



February 1, 2022

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

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

Members of the public who wish to submit comments 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 must be received by 12:00 p.m. on February 1, 2022. 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.
3. WORK SESSION. Items included under Work Session are intended to provide opportunities for City Council to study and discuss various issues, and gather and analyze information. 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 regarding Public Library Policies & American Library Association Best Practices. (Library Manager)
 - B. Receive a presentation and hold a discussion regarding the Low Income Housing Tax Credit Program. (Economic Development Director)
4. 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.
5. ITEMS TO BE REMOVED FROM CONSENT AGENDA.
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. Consider approval of minutes from City Board Interviews on January 19, 2022 and January 25, 2022. (City Secretary)
 - B. Consider approval of the Airport Advisory Board Bylaws. (Airport Manager)
 - C. Consider approval of appointing members to the Comprehensive Plan Advisory Committee and Downtown Master Plan Advisory Committee. (City Manager)
 - D. Consider approval of a resolution calling the regular election of City Council Members for the Southeast Ward and Southwest Ward in and for the City of Nacogdoches, Texas. (City Secretary)
 - E. Consider approval of revision to a previously approved 10-foot-wide utility easement and Right-of-Way to Oncor Electric at the Nacogdoches A.L. Mangum Airport. (Public Works Director)
 - F. Consider a donation of \$29,784.00 from the Charles and Lois Marie Bright Foundation and budget amendment for construction of a new Disc Golf Course at Lake Nacogdoches West Park. (Community Services Director).
7. **REGULAR AGENDA:** City Council will receive staff recommendations and public input on the following items, and may deliberate and take formal action on the item.
- A. Receive End of Year Report from Visit Nacogdoches. (Convention and Tourism Director)
 - B. Receive report on status of special events from Convention and Visitors Bureau. (Convention and Tourism Director)
 - C. Consider resolution closing East Main Street for the Old Town Rig Down event, September 16, 2022 through September 18, 2022. (Community Services Assistant Director).
 - D. Consider the following City board appointments: Airport Advisory Board, Building Standards Commission, Heath Code Advisory Board, Industrial Development Authority, Main Street Advisory Board and Pine Grove Cemetery Board. (Mayor)
 - E. Consider approval of a resolution for non-payment of franchise fees against video service providers, as required in the Texas Video Service Providers Act, Texas Utilities Code Sec. 66. (City Attorney)
8. **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 governmental body has received from business prospects that the governmental body seeks to have locate, stay, or expand in or near the territory of the governmental body and with which the governmental body is conducting economic development negotiations; and
2. Deliberate the offer of financial or other incentives to business prospects described by Subdivision 1 above.

9. 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 January 26, 2022 at 4 p.m. and remained posted until meeting convened.

Jan Vinson, City Secretary

PRESENTER: Mercedes Franks, Library Manager

ITEM/SUBJECT: Receive a report regarding Public Library Policies & American Library Association Best Practices. (Library Manager)

SUMMARY/BACKGROUND:

Introduction - The Nacogdoches Public Library (NLP) is accredited by the Texas State Library and Archives Commission. It was officially established as the public library in 1972 by citizens who formed the Nacogdoches Friends of the Library.

About NPL: Mission Statement - The Nacogdoches Public Library connects people with information, ideas and experiences to provide enjoyment, enhance lives and strengthen our community.

The Collection - 106,115 physical items and 6,374 eBooks and eAudio books

The Staff - 2 MLIS librarians, 4 full-time staff and 3 part-time staff

Library Services - Traditional library services include lending of materials, reference, technology access and assistance. Emergent library services include outreach, programs for all ages for entertainment or learning.

What does it mean to be an accredited library? Public libraries are accredited in the Government Code 441.127(a), Library Systems, under the authority of the Texas State Library and Archives Commission (TSLAC). TSLAC sets the minimum standards for accreditation based on rules found in the Texas Administrative Code. Accreditation is based on answers that a library supplies in its annual report to TSLAC. While there are no statutory financial penalties for failing to meet these standards, libraries which are denied accreditation are ineligible for certain grants, are barred from receiving discounts on state library services, participating in mutual borrowing agreements with other libraries, interlibrary loan, and other programs. Accreditation can also be considered an important quality of life indicator and a marketing tool for a community to attract new families.

Policies that Define the Library's Operations: Nacogdoches Public Library, like many other libraries across the country, operates under the guidelines and principles of the American Library Association (ALA), which is the largest and oldest professional organization of library workers and is responsible for accrediting master's degree programs in library and information studies. Additionally, each state has its own professional library association that serves a similar purpose at a more accessible level for librarians. ALA and Texas Library Association (TXLA) both offer professional development, access to professional staff for consultation, and print and online resources to help libraries establish policies that are considered best practices in the library field. Both ALA and TXLA also offer samples of policies that every library should have. There are no requirements that a library adopt any specific language in their implementation or procedures. However, the policies should reflect the overarching ideal of the First Amendment of the United States as embodied in the freedom to read. Below is the list of policies that Texas libraries should have according to the Texas Library and Archives Commission:

- Collection Development Policy
- Library Card and Circulation Policy
- Confidentiality of Patron Records
- Patron Responsibilities and Conduct Policy
- Personnel / Volunteer Policy
- Safety and Security Policy
- Library Services
- Internet / Technology Use
- Meeting Room Policy
- Library Displays, Exhibits and Bulletin Board Policies

The library continuously reviews policies and is currently updating policies based on ALA and TXLA best practices.

Recent Library Developments: School and public libraries have recently been in the news because of concerns about library materials that deal with subjects as LGBTQ+ matters, human sexual development, and people of color. Library staff welcome input from the community it serves. When a community shares its need for information or services, library staff can better identify which materials to purchase for the collection, keeping in mind that not every material purchased or program will be suitable for every individual. Every library should have a Collection Development Policy that outlines objective criteria for selection of materials and identifies who has the responsibility for selecting materials. The policy helps remove personal biases of the selector to promote a diverse collection of viewpoints that has something to offer all community members. It should include the Freedom to Read and Intellectual Freedom statements that ensure everyone's right to discern for themselves what is appropriate and that an inclusion of particular works is not the library's endorsement of a particular viewpoint.

ALA and TXLA recognize that each community is different and there are times when a community member might object to a particular work. Each library should have an avenue to hear concerns from its community members. ALA and TXLA have identified that process as the Reconsideration Process. It provides a stated path for someone to voice a concern to the appropriate library staff and for staff to address those concerns. It provides objective criteria for the evaluation and due process of a particular work, so that its fate in the collection is not subject to a small minority's objection. Currently, the Nacogdoches Friends of the Library members serve as the panel to review and decide on a Request for Reconsideration of Materials.

After an item has gone through the reconsideration process, there are three options for the item. It may be removed, kept in its current location, or kept in the library collection but moved to a different part of the library.

No library operates in a vacuum. The American Library Association and Texas Library Association provide invaluable assistance in helping local libraries serve their communities in a responsive and professional manner. NPL staff also consult other librarians for real-world resolution to issues. These are challenging but also inspiring times as librarians work to ensure that we are serving all our community members with accurate and reliable information. We accomplish this through the collection and the types of services we offer. Libraries have long been trusted institutions and important equalizers in a democracy because we provide access to information and diverse viewpoints, welcome everyone in the community, and provide the use of our resources free of charge. We offer a portal to knowledge to which everyone should have access.

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: Mercedes Franks, Library Manager
franksm@nactx.us
936-559-2945

ATTACHMENTS: 1. PowerPoint Presentation

Judy B. McDonald Public Library

An Accredited Library



**Texas State
Library & Archives
Commission**



Accreditation



**Quantitative Standards
for Library Operations**

**Texas Library
Association & American
Library Association**



Best Practices



**Policies for Library
Operations**

What does it mean to be accredited?

Texas public libraries are accredited in the *Government Code 441.127(a)*, Library Systems, under the authority of the Texas State Library and Archives Commission (TSLAC).

Accreditation means that the public library has met the minimum quantitative standards set by TSLAC, among them:

- Funding by its local government
- Hours of operation
- M.L.I.S. degreed staff



Why accreditation matters?



American Library Association & Texas Library Association

A public library has a borrowing collection of reading, audio visual, and nontraditional library materials and provides access to information and ideas through emerging technologies.

The Nacogdoches Public Library subscribes to best practices identified by its professional associations and has adopted policies to meet those standards, including:

- Acquisitions & Maintenance of its Collection
- Reconsideration Policy
- Privacy Policy
- Patron Behavior Policy
- Unattended Child Policy
- Computer Use & Internet Policy
- Borrowing Policies

Fundamental Principles of a Public Library

- It is publicly funded in part or in whole
- Free to use
- Accessible to everyone in the community
- Participation/use of the library is voluntary

Foundation of the Public Library: First Amendment, access to information and ideas

How are policies adopted?

- American Library Association and Texas Library Association
 - What are these groups?
 - Best Practices in Libraries
- Locally, who writes the policies?
- Who approves the policies?
- What is the purpose of policies?
- How often are policies updated?

Factors Influencing the Policies of the Nacogdoches Public Library

INCORPORATING THE IDEALS OF PUBLIC LIBRARIANSHIP TO WHO WE ARE
AS NACOGDOCHANS



Questions?

PRESENTER: Larissa Philpot, Economic Development Director

ITEM/SUBJECT: Receive a presentation and hold a discussion regarding the Low Income Housing Tax Credit Program. (Economic Development Director)

SUMMARY/BACKGROUND: The Low Income Housing Tax Credit (LIHTC) program (or HTC program) is a federal program created in 1986 designed to finance the construction of affordable rental housing. The LIHTC program is the primary way new affordable housing is constructed in the United States. More than \$83 million in tax credits has been provided to Texas for the 2022 allocation. In Texas, this program is administered by the Texas Department of Housing and Community Affairs (TDHCA).

The program works by providing a tax credit equal to 9% of the qualified basis of the development. Those tax credits can then be utilized by the project developer or they may be sold or transferred to another entity to provide capital and thus reduce the debt required to finance the project. This debt reduction allows for a lower than market rent to be charged for the property. After the property is developed, the applicant must market the property in the surrounding community. Tenants earning up to 60% of the area median family income for their household size who meet the screening and eligibility restrictions of the property may qualify for a reduced rent. The overall area median family income for Nacogdoches County is \$68,400. The chart below shows how family size is factored into the income limit calculation.

Household Size	1 Person	2 Person	3 Person	4 Person	5 Person
Income Limit	\$27,900	\$31,920	\$35,880	\$39,840	\$43,080

Each state designs its own Qualified Allocation Plan (QAP). In Texas, the QAP allocates credits within regions, in a process that sets up a competitively scored application process in each region. Nacogdoches lies within a rural subregion containing 12 counties. Developments are scored based on the amenities they provide, the demographics of the census tract the proposed development lies within, the development's proximity to previously awarded LIHTC properties, and a development's ability to obtain a resolution of support from the City. Staff has been informed the proposed developments will likely not receive a credit allocation if they do not receive a resolution of support from the City. It is also important to note only one development will receive a credit allocation in each region.

Nacogdoches contains several housing tax credit developments that were constructed using LIHTC financing in previous years.

Development	Address	Year Awarded
Cordova Rental	Various	1993

Units		
Commonwealth Apartments	5319 Northway Drive	1996
Commonwealth, Phase II	5319 Northway Drive	1999
Cypress Ridge	2701 Logan Circle	2000
Cardinal Village	1630 Cardinal Street	2002
Spring Hill Apartments	3413 East Main	2002
Nacogdoches Senior Village	605 Harris Street	2006
Vista Pines Apartment Homes	1602 Park Street	2006
Park Estates	1600-2026 Pruitt Hill	2007
Pine Lake Estates	2012 Durst Street	2013
Tower Village	Tower Rd & Park St	2013

This year, the City of Nacogdoches received requests for resolutions of support from four developers representing five different multi-family developments (one development team submitted two adjacent projects). All five proposed developments are located in the Northeast Ward (see attached map and chart). Introductory meetings were held with each developer, Larissa Philpot, City Manager Canizares, Mayor Mize or Mayor Pro Tem Boldon, and Northeast Ward Council Member Belanger.

All the developers have been invited to make presentations and answer community member questions at a community meeting to be held on February 2nd at the C.L. Simon Recreation Center. The developer presentations will be provided to City Council following the community meeting.

Timeline:

Community meeting	February 2, 2022, 5:30 PM at the C.L. Simon Recreation Center
Consideration of resolutions of support	February 22, 2022 City Council meeting
Full application from developer due to TDHCA	March 1, 2022
TDCHA issuance of credit allocations	July 2022

Construction complete	End of 2024
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FINANCIAL:

No financial impact associated with this item

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

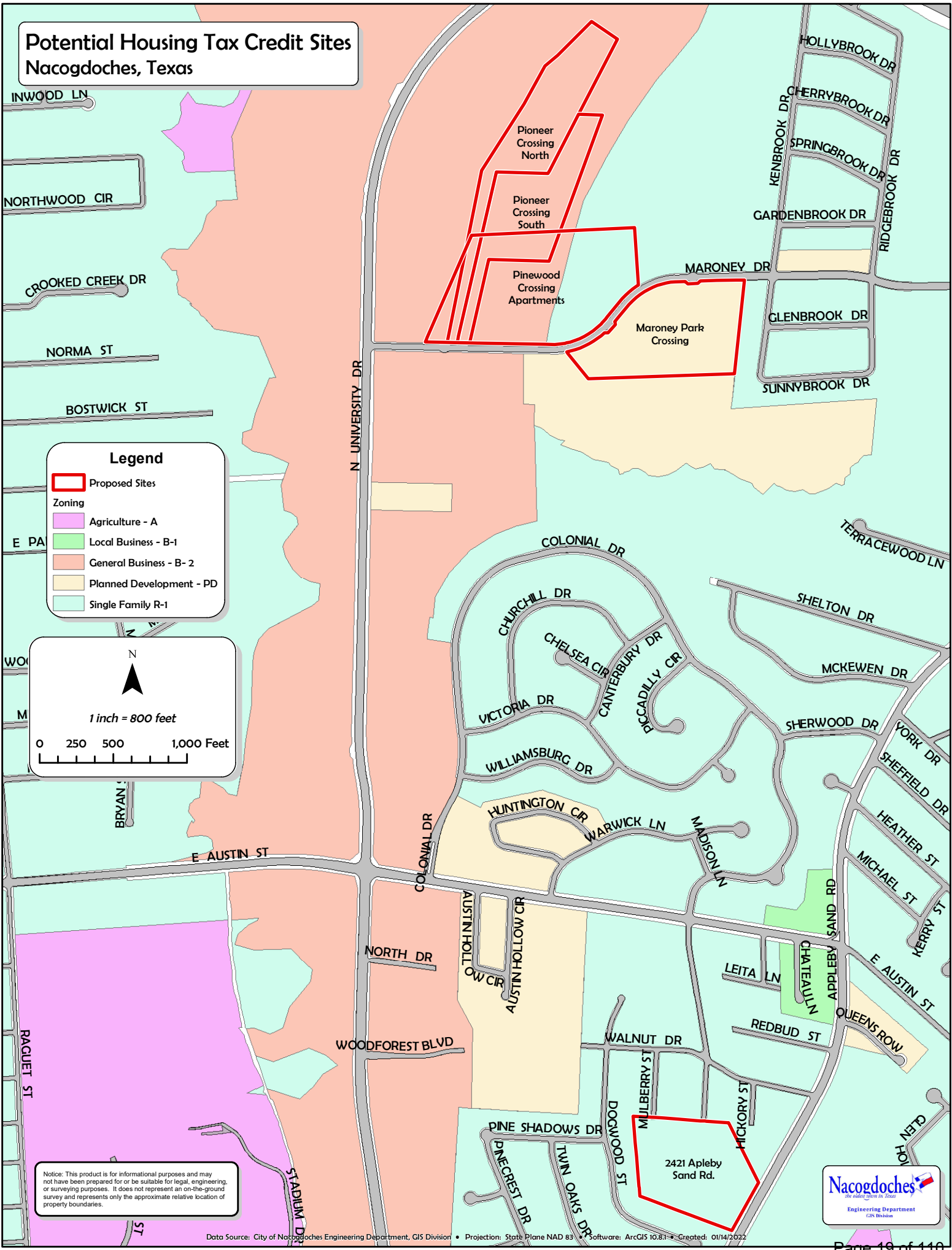
Neighborhood Revitalization and Attainable Housing

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

ATTACHMENTS: 1. HTC proposed development chart
2. Potential Housing Tax Credit Sites 01.14.2022

Development Name	Development Address	Non-profit	Units			Target Population	Estimated Capital Expenditure	Current Zoning
			Low Income	Market Rate	Total			
Reserve at Appleby Sand Road	2421 Appleby Sand Road		80	0	80	Elderly	\$22,000,000	R-1
Maroney Park Crossing	SWC of Maroney Dr and Kenbrook Dr	X	72	8	80	Elderly	\$13,000,000	R-1
Pinewood Crossing Apartments	SE Corner of N. University Dr. & Maroney Dr.		72	0	72	General	\$10,700,000	R-1
Pioneer Crossing	NEC of N University Dr and Maroney Dr		72	8	80	General	\$11,000,000	B-2
Pioneer Crossing for Seniors	NEC of N University Dr and Maroney Dr		72	8	80	Elderly	\$11,000,000	B-2

Potential Housing Tax Credit Sites Nacogdoches, Texas





City Council Meeting

Date: February 1, 2022

Agenda Item: 6.A.

PRESENTER: Jan Vinson, City Secretary

ITEM/SUBJECT: Consider approval of minutes from City Board Interviews on January 19, 2022 and January 25, 2022. (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
936-559-2506

ATTACHMENTS: 1. Board Interviews Minutes 011922
2. Board Interviews Minutes 012522



MINUTES
Board Interviews
Nacogdoches City Council
January 19, 2022 at 2 p.m.
City Hall
202 E. Pilar Street

PRESENT: Mayor Jimmy Mize, Council Member Kathleen Belanger, Council Member Jay Anderson and City Secretary Jan Vinson. Council Member Amelia Fischer was present via videoconference. **ABSENT:** Council Member Roy Boldon

Mayor Mize called meeting to order at 2 p.m.

Board Interview Committee, consisting of City Council Members, interviewed following applicants interested in serving on City boards/commissions:

David Zimmer
Sally Ann Swearingen
Scott Bowyer
Wendy Blount
Kathy Partin
Laura McKinney
Shelby DeWitt
Jennifer Bryant
Randy Johnson
Justin Pitcock
Rebecca Calahan
Lisa Page
Blaine Rotramel
Robin Thacker
Ricky Jones
John Calahan
Wes McKnight

No appointments were made at this meeting.

Council Member Anderson left the meeting early.

Adjourned at 6:30 p.m.

Mayor Jimmy Mize
City Council
City of Nacogdoches

ATTEST:

Jan Vinson, City Secretary



MINUTES
Board Interviews
Nacogdoches City Council
January 25, 2022 at 2 p.m.
City Hall
202 E. Pilar Street

PRESENT: Mayor Jimmy Mize, Council Member Kathleen Belanger, Council Member Jay Anderson, Council Member Roy Boldon and City Secretary Jan Vinson. Council Member Amelia Fischer was present via videoconference until 5:10 p.m.

Mayor Mize called meeting to order at 2 p.m.

Board Interview Committee, consisting of City Council Members, interviewed following applicants interested in serving on City boards/commissions:

Alisa Steed
Kelli Karczewski
Bret Arrant
Betty Jacobs
Lucinda McFarlin
Kristi Schnell
Bobby Smith
CC Conn
Miles Bradshaw
Shirley Luna
Lachanda Maxie
Colin Smith
Ida Sanders (by telephone)
Temple Rodriguez
Karen Harris
Danielle LaBauve
Travis Davis
Taylor Jones
Erin Windham

No appointments were made at this meeting.

Adjourned at 6:41 p.m.

Mayor Jimmy Mize
City Council
City of Nacogdoches

ATTEST:

Jan Vinson, City Secretary



City Council Meeting

Date: February 1, 2022

Agenda Item: 6.B.

PRESENTER: Joe Cefalu, Airport Manager

ITEM/SUBJECT: Consider approval of the Airport Advisory Board Bylaws. (Airport Manager)

SUMMARY/BACKGROUND: The Airport Advisory Board recently approved bylaws. The board had previously operated without bylaws. This document guides the standard practices of the Airport Advisory Board and includes:

- Eligibility for board service
- Attendance requirements
- Agenda setting procedures
- Standard meeting procedures

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: Guiseppe "Joe" Cefalu, Airport Manager
cefaluj@nactx.us
936-560-9567

ATTACHMENTS: 1. Final Bylaws

A. L. MANHAM JR. REGIONAL AIRPORT
BYLAWS OF THE AIRPORT ADVISORY BOARD

ARTICLE 1. NAME

The name of the board is Airport Advisory Board.

ARTICLE 2. DUTIES AND RESPONSIBILITIES

The board shall be an advisory board to City Council. It may establish its own rules and regulations for meetings and proceedings. Its recommendations may be presented to City Council as needed. The board shall advise the Airport Manager and make recommendations on the following matters:

- Master planning for use, expansion and development of the airport and its property;
- Construction, expansion, improvements, maintenance and operation of the airport;
- Consultant selection for various planning and construction projects;
- Selection of all fixed base operators and other lessees of airport property;
- Terms, conditions, duties, responsibilities, consideration and other lease provisions to be contained in all lease arrangements concerning airport property;
- Methods and matters in recruiting and creating interest at the airport;
- Planning and developing airport services and working toward general improvement of the airport as an air transportation center
- All other matters that may arise regarding the operation, facilities or services provided at the airport, and
- Airport Advisory shall serve as the Board of Adjustments where and as required by City Ordinance.

ARTICLE 3. MEMBERSHIP

- (A) The board is composed of five (5) regular and two (2) alternate members appointed by the city council.
- (B) The two (2) alternate members shall be designated at time of appointment as the “first” alternate and “second” alternate.
- (C) A member serves at the appointment and pleasure of the city council.
- (D) Board members serve for a term of two years beginning in January on the year of appointment.
- (E) To be eligible to serve as a board member, a person must be a United States of America citizen, resident of the county and not less than 21 years of age. To the extent possible, at least two members of the board must hold at least a private pilot’s license. If no applicants to serve on the board hold a private pilot’s license, then this standard shall be waived.
- (F) An individual board member may not act in an official capacity except through the action of the board.
- (G) A board member shall not receive a salary or other compensation for services as a board member.
- (H) Members shall complete Open Meetings Act Training within six (6) months of their appointment. Training as requested by the board shall be provided by the City Manager and the City Attorney or their designee.
- (I) A board member who is absent for three consecutive regular meetings or more than one-third of all regular meetings in a "rolling" twelve month timeframe automatically vacates the member's position. This does not apply to an absence due to illness or injury of the board member, an illness or injury of a board member's immediate family member, active military service, or the birth or adoption of the board member's child for 90 days after the event. The board member must notify the airport manager of the reason for the absence prior to the next

regular meeting of the board. Failure to notify the airport manager before the next regular meeting of the board will result in an unexcused absence.

- (J) A board member who seeks to resign from the board shall submit a written resignation to the chair of the board, the airport manager, or the city secretary's office. If possible, the resignation should allow for a thirty day notice so the city council can appoint a replacement.

ARTICLE 4. OFFICERS AND DUTIES

- (A) The officers of the board shall consist of a chair and a vice-chair.
- (B) Officers shall be elected annually by a majority vote of the board at the first regular meeting of the board after appointments are made, and shall take office at the adjournment of the meeting, serving one year.
- (C) In the event a current officer becomes ineligible to serve as an officer, the board may hold an emergency election as needed.
- (D) A person may not serve as an officer in a designated position of a board for more than four consecutive one year terms. A person who has served as an officer in a designated position of a board for four consecutive terms is not eligible for re-election to that designated office until the expiration of two years after the last date of the person's service in that office. The board may override the term limit provision for an officer by an affirmative vote of a super majority of the regular board members.
- (E) The chair shall preside at board meetings, represent the board at ceremonial functions, and approve each final meeting agenda.
- (F) In the absence of the chair, the vice-chair shall perform all duties of the chair.

ARTICLE 5. AGENDAS

- (A) A board member may place an item on the agenda by oral or written request to the airport manager at least seven (7) days before the meeting. After first consulting with and receiving input from the airport manager, the chair shall approve each final meeting agenda.
- (B) The airport manager shall submit the meeting agenda to the city secretary not less than 72 hours before the meeting.
- (C) Posting of the agenda must comply with Texas Government Code Chapter 551 (Texas Open Meetings Act).

ARTICLE 6. MEETINGS

- (A) The board meetings and notice of the meetings shall comply with Texas Government Code Chapter 551 (Texas Open Meetings Act).
- (B) Agenda Action: Customary procedure for addressing agenda items will be directed by the Board Chair:
 - a. Introduction. The agenda topic may be introduced by an individual who is considered knowledgeable on the topic at hand, most commonly, the Airport Manager.
 - b. Public Comment. The public may comment on the topic being considered. Due to time constraints public comment is normally limited to three (3) minutes per individual. Repetitious testimony is discouraged.
 - c. Board Discussion. The Board will discuss the item and ask questions.
 - d. Motion. The board chair shall call for a motion. A motion and a second will be made on the topic being considered, if appropriate, if possible, attempts should be made to make positive motions. If after the call for the motion, no motion is made, the item will be considered “not approved” for lack of motion, if a motion is made, but no second is made, the item will be considered “not approved” for lack of a second.
 - e. Board vote.
- (C) The board may not conduct a closed meeting without the approval of the city attorney.

- (D) The board shall meet bi-monthly. In November of each year, the board shall adopt a schedule of the meetings for the upcoming year, including makeup meeting dates for the holidays and cancelled meetings.
- (E) The chair may call a special meeting.
- (F) Three regular members constitute a quorum. In the absence of a regular member, alternate members shall act as regular members.
- (G) If a quorum for a meeting does not convene within one-half hour of the posted time for the meeting, then the meeting may not be held.
- (H) To be effective, a board action must be adopted by affirmative vote of the number of members necessary to provide a quorum.
- (I) The chair has the same voting privilege as any other member.
- (J) The board shall allow citizens to address the board on agenda items and during a period of time set aside for citizen communications. The chair may limit a speaker to three minutes.
- (K) The staff Airport Manager shall prepare the board minutes. The minutes of each board meeting must include the vote of each member on each item before the board and indicate whether a member is absent or failed to vote on an item.

ARTICLE 7. AMENDMENTS

- (A) Amendments to these bylaws must be agreed to by a majority of the board and approved by City Council.

PRESENTER: Mario Canizares, City Manager

ITEM/SUBJECT: Consider approval of appointing members to the Comprehensive Plan Advisory Committee and Downtown Master Plan Advisory Committee. (City Manager)

SUMMARY/BACKGROUND: On December 7, 2021, the City Council formally appointed several members to serve on two advisory committees to work on the Downtown Master Plan and Comprehensive Land Use Plan studies. The committees would work directly with the staff and DTJ, the consultant, throughout the study period. At the time of the appointment, staff had not provided a student representative from Stephen F. Austin State University and requested that a name would be brought forward at a later date.

Based on recommendations from professors at SFA, Taylor Talavera and Monique Villegas were recommended and applied to serve on the Comprehensive Plan Advisory Committee and the Downtown Master Plan Advisory Committee respectively. In addition, Chrystal Furniss is being recommended to serve as the replacement for Jeff Abt, who resigned from the Downtown Master Plan Advisory Committee in mid-December.

If these individuals are appointed, staff will work to get them up to speed prior to the next scheduled meetings in mid-February. Staff is recommending approval of the proposed appointments to both committees.

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. Crystal Furniss
2. Taylor Talavera
3. Monique Villegas

Online Form Submittal: Committee Appointment Application

noreply@civicplus.com <noreply@civicplus.com>
To: vinsonj@nactx.us

Fri, Jun 18, 2021 at 4:29 PM

Committee Appointment Application

Personal Information

Print and fill out

Name	Crystal Furniss
Application Date	6/18/2021
Physical Address	440 County Road 2153
Mailing Address	440 County Road 2153
Phone (Home)	9365690630
Phone (Cellular)	9365545125
Email Address	cefurniss@aol.com

(Section Break)

Business Information (if retired or unemployed, write N/A)

Business Name	D-BAT Arlington
Occupation	Owner/General Manager
Business Address	921 W. Mayfield Rd. Suite 112, Arlington, TX 76015
Phone (Office)	8176683228

(Section Break)

Place a checkmark by the committee you'd like to serve on:

Are you eligible to vote?	Yes
---------------------------	-----

Do you, your spouse, or your employer have any financial interest, (direct or indirect) in the following? 1) In any contract with the City of Nacogdoches? 2) Regarding the sale of land, materials, supplies, or services to the City of Nacogdoches? Please explain:	No, we have no financial interest regarding the City of Nacogdoches.
--	--

In the space provided below, please briefly (1000 characters max) answer the following: Why are you interested in serving on this committee? What will make you a good committee member? (Include any special knowledge, education, and experience.) Have you served on a City-appointed board before? If yes, which ones and for how long? Please list any other leadership activities you have participated in. If more space is needed, please attach additional information.	I am interested in serving on this committee so that I may help positively impact choices made regarding the City of Nacogdoches and the downtown area. My service to the Nacogdoches Historical Foundation, my commitment to the historical preservation and betterment of the City of Nacogdoches, as well as my leadership and teamwork skills will make me a good committee member. I have not served on a City-appointed board. Leadership Activities: Nacogdoches Heritage Heralds Vice-President Nacogdoches Heritage Heralds President Nacogdoches Heritage Heralds Escort Committee Chair Nacogdoches Historical Foundation Member Nacogdoches Heritage Festival Co-Chairman Junior Forum of Nacogdoches
Education and areas of interest: Please attach résumé or additional information if more space is needed.	Nacogdoches High School Graduate 1995 Bachelor of Science in Zoology from Louisiana State University 1999
Resume: (Optional)	<i>Field not completed.</i>
For questions contact the City Secretary at 936-559-2506. Printed applications can be emailed to vinsonj@nactx.us or delivered to City Hall, 202 East Pilar Street, Room 320, Nacogdoches, Texas 75961.	
By Clicking Submit, I certify the answers I have provided are true and correct to the best of my knowledge and belief, and I agree any misrepresentation or omission of fact may result in disqualification from serving.	

[Quoted text hidden]

Application for
Committee Appointment



Applications will be accepted until 5 p.m. on June 25, 2021.
Thank you for your interest in serving the City of Nacogdoches.

Personal Information

Name _____ Application Date _____
Physical Address _____
Mailing Address _____
Phone (H) _____ Phone (C) _____
Email _____

Business Information (if retired or unemployed, write N/A)

Business Name _____ Occupation _____
Business Address _____
Phone (O) _____

Place a checkmark by the committee you'd like to serve on:

_____ Comprehensive Plan _____ Downtown Master Plan

Are you eligible to vote? (yes or no) _____

Do you, your spouse, or your employer have any financial interest, (direct or indirect) in the following?

1) In any contract with the City of Nacogdoches? 2) Regarding the sale of land, materials, supplies, or services to the City of Nacogdoches? Please explain:

In the space provided below, please briefly (1000 characters max) answer the following: Why are you interested in serving on this committee? What will make you a good committee member? (Include any special knowledge, education, and experience.) Have you served on a City-appointed board before? If yes, which ones and for how long? Please list any other leadership activities you have participated in. If more space is needed, please attach additional information.

Education and areas of interest: Please attach résumé or additional information if more space is needed.

I certify the answers I have provided are true and correct to the best of my knowledge and belief, and I agree any misrepresentation or omission of fact may result in disqualification from serving.

Signature

Date

For questions contact the City Secretary at 936-559-2506. Printed applications can be emailed to vinsonj@nactx.us or delivered to City Hall, 202 East Pilar Street, Room 320, Nacogdoches, Texas 75961.

Application for
Committee Appointment



Applications will be accepted until 5 p.m. on June 25, 2021.
Thank you for your interest in serving the City of Nacogdoches.

Personal Information

Name _____ Application Date _____
Physical Address _____
Mailing Address _____
Phone (H) _____ Phone (C) _____
Email _____

Business Information (if retired or unemployed, write N/A)

Business Name _____ Occupation _____
Business Address _____
Phone (O) _____

Place a checkmark by the committee you'd like to serve on:

_____ Comprehensive Plan _____ Downtown Master Plan

Are you eligible to vote? (yes or no) _____

Do you, your spouse, or your employer have any financial interest, (direct or indirect) in the following?
1) In any contract with the City of Nacogdoches? 2) Regarding the sale of land, materials, supplies, or
services to the City of Nacogdoches? Please explain:

In the space provided below, please briefly (1000 characters max) answer the following: Why are you interested in serving on this committee? What will make you a good committee member? (Include any special knowledge, education, and experience.) Have you served on a City-appointed board before? If yes, which ones and for how long? Please list any other leadership activities you have participated in. If more space is needed, please attach additional information.

Education and areas of interest: Please attach résumé or additional information if more space is needed.

I certify the answers I have provided are true and correct to the best of my knowledge and belief, and I agree any misrepresentation or omission of fact may result in disqualification from serving.

Signature

Date

For questions contact the City Secretary at 936-559-2506. Printed applications can be emailed to vinsonj@nactx.us or delivered to City Hall, 202 East Pilar Street, Room 320, Nacogdoches, Texas 75961.



City Council Meeting

Date: February 1, 2022

Agenda Item: 6.D.

PRESENTER: Jan Vinson, City Secretary

ITEM/SUBJECT: Consider approval of a resolution calling the regular election of City Council Members for the Southeast Ward and Southwest Ward in and for the City of Nacogdoches, Texas. (City Secretary)

SUMMARY/BACKGROUND: The Regular Election will be held on Saturday, May 7, 2022 to elect Southeast Ward Council Member and Southwest Ward Council Member. The filing period for this election is January 19, 2022 through February 18, 2022. Early voting will be conducted at the Nacogdoches County Courthouse Annex in the Nacogdoches County Elections Office located at 203 West Main Street, Nacogdoches, Texas 75961. Early voting is April 25 through April 29, 2022, from 8 a.m. to 5 p.m. and May 2 through May 3, 2022, from 7 a.m. to 7 p.m.

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

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: Jan Vinson, City Secretary
vinsonj@nactx.us
936-559-2506

ATTACHMENTS:

1. Resolution Calling Election 2022(English)
2. Resolution Calling Election 2022(Spanish)

RESOLUTION CALLING THE REGULAR ELECTION OF COUNCIL MEMBERS FOR THE SOUTHEAST WARD AND SOUTHWEST WARD IN AND FOR CITY OF NACOGDOCHES, TEXAS.

BE IT RESOLVED BY THE CITY OF NACOGDOCHES, TEXAS:

I.

THAT a municipal election be held in the City of Nacogdoches, Texas, on Saturday, May 7, 2022 with polls open from 7:00 a.m. to 7:00 p.m. for the election of two (2) members of City Council, being Council Member Southeast Ward and Council Member Southwest Ward to succeed those Council Members whose terms expire when their successor is duly elected and qualified at a meeting of City Council following the date of the election.

II.

THAT applications shall be accepted in the office of the City Secretary, 202 E. Pilar Street, Room 320, beginning January 19 through February 18, 2022 from 8 a.m. to noon and 1 p.m. to 5 p.m. for said positions.

III.

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

IV.

THAT Early Voting by personal appearance for this May 7, 2022 City Council Election will be conducted Monday, April 25, 2022 through Friday, April 29, 2022 from 8:00 a.m. to 5:00 p.m. daily, and Monday, May 2, 2022 through Tuesday, May 3, 2022 from 7:00 a.m. to 7:00 p.m. daily at Nacogdoches County Elections Office located at 203 West Main Street, Nacogdoches, Texas 75961.

V.

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

PASSED AND APPROVED this the 1st day of February 2022.

Jimmy Mize, Mayor
City of Nacogdoches

ATTEST:

Jan Vinson, City Secretary

Approved as to form:

Steven Kirkland, City Attorney

UNA RESOLUCIÓN CONVOCANDO LA ELECCIÓN REGULAR DE COMISIONADOS PARA EL DISTRITO SURESTE (SOUTHEAST), Y EL DISTRITO SUROESTE (SOUTHWEST), EN Y PARA LA CIUDAD DE NACOGDOCHES, TEXAS.

RESUÉLVASE POR LA CIUDAD DE NACOGDOCHES, TEXAS:

I.

QUE una elección municipal sea llevada a cabo en la Ciudad de Nacogdoches, Texas, el Sábado 7 de Mayo, 2022, con las casillas electorales abiertas de 7:00 AM a 7:00 PM para la elección de dos (2) miembros de Comisionados de la Ciudad, siendo los puestos: Comisionado del Distrito Sureste (Southeast), y el Comisionado del Distrito Suroeste (Southwest) para suceder a aquellos comisionados cuyos términos expirarán cuando su sucesor sea debidamente elegido y calificado durante una reunión de los Comisionados de la Ciudad después de la fecha de elecciones.

II.

QUE las solicitudes para dichos puestos serán aceptadas en la Oficina de la Secretaria de la Ciudad, ubicada en el 202 E. Pilar Street, Sala 320, entre el 19 de Enero y el 18 de Febrero, 2022 de 8:00 AM a Mediodía y de 1:00 PM a 5:00 PM.

III.

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

IV.

QUE la votación anticipada por presentación personal para esta Elección de Comisionados de Distrito de la Ciudad, este 7 de Mayo, 2022 será llevada a cabo del Lunes 25 de Abril, 2022 al Viernes 29 de Abril, 2022, cada día entre las 8:00 AM y 5:00 PM, y el Lunes 2 de Mayo, 2022 al Martes 3 de Mayo, 2022, cada día de 7:00 AM a 7:00 PM en la Oficina de Elecciones del Condado Nacogdoches ubicada en el 203 West Main Street, Nacogdoches, Texas 75961.

V.

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

PASADA Y APROBADA este día 1 del mes de Febrero 2022.

Jimmy Mize, Alcalde
City of Nacogdoches

DAN FE:

Jan Vinson, secretaria de la Ciudad

Aprobada en su forma:

Steven Kirkland, Abogado de la Ciudad



City Council Meeting

Date: February 1, 2022

Agenda Item: 6.E.

PRESENTER: Steve Bartlett, Public Works Director

ITEM/SUBJECT: Consider approval of revision to a previously approved 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 hangers in the area, including HCH Aviation hosting the SFA flight school.

Revision of the easement consists of a minor alteration to the alignment to accommodate field conditions.

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: Guiseppe "Joe" Cefalu, Airport Manager
cefaluj@nactx.us
936-560-9567

ATTACHMENTS: 1. Revised Oncor Easement 1/25/22

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

EASEMENT AND RIGHT OF WAY

STATE OF TEXAS §
 § KNOW ALL MEN BY THESE PRESENTS:
COUNTY OF NACOGDOCHES §

That , **Mario Canizares, City Manager of 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 poles, guys, anchors, wires and cables, supporting structures, surface mounted equipment, transformers, switchgears, auto-transformers, conduits, manholes, vaults, 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, 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.

Grantor represents and warrants that it does not meet any of the ownership, control, or headquarters criteria listed in Lone Star Infrastructure Protection Act, Chapter 113 of the Texas Business & Commerce Code, as added by Act of June 18, 2021, 87th Leg., R.S., Ch. 975 (S.B. 2116) (relating to China, Iran, North Korea, Russia, and any other country designated by the Texas governor as a threat to critical infrastructure).

EXECUTED this _____ day of _____, 2022.

By: City of Nacogdoches

Printed Name: Mario Canizares, City Manager

STATE OF TEXAS §
 §
COUNTY OF NACOGDOCHES §

BEFORE ME, the undersigned authority, on this day personally appeared Mario Canizares, City Manager of City of Nacogdoches, 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.

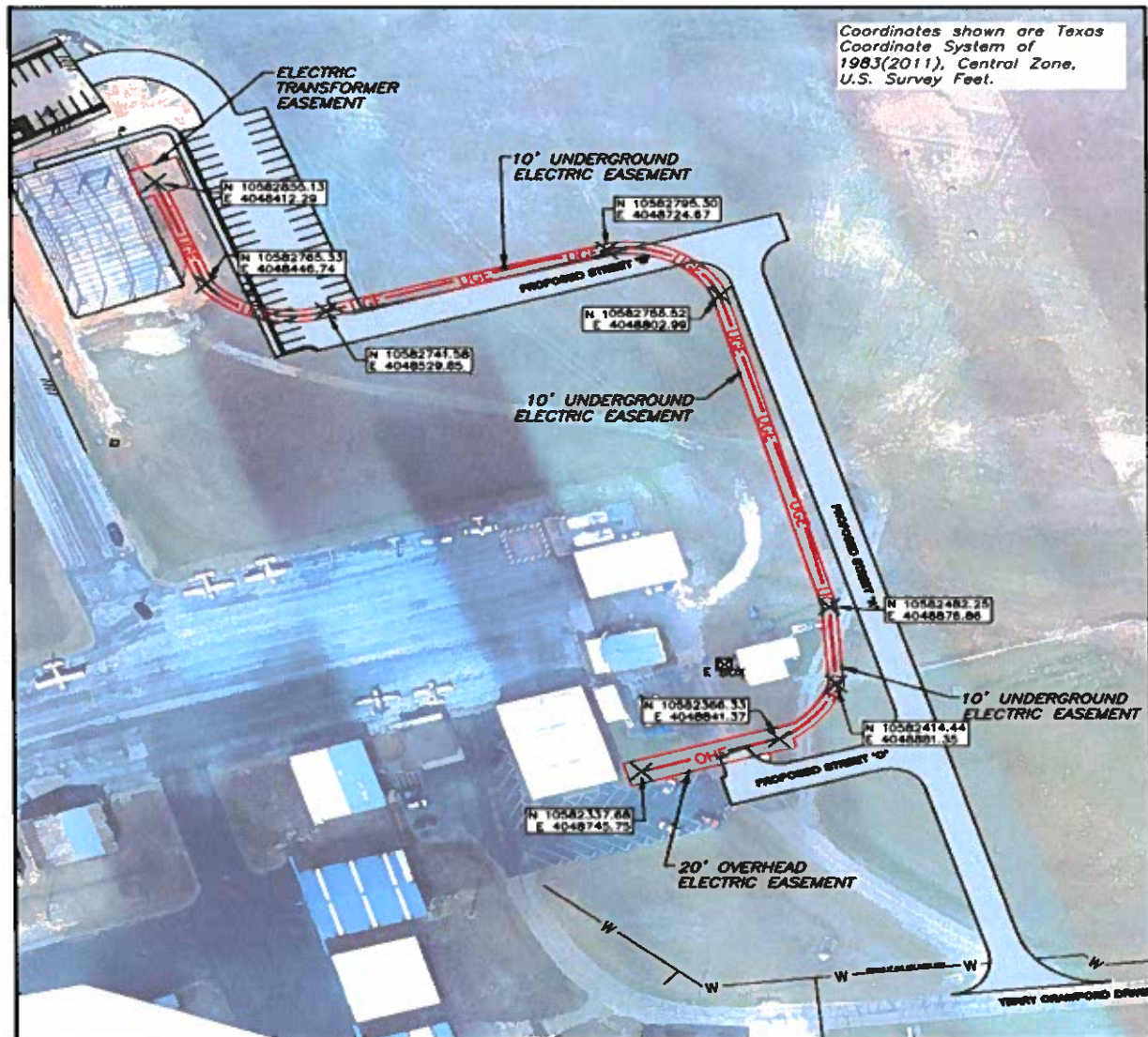
GIVEN UNDER MY HAND AND SEAL OF OFFICE this _____ day of _____, A.D. 2022.

Notary Public in and for the State of Texas



ONCOR ELECTRIC DELIVERY

"EXHIBIT A"



Legend

-  Existing Power Line
-  Boundary Line
-  Denotes Easement
Easement Width 10 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



City Council Meeting

Date: February 1, 2022

Agenda Item: 6.F.

PRESENTER: Brian Bray, Community Services Director

ITEM/SUBJECT: Consider a donation of \$29,784.00 from the Charles and Lois Marie Bright Foundation and budget amendment for construction of a new Disc Golf Course at Lake Nacogdoches West Park. (Community Services Director).

SUMMARY/BACKGROUND: One of the top items in the Parks Master Plan is to improve disc golf courses and make Nacogdoches even more attractive for hosting disc golf tournaments and drawing other enthusiasts. With the assistance of the local disc golf club, Crushers, a new course was laid out at Lake Nacogdoches West Park. We were able to clear the fairways and purchase baskets in the fall of 2021. If the donation from the Charles and Lois Marie Bright Foundation is accepted, we will be able to pour concrete T-pads and purchase directional signs for the course. If approved, staff anticipates the course will be open to the public by the summer of this year.

FINANCIAL:

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

Account No.: 01.559.70

Account Name: General Fund Donation Revenue

Amount: 29,784.00

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

Account No.: 01.86.680.40

Account Name: General Fund Reserves Parks Capital

Amount: 39,000.00

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

Infrastructure

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

ATTACHMENTS: 1. Budget Amendment Ordinance

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 Crushers submitted a grant request to the Charles and Lois Marie Bright Foundation; and

WHEREAS, these funds would be used to construct a new disc golf course at Lake Nacogdoches West Park; and

WHEREAS, with the adoption of this ordinance, the City is authorized to accept funding assistance from the Charles and Lois Marie Bright Foundation in the amount of \$29,784; and

WHEREAS, with the adoption of this ordinance, the Parks Department is authorized to expend a total of \$39,000 for completion of the Lake Nacogdoches disc golf course.

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 and payment of capital outlays of the city government of the City of Nacogdoches as follows:

Fund	Dept.	Acct.	Department	Description	Amt.
01		559.70	General Fund Donation Revenue	Bright Foundation Donation	\$29,784
01	86	680.40	General Fund Reserves Parks Capital	Lake Nacogdoches Disc Golf Course	\$39,000

PASSED AND APPROVED this the ____ day of _____.

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



City Council Meeting

Date: February 1, 2022

Agenda Item: 7.A.

PRESENTER: Sherry Morgan, Executive Director at Nacogdoches Convention & Visitors Bureau

ITEM/SUBJECT: Receive End of Year Report from Visit Nacogdoches. (Convention and Tourism Director)

SUMMARY/BACKGROUND: This report will cover operations, marketing, hotel occupancy, events and digital analytics for Fiscal Year Ending 2021 in accordance to the contract of services entered into between the City of Nacogdoches and the Nacogdoches Convention and Visitors Bureau (Visit Nacogdoches).

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: Sherry Morgan, Convention and Tourism Director
sherry@visitnacogdoches.org
936-564-7351

ATTACHMENTS: 1. PowerPoint Presentation



END OF YEAR

SUMMARY *in* NUMBERS





Visit Nacogdoches

Staff: Sherry Morgan, Joanna Temple, Mike Bay, Ashley Morgan, Cheryl Bartlett

Board of Directors: Chay Rees, Damon Ruckel, Wanda Mouton, John McLaren, Sarah Drake, Larry King, Alex Ranc



Chay
Rees



Damon
Ruckel



Wanda
Mouton



John
McLaren



Sarah
Drake



Larry
King



Alex
Ranc

01 GOALS CHECKLIST



GOAL 1

Increase Hotel Occupancy

50%

51.6%



GOAL 2

Increase Social Media following

25K ^

^ 19.9K



GOAL 3

Increase VisitNac.com visits

300K

373,861



GOAL 4

Increase Visit Nac app usage

50% ^

^ 114%



GOAL 5

Increase Number of Volunteers

50

30



01 GOALS CONT.



			
GOAL 6 Increase Visitor Center Foot Traffic	6K	8.6K	✓
GOAL 7 Increase Requests for Information	1,000	988	✗
GOAL 8 Increase & Encourage Travel Reviews	25% ^	^ 5%	✗
GOAL 9 Increase Number & Frequency of Music and Cultural Events	25% ^	^ 33%	✓
GOAL 10 Increase Total Digital Impressions	500K	1.86 MILLION	✓

02 MAIN ACTIVITIES

Our main activities this year were...



- 01 Marketed through shutdowns due to Covid
- 02 Broadened Scope of Work to include Special Events Permitting for City
- 03 Attended TACVB Annual Conference in Conroe
- 04 Initiated regional collaborations with Lufkin

03 KEY EVENTS TIMELINE

Event 2

Nac @ Nite Drive In
Movies at A.L.
Mangham Airport
began

DEC

OCT

Event 1

Start of new fiscal
year. Launched
community-focused
initiatives to
address cabin fever

MAR

Event 3

Accounted for
damage to Azalea
Trail season resulting
from winter weather
events

03 KEY EVENTS TIMELINE

Event 5

Full Moon Summer
Concert Series
begins

Event 6

Return of Blueberry
Festival

Event 9

New slate of
officers for Board
and Love Letters to
Nac book
published. Hosted
Regional
Collaboration
Summit for future
Lufkin/Nac collabs

MAY

JUNE

SEP

APR

JULY

AUG

Event 4

Took on Special
Events Permitting
for City of
Nacogdoches

Event 7

Board vacancies
filled

Event 8

Attended TACVB.
Brought home 3
awards.

04 HIGHLIGHTS OF 2020/21



^23%

Tourism Recovery



Collaboration

Hosted Lufkin tourism stakeholders in Nac for a summit on regional collaboration



Music
& Film

Created effective and successful concert model.
Met with one film site selector

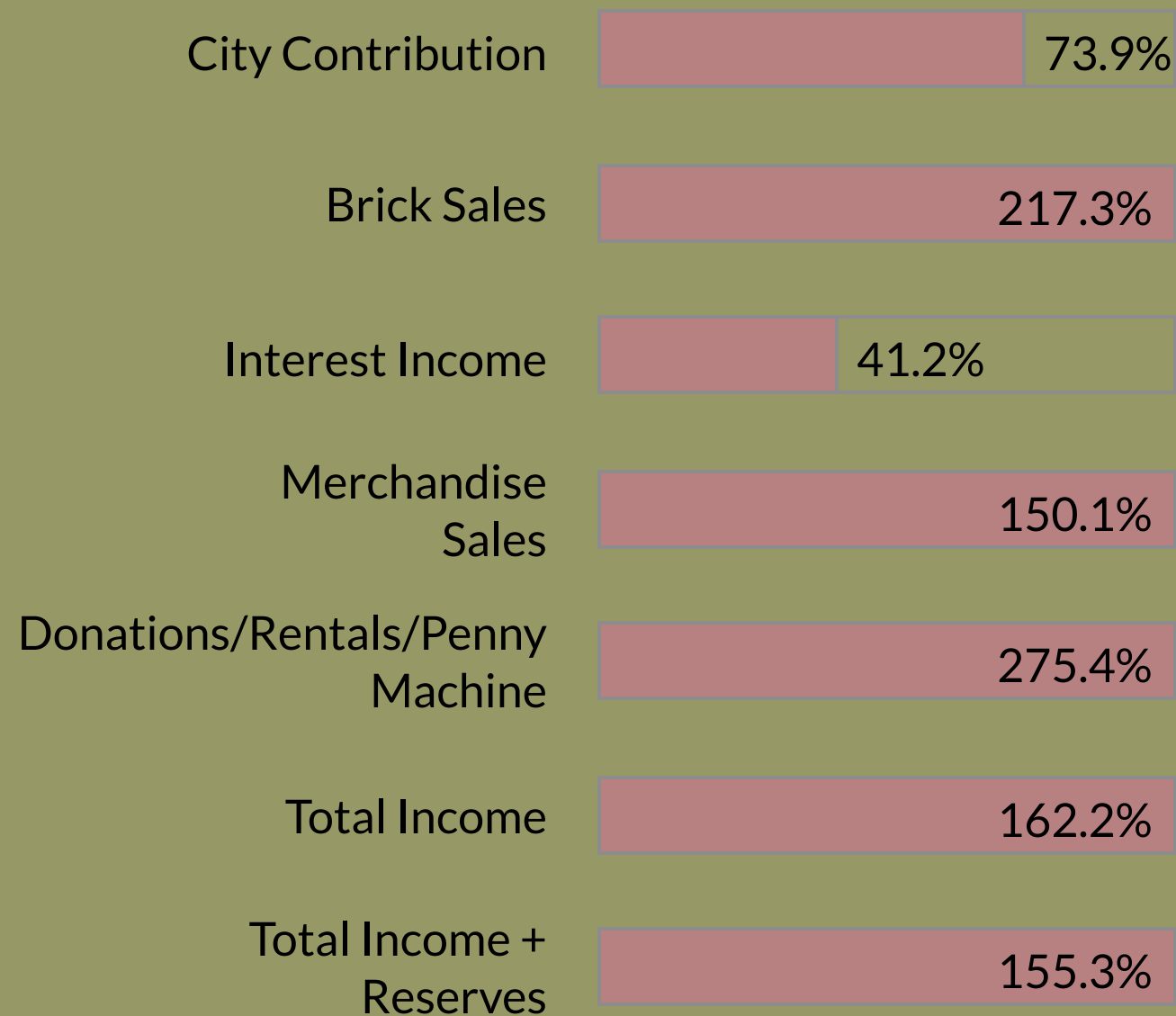


Story
Keepers

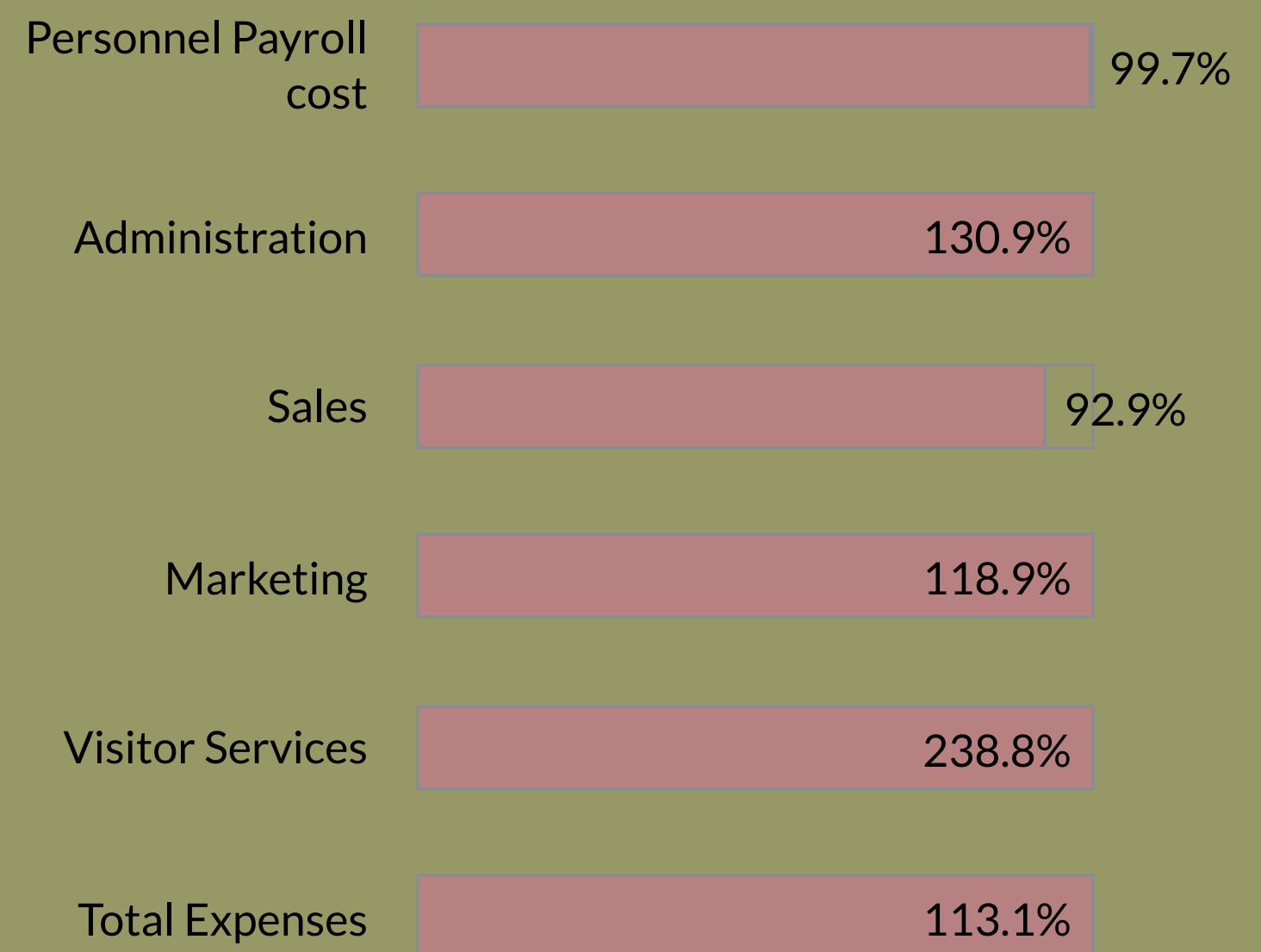
Published 2 books:
Love Letters to Nac &
Visit Nac Cookbook

Budget Overview

2021 Income



2021 Expenses



Special Event Breakdown

1 Medium Sized Events

14 medium sized events from April 2021

2 Large Sized Events

6 large scale events from April 2021

3 Other/Park Events

The majority of events fell under this category at 58

Print Insertions & Messaging Using Hancock Agency

Nov 2020 - Texas Monthly full page - "A Ride to Remember"

Nov 2020 - Texas Highways 1/3 pg vertical - "A Ride to Remember"

Mar 2021 - Texas Monthly full page - "New Blooms Opening Daily"

Apr 2021 - Texas Highways 1/3 pg vertical - "New Blooms Opening Daily"

May 2021 - Texas Monthly full page - "Biggest Blues in Texas"

Jun 2021 - Texas Highways 1/3 pg vertical - "Biggest Blues in Texas"

Jul 2021 - Texas Monthly full page - "Pining for Summer Refreshment"

2021 Texas State Travel Guide 1/3 pg vertical - "No Garden Variety Getaway"

Spring Sawdust full page - "Road Trip Back"

Fall Sawdust full page - "Nothing's Better"

Print Insertions & Messaging Performed In-House

Co-Op Ad with Palestine & Tyler in Texas Monthly March 2021

Southern Travel in May/Jun, July/Aug & Sept/Oct 2021

Food & Travel - Fall 2021

November/December 2021 Manor House Group/Adamo Nest Magazine (Canada)



THANK YOU!



City Council Meeting

Date: February 1, 2022

Agenda Item: 7.B.

PRESENTER: Sherry Morgan, Executive Director at Nacogdoches Convention & Visitors Bureau

ITEM/SUBJECT: Receive report on status of special events from Convention and Visitors Bureau. (Convention and Tourism Director)

SUMMARY/BACKGROUND: In 2021, the scope of work for the Nacogdoches Convention and Visitors Bureau broadened to include both the permitting of Special Events for the City of Nacogdoches as well as the planning and execution of select Special Events. This report will point out the size, type, marketing pillar, and estimated economic impact of past events in 2021 as well as inform regarding forecasted events for 2022.

FINANCIAL:

No financial impact associated with this item

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

Community Engagement/Diverse Environment

CITY CONTACT: Sherry Morgan, Convention and Tourism Director
sherry@visitnacogdoches.org
936-564-7351

ATTACHMENTS: 1. PowerPoint Presentation



City of Nacogdoches Special Events Breakdown

FEB 1, 2022



Prepared by:
Sherry Morgan, Joanna Temple, and Ashley Morgan

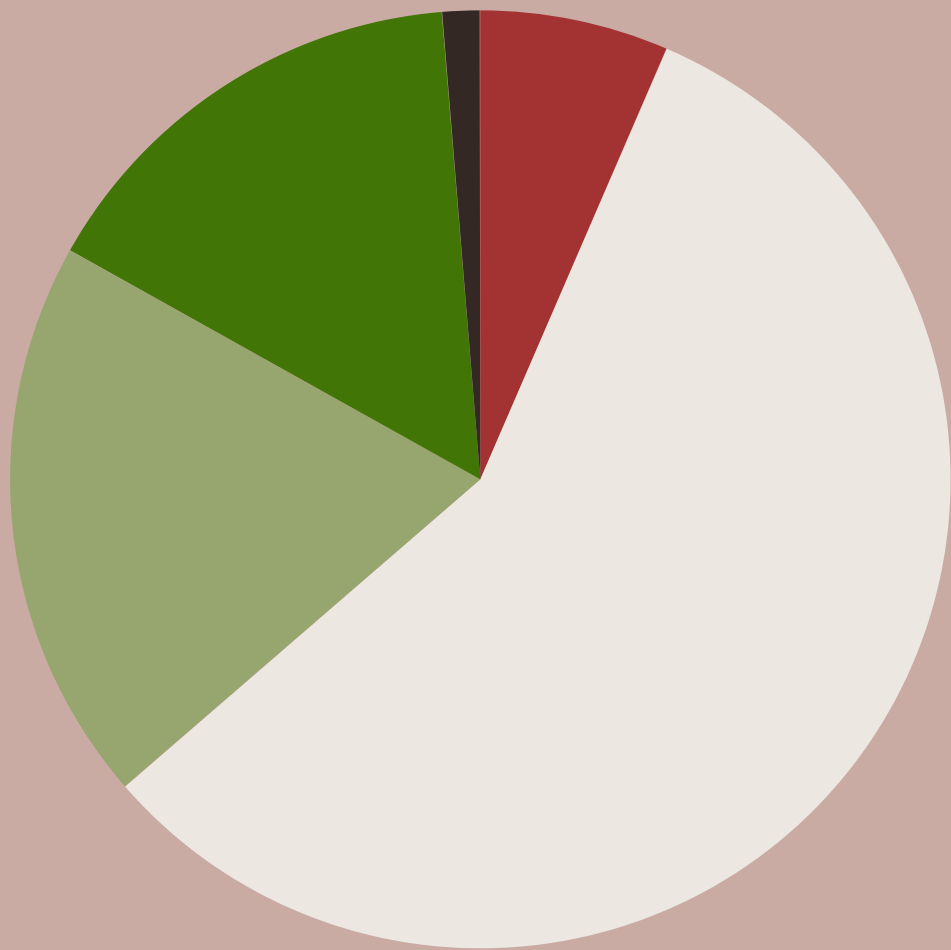
2021 Permitted* Special Events

2021 Permitted Special Events
Size Breakdown



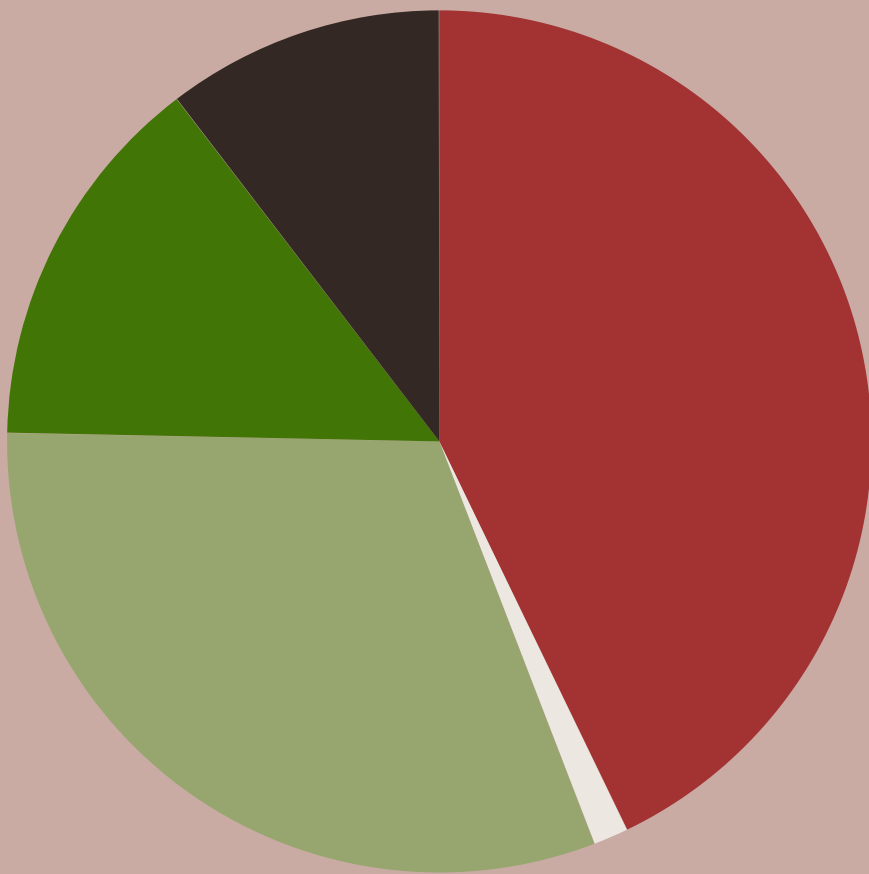
- SMALL (1-249) (58.44%)
- MEDIUM (250-500) (16.88%)
- LARGE (500+) (24.68%)

2021 Permitted Special Events
Type Breakdown



- MUSIC (6.49%)
- FAMILY (19.48%)
- PRIVATE (1.3%)
- COMMUNITY (57.14%)
- CULTURAL (15.58%)

2021 Permitted Special Events
Marketing Pillar Breakdown



- ARTS/CULTURE (42.86%)
- UNIQUE SHOPPING (1.3%)
- OUTDOORS (31.17%)
- MEETINGS (14.29%)
- HISTORY (10.39%)

2021 Permitted* Special Events

Permitted Events*	Total Cost Incurred	Avg CPE
77	≈ \$46,051.88	≈ \$598

Incidental costs include man hours, refuse, barriers, asset preparation, security, etc. When possible, costs are passed on to permit holder.

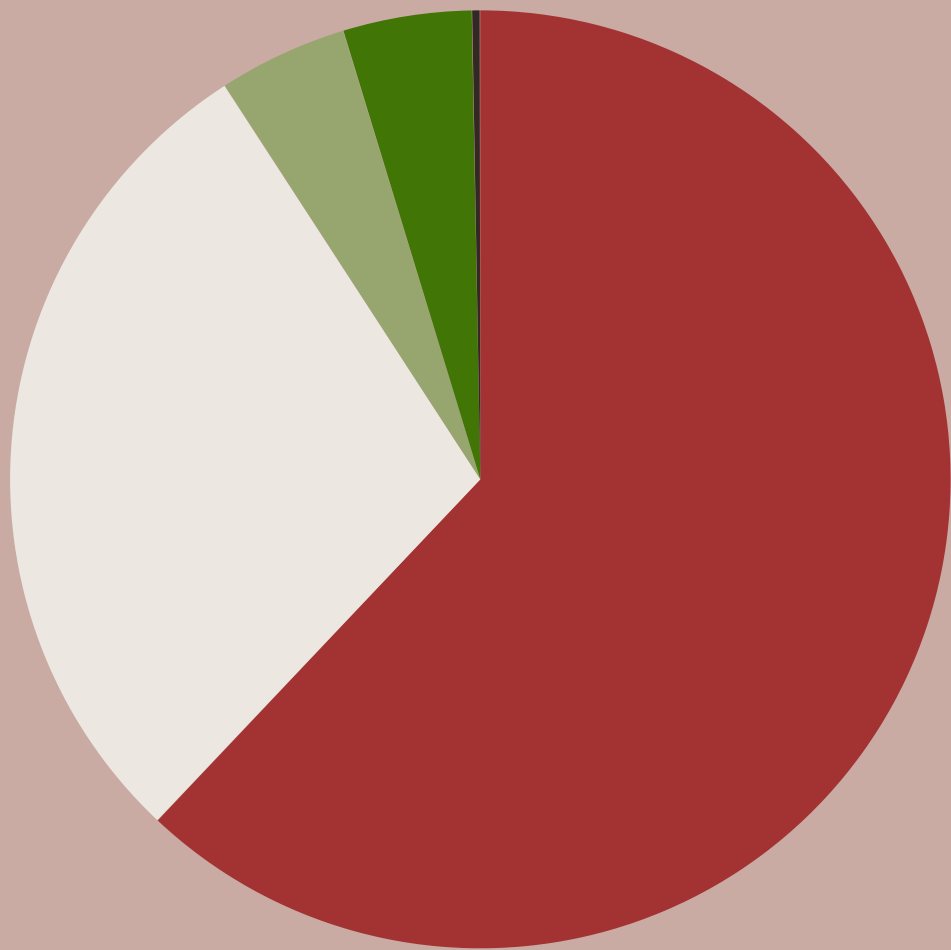
2022 Anticipated Special Events

2022 Anticipated Special Events
Size Breakdown



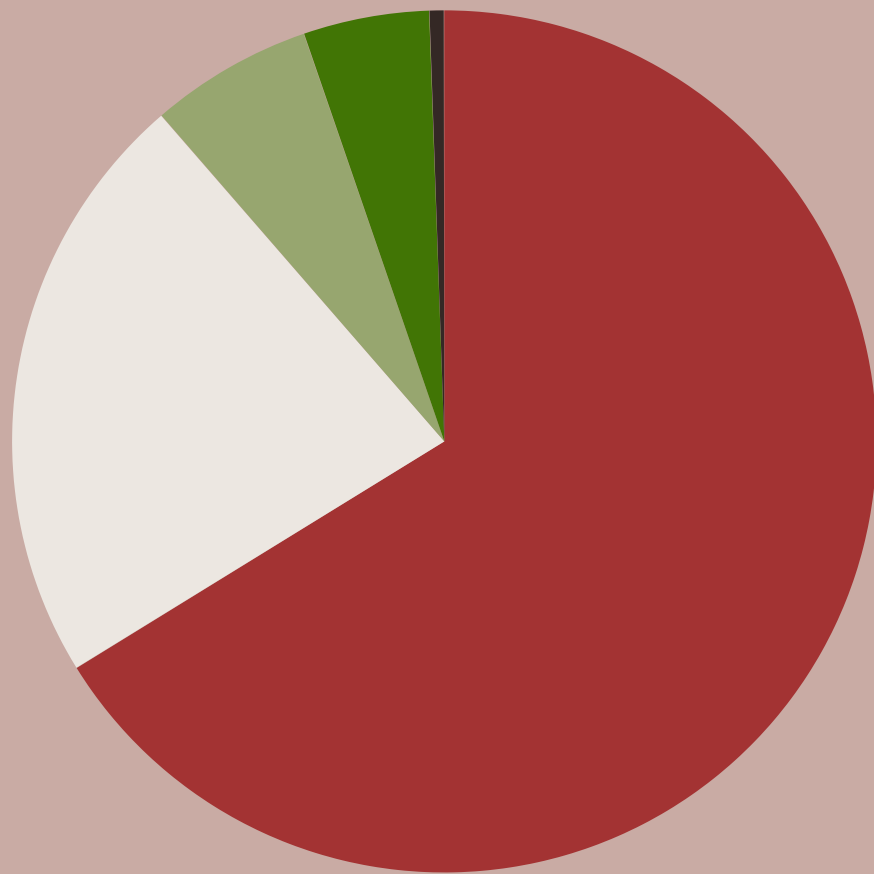
- SMALL (1-249) (59.78%)
- MEDIUM (250-500) (29.48%)
- LARGE (500+) (10.74%)

2022 Anticipated Special Events
Type Breakdown



- MUSIC (62.05%)
- COMMUNITY (28.81%)
- FAMILY (4.43%)
- CULTURAL (4.43%)
- PRIVATE (0.28%)

2022 Anticipated Special Events
Marketing Pillar Breakdown



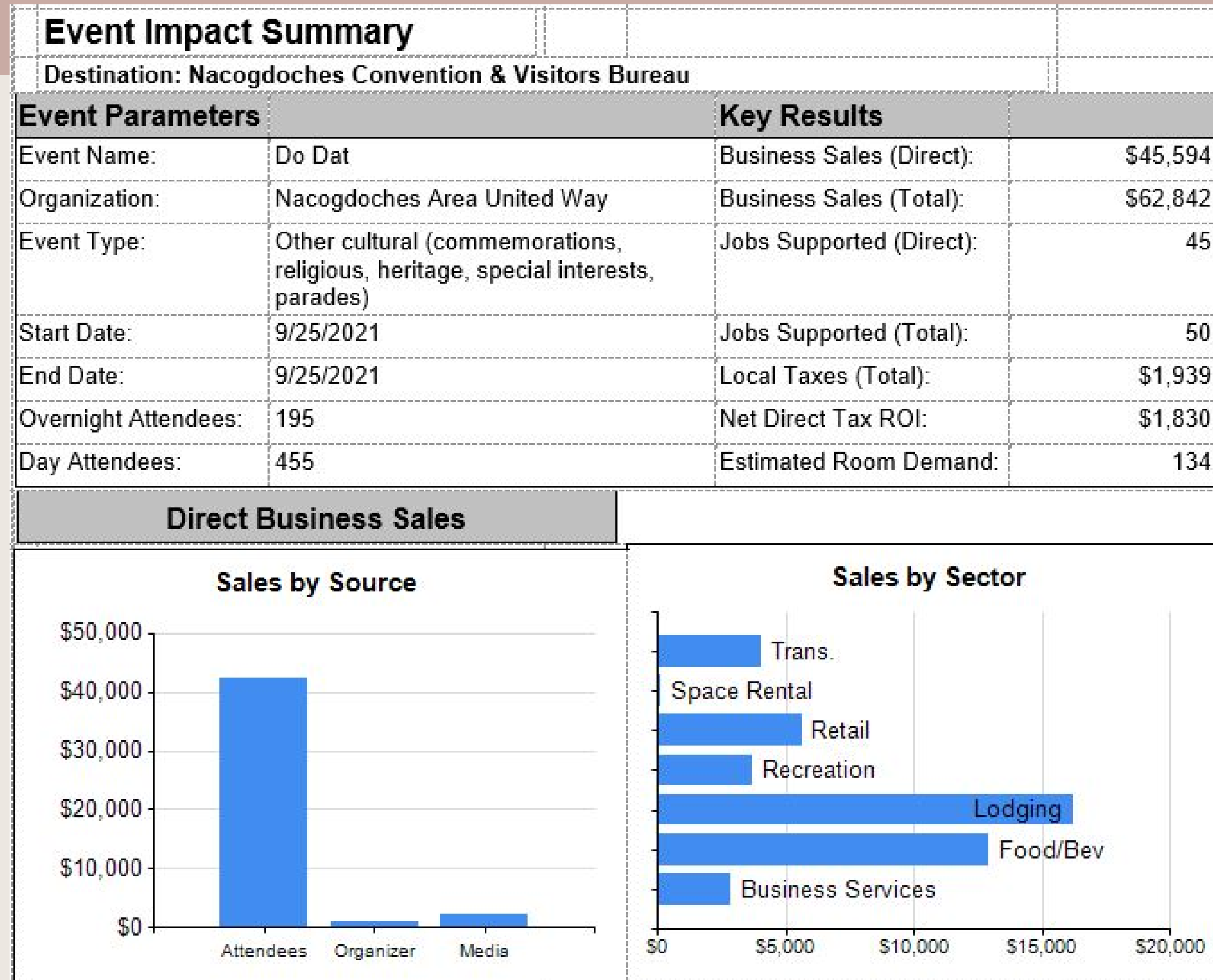
- ARTS/CULTURE (66.2%)
- UNIQUE SHOPPING (22.44%)
- OUTDOORS (6.09%)
- MEETINGS (4.71%)
- HISTORY (0.55%)

2022 Anticipated Special Events

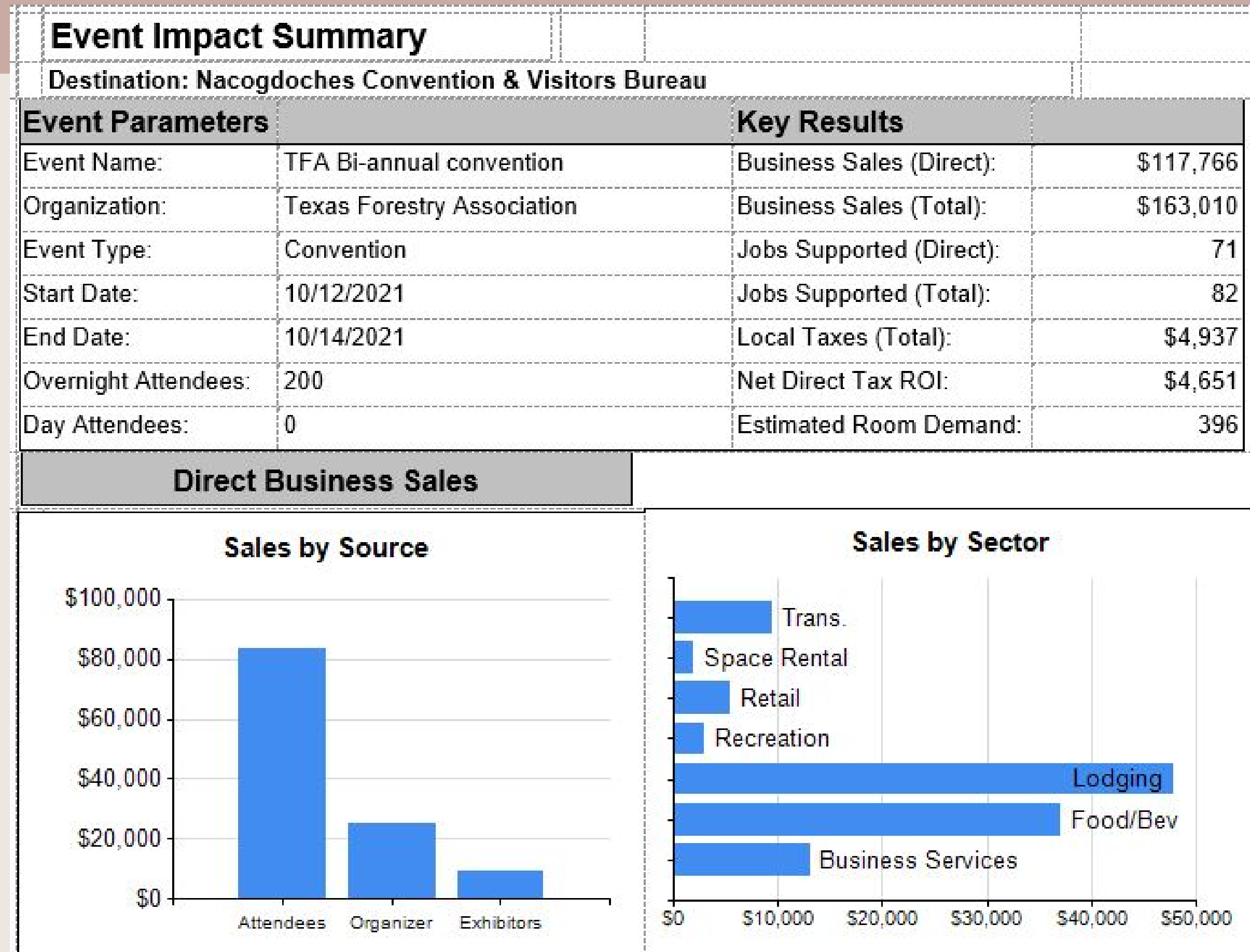
Anticipated Permitted Events	County Expo Events	SFA Athletics
361	31	342

The Expo Center staff enters their events on to our calendar. SFA has several different programming calendars from several different departments and divisions. We chose Athletics for comparison due to its inherent consistency.

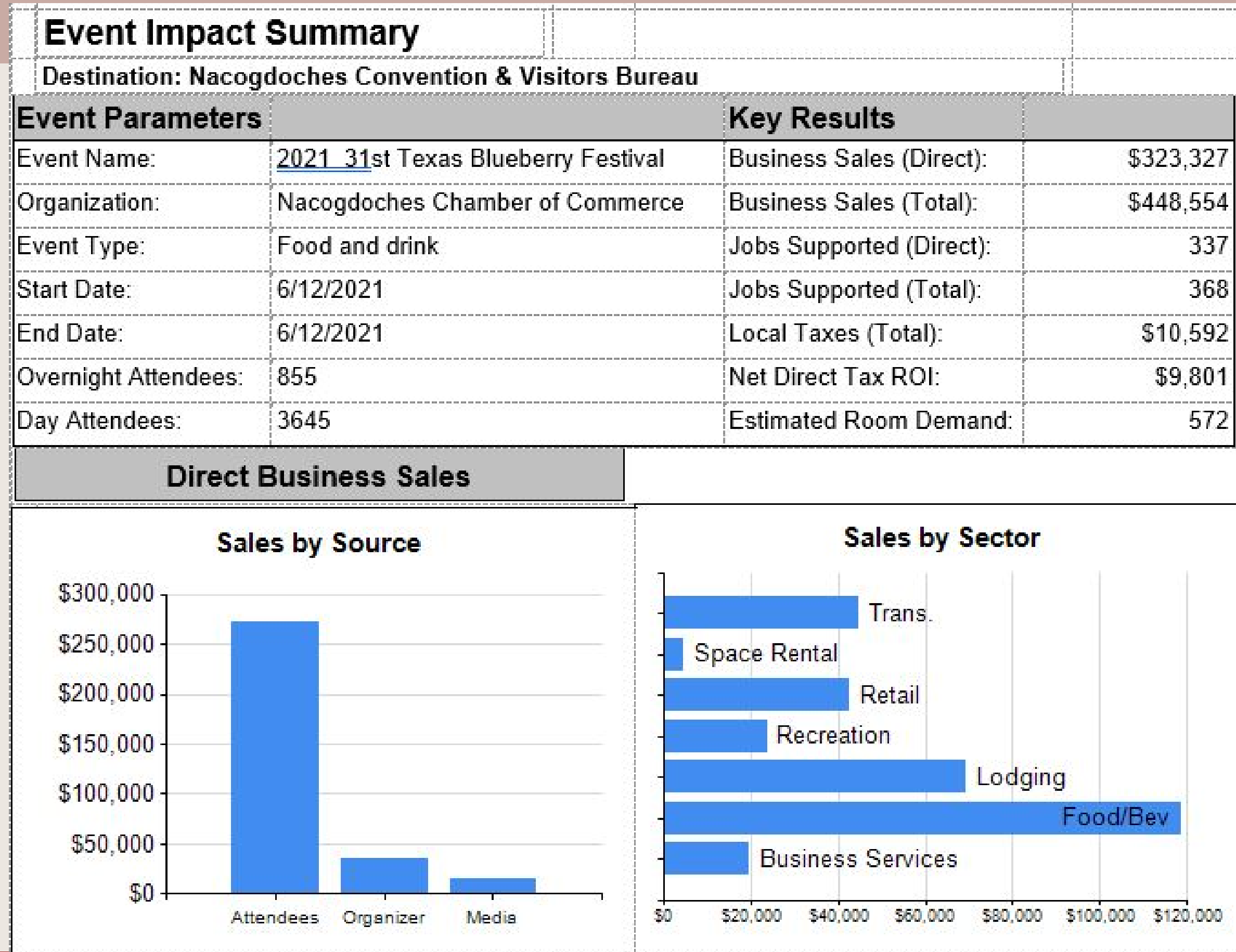
Sample Estimated Economic Impact Studies



Sample Estimated Economic Impact Studies



Sample Estimated Economic Impact Studies



Key Directives for Special Events



Build diversity in Special Events:

Pay attention to how closely our event offerings align with the needs and makeup of our community as well as the expectations, education, and interests of our visitors and guests.



Save time and costs:

Seek out efficient cost-cutting measures as well as potential sources of funding for programming.



Align complimentary events:

Aligning like events on sequential days helps save money and potentially generates more hotel occupancy tax and sales tax revenues.



Collect, save, and store data:

Collect meaningful data that can be shared to strengthen ROI and measure KPI. Create and keep to clear, concise, and consistent information flows between all contributing departments and parties.



Between the Pines Lufkin Collaboration:

Continue to look for ways in which to collaborate with Lufkin in order to diversify our audience as well as share in costs while marketing our region.

PRESENTER: Jessica Sowell, Community Services Asst Director

ITEM/SUBJECT: Consider resolution closing East Main Street for the Old Town Rig Down event, September 16, 2022 through September 18, 2022. (Community Services Assistant Director).

SUMMARY/BACKGROUND: September 16 - 18th, Downtown Nacogdoches will welcome the Old Town Rig Down truck show. This new event, which will span 3 days, will feature custom 18 wheeler trucks on display, vendors, food, an evening light show, shopping and a concert in Festival Park. An anticipated 100 trucks will be parked Downtown between North Street and Mound Street and will draw a large crowd from across the state. Money raised through vendor fees and auctions will be donated back to local Nacogdoches groups.

The Old Town Rig Down promoters, Main Street staff and Convention & Visitors Bureau staff presented the event at the January 13th Main Street Merchant Meeting. The merchants in attendance were excited about the event and approved of it. City staff and event planners are looking at alternate transportation and parking for event patrons and downtown store employees.

For this event, East Main Street will be closed from the intersection at North Street to the intersection at Mound Street. In order to do this, City Council must pass a resolution to temporarily close East Main Street which will be included in the Agreement for the Temporary Closure of State Right of Way with TXDOT (attached). East Main will be closed, if approved, from 8am on Friday, September 16th and re-open at 12 noon on Sunday, September 18th.

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

CITY CONTACT: Jessica Sowell, Community Services Assistant Director
sowellj@nactx.us
936-559-2940

ATTACHMENTS:

1. TxDOT Agreement for Temporary Closure
2. Agreement Exhibit B - Resolution
3. Agreement Exhibit C - Map

STATE OF TEXAS §
COUNTY OF TRAVIS §

AGREEMENT FOR THE TEMPORARY CLOSURE OF STATE RIGHT OF WAY

THIS AGREEMENT is made by and between the State of Texas, acting by and through the Texas Department of Transportation, hereinafter called the “State,” and the City of NACOGDOCHES, a municipal corporation, acting by and through its duly authorized officers, hereinafter called the “local government.”

W I T N E S S E T H

WHEREAS, the State owns and operates a system of highways for public use and benefit, including State Highway 21, in Nacogdoches, County; and

WHEREAS, the local government has requested the temporary closure of State Highway 21 for the purpose of Old Town Rig Down, from 8am on Friday, September 16th through 12pm on Sunday, September 18th, as described in the attached “Exhibit A,” hereinafter identified as the “Event;” and

WHEREAS, the Event will be located within the local government’s incorporated area; and

WHEREAS, the State, in recognition of the public purpose of the Event, wishes to cooperate with the City so long as the safety and convenience of the traveling public is ensured and that the closure of the State’s right of way will be performed within the State’s requirements; and

WHEREAS, on the 1st day of February 2022, the Nacogdoches City Council passed Resolution / Ordinance No. _____, attached hereto and identified as “Exhibit B,” establishing that the Event serves a public purpose and authorizing the local government to enter into this agreement with the State; and

WHEREAS, 43 TAC, Section 22.12 establishes the rules and procedures for the temporary closure of a segment of the State highway system; and

WHEREAS, this agreement has been developed in accordance with the rules and procedures of 43 TAC, Section 22.12;

NOW, THEREFORE, in consideration of the premises and of the mutual covenants and agreements of the parties hereto, to be by them respectively kept and performed as hereinafter set forth, it is agreed as follows:

A G R E E M E N T

Article 1. CONTRACT PERIOD

This agreement becomes effective upon final execution by the State and shall terminate upon completion of the Event or unless terminated or modified as hereinafter provided.

Article 2. EVENT DESCRIPTION

The physical description of the limits of the Event, including county names and highway numbers, the number of lanes the highway has and the number of lanes to be used, the proposed schedule of start and stop times and dates at each location, a brief description of the proposed activities involved, approximate number of people attending the Event, the number and types of animals and equipment, planned physical modifications of any man-made or natural features in or adjacent to the right of way involved shall be attached hereto along with a location map and identified as "Exhibit C."

Article 3. OPERATIONS OF THE EVENT

A. The local government shall assume all costs for the operations associated with the Event, to include but not limited to, plan development, materials, labor, public notification, providing protective barriers and barricades, protection of highway traffic and highway facilities, and all traffic control and temporary signing.

B. The local government shall submit to the State for review and approval the construction plans, if construction or modifications to the State's right of way is required, the traffic control and signing plans, traffic enforcement plans, and all other plans deemed necessary by the State. The State may require that any traffic control plans of sufficient complexity be signed, sealed and dated by a registered professional engineer. The traffic control plan shall be in accordance with the latest edition of the Texas Manual on Uniform Traffic Control Devices. All temporary traffic control devices used on state highway right of way must be included in the State's Compliant Work Zone Traffic Control Devices List. The State reserves the right to inspect the implementation of the traffic control plan and if it is found to be inadequate, the local government will bring the traffic control into compliance with the originally submitted plan, upon written notice from the State noting the required changes, prior to the event. The State may request changes to the traffic control plan to ensure public safety due to changing or unforeseen circumstances regarding the closure.

C. The local government will ensure that the appropriate law enforcement agency has reviewed the traffic control for the closures and that the agency has deemed them to be adequate. If the law enforcement agency is unsure as to the adequacy of the traffic control, it will contact the State for consultation no less than 10 workdays prior to the closure.

D. The local government will complete all revisions to the traffic control plan as requested by the State within the required timeframe or that the agreement will be terminated upon written notice from the State to the local government. The local government hereby agrees that any failure to cooperate with the State may constitute reckless endangerment of the public and that the Texas Department of Public Safety may be notified of the situation as soon as possible for the appropriate action and failing to follow the traffic control plan or State instructions may result in a denial of future use of the right of way for three years.

E. The local government will not initiate closure prior to 24 hours before the scheduled Event and all barriers and barricades will be removed, and the highway reopened to traffic within 24 hours after the completion of the Event.

F. The local government will provide adequate enforcement personnel to prevent vehicles from stopping and parking along the main lanes of highway right of way and otherwise prevent interference with the main lane traffic by both vehicles and pedestrians. The local government will prepare a traffic enforcement plan, to be approved by the State in writing at least 48 hours prior to the scheduled Event. Additionally, the local government shall provide to the State a letter of certification from the law enforcement agency that will be providing traffic control for the Event, certifying that they agree with the enforcement plan and will be able to meet its requirements.

G. The local government hereby assures the State that there will be appropriate passage

allowance for emergency vehicle travel and adequate access for abutting property owners during construction and closure of the highway facility. These allowances and accesses will be included in the local government's traffic control plan.

H. The local government will avoid or minimize damage, and will, at its own expense, restore or repair damage occurring outside the State's right of way and restore or repair the State's right of way, including, but not limited to, roadway and drainage structures, signs, overhead signs, pavement markings, traffic signals, power poles and pavement, etc. to a condition equal to that existing before the closure, and, to the extent practicable, restore the natural and cultural environment in accordance with federal and state law, including landscape and historical features.

Article 4. OWNERSHIP OF DOCUMENTS

Upon completion or termination of this agreement, all documents prepared by the local government will remain the property of the local government. All data prepared under this agreement shall be made available to the State without restriction or limitation on their further use. At the request of the State, the Local Government shall submit any information required by the State in the format directed by the State.

Article 5. TERMINATION

A. This agreement may be terminated by any of the following conditions:

- (1) By mutual written agreement and consent of both parties.
- (2) By the State upon determination that use of the State's right of way is not feasible or is not in the best interest of the State and the traveling public.
- (3) By either party, upon the failure of the other party to fulfill the obligations as set forth herein.
- (4) By satisfactory completion of all services and obligations as set forth herein.

B. The termination of this agreement shall extinguish all rights, duties, obligations, and liabilities of the State and local government under this agreement. If the potential termination of this agreement is due to the failure of the local government to fulfill its contractual obligations as set forth herein, the State will notify the local government that possible breach of contract has occurred. The local government must remedy the breach as outlined by the State within ten (10) days from receipt of the State's notification. In the event the local government does not remedy the breach to the satisfaction of the State, the local government shall be liable to the State for the costs of remedying the breach and any additional costs occasioned by the State.

Article 6. DISPUTES

Should disputes arise as to the parties' responsibilities or additional work under this agreement, the State's decision shall be final and binding.

Article 7. RESPONSIBILITIES OF THE PARTIES

The State and the Local Government agree that neither party is an agent, servant, or employee of the other party and each party agrees it is responsible for its individual acts and deeds as well as the acts and deeds of its contractors, employees, representatives, and agents.

Article 8. INSURANCE

A. Prior to beginning any work upon the State's right of way, the local government and/or its contractors shall furnish to the State a completed "Certificate of Insurance" (TxDOT Form 1560, latest edition) and shall maintain the insurance in full force and effect during the period

that the local government and/or its contractors are encroaching upon the State right of way.

B. In the event the local government is a self-insured entity, the local government shall provide the State proof of its self-insurance. The local government agrees to pay any and all claims and damages that may occur during the period of this closing of the highway in accordance with the terms of this agreement.

Article 9. AMENDMENTS

Any changes in the time frame, character, agreement provisions or obligations of the parties hereto shall be enacted by written amendment executed by both the local government and the State.

Article 10. COMPLIANCE WITH LAWS

The local government shall comply with all applicable federal, state and local environmental laws, regulations, ordinances and any conditions or restrictions required by the State to protect the natural environment and cultural resources of the State's right of way.

Article 11. LEGAL CONSTRUCTION

In case one or more of the provisions contained in this agreement shall for any reason be held invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions hereof and this agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

Article 12. NOTICES

All notices to either party by the other required under this agreement shall be delivered personally or sent by certified U.S. mail, postage prepaid, addressed to such party at the following respective addresses:

Local Government:	State:
City of Nacogdoches c/o Joanna Temple 200 E. Main Street Nacogdoches, TX 75965	Texas Department of Transportation 1805 N. Timberland Dr. Lufkin, TX 75901

All notices shall be deemed given on the date so delivered or so deposited in the mail, unless otherwise provided herein. Either party hereto may change the above address by sending written notice of such change to the other in the manner provided herein.

Article 13. SOLE AGREEMENT

This agreement constitutes the sole and only agreement between the parties hereto and supersedes any prior understandings or written or oral agreements respecting the within subject matter.

IN TESTIMONY WHEREOF, the parties hereto have caused these presents to be executed in duplicate counterparts.

THE CITY OF NACOGDOCHES

Executed on behalf of the local government by:

Agreement No. _____

By _____ Date _____
Signature of City Official

THE STATE OF TEXAS

Executed for the Executive Director and approved for the Texas Transportation Commission for the purpose and effect of activating and/or carrying out the orders, established policies or work programs heretofore approved and authorized by the Texas Transportation Commission.

By _____ Date _____
District Engineer

Exhibit A

Organizers of the Old Town Rig Down Truck Show is inviting custom 18-wheeler rigs and parking them on the brick streets of downtown Nacogdoches. The trucks will be parked on Main Street (Hwy 21) between North Street and Mound Street. The event planners are expecting between 80-100 rigs. The show begins Friday night with trucks coming in from all areas of the country during the day. All rigs must be in position by 5:00p for the 6p-8p light show. Saturday is a full day of truck owners displaying their shiny customer rigs while engaging with the public. Saturday begins at 10am and finishes with a concert in Festival Park planned for 8p. Trucks will remain parked on Main Street (Hwy 21) throughout the weekend with a Sunday morning departure. All trucks will from with Main Street (Hwy 21) re-opening to normal traffic by 12p.

Truckers often bring their families, most of whom will be out-of-town visitors to the Nacogdoches market. The events are family-friendly and attract many truck enthusiasts to the community hosting the event. There is no racing or pulling competitions planned at the Old Town Rig Down. This type of event is an opportunity to educate the public, giving them a better, more in-depth understanding of the trucking industry. The shows are considered loads of fun and held across the country providing an opportunity for truckers to meet other truckers, meet new friends, and socializing with local communities.

There will be no physical modification of any features in or adjacent to the right of way of State Highway 21. Traffic control will be handled by the City of Nacogdoches Police Department and Public Works Department.

Exhibit B

Agreement No. _____

Exhibit C

Agreement No. _____

RESOLUTION NO. 1292-02-22

WHEREAS, organizers of the Old Town Rig Down event desire to have a safe and successful event for all vendors and participants and,

WHEREAS, organizers of the Old Town Rig Down are requesting the City of Nacogdoches close Main Street (SH 21) from its intersection with North Street eastwardly to its intersection at Mound Street from 8:00 a.m. Friday, September 16, 2022 until 12:00 p.m. Sunday, September 18, 2022 in order to provide safety for vendors and participants; and,

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

NOW, THEREFORE BE IT RESOLVED by City Council of the City of Nacogdoches, Texas that this resolution be adopted requesting Texas Department of Transportation to close Main Street (SH 21) from its intersection with North Street eastwardly to its intersection at Mound Street from 8:00 a.m. Friday, September 16, 2022 until 12:00 p.m. Sunday, September 18, 2022 for the Old Town Rig Down.

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

PASSED AND APPROVED this the 1st Day of February, 2022.

Mayor Jimmy Mize
City Council
City of Nacogdoches

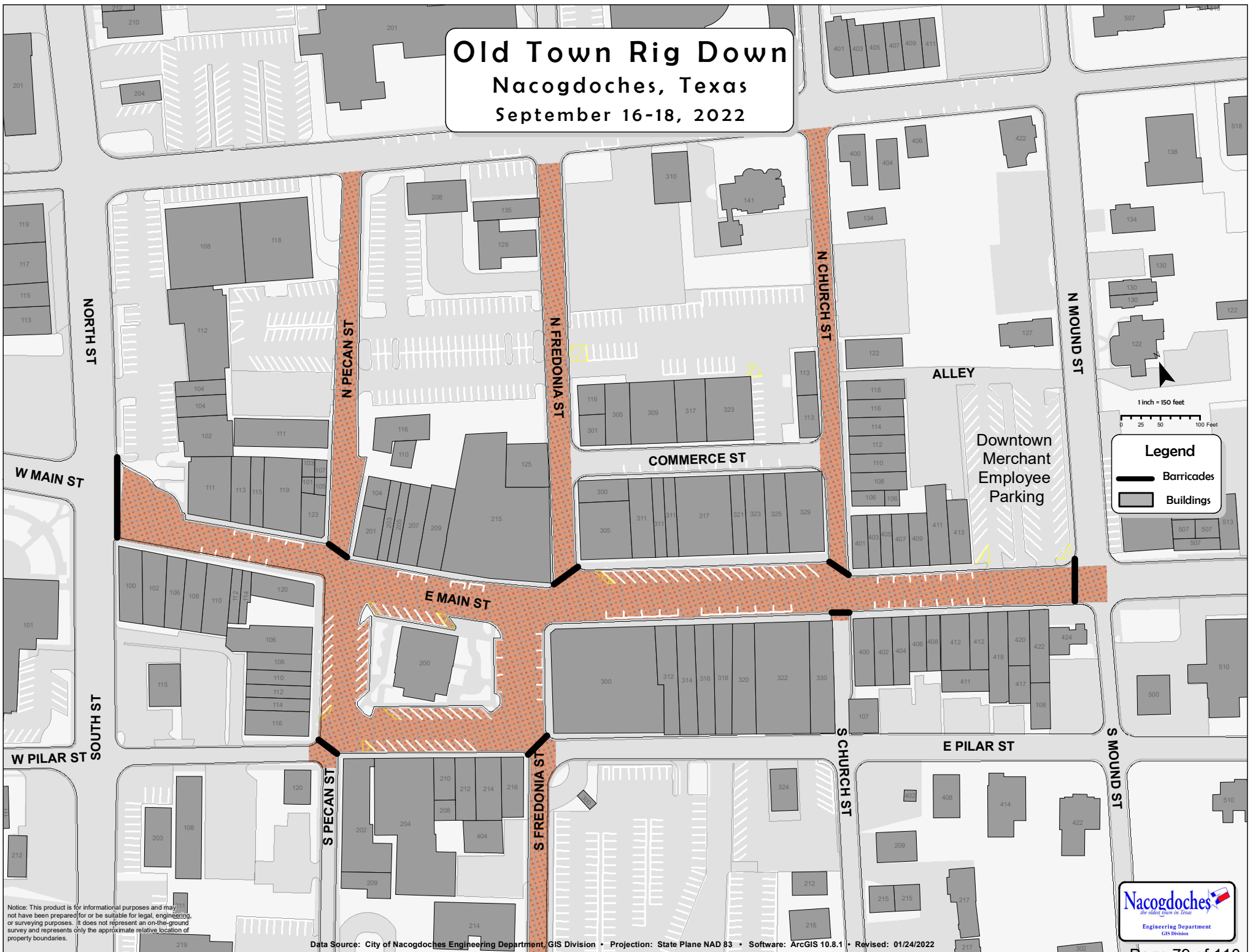
ATTEST:

Jan Vinson, City Secretary

Old Town Rig Down

Nacogdoches, Texas

September 16-18, 2022





City Council Meeting

Date: February 1, 2022

Agenda Item: 7.D.

PRESENTER: Mayor Jimmy Mize

ITEM/SUBJECT: Consider the following City board appointments: Airport Advisory Board, Building Standards Commission, Heath Code Advisory Board, Industrial Development Authority, Main Street Advisory Board and Pine Grove Cemetery Board. (Mayor)

SUMMARY/BACKGROUND: Twice per year, City Board interviews are conducted by the Interview Committee which consists of City Council Members. City Board interviews were conducted on January 19 and January 25, 2022. After all interviews are completed, the City Council will make recommendations to fill vacant/termed positions.

The Mayor's Committee on People with Disabilities had one vacancy due to a resignation. No one applied to serve in that position. Therefore, City Council will interview applicants to fill vacancies on that committee again in June 2022.

FINANCIAL:

No financial impact associated with this item

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

Community Engagement/Diverse Environment

CITY CONTACT: Jan Vinson, City Secretary
vinsonj@nactx.us
936-559-2506

ATTACHMENTS:



City Council Meeting

Date: February 1, 2022

Agenda Item: 7.E.

PRESENTER: Steven Kirkland, City Attorney

ITEM/SUBJECT: Consider approval of a resolution for non-payment of franchise fees against video service providers, as required in the Texas Video Service Providers Act, Texas Utilities Code Sec. 66. (City Attorney)

SUMMARY/BACKGROUND: The City of Nacogdoches, Texas (“City”) intends to pursue claims for monetary damages, declaratory relief, and other legal remedies (“Damages”) against Netflix, Inc., Hulu LLC, Disney DTC LLC, and other video service providers (“VSPs”) as determined for non-payment of franchise fees as set forth under the Texas Video Services Providers Act, Tex. Util. Code Sec. 66 (the “Litigation”). The City’s desired outcome in pursuing the Litigation is to recover from the VSPs Damages owed to the City for failure to pay franchise fees and obtain an order requiring the VSPs to pay the franchise fees going forward, in addition to other relief allowed under the law. Therefore, there is substantial need for the legal services.

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: Steven Kirkland, City Attorney
kirklands@nactx.us
936-559-2503

ATTACHMENTS:

1. Resolution
2. Contract
3. Fee Allocation Agreement
4. Public Notice

RESOLUTION NO. 1291-02-22

WHEREAS, the City intends to pursue claims for monetary damages, declaratory relief, and other legal remedies (“Damages”) against Netflix, Inc., Hulu LLC, Disney DTC LLC, and other video service providers (“VSPs”) as determined for non-payment of franchise fees as required in the Texas Video Service Providers Act, Texas Utilities Code Sec. 66 (the “Litigation”); and

WHEREAS, the City’s desired outcome in the Litigation is to recover from the VSPs Damages owed to the City for failure to pay franchise fees and obtain an order requiring the VSPs to pay the franchise fees going forward, in addition to other relief allowed under the law; and

WHEREAS, the VSPs deliver video programming to their customers via broadband internet through wireline facilities located at least partially in the public right of way; and

WHEREAS, the VSPs do not pay franchise fees to the City as required in section 66.005 of the Texas Utilities Code; and

WHEREAS, the City has a substantial need of the legal services of counsel to represent it in the Litigation; and

WHEREAS, the City requires legal counsel that specialize in complex litigation and are highly knowledgeable and experienced in the legal issues surrounding the non-payment of franchise fees by the VSPs; and

WHEREAS, the City now desires to enter into a contingent fee contract (“Contract”) for legal services with McKool Smith, P.C., Ashcroft Sutton Reyes LLC, and Korein Tillery LLC (“Counselors”) to represent the City in the Litigation; and

WHEREAS, Subchapter C of Chapter 2254 of the Texas Government Code (“Chapter 2254”) requires that a political subdivision of the State of Texas, including the City, may enter into a contingent fee contract for legal services only after: (i) the governing body of the political subdivision has provided written notice to the public stating certain provisions enumerated within Chapter 2254; (ii) the governing body of the political subdivision approved such contract in an open meeting called, in part or in whole, for the purposes of considering such contract; and (iii) the governing body of the political subdivision stated in writing certain findings made by the governing body upon the approval of such contract; and

WHEREAS, before the contingent fee contract for legal services is effective and enforceable, the City must receive approval of the Contract by the Office of the Attorney General of Texas or the Contract is otherwise allowed under Tex. Gov’t Code §2254, as amended; and

WHEREAS, the City has caused notice of this resolution, this meeting, and certain provisions enumerated within Chapter 2254 to be provided to the public in accordance with the Texas Open Meetings Act and Chapter 2254; and

WHEREAS, the meeting at which this resolution is being considered is an open meeting called, in part or in whole, for the purpose of considering: (i) the City's need for legal counsel to represent it in the Litigation; (ii) terms of the Contract; (iii) the competence, qualifications, and experience of the Counselors; and (iv) the reasons that the Contract is in the best interest of the City and complies with Chapter 2254; and

WHEREAS, the City Council hereby finds and determines that the adoption of this resolution is in the best interests of the residents of the City.

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

SECTION 1. That the recitals contained in the preamble hereof are hereby found to be true, and such recitals are hereby made a part of this resolution for all purposes and are adopted as a part of the judgment and findings of the City Council.

SECTION 2. That the City Council hereby finds that: (i) there is a substantial need for the legal services to be provided in the Litigation; (ii) the legal services to be provided in the Litigation cannot adequately be performed by the attorneys and supporting personnel currently employed by the City; (iii) the legal services to be provided in the Litigation cannot reasonably be obtained from attorneys in private practice under a contract providing only for the payment of hourly fees, without regard to the outcome of the matter, because of the nature of the Litigation and without imposing an unnecessary cost and burden on the City's finances; and (iv) the relationship between the City or the City Council and the Counselors is not improper and would not appear improper to a reasonable person.

SECTION 3. That based on the findings by the City Council described above, the City Council hereby authorizes the City Manager to execute a legal services contract with McKool Smith, P.C., Ashcroft Sutton Reyes LLC, and Korein Tillery LLC, approved as to form by the City Attorney, effective only upon approval by the Office of the Attorney General of Texas or as otherwise allowed under Tex. Gov't Code §2254, as amended.

SECTION 4. That it is officially found, determined, and declared that the meeting at which this resolution is adopted was open to the public and public notice of the time, place, and subject matter of the public business to be considered at such meeting, including this resolution, was given, all as required by Chapter 551 as amended, Texas Government Code.

SECTION 5. That the City will pay the Counselors a contingency fee and expenses in accordance with the rates in Attachment A to this resolution and contingent upon the recovery, if any, by the City in the Litigation.

SECTION 6. That this Resolution shall take effect immediately from and after its passage in accordance with the provisions of the Charter of the City of Nacogdoches, and it is accordingly so resolved.

_____, Mayor
City of Nacogdoches, Texas

ATTEST:

_____, City Secretary

APPROVED AS TO FORM & LEGALITY:

Steven Kirkland, City Attorney

ATTACHMENT A

The fees for legal services provided by the Counselors in connection with the Litigation are contingent upon the recovery by the City of Damages in the Litigation and will be paid out of such recovery, if any, as follows:

If the City obtains a recovery and collection on behalf of the City before a trial or appeal, the Counselors will receive attorneys' fees in the amount of Thirty Percent (30%) of the gross recovery. If recovery for the City occurs after (1) the beginning of trial (at the beginning of opening argument), or (2) upon appeal of any judgment, the Counselors will instead receive attorneys' fees in the amount of the Thirty-Three and One-Third (33 1/3%).

The Counselors will advance all costs associated with the Litigation. The City agrees to reimburse the Counselors for all reasonable costs out of its share of the gross recovery.

**AGREEMENT FOR PROVIDING
LEGAL SERVICES TO CITY OF NACOGDOCHES
IN CONNECTION WITH RECOVERY OF FRANCHISE FEES**

The City of Nacogdoches, Texas (“City”) and the law firms of McKool Smith, P.C., Korein Tillery LLC, and Ashcroft Sutton Reyes LLC (collectively, “Counselors”) enter into this agreement (“Contract”) to provide legal services on behalf of the City, its elected or appointed officials and employees with such services regarding the matter below. The City and Counselors shall collectively be referred to as the “Parties.”

1. **PROFESSIONAL LEGAL SERVICES**

A. Counselors are hereby retained to provide legal representation to the City in connection with litigation seeking damages, declaratory relief, attorneys’ fees, interest and other appropriate relief from Netflix, Inc., Hulu, LLC, Disney DTC LLC and other video service providers (“Defendants”) as may be decided for the non-payment of franchise fees (“Franchise Fees,” as referenced in Section 66.005, of the Texas Utilities Code, as amended) (collectively, the “Litigation”). The services shall be referred to as “Professional Legal Services.”

B. Counselors hereby agree to perform the Professional Legal Services necessary, in accordance with the terms of this Contract. This Contract shall be administered on behalf of City by its City Attorney. At the request of the City Attorney, Counselors will provide case status reports, and will participate from time to time in both open and closed session briefings of the City Council.

2. **PAYMENT**

For the performance of Professional Legal Services and advance of Costs by Counselors, City agrees to pay Counselors on a contingency fee and reimburse costs out of any recovery as detailed on Exhibit A which is incorporated herein.

3. **RECITALS PURSUANT TO TEX. GOV’T CODE CH. 2254**

Counselors’ further duties in compliance with Tex. Gov’t Code Ch. 2254, as amended, are set out in Exhibit A.

4. **TERM**

The term of this Contract shall begin 90 days after it is received by the Office of the Attorney General of Texas (“OAG”) pursuant to Tex. Gov’t Code Ch. 2254, as amended, unless it is not approved by that time. Once it is either approved by the OAG, or 90 days have passed, the Contract shall continue until completion of the Litigation or terminated as provided herein. All services under this Contract are to be completed timely and in the highest professional manner.

5. **TERMINATION**

A. The City Attorney may terminate the performance of services at any time, with or without cause by giving at least ten (10) days written notice to Counselors. The notice must be delivered by email and by certified mail with return receipt for delivery to the City.

1. Termination Without Cause: (i) if City terminates this Contract without cause, Counselors shall be paid for the reasonable value of the legal services provided plus reimbursement for all Costs incurred at the time of termination; (ii) if the City resolves the Litigation through final settlement, award, or judgment, Counselors shall be paid Attorneys' Fees pursuant to Exhibit A at the time a Recovery.

2. Termination with Cause: If Counselors fail to satisfactorily perform any material obligation under this Contract, such failure constitutes a Default. If Counselors fail to satisfactorily cure a Default within thirty (30) calendar days of receiving written notice from the City specifying the nature of the Default, the City may terminate this Contract for cause, in which case compensation and Costs due Counselors, if any, shall be calculated considering the particular facts and circumstances involved in such termination, and paid only out of any Recovery.

B. Counselors may withdraw as permitted under the Rules of Professional Conduct of the State Bar of Texas. The circumstances under which withdrawal is permitted include the following: (a) the City consents, (b) the City's conduct renders it unreasonably difficult for Counselors to carry out the employment effectively, (c) the City fails to pay Attorneys' Fees or Costs as required by this Contract; or (d) Counselors determine it is not economically feasible for Counselors to perform the Services. If Counselors properly withdraw from representing the City pursuant to subparagraph (a)–(c) above or because it is required to do so by the Rules of Professional Conduct, the City agrees to compensate Counselors for the reasonable value of the legal services provided, plus reimbursement for Costs. The reasonable value of legal services shall not exceed thirty-three and one-third percent (33.33%) of the City's total recovery or, if reimbursed on an hourly basis, shall not exceed the hourly rates provided in Exhibit A, Section 8.8. In such a situation, both Fees and reimbursement of Costs will be paid by City to Counselors at the time a Recovery is collected by the City. If Counselors withdraw from representing City pursuant to subparagraph (d) above, Attorneys' Fees and Costs due Counselors, if any, shall be calculated considering the particular facts and circumstances involved in such withdrawal, and only out of any Recovery. Any disputes regarding the reasonable value of such legal services or Costs shall be mediated by the Judicial Arbitration and Mediation Services (JAMS).

6. VENUE AND GOVERNING LAW

This Contract is made subject to the Charter and ordinances of the City, as amended, and all applicable laws of the State of Texas. This Contract is performable in Dallas County, Texas, and venue for any legal action under this Contract shall lie in Dallas County, Texas; and in construing this Contract, the laws and court decisions of the State. Any disputes regarding the Contract including the reasonable value of legal services or Costs shall be mediated by the Judicial Arbitration and Mediation Services (JAMS) before any litigation is undertaken.

7. NO REPRESENTATION OF ANY ADVERSE PARTY

Counselors acknowledge that they are not currently involved in any litigation in which it represents a party who is adverse to the City, and Counselors agree that they will not undertake any litigation adverse to the City or to an employee or officer of the City, except with prior disclosure to and written consent by the City Attorney.

8. CONFLICTS

The City and Counselors acknowledge that other Texas cities and individual government entities may seek to become named parties in the Litigation and be represented by Counselors. The City recognizes that there may be potential conflicts or actual conflicts of interest if Counselors represents other cities in litigation like the Litigation. The City understands that it would be to its benefit for other parties to become named parties as it may enhance the case and lower the City's expenses. Accordingly, the City has conferred with the City Attorney and has determined that it is in its own best interests to waive all potential or actual conflicts of interest which may occur as a result of Counselors representing other government entities in this or similar litigation. The City therefore waives all such potential or actual conflicts of interest which may occur because of the Counselors representing other government entities in this Litigation or similar litigation.

9. REPRESENTATION OF RELATED INTERESTS

Counselors shall have the right to represent other municipalities, or governmental subdivisions in other video service provider franchise fee actions or similar litigation without the consent of the City, subject to the Texas Disciplinary Rules of Professional Conduct ("Rules of Professional Conduct") relating to conflicts of interest.

10. CONFLICT OF INTEREST

It is understood and agreed that the Counselors will notify the City in writing of the potential for any conflict of interest in any legal matter or case within 24 hours of its discovery.

11. NOTICES

Except as otherwise provided in Section 14, any notice, payment, statement, or demand required or permitted to be given under this Contract by either party to the other may be affected by email and personal delivery in writing or by mail, postage prepaid. Mailed notices shall be addressed to the parties at the addresses appearing below, but each party may change its address by written notice in accordance with this section. Mailed notices shall be deemed communicated as of three (3) days after mailing.

If intended for City, to:
Steven Kirkland, City Attorney
City of Nacogdoches, Texas
202 East Pilar Street
Nacogdoches, Texas 75961
Email: kirklands@nactx.us

If intended for Counselors, to:

Steven Wolens
McKool Smith
300 Crescent Ct., Ste. 1500
Dallas, TX 75201
Email: swolens@mckoolsmith.com

Steven M. Berezney
Korein Tillery LLC
505 N. 7th Street, Ste. 3600
St. Louis, MO 63101
Email: SBerezney@KoreinTillery.com

Austin R. Nimocks
Ashcroft Sutton Reyes LLC
919 Congress Ave., Ste. 1325
Austin, TX 78701
Email: animocks@ashcroftlawfirm.com

12. LEGAL SERVICES SPECIFICALLY EXCLUDED

Counselors do not agree to provide any representation beyond that described in Section 1.A. above. If the City wishes to retain Counselors to provide any legal services not provided under this Contract, a separate written agreement between Counselors and the City will be required.

13. AUTHORITY OF COUNSELORS

Counselors may execute, at his/her option, all reasonable and necessary court documents connected with the handling of the Litigation. If the City Attorney gives Counselors sufficient notice of documents he/she wishes to jointly sign with Counselors, Counselors will undertake good faith efforts to accomplish same.

14. ATTORNEYS' LIEN

Counselors will have a lien to the fullest extent of Texas law for attorneys' fees and costs on all claims and causes of action that are the subject of its representation of the City under this Agreement and on all proceeds of any recovery collected (whether by settlement, Court judgment, or otherwise).

15. COMMUNICATIONS

The City designates Steven Kirkland, the City Attorney, or any other person designated by the City Attorney as the authorized representative of the City to direct Counselors. Correspondence will be forwarded to him at kirklands@nactx.us. Counselors designate Steven Wolens to be the primary individual to communicate with the City regarding the subject matter of Counselor's representation of the City under this Agreement. Correspondence will be forwarded to him at swolens@mckoolsmith.com.

16. NO ASSIGNMENT

Counselors shall not sell, assign, transfer, or convey this Contract, in whole or in part, without the prior written consent of the City Attorney.

17. COUNTERPARTS

This Contract may be executed in any number of counterparts, each of which shall be deemed an original and constitute one and the same instrument. If this Contract is executed in counterparts, then it shall become fully executed only as of the execution of the last such counterpart called for by the terms of this Contract to be executed. Any signature delivered by a party by facsimile or electronic transmission (including email transmission of a PDF image) shall be deemed to be an original signature hereto.

18. CAPTIONS

The captions to the various clauses of this Contract are for informational purposes only and shall not alter the substance of the terms and conditions of this Contract.

19. ENTIRE AGREEMENT; NO ORAL MODIFICATIONS

This Contract (with all referenced Exhibits, attachments, and provisions incorporated by reference) embodies the entire agreement of both parties, superseding all oral or written previous and contemporary agreements between the parties relating to matters set forth in this Contract. Except as otherwise provided elsewhere in this Contract, this Contract cannot be modified without written supplemental agreement executed by both parties.

20. MISCELLANEOUS

City recognizes that no result has been guaranteed by Counselors, and that this Contract is not based upon any such promise or anticipated result. City further acknowledges that it is exclusively responsible for all personal liability, or potential liability, awarded against it by a court because of a claim, counterclaim, protest suit, or otherwise, and that by undertaking to represent City pursuant to this Contract, Counselors assume none of City's joint and/or individual liability.

21. AUTHORITY TO SETTLE LITIGATION

City does not relinquish authority or responsibility through this Contract to settle the Litigation. City has the sole authority to settle the Litigation on behalf of the City and its citizens, and Counselors shall inform the City Attorney of all settlement offers.

22. APPROVAL BY THE OFFICE OF THE ATTORNEY GENERAL OF TEXAS

The Parties agree that this Contract is not effective until approved by the Office of the Attorney General of Texas ("OAG") or as otherwise allowed under Tex. Gov't Code Ch. 2254, as amended.

23. COMPLIANCE WITH CERTAIN STATE LAW

1. *Anti-Boycott of Israel.* Each Firm certifies that it is not currently engaged in, and agrees for the duration of this Agreement not to engage in, the boycott of Israel as defined by Section 808.001 of the Texas Government Code.

2. *Anti-Boycott of Energy Companies.* Each Firm certifies that the Firm is not currently engaged in, and agrees for the duration of this Agreement not to engage in, the boycott of energy companies as defined by Section 809.001 of the Texas Government Code.

3. *Anti-Boycott of Firearm Entities or Firearm Trade Associations.* Each Firm certifies that the Firm does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association, or will not discriminate against a firearm entity or firearm trade association for the duration of this Agreement, as defined by Section 2274.001 of the Texas Government Code.

4. *Certification of No Business with Foreign Terrorist Organizations.* For purposes of Section 2252.152 of the Texas Government Code, Each Firm certifies that, at the time of this Agreement neither Firm nor any wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of Firm, is a company listed by the Texas Comptroller of Public Accounts under Sections 2252.153 or 2270.0201 of the Texas Government Code as a company known to have contracts with or provide supplies to a foreign terrorist organization.

EXECUTED this the _____ day of _____, 2021.

COUNSELORS

MCKOOL SMITH, P.C.

Steven D. Wolens

KOREIN TILLERY, LLC

Steven M. Berezney

ASHCROFT SUTTON REYES LLC

Austin R. Nimocks

CITY OF NACOGDOCHES, TEXAS

_____, City Manager

ATTEST:

_____, City Secretary

Date

APPROVED AS TO FORM & LEGALITY:

Steven Kirkland, City Attorney

EXHIBIT A
COMPENSATION AND COSTS

1. **Compensation (“Attorneys’ Fee(s)”).**

The employment of Counselors will be on a contingency fee basis. Specifically, if the City obtains a recovery and collection on behalf of the City before a trial or appeal, Counselors will receive attorneys’ fees in the amount of Thirty Percent (30%) of the Gross Recovery. If recovery for the City occurs after the beginning of trial (at the beginning of opening argument) or 2) upon appeal of any judgment, Counselors will instead receive attorneys’ fees in the amount of the Thirty-Three and One-third percent (33 1/3 %) (“Attorneys’ Fee(s)” or “Contingency Fee(s)”). This Attorneys’ Fee is not set by law but is negotiable between the City and Counselors.

Counselors shall be entitled to such Contingency Fees regardless of whether the recoveries are a result of an accounting, settlement, judgment, litigation, ordinance, legislation, voluntary payment, credit, refund, adjustment, offset, reduction in future charges, protest suit, or some other method or source. Counselors’ Contingent Fee shall be allocated among City and any other participants in the recovery in proportion to the gross amount of that recovery by each participant.

City and Counselors acknowledge that the litigation may result in the payment of either or both of Franchise Fees for periods before the effective date of any final court judgment, settlement agreement, or other document establishing the right to a recovery (such effective date hereafter referred to as the “Effective Date” and such Franchise Fees for periods before the Effective Date hereafter referred to as “Historical Franchise Fees”) and Franchise Fees for periods on or after the Effective Date (“Prospective Franchise Fees”).

City and Counselors also acknowledge that resolution of the Litigation might discount Historical Franchise Fees for Prospective Franchise Fees. If the amount of Historical Franchise Fees paid from a source by judgment, agreement, or otherwise is less than the sum of what that source would have paid, in full, in Franchise Fees for all fiscal quarters preceding the Effective Date (the “Benchmark Franchise Fees”), then Counselors shall be entitled to Attorneys’ Fees in the amount of 33 1/3 % of the gross amount of that source’s payments of Prospective Franchise Fees until the total Franchise Fees paid by that source equal the Historical Franchise Fees. However, Counselors shall not, in any circumstance, collect from the City more than 33 1/3% of the City’s total recovery.

The sole contingency upon which the City will pay Fees to Counselors is a recovery and collection on behalf of the City, whether by settlement, court judgment, or otherwise.

2. **Gross Recovery.**

The term “Gross Recovery” shall include, without limitation, the then present value of any monetary payments agreed or ordered to be made and the fair market value of any property or services agreed or ordered to be made and the fair market value of any property or services agreed or ordered to be transferred or rendered for the benefit of the City by the adverse parties to the Litigation or their insurance carrier(s), whether by settlement, court judgment, or otherwise.

If payment of any part of the relief to the City will be in the form of property and services (“In Kind”), the value of such property and services for purposes of calculating the Gross Recovery shall be calculated based on the present value, as of the time of the settlement or final court judgment, of the In Kind relief to be received thereafter. The Attorneys’ Fees for the value of the In Kind relief shall be paid out of any initial lump-sum payment by the defendants. If the initial lump sum payment is insufficient to pay the Attorneys’ Fees in full, the balance will be paid from subsequent payments on the recovery before any distribution to the City.

If the Parties disagree with respect to the value of any In Kind relief, they will proceed as follows: Within thirty (30) days each party will select an appraiser qualified to conduct an appraisal of the value of the In Kind relief. Each Party’s selected appraiser will thereafter meet and confer. If resolution of the dispute is not reached within sixty (60) days of the initial meet and confer, the appraisers will select a third qualified appraiser within fifteen (15) days. The third appraiser’s valuation will be final and binding on the Parties.

Notwithstanding the foregoing, if there is no monetary recovery and the City receives In Kind relief, Attorneys’ Fees will be based on the value of the In Kind relief, which will be determined through the mutual agreement of the Parties. If the Parties disagree with respect to the values of any In Kind relief, they will proceed with an appraisal process as set forth above. If there is no monetary recovery, all Attorneys’ Fees and Costs due to Counselors under this Contract shall be paid from the City’s funds at the time of recovery and collection.

3. **Costs.**

It will be necessary for Counselors to incur and advance certain court costs and other types of expenses for the City (“Costs”). These Costs and other expenses may include, but are not limited to, the following: filing and service fees; costs of investigative services; travel expenses (including air fare, ground transportation, vehicle mileage, lodging, and meals); deposition expenses and court reporters fees; outside trial services providers; trial equipment rental and operation fees; preparation of exhibits and graphics; the costs of briefs and transcripts on appeal, and miscellaneous copying, postage, shipping, and courier expenses. In addition, it will be necessary to employ expert witnesses and Counselors, with prior approval from the City, may employ and pay these expert witnesses, and such expenditures shall be included within Costs.

The City agrees to reimburse Counselors for all reasonable Costs out of its share of the Gross Recovery, after the payment of Attorneys’ Fees specified in Sections 1 and 2 above.

The City understands that Counselors may incur certain expenses, including, for example, expenses for travel, experts, and copying that jointly benefit multiple cities in the Litigation. The City agrees that Counselors may allocate such expenses among such cities based on their pro rata share of the relief obtained, or on any other reasonable basis of which all affected clients are fully informed.

In some instances, it may be necessary for Counselors to retain special outside counsel to assist on matters other than prosecuting the City’s claims. Examples of such instances include: a defendant may seek bankruptcy protection; a defendant may attempt to fraudulently transfer some of its assets to avoid paying the City’s claim; a complex, multi-party settlement may require an

ethics opinion from outside counsel; or a separate lawsuit may need to be filed against a defendant's insurance company. The City agrees that Counselors, with written permission of the City, may retain such special outside counsel to represent the City when Counselors deem such assistance to be reasonably necessary. In such an instance, the fees of such special outside counsel shall be advanced by Counselors, shall be deemed a part of Costs, and as such shall be reimbursed to Counselors by the City from its share of the Gross Recovery provided that (1) the City finds that such costs were reasonable, proper, necessary, and were actually incurred on behalf of the City, and (2) such costs were in compliance with, and do not exceed, the rates and limits provided in Section 8.8 of Exhibit A. If there is no recovery, Counselors will be solely responsible for payment of the Cost.

4. **Application for Attorneys' Fees.**

The City and Counselors intend to seek an order for payment by Defendants of the City's Attorneys' Fees and Costs (as defined in Sections 1-3 above), if the City prevails, in whole or in part, in the Litigation. The City agrees to use its best efforts to support any such application.

If the amount of the Attorneys' Fees awarded and collected from a court order regarding Attorneys' Fees and Costs exceeds the amount called for under the contingency fee calculation in Section 1 of Exhibit A, Counselors shall be entitled to the amount of the Attorneys' Fee awarded and collected from the Defendants as a reasonable fee, in lieu of payment by the City of the Attorneys' Fee. If, however, the amount of the Attorneys' Fee awarded and collected from a court order regarding Attorneys' Fees and Costs is less than the amount as calculated under the Contingency Fee, Counselor's Attorneys' Fee shall remain as calculated by the Contingency Fee calculation in Paragraph 1 of Exhibit A, and, in that instance, the City may direct that the statutory attorneys' fee award be paid directly to Counselors by the Defendants, and the City shall pay the difference between the Contingency Fee and the attorneys' fee awarded out of the City's recovery in the Litigation.

5. **Reasonableness.**

The City and Counselors have discussed the reasonableness of the contingency fees provided for in this Contract, as opposed to an hourly rate, a fixed fee, quantum merit, or some other possible basis for calculating the Attorneys' Fees to be paid to Counselors. The City and Counselors agree that under all the circumstances a contingency fee is the most reasonable and equitable way to compensate Counselors in light of the effort required, the risks to be undertaken in the Litigation, and other applicable factors. The City and Counselors further understand that the substantial effort required will not be compensated if there is no recovery. Therefore, the City agrees that it will not contest the reasonableness or fairness of this contingency fee contract.

6. **Possible Efforts of Defendants to Invalidate Agreement.**

The City and Counselors are aware that, in the past, defendants in litigation involving public entities have challenged and sought to invalidate contingency fee arrangements between public entities and outside counsel. The City and Counselors believe that any such challenges to this Contract would lack merit and that this contingency fee arrangement as set forth above is valid and in the public interest. The City agrees to join Counselors in opposing any such challenge. However, if this contingency fee contract is found to be invalid, Counselors agree to continue to

represent the City. Under said circumstances, if there is a recovery, Counselors shall be compensated based on the reasonable value of its legal services and will be reimbursed for Costs. If there is no recovery, the City will owe nothing for Attorneys' Fees or Costs.

7. **Division of Attorneys' Fees.**

Counselors may divide the Attorneys' Fees received for the legal services provided under this Contract with other attorneys or law firms retained as associate counsel and approved by the City in writing. The terms of the division, if any, will be disclosed to the City. The City is informed that, under the Rules of Professional Conduct of the State Bar of Texas, such division may be made only with the City's written consent after a full disclosure to the City in writing that a division of Attorneys' Fees will be made, the identity of the lawyer or law firms involved, the basis upon which Attorneys' Fees will be divided, and of the terms of such division. The City will not unreasonably withhold approval of associate counsel recommended by Counselors or unreasonably refuse to consent to a proposed division of Attorneys' Fees among counsel.

8. **Recitals Pursuant to Tex. Gov't Code Ch. 2254.**

- 8.1 Counselors shall keep current and complete written time and expense records that describe in detail the time and money spent each day in performing the contract, as required under Tex. Gov't Code § 2254.104(a).
- 8.2 Counselors shall permit the governing body or governing officer of the City, the attorney general, and the state auditor, or other officials as appropriate, to inspect or obtain copies of the time and expense records at any time on request, as required under Tex. Gov't Code § 2254.104(b).
- 8.3 On conclusion of the matter for which Counselors were obtained, Counselors shall provide the City with a complete written statement that describes the outcome of the matter, states the amount of any recovery, shows the Counselors' computation of the amount of the contingent fee, and contains the final complete time and expense records, as required under Tex. Gov't Code § 2254.104(c). The complete written statement required under this section is public information subject to disclosure under Tex. Gov't Code § 2254.104(d).
- 8.4 All time and expense records required herein are public information subject to required public disclosure under Texas Government Code Chapter 552. Information in the records may be withheld from a member of the public under Section 552.103 only if, in addition to meeting the requirements of Section 552.103, the City Attorney determines that withholding the information is necessary to protect the City's strategy or position in pending or reasonably anticipated litigation. Information withheld from public disclosure shall be segregated from information that is subject to required public disclosure. Public disclosure may not be withheld, and is required, regarding the written statement required by Tex. Gov't Code § 2254.104(d).
- 8.5 Any subcontracted legal or support services performed by a person who is not a contracting attorney, partner, shareholder, or employee of Counselors is an expense

subject to reimbursement only in accordance with Tex. Gov't Code § 2254.105(4).

- 8.6 The method for payment of litigation and other expenses and, if reimbursement of any expense is contingent on the outcome of the matter or reimbursable from the amount recovered in the matter, whether the amount recovered for purposes of the contingent fee computation is the amount obtained before or after expenses are deducted, as required under Tex. Gov't Code § 2254.105(3).
- 8.7 The amount of the contingent fee and reimbursement of expenses under the Contract will be paid and limited in accordance with Tex. Gov't Code § 2254.105(5).
- 8.8 Counselors' contingent fee is limited to the lesser of 1) the contingent fee set forth in paragraph 1. above or 2) four times Counselors' base fee, as that term is used in Tex. Gov't Code § 2254.106.

Because of the expected difficulties in performing the work under this Agreement, the amount of expenses expected to be risked by Counselors, the expected risk of no recovery, and the expected long delay in recovery, a reasonable multiplier for the base fee in this matter is four. Counselors' reasonable hourly rate for the work performed under the Agreement is \$990 an hour for principals and partners of any members of the three Counselors' firms, \$855 for of counsel/senior counsel, \$795 an hour for senior level associates practicing 10 years or more; \$550 per hour for other attorneys, and \$325 per hour for paralegals or law clerks consistent based on the reasonable and customary rate in the relevant locality for the type of work performed and on the relevant experience, demonstrated ability, and standard hourly billing rate, if any, of the person performing the work, as required under Tex. Gov't Code § 2254.106(a). These rates apply to the subcontracted work performed, if any, by an attorney, law clerk, or paralegal. The base fee will be computed pursuant to Subchapter C, Chapter 2254 of the Texas Gov't Code by multiplying the number of hours the attorney, paralegal or law clerk worked in providing legal or support services for the City times the reasonable hourly rate for the work performed by the attorney, paralegal or law clerk. The base fee is computed by adding the resulting amounts. The computation of the base fee does not include hours or costs attributable to work performed by a person who is not employed by Counselors.

CITY OF NACOGDOCHES, TEXAS
Fee Allocation Agreement

This Fee Allocation Agreement (“FAA”), executed on the respective date indicated below, is made and entered into among Korein Tillery, LLC (“KT”), McKool Smith, P.C. (“MS”), and Ashcroft Sutton Reyes LLC (dba Ashcroft Law Firm) (“Ashcroft”) (collectively, the “Firms” or “Parties” individually, a “Firm”).

Recitals

WHEREAS, the Firms wish to associate with each other in the prosecution of litigation by the City of Killeen, Texas (“City”) against certain video service providers for nonpayment of franchise fee (“Litigation”), as defined in the Professional Services Contract for Legal Services between City and Firms (“Contract”),

WHEREAS, the Parties to this FAA agree to divide such work and tasks as will be mutually agreed; and

WHEREAS, the Parties to this FAA desire to acknowledge and set out the terms of the allocation of fees and costs regarding the representation of Cities in the Litigation.

NOW THEREFORE, for good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, the following FAA is entered into:

1. **Fee Sharing.** The attorneys’ fees shall be apportioned as follows:
 - (a) From the attorneys’ fees collected pursuant to the Contract, an amount will be deducted that reflects actual Costs incurred in the Litigation by MS, KT, and Ashcroft that are not deducted from the City’s recovery in the Litigation, in accordance with the Contract, to determine the Net Fees. For example, actual travel and lodging costs may exceed the amount the City may reimburse for such costs. In this instance, the amount by which the travel and lodging expenses exceed that allowed to be reimbursed by the City will be deducted from the Gross Fees before calculation and apportionment of the attorneys’ fees.
 - (b) Of the Net Fee as calculated in paragraph 1 (a) above, KT will receive 40% of the fees, MS will receive 40%, and Ashcroft will receive 20%.
2. **Cost Sharing.** Any Costs (as defined in the Contract) which must be advanced on behalf of the City will be advanced by the Firms as follows: KT 40%, MS 40%, and Ashcroft 20%.
 - (a) The allocation of Costs as provided above shall not apply to general litigation expenses, including, but not limited to postage, in-house copying, shipping, and courier expenses which shall be advanced by the firm incurring same. In the event the recovery is not sufficient to reimburse all Costs, the Firms will each be reimbursed the portion equal to their percentage of the total Costs they have advanced.

Costs for purposes of this Fee Allocation Agreement include only actual payments made by a Party, in connection with the Litigation, to persons or entities that are not, directly or indirectly, controlled by such Party and do not include any charges for overhead or other internal charges (such as rent, word processing, depreciation, and similar items). Costs include the actual amounts paid for filing fees; court and jury fees; fees for service of process; deposition-related fees and expenses, including court reporters', videographers', and electronic exhibit and live-streaming service fees; expert consultant fees; storage fees; fees for preparation of deposition and trial exhibits; fees for hearing or trial transcripts; fees for obtaining records; and expert witness fees and expenses. Costs further include all travel expenses and lodging and meal expenses. Costs also include general litigation expenses, including, but not limited to postage, in-house copying, shipping, and courier expenses which shall be advanced during the engagement. Costs are limited to amounts that are reasonable and customary in the relevant market for the goods or services for which the costs are incurred and shall not include any markup or margin for overhead or profit. Wages, salaries, or other compensation paid to personnel employed by a Firm, including but not limited to attorneys, secretaries, clerks, legal assistants, and paralegals, shall not be Costs for the purpose of this Understanding.

- (b) Periodically, and no less than biannually, Parties shall account to one another for each of their respective expenses advanced for these general litigation costs and reimburse one another as necessary so that the percentage of costs advanced by KT, MS, and Ashcroft shall be equal to their allocated percentages.

3. Division of Work. Each Firm shall devote time in prosecuting the Litigation in proportion to their relative attorneys' fees division.

4. City and AG Approval. All Firms acknowledge that any allocation of fees between the City and Firms is subject to the prior approval of the City, and that any Contract with the City is subject to prior approval of the Office of the Attorney General of Texas or as otherwise allowed under Tex. Gov't Code §2254 as amended.

5. Terms of Understanding. Except as otherwise agreed in writing by the Parties, this FAA shall continue in effect until the resolution of the Litigation and the allocation of fees and expenses from the Litigation between or among the Firms.

[Remainder of page left intentionally blank. Signatures on following page.]

AGREED TO:

Steven D. Wolens
McKool Smith, P.C.

Date

Austin R. Nimocks
Ashcroft Sutton Reyes LLC

Date

Steve Berezney
Korein Tillery, LLC

Date

APPROVED:

City Attorney
Nacogdoches, Texas

By: _____

Date

Name: _____

PUBLIC NOTICE
In association with Resolution No. 1291-02-22

This notice is given pursuant to Tex. Gov't Code § 2254.1036.

- A. The City of Nacogdoches, Texas ("City") intends to pursue claims for monetary damages, declaratory relief, and other legal remedies ("Damages") against Netflix, Inc., Hulu LLC, Disney DTC LLC, and other video service providers ("VSPs") as determined for non-payment of franchise fees as set forth under the Texas Video Services Providers Act, Tex. Util. Code Sec. 66 (the "Litigation"). The City's desired outcome in pursuing the Litigation is to recover from the VSPs Damages owed to the City for failure to pay franchise fees and obtain an order requiring the VSPs to pay the franchise fees going forward, in addition to other relief allowed under the law. Therefore, there is substantial need for the legal services.
- B. The City wishes to engage the following three law firms ("Counselors"): McKool Smith, P.C., Ashcroft Sutton Reyes LLC, and Korein Tillery LLC. Details regarding their competence, qualifications and experience are attached at Exhibit 1.
- C. The relationship with the three Counselors would span from the time of engaging them in the Litigation until it is completed. The City has had no prior relationship with the Korein Tillery or Ashcroft Sutton Reyes firms. The City was a member of a class of cities represented by McKool Smith and Mr. Wolens to recover municipal hotel occupancy taxes. The City was pleased with the representation provided by McKool Smith and Mr. Wolens.
- D. The legal services for which the Counselors are retained cannot be adequately performed by the attorneys and supporting personnel of the City. The City's budget is strained and has limited resources for its legal department. The City Attorney's office is engaged in hundreds of transactional matters and in overseeing, managing and litigating hundreds of matters. In addition, the investigation, research, and litigation of the claims will require the expenditure of large sums of money and require the work of numerous attorneys, paralegals and

others who are familiar with the VSPs' wrongful actions and/or inactions. Thus, the City does not have the resources it believes will be necessary to engage in protracted, time-consuming, and expensive litigation.

E. The legal services for which the law firms are retained cannot reasonably be obtained from attorneys in private practice under a contract providing for the payment of hourly fees without regard to the outcome of the matter for the following reasons:

(1) TIME: It is not economically feasible for the City to pay outside counsel on an hourly basis for what the City anticipates will require significant hours of attorney time and significant costs advanced in pursuing the relief the City expects to achieve.

The issues involved in the City's claim have not been adjudicated and determined since the Texas Video Services Providers Act was passed in 2005. As an unsettled matter of law, the VSPs will likely aggressively oppose all aspects of the Litigation. It will require the skill of attorneys who have familiarity with complex litigation. It is the City's experience that attorneys with this familiarity and experience have high billable hourly rates and are not receptive to taking on contingency fee cases such as this where recovery is not certain; doing so would preclude them from taking other cases on an hourly paid basis.

(2) COMPLEXITY/DAMAGES: Besides legal issues, determining damages may be complicated to calculate. Damages will be based, in part, on: 1) gross receipts of each VSP, with data going back thirteen years to 2007, and 2) individual subscriptions to residents of the City. It is unclear in what format the data is kept to determine gross receipts, but it is anticipated to be complex and difficult to understand. It will require experienced lawyers with the assistance of experts to decipher the data and determine a mathematical or formulaic calculation for each defendant for receipts generated over 13-plus years. Because there are at least three distinct defendants, it is likely that they have different business practices and ways of maintaining their data.

- (3) EXPENSES: Finally, the Counselors the City requests to employ have agreed to advance expenses in the case, which are likely to be significant given the need for experts in several fields and the general high expense of litigation. These expenses include but are not limited to: filing and service fees; costs of investigative services; travel expenses; deposition expenses and court reporter fees; outside trial services providers; expert witness fees; trial equipment rental and operation fees; preparation of exhibits and graphics; the costs of briefs and transcripts on appeal; and miscellaneous copying, postage, shipping, and courier expenses.

- F. The advance of expenses is risky because, under the terms of the legal services agreement, expenses are reimbursed only out of any recovery. Because the City has limited funds to advance for litigation expenses, it is especially in the City's interest, and that of its residents, to have attorneys advance those expenses and only be reimbursed by the City out of any recovery if the City is successful. Entering a contingent fee contract for legal services is in the best interest of the residents of the City because it will allow the City to recoup franchise fees owed the City since approximately 2007 and obtain a declaratory judgment ordering the VSPs to pay the fees in the future. Franchise fees recovered in the Litigation will be used to support other essential City services. Retaining counsel who will advance expenses in the litigation will allow the City to use those funds instead to support necessary city services.

EXHIBIT 1

McKOOL SMITH P.C.

McKool Smith was founded in 1991 with offices in Dallas, Austin, Houston, Marshall, Los Angeles, and New York. It represents clients in complex commercial litigation, insurance recovery, intellectual property, bankruptcy, and white-collar defense matters.

In the past 15 years, the firm has secured 12 nine-figure jury verdicts and 15 eight-figure jury verdicts. It has also won more VerdictSearch and The National Law Journal “Top 100 Verdicts” than any other law firm in the country. Recent recognitions include:

Recognized by BTI Consulting as one of ten “Awesome Opponents,” the firms most feared by senior in-house counsel, in its annual Litigation Outlook Report (2019-2020).

Ranked a “Tier 1” law firm for bankruptcy, commercial, securities, banking & finance, intellectual property, patent, real estate, and regulatory enforcement litigation by U.S. News & World Report - Best Law Counselors (2020).

Ranked as a leading firm for Commercial Litigation, Insurance Policyholder Litigation, and Securities Plaintiff Litigation by Chambers USA (2020).

Ranked as a “Highly Recommended” Litigation Firm and Plaintiff Firm by Benchmark Litigation (2020).

Awarded “Insurance Group of the Year” by Law360 (2020).

Recognized as a “Texas Powerhouse Firm” by Law360 (2019).

Awarded “Trial Group of the Year” by Law360 (2018).

Steven Wolens is a principal at McKool Smith. He has practiced law since 1976. He received a B.A. with distinction from Stanford University in 1973, and a J.D. from Southern Methodist University Law School in 1976. He represents clients in complex class-action claims and commercial litigation. He is peer-reviewed as an AV rated lawyer by Martindale Hubbell.

In certifying a class action on behalf of 173 Texas cities in *City of San Antonio v Hotels.com*, the district court found “With regard to adequacy of counsel, the Court must determine whether class counsel has the qualifications, experience and training to litigate the case to its conclusion...The lead attorneys in this case are Steven Wolens and Gary Cruciani. Both attorneys have a wealth of experience in complex litigation, including substantial class action experience.” *City of San Antonio v. Hotels.com*, No. SA-06-CA-381-OG, 2008 WL 2486043, at *8 (W.D. Tex. May 27, 2008).

For 24 years, he served as a member of the Texas Legislature and authored landmark legislation covering partnerships and limited liability corporations, ethics reforms, antitrust laws, and electric deregulation. Texas Monthly magazine named him one of the “Ten Best Legislator” in the state on six separate occasions. He currently serves on the Texas Ethics Commission, which he chaired from 2017–2019.

ASHCROFT SUTTON REYES LLC

Ashcroft Sutton Reyes LLC (d/b/a/ Ashcroft Law Firm) was founded in 2008 by former U.S. Attorney General, Governor, and Senator John Ashcroft. Together with the select group of seasoned, respected, and experienced senior executives he recruited to join him—many of whom helped to lead the U.S. Department of Justice during a significant time in our nation’s history following the attacks on 9/11—the Ashcroft Firm has earned a reputation for integrity and a track record for accelerating successful resolutions of even the most complex matters.

In addition to General Ashcroft, the Ashcroft Firm is comprised of the former U.S. Attorney for the Western District of Texas, former Deputy Assistant to the President of the United States, former member of the Executive Administration of the Texas Attorney General's Office, former Assistant United States Attorney, former Deputy Associate Attorney General and Chief of Staff in the U.S. Department of Justice, former General Counsel and Assistant General Counsel to the Special Inspector General for Iraq Reconstruction, former Assistant General Counsel to the Governor of Texas, and several other highly skilled and experienced attorneys, all of whom know and understand government.

The Ashcroft Firm’s attorneys are litigators who have led multi-plaintiff lawsuits against formidable foes, like the federal government, other states, and local government entities. Ashcroft attorneys have appeared in federal and state courts throughout the United States and internationally, ranging from the Supreme Court of the United States to municipal courts in Texas.

Additionally, the Ashcroft Firm provides legal and consulting services to world-leading clients, including Fortune 500, nation states, elected officials, multi-national corporations, and corporate executives. The Ashcroft Firm regularly leads large entities (government and private) through a large range of regulatory matters including issues involving the FCPA, FATCA, OFAC, SOX, ITAR, FCA, the FAR and the Bank Secrecy Act (Anti- Money Laundering).

Ashcroft attorneys have tried countless civil and criminal cases to verdict in state and federal courts throughout the country. The legal experience and efforts of Ashcroft attorneys has resulted in governmental entities recovering billions for contractual breaches, theft, tax evasion, waste, fraud, and abuse.

KOREIN TILLERY LLC

Korein Tillery — based in Chicago and St. Louis — is one of the country’s most successful plaintiffs’ complex-litigation firms, representing a broad array of clients in high-stakes lawsuits and delivering over \$18 billion in verdicts and settlements over the last 16 years. The National Law Journal has consistently deemed Korein Tillery to be one of the country’s top plaintiffs’ firms by naming it to its “Plaintiffs’ Hot List” seven times in the past 16 years. In 2014 and 2015, Korein Tillery was named by the NLJ as a member of its top 50 Elite Trial Lawyers.

Since 2007, Korein Tillery has represented Missouri municipalities in litigation that sought to recover unpaid license taxes. In suits against wireless and wireline carriers, Korein Tillery recovered hundreds of millions of dollars of license tax revenues—both retrospectively and prospectively—for more than 350 cities throughout Missouri. Korein Tillery has recovered more than \$1 billion for Missouri municipalities. As a result of their work in these cases, the Missouri Lawyers Weekly recognized Korein Tillery partners with awards in the “largest plaintiff wins” category in 2007, 2009, 2010, 2015, and 2017. On two separate occasions corporate defendants have secured state legislation banning the litigation. In both instances Korein Tillery has successfully challenged the legislation as unconstitutional in the Supreme Court of Missouri. *See, e.g., State ex rel. Collector of Winchester v. Jamison*, 357 S.W.3d 589 (Mo. 2012).

Steven Berezney is a partner in Korein Tillery’s St. Louis office. He received his J.D. from the University of Illinois in 2003, where he served as Editor-in-Chief of the Law Review. After graduation, Mr. Berezney served as a judicial law clerk for Judge Laura Denvir Stith of the Supreme Court of Missouri.

While in private practice at Husch Blackwell, Mr. Berezney was part of the team that won a \$1 billion judgment that, at the time, was the fourth largest patent infringement jury verdict in U.S. history, according to Bloomberg. *Monsanto Co. v. E.I. DuPont de Nemours & Co.*, 4:09-cv-00686-ERW (E.D. Mo. Aug. 1, 2012). At Korein Tillery, Mr. Berezney managed and litigated all aspects of multi-billion-dollar cases in federal trial and appellate courts against Wall Street investment banks arising from misrepresentations made about residential mortgage-backed securities. Mr. Berezney played a significant role in obtaining over \$5 billion in recoveries. Mr. Berezney has also been part of the team litigating Sherman Act price fixing conspiracy claims raised against 16 investment bank defendants in *In re: Foreign Exchange Benchmark Rates Antitrust Litigation*, No. 13-cv-07789-LGS (S.D.N.Y.), resulting in \$2.3 billion in recoveries to date.

Garrett Broshuis received his J.D. from Saint Louis University, where he graduated valedictorian and served as Editor-in-Chief of the Law Journal. Before law school, Mr. Broshuis played six years as a pitcher in the San Francisco Giants’ organization, working at all levels of minor league baseball.

Since joining Korein Tillery, Mr. Broshuis has represented minor league baseball players in a novel case seeking to increase the players’ pay, which recently had its class action status affirmed and expanded by the Ninth Circuit Court of Appeals. *Senne v. Kansas City Royals Baseball Corp.*, 934 F.3d 918, 922 (9th Cir. 2019). He also represents classes of Missouri municipalities in several actions against Fortune 500 and other large companies.

Mr. Berezney and Mr. Broshuis are both responsible for litigating the first known filed lawsuit (in Missouri) seeking to require streaming companies to pay franchise fees to municipalities. They are litigating similar cases in Indiana and Georgia.



City Council Meeting

Date: February 1, 2022

Agenda Item: 8.A.

PRESENTER: Larissa Philpot, Economic Development Director

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 governmental body has received from business prospects that the governmental body seeks to have locate, stay, or expand in or near the territory of the governmental body and with which the governmental body is conducting economic development negotiations; and
2. Deliberate the offer of financial or other incentives 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: