

APPROVED AS TO FORM:

Steven Kirkland, City Attorney

DEVELOPER:

HCH Aviation, LLC

By: _____
KRISTEN CONKLIN

Date: _____

By: _____

JOHN HASBUN

Date: _____

**CITY OF NACOGDOCHES, TEXAS
RESOLUTION NO. 1286-12-21**

A RESOLUTION CREATING A CHAPTER 380 ECONOMIC DEVELOPMENT PROGRAM AND APPROVING AND AUTHORIZING AGREEMENT BY AND BETWEEN THE CITY OF NACOGDOCHES AND HCH AVIATION, LLC REGARDING DEVELOPMENT OF A FLIGHT SCHOOL AT A.L. MANGHAM, JR. REGIONAL AIRPORT.

WHEREAS, the City of Nacogdoches, Texas, (the “City”), possesses the legal and statutory authority under Article III, Section 52-a of the Texas Constitution and Chapter 380 of the Texas Local Government Code to make loans and grants of public funds for the purposes of promoting local economic development, helping eliminate unemployment and underemployment in the City, and stimulating and enhancing business and commercial activity within the City;

WHEREAS, the City finds that the establishment of a certificated pilot school under Federal Aviation Regulations, 14 CFR Part 141 and 61 in association with Stephen F. Austin State University’s (“SFASU”) Aviation Bachelor’s Degree (the “Flight School”) assists in the development and diversification of the economy of the City by supporting recruitment and enrollment of students at SFASU, employment of instructors, and encourage development of other associated training programs and supporting business and industry, and,

WHEREAS, HCH Aviation LLC (the “Developer”) agreed to develop a program with SFASU to establish the Flight School and construct or cause to be constructed, improvements to include an approximate 10,000 square foot hangar and classroom building and associated infrastructure, (the “Improvements”) located at the A.L. Mangham, Jr. Regional Airport, which is required to support the Flight School; and

WHEREAS, the City created an economic development program pursuant to Chapter 380 of the Texas Local Government Code called the Flight School Economic Development Program to provide, encourage and coordinate public and private investment in developing the Flight School, the Improvements and any future associated development; and

WHEREAS, the City continues to find it appropriate to leverage the investment that the Developer is providing to expand facilities available at the airport, encourage more rapid enrollment and employment in the flight school, increase and promote revenue to the City from associated airport based businesses via the attached HCH Aviation LLC Chapter 380 Economic Development Agreement (“Chapter 380 Agreement”), and

WHEREAS, the City entered into a Chapter 380 economic development agreement with the Developer on August 3, 2021, and construction of the facilities has commenced, more definitive designs have been completed and costs of the facilities to be constructed have been refined; and

WHEREAS, the City and Developer now desire to amend the Agreement to substitute portions of the Improvements that may be reimbursed pursuant to the Agreement which will not change

the intent of the Agreement, expand the obligations of the Developer or increase the grant of public funds to the Developer but will aid in the orderly progress of the Project.

WHEREAS, the City has concluded and hereby finds that amending the HCH Aviation LLC Chapter 380 Economic Development Agreement clearly promotes economic development in the City, and, as such, meets the requirements under Chapter 380 of the Texas Local Government Code and Article III, Chapter 52-a of the Texas Constitution under which the City has the authority to use public funds for public purposes of of promoting economic development and stimulating business and commercial activity within the City, and further, is in the best interests of the City and Developer.

NOW, THEREFORE, be it resolved by the City Council of the City of Nacogdoches, Texas that:

1. The findings and recitations contained in the preamble of this Resolution are found and declared to be true and correct and are hereby adopted as part of this Resolution.
2. The City Council hereby approves and authorizes the HCH Aviation LLC Amended Chapter 380 Economic Development Agreement in substantially the form as shown in the document which is attached hereto and incorporated herein by this reference.
3. The City Manager is authorized to execute such document and related documents on behalf of the City, and the City Secretary is authorized to attest to all such signatures and the City Attorney is authorized to take all action necessary to enforce all legal obligations as may arise hereunder.
4. This resolution is effective immediately upon its passage.

PASSED AND APPROVED, this the 7th day of December, 2021, by a vote of ____ (ayes) to ____ (nays) of the City Council of the City of Nacogdoches, Texas.

CITY OF NACOGDOCHES

By: _____
JIMMY MIZE, Mayor

ATTEST:

APPROVED AS TO FORM:

Jan Vinson, City Secretary

Steven Kirkland, City Attorney

PRESENTER: Larissa Philpot, Economic Development Director

ITEM/SUBJECT: Consider approval of Resolution No. 1287-12-21 amending a Chapter 380 Economic Development Program agreement by and between the City of Nacogdoches and Kingdom Perspectives-Nacogdoches, LTD. (Economic Development Director)

SUMMARY/BACKGROUND: Splash Kingdom entered into an economic development agreement with Splash Kingdom in September 2014. In this agreement, the City required Splash Kingdom to bid on the property the City was offering for construction of a water park, agree to build a water park valued at \$6 million, and provide discounted tickets for City residents. The City provided \$2 million to be used for construction costs.

This original agreement had a term of 15 years and contained a clause allowing the City to repurchase the property for \$1 if Splash Kingdom failed to operate the park for the 15 year term of the agreement. This repurchase option required the City to assume any outstanding loans up to \$2 million, which was the amount of Splash Kingdom's original construction loan.

Splash Kingdom's financial obligations were secured by a Deed of Trust which contained a provision deeming the value of the obligations under the economic development agreement to be \$500,000 for the first five years and then \$0 in subsequent years. The City was required and did agree to subordinate its lien to the construction lender. The Deed of Trust provides for the City's inclusion in financing events at the park and retains the City's right to repurchase the property.

Splash Kingdom is now in the process of changing lenders and refinancing debt. Splash Kingdom's new lender is requiring a new loan subordination agreement. The new lender has requested the City increase the cap for the City's assumption of outstanding loans for the repurchase option. City Staff has proposed to increase this cap to \$2.95 million, which represents the amount of the original construction loan plus Splash Kingdom's planned future improvements through the end of the agreement term.

Staff is presenting a new Chapter 380 economic development program agreement with Splash Kingdom that would include the new terms required by the new lender, but would also require Splash Kingdom to meet the following new performance standards:

- Maintain seasonal employment of at least 65 positions
- Maintain, repair, and replace improvements at least once a year
- Submit an annual compliance verification report
- Make the following improvements to the park

Item	Approximate Qualified Expenditures Minimum Value	Completion Date
High Trill Drop Slide with Loop	\$150,000	September 1, 2022
Large Spray Ground Area	\$100,000	September 1, 2024
Wave Pool	\$300,000	September 1, 2029
Tube Slide Tower	\$400,000	September 1, 2029

Additional performance measures from the previous agreement were carried into the new agreement. These measures include:

- Continuous operations - Splash Kingdom will operate the park during the summer months each year
- Reduced admissions - Splash Kingdom will offer a reduced admission rate for City residents
- Sales tax situs - Splash Kingdom will make every effort to ensure supplies and construction material contracts are developed in a way that allows the sales tax on these items to be collected in Nacogdoches

The new agreement is currently under review by Splash Kingdom and will be attached with the adopting resolution as soon as it is finalized.

FINANCIAL:

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

Economic Development

CITY CONTACT: Larissa Philpot, Economic Development Director
lphilpot@nedco.org
936-559-1255

ATTACHMENTS: 1. Splash Kingdom New 380

CITY OF NACOGDOCHES, TEXAS

AND

Kingdom Perspectives-Nacogdoches, LTD

First Amended CHAPTER 380 ECONOMIC DEVELOPMENT AGREEMENT

This **CHAPTER 380 ECONOMIC DEVELOPMENT AGREEMENT** (hereinafter referred to as the "Agreement") is made and entered into by and between the **CITY OF NACOGDOCHES, TEXAS**, a Texas home-rule municipality (the "City"), and **Kingdom Perspectives-Nacogdoches, LTD**, a Texas limited liability company, its successors and assigns ("Developer").

RECITALS:

- A.** The City entered into an economic development agreement with the Developer on September 17, 2014, as seen in Exhibit A which was secured by Deed of Trust filed in the Real Property Records of Nacogdoches County, Texas as Instrument 2014-7882.
- B.** In exchange for sale of the land for \$500,000 and capital contribution of \$2 million dollars from the citizens of Nacogdoches, the Developer agreed to obtain \$1.5 million in additional financing to build a Water Park with certain features and operate the Water Park for 15 years allowing residents of the City to purchase admission at discounted rates.
- C.** The Developer has substantially performed by obtaining financing, constructing the park, and operating the Park since the summer of 2015.
- D.** The Developer has requested a revision of the economic development agreement dated September 17, 2014 to allow an increased level of debt secured by the property to obtain funding from secured creditors for more investment in the project. To provide the financing, the Developer's bank requires subordination of the City's Deed of Trust by Agreement attached as Exhibit B
- E.** The City desires to accommodate the Developer's continued investment in the park and obtain better defined performance metrics and expectations while honoring the original commitment of resources and respecting the protections provided in the original agreement.
- F.** The City possesses the legal and statutory authority under Chapter 380 of the Texas Local Government Code to make loans and grants of public funds for the purposes of promoting local economic development and stimulating and enhancing business and commercial activity within the City.
- G.** The City has established an economic development program which authorizes the City to make such economic development loans and grants.
- H.** The City has determined that a grant of funds to Developer will serve the public purposes of promoting local economic development, helping eliminate unemployment and underemployment in the City, and stimulating and enhancing business and commercial activity within the City.

- I. The City has concluded and hereby finds that this Agreement clearly promotes economic development in the City, and, as such, meets the requisites under Chapter 380 of the Texas Local Government Code, and further, is in the best interests of the City and Developer.
- J. The City has concluded and hereby finds that this Agreement clearly promotes economic development in the City, and, as such, meets the requirements of Article III, Section 52-a of the Texas Constitution, by assisting in the development and diversification of the economy of the State, by helping to eliminate unemployment or underemployment in the State, and by the development or expansion of commerce within the State.
- K. The City desires and agrees to enter into this Agreement with Developer in order to implement the economic development program adopted August 3, 2021 and shall follow all applicable rules and procedures prescribed by the City's Charter and the laws of the State in providing Developer the economic development incentives described herein.
- L. Developer desires and agrees to enter into this Agreement with City in order to improve the Project described herein and to create well paying jobs and shall follow the laws of the State of Texas.

NOW, THEREFORE, for and in consideration of the agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and Developer agree as follows:

SECTION 1. RECITALS INCORPORATED.

The foregoing Recitals are hereby incorporated into the body of this Agreement and shall be considered part of the mutual covenants and consideration that bind the parties.

SECTION 2. TERM.

This Agreement shall be effective as of this date, and shall continue until all obligations of both parties are met unless terminated sooner under the provisions hereof.

SECTION 3. DEFINITIONS.

The following words shall have the following meanings when used in this Agreement.

- (a) **Personalty.** The word "Personalty" means the tangible personal property, including inventory and supplies, located on the property other than tangible personal property that was located on the Property prior to the period covered by this Agreement, and which is otherwise subject to a tax abatement consistent with section 312.204(a) of the Texas Tax Code, as amended.
- (b) **Qualified Expenditures.** The words "Qualified Expenditures" mean those expenditures consisting of and contributing to the hard and soft costs associated with the development and construction of the Improvements for the Project including furniture, fixtures, equipment, and public infrastructure.

- (c) **Related Documents.** The words “Related Documents” mean and include without limitation any and all promissory notes, loan agreements, grant agreements, performance agreements, tax abatement agreements, and other instruments and documents, whether now or hereafter existing, entered by and between the City and Developer in connection with this Agreement.
- (d) **Sales and Use Tax.** The words “Sales and Use Tax” or “Sales and Use Taxes” mean the City’s municipal sales and use tax, pursuant to Section 321.103(a) of the Texas Tax Code, as amended. The current Sales and Use Tax rate is one percent (1%).
- (e) **Seasonal Employee.** The words “Seasonal Employee” means and includes a job requiring a minimum of thirty hours of work per week during the operating season.
- (f) **State.** The word “State” means the State of Texas.
- (g) **State Comptroller.** The words “State Comptroller” mean the Office of the Texas Comptroller of Public Accounts, or any successor agency.
- (h) **Term.** The word “Term” means the term of this Agreement as specified in Section 2 of this Agreement.

SECTION 4. AFFIRMATIVE OBLIGATIONS OF DEVELOPER.

Developer covenants and agrees with the City that while this Agreement is in effect, Developer shall comply with the following terms and conditions:

- (a) **Construction of the Additional Improvements.**
- i. Developer shall construct or cause to be constructed the Additional Improvements as described on Table 1 below and shall submit to the City invoices, receipts, or other similar documentation for the Qualified Expenditures in a form reasonably acceptable to the City by the dates shown below.

Table 1

Item	Approximate Qualified Expenditure Minimum Value	Completion Date
Tree House DJ Booth/Theme	\$18,000	September 1, 2022
High Thrill Drop Slide with a Loop	\$150,000	September 1, 2022
New Staff Breakroom	\$10,000	September 1, 2023
Additional Cabanas	\$5,000	September 1, 2023
Large Spray Ground Area	\$100,000	September 1, 2024
Wave Pool and Sun Deck with Umbrellas	\$425,000	September 1, 2029
Tube Slide Tower	\$400,000	September 1, 2029
Maintenance, repair, replacement, and upgrades	\$145,000	September 1, 2029
Soft Costs Associated with Above Improvements	\$750,000	September 1, 2029
Total	\$2,003,000	

- ii. Developer represents that Developer has the present capacity to construct the Improvements. The Additional Improvements shall be completed on or before the dates shown in Table 1. Only those Additional Improvements listed in Table 1 which are completed prior to the dates shown above will be considered by the City as meeting this obligation.
 - iii. All Additional Improvements constructed at the Property shall meet or exceed all City of Nacogdoches adopted codes and ordinances.
- (b) **Job Creation and Retention.**
- i. On or before December 31, 2022, and during the Term of this Agreement, the Developer shall employ and maintain 65 seasonal positions working at the Project each year. This shall be continuously maintained through the Term of this Agreement.
- (c) **Continuous Operations.** Developer or its assigns will operate the Project as a family oriented recreational water park up to at least November 14, 2029. For purposes of this Agreement, it is understood and agreed that the normal season for water park operation runs from June 1 to September 1 of each year. During the regular season, the park may close from day to day due to inclement weather. Operations at other times are not required to satisfy this covenant of continuous operations. This will be a covenant running with the Land in the form of an equitable servitude which may be subordinated to a lender's deed of trust if required by the third party lender of construction or improvement financing.
- (d) **Maintenance.** Developer agrees to maintain, repair and replace Water Park Additional Improvements on the Land in operating condition and in accordance with applicable City codes but at a minimum at least once of a year. This provision is construed as a covenant, not a condition, and such obligations will be binding upon the Developer until the termination of the Agreement.
- (e) **Reduced Admission Rate for Residents of Nacogdoches.** Developer or its assigns will offer to residents of City a reduced rate for admission through November 14, 2029. The rate will not exceed seventy-five percent (75%) of the normal admission price, and the price of the resident ticket will not increase more than three percent (3%) over the prior year's rate unless approved by the City Council. All discounted admission (single day tickets and season passes) will be sold at City offices after obtaining proof of residence; no discounted admission will be sold at the Water Park. This will be a covenant running with the Land in the form of an equitable servitude which will be subordinated to a lender's deed of trust if required by the third party lender of construction or improvement financing.
- (f) **Operations by Developer.** The Water Park will be operated by Splash Kingdom, Inc., an affiliated company of Splash Kingdom (i.e.; Kingdom Perspectives-Nacogdoches, Ltd.). City will have no operational duties or obligations nor will City be liable for future operating costs or expenses.
- (g) **City Sales Tax Matters.** As a portion of the consideration for this Agreement, and to the maximum extent permitted under applicable law, Developer covenants and agrees with City to structure all contracts to which Developer or related person or entity is a party relating to the construction of the improvements and facilities to be constructed on the Property pursuant to this Agreement that are not purchased for resale, in a manner that requires City sales and use taxes to be collected and remitted to the City of Nacogdoches with respect to the purchase of all materials and other taxable items for such improvements and facilities. Without limiting the generality of the immediately preceding sentence, Developer shall cause each contract with a contractor to:

- i. be structured as a “separated contract” as such term is defined in 34 Texas Administrative Code 3.291(a)(13) with the result that:
 - i. the agreed contract price under the contract is divided into (A) a separately stated agreed contract price for incorporated materials, and (B) a separately stated amount for all skill and labor that includes fabrication, installation, another other labor that is performed by the contractor; and
 - ii. the contractor is required under 34 Texas Administrative Code 3.291(a)(13) to collect City sales and use taxes on the charge to Developer for materials and other taxable items based on the location of the Improvements and facilities to be constructed in the City; and
- ii. contain provisions requiring such contractor to issue, and to cause each subcontractor and each sub-subcontractor to issue, properly completed Texas Sales and Use Tax Resale Certificates and/or other certifications or documentation, as appropriate, to all subcontractors and sub-subcontractors, and to take such other actions as are necessary or advisable, in order to claim, obtain and/or evidence that the materials and other taxable items for the improvements and facilities to be constructed on the Property.

Notwithstanding any other provision hereof, the sole remedy of the City with regard to any failure of the Developer to comply with this Section 4(d) shall be to require the Developer to pay to the City the sales and use tax revenue lost by the City as a result of the Developer’s failure to comply with this Section. Developer shall not be liable for sales and use tax revenue lost by any taxing authority other than the City for failure to comply with this Section 4(d).

(h) **Annual Compliance Verification.** Beginning on January 1, 2022 and each January 1st for the following seven years for a total of eight occurrences until January 1, 2030 Developer shall deliver to the City an Annual Compliance verification signed by a duly authorized representative of Developer that shall certify the following:

- (1) A listing of the improvements made to the Property during the prior year;
- (2) The taxable appraised value of the Property and Personalty located on the Property for the applicable prior tax year;
- (3) Proof of rendering of personal property to the Nacogdoches County Central Appraisal District;
- (4) The ad valorem taxes paid to the City for the Property and Personalty located on the Property for the applicable prior tax year;
- (5) The total number of employees of Kingdom Perspectives-Nacogdoches, LTD;
- (6) The total number of reduced rate City resident entry tickets sold for the prior year; and
- (7) Ticket pricing schedule for the prior year, including reduced rates for City residents.

(i) **Payment of Ad Valorem Taxes.** Developer, at Developer’s sole cost, covenants and agrees to pay by January 31st of each year all of the real and business personal ad valorem taxes due for the previous tax year on the Property.

- (j) **Performance.** Developer agrees to perform and comply with all applicable terms, conditions, and provisions set forth in this Agreement, and in all other instruments and agreements by and between Developer and the City.

SECTION 5. AFFIRMATIVE OBLIGATIONS OF THE CITY.

City agrees to execute such subordination agreements as may be reasonably required by third party lenders subject to the limitations described herein.

SECTION 6. EVENTS OF DEFAULT.

- (a) Each of the following shall constitute an Event of Default under this Agreement by Developer:
 - (1) **Construction of Qualified Expenditures.** Failure of Developer to construct or provide copies of the invoices, receipts or other documentation to the City regarding said Qualified Expenditures made to the Property consistent with Section 4(a) of this Agreement.
 - (2) **Payroll.** Failure of Developer to provide verification of employment as identified in Section 4(b).
 - (3) **Continuous Operations.** Failure of Developer to remain open as a family water park with the Water Park Improvements in good repair or condition or any time after opening for business cease to operate as a family water park with the Water Park Improvements for three hundred sixty-five (365) consecutive days.
 - (4) **Insolvency.** Developer's insolvency, appointment of receiver for any part of Developer's property, any assignment for the benefit of creditors of Developer, any type of creditor workout for Developer, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Developer.
 - (5) **Other Defaults.** Failure of Developer to comply with or to perform any other term, obligation, covenant or condition contained in this Agreement, or in any of the Related Documents, or failure of Developer to comply with or to perform any other term, obligation, covenant or condition contained in any other agreement by and between the City and Developer, and such failure is not cured after written notice of the default from the City to Developer.

SECTION 7. EFFECT OF AN EVENT OF DEFAULT.

- (a) If an Event of Default occurs, the non-defaulting party shall give written notice to the other party of the specific Event of Default, and the defaulting party shall have thirty (30) days to cure said default (as to defaults reasonably curable within such period) or commences to cure alleged default within said thirty (30) days and diligently pursues the cure to its conclusion (as to defaults not reasonably curable within thirty (30) days).
- (b) In the event Developer defaults and is unable or unwilling to cure said default within the prescribed time period, the City has the option to repurchase the Land for \$1.00 as the only consideration, (the "Repurchase Option"), upon the following terms:
 - a. **Assumption of Existing Indebtedness.** As a condition of its exercise of the Repurchase Option, City must assume any improvement loan of Developer which financed in whole or in part, the construction or installation of the improvements located on the Land. The principal amount of such loan including any extensions or renewals shall not exceed \$4,000,000 (the "Indebtedness") and the Developer shall secure the irrevocable written commitment of any and all such lenders to notify the City of any delinquencies in payment

or performance by the Developer or its affiliated entities as well as notice of intent to accelerate the loan or any part thereof, notice of acceleration of the loan or any part thereof, notice of trustee's sale, whether judicial foreclosure or non-judicial foreclosure, notice of sale of any personal property or default or proposed default under any Security Agreement securing all or any part of the loan as well as an agreement to the terms of Option to Purchase Land and Improvements in Section 4, Affirmative Obligations of Developer, above. Developer shall allow the Indebtedness to pay out and reduce on a regular amortized basis with no increase in the decreasing principal by renewal, extension, or future or further advance.

- b. **Termination of Option by Time.** Notwithstanding anything herein to the contrary, if not otherwise terminated, the Repurchase Option will terminate eight (8) years after the date of this agreement.

SECTION 8. INDEMNIFICATION.

Developer shall indemnify, save, and hold harmless the City, its council members, officers, agents, and employees (collectively, the "indemnitees") from and against" (i) any and all claims, demands, actions or causes of action that are asserted against any indemnitee if the claim, demand, action or cause of action is a result of or related to Developer's performance under this agreement, Developer's tortious interference with contract or business interference, or Developer's wrongful or negligent use of the City's financial assistance by Developer or its agents and employees; (ii) any claim, demand, action or cause of action which contests or challenges the legal authority of Developer to enter into this Agreement; and (iii) any and all liabilities, losses, costs, or expenses (including reasonable attorneys' fees and disbursements) that any indemnitee suffers or incurs as a result of any of the foregoing; provided, however, that Developer shall have no obligation under this Section to the City with respect to any of the foregoing arising out of the gross negligence or willful misconduct of any indemnitee or the breach by the City of this Agreement. If any claim, demand, action or cause of action is asserted against any indemnitee, such indemnitee shall promptly notify Developer, and failure to so promptly notify Developer shall release Developer's obligations under this Section if such failure prejudices Developer's right to participate in the contest of such claim, demand, action or cause of action, as hereinafter provided. As so long as no Default or Event of Default shall have occurred and be continuing, if requested by Developer in writing, an indemnitee shall in good faith contest the validity, applicability and amount of such claim, demand, action or cause of action and shall permit Developer to participate in such contest. Any indemnitee that proposes to settle or compromise any claim, demand, action, cause of action or proceeding for which Developer may be liable for payment of indemnity hereunder shall give Developer written notice of the terms of such proposed settlement or compromise reasonably in advance of settling or compromising such claim or proceeding and shall obtain Developer's concurrence thereto.

SECTION 9. MISCELLANEOUS PROVISIONS.

The following miscellaneous provisions are a part of this Agreement:

(a) **Amendments.** This Agreement, together with the Related Documents, 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.

(b) **Applicable Law and Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, and all obligations of the parties created hereunder are

performable in Nacogdoches County, Texas. Venue for any action arising under this Agreement shall lie in the state district courts of Nacogdoches County, Texas.

(c) **Assignment.** This Agreement may not be assigned without the express written consent of the City, which consent will not be unreasonably withheld but which may be conditioned on adequate assurances that the assignee has the resources and expertise necessary to operate the Project for the remainder of the term and honoring the provisions of the Agreement. Assignment shall not release Developer from any obligation under this Agreement.

(d) **Binding Obligation.** This Agreement shall become a binding obligation on the signatories upon execution by all signatories hereto. The City warrants and represents as follows: that the individual executing this Agreement on behalf of the City has full authority to execute this Agreement and bind the City to the same; and the Agreement is authorized by State law, including but not limited to, Chapter 380 of the Texas Local Government Code, is within the authority of the City, and constitutes a legal and binding obligation of the City. Developer warrants and represents that the individual executing this Agreement on Developer's behalf has full authority to execute this Agreement and bind Developer to the same.

(e) **Caption Heading.** Caption headings in this Agreement are for convenience purposes only and are not to be used to interpret or define the provisions of the Agreement.

(f) **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall constitute one and the same document.

(g) **Force Majeure.** It is expressly understood and agreed by the parties to this Agreement that if the performance of any obligations hereunder is delayed by reason of war; civil commotion; acts of God; inclement weather; fire or other casualty; pandemic or epidemic; government mandated shutdowns, closures or attendance restrictions arising from or attributed to a pandemic or epidemic; court injunction or other cause outside the control of the party who is to perform, the party so obligated or permitted shall be excused from doing or performing the same during such period of delay, so that the time period applicable to such obligation or requirement shall be extended for a period of time equal to the period such party was delayed.

(h) **Notices.** Any notice or other communication required or permitted by this Agreement (hereinafter referred to as the "Notice") is effective when in writing and (i) personally delivered by hand or by express courier such as Federal Express, UPS, DHL, or Lone Star Overnight, or (ii) ten (10) days after notice is deposited with the U.S. Postal Service, postage prepaid, certified with return receipt requested, and addressed as follows:

If to Developer: Kingdom Perspectives-Nacogdoches, LTD
Attn: Johnny I. Blevins
PO Box 876
Canton, TX 75103
903-567-0044

With a copy to: Jon D. Smithson
Jon D. Smithson, PC
PO Box 9809
Tyler, TX 75711

If to the City: City of Nacogdoches
Attn: City Manager

202 East Pillar Street
Nacogdoches, TX 75961
936-559-2501

With a copy to: City of Nacogdoches
Attn: City Attorney
202 East Pillar Street
Nacogdoches, TX 75961
936-559-2503

(i) **Revenue Sharing Agreement.** The City designated this Agreement as a revenue sharing agreement, thereby entitling the City to request Sales and Use Tax information from the State Comptroller, pursuant to Section 321.3022 of the Texas Tax Code, as amended.

(j) **Severability.** The provisions of this Agreement are severable. If any paragraph, section, subdivision, sentence, clause or phrase of this Agreement is for any reason held by a court of competent jurisdiction to be contrary to law or contrary to any rule or regulation having the force and effect of law, the remaining portions of the Agreement shall be enforced as if the invalid provision had never been included.

(k) **Undocumented Workers.** Developer certifies that Developer does not and will not knowingly employ an undocumented worker in accordance with Chapter 2264 of the Texas Government Code, as amended. If during the Term of this Agreement, developer is convicted of a violation under 8 U.S.C. § 1324a(f), Developer shall repay the amount of any public subsidy provided under this Agreement plus interest, at the rate of two and one-half percent (2.5%), not later than the 120th day after the date the City notifies Developer of the violation.

(l) **Mutual Assistance.** The parties shall do all things reasonably necessary or appropriate to carry out the terms and provisions of this Agreement and to aid and assist each other in carrying out such terms and provisions, including, but not limited to, executing and delivering any additional documents and agreements reasonably necessary to implement this Agreement.

(m) **Attorneys Fees.** In the event any legal proceeding is commenced to enforce or interpret provisions of this Agreement, the prevailing party in any such legal action shall be entitled to recover its reasonable attorney's fees and expenses incurred by reason of such action.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be duly executed.

CITY
CITY OF NACOGDOCHES, TEXAS
a Texas home-rule municipality

By: _____
Jimmy Mize, Mayor

Date: _____

ATTEST:

Jan Vinson, City Secretary

APPROVED AS TO FORM:

Steven Kirkland, City Attorney

DEVELOPER:
Kingdom Perspectives-Nacogdoches, LTD
a Texas limited partnership

By: _____
Johnny I. Blevins, President and Member

Date: _____