



May 3, 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 4:30 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 by telephone 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 May 3, 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 presentation and hold a discussion regarding new Planning & Zoning policy changes regarding zoning applications and meetings. (City Planner)
 - B. Receive a presentation, hold a discussion and give staff direction regarding amendments to Chapters 18, 74 and 86 of the Code of Ordinances to update and consolidate alcohol regulations. (Community Services 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. RECOGNITIONS:
 - A. Present a Mayor's Monarch Pledge Day proclamation. (Community Services

Director and Mayor)

6. ITEMS TO BE REMOVED FROM CONSENT AGENDA.
7. CONSENT AGENDA: Items included under Consent Agenda require little or no deliberation by Council. Approval of Consent Agenda authorizes the City Manager or his designee to proceed with conclusion of each in accordance with staff recommendations as reflected in the minutes of this meeting.
 - A. Consider approval of minutes for April 19, 2022 regular meeting. (City Secretary)
 - B. Quarterly Investment Report for quarter ended March 31, 2022. (Director of Finance)
 - C. Consider approval of a Mutual Aid Agreement between the City of Nacogdoches and the Nacogdoches ISD Police Department for the provision of law enforcement during an emergency. (Interim Police Chief)
 - D. Consider approval of a Mutual Aid Agreement between the City of Nacogdoches and the City of Center for the provision of law enforcement during an emergency. (Interim Police Chief)
 - E. Consider approval of a Mutual Aid Agreement between the City of Nacogdoches and Houston County for the provision of law enforcement during an emergency. (Interim Police Chief)
 - F. Consider approval of a Mutual Aid Agreement between the City of Nacogdoches and Cherokee County for the provision of law enforcement during an emergency. (Interim Police Chief)
 - G. Consider approval of a contract with Advanced Roofing Services, Inc. for the replacement of the Sunset Cemetery Mausoleum roof in the amount of \$55,073. (Community Services Director)
8. REGULAR AGENDA: City Council will receive staff recommendations and public input on the following items, and may deliberate and take formal action on the item.
 - A. Consider approval of Resolution No. 1300-05-22 amending a Chapter 380 Economic Development Program agreement by and between the City of Nacogdoches and HCH Aviation, LLC regarding development of a flight school at A.L. Mangham, Jr. Regional Airport. (Economic Development Director)
 - B. Consider the adoption of a budget amendment in the amount of \$610,835 for the amended Chapter 380 Economic Development Program agreement by and between the City of Nacogdoches and HCH Aviation, LLC regarding development

of a flight school at A.L. Mangham, Jr. Regional Airport. (Economic Development Director)

- C. Receive mid-year financial update. (Director of Finance)
 - D. Receive an update on Customer Service Inspections for commercial entities and backflow preventer testing and installations. (Public Works Director)
 - E. Consider the adoption of an ordinance amending Chapters 18, 74 and 86 of the City of Nacogdoches' Code of Ordinances to update and consolidate alcohol regulations. (Community Services Director)
 - F. Consider a contract amendment to extend the current electricity retail sales agreement with the Texas General Land Office (GLO) for a period to expire on December 31, 2023 (Director of Finance)
 - G. Consider resolution(s) to rejoin the Texas Coalition for Affordable Power (TCAP) for the procurement of electric services and to authorize the City Manager to execute any associated agreements. (Director of Finance)
 - H. Consider resolution(s) to participate in a Purchasing Cooperative offered by the Region15 Education Service Center for the procurement of electric services and to authorize the City Manager to execute any associated agreements. (Director of Finance)
9. EXECUTIVE SESSION: Executive Sessions are for City Council to receive information and deliberate on matters specified in Subchapter D of the Texas Open Meetings Act. Council may reconvene in open session to vote on the matter.
- A. Deliberation regarding Economic Development negotiations under Government Code Section 551.087 as follows:
 - 1. Discuss or deliberate regarding commercial or financial information the 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.
 - B. Personnel Matters – Pursuant to Texas Government Code Section 551.074, deliberations regarding the employment of a public officer or employee.
 - C. Personnel Matters – Pursuant to Texas Government Code Section 551.074, deliberations regarding the appointment or employment of a public officer or employee. The subject of this executive session is to discuss the annual evaluation

and extension of the City Attorney's contract.

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

11. ADJOURN.



Jan Vinson, City Secretary



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

CERTIFICATION

I certify the notice of meeting was posted in the directory outside of City Hall, 202 E. Pilar Street, Nacogdoches, Texas on April 28, 2022 at 10:30 a.m. and remained posted until meeting convened.

Jan Vinson, City Secretary



City Council Meeting

Date: May 3, 2022

Agenda Item: 3.A.

PRESENTER: Alaina Helton, City Planner

ITEM/SUBJECT: Receive a presentation and hold a discussion regarding new Planning & Zoning policy changes regarding zoning applications and meetings. (City Planner)

SUMMARY/BACKGROUND: This item will include a discussion of new Planning & Zoning departmental policy changes intended to increase community engagement and participation in the zoning process. These policy changes cover the following areas:

- Pre-application meetings;
- Neighborhood meetings for certain zoning applications; and,
- Additional P&Z Commission meetings

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: Alaina Helton, AICP, City Planner
heltona@nactx.us
936-559-2572

ATTACHMENTS:

1. Planning & Zoning Commission Calendar (2022)
2. PowerPoint Presentation

Planning & Zoning Meeting Dates (2022)
April 11, 2022
April 25, 2022
May 9, 2022
May 23, 2022
June 13, 2022
June 27, 2022
July 11, 2022
July 25, 2022
August 8, 2022
August 22, 2022
September 12, 2022
September 26, 2022
October 10, 2022
October 24, 2022
November 14, 2022
November 28, 2022
December 12, 2022
December 26, 2022
January 9, 2023

Agenda Item #3.A

Work Session P&Z Policy Changes

Council Policy changes since 1/2021

- Courtesy notices beyond 200' (w/in 500')
- HOA/NA letters
- Signs
- Website & social media posts

P&Z Policy Changes:

SUP, PD, and certain Zone changes

- Pre-application meetings*
- Neighborhood meetings
- Additional P&Z Commission meetings

Applicable Zoning Changes

- Planned Development Districts (PD)
- Specific Use Permits (SUP)
- Change from Single Family to Multi-Family, Commercial or Industrial district.
- Increase by 2 or more zoning districts. Ex: R-1 to R-3, or R-2 to R-4

Zoning Ordinance

Sec. 118-171. – Preapplication conference.

- a) It is **recommended** that the applicant for a zoning-related change have a preapplication conference with the city planner prior to incurring substantial expense in preparing plans, surveys and other data.
- b) An applicant for a zoning change is **encouraged** to request a preapplication conference with the city planner prior to formal application.
- c) At the preapplication conference, the applicant should present a draft concept with as much detail as possible.
- d) Based on the information presented, the city planner will provide initial comments concerning the merits of the proposed development and inform the applicant of any additional requirements for preparation of the formal planned development application.

Neighborhood Meetings

- Get neighborhood input **prior** to application submission
- Postcards to property owners w/in 500 ft
- 10 day notice
- Applicant led
- City staff coordinate time, location and notices

PUBLIC/ NEIGHBORHOOD MEETING

Project Location: 1905 Pearl Street
Applicant: Mario Wesley

Dear Resident,

Prior to submittal of certain zone change applications, the City of Nacogdoches Planning & Zoning department requires a meeting between the applicant and neighbors. This is your notice to meet and review a **potential zone change from R-1, Single Family to R-4, Multi-Family** for a duplex development at **1905 Pearl Street**.

As a property owner/resident who lives within 500 feet of this request, you are invited to make your views known by attending this pre-application neighborhood meeting. This meeting will take place on **Wednesday, April 27th at 5:30pm** in the large meeting room at the C. L. Simon **Recreation Center, located at 1112 North St.**, Nacogdoches, TX.

This is not a public hearing, and public officials will not be present. If you have questions regarding meeting requirements, please contact the City of Nacogdoches Planning & Zoning Department.

For more information, contact Planning staff at (936) 559-2574 or lewisl@nactx.us



P&Z Commission Meetings

- Currently meets 2nd Monday of month
- Additional meeting 4th Monday of month (if needed)
- More flexibility in managing agendas
- Reduces project delays
- Reduces administrative burden

City Comparison

City	Lufkin	Huntsville	Denton	Bryan	Missouri City	Georgetown	San Marcos	Plano
Pre-App Mtgs			✓		✓		✓	✓
Neighborhood Mtgs								
2 P&Z Mtgs	✓		✓	✓		✓	✓	✓

Re-cap of Changes:

- Pre-application meetings*
- Neighborhood meetings
- 2 P&Z meetings a month (if needed)
- Questions?

PRESENTER: Brian Bray, Community Services Director

ITEM/SUBJECT: Receive a presentation, hold a discussion and give staff direction regarding amendments to Chapters 18, 74 and 86 of the Code of Ordinances to update and consolidate alcohol regulations. (Community Services Director)

SUMMARY/BACKGROUND: The City of Nacogdoches Code of Ordinances that reference the sale and consumption of alcoholic beverages has not kept pace with the legislature and regulator changes to the statutes and regulations. Some of these ordinances are inconsistent and/or preempted by state regulations.

The City of Nacogdoches would like to bring our Code of Ordinances into compliance with State regulations and create a clear pathway for reviewing requests to serve and consume alcoholic beverages in city facilities. The proposed amendments will assist special event and festival organizers, hosting events in City facilities, with a permit process to provide wine, beer and other alcoholic beverages at their events and fundraisers. The City has previously allowed alcoholic beverages at events without experiencing detrimental impacts, but the City process for allowing such is not standardized or easily accessible to the public or event organizers.

The City desires to consolidate its alcohol regulations, listed in sections 74-62 and 86-26, update the code to comply with current statutes and regulations and simplify the process for obtaining permission to sell or provide alcohol at a special event. The consolidated ordinance would be Chapter 18, Section 18-27 - Alcohol at City Facilities.

This new section outlines the process which a group, organization or event planner must go through to be able to sell or serve an alcoholic beverage at an event in a City facility. The event planner must obtain a special event permit, issued by the City Manager or designee, provide proof of liability insurance and comply with the Texas Alcoholic Beverage Code before being eligible to receive a permit. If approved, the permit is valid for a period not to exceed 72 consecutive hours. Furthermore, in issuing the permit, the City Manager is authorized to implement additional safety and control regulations concerning location, hours of operation, security and other appropriate conditions to protect the health, safety and welfare of the general public and event attendees.

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

ATTACHMENTS: 1. Ordinance No. 1910-05-22.docx

2. Chapters 74 & 86
3. Chapter 18-27
4. Sample TABC letter.docx
5. PowerPoint Presentation

ORDINANCE NO. 1910-05-22

ORDINANCE AMENDING CHAPTERS 18, 74 AND 86 OF THE CODE OF ORDINANCES TO UPDATE AND CONSOLIDATE ALCOHOL REGULATIONS

WHEREAS, the City of Nacogdoches, Texas (the “City”) owns and operates streets, parks and buildings, (“ Facilities”) throughout the City; and

WHEREAS, the State of Texas has extensive statutes and regulations for the sale and consumption of alcoholic beverages,

WHEREAS, the Code of Ordinances has not kept pace with the legislature and regulatory changes to the statutes and regulations and some may be inconsistent or preempted by State regulation,

WHEREAS, organizers of festivals and other special events, nonprofit and civic agencies that hold special events, and city boards and commissions that support city activities and facilities desire to have the option of providing wine, beer and other alcoholic beverages at their events and fundraisers; and

WHEREAS, Patrons of said events expect to have the option of purchasing and consuming beer, wine and other alcoholic beverages at the events, and

WHEREAS, the City has previously allowed alcoholic beverages at events without experiencing detrimental impacts, but the City process for allowing such is not standardized or easily accessible to the public or event organizers, and

WHEREAS, the City desires to consolidate its alcohol regulations, update the Code to comply with current statutes and regulations, and simplify the process for obtaining permission to sell or provide alcohol at a special event,

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

SECTION I

All of the above recitals are found to be true and correct legislative and factual findings.

SECTION II

Chapter 18 is amended to add the following section:

Section 18 - 27 – Alcohol at City Facilities.

- (a) No person, firm, corporation, or business entity of any land shall sell, store, possess or consume an alcoholic beverage in any city park, street, sidewalk, facility or city owned

premises ("City Facilities"), except as provided in this subsection. The term "alcoholic beverage," as that term is used in this article, shall be defined as used in the Texas Alcoholic Beverage Code.

- (b) The city manager or designee may, notwithstanding the prohibition in subsection (a) of this section, issue a permit to a person or entity for the consumption, possession and/or sale of alcoholic beverages for on premises consumption, for a period not to exceed 72 consecutive hours, for City Facilities. For such event, the city manager or designee may grant a special event permit to allow for the consumption, possession, and/or sale of beer and wine by a state licensed vendor or permit holder under the Texas Alcohol Beverage Code in accordance with state law and reasonable conditions as set forth herein.
- (c) No permit shall be issued until satisfactory proof has been provided for liability insurance and compliance with the Texas Alcoholic Beverage Code, as amended, and rules issued by the appropriate state agency. The city manager is further authorized to implement such other appropriate safety and control regulations concerning location, hours of operations, security and other appropriate conditions to protect the health, safety and welfare of the general public and event attendees.
- (d) The city by resolution may establish an appropriate fee for issuance of such permit. Standard conditions, requirements and permit application will be published and made available to the public on the City website.

SECTION III

Sec. 74-62 of Chapter 74 of the Code of Ordinances is deleted.

SECTION IV

Sec. 86-26 of Chapter 82 of the Code of Ordinances is deleted.

SECTION V

All ordinances, resolutions, or parts thereof that are inconsistent with any provision of this Ordinance are hereby repealed to the extent of such conflict, and the provisions of this Ordinance shall be and remain controlling as to the matter regulated.

SECTION VI

If any word, article, phrase, paragraph, sentence, clause, or provision of this Ordinance shall be held to be invalid or unconstitutional, such holding shall in no way affect other provisions or applications of this Ordinance which can be given effect without the invalid provision, and to this end the provisions of this Ordinance are declared to be severable.

SECTION VII

All provisions of the Code of Ordinances of the City of Nacogdoches not specifically amended or repealed herein remain in full force and effect. This ordinance shall be and is hereby

declared to be cumulative of all other ordinances of the City of Nacogdoches, and this ordinance shall not operate to repeal or affect any of such other ordinances except insofar as the provisions thereof might be inconsistent or in conflict with the provisions of this ordinance, in which event such conflicting provisions, if any, in such other ordinance or ordinances are hereby repealed.

SECTION VIII

This Ordinance shall take effect immediately upon its passage.

SECTION IX

Proper Notice & Open Meeting. It is hereby officially found and determined that the meeting at which this Ordinance was passed was open to the public as required and that public notice of the time, place, and purpose of said meeting was given as required by the Open Meetings Act, Chapter 551 of the Texas Government Code.

SECTION X

The City Secretary is hereby authorized and instructed to file a signed and sealed copy of this Ordinance in and among the records of the City of Nacogdoches.

PASSED AND APPROVED, this the ____ day of _____, 2022, by a vote of ____ (ayes) to ____ (nays) of the City Council of the City of Nacogdoches, Texas.

CITY OF NACOGDOCHES

By: _____
JIMMY MIZE, Mayor

ATTEST:

APPROVED AS TO FORM:

Jan Vinson, City Secretary

Steven Kirkland, City Attorney

Chapter 74 - PARKS AND RECREATION

~~Sec. 74-62. Consumption and possession of alcoholic beverages.~~

- ~~(a) It shall be unlawful for any person to possess or consume alcoholic beverages within any city-owned property, without the appropriate permissions.~~
- ~~(b) Alcoholic beverages may be allowed in foregoing areas provided the appropriate application and deposit, and a reservation agreement is issued.~~
- ~~(c) The following guidelines and procedures apply to alcoholic beverages in all areas listed in subsection 74-62(a) above, except for the designated area of Festival Park:
 - ~~(1) Consumption of alcohol on these properties is permitted during special events that are approved by the city.~~
 - ~~(2) Applicant must submit an event application at least ten days prior to the proposed event.~~
 - ~~(3) Alcoholic beverages must only be consumed in accordance with state law.~~~~
- ~~(d) The following guidelines and procedures apply to alcoholic beverages in the designated area of Festival Park:
 - ~~(1) Alcohol is allowed only during a festival or event that is approved by the city.~~
 - ~~(2) Applicant must submit a festival/event permit application at least 90 days prior to the proposed festival that includes the following documentation:
 - ~~a. A map depicting the following:
 - ~~1. The boundaries of the festival area;~~
 - ~~2. Locations of fencing and type of fencing material to be approved by the city manager;~~
 - ~~3. Locations of entrance and exit points; and~~
 - ~~4. Locations of alcohol sales.~~~~
 - ~~b. Proof of required licenses, permits and paid fees mandated by state and local law for the sale of alcoholic beverages.~~~~
 - ~~(3) Applicant must present the request to the city council for consideration.~~
 - ~~(4) The sale and/or consumption of alcoholic beverages shall be limited to the area(s) indicated on the festival/event permit application.~~
 - ~~(5) If the event is gated with controlled access:
 - ~~a. Alcohol may be sold throughout the gated, controlled access area of Festival Park.~~
 - ~~b. The gating and access control must be approved by the city manager.~~~~
 - ~~(6) If the event is not gated with controlled access:
 - ~~a. Alcohol may only be sold in areas designated in the festival/event permit application.~~
 - ~~b. Each designated area shall be "double-fenced" of a material approved by the city manager with a four foot space between fences for security personnel and minimum height of 48 inches.~~
 - ~~c. The designated area shall meet all applicable health and safety codes.~~
 - ~~d. The designated area shall have no more than one public entrance.~~~~~~

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- ~~(7) — Peace officers licensed in the state must be on-site throughout the event's operation and outside the perimeter to provide security. The city manager shall determine the number of officers required for the event. The event holders will pay for the service of the peace officers.~~
- ~~(8) — Alcoholic beverages may only be sold or consumed in accordance with state law.~~
- ~~(9) — No glass containers will be allowed in Festival Park.~~
- ~~(10) — The applicant will be responsible for the proper disposal of all trash on any property, public or private, which was utilized by the organizer during the event. Proper disposal of trash shall occur no later than 24 hours following the end of the event.~~

(Code 1971, § 19-16(a); Ord. No. 1323-5-03, 5-20-2003; Ord. No. 1520-06-09, 6-16-2009; Ord. No. 1574-6-11, 6-21-2011; Ord. No. 1614-11-12, 11-20-2012; Ord. No. 1872-08-21, § III, 9-7-2021)

Chapter 86 – STREETS, SIDEWALKS AND OTHER PUBLIC PLACES

Sec. 86-26. Alcoholic beverages.

~~It shall be unlawful for any person to consume alcoholic beverages in any public place within the city, excluding restaurants, private clubs and those areas indicated in section 74-62.~~

~~(Code 1971, § 19-16(b))~~

ARTICLE II. - ALCOHOLIC BEVERAGES

Secs. 18-27

- (a) No person, firm, corporation, or business entity of any land shall sell, store, possess or consume an alcoholic beverage in any city park, street, sidewalk, facility or city owned premises ("City Facilities"), except as provided in this subsection. The term "alcoholic beverage," as that term is used in this article, shall be defined as used in the Texas Alcoholic Beverage Code.
- (b) The city manager or designee may, notwithstanding the prohibition in subsection (a) of this section, issue a permit to a person or entity for the consumption, possession and/or sale of alcoholic beverages for on premises consumption, for a period not to exceed 72 consecutive hours, for City Facilities. For such event, the city manager or designee may grant a special event permit to allow for the consumption, possession, and/or sale of beer and wine by a state licensed vendor or permit holder under the Texas Alcohol Beverage Code in accordance with state law and reasonable conditions as set forth herein.
- (c) No permit shall be issued until satisfactory proof has been provided for liability insurance and compliance with the Texas Alcoholic Beverage Code, as amended, and rules issued by the appropriate state agency. The city manager is further authorized to implement such other appropriate safety and control regulations concerning location, hours of operations, security and other appropriate conditions to protect the health, safety and welfare of the general public and event attendees.
- (d) The city by resolution may establish an appropriate fee for issuance of such permit. Standard conditions, requirements and permit application will be published and made available to the public on the City website.



May 3, 2022

SAMPLE
FORM

Texas Alcohol Beverage Commission
1234 Main Street
Anywhere, TX

To Whom it May Concern,

The city of Nacogdoches is hosting the Pecan Acres Theater on Saturday, June 4, 2022 at Pecan Acres Park. ABC Company is authorized to sell alcoholic beverages at the event:

Event Name: Pecan Acres Theater

Event Location: 826 Starr, Nacogdoches, Texas
The attached site plan shows the permitted area for alcoholic beverage sales

Event Date: June 4, 2022

Event Times: 6:30 PM- 10:30PM

Permit Hours: 2 hours prior to event start time - 2 hours after event end time to allow for setup and tear down

Please contact Jane Doe at 936-123-4567 or doej@nactx.us if you have any questions or if you need additional information.

Sincerely,

Mario Canizares,
City Manager

CC: John Smith, ABC Company
Jane Doe, City of Nacogdoches

SAMPLE MAP



Consider ordinance amending

Chapters 18, 74 and 86 to update and consolidate alcohol
regulations

Chapter 74-62 - Consumption and Possession of Alcoholic Beverages

- Prohibits consumption or sale of alcoholic beverages at any City facility with the exception of Festival Park.
 - Festival Park requirements
 - Fencing around area where sale and consumption takes place, double fencing may be required
 - Controlled access or gated entrance/exit
 - Requires each request be presented to City Council for approval
- Alcohol is only allowed during a festival or event that has been approved by the City.

-Deleted-

Chapter 86-26 - Streets, Sidewalks and Other Public Places

- States that it is unlawful for any person to consume alcoholic beverages in any public place within the city, excluding restaurants, private clubs and those indicated in section 74-62.

-Deleted-

Chapter 18-27 Alcohol at City Facilities

(a) No person, firm, corporation, or business entity of any land shall sell, store, possess or consume an alcoholic beverage in any city park, street, sidewalk, facility or city owned premises ("City Facilities"), except as provided in this subsection. The term "alcoholic beverage," as that term is used in this article, shall be defined as used in the Texas Alcoholic Beverage Code.

(b) The city manager or designee may, notwithstanding the prohibition in subsection (a) of this section, issue a permit to a person or entity for the consumption, possession and/or sale of alcoholic beverages for on premises consumption, for a period not to exceed 72 consecutive hours, for City Facilities. For such event, the city manager or designee may grant a special event permit to allow for the consumption, possession, and/or sale of beer and wine by a state licensed vendor or permit holder under the Texas Alcohol Beverage Code in accordance with state law and reasonable conditions as set forth herein.

(c) No permit shall be issued until satisfactory proof has been provided for liability insurance and compliance with the Texas Alcoholic Beverage Code, as amended, and rules issued by the appropriate state agency. The city manager is further authorized to implement such other appropriate safety and control regulations concerning location, hours of operations, security and other appropriate conditions to protect the health, safety and welfare of the general public and event attendees.

(d) The city by resolution may establish an appropriate fee for issuance of such permit. Standard conditions, requirements and permit application will be published and made available to the public on the City website.

***New* Chapter 18-27 Alcohol at City Facilities**

- City manager or designee may issue a permit to a person or entity for the consumption, possession and/or sale of alcoholic beverages on City premises.
 - Special Event permit would allow for consumption, possession and/or sale of alcoholic beverages on City property not to exceed 72 hours.
 - Special Event permit to allow for the consumption, possession and/or sale of beer and wine by a state licensed vendor or permit holder under Texas Alcohol Beverage Code (TABC).
- City Manager is authorized to implement appropriate safety and control regulations concerning location, hours of operation, security and other appropriate conditions.
- City may establish an appropriate fee for issuance of a permit.

Ordinance Comparison

	Section 74-62	Section 18-27
Allows for sale of alcohol on city facilities.	Yes, only at Festival Park	Yes
Permit required?	Yes	Yes
Requires specific, set controlled access.	Yes	Yes/No
Final approval by City Council?	Yes	No
Final approval by City Manager?	No Yes - City Manager must approve fencing	Yes
In line with State and TABC Regulations?	No	Yes

Events allowed by Ordinance

Event	Allowed in Section 74-62?	Allowed in Section 18-27?
Concert in Festival Park	Yes, with fencing	Yes
Wedding Receptions and Events at Zion Hill	No	Yes
Wine Swirl	No	Yes
Alive After Five inside CVB	No	Yes
Nac Snack Food Truck on the Square	No	Yes
Literary Ball at Public Library	No	Yes

PRESENTER: Jimmy Mize, Mayor, Brian Bray, Community Services Director

ITEM/SUBJECT: Present a Mayor's Monarch Pledge Day proclamation. (Community Services Director and Mayor)

SUMMARY/BACKGROUND: The Mayors' Monarch Pledge program launched in 2015 to engage cities and communities in monarch and pollinator conservation. Between 2015 and 2020, the program welcomed over 600 mayors and heads of local and tribal government who engaged 6 million people and restored more than 6,500 acres of monarch habitat.

Since the monarch's migration spans the United States, Mexico, and Canada, the pledge expanded to these countries through new tri-national partnerships in 2017. The City of Nacogdoches took the Monarch Pledge in 2021 and installed three new Pollinator-friendly demonstration gardens (Nacogdoches RR Depot, Festival Park and Maroney Park). The Parks staff are committed to maintaining these three gardens along with the ones planted at the C.L. Simon Recreation Center and Ab's Park.

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

ATTACHMENTS:



City Council Meeting

Date: May 3, 2022

Agenda Item: 7.A.

PRESENTER: Jan Vinson, City Secretary

ITEM/SUBJECT: Consider approval of minutes for April 19, 2022 regular meeting. (City Secretary)

SUMMARY/BACKGROUND:

FINANCIAL:

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

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

ATTACHMENTS: 1. Minutes



Regular Session
Nacogdoches City Council
April 19, 2022 – 5:30 p.m.
City Council Room – City Hall
202 East Pilar Street

DRAFT

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

1. Called to order at 5:31 p.m.
2. Pledge of Allegiance.
3. Matt Moore spoke during open forum stating he was in favor of the affordable elderly housing issue discussed several weeks ago. He also stated that the tract on Maroney Drive should not be rezoned until the Comprehensive Plan is complete. Mr. Moore discussed the Park Street subdivision that received incentives from the City stating the actions of the City have allowed a rural subdivision with urban standards.
4. Council Member Boldon asked that Item 5.H. be removed for discussion.
5. **CONSENT AGENDA:** Items included under Consent Agenda require little or no deliberation by Council. Approval of Consent Agenda authorizes the City Manager or his designee to proceed with conclusion of each in accordance with staff recommendations as reflected in the minutes of this meeting.
 - A. Consider approval of minutes for April 5, 2022 regular meeting and April 6, 2022 special meeting.
 - B. Consider approval of a Mutual Aid Agreement between the City of Nacogdoches and Stephen F. Austin Police Department for the provision of law enforcement during an emergency.
 - C. Consider approval of a Mutual Aid Agreement between the City of Nacogdoches and the City of Henderson for the provision of law enforcement during an emergency.
 - D. Consider approval of a Mutual Aid Agreement between the City of Nacogdoches and the City of Crockett for the provision of law enforcement during an emergency.
 - E. Consider approval of a Mutual Aid Agreement between the City of Nacogdoches and San Augustine County for the provision of law enforcement during an emergency.
 - F. Consider approval of a Mutual Aid Agreement between the City of Nacogdoches and Shelby County for the provision of law enforcement during an emergency.
 - G. Consider approval of a resolution of support for appropriation request for US 59/259 North Interchange Project.
 - H. Consider acceptance of Texas Department of Transportation STEP-Click it or Ticket grant.
 - I. Consider approval of an ordinance amending Ordinance No. 1906-04-22 appropriating various amounts in accordance with budget adopted for the ensuing fiscal year beginning October 1, 2021 and ending September 30, 2022 for the Texas Department of Transportation STEP - Click it or Ticket grant program.

Council Member Jay Anderson moved approval of the Consent Agenda except for Item 5.H.; motion duly seconded by Council Member Amelia Fischer and carried by unanimous vote.

Council Member Boldon stated he mistakenly said Item 5.H. but actually had questions about the mutual aid agreements that are on the Consent Agenda. Council Member Boldon discussed fees for services regarding the mutual aid agreements.

Chief Sevey stated the City does not charge fees for the mutual aid agreement services. Chief Sevey stated the mutual aid agreements have been revised due to changes in leadership of each entity which changes the signatory line.

Minutes unofficial until approved by City Council

Council Member Roy Boldon moved approval for Item 5.H.; motion duly seconded by Council Member Amelia Fischer and carried by unanimous vote.

Council Member Boldon also asked about mutual aid agreements for fire protection. Chief Keith Kiplinger explained those agreements and where we are in the process of updating said agreements.

6. REGULAR AGENDA:

- A. **Public Hearing:** Discuss and consider approval of a Historic Overlay Zoning application for the property located at 403 S. Shawnee St. HO#2022-001

Community Service Director Brian Bray stated that applicant Cleo Jenkins, representative of the E. J. Campbell Alumni Association, has requested the property located at 403 S. Shawnee Street, known as the E. J. Campbell High School, be included in the Historic Overlay Zoning. Mr. Bray also discussed the history of the school.

The Historic Landmark Preservation Committee and the Planning and Zoning Commission both recommended approval of the request.

Council Member Kathleen Belanger moved approval; motion duly seconded by Council Member Jay Anderson and carried by unanimous vote.

- B. **Public Hearing:** Consider a Zone Change from PD, Planned Development District to R-1, Single Family for approximately 32 acres, being Lots 1, 2, 3, 4R, 5 and 6R-1 of the Timber Springs Subdivision. This request has been submitted by Lone Star Breeder Farms, Inc. Case File ZON2022-02.

Council Member Jay Anderson recused himself due to a potential conflict of interest and left the room.

Alaina Helton, City Planner, stated this property was part of a Planned Development that never came to fruition, therefore the property owner is requesting it be zoned back to the original R-1 designation to be more consistent with the surrounding neighborhoods. The property owner is hoping to make the property more marketable for future single family development. This Planned Development has expired and is considered an empty zoning at this time.

The Planning and Zoning Commission recommended approval at their meeting on April 11, 2022 with a vote of 4-1.

Charmayne Dickhaut stated that the residents of the Kenbrook neighborhood looked at many variables when speaking against the Low Income Housing Tax Credit project near their subdivision.

Ed Pool, who works for Charles Pool Real Estate and also represents Lone Star Breeder Farms, stated that due to the overwhelming response from area residents the property owner is applying to rezone the property back to single family. There are no plans for a subdivision at this time.

Collin Ortiz who lives on Carole Street stated R-1 is the correct zoning for the property and will pave the way for more middle class housing.

Allen Reed stated he and his wife have lived in Kenbrook for over 40 years and they agree the property should be R-1 zoning.

Matt Moore asked City Council to wait until the Comprehensive Plan is complete. He stated the Comprehensive Plan is what we see and what we experience.

City Council discussed the current expired zoning, previous requests to rezone the same property, housing tax credit program and low income housing.

Council Member Kathleen Belanger moved approval; motion duly seconded by Mayor Jimmy Mize
Ayes – Council Member Belanger and Mayor Mize
Nays – Council Member Boldon

Council Member Fischer moved to table the Item 6.B. until the May 3, 2022 City Council meeting; motion duly seconded by Council Member Boldon and didn't pass by the following vote:
Ayes – Council Member Fischer and Council Member Boldon
Nays – Council Member Belanger and Mayor Mize

Mayor Jimmy Mize again called for a vote on the original motion; original motion didn't pass by the following vote:
Ayes – Council Member Belanger and Mayor Mize
Nays – Council Member Boldon and Council Member Fischer

Council Member Jay Anderson returned to the meeting.

C. Receive mid-year Nacogdoches Economic Development Corporation (NEDCO) update.

Robert Flores, NEDCO Chairman, discussed goals, mission and structure of NEDCO as well as major tasks and accomplishments.

Larissa Philpott Brown, NEDCO Executive Director, discussed job fairs, broadband and technology action plan, business development, A.L. Mangham Jr. Regional Airport, 380 Agreements, collaboration with SFASU, I-69 Advocacy and partnerships.

City Council discussed adult workforce development, flight school, aircraft maintenance classes and broadband. Council Member Belanger requested future discussions about the lack of a public hospital and charity care now that both hospitals are privately owned. Council Member Fischer would also like the discussion regarding the hospital district to occur as part of a work session during a future City Council meeting.

D. Consider approval of a contract by and between the City of Nacogdoches and Drewery Construction Co., Inc. for the 2022 Street Paving Project #1 in a not-to-exceed amount of \$918,483.00.

Case Opperman, Assistant Public Works Director, stated that CCC Blacktopping was the lowest bidder but withdrew their bid leaving Drewery Construction as the lowest bid in the total amount of \$918,483.00.

Council Member Roy Boldon moved approval; motion duly seconded by Council Member Jay Anderson and carried by unanimous vote.

E. Consider approval of the purchase and installation of playground equipment from GameTime for the Ritchie Street Playground in the amount of \$240,397.26.

Brian Bray, Community Services Director, stated this purchase will replace old playground equipment at Ritchie Street Park. The equipment will provide an all-abilities playground which will allow children and adults of all abilities to play together. The initial design was \$180,000 but with inflation the same design was \$260,000. Value engineering was done by Community Services staff and GameTime and the final design cost will be \$240,397.26.

Michelle Cox, Parks Advocacy League President, discussed many parks in Nacogdoches that have received updates and asked that City Council also approve this item.

Ann Keehnen also spoke in support of this all-abilities playground equipment.

Council Member Kathleen Belanger moved approval; motion duly seconded by Council Member Amelia Fischer and carried by unanimous vote.

F. Consider the adoption of a budget amendment in the amount of \$60,500.00 for the purchase and installation of playground equipment for Ritchie Street Park.

Brian Bray, Community Services Director, stated the playground equipment for Ritchie Street Park is over budget and approval of this budget amendment will allow staff to begin the process of purchasing and installing the playground equipment.

Council Member Jay Anderson moved approval; motion duly seconded by Council Member Roy Boldon and carried by unanimous vote.

G. Hold a discussion and give direction regarding the City of Nacogdoches Capital Improvement Project program.

Pam Curbow, Finance Director, briefly reviewed the same presentation which was given at the April 6, 2022 Special City Council Meeting regarding Capital Improvement Projects.

Council Member Belanger stated she is concerned about the Lanana and Banita Creek trunk sewer lines.

Steve Bartlett, Public Works Director, discussed why the Lanana and Banita Creek trunk sewer line repairs are so important. He stated staff will begin the process of securing engineers, environmental studies and surveys including some land acquisitions and easements which will probably take about 3 years. The money for this portion of the project is already in the current budget. Once there is a plan on how to move forward with the trunk sewer replacements, then staff will return to City Council to discuss funding of the trunk sewer replacement.

Pam Curbow, Finance Director, discussed street maintenance fees and what that revenue is used for. Ms. Curbow also discussed Tier 1, 2 and 3 Capital Improvement Projects. Tier 1 projects are in the upcoming budget but Tiers 2 and 3 are not funded at this time.

Council Member Belanger said she'd like to see several proposals on how the City might pay for the next five years projects and what that impact will be.

Finance Director Curbow stated that she would get the City's financial advisors to run a report showing debt service on the \$25,000,000 to complete the Lanana and Banita trunk sewer line projects.

Staff also discussed a water rate study, drainage fees, utility rate adjustments, impact fees, funding sources and deferred maintenance issues.

City Council went into Executive Session at 7:59 p.m.

7. EXECUTIVE SESSION:

A. Personnel Matters – Pursuant to Texas Government Code Section 551.074, deliberations regarding duties of a public officer or employee. The subject of this Executive Session is to discuss the annual evaluation and extension of the City Attorney's contract.

8. City Council reconvened in open session at 8:12 p.m. with the following action:

Council Member Kathleen Belanger moved to extend the City Attorney's contract for an additional year; motion duly seconded by Council Member Jay Anderson and carried by unanimous vote.

Council Member Jay Anderson moved to grant the City Attorney an additional two weeks of vacation accrual during the one year extended contract; motion duly seconded by Council Member Amelia Fischer and carried by unanimous vote.

9. Adjourned 8:14 p.m.

ATTEST:

Mayor Jimmy Mize
City Council
City of Nacogdoches

Jan Vinson, City Secretary



City Council Meeting

Date: May 3, 2022

Agenda Item: 7.B.

PRESENTER: Pam Curbow, Finance Director

ITEM/SUBJECT: Quarterly Investment Report for quarter ended March 31, 2022. (Director of Finance)

SUMMARY/BACKGROUND: Presentation of the quarterly investment report for the quarter ended March 31, 2022.

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

ATTACHMENTS: 1. Quarterly Investment Report

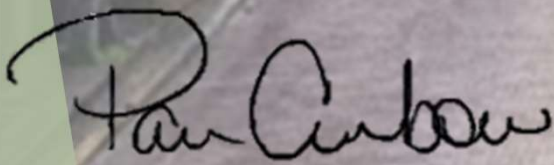
Nacogdoches

the oldest town in Texas



FY 2021-22 Investment Report – 2nd Quarter January 1, 2022 – March 31, 2022

This report is presented in accordance with the Texas Government Code Title 10 Section 2256.023. The below signed hereby certify that, to the best of their knowledge on the date this report was created, that this report is in compliance with the state policies and Investment Policy of the City of Nacogdoches.

A handwritten signature in black ink, appearing to read "Pam Curban".

Investment Officer

Investment Position as of March 31, 2022

As of March 31, 2022 the City of Nacogdoches has investments in the following accounts:

- ▶ \$7.9 million invested in Southside Bank; earning an average rate of 0.21%,
- ▶ \$42.4 million invested in TexPool accounts; earning a rate of 0.39%,
- ▶ \$1.5 million invested in a Fidelity Money Market Account with Regions Bank; earning a rate of 0.01%,
- ▶ \$6.5 million invested in a Money Market Account with Veritex Bank; earning a rate of 0.49% (variable, Texas Pools avg +.10%),
- ▶ \$4 million invested in a Money Market Account with Southside Bank; earning a rate of 0.38%,
- ▶ \$18.2 million invested in Certificates of Deposit; earning an average rate of 0.53%
- ▶ \$14 million invested in US Treasury Notes; earning an average rate of 1.05%
- ▶ The City's average yield for FY22 is 0.27%

Quarter End Results by Investment Category

Asset Type	December 31, 2021 Book Value	December 31, 2021 Market Value	March 31, 2022 Book Value	March 31, 2022 Market Value	March 31, 2022 APR
Southside Bank Depository Accounts	\$ 11,875,932.54	\$ 9,947,670.01	\$ 7,149,443.42	\$ 7,920,168.55	0.21%
Southside Money Market Account	\$ 4,011,466.64	\$ 4,011,466.64	\$ 4,015,226.50	\$ 4,015,226.50	0.38%
Veritex Bank Money Market Account	\$ 6,500,668.91	\$ 6,500,668.91	\$ 6,502,558.74	\$ 6,502,558.74	0.49%
Regions Bank/Fidelity Money Market Account	\$ 1,490,176.37	\$ 1,490,176.37	\$ 1,489,561.15	\$ 1,489,561.15	0.01%
Certificates of Deposits	\$ 20,219,787.96	\$ 20,219,787.93	\$ 18,237,567.60	\$ 18,237,567.57	0.53%
Texpool Investments	\$ 44,104,334.60	\$ 44,104,334.60	\$ 42,356,527.57	\$ 42,434,397.51	0.39%
US Treasury Notes	\$ -	\$ -	\$ 14,000,000.00	\$ 14,000,000.00	1.05%
Totals	\$ 88,202,367.02	\$ 86,274,104.46	\$ 93,750,884.98	\$ 94,599,480.02	

Current Quarter Average Yield
Total Portfolio 0.37%

Fiscal Year to Date Average Yield
Total Portfolio 0.27%

Interest Earnings

Quarterly Interest Income	\$ 83,578.36
Year to date Interest Income	\$ 121,641.50

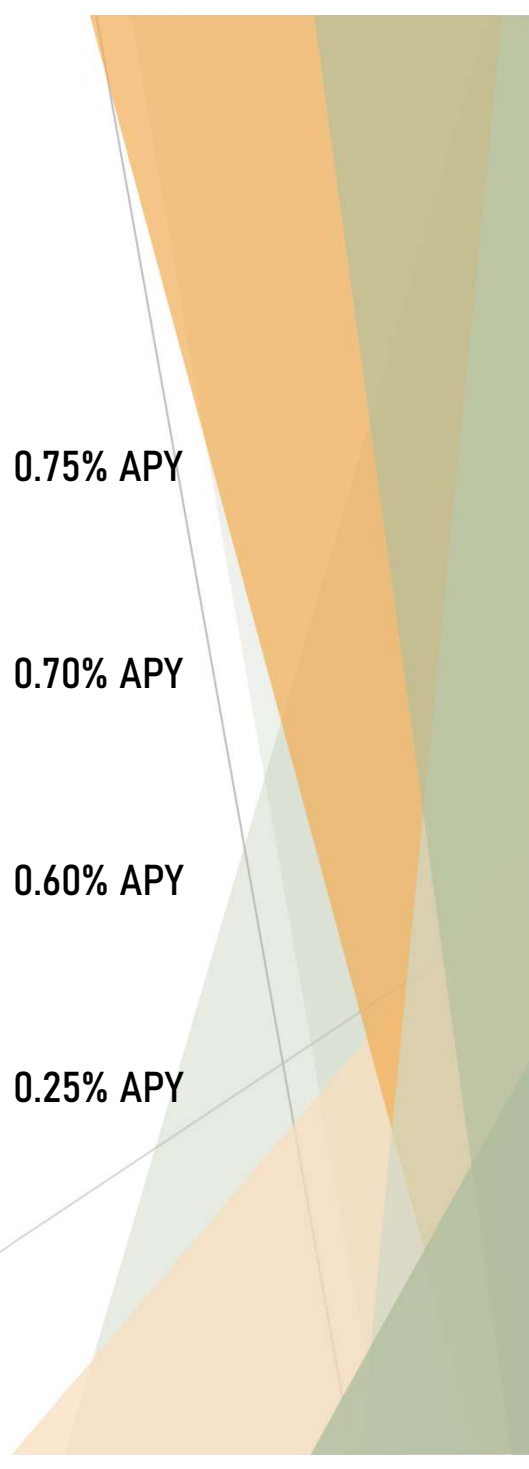
Note: Bank balances represent pooled cash accounts. Cash balances are unaudited.

Summary Investment Statement

01/01/2022 – 03/31/2022

Beginning Balance	01/01/2022	\$ 88,202,367
Ending Balance	03/31/2022	\$ 93,750,885
Increase / (Decrease)		\$ 5,548,518
Total Interest		\$ 83,578
Avg Yield for Quarter		0.37%

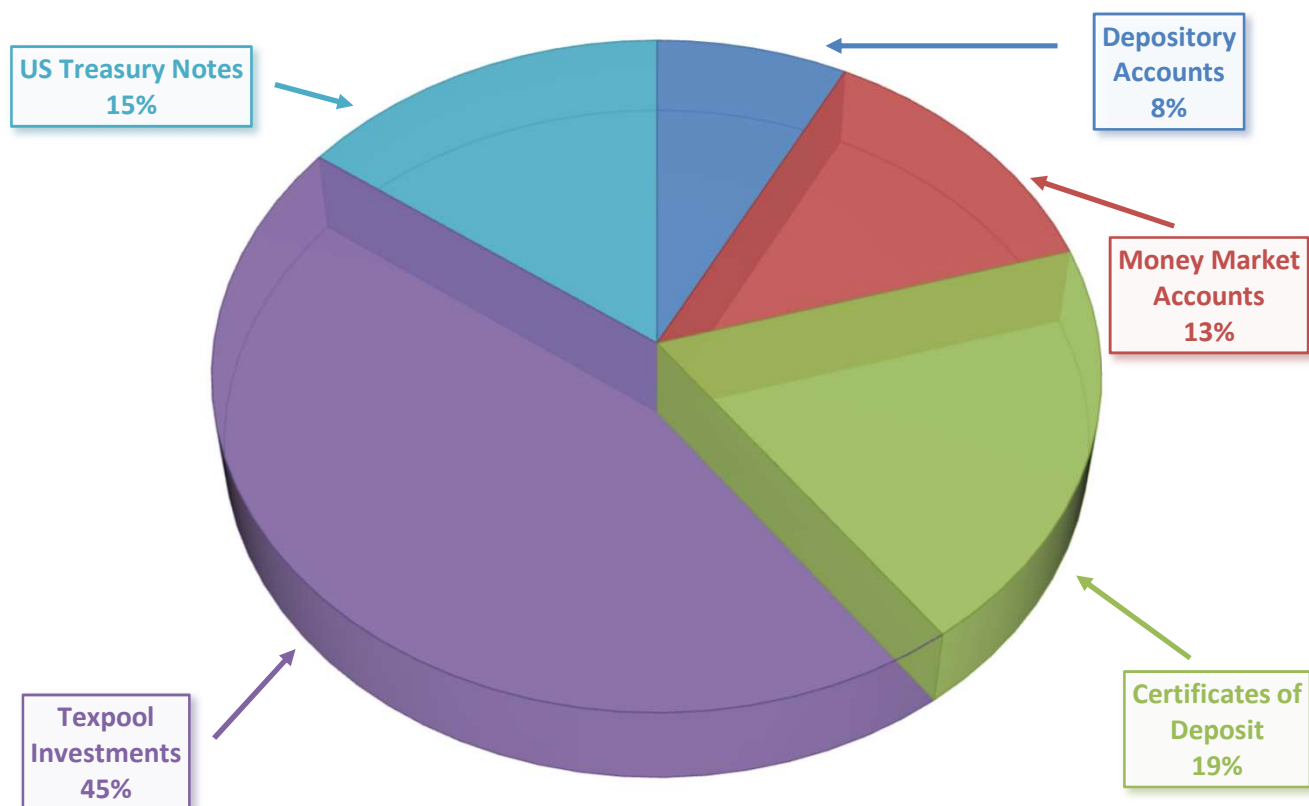
Certificates of Deposit

- 
- 
- ▶ Citizens State Bank (GF - \$2M)
18 Month CD
Balance = \$2,018,409
Maturity Date: 9/23/2023
0.75% APY
 - ▶ Citizens State Bank (GF - \$2M)
12 Month CD
Balance = \$2,030,228
Maturity Date: 3/31/2023
0.70% APY
 - ▶ Citizens 1st Bank (GF - \$1M, UF - \$1M)
24 Month CD
Balance = \$2,059,169
Maturity Date: 8/27/2022
0.60% APY
 - ▶ Austin Bank (UF - \$2M)
12 Month CD
Balance = \$2,069,984
Maturity Date: 04/01/2022
0.25% APY

Certificates of Deposit

- ▶ Austin Bank (UF - \$2M)
18 Month CD
Balance = \$2,008,142
Maturity Date: 7/26/2022
0.35% APY
- ▶ Austin Bank (UF - \$2M)
24 Month CD
Balance = \$2,010,475
Maturity Date: 1/26/2023
0.45% APY
- ▶ Citizens State Bank (SF - \$2M)
21 Month CD
Balance = \$2,018,334
Maturity Date: 6/23/2022
0.60% APY
- ▶ Citizens State Bank (SF - \$2M)
24 Month CD
Balance = \$2,018,334
Maturity Date: 9/23/2022
0.60% APY
- ▶ Citizens State Bank (SF - \$2M)
24 Month CD
Balance = \$2,004,493
Maturity Date: 10/04/2023
0.45% APY

Ending Book Value March 31, 2022



Investment	Value	% Total
Depository Accounts	\$ 7,149,443.42	7.63%
Money Market Accounts	\$ 12,007,346.39	12.81%
Certificates of Deposit	\$ 18,237,567.60	19.45%
Texpool Investments	\$ 42,356,527.57	45.18%
US Treasury Notes	\$ 14,000,000.00	14.93%
Total	\$ 93,750,884.98	100.00%

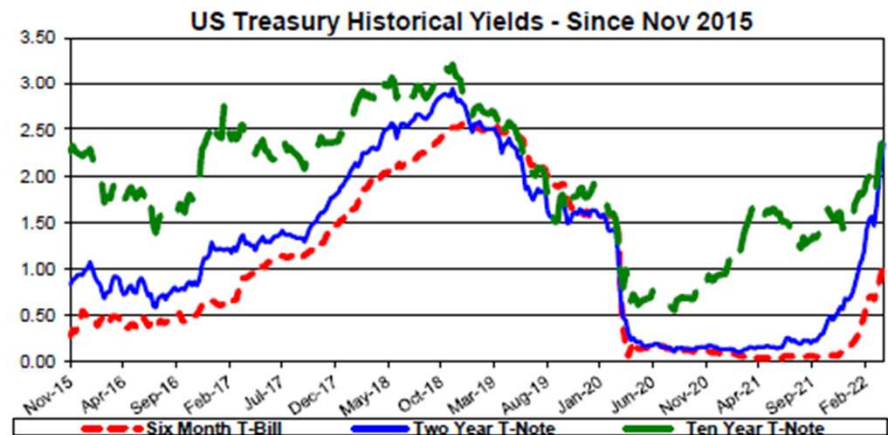
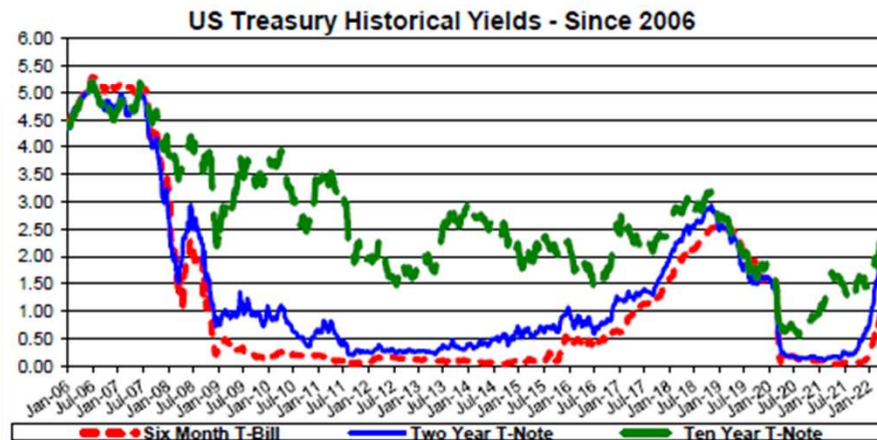
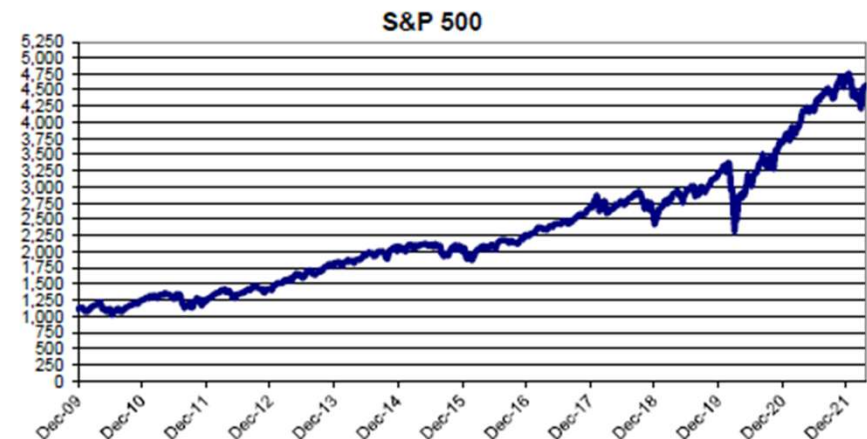
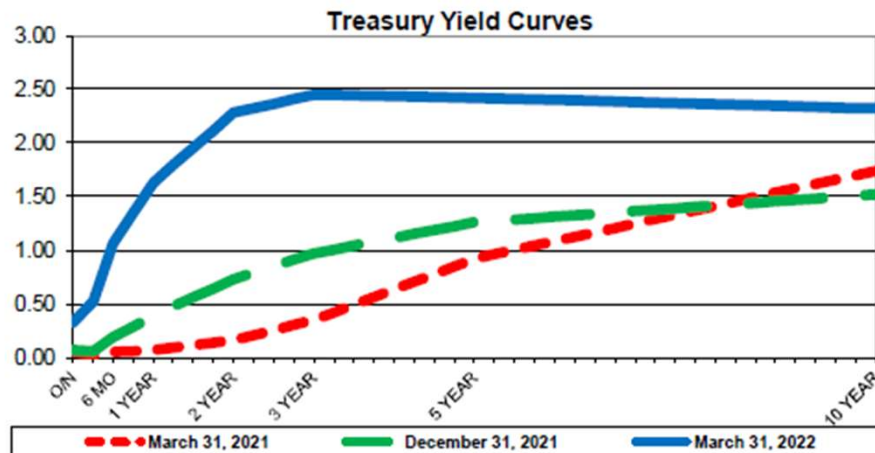
5-Year Portfolio Balance History



Economic Overview – 03/31/2022

Valley View Consulting LLC

The Federal Open Market Committee (FOMC) raised the Fed Funds target range to 0.25% to 0.50% (Effective Fed Funds are trading +/-0.30%). The FOMC ended monthly security purchases and may begin reducing their balance sheet. The market projection 4 to 6 more increases this calendar year. Final Fourth Quarter GDP recorded +6.9%. March Non-Farm Payroll missed estimates adding 431k net new jobs. Decreasing the Three Month Average NFP to 562k. Crude oil declined to +/- \$100 per barrel. The Stock Markets have recovered from the "correction" and slowly regained some lost ground. Some domestic economic indicators, including housing, softened. Inflation remained well over the FOMC 2% target (Core PCE +/-5.4%). The FOMC Fed Funds target projections pushed the yield curve to a Three Year Maturity peak.





City Council Meeting

Date: May 3, 2022

Agenda Item: 7.C.

PRESENTER: Scott Weems, Interim Police Chief

ITEM/SUBJECT: Consider approval of a Mutual Aid Agreement between the City of Nacogdoches and the Nacogdoches ISD Police Department for the provision of law enforcement during an emergency. (Interim Police Chief)

SUMMARY/BACKGROUND: Mutual Aid agreements allow law enforcement agencies to aid and assist other participating law enforcement agencies during an emergency by assigning some of their resources, equipment, and/or law enforcement personnel to the affected agency as circumstances permit. These agreements recognize the fact that natural or man-made occurrences may result in emergencies that exceed the resources, equipment and/or law enforcement personnel of individual law enforcement agencies. The specific intent of the Agreement is to safeguard the lives, persons, and property of citizens during an emergency .

The City of Nacogdoches has participated in the past and this agreement merely updates the existing agreement.

FINANCIAL:

No financial impact associated with this item.

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

Not Applicable

CITY CONTACT: Scott Weems, Interim Police Chief
weemss@nactx.us
936-559-2619

ATTACHMENTS: 1. Mutual Aid Agreement- NISD

Mutual Aid Agreement

THE STATE OF TEXAS

COUNTY OF NACOGDOCHES

THIS MUTUAL AID AGREEMENT (the "Agreement") is made and entered into by and between the City of Nacogdoches, a municipal corporation under the laws of the State of Texas, acting by and through its governing body, the Nacogdoches City Commission, and the Nacogdoches Independent School District (NISD) Police Department, under the laws of the State of Texas, acting by and through its governing body, the NISD Board of Trustees. This agreement is made pursuant to chapter 791 of the Texas Government code (the Interlocal Cooperation Act), as amended, chapter 418 of the Texas Government code (the Texas Disaster Act of 1975), as amended, and chapter 362 of the Texas Local Government Code.

Section 1

Purpose of Agreement

This agreement is made in recognition of the fact that natural or man-made occurrences may result in emergencies or incidents that exceed the resources, equipment and/or law enforcement personnel of a law enforcement agency. Each law enforcement agency who signs a copy of the Agreement has and does express its intent to aid and assist the other participating law enforcement agencies during an emergency or incident by assigning some of their resources, equipment, and/or law enforcement personnel to the affected law enforcement agency as circumstances permit and in accordance with the terms of the Agreement. The specific intent of the Agreement is to safeguard the lives, persons, and property of citizens by enabling other law enforcement agencies to provide additional resources, equipment, and/or law enforcement personnel as needed.

Section 2

Definitions

For the purpose of this Agreement, the following terms are defined as follows:

Aiding law enforcement agency: A participating law enforcement agency that provides resources, equipment, and/or law enforcement personnel to a stricken law enforcement agency during an emergency.

Disaster: An occurrence or threat of widespread or severe damage, injury, or loss of life or property resulting from any natural or technological cause, including by not limited to fire, flood earthquake, wind, storm, hazardous materials spill, or other water contamination requiring emergency action to avert danger or damage, epidemic, air contamination, blight, extended periods of severe and inclement weather, drought, infestation, critical shortages of essential fuels and energy, explosion, riot, hostile military or paramilitary action or acts of domestic terrorism.

Emergency: A natural or man-made situation that threatens or causes loss of life and property and exceeds the physical and organizational capabilities of a unit of local, state, or federal government.

Incident: A law enforcement incident that exceeds the physical or organizational capabilities of a local law enforcement agency. Typical incidents include, but are not limited to: barricaded persons, hostage situations, sniper situations, or high-risk felony arrests.

Law enforcement personnel: An employee of a participating law enforcement agency who is a peace officer (as defined by state law and the Texas Commission on Law Enforcement) and by virtue of his office or public employment, is vested by the state or federal law with the primary duty of maintaining public order and making arrests for violations of state or federal law.

Mutual aid: A definite and prearranged written agreement and plan whereby regular response and assistance is provided in the event of a natural or man-made emergency.

Participating law enforcement agencies: A law enforcement agency that commits itself to this mutual aid agreement by having an authorized representative sign this Agreement.

State: The term *state* refers exclusively to the state of Texas.

Stricken law enforcement agency: A participating law enforcement agency which has a primary jurisdiction over the site of the emergency but due to insufficient resources, equipment, and/or law enforcement personnel is unable to provide an adequate response to an emergency without the assistance of others.

Section 3

Agreement to Effectuate the Mutual Aid Plan

- A. Each undersigned party agrees that in the event of an emergency, it will respond to requests for assistance by a stricken law enforcement agency with such law enforcement personnel, equipment, facilities, or services as is, in the opinion of the aiding law enforcement agency, available. Provided, however, that each party reserves the right to refuse to render assistance or to recall any or all rendered assistance, whenever it believes that such refusal or recall is necessary to ensure adequate protection of its own jurisdiction or safety of its personnel.
- B. It is expected that requests for mutual aid under the Agreement will be initiated only when the needs of the stricken agency exceeds its resources. Aiding agencies will be released and returned to their own jurisdictions as soon as the situation is restored to the point where the stricken agency is able to satisfactorily handle the situation with its own resources or when an aiding agency decides to recall its assistance.
- C. Whenever an emergency is of such magnitude and consequence that it is deemed advisable by the senior officer present of the stricken law enforcement agency to request

assistance from an aiding law enforcement agency, he is hereby authorized to do so under the terms of this mutual aid agreement.

The senior officer present of the aiding law enforcement agency is authorized to and shall forthwith take the following actions:

- Immediately determine what type of assistance is being requested.
 - Immediately determine if the requested resources, equipment, and/or law enforcement personnel can be committed to the stricken law enforcement agency.
 - Immediately dispatch the resources, equipment and/or law enforcement personnel that are available to the stricken law enforcement agency.
- D. At the emergency site, the most senior officer of the stricken law enforcement agency present shall assume full responsibility and command for operations at the scene. Law enforcement personnel from the aiding agencies shall report to and shall work under the direction and supervision of the stricken agency. Provided, however, that at all times, the personnel of the aiding agencies shall remain employees of their own agency and shall adhere to the policies and procedures of their own employer. While working under the direction of the aiding agency, law enforcement personnel shall only be required to respond to lawful orders.
- E. The chief law enforcement officers of the participating agencies will establish an operational plan for giving and receiving aid under this Agreement. Said plan will be reviewed, updated, and tested at regular intervals.

Section 4

No Indemnity or Debt Created by this Agreement

- A. The participating agencies agree that this Agreement shall not give rise to any liability or responsibility for the failure to respond to any request for assistance made pursuant to this Agreement. This Agreement shall not be construed as deemed to be an Agreement for the benefit of any third party or parties, or no third party or parties shall have any right or action whatsoever hereunder for any cause whatsoever.
- B. The participating agencies further agree that each agency will be responsible for defending its own respective entity and personnel in any action, claim, or dispute that arises in connection with or as the result of this Agreement and that each agency will be responsible for bearing their own costs, damages, losses, expenses, and attorney fees arising from or related to such action, claim, or dispute.
- C. The participating agency regularly employing the law enforcement officer shall pay all wages and disability payments, pension payments, damages to equipment and clothing, medical expenses, and travel, food, and lodging expenses. The participating agency whose authorized official requested the services shall reimburse the original participating agency after the payment is made and reimbursement is requested. Any payments made under this Agreement (1) will be based on cost recovery, (2) will fairly compensate for

the services performed and (3) will be made from the current revenues available to the paying party. The parties agree that when outside sources are available, they will seek reimbursement of any expenses incurred under this agreement from other possible funding sources in the manner required by the funding source. The parties agree they will cooperate in seeking reimbursement from any source including any monies set aside by federal and state authorities for law enforcement grants, disaster aid or any other funding source.

- D. By entering into this Agreement, no party waives sovereign immunity defenses or any other limitation of liability. No provision of this agreement is intended to modify or waive any provision of the Texas Tort Claims Act, as amended.

Section 5

Adoption and Termination

This mutual aid agreement shall be in full force and in effect when approved by the governing body of the participating agency and executed by a representative of a participating law enforcement agency who has the legal authority to sign and enter into this Agreement on behalf of his/her law enforcement agency.

Any participating law enforcement agency may withdraw from this Agreement upon giving ninety (90) days written notice addressed to each of the other agencies.

This signatory certifies that this mutual aid agreement has been adopted and approved by ordinance, resolution, memorandum of understanding, or other manner adopted by law.

City of Nacogdoches

Mayor Date

J. Berry 4/5/22
Chief of Police Date

Attest:

Notary Public, State of Texas

Date

Nacogdoches ISD

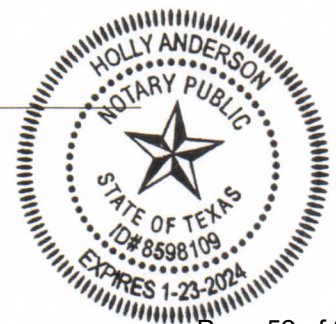
[Signature] 3/31/22
Board President Date

S. Murray 3/31/22
Chief of Police Date

Attest:

[Signature]
Notary Public, State of Texas

3/31/22
Date





City Council Meeting

Date: May 3, 2022

Agenda Item: 7.D.

PRESENTER: Scott Weems, Interim Police Chief

ITEM/SUBJECT: Consider approval of a Mutual Aid Agreement between the City of Nacogdoches and the City of Center for the provision of law enforcement during an emergency. (Interim Police Chief)

SUMMARY/BACKGROUND: Mutual Aid agreements allow law enforcement agencies to aid and assist other participating law enforcement agencies during an emergency by assigning some of their resources, equipment, and/or law enforcement personnel to the affected agency as circumstances permit. These agreements recognize the fact that natural or man-made occurrences may result in emergencies that exceed the resources, equipment and/or law enforcement personnel of individual law enforcement agencies. The specific intent of the Agreement is to safeguard the lives, persons, and property of citizens during an emergency .

The City of Nacogdoches has participated in the past and this agreement merely updates the existing agreement.

FINANCIAL:

No financial impact associated with this item.

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

Not Applicable

CITY CONTACT: Scott Weems, Interim Police Chief
weemss@nacts.us
936-559-2619

ATTACHMENTS: 1. Mutual Aid Agreement- City of Center

Mutual Aid Agreement

THE STATE OF TEXAS

COUNTY OF NACOGDOCHES

THIS MUTUAL AID AGREEMENT (the "Agreement") is made and entered into by and between the City of Nacogdoches, a municipal corporation under the laws of the State of Texas, acting by and through its governing body, the Nacogdoches City Commission, and the City of Center, a municipal corporation under the laws of the State of Texas, acting by and through its governing body, the Center City Commission. This agreement is made pursuant to chapter 791 of the Texas Government code (the Interlocal Cooperation Act), as amended, and chapter 418 of the Texas Government code (the Texas Disaster Act of 1975), as amended.

Section 1

Purpose of Agreement

This agreement is made in recognition of the fact that natural or man-made occurrences may result in emergencies that exceed the resources, equipment and/or law enforcement personnel of a law enforcement agency. Each law enforcement agency who signs a copy of the Agreement has and does express its intent to aid and assist the other participating law enforcement agencies during an emergency by assigning some of their resources, equipment, and/or law enforcement personnel to the affected law enforcement agency as circumstances permit and in accordance with the terms of the Agreement. The specific intent of the Agreement is to safeguard the lives, persons, and property of citizens during an emergency by enabling other law enforcement agencies to provide additional resources, equipment, and/or law enforcement personnel as needed.

Section 2

Definitions

For the purpose of this Agreement, the following terms are defined as follows:

Aiding law enforcement agency: A participating law enforcement agency that provides resources, equipment, and/or law enforcement personnel to a stricken law enforcement agency during an emergency.

Disaster: An occurrence or threat of widespread or severe damage, injury, or loss of life or property resulting from any natural or technological cause, including by not limited to fire, flood earthquake, wind, storm, hazardous materials spill, or other water contamination requiring emergency action to avert danger or damage, epidemic, air contamination, blight, extended periods of severe and inclement weather, drought, infestation, critical shortages of essential fuels and energy, explosion, riot, hostile military or paramilitary action or acts of domestic terrorism.

Emergency: A natural or man-made situation that threatens or causes loss of life and property and exceeds the physical and organizational capabilities of a unit of local, state, or federal government. Typical police emergencies include, but are not limited to: barricaded persons, hostage situations, sniper situations, or high-risk felony arrests.

Law enforcement personnel: An employee of a participating law enforcement agency who is a peace officer (as defined by state law and the Texas Commission on Law Enforcement Officer Standards and Education) and by virtue of his office or public employment, is vested by the state or federal law with the primary duty of maintaining public order and making arrests for violations of state or federal law.

Mutual aid: A definite and prearranged written agreement and plan whereby regular response and assistance is provided in the event of a natural or man-made emergency.

Participating law enforcement agencies: A law enforcement agency that commits itself to this mutual aid agreement by having an authorized representative sign this Agreement.

State: The term *state* refers exclusively to the state of Texas.

Stricken law enforcement agency: A participating law enforcement agency which has a primary jurisdiction over the site of the emergency but due to insufficient resources, equipment, and/or law enforcement personnel is unable to provide an adequate response to an emergency without the assistance of others.

Section 3

Agreement to Effectuate the Mutual Aid Plan

Each undersigned party agrees that in the event of an emergency, it will respond to requests for assistance by a stricken law enforcement agency with such law enforcement personnel, equipment, facilities, or services as is, in the opinion of the aiding law enforcement agency, available. Provided, however, that each party reserves the right to refuse to render assistance or to recall any or all rendered assistance, whenever it believes that such refusal or recall is necessary to ensure adequate protection of its own jurisdiction or safety of its personnel.

It is expected that requests for mutual aid under the Agreement will be initiated only when the needs of the stricken agency exceeds its resources. Aiding agencies will be released and returned to their own jurisdictions as soon as the situation is restored to the point where the stricken agency is able to satisfactorily handle the situation with its own resources or when an aiding agency decides to recall its assistance.

Whenever an emergency is of such magnitude and consequence that it is deemed advisable by the senior officer present of the stricken law enforcement agency to request assistance from an aiding law enforcement agency, he is hereby authorized to do so under the terms of this mutual aid agreement.

The senior officer present of the aiding law enforcement agency is authorized to and shall forthwith take the following actions:

- Immediately determine what type of assistance is being requested.
- Immediately determine if the requested resources, equipment, and/or law enforcement personnel can be committed to the stricken law enforcement agency.
- Immediately dispatch the resources, equipment and/or law enforcement personnel that are available to the stricken law enforcement agency.

At the emergency site, the most senior officer of the stricken law enforcement agency present shall assume full responsibility and command for operations at the scene. Law enforcement personnel from the aiding agencies shall report to and shall work under the direction and supervision of the stricken agency. Provided, however, that at all times, the personnel of the aiding agencies shall remain employees of their own agency and shall adhere to the policies and procedures of their own employer. While working under the direction of the aiding agency, law enforcement personnel shall only be required to respond to lawful orders.

The participating agencies agree that this Agreement shall not give rise to any liability or responsibility for the failure to respond to any request for assistance made pursuant to this Agreement. This Agreement shall not be construed as deemed to be an Agreement for the benefit of any third party or parties, or no third party or parties shall have any right or action whatsoever hereunder for any cause whatsoever.

The participating agencies further agree that each agency will be responsible for defending its own respective entity and personnel in any action, claim, or dispute that arises in connection with or as the result of this Agreement and that each agency will be responsible for bearing their own costs, damages, losses, expenses, and attorney fees arising from or related to such action, claim, or dispute.

The chief law enforcement officers of the participating agencies will establish an operational plan for giving and receiving aid under this Agreement. Said plan will be reviewed, updated, and tested at regular intervals.

Section 4 Adoption

This mutual aid agreement shall be in full force and in effect when approved and executed by a representative of a participating law enforcement agency who has the legal authority to sign and enter into this Agreement on behalf of his/her law enforcement agency. Such authority is shown by the order attached hereto as "EXHIBIT A" and incorporated herein.

Section 5 Termination

Any participating law enforcement agency may withdraw from this Agreement upon giving ninety (90) days written notice addressed to each of the other agencies.

EXHIBIT A

Signatory Page

This signatory certifies that this mutual aid agreement has been adopted and approved by ordinance, resolution, memorandum of understanding, or other manner adopted by law.

City of Nacogdoches

City of Center

Mayor Date

W. C. L. L. 5/12/21

Mayor Date

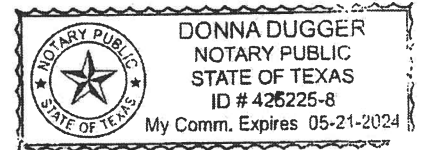
Chief of Police Date

Jim Allen 5/5/21

Chief of Police Date

Attest:

Attest:



Notary Public, State of Texas

Donna Dugger

Notary Public, State of Texas

Date

5/5/2021
5/12/2021

Date



City Council Meeting

Date: May 3, 2022

Agenda Item: 7.E.

PRESENTER: Scott Weems, Interim Police Chief

ITEM/SUBJECT: Consider approval of a Mutual Aid Agreement between the City of Nacogdoches and Houston County for the provision of law enforcement during an emergency. (Interim Police Chief)

SUMMARY/BACKGROUND: Mutual Aid agreements allow law enforcement agencies to aid and assist other participating law enforcement agencies during an emergency by assigning some of their resources, equipment, and/or law enforcement personnel to the affected agency as circumstances permit. These agreements recognize the fact that natural or man-made occurrences may result in emergencies that exceed the resources, equipment and/or law enforcement personnel of individual law enforcement agencies. The specific intent of the Agreement is to safeguard the lives, persons, and property of citizens during an emergency .

The City of Nacogdoches has participated in the past and this agreement merely updates the existing agreement.

FINANCIAL:

No financial impact associated with this item.

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

Not Applicable

CITY CONTACT: Scott Weems, Interim Police Chief
weemss@nactx.us
936-559-2619

ATTACHMENTS: 1. Mutual Aid Agreement- Houston County

Mutual Aid Agreement

THE STATE OF TEXAS

COUNTY OF NACOGDOCHES

THIS MUTUAL AID AGREEMENT (the "Agreement") is made and entered into by and between the City of Nacogdoches, a municipal corporation under the laws of the State of Texas, acting by and through its governing body, the Nacogdoches City Commission, and Houston County under the laws of the State of Texas, acting by and through its governing body, the Houston County Commissioners' Court. This agreement is made pursuant to chapter 791 of the Texas Government code (the Interlocal Cooperation Act), as amended, and chapter 418 of the Texas Government code (the Texas Disaster Act of 1975), as amended.

Section 1

Purpose of Agreement

This agreement is made in recognition of the fact that natural or man-made occurrences may result in emergencies that exceed the resources, equipment and/or law enforcement personnel of a law enforcement agency. Each law enforcement agency who signs a copy of the Agreement has and does express its intent to aid and assist the other participating law enforcement agencies during an emergency by assigning some of their resources, equipment, and/or law enforcement personnel to the affected law enforcement agency as circumstances permit and in accordance with the terms of the Agreement. The specific intent of the Agreement is to safeguard the lives, persons, and property of citizens during an emergency by enabling other law enforcement agencies to provide additional resources, equipment, and/or law enforcement personnel as needed.

Section 2

Definitions

For the purpose of this Agreement, the following terms are defined as follows:

Aiding law enforcement agency: A participating law enforcement agency that provides resources, equipment, and/or law enforcement personnel to a stricken law enforcement agency during an emergency.

Disaster: An occurrence or threat of widespread or severe damage, injury, or loss of life or property resulting from any natural or technological cause, including but not limited to fire, flood, earthquake, wind, storm, hazardous materials spill, or other water contamination requiring emergency action to avert danger or damage, epidemic, air contamination, blight, extended periods of severe and inclement weather, drought, infestation, critical shortages of essential fuels and energy, explosion, riot, hostile military or paramilitary action or acts of domestic terrorism.

Emergency: A natural or man-made situation that threatens or causes loss of life and property and exceeds the physical and organizational capabilities of a unit of local, state, or federal government. Typical police emergencies include, but are not limited to: barricaded persons, hostage situations, sniper situations, or high-risk felony arrests.

Law enforcement personnel: An employee of a participating law enforcement agency who is a peace officer (as defined by state law and the Texas Commission on Law Enforcement Officer Standards and Education) and by virtue of his office or public employment, is vested by the state or federal law with the primary duty of maintaining public order and making arrests for violations of state or federal law.

Mutual aid: A definite and prearranged written agreement and plan whereby regular response and assistance is provided in the event of a natural or man-made emergency.

Participating law enforcement agencies: A law enforcement agency that commits itself to this mutual aid agreement by having an authorized representative sign this Agreement.

State: The term *state* refers exclusively to the state of Texas.

Stricken law enforcement agency: A participating law enforcement agency which has a primary jurisdiction over the site of the emergency but due to insufficient resources, equipment, and/or law enforcement personnel is unable to provide an adequate response to an emergency without the assistance of others.

Section 3

Agreement to Effectuate the Mutual Aid Plan

Each undersigned party agrees that in the event of an emergency, it will respond to requests for assistance by a stricken law enforcement agency with such law enforcement personnel, equipment, facilities, or services as is, in the opinion of the aiding law enforcement agency, available. Provided, however, that each party reserves the right to refuse to render assistance or to recall any or all rendered assistance, whenever it believes that such refusal or recall is necessary to ensure adequate protection of its own jurisdiction or safety of its personnel.

It is expected that requests for mutual aid under the Agreement will be initiated only when the needs of the stricken agency exceeds its resources. Aiding agencies will be released and returned to their own jurisdictions as soon as the situation is restored to the point where the stricken agency is able to satisfactorily handle the situation with its own resources or when an aiding agency decides to recall its assistance.

Whenever an emergency is of such magnitude and consequence that it is deemed advisable by the senior officer present of the stricken law enforcement agency to request assistance from an aiding law enforcement agency, he is hereby authorized to do so under the terms of this mutual aid agreement.

The senior officer present of the aiding law enforcement agency is authorized to and shall forthwith take the following actions:

- Immediately determine what type of assistance is being requested.
- Immediately determine if the requested resources, equipment, and/or law enforcement personnel can be committed to the stricken law enforcement agency.
- Immediately dispatch the resources, equipment and/or law enforcement personnel that are available to the stricken law enforcement agency.

At the emergency site, the most senior officer of the stricken law enforcement agency present shall assume full responsibility and command for operations at the scene. Law enforcement personnel from the aiding agencies shall report to and shall work under the direction and supervision of the stricken agency. Provided, however, that at all times, the personnel of the aiding agencies shall remain employees of their own agency and shall adhere to the policies and procedures of their own employer. While working under the direction of the aiding agency, law enforcement personnel shall only be required to respond to lawful orders.

The participating agencies agree that this Agreement shall not give rise to any liability or responsibility for the failure to respond to any request for assistance made pursuant to this Agreement. This Agreement shall not be construed as deemed to be an Agreement for the benefit of any third party or parties, or no third party or parties shall have any right or action whatsoever hereunder for any cause whatsoever.

The participating agencies further agree that each agency will be responsible for defending its own respective entity and personnel in any action, claim, or dispute that arises in connection with or as the result of this Agreement and that each agency will be responsible for bearing their own costs, damages, losses, expenses, and attorney fees arising from or related to such action, claim, or dispute.

The chief law enforcement officers of the participating agencies will establish an operational plan for giving and receiving aid under this Agreement. Said plan will be reviewed, updated, and tested at regular intervals.

Section 4 **Adoption**

This mutual aid agreement shall be in full force and in effect when approved and executed by a representative of a participating law enforcement agency who has the legal authority to sign and enter into this Agreement on behalf of his/her law enforcement agency. Such authority is shown by the order attached hereto as "EXHIBIT A" and incorporated herein.

Section 5 **Termination**

Any participating law enforcement agency may withdraw from this Agreement upon giving ninety (90) days written notice addressed to each of the other agencies.

EXHIBIT A

Signatory Page

This signatory certifies that this mutual aid agreement has been adopted and approved by ordinance, resolution, memorandum of understanding, or other manner adopted by law.

City of Nacogdoches

Mayor Date

Chief of Police Date

Attest:

Notary Public, State of Texas

Date

Houston County

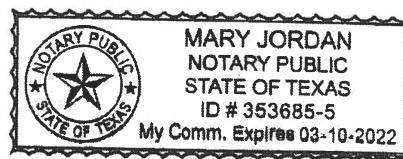
John Lull 5-11-2021
County Judge Date

Randy Hargis 5/3/2021
Sheriff Date

Attest:

Mary Jordan
Notary Public, State of Texas

5-19-21
Date



Post Incident Reporting:

As soon as practical, but within ten (10) working days after the completion of an incident requiring assistance from a participating agency, the stricken agency shall provide a copy of the incident/offense report to any participating agency that provided aid.

As soon as practical, but within ten (10) working days after the completion of an incident requiring assistance from a participating agency, the stricken agency shall provide a full listing of equipment and personnel deployed to the stricken agency. When requested, this list shall include hourly rates for employees of the aiding agency, hours of use for equipment deployed and amounts and replacement costs for supplies expended in support of the operation.

Updated: January 21, 2020

Assistant Chief Scott Weems
Nacogdoches Police Department
312 W. Main Street
Nacogdoches, TX 75961



City Council Meeting

Date: May 3, 2022

Agenda Item: 7.F.

PRESENTER: Scott Weems, Interim Police Chief

ITEM/SUBJECT: Consider approval of a Mutual Aid Agreement between the City of Nacogdoches and Cherokee County for the provision of law enforcement during an emergency. (Interim Police Chief)

SUMMARY/BACKGROUND: Mutual Aid agreements allow law enforcement agencies to aid and assist other participating law enforcement agencies during an emergency by assigning some of their resources, equipment, and/or law enforcement personnel to the affected agency as circumstances permit. These agreements recognize the fact that natural or man-made occurrences may result in emergencies that exceed the resources, equipment and/or law enforcement personnel of individual law enforcement agencies. The specific intent of the Agreement is to safeguard the lives, persons, and property of citizens during an emergency .

The City of Nacogdoches has participated in the past and this agreement merely updates the existing agreement.

FINANCIAL:

No financial impact associated with this item

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

Not Applicable

CITY CONTACT: Scott Weems, Interim Police Chief
weemss@nactx.us
936-559-2619

ATTACHMENTS: 1. Mutual Aid Agreement- Cherokee County

Mutual Aid Agreement

THE STATE OF TEXAS

COUNTY OF NACOGDOCHES

THIS MUTUAL AID AGREEMENT (the "Agreement") is made and entered into by and between the City of Nacogdoches, a municipal corporation under the laws of the State of Texas, acting by and through its governing body, the Nacogdoches City Commission, and the County of Cherokee, under the laws of the State of Texas, acting by and through its governing body, the Cherokee County Commissioners' Court. This agreement is made pursuant to chapter 791 of the Texas Government code (the Interlocal Cooperation Act), as amended, chapter 418 of the Texas Government code (the Texas Disaster Act of 1975), as amended, and chapter 362 of the Texas Local Government Code.

Section 1

Purpose of Agreement

This agreement is made in recognition of the fact that natural or man-made occurrences may result in emergencies or incidents that exceed the resources, equipment and/or law enforcement personnel of a law enforcement agency. Each law enforcement agency who signs a copy of the Agreement has and does express its intent to aid and assist the other participating law enforcement agencies during an emergency or incident by assigning some of their resources, equipment, and/or law enforcement personnel to the affected law enforcement agency as circumstances permit and in accordance with the terms of the Agreement. The specific intent of the Agreement is to safeguard the lives, persons, and property of citizens by enabling other law enforcement agencies to provide additional resources, equipment, and/or law enforcement personnel as needed.

Section 2

Definitions

For the purpose of this Agreement, the following terms are defined as follows:

Aiding law enforcement agency: A participating law enforcement agency that provides resources, equipment, and/or law enforcement personnel to a stricken law enforcement agency during an emergency.

Disaster: An occurrence or threat of widespread or severe damage, injury, or loss of life or property resulting from any natural or technological cause, including but not limited to fire, flood, earthquake, wind, storm, hazardous materials spill, or other water contamination requiring emergency action to avert danger or damage, epidemic, air contamination, blight, extended periods of severe and inclement weather, drought, infestation, critical shortages of essential fuels and energy, explosion, riot, hostile military or paramilitary action or acts of domestic terrorism.

Emergency: A natural or man-made situation that threatens or causes loss of life and property and exceeds the physical and organizational capabilities of a unit of local, state, or federal government.

Incident: A law enforcement incident that exceeds the physical or organizational capabilities of a local law enforcement agency. Typical incidents include, but are not limited to: barricaded persons, hostage situations, sniper situations, or high-risk felony arrests.

Law enforcement personnel: An employee of a participating law enforcement agency who is a peace officer (as defined by state law and the Texas Commission on Law Enforcement) and by virtue of his office or public employment, is vested by the state or federal law with the primary duty of maintaining public order and making arrests for violations of state or federal law.

Mutual aid: A definite and prearranged written agreement and plan whereby regular response and assistance is provided in the event of a natural or man-made emergency.

Participating law enforcement agencies: A law enforcement agency that commits itself to this mutual aid agreement by having an authorized representative sign this Agreement.

State: The term *state* refers exclusively to the state of Texas.

Stricken law enforcement agency: A participating law enforcement agency which has a primary jurisdiction over the site of the emergency but due to insufficient resources, equipment, and/or law enforcement personnel is unable to provide an adequate response to an emergency without the assistance of others.

Section 3

Agreement to Effectuate the Mutual Aid Plan

- A. Each undersigned party agrees that in the event of an emergency, it will respond to requests for assistance by a stricken law enforcement agency with such law enforcement personnel, equipment, facilities, or services as is, in the opinion of the aiding law enforcement agency, available. Provided, however, that each party reserves the right to refuse to render assistance or to recall any or all rendered assistance, whenever it believes that such refusal or recall is necessary to ensure adequate protection of its own jurisdiction or safety of its personnel.
- B. It is expected that requests for mutual aid under the Agreement will be initiated only when the needs of the stricken agency exceeds its resources. Aiding agencies will be released and returned to their own jurisdictions as soon as the situation is restored to the point where the stricken agency is able to satisfactorily handle the situation with its own resources or when an aiding agency decides to recall its assistance.
- C. Whenever an emergency is of such magnitude and consequence that it is deemed advisable by the senior officer present of the stricken law enforcement agency to request

assistance from an aiding law enforcement agency, he is hereby authorized to do so under the terms of this mutual aid agreement.

The senior officer present of the aiding law enforcement agency is authorized to and shall forthwith take the following actions:

- Immediately determine what type of assistance is being requested.
 - Immediately determine if the requested resources, equipment, and/or law enforcement personnel can be committed to the stricken law enforcement agency.
 - Immediately dispatch the resources, equipment and/or law enforcement personnel that are available to the stricken law enforcement agency.
- D. At the emergency site, the most senior officer of the stricken law enforcement agency present shall assume full responsibility and command for operations at the scene. Law enforcement personnel from the aiding agencies shall report to and shall work under the direction and supervision of the stricken agency. Provided, however, that at all times, the personnel of the aiding agencies shall remain employees of their own agency and shall adhere to the policies and procedures of their own employer. While working under the direction of the aiding agency, law enforcement personnel shall only be required to respond to lawful orders.
- E. The chief law enforcement officers of the participating agencies will establish an operational plan for giving and receiving aid under this Agreement. Said plan will be reviewed, updated, and tested at regular intervals.

Section 4

No Indemnity or Debt Created by this Agreement

- A. The participating agencies agree that this Agreement shall not give rise to any liability or responsibility for the failure to respond to any request for assistance made pursuant to this Agreement. This Agreement shall not be construed as deemed to be an Agreement for the benefit of any third party or parties, or no third party or parties shall have any right or action whatsoever hereunder for any cause whatsoever.
- B. The participating agencies further agree that each agency will be responsible for defending its own respective entity and personnel in any action, claim, or dispute that arises in connection with or as the result of this Agreement and that each agency will be responsible for bearing their own costs, damages, losses, expenses, and attorney fees arising from or related to such action, claim, or dispute.
- C. The participating agency regularly employing the law enforcement officer shall pay all wages and disability payments, pension payments, damages to equipment and clothing, medical expenses, and travel, food, and lodging expenses. The participating agency whose authorized official requested the services shall reimburse the original participating agency after the payment is made and reimbursement is requested. Any payments made under this Agreement (1) will be based on cost recovery, (2) will fairly compensate for

the services performed and (3) will be made from the current revenues available to the paying party. The parties agree that when outside sources are available, they will seek reimbursement of any expenses incurred under this agreement from other possible funding sources in the manner required by the funding source. The parties agree they will cooperate in seeking reimbursement from any source including any monies set aside by federal and state authorities for law enforcement grants, disaster aid or any other funding source.

- D. By entering into this Agreement, no party waives sovereign immunity defenses or any other limitation of liability. No provision of this agreement is intended to modify or waive any provision of the Texas Tort Claims Act, as amended.

Section 5

Adoption and Termination

This mutual aid agreement shall be in full force and in effect when approved by the governing body of the participating agency and executed by a representative of a participating law enforcement agency who has the legal authority to sign and enter into this Agreement on behalf of his/her law enforcement agency.

Any participating law enforcement agency may withdraw from this Agreement upon giving ninety (90) days written notice addressed to each of the other agencies.

This signatory certifies that this mutual aid agreement has been adopted and approved by ordinance, resolution, memorandum of understanding, or other manner adopted by law.

City of Nacogdoches

Mayor Date
Benny 4/18/22
Chief of Police Date

Attest:

Notary Public, State of Texas

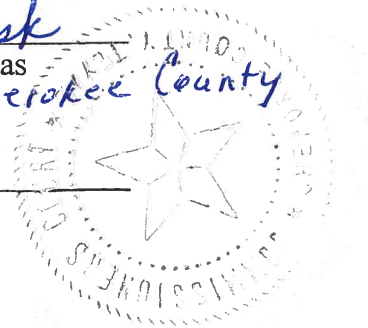
Date

County of Cherokee

[Signature] 4-12-22
County Judge Date
[Signature] 4-12-22
Sheriff Date

Attest:

Laverne Lusk
Notary Public, State of Texas
County Clerk, Cherokee County
April 12, 2022
Date





City Council Meeting

Date: May 3, 2022

Agenda Item: 7.G.

PRESENTER: Brian Bray, Community Services Director

ITEM/SUBJECT: Consider approval of a contract with Advanced Roofing Services, Inc. for the replacement of the Sunset Cemetery Mausoleum roof in the amount of \$55,073. (Community Services Director)

SUMMARY/BACKGROUND: \$60,000 was budgeted for the replacement of the approximately 50-year-old roof on the Mausoleum at Sunset Cemetery. Bids were released to vendors on March 9th with advertisement dates of March 9th and March 16th and bids were due on March 31st. Only two bids were received, and both were found to be qualified bids. Carney Roofing Company, Inc. (Nacogdoches, TX) submitted a bid in the amount of \$73,500 and Advanced Roofing Services, Inc. (Longview, TX) submitted a bid in the amount of \$55,073.

Staff recommends awarding the bid to Advanced Roofing Services, Inc. as this is a qualified bid and is approximately \$5,000 under budget. If awarded the bid, Advanced Roofing Services will complete the project within 24 weeks from the date of notice to proceed.

FINANCIAL:

Item is budgeted:

Account No.: 01.86.680.00

Account Name: General Fund.Committed Reserves Buildings & Structures

Amount: \$55,073.00

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. Advanced Roof Contract - Sunset
2. Bid Tabulation - Sunset Mausoleum

**CITY OF NACOGDOCHES
GENERAL SERVICE CONTRACT**

This General Service Contract is by and between the **City of Nacogdoches**, a Texas Home-Rule Municipal Corporation (the “City”), and **Advanced Roofing Services, Inc** (the “Contractor”), for the following work: Sunset Mausoleum Roof as described in the Scope of Services attached as **Exhibit “A”**.

**ARTICLE I
PAYMENT AND TERM**

1.1 Consideration. In consideration for the services performed in the Scope of Services and Contractor’s completion of work in conformity with this Contract, the City shall pay the Contractor an amount not to exceed fifty five thousand seventy three and XX/100 Dollars (\$55,073.00).

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

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

1.4 Time is of the Essence. The Contractor must complete all the services described in the Scope of Services by the following dates: **24 weeks from notice to proceed.**

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

**ARTICLE II
CHANGE ORDERS**

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

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

a total contract amount that exceeds \$50,000, the City Council of the City must approve such change order prior to commencement of the services or work; and

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

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

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

ARTICLE III INDEPENDENT CONTRACTOR AND SUBCONTRACTORS

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

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

ARTICLE IV INSURANCE

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

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

ARTICLE V INDEMNIFICATION AND RELEASE

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

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

ARTICLE VI GENERAL TERMS

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

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

6.3 Venue. This Contract has been made under and shall be governed by the laws of the State of Texas. The parties agree that performance and all matters related thereto shall be in Nacogdoches County, Texas.

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

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

6.6 Compliance with Laws. The Contractor will comply with all applicable federal, state, and local statutes, regulations, ordinances, and other laws, including but not limited to the Immigration Reform and Control Act (IRCA). The Contractor may not knowingly obtain the labor or services of an undocumented worker. The Contractor, not the City, must verify eligibility for employment as required by IRCA.

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

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

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

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

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

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

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

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

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

CONTRACTOR
Attn: Advanced Roofing Services, Inc
7724 US Hwy 259
Longview, TX, 75605
cruz@advancedroofingservices.com

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

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

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

List of Exhibits

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

[Advanced Roofing Services, Inc]

By:_____

Printed Name:_____

Title:_____

Date:_____

CITY OF NACOGDOCHES

By:_____

City Manager

Date:_____

APPROVED AS TO FORM:

City Attorney

Date:_____

EXHIBIT A

SCOPE OF SERVICES

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

Technical Specifications

The City of Nacogdoches is soliciting for bids to remove and replace the current roof on the mausoleum at Sunset Cemetery in Nacogdoches, TX. Listed below are the bid specifications containing all of the requirements to complete the service.

1. Remove gravel from existing built up roof system to expose felts
2. Adhere 1.5 polyisocyanurate insulation to existing roof surface
3. Furnish and install wood nailers at perimeter to match height of new insulation
4. Install .060 mil white thermoplastic Polyolefin (TPO) "Fully Adhered" roof system over newly installed insulation
5. Flash all roof penetrations in accordance with manufacturer's specifications
6. Furnish and install TPO coated roof drains tying to existing plumbing
7. Furnish and install medium bronze fascia system at perimeter of area re-roofed
8. Furnish manufacturer's labor and material warranty With 2 year workmanship guarantee on all work performed
9. Replace all damaged or deteriorated decking, rafters, fascia or any other carpentries
10. Replace glass in skylight and reseal

EXHIBIT B
PAYMENT SCHEDULE

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

Schedule of Payment for each phase:

50% upon delivery of materials and balance upon completion.

EXHIBIT C INSURANCE REQUIREMENTS

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

I. Standard Insurance Policies Required:

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

II. General Requirements Applicable to All Policies:

- A.** Certificates of Insurance shall be prepared and executed by the insurance company or its authorized agent
- B.** Certificates of Insurance and endorsements shall be furnished on the most current State of Texas Department of Insurance-approved forms to the City's Representative at the time of execution of this Agreement; shall be attached to this Agreement as Exhibit D; and shall be approved by the City before work begins
- C.** Contractor shall be responsible for all deductibles on any policies obtained in compliance with this Agreement. Deductibles shall be listed on the Certificate of Insurance and are acceptable on a per-occurrence basis only
- D.** The City will accept only Insurance Carriers licensed and authorized to do business in the State of Texas
- E.** The City will not accept "claims made" policies
- F.** Coverage shall not be suspended, canceled, non-renewed or reduced in limits of liability before thirty (30) days written notice has been given to the City

III. Commercial General Liability

- A.** General Liability insurance shall be written by a carrier rated "A: VIII" or better under the current A. M. Best Key Rating Guide.
- B.** Policies shall contain an endorsement naming the City as Additional Insured and further providing "primary and non-contributory" language with regard to self-insurance or any insurance the City may have or obtain
- C.** Limits of liability must be equal to or greater than \$1,000,000 per occurrence for bodily injury and property damage, with an annual aggregate limit of \$2,000,000. Limits shall be endorsed to be per project.
- D.** No coverage shall be excluded from the standard policy without notification of individual exclusions being submitted for the City's review and acceptance
- E.** The coverage shall include, but not be limited to the following: premises/operations with separate aggregate; independent contracts; products/completed operations; contractual liability (insuring the indemnity provided herein) Host Liquor Liability, and Personal & Advertising Liability.

IV. Business Automobile Liability

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

V. Workers' Compensation Insurance

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

EXHIBIT D
CERTIFICATES OF INSURANCE



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

04/07/2022

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

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

PRODUCER K&S Insurance Agency 2255 Ridge Road, Ste. 333 P. O. Box 277 Rockwall TX 75087	CONTACT NAME: Keely Morris PHONE (A/C, No, Ext): (972) 771-4071 FAX (A/C, No): (972) 771-4695 E-MAIL ADDRESS: kmorris@kandsins.com																					
INSURED Advanced Roofing Services, Inc. 7724 US HWY 259 North Longview TX 75605	<table><tr><th colspan="2">INSURER(S) AFFORDING COVERAGE</th><th>NAIC #</th></tr><tr><td>INSURER A:</td><td>Monroe Guaranty Ins. Co.</td><td>32506</td></tr><tr><td>INSURER B:</td><td>FCCI Insurance Co.</td><td>10178</td></tr><tr><td>INSURER C:</td><td>Texas Mutual Insurance Co.</td><td>22945</td></tr><tr><td>INSURER D:</td><td></td><td></td></tr><tr><td>INSURER E:</td><td></td><td></td></tr><tr><td>INSURER F:</td><td></td><td></td></tr></table>	INSURER(S) AFFORDING COVERAGE		NAIC #	INSURER A:	Monroe Guaranty Ins. Co.	32506	INSURER B:	FCCI Insurance Co.	10178	INSURER C:	Texas Mutual Insurance Co.	22945	INSURER D:			INSURER E:			INSURER F:		
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INSURER D:																						
INSURER E:																						
INSURER F:																						

COVERAGES**CERTIFICATE NUMBER:** 2021 Master**REVISION NUMBER:**

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

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☒ OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: ☐ POLICY ☒ PRO-JECT ☐ LOC OTHER:			CPP 100059528 01	07/31/2021	07/31/2022	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 \$
B	☒ AUTOMOBILE LIABILITY ☒ ANY AUTO OWNED AUTOS ONLY ☐ SCHEDULED AUTOS HIRED AUTOS ONLY ☐ NON-OWNED AUTOS ONLY			CA 100059529 01	07/31/2021	07/31/2022	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
B	☒ UMBRELLA LIAB ☒ OCCUR ☐ EXCESS LIAB ☐ CLAIMS-MADE DED ☒ RETENTION \$ 10,000			UMB 100059530 01	07/31/2021	07/31/2022	EACH OCCURRENCE \$ 5,000,000 AGGREGATE \$ 5,000,000 \$
C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N Y	N/A	0002050631	07/31/2021	07/31/2022	☒ PER STATUTE ☐ OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
A	Contractors Equipment			CPP 100059528 01	07/31/2021	07/31/2022	Leased/Rented Equip: \$100,000 Deductible: \$1,000

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

See attached page for additional information.

CERTIFICATE HOLDER**CANCELLATION**City of Nacogdoches, Finance Department
P.O. BOX 635030

Nacogdoches

TX 75963

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

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AGENCY CUSTOMER ID: _____

LOC #: _____



ADDITIONAL REMARKS SCHEDULE

Page ____ of ____

AGENCY K&S Insurance Agency		NAMED INSURED Advanced Roofing Services, Inc.	
POLICY NUMBER			
CARRIER	NAIC CODE		
EFFECTIVE DATE:			

ADDITIONAL REMARKS

THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,

FORM NUMBER: 25 **FORM TITLE:** Certificate of Liability Insurance: Notes

GENERAL LIABILITY:

General Liability policy includes a blanket automatic additional insured endorsement that provides additional insured status to the certificate holder only when there is a written contract between the named insured and the certificate holder that requires such status.

General Liability policy contain an endorsement with "Primary and Noncontributory" wording.

General Liability policy includes a blanket automatic waiver of subrogation endorsement that provides this feature only when there is a written contract between the named insured and the certificate holder that requires it.

AUTOMOBILE LIABILITY:

Automobile policy includes a blanket automatic additional insured endorsement that provides additional insured status to the certificate holder only when there is a written contract between the named insured and the certificate holder that requires such status.

Automobile policy includes a blanket automatic waiver of subrogation endorsement that provides this feature only when there is a written contract between the named insured and the certificate holder that requires it.

WORKERS COMPENSATION:

Workers Compensation policy includes a blanket automatic waiver of subrogation endorsement that provides this feature only when there is a written contract between the named insured and the certificate holder that requires it.

*ALWAYS REFER TO THE ATTACHED POLICY FORMS FOR SPECIFIC WORDING OF SUCH COVERAGE, LIMITS, CONDITIONS AND EXCLUSIONS.



City of Nacogdoches, Texas Bid Tabulation Sheet

DATE: 4/13/2022

REQUISITION NUMBER: 4262022

DEPARTMENT: Finance

Item No.	Qty.	UOM	Description	BIDDER A		BIDDER B		BIDDER C	
				Unit Cost	Extension	Unit Cost	Extension	Unit Cost	Extension
1	1	ea	Sunset Cemetary Mausoleum Roof		\$73,500.00	\$0.00	\$55,073.00	\$0.00	\$0.00
2	0	ea			\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
3	0	ea			\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
4	0			\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
5	0			\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
TOTAL:					\$73,500.00	TOTAL:	\$55,073.00	TOTAL:	\$0.00

BIDDER A:

Company Name: Carney Roofing Company INC.
 Contact: Bobby Frazier
 Phone: (936) 569-8241
 Address: 2305 Center Hwy. P.O. Box 631 Nacogodhces, TX 75963
 Email: _____

BIDDER B:

Company Name: Advanced Roofing Services, Inc
 Contact: J Cruz Mendez
 Phone: (903) 759-9298
 Address: 7724 US HWY 259 N Longview, Tx 75605
 Email: cruz@advancesroofingservices.com

BIDDER C:

Company Name: _____
 Contact: _____
 Phone: _____
 Address: _____

TABULATED BY: Cecilia Sarmiento

PRESENTER: Larissa Philpot, Economic Development Director

ITEM/SUBJECT: Consider approval of Resolution No. 1300-05-22 amending a Chapter 380 Economic Development Program agreement by and between the City of Nacogdoches and HCH Aviation, LLC regarding development of a flight school at A.L. Mangham, Jr. Regional Airport. (Economic Development Director)

SUMMARY/BACKGROUND: City Council entered into a Chapter 380 agreement with HCH Aviation, LLC on August 3, 2021. The agreement allowed for reimbursement of expenses related to capital infrastructure improvements at A.L. Mangham, Jr. Regional Airport which would benefit the airport as a whole. The agreement contained a budget of \$688,000 based upon estimates generated in July 2021.

The budget for the Chapter 380 agreement was as follows:

Item	Approximate Qualified Expenditure Not to Exceed	Budget Account
On-site sewer system	\$8,000	CIP Misc Sewer Line Additions/Replacements
Water distribution system	\$100,000	CIP Misc Water Line Additions/Replacements
Storm drainage	\$30,000	Economic Development Fund
Driveway, parking, paving striping	\$550,000	Economic Development Fund

In December of 2021, the City Council approved a request by HCH Aviation to substitute the storm drainage project with an equivalently priced project to install and upgrade electrical infrastructure to the region of the airport containing HCH Aviation's hangar.

In February of 2022, the on-site sewer system at the airport office failed and had to be replaced. For efficiency's sake, this project was combined with the on-site sewer system for HCH Aviation's hangar. This portion of HCH's project has been removed from the project budget and does not need to be reimbursed to HCH.

The extraordinary inflation experienced across the country in 2022 has affected the paving portion of the project. The lowest responsible bid for the paving project came in at \$584,876 (\$34,876 or 6% more than originally anticipated).

The portions of the project completed in late 2021 and early 2022 were not affected by inflationary forces and came in under budget as seen in the chart below.

Item	380 Budget	Final Cost	Unallocated Balance	Budget Account
Water distribution system	\$100,000	\$91,813.81	\$8,186.20	CIP Misc Water Line Additions Replacement
Electrical (originally storm drainage)	\$30,000	\$25,959.20	\$4,040.80	Economic Development Fund
Driveway, paving, parking striping	\$550,000	\$584,876.20	(\$34,876.20)	Economic Development Fund
Total	\$680,000	\$702,649.20	(\$22,649.20)	

HCH Aviation has requested to allocate the \$12,227 remaining unallocated balance from the water distribution system and electrical work to the paving budget, as well as an additional \$22,649.20 to cover the remaining cost of the paving work. This represents an increase of 3.33% over the originally allocated amount.

If approved, this request would represent a reallocation of \$8,186.20 from the CIP Misc Water Line Additions budget to the Economic Development Fund for this agreement. The total amount of expenditure from the Economic Development fund was \$580,000 in the original CIP. If approved, the new approved expenditure from the Economic Development Fund would be \$610,835.40 (an increase of 5%).

The project has also been delayed due to materials shortages and unexpected conditions discovered during construction. The approved 380 agreement called for the construction to be completed by July 1, 2022. HCH Aviation has requested this timeline be extended to October 1, 2022, allowing for construction of the paving June through August and time for final completion reporting to be submitted.

FINANCIAL:

Item is budgeted:

Account No.: 30.179.02

Account Name: *CIP Misc Water Line Additions/Replacements*

Amount: \$91,813.80

Item is budgeted:

Account No.: 12.75.680.30

Account Name: *Economic Development Fund*

Amount: \$610,835.40

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

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

ATTACHMENTS:

1. Resolution 1300-05-22 - HCH Flight School Amending 380 No 2
2. HCH 380 Amended Agreement No 2
3. PowerPoint Presentation

**CITY OF NACOGDOCHES, TEXAS
RESOLUTION NO. 1300-05-22**

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

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

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

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

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

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

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

WHEREAS, the City and Developer now desire to amend the Agreement to more accurately reflect the cost of the Improvements, increase the grant of public funds to the Developer by

\$22,649.20, and extend the required construction completion date to October 1, 2022, which will not change the intent of the Agreement and will aid in the orderly progress of the Project.

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

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

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

PASSED AND APPROVED, this the 3rd day of May, 2022, by a vote of _____ (ayes) to _____ (nays) of the City Council of the City of Nacogdoches, Texas.

CITY OF NACOGDOCHES

By: _____
JIMMY MIZE, Mayor

ATTEST:

APPROVED AS TO FORM:

Jan Vinson, City Secretary

Steven Kirkland, City Attorney

CITY OF NACOGDOCHES, TEXAS

AND

HCH Aviation, LLC

AMENDED CHAPTER 380 ECONOMIC DEVELOPMENT AGREEMENT

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

RECITALS:

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

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

SECTION 1. RECITALS INCORPORATED.

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

SECTION 2. Amended Sections

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

Table 1

Item	Approximate Qualified Expenditure Not to Exceed
Water Distribution System (as detailed on Exhibit B)	\$91,813.80
Electrical Components (as detailed on Exhibit B)	\$25,959.20
Paving (as detailed on Exhibit B)	\$584,876.20

Section 4(a)(ii) is amended to read as follows:

ii. Developer represents that Developer has the present capacity to construct the Improvements. The Improvements shall be completed on or before October 1, 2022. Only those Improvements listed in Table 1 which are completed prior to October 1, 2022 will be considered by the City for reimbursement. To ensure safe and orderly operation of the Airport during construction, all construction activity will be coordinated with the Airport Manager.

SECTION 2. NO OTHER CHANGES.

All other portions of the Agreement are unchanged.

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

CITY

CITY OF NACOGDOCHES, TEXAS

a Texas home-rule municipality

By: _____
Jimmy Mize, Mayor

Date: _____

ATTEST:

Jan Vinson, City Secretary

APPROVED AS TO FORM:

Steven Kirkland, City Attorney

DEVELOPER:
HCH Aviation, LLC

By: _____
KRISTEN CONKLIN

Date: _____

By: _____
JOHN HASBUN

Date: _____

Amending HCH Aviation Chapter 380 Economic Development Agreement



Change to Agreement

- Paving expenses more than anticipated
- Reallocating unused amounts to paving + 3.33% additional
- Extending construction deadline to October 1, 2022

Item	(Original 380 Budget)	Final Cost	Balance	Budget Fund
Water Distribution System	\$100,000	\$91,813.81	\$8,186.20	CIP Misc Water Line Additions / Replacement
Electrical	\$30,000	\$25,959.20	\$4,040.80	Economic Development Fund
Driveway and Parking, Paving, and Striping	\$550,000	\$584,876.20	(\$34,876.20)	Economic Development Fund
Total	\$688,000	\$702,649.20	(\$22,649.20)	



City Council Meeting

Date: May 3, 2022

Agenda Item: 8.B.

PRESENTER: Larissa Philpot, Economic Development Director

ITEM/SUBJECT: Consider the adoption of a budget amendment in the amount of \$610,835 for the amended Chapter 380 Economic Development Program agreement by and between the City of Nacogdoches and HCH Aviation, LLC regarding development of a flight school at A.L. Mangham, Jr. Regional Airport. (Economic Development Director)

SUMMARY/BACKGROUND: This is the budget amendment associated with the previous item.

FINANCIAL:

No financial impact associated with this item

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

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

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

ATTACHMENTS: 1. HCH Chapter 380 agreement Budget Amendment Ordinance No 1909-05-22

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

WHEREAS, the City Council of the City of Nacogdoches, Texas has approved and adopted the budget for said city for the ensuing fiscal year beginning October 1, 2021 and ending September 30, 2022.

WHEREAS, The City possesses the legal and statutory authority under Chapter 380 of the Texas Local Government Code to make loans and grants of public funds for the purposes of promoting local economic development and stimulating and enhancing business and commercial activity within the City;

WHEREAS, the City possesses the legal and statutory authority under Chapter 212, Subchapter C of the Texas Local Government Code to enter into Developer Participation Contract to construct public improvements related to a development without competitive sealed bidding if the City's participation is 30% or less than the total costs of the Improvements.

WHEREAS, HCH Aviation, LLC has agreed to construct or cause to be constructed, improvements to include an approximate 143 lot subdivision and associated infrastructure, located on the south side of the eastern end of Park Street.

WHEREAS, the City has established an economic development program which authorizes the City to make such economic development loans and grants.

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

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

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

WHEREAS, the City has concluded and hereby finds that this Agreement clearly promotes economic development in the City, and, as such, meets the requisites under Chapter 380 of the Texas Local Government Code, and further, is in the best interests of the City and HCH Aviation, LLC; and

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

WHEREAS, with the adoption of this ordinance, the Engineering Department is authorized to proceed with reimbursement to HCH Aviation, LLC of up to \$702,649 upon receipt of a request for reimbursement and final inspection and approval of improvements.

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

Fund	Dept.	Acct.	Department	Description	Amt.
12	75	630.90	Eco Dev Fund Non-Departmental	Electrical line	\$25,959
01	86	680.30	General Fund Reserve Street Capital	Driveway, Paving, and Parking Striping	\$584,876
01		590.12	General Fund transfer from Economic Development Fund	Driveway, Paving, and Parking Striping	\$584,876
12	85	699.01	Economic Development Fund transfer to General Fund	Driveway, Paving, and Parking Striping	\$584,876

PASSED AND APPROVED this the 3rd day of May.

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: May 3, 2022

Agenda Item: 8.C.

PRESENTER: Pam Curbow, Finance Director

ITEM/SUBJECT: Receive mid-year financial update. (Director of Finance)

SUMMARY/BACKGROUND: Overview of City's Financial Reports for major funds as of March 31, 2022 . Discuss actual revenues and expenditures compared to budget estimates.

FINANCIAL:

No financial impact associated with this item

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

Not Applicable

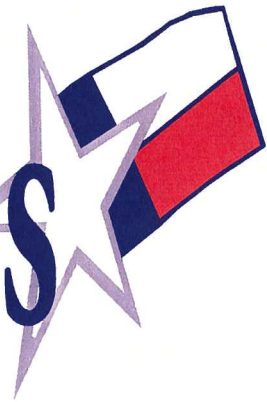
CITY CONTACT: Pamela Curbow, Director of Finance
curbowp@nactx.us
936-559-2526

ATTACHMENTS:

1. Mid Year 2021 2022 Financial Update for Council
2. PowerPoint Presentation

Nacogdoches

the oldest town in Texas



Mid-Year Financial Update (Major Funds)

At March 31, 2022

General Fund Operating Budget

	Adopted Budget	Amended Budget	Actual YTD March 31, 2022	% Used
Revenues				
Taxes:				
Property - Current	\$ 9,751,036	\$ 9,751,036	\$ 9,596,966	98%
Property - Delinquent	\$ 100,000	\$ 100,000	\$ 72,250	72%
Property - Penalty & Interest	\$ 135,000	\$ 135,000	\$ 80,402	60%
Property - Other Personal	\$ 7,000	\$ 7,000	\$ -	0%
Sales Tax	\$ 7,000,000	\$ 7,000,000	\$ 4,206,315	60%
Sales Tax - Mixed Beverage	\$ 55,000	\$ 55,000	\$ 31,681	58%
Franchise - Elec	\$ 1,503,000	\$ 1,503,000	\$ -	0%
Franchise - Cable	\$ 320,000	\$ 320,000	\$ 144,621	45%
Franchise - Gas	\$ 335,000	\$ 335,000	\$ 140,339	42%
Franchise - Communication	\$ 120,000	\$ 120,000	\$ 54,814	46%
Franchise - Mixed Beverage	\$ 50,000	\$ 50,000	\$ 24,888	50%
Licenses & Permits:				
Alcoholic Beverage	\$ 15,000	\$ 15,000	\$ 8,755	58%
Inspection Permits	\$ 75,000	\$ 75,000	\$ 42,696	57%
Animal Adoption Fees	\$ 35,000	\$ 35,000	\$ 16,350	47%
Animal Microchip Fees	\$ 12,500	\$ 12,500	\$ 5,860	47%
Other Licenses & Permits	\$ 70,000	\$ 70,000	\$ 37,900	54%
Fines:				
Adm Fee State Court Costs	\$ 35,000	\$ 35,000	\$ 14,039	40%
Court Fines	\$ 325,000	\$ 325,000	\$ 157,168	48%
Arrest Fees	\$ 40,000	\$ 40,000	\$ 13,712	34%
Charges for Services:				
County Fire Protection	\$ 10,000	\$ 10,000	\$ 5,833	58%
Library	\$ 9,000	\$ 9,000	\$ 1,340	15%
Recreation Fees	\$ 200,000	\$ 200,000	\$ 113,527	57%
Cemetery Lot Sales	\$ 100,000	\$ 100,000	\$ 55,600	56%
Intergovernmental Receipts	\$ 36,500	\$ 46,454	\$ 529,852	1141%
Investment Earnings	\$ 15,000	\$ 15,000	\$ 23,960	160%
Rents & Royalties	\$ 8,360	\$ 8,360	\$ 1,680	20%
Contributions from County	\$ 334,300	\$ 334,300	\$ 167,149	50%
Contributions from NEDCO	\$ 313,872	\$ 313,872	\$ 117,156	37%
Contributions from CVB	\$ 327,805	\$ 327,805	\$ 132,406	40%
Contributions from Other	\$ 24,500	\$ 37,284	\$ 29,784	80%
Miscellaneous Revenues	\$ 132,992	\$ 132,992	\$ 63,854	48%
Total Operating Revenues	\$ 21,495,865	\$ 21,518,603	\$ 15,890,899	74%
Inter-Fund Transfers In				
Transfer Water / Wastewater Franchise Fee	\$ 1,536,000	\$ 1,536,000	\$ 768,000	50%
Transfer Sanitation Franchise Fee	\$ 457,440	\$ 457,440	\$ 228,720	50%
Transfer Utility Fund Overhead Cost	\$ 2,021,881	\$ 2,021,881	\$ 1,010,940	50%
Transfer Sanitation Fund Overhead Cost	\$ 1,781,604	\$ 1,781,604	\$ 890,802	50%
Transfer Eco Dev	\$ 50,000	\$ 50,000	\$ -	0%
Total Inter-Fund Transfers In	\$ 5,846,925	\$ 5,846,925	\$ 2,898,462	50%
Total Revenues	\$ 27,342,790	\$ 27,365,528	\$ 18,789,361	69%

General Fund Operating Budget

	Adopted Budget	Amended Budget	Actual YTD March 31, 2022	% Used
<u>Expenditures</u>				
<u>General Government</u>				
City Council	\$ 26,250	\$ 26,250	\$ 10,678	41%
City Manager	\$ 307,525	\$ 307,525	\$ 149,656	49%
Municipal Court	\$ 300,602	\$ 300,602	\$ 135,427	45%
City Secretary	\$ 137,190	\$ 137,190	\$ 63,601	46%
Finance	\$ 661,056	\$ 678,751	\$ 318,965	47%
Information Technology	\$ 496,819	\$ 501,814	\$ 205,195	41%
Personnel	\$ 375,905	\$ 393,905	\$ 177,922	45%
Legal	\$ 280,998	\$ 280,998	\$ 136,399	49%
Planning & Zoning	\$ 244,427	\$ 244,427	\$ 142,459	58%
Building Maintenance	\$ 376,312	\$ 376,312	\$ 191,445	51%
Vehicle Maintenance	\$ 308,961	\$ 308,961	\$ 151,966	49%
Conventions & Tourism	\$ 369,005	\$ 369,005	\$ 156,549	42%
Economic Development	\$ 263,872	\$ 263,872	\$ 110,291	42%
Non-Departmental	\$ 1,577,844	\$ 1,878,955	\$ 874,221	47%
Total General Government	\$ 5,726,766	\$ 6,068,567	\$ 2,824,776	47%
<u>Public Safety</u>				
Police	\$ 8,706,645	\$ 8,721,599	\$ 4,339,204	50%
Fire	\$ 6,478,607	\$ 6,488,913	\$ 3,415,153	53%
Code Enforcement	\$ 254,927	\$ 254,927	\$ 97,406	38%
Inspections	\$ 236,057	\$ 236,057	\$ 67,435	29%
Animal Control	\$ 557,129	\$ 557,129	\$ 256,154	46%
Total Public Safety	\$ 16,233,365	\$ 16,258,625	\$ 8,175,353	50%
<u>Cultural & Recreational</u>				
Historic Sites & Main Street	\$ 351,820	\$ 351,820	\$ 110,684	31%
City Library	\$ 612,220	\$ 602,220	\$ 277,821	46%
Recreation	\$ 665,351	\$ 665,351	\$ 307,517	46%
Parks & Cemetery	\$ 1,388,988	\$ 1,388,988	\$ 619,786	45%
Total Cultural & Recreational	\$ 3,018,379	\$ 3,008,379	\$ 1,315,809	44%
<u>Highways & Streets</u>				
Public Works Admin.	\$ 130,934	\$ 130,934	\$ 64,242	49%
Streets	\$ 1,283,791	\$ 1,447,791	\$ 478,227	33%
Engineering	\$ 589,555	\$ 589,555	\$ 326,177	55%
Total Highways & Streets	\$ 2,004,280	\$ 2,168,280	\$ 868,645	40%
Total Expenditures	\$ 26,982,790	\$ 27,503,851	\$ 13,184,583	48%
<u>Inter-Fund Transfers Out</u>				
Transfers - Eco Dev	\$ 150,000	\$ 150,000	\$ 150,000	100%
Transfers - Mayors Comm	\$ 5,000	\$ 5,000	\$ -	0%
Transfers - Airport Construction	\$ 55,000	\$ 55,000	\$ -	0%
Transfers - Airport Operation	\$ 50,000	\$ 50,000	\$ -	0%
Total Inter-Fund Transfers Out	\$ 260,000	\$ 260,000	\$ 150,000	58%
Total Expenditures	\$ 27,242,790	\$ 27,763,851	\$ 13,334,583	48%

Utility Fund Operating Budget

	Adopted Budget	Amended Budget	Actual YTD March 31, 2022	% Used
Revenues				
<u>Charges for Sales & Services:</u>				
Water Sales	\$ 10,200,000	\$ 10,200,000	\$ 5,082,504	50%
Sewer Sales	\$ 9,000,000	\$ 9,000,000	\$ 4,380,267	49%
Plumbing Permits	\$ 5,000	\$ 5,000	\$ 5,203	104%
Water / Wastewater Permits - Inspections	\$ 30,000	\$ 30,000	\$ 13,500	45%
Water Taps	\$ 25,000	\$ 25,000	\$ 10,840	43%
Sewer Taps	\$ 10,000	\$ 10,000	\$ 4,970	50%
Utility Service Fees	\$ 100,000	\$ 100,000	\$ 46,823	47%
Late Payment Penalties Fees	\$ 275,000	\$ 275,000	\$ 160,395	58%
Water Miscellaneous Receipts	\$ 5,000	\$ 5,000	\$ 2,607	52%
Sewer Miscellaneous Receipts	\$ 150,000	\$ 150,000	\$ 78,705	52%
Receipt on Bad Accounts	\$ 30,000	\$ 30,000	\$ 19,139	64%
Miscellaneous Receipts	\$ 2,500	\$ 2,500	\$ 25	1%
Total Operating Revenues	\$ 19,832,500	\$ 19,832,500	\$ 9,804,978	49%
<u>Nonoperating Revenues</u>				
<u>Investment Earnings:</u>				
Water / Sewer Interest	\$ 16,250	\$ 16,250	\$ 16,957	104%
Water / Sewer Reserve Interest	\$ 750	\$ 750	\$ 426	57%
Water / Sewer Debt Service Interest	\$ 1,500	\$ 1,500	\$ 1,277	85%
Total Investment Earnings	\$ 18,500	\$ 18,500	\$ 18,660	101%
Total Revenues	\$ 19,851,000	\$ 19,851,000	\$ 9,823,638	49%
<u>Operating Expenses</u>				
Water Billing	\$ 1,362,907	\$ 1,422,843	\$ 658,537	46%
Water Production	\$ 2,574,339	\$ 2,799,339	\$ 910,930	33%
Utility Construction	\$ 1,472,746	\$ 1,472,746	\$ 757,128	51%
Wastewater Treatment	\$ 2,338,479	\$ 2,338,479	\$ 1,179,107	50%
Non - Departmental	\$ 400,882	\$ 400,882	\$ 176,707	44%
Total Operating Expenses	\$ 8,149,353	\$ 8,434,289	\$ 3,682,410	44%
Debt Service - Principal	\$ 3,625,000	\$ 3,625,000	\$ 1,290,000	36%
Debt Service - Interest	\$ 344,882	\$ 344,882	\$ 178,214	52%
Transfer to Eco Dev Fund	\$ 50,000	\$ 50,000	\$ 50,000	100%
Transfer to Airport FBO Fund	\$ 50,000	\$ 50,000	\$ -	0%
Transfer to General Fd - Franchise Fee	\$ 1,536,000	\$ 1,536,000	\$ 768,000	50%
Transfer to General Fd - Overhead Cost	\$ 2,021,881	\$ 2,021,881	\$ 1,010,940	50%
Total Nonoperating Expenses	\$ 7,627,763	\$ 7,627,763	\$ 3,297,154	43%
Total Expenditures	\$ 15,777,116	\$ 16,062,052	\$ 6,979,564	43%

Sanitation Fund Operating Budget

	Adopted Budget	Amended Budget	Actual YTD March 31, 2022	% Used
Revenues				
Charges for Sales & Services:				
Sanitation Charges	\$ 5,496,000	\$ 5,496,000	\$ 2,833,686	52%
Sanitation Fuel Charge	\$ 222,000	\$ 222,000	\$ 161,378	73%
Landfill Gate Receipts	\$ 680,000	\$ 680,000	\$ 415,668	61%
Miscellaneous Receipts	\$ 375,000	\$ 375,000	\$ 306,439	82%
Total Operating Revenues	\$ 6,773,000	\$ 6,773,000	\$ 3,717,171	55%
Nonoperating Revenues				
Sanitation Fund Interest	\$ 25,000	\$ 25,000	\$ 20,650	83%
Gain from Disposal of Assets	\$ -	\$ -	\$ 155,000	#DIV/0!
Total Nonoperating Revenues	\$ 25,000	\$ 25,000	\$ 175,650	703%
Total Revenues	\$ 6,798,000	\$ 6,798,000	\$ 3,892,821	57%
Operating Expenses				
Sanitation Collection	\$ 1,418,811	\$ 1,418,811	\$ 726,696	51%
Sanitation Disposal	\$ 956,517	\$ 956,517	\$ 377,080	39%
Sanitation Administration	\$ 196,049	\$ 196,049	\$ 85,980	44%
Non - Departmental	\$ 371,782	\$ 371,782	\$ 179,309	48%
Total Operating Expenses	\$ 2,943,159	\$ 2,943,159	\$ 1,369,065	47%
Transfers Out				
Transfer to Eco Dev Fd	\$ 50,000	\$ 50,000	\$ 50,000	100%
Transfer to General Fd - Franchise Fee	\$ 457,440	\$ 457,440	\$ 228,720	50%
Transfer to General Fd - Overhead Cost	\$ 1,781,604	\$ 1,781,604	\$ 890,802	50%
Total Transfers Out	\$ 2,289,044	\$ 2,289,044	\$ 1,169,522	51%
Total Expenditures	\$ 5,232,203	\$ 5,232,203	\$ 2,538,587	49%

Hotel Tax Fund Operating Budget

	Adopted Budget	Amended Budget	Actual YTD March 31, 2022	% Used
<u>Revenues</u>				
Hotel Occupancy Tax	\$ 725,000	\$ 725,000	\$ 338,475	47%
Total Operating Revenues	\$ 725,000	\$ 725,000	\$ 338,475	47%
<u>Nonoperating Revenues</u>				
Investment Earnings:				
Interest Income	\$ 500	\$ 500	\$ 519	104%
Total Investment Earnings	\$ 500	\$ 500	\$ 519	104%
Total Revenues	\$ 725,500	\$ 725,500	\$ 338,995	47%
<u>Operating Expenses</u>				
Bldg & Structure Maint	\$ 10,000	\$ 25,500	\$ -	0%
Special Services	\$ 95,000	\$ 95,000	\$ 47,500	50%
Tourist & Convention Services	\$ 525,625	\$ 525,625	\$ 240,038	46%
Total Operating Expenses	\$ 630,625	\$ 646,125	\$ 287,538	45%
Transfer to Historical Fd	\$ 25,000	\$ 25,000	\$ 25,000	100%
Total Nonoperating Expenses	\$ 25,000	\$ 25,000	\$ 25,000	100%
Total Expenditures	\$ 655,625	\$ 671,125	\$ 312,538	47%

Estimated Ending Cash Balances

	General Fund Operations/Capital	Utility Fund Operations	Utility Fund Capital	Utility Fund Debt	Sanitation Fund Operations	Sanitation Fund Capital	Sanitation Fund Landfill
Unaudited Cash Balance 10/1/2021	\$ 16,758,883	\$ 6,121,460	\$ 27,164,645	\$ 1,774,276	\$ 3,200,293	\$ 2,479,480	\$ 8,119,386
Budgeted Revenues	\$ 21,518,603	\$ 19,851,000	\$ 20,000	\$ 2,250	\$ 6,798,000		
Budgeted Interfund Transfers In	\$ 5,846,925						
Other Financing Sources			\$ 4,360,058	\$ 3,969,882		\$ 1,445,201	
Budgeted Operating Expenditures	\$ (27,503,851)	\$ (8,434,289)		\$ (3,969,882)	\$ (2,943,159)		
Budgeted Capital Equipment	\$ (2,493,991)		\$ (580,387)			\$ (1,533,500)	
Budgeted CIP	\$ (2,464,322)		\$ (16,341,221)				\$ (1,571,836)
Budgeted Interfund Transfers Out	\$ (260,000)	\$ (3,657,881)			\$ (2,289,044)		
Other Financing Uses		\$ (8,329,940)			\$ (1,445,201)		
Est. Cash Balance 9/30/2022	\$ 11,402,247	\$ 5,550,350	\$ 14,623,095	\$ 1,776,526	\$ 3,320,889	\$ 2,391,181	\$ 6,547,550
25% of Operational Expense Budget	\$ 6,875,963	\$ 3,977,159			\$ 1,193,192		
Difference	\$ 4,526,284	\$ 1,573,191			\$ 2,127,697		

2021-2022 Mid Year Financial Report

As of March 31, 2022



General Fund Major Revenues

thru March 31, 2022

• Property Taxes	\$ 9,749,618	98%
• Sales Tax	\$ 4,237,996	60%
• Franchise Fee (exclude Oncor July)	\$ 364,662	16%
• Court Fines	\$ 184,919	46%
• Other Revenues	\$ 823,851	49%
— Rec, Insp, Interest,		
• Grants/Reimb	\$ 529,852	1141%
• Transfers	\$ 2,898,462	50%

General Fund Major Revenues

thru March 31, 2022

- Revenues — Compared to Prior Year Collections at 3/31/2021
 - Property Tax — **up 4%** (\$417,438)
 - Sales Tax — **up 18%** (\$647,824)
 - Franchise Fees — **down 4%** (\$17,182)
 - Fines — **up 13%** (\$20,986)
 - Misc Fees — **up 13%** (\$93,330)
 - Interest Earnings — **up 7%** (\$1,582)

Utility & Sanitation Funds

Major Revenues

thru March 31, 2022

• Water Sales	\$ 5,082,504	50%
• Sewer Sales	\$ 4,380,267	49%
• Sanitation Fees	\$ 2,833,686	52%
• Sanitation Fuel Charges	\$ 161,378	73%
• Landfill Gate Fees	\$ 415,668	61%

Hotel Tax Fund

thru March 31, 2022

- Hotel Taxes \$ 338,475 47%
- Compared to Prior Year Collections at 3/31/2021
 - Up 2% (\$5,351)

PRESENTER: Steve Bartlett, Public Works Director

ITEM/SUBJECT: Receive an update on Customer Service Inspections for commercial entities and backflow preventer testing and installations. (Public Works Director)

SUMMARY/BACKGROUND: Customer Service Inspections (CSI) are being conducted across the City for all commercial water account customers. These inspections are being performed by three (3) firms that were previously awarded a contract for this effort. These inspections specifically look for health risks to our water system, including possible cross-connection points where hazardous pollutants could enter the water system from the customer's facilities.

Examples of cross-connection points can include carbonated drink fountains, mop sinks, hose bibs, irrigation systems and other direct water connection devices. These inspections identify the locations of any possible hazards and provide the customer with needed solutions to protect the water system.

All commercial customers are required to have a reduced-pressure-zone backflow device immediately after their meter. These devices are required to be checked annually by a certified tester, at the customer's expense. The City sends a courtesy reminder letter each year to every customer, identifying each device that must be recertified. The results of the tests are reported to the City and recorded in an online database for inspection by the Texas Commission on Environmental Quality (TCEQ).

Failure by the customer to install the necessary cross connection devices, or not completing the annual test certifications, can result in the termination of water service until the issue is resolved.

Requirements for cross connection controls are defined in our Code of Ordinances under ARTICLE XI - CONTROL OF BACKFLOW AND CROSS-CONNECTIONS, and generally mirror the requirements mandated by TCEQ.

Commercial customers who are identified as needing additional cross connection controls, or those who are delinquent in providing annual backflow certification results, are notified by letter and given 30 days to comply. If no contact or action is noted within 15 days, a second letter is sent to the customer. If the customer fails to respond, a 10-day letter is sent by registered mail which formally notifies them that their water will be shut off until the issue is resolved.

Customers who contact the City with a plan of action and a reasonable schedule for compliance, can avoid losing water service if they are making reasonable headway with rectifying the issues identified in the CSI.

City staff will be publishing the possible water shut-off candidates generally near the 15th of each month. The list can be sent to the Executive Staff, City Council, and other organizations like Nacogdoches Economic Development Cooperation and the Chamber of Commerce, to help communicate the urgency of making these improvements to any business customer on the list

that they may know.

The inspection process to perform Customer Service Inspections on all remaining businesses, is estimated to take 18 months to complete. Finalizing new installations of backflow devices may take an additional 6 months.

Customers who have not rectified delinquent annual backflow device tests will also be subject to having their water service discontinued. Working with these customers is a perpetual process.

FINANCIAL:

No financial impact associated with this item

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

Infrastructure

CITY CONTACT: Steve Bartlett, Public Works Director
bartletts@nactx.us
936-559-2522

ATTACHMENTS: 1. PowerPoint Presentation

CUSTOMER SERVICE INSPECTIONS (CSI)

- TCEQ requires cities to inspect existing and new businesses & perform Customer Service Inspections
- No “grandfathering”
- Identifies potential sources of contamination to public water system
- Approx. 800 inspections remaining



CROSS CONNECTION ORDINANCE

- Chapter 106 Utilities - regulations for backflow prevention
- Describes plumbing requirements for different facilities
- Requires annual inspections of backflow devices
- Allows penalties for non-compliance

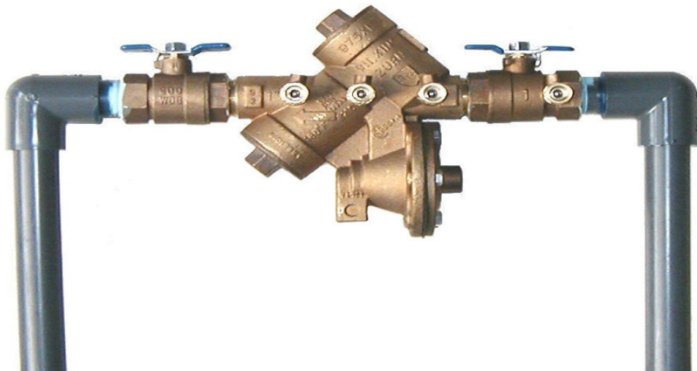


CROSS CONNECTION DEVICES

REDUCED PRESSURE ZONE
BACKFLOW PREVENTERS



VACUUM BREAKERS & DOUBLE
CHECK VALVE BACKFLOW DEVICES



NOTIFICATION PROCESS

- 30 day notice mailed to customer of record.
May be tenant or owner.
- 15 day notice mailed to customer.
- 10 day shut-off notice by Certified mail.

Any contact with City Staff outlining a schedule or plan of action will delay water shut off. Staff uses prudent judgment on nursing homes, hospitals, apartments, etc.



NOTIFICATION HURDLES

Customer who signed for the water service account is responsible

- Owner receives letter but takes no action claiming they never received the notices. Since COVID, Certified mail is not always signed by recipient
- Tenant receives notice but thinks owner is responsible and dismisses the letter
- Tenant receives notice and sends to building owner, with no response
- Tenant receives notice and sends to property management company, who then sends to owner with no response
- Customer address is a P.O. Box that is not checked regularly
- Customer is out of state corporate entity. Local management is hired staff. No or slow response.
- Language barriers

TESTING OR INSTALLATION HURDLES

- Customer does not know who to call to get backflow device installed or tested
- Customer cannot afford the cost of testing (\$175+ ea) or new device installation (\$1,000 to \$10,000+)
- Testing companies and plumbers backlogged
- Intermittent supply of backflow devices & repair parts
- Some installations require significant site construction
- Some installations have almost no feasible installation location (City Hall)

SUGGESTED ACTIONS

- Circulate list of customers with pending water service turn offs?
- Spend time and money to hunt down building owners?
- Provide testing of existing devices for a charge?
- Wait longer between 15 day letter and 10 day notice?
(Note TCEQ promotes immediate turn off to protect water system. Not doing so could subject the City to fines)
- Provide additional social media coverage?

PRESENTER: Brian Bray, Community Services Director

ITEM/SUBJECT: Consider the adoption of an ordinance amending Chapters 18, 74 and 86 of the City of Nacogdoches' Code of Ordinances to update and consolidate alcohol regulations.
(Community Services Director)

SUMMARY/BACKGROUND: The City of Nacogdoches Code of Ordinances that reference the sale and consumption of alcoholic beverages has not kept pace with the legislature and regulator changes to the statutes and regulations. Some of these ordinances are inconsistent and/or preempted by state regulations. The City of Nacogdoches would like to bring our code of ordinances into compliance with State regulations and create a clear pathway for reviewing requests to serve and consume alcoholic beverages in City facilities.

The proposed amendments will assist special event and festival organizers, hosting events in City facilities, with a permit process to provide wine, beer and other alcoholic beverages at their events and fundraisers. The City has previously allowed alcoholic beverages at events without experiencing detrimental impacts, but the City process for allowing such is not standardized or easily accessible to the public or event organizers. The City desires to consolidate its alcohol regulations, listed in sections 74-62 and 86-26, update the code to comply with current statutes and regulations and simplify the process for obtaining permission to sell or provide alcohol at a special event. The consolidated ordinance would be Chapter 18, Section 18-27 - Alcohol at City Facilities.

This new section outlines the process which a group, organization or event planner must go through to be able to sell or serve an alcoholic beverage at an event in a City facility. The event planner must obtain a special event permit, issued by the City Manager or designee, provide proof of liability insurance and comply with the Texas Alcoholic Beverage Code before being eligible to receive a permit. If approved, the permit is valid for a period not to exceed 72 consecutive hours. Furthermore, in issuing the permit, the City Manager is authorized to implement additional safety and control regulations concerning location, hours of operation, security and other appropriate conditions to protect the health, safety and welfare of the general public and event attendees.

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: Brian W. Bray, Director of Community Services
brayb@nactx.us

936-559-2935

- ATTACHMENTS:**
1. Ordinance No. 1910-05-22.docx
 2. Chapters 74 & 86
 3. Chapter 18-27
 4. PowerPoint Presentation

ORDINANCE NO. 1910-05-22

ORDINANCE AMENDING CHAPTERS 18, 74 AND 86 OF THE CODE OF ORDINANCES TO UPDATE AND CONSOLIDATE ALCOHOL REGULATIONS

WHEREAS, the City of Nacogdoches, Texas (the “City”) owns and operates streets, parks and buildings, (“ Facilities”) throughout the City; and

WHEREAS, the State of Texas has extensive statutes and regulations for the sale and consumption of alcoholic beverages,

WHEREAS, the Code of Ordinances has not kept pace with the legislature and regulatory changes to the statutes and regulations and some may be inconsistent or preempted by State regulation,

WHEREAS, organizers of festivals and other special events, nonprofit and civic agencies that hold special events, and city boards and commissions that support city activities and facilities desire to have the option of providing wine, beer and other alcoholic beverages at their events and fundraisers; and

WHEREAS, Patrons of said events expect to have the option of purchasing and consuming beer, wine and other alcoholic beverages at the events, and

WHEREAS, the City has previously allowed alcoholic beverages at events without experiencing detrimental impacts, but the City process for allowing such is not standardized or easily accessible to the public or event organizers, and

WHEREAS, the City desires to consolidate its alcohol regulations, update the Code to comply with current statutes and regulations, and simplify the process for obtaining permission to sell or provide alcohol at a special event,

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

SECTION I

All of the above recitals are found to be true and correct legislative and factual findings.

SECTION II

Chapter 18 is amended to add the following section:

Section 18 - 27 – Alcohol at City Facilities.

- (a) No person, firm, corporation, or business entity of any land shall sell, store, possess or consume an alcoholic beverage in any city park, street, sidewalk, facility or city owned

premises ("City Facilities"), except as provided in this subsection. The term "alcoholic beverage," as that term is used in this article, shall be defined as used in the Texas Alcoholic Beverage Code.

- (b) The city manager or designee may, notwithstanding the prohibition in subsection (a) of this section, issue a permit to a person or entity for the consumption, possession and/or sale of alcoholic beverages for on premises consumption, for a period not to exceed 72 consecutive hours, for City Facilities. For such event, the city manager or designee may grant a special event permit to allow for the consumption, possession, and/or sale of beer and wine by a state licensed vendor or permit holder under the Texas Alcohol Beverage Code in accordance with state law and reasonable conditions as set forth herein.
- (c) No permit shall be issued until satisfactory proof has been provided for liability insurance and compliance with the Texas Alcoholic Beverage Code, as amended, and rules issued by the appropriate state agency. The city manager is further authorized to implement such other appropriate safety and control regulations concerning location, hours of operations, security and other appropriate conditions to protect the health, safety and welfare of the general public and event attendees.
- (d) The city by resolution may establish an appropriate fee for issuance of such permit. Standard conditions, requirements and permit application will be published and made available to the public on the City website.

SECTION III

Sec. 74-62 of Chapter 74 of the Code of Ordinances is deleted.

SECTION IV

Sec. 86-26 of Chapter 82 of the Code of Ordinances is deleted.

SECTION V

All ordinances, resolutions, or parts thereof that are inconsistent with any provision of this Ordinance are hereby repealed to the extent of such conflict, and the provisions of this Ordinance shall be and remain controlling as to the matter regulated.

SECTION VI

If any word, article, phrase, paragraph, sentence, clause, or provision of this Ordinance shall be held to be invalid or unconstitutional, such holding shall in no way affect other provisions or applications of this Ordinance which can be given effect without the invalid provision, and to this end the provisions of this Ordinance are declared to be severable.

SECTION VII

All provisions of the Code of Ordinances of the City of Nacogdoches not specifically amended or repealed herein remain in full force and effect. This ordinance shall be and is hereby

declared to be cumulative of all other ordinances of the City of Nacogdoches, and this ordinance shall not operate to repeal or affect any of such other ordinances except insofar as the provisions thereof might be inconsistent or in conflict with the provisions of this ordinance, in which event such conflicting provisions, if any, in such other ordinance or ordinances are hereby repealed.

SECTION VIII

This Ordinance shall take effect immediately upon its passage.

SECTION IX

Proper Notice & Open Meeting. It is hereby officially found and determined that the meeting at which this Ordinance was passed was open to the public as required and that public notice of the time, place, and purpose of said meeting was given as required by the Open Meetings Act, Chapter 551 of the Texas Government Code.

SECTION X

The City Secretary is hereby authorized and instructed to file a signed and sealed copy of this Ordinance in and among the records of the City of Nacogdoches.

PASSED AND APPROVED, this the ____ day of _____, 2022, by a vote of ____ (ayes) to ____ (nays) of the City Council of the City of Nacogdoches, Texas.

CITY OF NACOGDOCHES

By: _____
JIMMY MIZE, Mayor

ATTEST:

APPROVED AS TO FORM:

Jan Vinson, City Secretary

Steven Kirkland, City Attorney

Chapter 74 - PARKS AND RECREATION

~~Sec. 74-62. Consumption and possession of alcoholic beverages.~~

- ~~(a) It shall be unlawful for any person to possess or consume alcoholic beverages within any city-owned property, without the appropriate permissions.~~
- ~~(b) Alcoholic beverages may be allowed in foregoing areas provided the appropriate application and deposit, and a reservation agreement is issued.~~
- ~~(c) The following guidelines and procedures apply to alcoholic beverages in all areas listed in subsection 74-62(a) above, except for the designated area of Festival Park:
 - ~~(1) Consumption of alcohol on these properties is permitted during special events that are approved by the city.~~
 - ~~(2) Applicant must submit an event application at least ten days prior to the proposed event.~~
 - ~~(3) Alcoholic beverages must only be consumed in accordance with state law.~~~~
- ~~(d) The following guidelines and procedures apply to alcoholic beverages in the designated area of Festival Park:
 - ~~(1) Alcohol is allowed only during a festival or event that is approved by the city.~~
 - ~~(2) Applicant must submit a festival/event permit application at least 90 days prior to the proposed festival that includes the following documentation:
 - ~~a. A map depicting the following:
 - ~~1. The boundaries of the festival area;~~
 - ~~2. Locations of fencing and type of fencing material to be approved by the city manager;~~
 - ~~3. Locations of entrance and exit points; and~~
 - ~~4. Locations of alcohol sales.~~~~
 - ~~b. Proof of required licenses, permits and paid fees mandated by state and local law for the sale of alcoholic beverages.~~~~
 - ~~(3) Applicant must present the request to the city council for consideration.~~
 - ~~(4) The sale and/or consumption of alcoholic beverages shall be limited to the area(s) indicated on the festival/event permit application.~~
 - ~~(5) If the event is gated with controlled access:
 - ~~a. Alcohol may be sold throughout the gated, controlled access area of Festival Park.~~
 - ~~b. The gating and access control must be approved by the city manager.~~~~
 - ~~(6) If the event is not gated with controlled access:
 - ~~a. Alcohol may only be sold in areas designated in the festival/event permit application.~~
 - ~~b. Each designated area shall be "double-fenced" of a material approved by the city manager with a four-foot space between fences for security personnel and minimum height of 48 inches.~~
 - ~~c. The designated area shall meet all applicable health and safety codes.~~
 - ~~d. The designated area shall have no more than one public entrance.~~~~~~

-
- ~~(7) — Peace officers licensed in the state must be on-site throughout the event's operation and outside the perimeter to provide security. The city manager shall determine the number of officers required for the event. The event holders will pay for the service of the peace officers.~~
- ~~(8) — Alcoholic beverages may only be sold or consumed in accordance with state law.~~
- ~~(9) — No glass containers will be allowed in Festival Park.~~
- ~~(10) — The applicant will be responsible for the proper disposal of all trash on any property, public or private, which was utilized by the organizer during the event. Proper disposal of trash shall occur no later than 24 hours following the end of the event.~~

(Code 1971, § 19-16(a); Ord. No. 1323-5-03, 5-20-2003; Ord. No. 1520-06-09, 6-16-2009; Ord. No. 1574-6-11, 6-21-2011; Ord. No. 1614-11-12, 11-20-2012; Ord. No. 1872-08-21, § III, 9-7-2021)

Chapter 86 – STREETS, SIDEWALKS AND OTHER PUBLIC PLACES

Sec. 86-26. Alcoholic beverages.

~~It shall be unlawful for any person to consume alcoholic beverages in any public place within the city, excluding restaurants, private clubs and those areas indicated in section 74-62.~~

~~(Code 1971, § 19-16(b))~~

ARTICLE II. - ALCOHOLIC BEVERAGES

Secs. 18-27

- (a) No person, firm, corporation, or business entity of any land shall sell, store, possess or consume an alcoholic beverage in any city park, street, sidewalk, facility or city owned premises ("City Facilities"), except as provided in this subsection. The term "alcoholic beverage," as that term is used in this article, shall be defined as used in the Texas Alcoholic Beverage Code.
- (b) The city manager or designee may, notwithstanding the prohibition in subsection (a) of this section, issue a permit to a person or entity for the consumption, possession and/or sale of alcoholic beverages for on premises consumption, for a period not to exceed 72 consecutive hours, for City Facilities. For such event, the city manager or designee may grant a special event permit to allow for the consumption, possession, and/or sale of beer and wine by a state licensed vendor or permit holder under the Texas Alcohol Beverage Code in accordance with state law and reasonable conditions as set forth herein.
- (c) No permit shall be issued until satisfactory proof has been provided for liability insurance and compliance with the Texas Alcoholic Beverage Code, as amended, and rules issued by the appropriate state agency. The city manager is further authorized to implement such other appropriate safety and control regulations concerning location, hours of operations, security and other appropriate conditions to protect the health, safety and welfare of the general public and event attendees.
- (d) The city by resolution may establish an appropriate fee for issuance of such permit. Standard conditions, requirements and permit application will be published and made available to the public on the City website.

Consider the adoption of an ordinance amending Chapters 18, 74 and 86 of the City of Nacogdoches' Code of Ordinances to update and consolidate alcohol regulations.

(Community Services Director)

Chapter 18-27 Alcohol at City Facilities

(a) No person, firm, corporation, or business entity of any land shall sell, store, possess or consume an alcoholic beverage in any city park, street, sidewalk, facility or city owned premises ("City Facilities"), except as provided in this subsection. The term "alcoholic beverage," as that term is used in this article, shall be defined as used in the Texas Alcoholic Beverage Code.

(b) The city manager or designee may, notwithstanding the prohibition in subsection (a) of this section, issue a permit to a person or entity for the consumption, possession and/or sale of alcoholic beverages for on premises consumption, for a period not to exceed 72 consecutive hours, for City Facilities. For such event, the city manager or designee may grant a special event permit to allow for the consumption, possession, and/or sale of beer and wine by a state licensed vendor or permit holder under the Texas Alcohol Beverage Code in accordance with state law and reasonable conditions as set forth herein.

(c) No permit shall be issued until satisfactory proof has been provided for liability insurance and compliance with the Texas Alcoholic Beverage Code, as amended, and rules issued by the appropriate state agency. The city manager is further authorized to implement such other appropriate safety and control regulations concerning location, hours of operations, security and other appropriate conditions to protect the health, safety and welfare of the general public and event attendees.

(d) The city by resolution may establish an appropriate fee for issuance of such permit. Standard conditions, requirements and permit application will be published and made available to the public on the City website.



City Council Meeting

Date: May 3, 2022

Agenda Item: 8.F.

PRESENTER: Pam Curbow, Finance Director

ITEM/SUBJECT: Consider a contract amendment to extend the current electricity retail sales agreement with the Texas General Land Office (GLO) for a period to expire on December 31, 2023 (Director of Finance)

SUMMARY/BACKGROUND: The City of Nacogdoches entered into a retail sales agreement for the purchase of electricity with the Texas General Land Office (GLO) in January, 2014. This agreement afforded the City the benefit of waived Gross Receipts Taxes on all electric accounts. Legislation was passed in 2019 that removed municipalities from the exemption as of December, 31, 2023. We are able to retain these savings until that date through the extension of our current agreement. Due to the volatile nature of the electric market, we are unable to provide a rate until the morning of the Council Meeting so the rate will be presented at the meeting. We anticipate a significant increase in our energy rate due to the current market conditions. Our current contract rate is \$0.03457 per kWh and we have received preliminary pricing in the \$0.070 - \$0.090 per kWh range over the last two weeks.

FINANCIAL:

Item is not budgeted (*Budget Amendment required – future meeting*)

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

Not Applicable

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

ATTACHMENTS: 1. Retail Sales Agreement Amendment

SECOND AMENDMENT TO RETAIL SALES AGREEMENT

GLO CONTRACT NO. _____

This is the Second Amendment ("this Amendment") to the Retail Sales Agreement ("RSA") between Texas General Land Office ("Seller") and City of Nacogdoches ("Customer"). Seller and Customer entered into that certain Retail Sales Agreement between Seller and Customer with an Initial Term of January 1, 2014 through May 31, 2018 (the "Agreement"), GLO contract number 14-053-000-7110. The Agreement was amended by the First Amendment to extend the Term through the first meter read date after May 31, 2022. This Amendment is effective upon the date fully executed by both parties. Customer and Seller may collectively be referred to as the "Parties".

The Parties agree to extend the Term of the Agreement for an additional eighteen (18) months. This Amendment amends the Term paragraph in the Agreement by deleting the phrase "and will expire, unless earlier terminated, on the first meter read date after May 31, 2022," and replacing with the following:

"and will expire, unless earlier terminated, on December 31, 2023."

Exhibits "A-1" through E-1" inclusive of Contract Price are replaced in their entirety effective the first meter read after May 31, 2022 with Exhibits "A-2" through Exhibits "E-2".

THE PERSON SIGNING THIS AMENDMENT ON BEHALF OF THE CUSTOMER CERTIFIES THAT HE OR SHE IS AUTHORIZED TO LEGALLY OBLIGATE THE CUSTOMER. IN WITNESS WHEREOF, SELLER AND CUSTOMER HAVE EXECUTED AND DELIVERED THIS AMENDMENT EFFECTIVE AS OF THE EFFECTIVE DATE.

TEXAS GENERAL LAND OFFICE
SELLER:

By: _____
Mark A. Havens,
Chief Clerk/Deputy Land Commissioner
Date: _____

CITY OF NACOGDOCHES
CUSTOMER:

By: _____
Name: _____
Title: _____
Date: _____

SA _____ **Deputy** _____

DIV _____

THE PERSON SIGNING THIS AMENDMENT ON BEHALF OF CAVALLO CERTIFIES THAT HE OR SHE IS AUTHORIZED TO LEGALLY OBLIGATE CAVALLO. Cavallo is a signatory to this Amendment for purposes of acknowledging its obligations to accept assignment as provided in the General Terms and Conditions.

CAVALLO:
CAVALLO ENERGY TEXAS LLC

By: _____
Ed Hess
Authorized Signatory

THIS AGREEMENT IS CONFIDENTIAL AND MAY BE EXEMPT FROM DISCLOSURE UNDER THE PUBLIC INFORMATION ACT: DO NOT DISCLOSE ANY PROVISION HEREIN WITHOUT FIRST CONTACTING THE GENERAL LAND OFFICE

EXHIBITS TO RETAIL SALES AGREEMENT

Customer:

Contract Date:

EXHIBIT "A-2"

Initial Term

Start Date:

End Date:

Consumption Variance Allowance: N/A

Contract

Quantity: The monthly kWh quantity per ERCOT congestion zone shown below.

	Congestion Zone			
	Houston	South	North	West
Jan	0	0	0	0
Feb	0	0	0	0
Mar	0	0	0	0
Apr	0	0	0	0
May	0	0	0	0
Jun	0	0	0	0
Jul	0	0	0	0
Aug	0	0	0	0
Sep	0	0	0	0
Oct	0	0	0	0
Nov	0	0	0	0
Dec	0	0	0	0
Annual	0	0	0	0
Total Term	0	0	0	0

EXHIBIT "B-2"

ERCOT Costs (included in Contract Price)

Energy	Transmission and Distribution Line Losses	
REP Administration and Margin Fees	Unaccounted for Energy	Nodal Implementation Surcharge
Renewable Energy Charge	ERCOT Administration Fee	Gross Receipts Tax Reimbursements
Regulation Up Service Charge	ERCOT Credit Requirements	PUC Assessment Fee Reimbursements
Regulation Down Service Charge	PUCT Credit Requirements	Hub to Load Zone Basis
Non-Spinning Reserve Service Charge	Qualified Scheduling Entity Fees	
Responsive Reserve Service Charge	Balancing Energy Neutrality Adjustment	
Black Start Capacity Charge	EILS Uplift	
RMR Reserve Service Charge	Reliability Unit Commitment (Non-Index Products)	

EXHIBIT "C-2"

Pass-through Charges (passed through at cost)

TDSP Charges - regulated by Public Utility Commission of Texas and imposed and invoiced by the TDSP(s)

Transmission and Distribution Charges	Utility-imposed Reactive Power Charges	Sales Taxes (Not Applicable)
Transmission Cost Recovery Factor	Excess Mitigation Credits	
Competitive Transition Charges	System Benefit Fund Charges	
Meter Charges	Nuclear Decommissioning Charges	
Transition Charges	Charges for services, repairs & equipment	
Customer Charges	Other Charges TDSP(s) may impose from time-to-time	
Municipal Franchise Fees	Advanced Metering Cost Recovery Factor	

EXHIBIT "D-2" _____, 2022

Delivery Point(s)

No.	ESI ID	SERVICE ADDRESS	CITY, STATE, ZIP	CONGESTION ZONE
1				
2				

EXHIBIT "E-2"

Fixed Price Product

SELLER INVOICE

Seller will invoice Delivery Points on a monthly basis. Invoices may consist of the following components:

1. Contract Price (the per kWh price shown below);
2. Charges listed in exhibit "C-2";
3. Any additional charges that are expressly authorized in this Agreement.

Pricing: Customer will pay the Contract Price times the Actual Consumption. This Contract Price is \$0._____ per kWh and includes energy commodity charges and the initial costs listed on Exhibit "B-2". The costs in Exhibit "C-2" will be passed-through to Customer without markup. Customer may have involved a broker, aggregator or consultant in the negotiation of this contract and such fees or commissions are included in the Contract Price unless listed as a pass-through on Exhibit "C-2". Seller may, pursuant to the Regulatory Events clause of the Agreement, pass through without markup any increases in those costs and charges in Exhibit "B-2" during the Term of the Agreement. Seller may also, during the Term of this Agreement, adjust any Transmission and Distribution Charges included in Exhibit "B-2" to reflect implemented increases or reductions in tariff rates and changes in demand or other delivery components that occur during the Term.

Transition Charge and Consumption Variance Pricing: For periods during the Initial Term which Actual Consumption within a Congestion Management Zone varies from the Contract Quantity by a percentage greater than the Consumption Variance Allowance as shown on Exhibit "A-2", or for periods in which Actual Consumption occurs after the period between the Start Date and the End Date of the Initial Term, as listed on the Exhibit "A-2", Seller will charge, and Customer will pay the ERCOT Rate. The adder will be posted on the Site during the Term. The costs in Exhibit "C-2" will be passed through without markup. In the event of excess or deficient usage, if ERCOT charges certain incremental Ancillary Services for under or over procured loads, then Seller may also pass through these Ancillary Services to Buyer without markup.

Load Change Notification: Customer will promptly notify Seller of any event or circumstance that is likely to cause a significant change to the load at any Delivery Point(s) (a "Notice of Load Change"), including Customer's plans for new construction, facility replacement or equipment modification, planned closures, applications for new construction permits, or new environmental limits.

If Customer has a change in usage of 25% or more for two consecutive months; Seller may pass through the resulting cost increase to Customer. If Seller elects to pass through such cost increases, Seller will calculate the amount of such cost in a commercially reasonable manner and submit to Customer, which invoice will be due and payable pursuant to the payment terms of this agreement.

Adding and Deleting Delivery Points: Customer is permitted to add new Delivery Points at the Contract Price, or delete Delivery Points as a result of a sale or closure without any form of termination payment provided that (i) there is no Event of Default by Customer, (ii) any such Delivery Point to be added is located within the ERCOT area currently served by Seller; (iii) the aggregate volume of addition of Delivery Point(s), or deletion of Delivery Point(s) listed on Exhibit "D-2", does not exceed three (3) percent of the contract quantities specified in Exhibit "A-2", and (iv) such deletions are, in the reasonable judgment of Seller, for operational reasons and not an effort to access lower energy rates.

DEFINITIONS

"Ancillary Services" means, for each Delivery Point, all charges assessed by ERCOT for services necessary to maintain reliable operation of the transmission system in order to support the transmission of Energy from the source of generation to the points of demand.

"Congestion Management Zone" means the applicable congestion management zone as defined by ERCOT for the applicable Delivery Points and delivery period.

"ERCOT Rate" means the volume weighted sum of the Real Time Settlement Price (RT LMPZ) applicable to the Delivery Points for the specific delivery period, plus the applicable Exhibit "B-2" and "C-2" items, which may include retail margin, energy losses, capacity charges, RUC, replacement reserves, broker fees and commissions, congestion charges, ancillary service charges, ERCOT administrative fees, and delivery charges and other charges incurred by Seller for the Actual Consumption.

"Transmission and Distribution Charges" or "TDSP Charges" means, for each Delivery point, all transmission and distribution charges and other cost recovery charges and fees outlined in the TDSP's tariff and billed to Seller for TDSP's services to deliver Energy to the applicable Delivery point; .

CUSTOMER'S ACKNOWLEDGMENT

Customer acknowledges that Seller's representatives are in the business of buying and selling power within the ERCOT market for each of their own accounts and that such participation in the foregoing market may affect the calculation of the Day Ahead Settlement Price (DAM LMPZ) or Real-Time Settlement Point Prices (RT LMPZ). Notwithstanding the foregoing, Customer agrees to pay the amounts provided for in this Agreement that may be based upon the DAM LMPZ or RT LMPZ, as promulgated by ERCOT. Subject to the right of Customer to dispute a Seller Invoice as set forth in this Agreement, Customer will not withhold payment for any reason, including, investigatory activities undertaken by ERCOT or PUCT, based on Seller's representatives' participation in the market and its effect on RT LMPZ. Nothing in this Agreement restricts Seller or any of Seller's representatives from participating in ERCOT market activities that may affect the DAM LMPZ or RT LMPZ.

PRESENTER: Pam Curbow, Finance Director

ITEM/SUBJECT: Consider resolution(s) to rejoin the Texas Coalition for Affordable Power (TCAP) for the procurement of electric services and to authorize the City Manager to execute any associated agreements. (Director of Finance)

SUMMARY/BACKGROUND:

With the deregulation of the electric market in 2001, the City of Nacogdoches joined the Cities Aggregation Power Project (CAPP) which later became the Texas Coalition for Affordable Power (TCAP) for the procurement of electricity. In 2013 the City was approached with the opportunity to move the electric contract to a state power program to realize additional savings. The City then entered into a retail sales agreement for the purchase of electricity with the Texas General Land Office (GLO) in January, 2014. This agreement afforded the City the benefit of waived Gross Receipts Taxes on all electric accounts.

Legislation was passed in 2019 that removed municipalities from the exemption as of December, 31, 2023. We are able to retain these savings until that date through the extension of our current agreement. Since the City can no longer participate in the State Power Program we must change providers. TCAP has provided an opportunity for the City to re-join them to procure future electric services.

Due to the volatile nature of the electric market, we are unable to provide a rate until the morning of the Council meeting so the rate will be presented at the meeting. We anticipate a significant increase in our energy rate due to the current market conditions. Our current contract rate is \$0.03457 per kWh and we have received preliminary pricing in the \$0.070 - \$0.090 per kWh range over the last two weeks.

FINANCIAL:

Item is not budgeted (*Budget Amendment required – future meeting*)

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

Not Applicable

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

ATTACHMENTS:

1. Resolution
2. Cert. of Filing and Bylaws
3. Agreement Exhibits
4. Service Agreement

RESOLUTION NO. _____

A RESOLUTION OF CITY OF NACOGDOCHES APPROVING THE CERTIFICATE OF FORMATION AND BYLAWS OF TEXAS COALITION FOR AFFORDABLE POWER (“TCAP”), A POLITICAL SUBDIVISION CORPORATION; ACCEPTING MEMBERSHIP IN SAID CORPORATION; APPOINTING A REPRESENTATIVE TO SERVE ON BEHALF OF CITY OF NACOGDOCHES; APPROVING THE PROFESSIONAL SERVICES AGREEMENT; AUTHORIZING TCAP TO ACT AS AN AGENT ON BEHALF OF THE CITY TO ENTER INTO A CONTRACT FOR DELIVERIES OF ELECTRICITY EFFECTIVE ON OR AFTER JUNE 1, 2022; AND ADOPTING GEXA ENERGY’S COMMERCIAL ELECTRIC SERVICE AGREEMENT FOR POWER TO BE PROVIDED THROUGH DECEMBER 31, 2023.

WHEREAS, Chapter 304 of the Texas Local Government Code, entitled Energy Aggregation Measures for Local Governments, allows political subdivisions to form a political subdivision corporation to act as an agent to negotiate the purchase of electricity, or to likewise aid or act on behalf of the political subdivisions for which the corporation is created, with respect to their own electricity use for their respective public facilities; and

WHEREAS, Texas Coalition for Affordable Power (“TCAP”) is a political subdivision corporation organized under said Chapter; and

WHEREAS, more than one hundred-sixty (160) cities and other political subdivisions have joined TCAP since the Texas electric retail market was deregulated January 1, 2002; and

WHEREAS, TCAP members work collaboratively with the assistance of attorneys and procurements experts hired by TCAP to negotiate lower cost, reliable electric power with price stability; and

WHEREAS, the industry-standard retail contract is a Commercial Electric Service Agreement (“CESA”) offered by a Retail Electric Provider (“REP”); (Exhibit D) and

WHEREAS, the City of Nacogdoches seeks to become a Member of TCAP; and

WHEREAS, TCAP has prepared a Professional Services Agreement (“PSA”), attached as Exhibit C, that, in addition to enumerating services and benefits to members of TCAP, provides TCAP with specific authority to procure power in the wholesale market on behalf of members

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

Section 1. The recitals contained in the preamble of this Resolution are determined to be true and correct and are hereby adopted as a part of this Resolution.

Section 2. The Certificate of Formation and Bylaws of TCAP, a political subdivision corporation, attached hereto and incorporated herein for all purposes as Exhibits A and B respectively, are hereby approved.

Section 3. City of Nacogdoches accepts Membership in TCAP.

Section 4. The City of Nacogdoches hereby appoints Pamela Curbow to serve as Nacogdoches' representative to the corporation and to act on the City of Nacogdoches' behalf.

Section 5. Assuming this resolution is passed and Gexa Energy is able to provide TCAP an opportunity prior to June 1, 2022 to contract for power to be delivered to the City, any one of the following individuals is hereby authorized to sign an electric supply agreement for the City within 24 hours of receipt of a contract that has been approved and recommended by the TCAP Board of Directors: City Manager, or Director of Finance.

Section 6. The City will commit to purchase power to meet all of its electricity needs eligible for competition pursuant to the TCAP approved supply agreement and approve funds necessary to pay electricity costs proportionate to the City's load under the supply agreement (whether wholesale or retail) arranged by TCAP and signed by TCAP's Executive Director or President or other TCAP representatives authorized by the TCAP Board.

Section 7. That the City Manager is authorized to sign TCAP's Professional Services Agreement and Gexa Energy's CESA for the period June 1, 2022 through December 31, 2023.

Section 8. All Resolutions and parts thereof in conflict herewith are hereby expressly repealed insofar as they conflict herewith.

Section 9. That if any one or more sections or clauses of this Resolution is adjudged to be unconstitutional or invalid, such judgment shall not affect, impair or invalidate the remaining provisions of this Resolution and the remaining provisions of the Resolution shall be interpreted as if the offending section or clause never existed.

Section 10. This Resolution shall take effect immediately from and after its adoption and it is accordingly so resolved.

Section 11. A copy of this Resolution, Professional Services Agreement, and CESA shall be sent to TCAP, 15455 Dallas Parkway, Suite 600, Addison, Texas 75001.

PASSED AND APPROVED, this the 3rd day of May, 2022, by a vote of _____ (ayes) to _____ (nays) of the City Council of the City of Nacogdoches, Texas.

CITY OF NACOGDOCHES

By: _____
JIMMY MIZE, Mayor

ATTEST:

APPROVED AS TO FORM:

Jan Vinson, City Secretary

Steven Kirkland, City Attorney

Exhibit A

Corporations Section
P.O.Box 13697
Austin, Texas 78711-3697

Hope Andrade
Secretary of State



Office of the Secretary of State

CERTIFICATE OF FILING OF

Texas Coalition for Affordable Power
File Number: 801327832

The undersigned, as Secretary of State of Texas, hereby certifies that a Certificate of Formation for the above named Domestic Nonprofit Corporation has been received in this office and has been found to conform to the applicable provisions of law.

ACCORDINGLY, the undersigned, as Secretary of State, and by virtue of the authority vested in the secretary by law, hereby issues this certificate evidencing filing effective on the date shown below.

The issuance of this certificate does not authorize the use of a name in this state in violation of the rights of another under the federal Trademark Act of 1946, the Texas trademark law, the Assumed Business or Professional Name Act, or the common law.

Dated: 10/05/2010

Effective: 10/05/2010



A handwritten signature in cursive script, appearing to read "Hope Andrade".

Hope Andrade
Secretary of State

Come visit us on the internet at <http://www.sos.state.tx.us/>

Phone: (512) 463-5555
Prepared by: Linda Gemuenden

Fax: (512) 463-5709
TID: 10306

Dial: 7-1-1 for Relay Services
Document: 332951110002



Office of the Secretary of State

October 07, 2010

Attn: Cathleen C. Slack

Lloyd Gosselink, Attorneys at Law
816 Congress Avenue, Ste. 1900
Austin, TX 78701 USA

RE: Texas Coalition for Affordable Power
File Number: 801327832

It has been our pleasure to file the certificate of formation and issue the enclosed certificate of filing evidencing the existence of the newly created nonprofit corporation.

Nonprofit corporations do not automatically qualify for an exemption from federal and state taxes. Shortly, the Comptroller of Public Accounts will be contacting the corporation at its registered office for information that will assist the Comptroller in setting up the franchise tax account for the corporation. Information about franchise tax, and contact information for the Comptroller's office, is available on their web site at <http://window.state.tx.us/taxinfo/franchise/index.html>. For information on state tax exemption, including applications and publications, visit the Comptroller's Exempt Organizations web site at <http://window.state.tx.us/taxinfo/exempt/index.html>. Information on exemption from federal taxes is available from the Internal Revenue Service web site at www.irs.gov.

Nonprofit corporations do not file annual reports with the Secretary of State, but do file a report not more often than once every four years as requested by the Secretary. It is important for the corporation to continuously maintain a registered agent and office in Texas as this is the address to which the Secretary of State will send a request to file a periodic report. Failure to maintain a registered agent or office in Texas, failure to file a change to the agent or office information, or failure to file a report when requested may result in the involuntary termination of the corporation. Additionally, a nonprofit corporation will file documents with the Secretary of State if the corporation needs to amend one of the provisions in its certificate of formation. If we can be of further service at any time, please let us know.

Sincerely,

Corporations Section
Business & Public Filings Division
(512) 463-5555
Enclosure

Come visit us on the internet at <http://www.sos.state.tx.us/>

Phone: (512) 463-5555

Fax: (512) 463-5709

Dial: 7-1-1 for Relay Services

Prepared by: Linda Gemuenden

TID: 10286

Document: 332951110002

Form 202
(Revised 12/09)

Submit in duplicate to:
Secretary of State
P.O. Box 13697
Austin, TX 78711-3697
512 463-5555
FAX: 512/463-5709
Filing Fee: \$25



Certificate of Formation
Nonprofit Corporation

This space reserved for office use.

FILED
In the Office of the
Secretary of State of Texas

OCT 05 2010

Corporations Section

Article 1 – Entity Name and Type

The filing entity being formed is a nonprofit corporation. The name of the entity is:

Texas Coalition for Affordable Power

Article 2 – Registered Agent and Registered Office

(See instructions. Select and complete either A or B and complete C.)

☐ A. The initial registered agent is an organization (cannot be entity named above) by the name of:

OR

☒ B. The initial registered agent is an individual resident of the state whose name is set forth below:

Geoffrey	M	Gay	
<i>First Name</i>	<i>M.I.</i>	<i>Last Name</i>	<i>Suffix</i>

C. The business address of the registered agent and the registered office address is:

816 Congress Avenue, Suite 1900	Austin	TX	78701
<i>Street Address</i>	<i>City</i>	<i>State</i>	<i>Zip Code</i>

Article 3 – Management

The management of the affairs of the corporation is vested in the board of directors. The number of directors constituting the initial board of directors and the names and addresses of the persons who are to serve as directors until the first annual meeting of members or until their successors are elected and qualified are as follows:

A minimum of three directors is required.

Director 1				
Jay		Doegey		
<i>First Name</i>	<i>M.I.</i>	<i>Last Name</i>	<i>Suffix</i>	
101 South Mesquite St., Suite 300	Arlington	TX	76010	
<i>Street or Mailing Address</i>	<i>City</i>	<i>State</i>	<i>Zip Code</i>	<i>Country</i>

Director 2				
Tom	J.	Blazek		
<i>First Name</i>	<i>M.I.</i>	<i>Last Name</i>	<i>Suffix</i>	
622 E. Market Street	Rockport	TX	78382	
<i>Street or Mailing Address</i>	<i>City</i>	<i>State</i>	<i>Zip Code</i>	<i>Country</i>

Director 3				
Randy		Moravec		
<i>First Name</i>	<i>M.I.</i>	<i>Last Name</i>	<i>Suffix</i>	
5350 Belt Line Road	Addison	TX	75254-7606	
<i>Street or Mailing Address</i>	<i>City</i>	<i>State</i>	<i>Zip Code</i>	<i>Country</i>

OR

☐ The management of the affairs of the corporation is to be vested in the nonprofit corporation's members.

Article 4 – Membership

(See instructions. Do not select statement B if the corporation is to be managed by its members.)

☒ A. The nonprofit corporation shall have members.

☐ B. The nonprofit corporation will have no members.

Article 5 – Purpose

(See instructions. This form does not contain language needed to obtain a tax-exempt status on the state or federal level.)

The nonprofit corporation is organized for the following purpose or purposes:

any and all lawful business for which non-profit corporations may be organized under the Texas Business Organizations Code; purchasing electricity; aiding or acting on behalf of its Members with respect to their own electricity use for their respective public facilities and that of their citizens; negotiating on behalf of its Members for the purchase of electricity; making contracts for the purchase of electricity; and taking any other actions necessary to purchase electricity for use in the public facilities of the political subdivision or subdivisions represented by the Corporation; acting as a local cooperative organization to purchase goods and services for its Members; and for all other purposes as may be permitted by law for political subdivision corporations.

The following text area may be used to include any additional language or provisions that may be needed to obtain tax-exempt status.

Supplemental Provisions/Information
(See instructions.)

Text Area: [The attached addendum, if any, is incorporated herein by reference.]

Organizer

The name and address of the organizer:

Cathleen C. Slack

Name

816 Congress Avenue, Suite 1900

Austin

TX

78701

Street or Mailing Address

City

State

Zip Code

Effectiveness of Filing (Select either A, B, or C.)

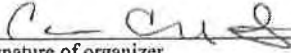
- A. ☒ This document becomes effective when the document is filed by the secretary of state.
- B. ☐ This document becomes effective at a later date, which is not more than ninety (90) days from the date of signing. The delayed effective date is: _____
- C. ☐ This document takes effect upon the occurrence of a future event or fact, other than the passage of time. The 90th day after the date of signing is: _____

The following event or fact will cause the document to take effect in the manner described below:

Execution

The undersigned affirms that the person designated as registered agent has consented to the appointment. The undersigned signs this document subject to the penalties imposed by law for the submission of a materially false or fraudulent instrument and certifies under penalty of perjury that the undersigned is authorized to execute the filing instrument.

Date: October 4, 2010


Signature of organizer

Cayleen C. Slack
Printed or typed name of organizer

Corporations Section
P.O.Box 13697
Austin, Texas 78711-3697



Hope Andrade
Secretary of State

Office of the Secretary of State
Packing Slip

October 7, 2010
Page 1 of 1

Attn: Cathleen C. Slack
Lloyd Gosselink, Attorneys at Law
816 Congress Avenue
Ste. 1900
Austin, TX 78701

Batch Number: 33295111

Batch Date: 10-05-2010

Client ID: 137735016

Return Method: Mail

Phone No: 5123225800

Document Number	Document Detail	Filing Number / Name	Page Count	Fee
332951110002	Certificate of Formation	Texas Coalition for Affordable Power	0	\$25.00
Total Document Fees				\$25.00

Payment Type	Payment Status	Payment Reference	Amount
Check	Received	15200	\$25.00
Total Payments Received			\$25.00
Total Amount Charged to Client Account			\$0.00
Total Amount Credited to Client Account			\$0.00

Note: This is not a bill. Please do not send any payments until the monthly statement is received.
Any amount credited to Client Account may be refunded upon request.
Refunds (if applicable) will be processed within 10 business days.
Acknowledgement of Filing Document(s) (if present) is attached.

User ID: LGEMUENDEN

Come visit us on the Internet @ <http://www.sos.state.tx.us/>

Phone:(512) 463-5555

FAX (512) 463-5709

Dial: 7-1-1 for Relay Services

Exhibit B

AMENDED AND RESTATED

BYLAWS OF

TEXAS COALITION FOR AFFORDABLE POWER

WHEREAS, Texas Coalition for Affordable Power is organized pursuant to these Bylaws and to that certain Certificate of Formation filed with the Secretary of State on October 4, 2010; and

WHEREAS, South Texas Aggregation Project, Inc., a Texas non-profit corporation, and Cities Aggregation Power Project, Inc., a Texas non-profit corporation, anticipates merger with Texas Coalition for Affordable Power in accordance with that certain Certificate of Merger of Non-Profit Corporation (the "**Certificate**") to be filed with the Secretary of State of Texas in December 2010, to be effective January 1, 2011, and according to that certain plan of merger attached thereto (the "**Merger**"); and

WHEREAS, South Texas Aggregation Project, Inc. and Cities Aggregation Power Project, Inc., desire to participate in elections in the fall of 2010 for Board of Director positions for Texas Coalition for Affordable Power, which positions shall be in effect January 1, 2011; and

WHEREAS, Texas Coalition for Affordable Power desires to modify a provision relating to the election of Directors and otherwise ratify and affirm these Bylaws.

ARTICLE ONE

NAME, PURPOSES, POWERS AND OFFICES

Section 1.1. Name. The name of this corporation (the "**Corporation**") is Texas Coalition for Affordable Power.

Section 1.2. Purposes. The Corporation has been organized for any and all lawful business for which nonprofit corporations may be organized under the Texas Business Organizations Code (the "**Code**"), for the purposes of purchasing electricity, aiding or acting on behalf of its Members (as hereinafter defined) with respect to their own electricity use for their respective public facilities and that of their citizens, negotiating on behalf of its Members for the purchase of electricity, making contracts for the purchase of electricity, and taking any other actions necessary to purchase electricity for use in the public facilities of the political subdivision or subdivisions represented by the Corporation, for the purposes of acting as a local cooperative organization to purchase goods and services for its Members, and for all other purposes as may be permitted by law for political subdivision corporations.

Section 1.3. Powers. The Corporation is a nonprofit corporation and shall have all of the powers, duties, authorizations and responsibilities as provided in the Code; provided, however, the Corporation shall neither have nor exercise any power, nor engage directly or indirectly in any activity, that would invalidate its status as a corporation that is exempt from federal income tax as an organization described in Section 501(c)(6) of the Internal Revenue Code (2010).

Section 1.4. Offices. The Corporation may have, in addition to its registered office, offices at such places, both within and without the State of Texas, as the Board of Directors may from time to time determine or as the activities of the Corporation may require.

ARTICLE TWO

MEMBERS OF THE CORPORATION

Section 2.1. Members. A “**Member**” of the Corporation shall be a political subdivision of the State of Texas that passes a resolution by its governing body that accepts the Certificate of Formation and Bylaws of the Corporation and contracts for energy through the Corporation. Members will be ranked by annual power usage based on the previous calendar year. A “**Large Member**” shall be the top 10% of members based on annual power usage. A “**Medium Member**” shall be the next 20% of Members after the large members based on annual power usage. A “**Small Member**” shall be Members who are the remaining 70% of membership after large and medium members. Members will be defined on a bi-annual basis in even years, prior to elections based on the previous year’s annual usage.

Section 2.2. Associate Members. The Corporation may have associate members. An “**Associate Member**” is a political subdivision of the State of Texas whose governing body resolves to support the advocacy efforts of the Corporation, and pays annual dues that may be set from time to time by the Board of Directors (“**Associate Member Dues**”), but is not served under a power contract to which the Corporation is a party. Associate Members shall **not** have the right to vote on any matters of business of the Corporation, including, but not limited to, those voting rights described in Article 3 herein. The Board may, at its sole discretion, require a reinstatement fee of any Associate Member who desires to become a Member.

Section 2.3. Suspended Members. Any Member or Associate Member who is not currently served under a power contract to which the Corporation is a party shall have its membership in the Corporation suspended and shall be considered a “**Suspended Member**”.

Section 2.4. Withdrawal of Member. Any Member or Associate Member may withdraw from participation in the activities of the Corporation at any time upon thirty (30) days prior written notice to the Board of Directors, whereupon it shall cease to be a Member or Associate Member, and shall cease to be entitled or obligated to participate in the activities of all committees of the Board of Directors and shall have no further obligations as a Member; provided, however, that if such notice is given more than thirty (30) days after such Members receipt of its statement of annual dues, fees and expenses for a fiscal year, the Member or Associate Member shall be obligated to pay for the full fiscal year within which such termination is effective. Withdrawal of membership shall have no effect on power agreements to which the withdrawing entity may be contractually obligated, including, but not limited to, the payment of the Corporation’s Aggregation Fees for the duration of the then-current electric contract.

ARTICLE THREE

BOARD OF DIRECTORS

Section 3.1. General Powers; Delegation. The activities, property and affairs of the Corporation shall be managed by its Board of Directors, who may exercise all such powers of the Corporation and do all such lawful acts and things as are permitted by statute, by the Certificate of Formation or by these Bylaws. By illustration and without limitation, included among the powers of the Board of Directors is the power to negotiate the purchase of electricity, aid or act on behalf of the political subdivisions for which the corporation is created, make contracts for the purchase of electricity, purchase electricity, and take any other action necessary to purchase electricity for use in the public facilities or by the citizens of the political subdivision or subdivisions represented by the Corporation; provided, however, no Member shall be obligated under any such contract unless the Member approves such contract.

Section 3.2. Number and Qualifications. The Board of Directors shall initially consist of fifteen (15) Directors as more particularly described in Section 3.3 herein. The Board of Directors may increase or decrease the number of Directors by a resolution of the Board, however no such resolution shall have the effect of shortening or terminating the term of a current Director. Any full-time salaried employee or elected official of a Member shall be eligible to serve as a Director. Any Director who (a) ceases to be an official or full-time salaried employee of a Member; or (b) is an official of full-time salaried employee of a political subdivision who ceases to be a Member of the Corporation, or who refuses to extend a contract authorized by the Board of Directors or who otherwise expresses a desire to exit the corporation shall immediately become disqualified to serve as a Director and shall vacate such position. Such vacancy shall be filled according to Section 3.4 herein

Section 3.3. Election and Term of Office. The Directors of the Corporation shall be selected from nominations by the Members according to the provisions of this Section 3.3. No more than one (1) nominee may be nominated by each Member. The Members shall elect six (6) Directors from nominees of Large Members (Board Positions 1-6), three (3) Directors from nominees of Medium Members (Board Positions 7-9), and two (2) Directors from nominees of Small Members (Board Positions 10-11). The remaining four (4) Directors shall be those nominees who received the greatest number of votes but were not otherwise elected (Board positions 12-15). Notwithstanding the foregoing, it is the intent of the Members that each ERCOT Zone is represented by at least one (1) Director. To that end, for example, if one ERCOT Zone is not represented by a Director after elections have proceeded according to the above provisions, then the highest numbered Board Position to be elected (*e.g.*, Board Position 15) shall go to the nominee from such unrepresented ERCOT Zone instead of the nominee who otherwise would have been elected to such Board Position. Directors shall hold office for staggered two (2) year terms and until such Director's successor is chosen and qualified, or until such Director's earlier death, resignation, retirement, disqualification or removal from office. Directors may serve any number of consecutive terms. Board positions 1, 3, 5, 7, 9, 11, 13, and 15 will be selected in odd-numbered years. Board positions 2, 4, 6, 8, 10, 12 and 14 will be selected in even-numbered years. The terms 'odd' and 'even' shall apply to the year in which such Director's term of office begins. In order to stagger the terms of office, if the initial terms of office of all Directors begin in 2011, for example, then the initial term of office for odd numbered Board Positions will be two (2) years and the initial term of office for even numbered

Board Positions will be one (1) year. At the Annual Meeting every three (3) years, the Board shall consider whether to adopt term limits.

Section 3.4. Filling of Vacancies. Any vacancy occurring in the Board of Directors resulting from the death, resignation, retirement, disqualification or removal from office of any Director or as the result of an increase in the number of Directors may be filled by the Board. Any Director appointed to fill a vacancy shall hold office until the expiration of the term of the vacating Director.

Section 3.5. Removal. Any Director absent for any two (2) meetings of the Board in a twelve (12) month period shall be automatically removed from the Board subject to the discretion of a majority vote by the Board to exclude an absence from the twelve (12) month period. Directors may be removed from office, with or without cause, by a majority vote of Directors in attendance at a meeting of the Board of Directors, but only so long as written notice that such action shall be considered is provided sixty (60) days prior to such meeting to each Director by the President or Secretary of the Board of Directors. If any Director shall violate any of the terms of Article 11 herein, such Director may be immediately removed by a majority vote of the Board.

Section 3.6. Place of Meeting. Meetings of the Board of Directors shall be held at such places, within or without the State of Texas, as may from time to time be fixed by the Board of Directors or as shall be specified or fixed in the respective notices or waivers of notice thereof.

Section 3.7. Annual Meetings. Beginning in 2011, an annual meeting of the Board of Directors (the “**Annual Board Meeting**”) shall be held in conjunction with the Annual Meeting of the Membership (“**Annual Membership Meeting**”) the first week in January (or at such other time that the Board determines to be advisable) of each year in Austin, Texas (or at such other location as the Board determines to be advisable), at such time as the Directors shall determine. At such Annual Membership Meeting, each Member shall be entitled to vote in the election of Directors and upon such other matters as may come before the Annual Membership Meeting. A quorum for the election of Directors at the Annual Membership Meeting shall be considered achieved if at least twenty percent (20%) of the total voting-eligible Members are present in person or have submitted a vote by mail, email or facsimile ballot. At the Annual Board Meeting, the Directors shall recognize new members of the Board of Directors of the Corporation in accordance with the requirements of Sections 3.2-3.5 of these Bylaws, shall elect officers, and shall transact any and all other business as may properly come before the meeting. Written or printed notice stating the place, day and hour of each Annual Membership Meeting and Annual Board Meeting shall be delivered not less than ten (10) nor more than sixty (60) days before the date of such meeting to each Member and Director entitled to vote at such meetings, respectively.

Section 3.8. Regular Meetings. Regular meetings of the Board of Directors shall be held at such times and places as may be fixed from time to time by resolution adopted by the Board and communicated by notice to all Directors. The Board shall choose a location most convenient to the Directors which shall minimize travel expenses that may be reimbursed to Directors required to travel. Except as otherwise provided by statute, by the Certificate of Merger of Non-Profit Corporation, or by these Bylaws, any and all business may be transacted at any regular meeting.

Section 3.9. Special Meetings. Special meetings of the Board of Directors may be called by the President upon not less than one (1) nor more than sixty (60) days notice to each Director. Special meetings shall be called by the President or Secretary in like manner and on like notice on the written request of two (2) or more Directors. Except as otherwise provided by statute, by the Certificate of Merger of Non-Profit Corporation or by these Bylaws, neither the business to be transacted at, nor the purpose of, any regular or special meeting of the Board of Directors need be specified in the notice or waiver of notice of such meeting.

Section 3.10. Quorum and Manner of Acting. At all meetings of the Board of Directors the presence of a majority of the number of Directors then in office shall be necessary and sufficient to constitute a quorum for the transaction of business, except as otherwise provided by statute, by the Certificate of Merger of Non-Profit Corporation or by these Bylaws. The act of a majority of the Directors present in person at a meeting at which a quorum is present shall be the act of the Board of Directors unless the act of a greater number is required by statute, by the Certificate of Merger of Non-Profit Corporation or by these Bylaws, in which case the act of such greater number shall be requisite to constitute the act of the Board. If a quorum shall not be present at any meeting of the Directors, the Directors present thereat may adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum shall be present. At any such adjourned meeting at which a quorum shall later be present, any business may be transacted which might have been transacted at the meeting as originally convened.

Section 3.11. No Compensation. Directors shall not receive any compensation for their services as Directors or as members of a standing or special committee of the Board, but may receive reimbursement for expenses incurred on behalf of the Corporation or in attending meetings of the Board of Directors (if, and to the extent, authorized by a resolution adopted by the Directors) and may receive compensation for serving the Corporation in any other capacity (if, and to the extent, authorized by a resolution adopted by the Directors).

Section 3.12. Telephone Meetings. Subject to the provisions of applicable law and these Bylaws regarding notice of meetings, members of the Board of Directors or members of any committee designated by such Board may, unless otherwise restricted by statute, by the Certificate of Merger of Non-Profit Corporation or by these Bylaws, participate in and hold a meeting of such Board of Directors or committee by using conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other or read the written text of each other's communication (e.g. email communications), and participation in a meeting pursuant to Section 3.10 shall constitute presence in person at such meeting, except when a person participates in the meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting was not lawfully called or convened. Annual Membership Meetings may be similarly conducted.

ARTICLE FOUR

COMMITTEES AND ADVISORY BOARDS

Section 4.1. Executive Committee of Board of Directors. The President of the Board of Directors may appoint an Executive Committee made up of Directors. Such Executive Committee shall have and exercise the authority of the Board of Directors in the management of

the Corporation to the extent permitted by resolution adopted by a majority of the Directors in office.

Section 4.2. Advisory Boards or Committees. The President of the Board of Directors may designate one or more advisory boards or committees not having and exercising the authority, responsibility, or duties of the Board of Directors in the management of the Corporation. A Director must serve as the Chair, Co-Chair, or Vice Chair of any committees designated, but committee membership may be made up of employees or officials of Members and Associate Members. The President shall appoint the members of such advisory boards or committees. Any member thereof may be removed by the President whenever in the President's judgment the best interests of the Corporation shall be served by such removal.

Section 4.3. Term of Office. Each member of an advisory board or committee shall continue as such until the next annual meeting of the directors of the Corporation and until such member's successor is appointed or elected, unless the board or committee is sooner terminated, or unless such member is removed from such board or committee or shall cease to qualify as a member thereof.

Section 4.4. Chairman. Unless otherwise designated by these Bylaws, one or more members of each advisory board or committee shall be appointed chairman, or co-chairman of such committee, by the President of the Board of Directors.

Section 4.5. Vacancies. Vacancies in the membership of any advisory board or committee may be filled by appointments made in the same manner as provided in the case of the original appointments or elections.

Section 4.6. Quorum; Manner of Acting. Unless otherwise provided in the resolution of the Board of Directors designating an advisory board or committee, a majority of the whole board or committee shall constitute a quorum, and the act of the majority of the members present at a meeting at which a quorum is present shall be the act of the board or committee.

Section 4.7. Rules. Each committee of directors, or advisory board or committee, may adopt rules for its own government not inconsistent with these Bylaws or with rules adopted by the Board of Directors.

ARTICLE FIVE

NOTICES

Section 5.1. Manner of Giving Notice. Whenever, under the provisions of any statute, the Certificate of Merger of Non-Profit Corporation or these Bylaws, notice is required to be given to any Director, advisory board member or committee member of the Corporation, and no provision is made as to how such notice shall be given, it shall not be construed to require personal notice, but any such notice may be given in writing by hand delivery, by facsimile transmission, by electronic mail or other form of electronic communication if permitted by the Code, or by mail, postage prepaid, addressed to such director or advisory board member or committee member at such person's address as it appears on the records of the Corporation. Any notice required or permitted to be given by mail shall be deemed to be delivered at the time when

the same shall be thus deposited in the United States mails, as aforesaid. Any notice required or permitted to be given by facsimile transmission or electronic mail or other form of electronic communication shall be deemed to be given upon successful transmission of such facsimile or electronic mail or other form of electronic communication.

Section 5.2. Waiver of Notice. Whenever any notice is required to be given to any Director or advisory board member or committee member of the Corporation under the provisions of any statute, the Certificate of Merger of Non-Profit Corporation or these Bylaws, a waiver thereof in writing signed by the person or persons entitled to such notice, whether signed before or after the time stated therein, shall be deemed equivalent to the giving of such notice.

ARTICLE SIX

OFFICERS, EMPLOYEES AND AGENTS: POWERS AND DUTIES

Section 6.1. Elected Officers. The elected officers of the Corporation shall include a President, a Vice President, a Secretary and a Treasurer. So far as is practicable, all elected officers shall be elected by the Board of Directors at each Annual Board Meeting. The Board of Directors shall elect from among the Directors a President and Vice President. The Secretary and Treasurer need not be a Director.

Section 6.2. Appointive Officers. The Board of Directors may also appoint one or more Assistant Secretaries and Assistant Treasurers and such other officers and assistant officers and agents as it shall from time to time deem necessary, who shall exercise such powers and perform such duties as shall be set forth in these Bylaws or determined from time to time by the Board.

Section 6.3. Two or More Offices. Any two (2) or more offices may be held by the same person, except that the President and Secretary shall not be the same person.

Section 6.4. Compensation. The compensation, if any, of all officers of the Corporation shall be fixed from time to time by the Board of Directors. The Board of Directors may from time to time delegate to the President the authority to fix the compensation of any or all of the other employees and agents of the Corporation. Any officer of the Corporation who receives compensation for his or her services in such capacity shall abstain from all discussions and voting with respect to the amount or any other aspect of such compensation.

Section 6.5. Reimbursement. Members and agents, employees and representatives of members may be reimbursed out-of-pocket expenses associated with Board sanctioned activity or for routine labor costs associated with performance of activities benefiting the Corporation, such as but not limited to financial and accounting services.

Section 6.6. Term of Office; Removal; Filling of Vacancies. Each elected officer of the Corporation shall hold office until such officer's successor is chosen and qualified in such officer's stead or until such officer's earlier death, resignation, retirement, disqualification or removal from office. Each appointive officer shall hold office at the pleasure of the Board of Directors without the necessity of periodic reappointment. Any officer or agent may be removed

at any time by the Board of Directors whenever in its judgment the best interests of the Corporation will be served thereby. If the office of any officer becomes vacant for any reason, the vacancy shall be filled by the Board of Directors. If any officer of the Corporation shall violate any of the provisions of Article 11 herein, such officer may be removed by a majority vote of the Directors.

Section 6.7. President. The President shall be the chief executive officer of the Corporation and, subject to the provisions of these Bylaws, shall have general supervision of the activities and affairs of the Corporation and shall have general and active control thereof. The President shall preside when present at meetings of the Board of Directors. The President shall have general authority to execute bonds, deeds and contracts in the name of the Corporation and to affix the corporate seal thereto; to cause the employment or appointment of such employees and agents of the Corporation as the proper conduct of operations may require and to fix their compensation; to remove or suspend any employee or agent; and in general to exercise all the powers usually appertaining to the office of president of a corporation, except as otherwise provided by statute, the Certificate of Formation or these Bylaws.

Section 6.8. Vice President. The Vice President shall assist the President and shall perform such duties as may be assigned by the President or by the Board of Directors. In the absence of the President, the Vice President shall have the powers and perform the duties of the President. In addition, the Vice President shall have such other powers and duties as from time to time may be assigned by the President or by the Board of Directors.

Section 6.9. Secretary. The Secretary shall see that notice is given of all annual and special meetings of the Board of Directors and shall keep and attest true records of all proceedings at all meetings of the Board. The Secretary shall have charge of the corporate seal and shall have authority to attest any and all instruments of writing to which the same may be affixed. The Secretary shall keep and account for all books, documents, papers and records of the Corporation, except those for which some other officer or agent is properly accountable. The Secretary shall generally perform all duties usually appertaining to the office of secretary of a corporation. In the absence or disability of the Secretary, the duties of such office shall be performed and the powers may be exercised by the Assistant Secretaries in the order of their seniority, unless otherwise determined by the Secretary, the President or the Board of Directors.

Section 6.10. Assistant Secretaries. Each Assistant Secretary shall generally assist the Secretary and shall have such powers and perform such duties and services as shall from time to time be prescribed or delegated to such office by the Secretary, the President or the Board of Directors.

Section 6.11. Treasurer. The Treasurer shall be the chief accounting and financial officer of the Corporation and shall have active control of and shall be responsible for all matters pertaining to the accounts and finances of the Corporation and shall direct the manner of certifying the same; shall supervise the manner of keeping all vouchers for payments by the Corporation and all other documents relating to such payments; shall receive, audit and consolidate all operating and financial statements of the Corporation and its various departments; shall have supervision of the books of account of the Corporation, their arrangements and classification; shall supervise the accounting and auditing practices of the Corporation and shall have charge of all matters relating to taxation. The Treasurer shall have the care and custody of all monies, funds and securities of the Corporation; shall deposit or cause to be deposited all such

funds in and with such depositories as the Board of Directors shall from time to time direct or as shall be selected in accordance with procedures established by the Board; shall advise upon all terms of credit granted by the Corporation; shall be responsible for the collection of all its accounts and shall cause to be kept full and accurate accounts of all receipts, disbursements and contributions of the Corporation. The Treasurer shall have the power to endorse for deposit or collection or otherwise all checks, drafts, notes, bills of exchange or other commercial papers payable to the Corporation, and to give proper receipts or discharges for all payments to the Corporation. The Treasurer shall generally perform all duties usually appertaining to the office of treasurer of a corporation. Any or all of the duties of the Treasurer may be delegated to one or more appointive officers or employees of the Corporation upon the approval of such delegation by the Board of Directors. In the absence or disability of the Treasurer, the duties of such office shall be performed and the powers may be exercised by the Assistant Treasurers in the order of their seniority, unless otherwise determined by the Treasurer, the President or the Board of Directors.

Section 6.12. Assistant Treasurers. Each Assistant Treasurer shall generally assist the Treasurer and shall have such powers and perform such duties and services as shall from time to time be prescribed or delegated to such office by the Treasurer, the President or the Board of Directors.

Section 6.13. Additional Powers and Duties. In addition to the foregoing specially enumerated duties, services and powers, the several elected and appointed officers (e.g. an Executive Director and any other employees) of the Corporation shall perform such other duties and services and exercise such further powers as may be provided by statute, the Certificate of Formation or these Bylaws, or as the Board of Directors may from time to time determine or as may be assigned by any competent superior officer.

ARTICLE SEVEN

CONTRACTS, CHECKS, DEPOSITS AND FUNDS

Section 7.1. Contracts. The Board of Directors may authorize any officer or officers, or agent or agents, of the Corporation, in addition to the officers so authorized by these Bylaws, to enter into any contract or execute and deliver any instrument in the name of and on behalf of the Corporation, and such authority may be general or confined to specific instances.

Section 7.2. Checks, Drafts or Orders for Payment. All checks, drafts or orders for the payment of money, notes or other evidences of indebtedness issued in the name of the Corporation shall be signed by such officer or officers, or agent or agents, of the Corporation and in such manner as shall from time to time be determined by resolution of the Board of Directors. In the absence of such determination, such instruments shall be signed by the President or the Treasurer of the Corporation.

Section 7.3. Deposits. All funds of the Corporation shall be deposited from time to time to the credit of the Corporation in such banks, trust companies or other depositories as the Board of Directors may select or as may be selected in accordance with procedures established by the Board.

Section 7.4. Conflicts of Interest. No contract or agreement may be entered into by and between the Corporation and any of the following: (a) a director, officer, committee member, or employee of the Corporation (hereinafter an “Insider”); or (b) any corporation, partnership, trust, sole proprietorship or any other entity (hereinafter an “Entity”) in which an interest is owned or held, directly or indirectly, by or for the benefit of an Insider, unless (i) the transaction is approved in accordance with Section 22.230 of the Texas Business Organizations Code; and (ii) if one or more of the parties to the contract is a “disqualified person” with respect to the Corporation with in the meaning of Section 4958 of the Internal Revenue Code, either (x) such transaction is reviewed and approved in accordance with the “rebuttable presumption safe harbor” provisions set forth in the regulations promulgated under Section 4958 of the Internal Revenue Code or (y) the Board of Directors or any committee thereof determines that such procedures are not necessary for the transaction involved and records its specific findings for making such determination; provided, however, that the following contracts and agreements shall not be subject to the foregoing prohibition: a wholly gratuitous transfer of assets or promise to transfer assets to the Corporation of any kind, including, but not limited to, a charitable contribution of cash or property to the Corporation, an interest-free loan, a wholly gratuitous lease, a pledge, a guarantee, an assumption of liability, a bailment, or a consignment. All Insiders shall, as a condition of qualifying and continuing to qualify as a director, officer, committee member and/or employee of the Corporation, abide by such conflict of interest policies as the Board of Directors may adopt from time to time.

ARTICLE EIGHT

ACTIONS WITHOUT MEETINGS

Section 8.1. Unanimous Consent. Any action required or permitted to be taken at any meeting of the Directors or the members of a committee may be taken without a meeting if a consent in writing setting forth the action to be taken shall be signed by all of the Directors or all of the committee members, as the case may be. Such consent shall have the same force and effect as a unanimous vote, and may be stated as such in any document.

Section 8.2. Other Action Without a Meeting. Any action required or permitted to be taken at any meeting of Directors or committee members may be taken without a meeting, if a consent or consents in writing, setting forth the action so taken, shall be signed by at least a majority (or such greater percentage as may be required for the particular action under the Texas Business Organizations Code or these Bylaws), of all the Directors or committee members, as the case may be, so long as at least twenty-four (24) hours' notice of the proposed action is sent to each director or each committee member at the address or facsimile number of such director or committee member that appears in the records of the Corporation. Prompt notice of the taking of any action by the directors or the members of a committee without a meeting by less than unanimous written consent shall be given to those directors or committee members who did not consent in writing to the action. Every written consent signed by less than all the directors or committee members entitled to vote with respect to the action that is the subject of the consent shall bear the date of signature of each person who signs the consent. No written consent signed by less than all the directors or committee members entitled to vote with respect to the action that is the subject of the consent shall be effective to take such action unless, within sixty (60) days after the date of the earliest dated consent delivered to the Corporation in the manner required by

law, a consent or consents signed by not less than the minimum number of directors or committee members that would be necessary to take the action that is the subject of the consent are delivered to the Corporation by delivery to its registered office, registered agent, or principal place of business, or by delivery to an officer or agent of the Corporation having custody of the books in which proceedings of meetings are recorded. Delivery shall be by hand or certified or registered mail, return receipt requested. Delivery to the Corporation's principal place of business shall be addressed to the President or principal executive officer of the Corporation. A telegram, telex, cablegram or similar transmission by a director or committee member, or a photographic, photostatic, facsimile or similar reproduction of a writing signed by a director or committee member, shall be regarded as signed by the director or committee member for purposes of this Section 8.2.

ARTICLE NINE

FUNDING OF THE CORPORATION

Section 9.1. Generally. The Corporation shall be funded through the collection of (a) fees assessed against Members based upon such Member's power consumption ("**Aggregation Fees**") as further described in this Article Nine; (b) Associate Member Dues assessed annually against Associate Members; and (c) specially assessed fees ("**Special Assessment Fees**") against Members or Associate Members that may be necessary to meet contractual or other legally enforceable obligations. Aggregation Fees (including Initial STAP Aggregation Fee and Initial CAPP Aggregation Fee as defined below), and Special Assessment Fees, may collectively be referred to herein as "**Fees.**" Associate Member Dues may collectively be referred to herein as "**Dues.**" The Board of Directors shall have the authority to set Fees and Dues and any penalties for failure to timely pay such Fees and Dues assessed against Members and Associate Members.

Section 9.2. Fees. In the first calendar year following the Merger, the Aggregation Fee for Members formerly members of South Texas Aggregation Project, Inc., shall not exceed \$00.001 per kWh per month (the "**Initial STAP Aggregation Fee**"). In the first calendar year following the Merger, the Fee for Members formerly members of Cities Aggregation Power Project, Inc., shall not exceed \$00.0013 per kWh per month (the "**Initial CAPP Aggregation Fee**"). After the expiration of such first calendar year, the Board shall set common Aggregation Fees for all Members sufficient to support the Corporation's annual budget. Associate Member Dues shall be one cent (\$00.01) per capita or \$1,000.00, whichever is greater, to be assessed annually in January. Associate Members without resident populations shall be assessed \$1,000.00 annually.

Section 9.3. Statements. Aggregation Fees shall be billed to Members on a monthly or other periodic basis by the Retail Electric Provider that is party to the current power supply agreement. Associate Member Dues shall be billed annually in January or on a pro rata basis in the month a political subdivision becomes an Associate Member. Special Assessment Fees, other fees and expenses ("**Expenses**") shall be billed to Members and Associate Members as may be appropriate. The Board shall determine due dates for Fees and Expenses.

Section 9.4. Books and Records. All Members of the Corporation shall have reasonable access to the books and records of the Corporation, including financial statements and budgets and audits. Notwithstanding the foregoing, the Board of Directors may adopt policies that

provide reasonable protection against the unreasonable disclosure of information. The Corporation's accounting shall adhere to the Generally Accepted Accounting Principals and shall be based upon the calendar year beginning January 1st and ending December 31st.

ARTICLE TEN

INDEMNIFICATION

Section 10.1. Liability. A Director, officer, employee or agent of the Corporation who performs his or her duties in good faith, in a manner he or she reasonably believes to be in the best interests of the Corporation, and with such care as an ordinarily prudent person in a like position would use under the same or similar circumstances, shall not have any liability for an action taken or omission made by such Director, officer, employee or agent of the Corporation in that person's capacity as an Director, officer, employee or agent of the Corporation. No Director, officer, employee or agent shall be liable for any action take or omitted by another Director, officer employee or agent.

Section 10.2. **INDEMNIFICATION**. EACH PERSON WHO AT ANY TIME SHALL SERVE, OR SHALL HAVE SERVED, AS A DIRECTOR, OFFICER, EMPLOYEE OR AGENT OF THE CORPORATION, OR ANY PERSON WHO, WHILE A DIRECTOR, OFFICER, EMPLOYEE OR AGENT OF THE CORPORATION, IS OR WAS SERVING AT ITS REQUEST AS A DIRECTOR, OFFICER, PARTNER, VENTURER, PROPRIETOR, TRUSTEE, EMPLOYEE, AGENT OR SIMILAR FUNCTIONARY OF ANOTHER FOREIGN OR DOMESTIC CORPORATION, PARTNERSHIP, JOINT VENTURE, SOLE PROPRIETORSHIP, TRUST EMPLOYEE BENEFIT PLAN OR OTHER ENTERPRISE, SHALL BE ENTITLED TO INDEMNIFICATION AS, AND TO THE FULLEST EXTENT, PERMITTED BY, ARTICLE 1396 SECTION 2.22A OF THE TEXAS NON-PROFIT CORPORATION ACT OR ANY SUCCESSOR STATUTORY PROVISION, AS FROM TIME TO TIME AMENDED, SUCH ARTICLE OR SUCCESSOR PROVISION, BEING INCORPORATED IN FULL IN THESE BYLAWS BY REFERENCE. THE FOREGOING RIGHT OF INDEMNIFICATION SHALL NOT BE DEEMED EXCLUSIVE OF ANY OTHER RIGHTS TO WHICH THOSE TO BE INDEMNIFIED MAY BE ENTITLED AS A MATTER OF LAW OR UNDER ANY AGREEMENT, VOTE OF DISINTERESTED DIRECTORS, OR OTHER ARRANGEMENT. IT IS EXPRESSLY ACKNOWLEDGED THAT THE INDEMNIFICATION PROVIDED IN THIS ARTICLE COULD INVOLVE INDEMNIFICATION FOR NEGLIGENCE OR UNDER THEORIES OF STRICT LIABILITY.

ARTICLE ELEVEN

CODE OF CONDUCT

Section 11.1. Policy and Purposes. It is the policy of the Corporation that Directors and officers conduct themselves in a manner consistent with sound business and ethical practices;

that the public interest always be considered in conducting corporate business; that the appearance of impropriety be avoided to ensure and maintain public confidence in the Corporation; and that the Board establish policies to control and manage the affairs of the Corporation fairly, impartially, and without discrimination.

This Code of Ethics has been adopted as part of the Corporation's Bylaws for the following purposes: (a) to encourage high ethical standards in official conduct by Directors and corporate officers; and (b) to establish guidelines for such ethical standards of conduct.

Section 11.2. Conflicts of Interest.

(a) Except as provided in subsection (c), a Director or officer is prohibited from participating in a vote, decision, or award of a contract involving a business entity or real property in which the Director or the officer has a substantial interest, if it is foreseeable that the business entity or real property will be economically benefitted by the action. A person has a substantial interest in a business (i) if his or her ownership interest is ten percent or more of the voting stock or shares of the business entity or ownership of \$15,000 or more of the fair market value of the business entity, or (ii) if the business entity provides more than ten percent of the person's gross income. A person has a substantial interest in real property if the interest is an equitable or legal ownership with a fair market value of \$2,500 or more. An interest of a person related in the first degree by affinity (marriage relationship) or consanguinity (blood relationship) to a Director or officer is considered a substantial interest.

(b) If a Director or a person related to a Director in the first degree by affinity or the first degree by consanguinity has a substantial interest in a business entity or real property that would be pecuniarily affected by any official action taken by the Board, such Director, before a vote or decision on the matter, shall file an affidavit stating the nature and extent of the interest. The affidavit shall be filed with the Secretary of the Board.

(c) A Director who has a substantial interest in a business entity that will receive a pecuniary benefit from an action of the Board may vote on that action if a majority of the Board has a similar interest in the same action or if all other similar business entities in the Corporation will receive a similar pecuniary benefit.

(d) An employee of a public entity may serve on the Board. It is specifically recognized that as an official or employee of a public entity, that person's primary loyalty is to the political subdivision that employs them. It shall not be a conflict of interest for said Board member to express opinions or vote in a manner that reflects the self-interest of the public entity that the Board member represents.

Section 11.3. Acceptance of Gifts. No Director or officer shall accept any benefit as consideration for any decision, opinion, recommendation, vote or other exercise of discretion in carrying out official acts for the Corporation. No Director or officer shall solicit, accept, or agree to accept any benefit from a person known to be interested in or likely to become interested in any contract, purchase, payment, claim or transaction involving the exercise of the Director's or officer's discretion. As used here, a benefit does not include:

(a) a fee prescribed by law to be received by a Director or officer or any other benefit

to which the Director or officer is lawfully entitled or for which he or she gives legitimate consideration in a capacity other than as a Director or officer,

(b) a gift or other benefit conferred on account of kinship or a personal, professional, or business relationship independent of the official status of the Director or officer;

(c) an honorarium in consideration for legitimate services rendered above and beyond official duties and responsibilities if:

(i) not more than one honorarium is received from the same person in a calendar year;

(ii) not more than one honorarium is received for the same service; and

(iii) the value of the honorarium does not exceed \$50 exclusive of reimbursement for travel, food, and lodging expenses incurred by the Director or officer in performance of the services.

(d) a benefit consisting of food, lodging, transportation, or entertainment accepted as a guest if reported as may be required by law.

Section 11.4. Bribery. A Director or officer shall not intentionally or knowingly offer, confer or agree to confer on another, or solicit, accept, or agree to accept from another:

(a) any benefit as consideration for the Director's or officer's decision, opinion, recommendation, vote, or other exercise of discretion as a Director or officer;

(b) any benefit as consideration for the Director or officer's decision, vote, recommendation, or other exercise of official discretion in a judicial or administrative proceeding; or

(c) any benefit as consideration for a violation of duty imposed by law on the Director or officer.

Section 11.5. Nepotism. No Director or officer shall appoint, or vote for, or confirm the appointment to any office, position, clerkship, employment or duty, of an person related within the second degree by affinity or within the third degree of consanguinity to the Director or officer so appointing, voting or confirming, or to any other Director or officer. This provision shall not prevent the appointment, voting for, or confirmation of any person who shall have been continuously employed in any such office, position, clerkship, employment or duty at least thirty (30) days prior to the appointment of the Director or officer so appointing or voting.

ARTICLE TWELVE

MISCELLANEOUS

Section 12.1. Dividends Prohibited. No part of the net income of the Corporation shall inure to the benefit of any private individual and no dividend shall be paid and no part of the income of the Corporation shall be distributed to its Directors or officers. Notwithstanding the foregoing, the Corporation may reimburse reasonable expenses as provided in Sections 3.11 and 6.5.

Section 12.2. Loans to Officers and Directors Prohibited. No loans shall be made by the Corporation to its officers or Directors. Any Directors voting for or assenting to the making of any loan to a Director or officer which is prohibited by the Texas Business Organizations Code and Texas Non-Profit Corporation Act, and any officer participating in the making thereof, shall be jointly and severally liable to the Corporation for the amount of such loan until repayment thereof.

Section 12.3. Amendments. These Bylaws may be amended or repealed, or new bylaws may be adopted, at any meeting of the Board of Directors by the affirmative vote of a majority of the number of the Directors then in office. Notwithstanding the foregoing, notice of the proposed amendment, repeal or adoption must be contained in the notice of such meeting; provided, however, that the foregoing notice requirement shall not prohibit the Board of Directors from adopting the proposed amendment, effecting the proposed repeal or adopting the proposed new bylaws, as the case may be, in a modified form which is not identical to that described or set forth in the notice of such meeting.

Section 12.4. Fiscal Year. The fiscal year of the Corporation shall be based upon the calendar year beginning January 1st and ending December 31st.

Section 12.5. Seal. The Corporation's seal, if any, shall be in such form as shall be adopted and approved from time to time by the Board of Directors. The seal may be used by causing it, or a facsimile thereof, to be impressed, affixed, imprinted or in any manner reproduced.

Section 12.6. Gender. Words of either gender used in these Bylaws shall be construed to include the other gender, unless the context requires otherwise.

Section 12.7. Invalid Provisions. If any part of these Bylaws shall be held invalid or inoperative for any reason, the remaining parts, so far as is possible and reasonable, shall remain valid and operative.

Section 12.8. Headings. The headings used in these Bylaws are for convenience only and do not constitute matter to be construed in the interpretation of these Bylaws.

ARTICLE THIRTEEN

DISSOLUTION

The resolution to dissolve the Corporation may only be made by a three-fourths ($\frac{3}{4}$) vote of the Members of the Corporation, with each Member receiving one (1) vote. Such dissolution will thereafter be governed by the Code.

* * * * *

The undersigned, being the duly elected and qualifying Secretary of the Corporation, hereby certifies that the foregoing Amended and Restated Bylaws of the Corporation were duly adopted by the Board of Directors of the Corporation on December 9, 2010.

_____, Secretary

PROFESSIONAL SERVICES AGREEMENT BETWEEN
CITY OF NACOGDOCHES AND TEXAS COALITION FOR AFFORDABLE
POWER, INC.

This Professional Services Agreement (“AGREEMENT”) is made and entered by and between Texas Coalition for Affordable Power, Inc. (“TCAP”), a non-profit, political subdivision corporation, and City of Nacogdoches (“MEMBER”), a TCAP member.

SECTION 1 DURATION:

This AGREEMENT becomes effective as of signing by MEMBER and shall remain effective as long as MEMBER is being served by TCAP and MEMBER’s electric load included in a current TCAP procurement.

SECTION 2 PURPOSE OF AGREEMENT:

The purpose of this AGREEMENT is to define services and obligations of TCAP to MEMBER and obligations of MEMBER to TCAP and other members. In furtherance of this AGREEMENT, MEMBER will enter into a Commercial Electric Service Agreement (“CESA”) with a retail electric provider (“REP”) selected by TCAP pursuant to the terms set forth herein; provided that nothing in this AGREEMENT is intended to alter the price or other terms of MEMBER’s current CESA in effect through December 31, 2022.

SECTION 3 OBLIGATIONS OF TCAP TO MEMBER:

MEMBER authorizes TCAP to contract for the purchase of energy for MEMBER in the wholesale market from an energy manager selected by TCAP (“Energy Manager”) and to select an acceptable, cost-beneficial REP to serve MEMBER’s electric accounts. TCAP shall provide procurement services, which services shall consist of securing wholesale power for MEMBER through an alternative procurement strategy, such as TCAP’s Strategic Hedging Program (“SHP”), as may be authorized and defined by TCAP’s Board of Directors. MEMBER may elect to consider fixed-price, fixed-term offers for wholesale power supply, such election to be communicated to TCAP separately in writing by providing an Authorized Election Form to TCAP, the form of which has been attached to this AGREEMENT as Exhibit A. If MEMBER has provided to TCAP an Authorized Election Form, TCAP’s procurement services to MEMBER shall also consist of arranging fixed-price, fixed-term offers to MEMBER following solicitation of competitive offers. TCAP consultants and attorneys will negotiate terms and conditions of all contracts, monitor performance of Energy Managers and REPs, work to avoid and remedy problems that may be encountered by MEMBER where possible, assist MEMBER with wires company issues, and represent MEMBER in energy related matters before State agencies, the courts or legislature. TCAP will provide additional customer services to MEMBER that are defined in SECTION 5.

SECTION 4 OBLIGATIONS AND RIGHTS OF MEMBER:

MEMBER will honor the terms of its CESA and promptly pay or promptly dispute invoices from its REP. MEMBER will comply with the confidentiality and non-disclosure obligations contained in its CESA and Section 7 of this AGREEMENT. MEMBER will designate one or more individuals to receive notices and updates from TCAP and will promptly update contact information. MEMBER will pay aggregation fees to support the non-profit functions of TCAP assessed annually by the TCAP Board of Directors and recovered as part of the energy charges paid to REP. Also, MEMBER will pay or receive refunds equal to the Quarterly Adjustment and the Annual Adjustment mutually agreed upon by TCAP and the Energy Manager to address certain variable costs and charges, including costs imposed by ERCOT, such payment or receipt of funds subject to the reserve account as further described herein. TCAP members will fund, and TCAP will maintain and administer, a reserve account to facilitate the reconciliation of any Quarterly Adjustments or Annual Adjustments by collecting any excess amounts paid and/or paying any deficient amounts incurred (as possible). The reserve account balance will be maintained at a minimum level to cover anticipated future needs for up to two (2) years. The TCAP Board may vote to refund to members amounts in excess of future anticipated needs. Any monies remaining in the reserve account at the dissolution of TCAP will be refunded to current membership at the time of dissolution. TCAP is owned and controlled by its members and is governed by a Board of Directors consisting of employees or elected officials of members. Consistent with TCAP's Bylaws, each MEMBER has a right to nominate its representative to serve on the Board of Directors and has a right to vote in annual elections of Board members. MEMBER has a right to attend or monitor each Board meeting. TCAP has a financial audit performed each year and MEMBER has a right to a copy of the annual audit upon request.

SECTION 5 TCAP SERVICES TO MEMBER:

A. Procurement of Energy Supplies and REP Services

1. TCAP Procurement Services and Capabilities

TCAP will assist prospective members in reviewing market conditions and in estimating the most price opportune time to contract for energy supplies. TCAP will work with MEMBER to achieve a competitive price that balances supply security and risk tolerance while maintaining superior billing and customer services. As a political subdivision corporation, offering electricity procurement to political subdivisions, TCAP has the ability to procure wholesale energy supplies and REP services separately to secure the most effective combination of competitively priced energy supplies and superior billing and customer services. TCAP may utilize either wholesale or retail sources of power, or some combination of both. TCAP may utilize multiple suppliers with different generation resources. TCAP will solicit bids from multiple sources for energy supplies. TCAP aggregates the load of all members to maximize clout in negotiating contract terms. TCAP's objective in negotiations with suppliers is to continue obtaining favorable terms

regarding band widths for annual usage based on total load of all members (rather than based on MEMBER's individual load) and to minimize fees for adding or deleting accounts. TCAP will monitor the wholesale and retail markets for favorable hedging opportunities. TCAP will also monitor, evaluate and issue requests for proposals for power development opportunities beneficial to its MEMBERS, including renewable projects (each, a "Power Project").

2. MEMBER Procurement Options

If MEMBER elects a fixed-price contract for a fixed period by submitting an Authorized Election Form, TCAP will function as MEMBER'S agent in the wholesale energy marketplace in soliciting, evaluating and negotiating each such fixed-price contract. Absent an election, MEMBER shall participate in other procurement strategy options offered by TCAP, such as TCAP's SHP, and TCAP will function as MEMBER's electric energy procurer. As such, TCAP will (i) oversee the Energy Manager, (ii) will direct the Energy Manager to solicit wholesale energy market quotes, (iii) will cause the Energy Manager to transact at the most favorable executable market quotes and (iv) will negotiate and develop the Energy Price in MEMBER'S CESA (the "CESA Energy Price"). The CESA Energy Price shall be developed and agreed upon by TCAP, the Energy Manager and the REP and shall include the wholesale energy market transactions as well as Energy Manager's estimate of any non-fixed charges, including zonal congestion charges, ancillaries service charges, and other charges in connection with MEMBER'S load. If MEMBER elects to purchase power from a Power Project solicited and chosen by TCAP via a competitive RFP process (or other similar process), TCAP will function as MEMBER'S electric energy procurer, and will direct the Energy Manager to include the value of the power procured from such projects in the development of MEMBER'S CESA price.

B. Customer and Billing Services Provided by TCAP

1. REP Portal

TCAP consultants oversee the development and presentation of the REP's portal for TCAP members; the REP will be responsible for operation of the portal. TCAP provides training and assistance regarding portal use.

2. REP Customer Service

TCAP negotiates with the REP regarding service standards and annually reviews REP performance. TCAP maintains a right to replace a REP for unsatisfactory performance without affecting the price of wholesale power, so long as the replacement REP has a credit rating acceptable to the Energy Manager. TCAP continuously monitors customer billings and will alert both the REP and MEMBER, when appropriate, of any billing errors and the adjustments needed to ensure accurate and reliable billings to MEMBER. TCAP will advocate on behalf of MEMBER when needed to resolve billing or customer service

issues. TCAP will review customer billings and make MEMBER aware of inactive accounts that MEMBER may be able to disconnect to save monthly charges.

3. TCAP Assistance with Budgets and Required Filings and Assistance with TDSP Issues

TCAP monitors Public Utility Commission (“PUC”) and ERCOT activity and will provide MEMBER a forecast of changes in non-by passable charges that may impact MEMBER’s annual budget estimates. TCAP will prepare an annual electricity cost estimate for MEMBER. TCAP will assist MEMBER in preparation of energy related reports that may be necessary for MEMBER to file in response to legislative or agency mandates. TCAP will assist MEMBER in understanding non-bypassable charges included in REP invoices, and assist in resolving issues caused by errors of MEMBER’S Transmission and Distribution Service Provider (“TDSP” aka “wires company”).

4. Information Services

TCAP maintains a member web site, www.tcaptx.com. In addition to regular blog postings on energy news relevant to MEMBER, TCAP has prepared and posted major reports on the history of deregulation in Texas and a history of ERCOT. TCAP consultants continuously monitor the Nymex gas market, ERCOT energy market, and economic conditions that may affect MEMBER, as well as activities at the PUC and ERCOT. Important trends are noted in consultant reports to the Board of Directors and are attached to Board Minutes. TCAP’s Executive Director prepares and distributes a monthly newsletter and coordinates TCAP activities with various city coalitions and Texas Municipal League (“TML”). The Executive Director monthly newsletters will also include important or trending issues in the energy markets.

5. Demand Response, Distributed Generation and Cost Savings Strategy

TCAP will work with relevant service providers to make available to MEMBER competitive demand reduction programs that facilitate MEMBER’s participation in TDSP and ERCOT cost reduction strategies approved by the PUC. Upon request, TCAP will monitor and evaluate demand reduction program performance metrics. TCAP will assist MEMBER in reviewing, analyzing and developing distributed generation programs that can reduce wires and energy costs and/or provide backup power to specific facilities. TCAP will assist MEMBER in meeting renewable energy goals established by MEMBER, including behind-the-meter solar projects and local wind projects.

6. Regulatory and Legislative Representation

TCAP will provide representation and advocacy services on energy issues relevant to MEMBER in regulatory and legislative areas including, but not limited to, ERCOT stakeholder meetings, PUC projects and dockets, and legislative actions.

7. Strategic Hedging

To the extent that there is sufficient interest and commitment of load of TCAP members within an ERCOT zone, and to the extent MEMBER has not elected a fixed-price contract for a fixed period, MEMBER will perpetually (subject to potential charter or ordinance constraints on length of contracts) commit to two-year participation obligations. MEMBER may terminate participation in the SHP, without energy price penalties and with minimal other termination fees, by providing sufficient notice as set forth herein (Section 6). A SHP price will be determined at least 9 months prior to the effective date of the price by averaging the winning bids from periodic competitive auctions that occur throughout the 24 months preceding the effective date. TCAP will direct Energy Manager to conduct the periodic competitive auctions. TCAP will have the right to audit the auction results. The auction process will be designed to identify competitively priced energy supplies from a variety of creditworthy suppliers, resulting in prices that are rarely, if ever, significantly above prevailing market prices and that should generally be less than pricing for long-term fixed priced contracts (when evaluated from a common contract start date and term). Designed to take advantage of the characteristics of the nation's well supplied energy markets, the SHP will also be flexible enough to respond to market changes when and if they occur in the future. Participation in the SHP may be viewed as a series of 24 -month forward year-to-year contracts for as long as desired by MEMBER. If MEMBER participates in the SHP, MEMBER agrees that TCAP is authorized to direct Energy Manager to procure electric energy in the wholesale market on MEMBER's behalf and that TCAP is authorized to commit MEMBER's load to periodic competitive auctions.

SECTION 6 MEMBER RIGHT OF TERMINATION:

A. Fixed-Term, Fixed-Price Contract

MEMBER may terminate a CESA prior to the end-of-term specified in a contract subject to payment of "Liquidated Damages" prescribed in MEMBER's CESA. If MEMBER commits to a fixed multi-year term, fixed-price contract and wants to terminate the agreement prior to the end of the fixed multi-year term, liquidated damages will be based on the differential in the price of electric energy futures contracts used to support the fixed-price agreement and the price of comparable electric energy contracts at time of termination and shall also include damages prescribed herein and in the CESA, as applicable. If electric energy prices are lower at the point of termination than they were at time of contracting, MEMBER should expect to pay energy price damages upon early termination. In any event, any termination payment will be calculated and assessed in accordance with MEMBER's CESA.

B. Strategic Hedging Program

Since the SHP is based on a series of one-year term contracts, MEMBER is entitled to exit the program so long as notice of termination can be given prior to inclusion of MEMBER's load in the competitive auction process for a future year's price. TCAP will periodically notify MEMBER of expected procurement schedules and provide no less than 90 days

prior notice of any upcoming solicitation, and MEMBER may notify TCAP that it wants to exclude its load from the competitive auction process by giving notice at least 60 days prior to the next procurement date. Termination of involvement in SHP without appropriate notice will require calculation of damages as prescribed by CESA under Edison Electric Institute (“EEI”) principles with the intent of making the REP and Energy Manager whole for the termination. Liquidated damages will be based on the differential in the price of electric energy futures contracts used to support the SHP price and the price of comparable electric energy contracts at time of termination and shall also include damages prescribed herein and in the CESA, as applicable. If electric energy prices are lower at the point of termination than they were at time of contracting, MEMBER should expect to pay energy price damages upon early termination. In any event, any termination payment will be calculated and assessed in accordance with MEMBER’s CESA.

C. Participation in Power Projects

If MEMBER has chosen to purchase power from a Power Project through TCAP, in accordance with a signed Project Addendum attached to MEMBER’S CESA, MEMBER’s termination rights with respect to its commitment to purchase power from the Power Project shall be contained in the Project Addendum.

SECTION 7 CONFIDENTIALITY:

MEMBER is a governmental body subject to public information laws, including Chapter 552 of the Texas Government Code. If MEMBER receives a valid request under applicable public information laws for information related to this AGREEMENT or its CESA, it shall provide TCAP notice of the request including a description the information sought prior to MEMBER’s release of information so that TCAP has the opportunity to determine whether such information is subject to an exception as trade secret, competitive, commercial, or financial information. With the exception of the preceding disclosures pursuant to public information laws, a Party (that party, the “Receiving Party”) shall keep confidential and not disclose to third parties any information related this AGREEMENT, except for disclosures to Authorized Parties or as otherwise required by law; and provided that MEMBER authorizes TCAP to provide Energy Manager and REP with any relevant information concerning MEMBER’s account, usage and billings. The provisions of this Section 7 apply regardless of fault and survive termination, cancellation, suspension, completion or expiration of this AGREEMENT for a period of two (2) years. “Authorized Parties” means those respective officers, directors, employees, agents, representatives and professional consultants of MEMBER and TCAP and each of their respective affiliates that have a need to know the confidential information for the purpose of evaluating, performing or administering this AGREEMENT.

SECTION 8 PARAGRAPH HEADINGS:

The paragraph headings contained in this AGREEMENT are for convenience only and shall is no way enlarge or limit the scope or meaning of the various and several paragraphs.

SECTION 9 COUNTERPARTS:

This AGREEMENT may be executed in multiple counterparts, each of which shall be deemed an original, and all of which shall constitute but one and the same instrument.

SECTION 10 DEFINITIONS:

“Annual Adjustment” shall mean either a credit to MEMBER for the over-collection of funds, or a charge to MEMBER for under-collection of funds, related to Power Project settlements, if applicable. For those MEMBERS that participate in SHP, the Annual Adjustment shall also include (i) adjustments related to the loss factor for each specific ERCOT zone and (ii) adjustments related to load reconciliation as determined by TCAP, the Energy Manager and the REP.

“Energy Manager” means the wholesale market participant selected by TCAP to conduct SHP procurements at TCAP’s direction, in accordance with Section 5A and Section 7 of this Agreement. The Energy Manager may sell all or a portion of the required wholesale energy to TCAP or TCAP’s REP.

“Power Project” means a power generation project identified by TCAP to supply electric energy to one or more TCAP Members.

“Project Addendum” means the Addendum for a Power Project, if any, signed and attached as an Exhibit to MEMBER’S CESA.

“QSE Services Fee” means the QSE Services Fee in affect during the Delivery Term, as agreed between TCAP and Energy Manager.

“Quarterly Adjustment” shall mean either a credit to MEMBER for the over-collection of funds, or a charge to MEMBER for under-collection of funds, related to (i) ERCOT zonal congestion charges and (ii) ancillary services charges and other charges imposed by governmental agencies or ERCOT upon wholesale suppliers or REPs under statutes, regulations or courts for services within ERCOT zones. Said charges or refunds will be proportional to MEMBER’s relative contribution to TCAP load within specific ERCOT zones.

“Retail Electric Provider” or “REP” means the Retail Electric Provider that is party to (i) the REP Services Agreement with TCAP and (ii) the CESA between itself and MEMBER for the provision of retail electric service.

“Strategic Hedging Program” or “SHP” means an energy procurement strategy approved by TCAP’s Board of Directors, overseen by TCAP’s designated consultants, and administered by TCAP’s appointed Energy Manager, whereby wholesale energy is solicited and procured at agreed upon intervals, as directed by TCAP.

EXECUTED on this the ____ day of _____, 20____.

MEMBER:

By: _____

Printed Name: _____

Title: _____

TCAP:

By: _____

Printed Name: _____

Title: _____

EXHIBIT A

MEMBER'S AUTHORIZED ELECTION FORM

MEMBER hereby grants TCAP Authorization to solicit, evaluate, and select fixed-price, fixed-term power supply offers for the purpose of fixing all or a portion of MEMBER'S Energy Price for all or a portion of MEMBER'S CESA Term, in accordance with the terms below:

Fixed Price Term Start Date: January 1, 2023

Fixed Price Term End Date: December 31, 2027

Fixed Price not to exceed \$_____ / MWh

Upon TCAP's selection of a winning fixed-price, fixed-term offer, MEMBER authorizes TCAP to set the Energy Price for MEMBER'S CESA in accordance with MEMBER's CESA and as agreed upon by TCAP, TCAP's Energy Manager, and the REP.

Authorized on this the _____ day of _____, 20____.

MEMBER:

By: _____

Printed Name: _____

Title: _____

COMMERCIAL ELECTRICITY SERVICE AGREEMENT

(All-In Product)

This Commercial Electricity Service Agreement, including all of the Attachments, Schedules, and Exhibits, which are attached and incorporated (collectively, the “**Agreement**”), is entered into between Gexa Energy, LP (“**Gexa**”), a Texas limited partnership, and [REDACTED] (“**Customer**”). Gexa and Customer may be referred to individually as a “**Party**” or collectively as the “**Parties**”.

SECTION 1: RETAIL ELECTRIC SALES AND SERVICES

1.1 Appointment and Scope. Customer appoints Gexa as its Retail Electric Provider (“**REP**”) for the ESI ID(s) served under this Agreement. Customer authorizes Gexa to: (i) act as Customer’s REP for all purposes; and (ii) provide the services required of a REP including, without limitation, the procurement, scheduling and delivery of electricity throughout the Term to each of the ESI ID(s) in accordance with the terms set forth in this Agreement, including the Terms and Conditions of Service set forth in Attachment A. Customer’s appointment imposes no other duties on Gexa other than those specified in this Agreement and the REP Services Agreement.

1.2 Agreement to Purchase. Customer shall purchase its electricity requirements from Gexa throughout the Term for each of the ESI ID(s) except as otherwise provided. The electricity and services Customer receives from Gexa is for Customer’s exclusive proprietary use. Customer alone shall pay for electricity and services provided and for electricity and services Customer fails to take pursuant to its contractual obligations. If Gexa fails to deliver sufficient quantities of electricity to the TDSP for delivery to Customer or fails to schedule the delivery of sufficient quantities of electricity (collectively, a “**Scheduling Failure**”) the TDSP is obligated by law and by its tariff to deliver sufficient electricity to satisfy Customer’s needs. If a Scheduling Failure occurs, Gexa shall financially settle, at no additional cost or expense to Customer, with its Qualified Scheduling Entity (as defined by ERCOT) for the purchase of electricity necessary to cover the Scheduling Failure.

1.3 Membership in TCAP. Customer is a current member of the Texas Coalition for Affordable Power, Inc. (“**TCAP**”), and has entered into the Professional Services Agreement (the “**PSA**”) authorizing the purchase of wholesale energy on behalf of the Customer by TCAP and/or TCAP’s Energy Manager. Such wholesale energy purchases will affect the calculation of the Energy Price throughout the Term of this Agreement as described in Section 2. If, at any time during the Term, Customer elects to participate in a Power Purchase Agreement with a project to be developed for TCAP’s members, and executes the Project Addendum for such project, then the Agreement may be amended to incorporate a Project Addendum, to be attached hereto as Schedule I. Notwithstanding Customer’s TCAP membership status, Customer agrees to fulfill all of its obligations under this Agreement, the PSA and, if applicable, the Project Addendum throughout the Term of this Agreement.

1.4 Term.

(a) Effective Date and Termination Date. Gexa shall provide retail electric service under this Agreement to each ESI ID beginning on the Effective Date and Terminating on the Termination Date, as further defined in this Section 1.4(a) (such period, the “**Term**”). The Effective Date will occur either (i) on the date occurring on or after the Expected Start Date stated in Attachment B on which each such ESI ID is enrolled with Gexa’s service for any new customer, or (ii) if Customer is an Existing customer then the Expected Start Date is the meter read date following the expiration of the Customer’s prior Agreement with Gexa. Gexa shall continue to provide retail electric service to each ESI ID until the Termination Date. The Termination Date will occur on each respective ESI ID’s last meter read date during the month of [REDACTED]. As a result of variations in the timing of the Effective Date described in this Section 1.4 the Term may include a partial calendar month in addition to the number of months set forth in Attachment B, if any.

(b) Delayed Effective Date. Gexa shall use commercially reasonable efforts to cause the Effective Date for each ESI ID to occur on the Expected Start Date. If the Effective Date for an ESI ID occurs more than 20 days after the Expected Start Date, Customer may provide Gexa with evidence of the amount of electricity purchased by Customer from its current REP in connection with that ESI ID during the period on and after the 21st day after the Expected Start Date until the Effective Date (the “**Delayed Effective Date Period**”), and the total amount paid by Customer to its current REP for the electricity it purchased during the Delayed Effective Date Period (the “**Delayed Effective Date Electricity Amount**”). Upon receipt of evidence from Customer Gexa shall calculate and provide Customer a credit against future purchases under this Agreement equal to the positive amount resulting from the following calculation: (a) the Delayed Effective Date Electricity Amount minus (b) the amount that Customer would have paid to Gexa pursuant to this Agreement during the Delayed Effective Date Period for the same amount of electricity purchased by Customer from its current REP during that period in connection with the affected ESI ID(s); provided, that Gexa shall not be required to provide a credit with respect to any period during a Delayed Effective Date Period where the delay was caused by an event outside of Gexa’s control.

(c) Service After Term. If, for any reason, service continues beyond the Term, it will be on a month-to-month basis, and the Agreement will continue in effect for the ESI ID(s) except that the Energy Price will be the greater of: (i) the Energy Price as set forth in Section 2.1 below, or (ii) the aggregate weighted average of the Market Rate (as

defined herein) as determined for all of the ESI ID(s), for as long as service continues. If Customer has not switched from Gexa to another supplier at the expiration of the Term, Gexa shall serve Customer at the rate set forth in this Section for a minimum of 60 days. After those 60 days, Gexa may continue to serve Customer or terminate the Agreement and disconnect Customer.

1.5 Modifications to ESI IDs. Gexa shall work with Customer in good faith during the Term to reasonably accommodate and assist Customer with the management of its electricity needs. If at any time during the Term, Customer wants to i) add or delete one or more ESI IDs, ii) otherwise modify the ESI ID information as a result of a decision by Customer to open, close or sell a facility owned or leased by Customer, iii) expand an existing facility, or iv) increase an existing facility's metered load, then Customer shall provide written notice to Gexa of such change ("ESI ID Change Notice"). If such change to the ESI ID is expected to occur prior to the first month of any calendar year for which the Energy Price has been established as of the date of the ESI ID Change Notice, in accordance with Section 2.1 (a) of this Agreement, such notice shall include Customer's election of the "Special Load Threshold," as defined below, which will apply to such change in load. If, in Gexa's reasonable judgment, i) the addition is a separately metered load which does not exceed the applicable Special Load Threshold; or ii) does not result in a net increase in excess of the applicable Special Load Threshold for an existing facility, Gexa shall use commercially reasonable efforts to promptly implement such changes, including providing required notices to ERCOT. If the addition is a separately metered load which exceeds the applicable Special Load Threshold, or results in a net increase in excess of the applicable Special Load Threshold after consideration of any contemporaneous offsetting load decreases, Gexa shall provide service to that ESI ID and shall determine any incremental charge or credit to provide service to any changed ESI IDs. Gexa shall apply such charge or credit to the affected ESI IDs, after such charges have been reviewed by TCAP. "Special Load Threshold" shall mean additional peak demand that is reasonably expected during the first twelve months following commercial operations to exceed, at Customer's election, either (i) 0.25 MW at any time or an annual average load of 0.125 MW or (ii) 1.0 MW at any time or an annual average load of 0.5 MW. Gexa shall make periodic reports regarding changes to the billing status of any ESI ID(s) available to Customer and TCAP. Amendments that add or remove ESI ID(s) as a result of changes made pursuant to this section are incorporated into this Agreement, and are effective on the Effective Date for each ESI ID(s) added to this Agreement or the date that retail electric service for any removed ESI ID(s) ceases or is transferred to another REP.

SECTION 2: RETAIL ELECTRIC ENERGY SERVICE CHARGES

2.1 Energy Price.

- (a) The Energy Price for the Term is equal to \$ [REDACTED] /MWh. For the purposes of Section 3 the Energy Price shall be converted to dollars per kWh.

2.2 Energy Price Adjustments.

- (a) The Energy Price shall include a charge intended to reflect (i) the anticipated Ancillary Services charges and (ii) the anticipated difference between the Load Zone price for the applicable load zone(s) in which the load is located and the appropriate trading hub price for those zone(s) (that charge or credit the "**Ancillary Services and Nodal Basis Rate**"). Energy Manager shall have the right to reconcile the revenue received from the customer for the Ancillary Services and Nodal Basis Rate with actual costs for each item on a quarterly basis, by determining a quarterly Adjustment in the manner specified in the PSA (that reconciliation the "**Ancillary Services and Nodal Basis Adjustment**").
- (b) The Energy Price shall include a charge intended to reflect the difference between Customer's load at its meter and the load required at the wholesale level to serve Customer (primarily transmission and distribution line losses), (that charge the "Loss Factor"). If Loss Factor differs from the actual loss factor, then Energy Manager shall have the right to reconcile the economic impact associated with this difference on an annual basis (that reconciliation the "**Loss Factor Adjustment**").

2.3 Additional Pass-Through Charges. Gexa shall pass through and identify separately on Customer's bill with no mark-up Delivery Charges, Non-Recurring Charges, or Taxes that are not included in the Energy Price(s). All charges are exclusive of Taxes. Pass-Through charges may include charges related to amounts owed to Gexa and/or Wholesale Supplier in accordance with Section 1.3.

2.4 Tax Exempt Status. Customer shall provide Gexa with all required exemption certificates if Customer is exempt from paying any Taxes. Gexa shall not recognize an exemption without the exemption certificates and shall not be required to refund or credit previously paid Taxes unless the taxing entity sends the refund to Gexa. Gexa shall, however, assign to Customer any applicable claims for refund.

SECTION 3: BILLING AND PAYMENT

3.1 Billing and Payment. Gexa shall invoice Customer's accounts on a monthly basis and shall bill Customer on a consolidated basis for all ESI IDs upon Customer's request. Gexa shall provide a summary bill for all accounts and detailed information for each account. Customer shall remit payment within 30 days of receiving the invoice. Gexa shall base the invoice amount on actual data provided by ERCOT and the TDSP. If ERCOT or the TDSP does not

provide actual data in a timely manner, Gexa shall use estimated data to calculate the invoice and, upon receipt of actual data, reconcile the charges and adjust them as needed in subsequent invoices.

3.2 Project Settlement Agent Services. Gexa shall remit the total Project Settlement to the Project on a monthly basis, in accordance with the REP Services Agreement.

3.3 Late Penalties, Interest on Overdue Payments, Invoice Disputes. If Customer fails to remit all undisputed amounts on or before the due date, interest will accrue on any due and unpaid amounts from the due date at a rate of one percent per month, or the highest rate permitted by law, whichever is less. If Customer disputes a portion of an invoice it shall provide Gexa a written explanation specifying the amount in dispute and the reason for the dispute within 20 days of the invoice date. If Customer does not provide timely notice, Customer shall owe all amounts by the due date. Notwithstanding the above, if Customer notifies Gexa of a disputed invoice, regardless of whether Customer has already paid the invoice, Gexa shall make records in its possession that are reasonably necessary for Customer to determine the accuracy of the invoice available to Customer during normal business hours; provided, however that neither party may request an adjustment or correction of an invoice unless written notice of such dispute is given within twelve months after the due date of such invoice; provided further, that such twelve month limit does not apply in the case of TDSP meter tampering charges first billed to Gexa that prevent Gexa from reasonably adjusting invoices prior to the twelve month period. In all cases, Gexa and Customer shall use good faith efforts to resolve disputes. In the event the Parties are unable to resolve a dispute within ten days of the notice date, either Party may begin legal proceedings to seek resolution. Any amounts determined owed shall be paid within three days after a decision.

3.4 Aggregator Fees. Pursuant to the REP Services Agreement between Gexa and TCAP, Gexa is obligated to pay TCAP an amount determined by multiplying a TCAP Aggregation Fee by the volume consumed in association with the ESI IDs (the "**Aggregator Fee**"). Customer shall pay the Aggregator Fee. The initial TCAP Aggregation Fee is \$0.001 per kWh, however, it may be changed by the TCAP Board of Directors at any time. Gexa shall state the Aggregator Fee as a separate line item on the Customer's bill.

3.5 Billing Guarantee. Gexa shall issue an invoice based on actual or estimated usage to Customer for every ESI ID at least one time per month. If, for reasons other than Force Majeure, Gexa fails to invoice an ESI ID within 120 days of any scheduled meter read, Gexa irrevocably waives its right to invoice Customer for any energy consumed at that ESI ID for the meter read cycle that should have been invoiced, unless not less than 10 days prior to the expiration of such 120 day period, Gexa provides Customer with a written explanation of the circumstances that prevent Gexa from issuing that invoice and the expected time by which an invoice can be issued. In such event, Customer and Gexa shall determine a reasonable extension period, not to exceed 30 days, within which an invoice will be issued. Gexa shall adjust or true-up each invoice no more than twice and Gexa shall issue such adjustments within 210 days of the initial issue date. Notwithstanding the foregoing, Gexa may issue an invoice or partial invoice arising from meter tampering charges without limitation and within a reasonable time after first billed to Gexa by the TDSP.

SECTION 4: CUSTOMER INFORMATION, CREDIT AND DEPOSITS

4.1 Customer Information. By entering into this Agreement and appointing Gexa as Customer's agent for electricity service, Customer authorizes Gexa to obtain certain information that Gexa may need to provide Customer's electric service, including Customer's address, telephone number, account numbers, historical usage information, and historical payment information from Customer's TDSP, and Customer further authorizes its TDSP to release that information to Gexa.

4.2 Deposits and Other Security. A Party (the "**Requesting Party**") may require the other Party (the "**Providing Party**") to provide a deposit (or additional deposit if an initial deposit was also required), letter of credit, or other form of credit assurance reasonably acceptable to the Requesting Party (collectively, "**Performance Assurance**") during the Term of this Agreement if: (i) the Requesting Party determines in its reasonable discretion that there has been a material adverse change in the Providing Party's or its guarantor's (if applicable) credit status or financial condition (which, if applicable, will mean that its credit or bond rating has dropped lower than BBB- by Standard & Poor's Rating Group or Baa3 by Moody's Investor Services or ceases to be rated by either of these agencies); or (ii) Customer has been delinquent in paying the electric bill by more than seven days more than twice during the past twelve months. Any Performance Assurance, less any outstanding balance owed by Providing Party to the Requesting Party, will be returned to the Providing Party once the Providing Party's or its guarantor's (if applicable) credit or financial condition becomes satisfactory or, if applicable, to a credit or bond rating of BBB- or Baa3 or higher, whichever occurs earlier; or, if the Performance Assurance relates to delinquent payments, the Providing Party has paid all outstanding balances and has made all payments within the dates set forth in this Agreement for a period of six consecutive months.

SECTION 5: EARLY TERMINATION; DAMAGES

5.1 Cancellation by Customer for Insufficient Appropriations. If, during Customer's annual appropriations determination, the applicable governmental authorities do not allocate sufficient funds to allow Customer to continue to perform its obligations under this Agreement (an "**Appropriations Failure**"), then Customer or Gexa shall have the right to terminate this Agreement in full or as to any affected ESI ID upon 30 days advance written notice effective at

the end of the period for which appropriations are made; provided, that if appropriations are subsequently allocated for electricity for the ESI IDs covered by this Agreement, then the termination may be revoked at Gexa's option and those appropriations shall continue to apply to this Agreement and shall not be used for an electricity supply agreement with another REP. Upon a termination of this Agreement for Appropriations Failure, in full or as to any ESI ID(s), Customer shall pay all amounts due Gexa under this Agreement, including the Customer Early Termination Damages.

5.2 Customer Early Termination Damages. Except in connection with the closure of a facility associated with an ESI ID pursuant to Section 1.4, in connection with a Force Majeure Event, or as otherwise provided or excused in this Agreement, if Customer cancels this Agreement before the end of the Term and refuses to accept electric supply delivery from Gexa for any ESI ID(s), Gexa may charge Customer early termination damages equal to the sum of (a) the Retail Termination Payment, (b) the QSE Services Termination Payment, (c) the Quarterly and Annual Adjustment Payment, and (d) the Wholesale Transaction Termination Payment, as each of these terms are defined below (the sum total of these, the "**Customer Early Termination Damages**"). The "**Retail Termination Payment**" shall equal the product of (a) the Expected Usage for each ESI ID subject to Customer's cancellation or refusal of electric supply delivery ("**Customer Terminated Usage**") multiplied by (b) the sum of (i) the Aggregator Fee and (ii) the REP Services Fee specified in the REP Services Agreement. The "**QSE Services Termination Payment**" shall equal the product of (a) the Customer Terminated Usage grossed up for losses multiplied by (b) the QSE Services Fee, as defined in the PSA. The "**Quarterly and Annual Adjustment Payment**" shall be the sum of the Ancillary Services and Nodal Basis Adjustment and the Loss Factor Adjustment, and shall be calculated by the Energy Manager in accordance with the PSA, and shall include any Quarterly and Annual Adjustment amounts for electricity provided to the Customer under this Agreement prior to the termination of this Agreement, which have not yet been charged or credited to Customer, as appropriate. For avoidance of doubt, the Quarterly and Annual Adjustment Payment may be either a charge or a credit to Customer, as calculated in accordance with the PSA. If the Customer Early Termination Damages are charged due to an Event of Default by Customer, then the Customer Early Termination Damages will also include Gexa's reasonable costs relating to the determination and collection of Customer Early Termination Damages, including attorney and consultant fees incurred. The provisions in Section 3 related to Billing and Payment apply to the billing, due date, and collection of Customer Early Termination Damages. Customer agrees that Customer Early Termination Damages are a reasonable estimate of the damages due Gexa for failure to accept electric supply, and are not punitive in nature.

5.3 Termination for Wholesale Supply Failure. If, during the Term, the Wholesale Transactions are terminated as a result of a default by the Energy Manager ("**Wholesale Supply Failure**"), then this Agreement will also terminate effective on the date the Wholesale Agreement terminates. In the event of a termination for Wholesale Supply Failure, Gexa shall pay Customer a Wholesale Termination Payment if required by Section 5.5.

5.4 Gexa Early Termination Damages. Except for a Wholesale Supply Failure, a Force Majeure Event, or as otherwise provided or excused in this Agreement, if Gexa cancels this Agreement and refuses to provide electric supply delivery to Customer for any or all ESI ID(s), Customer shall have the right to charge Gexa an early termination penalty equal to the amount determined as follows: the product of (i) the Expected Usage for each ESI ID subject to Gexa's cancellation or refusal of electric supply delivery ("**Gexa Terminated Usage**") multiplied by (ii) the REP Services Fee specified in the REP Services Agreement (that result the "**Gexa Early Termination Damages**"). If the Gexa Early Termination Damages are charged due to an Event of Default by Gexa, then the Gexa Early Termination Damages will also include Customer's reasonable costs relating to the determination and collection of Gexa Early Termination Damages, including attorney and consultant fees incurred. Gexa agrees the Gexa Early Termination Damages are a reasonable estimate of the damages due Customer for failure to deliver electric supply, and are not punitive in nature.

5.5 Wholesale Transaction Termination Payment. If the Wholesale Transactions are terminated then Gexa shall calculate the portion of the termination payment paid under each Wholesale Transaction attributable to Customer's load. The termination payment under each Wholesale Transaction shall be calculated by subtracting the Wholesale Supplier's actual cost for the portion of the Wholesale Transaction still outstanding for the remainder of the Term from the current market value of comparable electric energy futures contracts. Energy Manager, in its sole discretion, shall determine the current market value of a comparable electricity futures contract within three (3) business days of the termination of a Wholesale Transaction, and shall be either (i) the value of the Wholesale Transaction actually sold to a third-party market participant or (ii) a third-party market quote for a comparable electricity energy future contracts. Energy Manager shall sum Customer's prorata share of each termination payment for each Wholesale Transaction attributable to Customer's Load to determine a total Wholesale Transaction Termination Payment under this Agreement (the "**Wholesale Transaction Termination Payment**"). Customer or Gexa shall pay the Wholesale Transaction Termination Payment to the other, as appropriate, in the manner described below and without regard to who is a defaulting party. If the Wholesale Transaction Termination Payment is negative, Customer shall pay Gexa the Wholesale Transaction Termination Payment. If the Wholesale Transaction Termination Payment is positive, Gexa shall pay Customer the Wholesale Transaction Termination Payment. To the extent a termination payment due from Gexa to the Energy Manager is adjusted in Gexa's account to reflect the full benefit of TCAP transacting with a replacement REP, Gexa shall make corresponding adjustments to the Wholesale Transaction

Termination Payment on a pro-rata basis. Gexa shall remit a Wholesale Transaction Termination Payment due Customer, within 30 days of Gexa receiving the payment from the Energy Manager. Customer shall remit a Wholesale Transaction Termination Payment due Gexa within 30 days of Gexa's invoice. Gexa shall use commercially reasonable efforts to collect Termination Payments from the Energy Manager that include amounts due Customer.

SECTION 6: NOTICES AND PAYMENT

6.1 General Notice. Except as otherwise required by Applicable Law, all notices are deemed duly delivered if hand delivered or sent by United States, prepaid first class mail, facsimile, or by overnight delivery service. Notice by facsimile or hand delivery is effective on the day actually received, notice by overnight United States mail or courier is effective on the next business day after it is sent, and notice by U.S. Mail is effective on the second day after it is sent. The Parties shall send notices to the addresses below or any other address one Party provides to the other in writing:

a. **If to Customer (type customer address below):**

b. If to Gexa:
Gexa Energy, LP
20455 State Highway 249, Suite 200
Houston, Texas 77070

6.2 Payments. The Parties shall send payments to the addresses below or any other address one Party provides to the other in writing:

a. **If to Customer (type customer address below):**

b. If to Gexa:
Gexa Energy, LP
20455 State Highway 249, Suite 200
Houston, Texas 77070

SECTION 7: DEFINITIONS

7.1 Definitions. In addition to terms defined elsewhere in this Agreement, when used with initial capitalization, whether singular or plural, capitalized terms have the meanings set forth in this Section 7.1. All other capitalized terms not otherwise defined shall have the meanings given them in the following documents, with any conflicting definitions contained in those documents applied in the following order: PURA, the PUCT Substantive Rules, and the ERCOT Protocols.

1. **"Actual Usage"** means the actual amount of electric energy (in kWh) used at the ESI ID(s) as determined by the TDSP.

2. **"Delivery Charges"** means those charges or credits from the TDSP pursuant to its tariff, including, but not limited to: Transmission and Distribution Charges, System Benefit Fund Charge, Nuclear Decommissioning Charge, Competitive Transition Charge, Standard Customer Metering Charge, Customer Charge, Merger Savings and Rate Reduction Credit, Excess Mitigation Credit and Utility Imposed Reactive Power Charges.

3. **"EEI Master Agreement"** mean an EEI Master Agreement between Gexa and the Energy Manager governing the Wholesale Transactions entered into by the Energy Manager in accordance with Section 2.1 and transferred by the Energy Manager to Gexa.

4. **“Effective Date”** means the date of the first meter reading of an ESI ID provided to Gexa by the TDSP after the TDSP and ERCOT shall have timely performed any required enrollment and cancellation procedures necessary to switch Customer’s REP to such ESI ID to Gexa.
5. **“Electricity Related Charges”** means, unless noted otherwise: Ancillary Services Charge, Congestion, ERCOT Administrative Fee, Delivery Loss Charge, Transmission Loss Charge, Renewable Energy Credit Charge, Residential Energy Credit Charge, Unaccounted For Energy Charge, Qualified Scheduling Entity Charge, Imbalance Settlement Charge.
6. **“Energy Manager”** means the wholesale market participant designated by TCAP to perform the services described in the PSA.
7. **“Energy Price(s)”** means the rates per unit of measure specified in Section 2.1 and includes all Electricity Related Charges.
8. **“ERCOT”** means the Electric Reliability Council of Texas.
9. **“ERCOT Protocols”** means the document adopted, published, and amended from time to time by ERCOT, and initially approved by the PUCT, to govern electric transactions in the ERCOT Region, including any attachments or exhibits referenced in the document, that contains the scheduling, operating, planning, reliability, and settlement policies, rules, guidelines, procedures, standards, and criteria of ERCOT, or any successor document thereto.
10. **“ESI ID(s)”** means the Electric Service Identifiers for the property service addresses identified on Attachment B to this Agreement or if Customer is an existing Gexa customer then the list of service addresses currently served by Gexa, as such list may be modified from time to time as provided in Section 1.4.
11. **“Expected Usage”** means either the amount stated in Attachment B calculated for the remaining Term, or if no amounts are stated or Customer is an existing Gexa customer then the average actual monthly Customer energy usage from the comparable month from the previous year (or if an average cannot be computed due to limited service by Gexa or other circumstances, an average monthly usage as is reasonably determined by Gexa) times the number of months remaining in the Term as outlined in Section 1.4.
12. **“kWh”** means kilowatt hour.
13. **“LMP” or “Locational Marginal Price”** means the price calculated for the applicable trading hub pursuant to the ERCOT Protocols.
14. **“Market Rate”** means 135% of the load-weighted average of the hourly LMPs at the corresponding load zone, as determined for any delivery period.
15. **“Nodal Market”** means the implementation of wholesale market design by ERCOT with locational marginal pricing for resources.
16. **“Nodal Congestion”** means the positive difference in price between the real-time settlement point price as determined by ERCOT for the trading hub and the real-time settlement point price as determined by ERCOT for the load zone associated with the customer Facilities.
17. **“Non-Recurring Charges”** means any charges imposed by the TDSP or other third parties on a non-recurring basis for services, repairs or additional equipment needed for Customer’s electric service.
18. **“PUCT”** means Public Utility Commission of Texas.
19. **“Project Settlement Payment”** means the Project Settlement Payment as defined in the Project Addendum, attached as Schedule I to this Agreement.
20. **“QSE Services Fee”** means the fee owed from Customer to Gexa, and remitted from Gexa to Energy Manager, for QSE Services performed by Energy Manager for the Term, as mutually agreed between TCAP and Energy Manager, the Customer having authorized TCAP to negotiate such fee on behalf of Customer in the PSA. The QSE Services Fee shall be included in the Energy Price for the Term.
21. **“REP Services Agreement”** means the REP Services Agreement currently in effect during the Term, as amended from time to time, between Gexa and TCAP.
22. **“REP Services Fee”** means the fee owed from Customer to Gexa, for REP services rendered during the Term, as mutually agreed between TCAP and Gexa, the Customer having authorized TCAP to negotiate such fee on behalf of Customer in the PSA. The REP Services Fee shall be included in the Energy Price for the Term.
23. **“Taxes”** means all taxes, assessments, levies, duties, charges, fees and withholdings of any kind levied by a duly-constituted taxing authority and all penalties, fines, and additions to tax, and interest thereon that are directly

related to the services provided under this Agreement, but does not include the System Benefit Fund fee and fees and charges imposed by ERCOT. By way of example only, Taxes includes: Sales Tax, Miscellaneous Gross Receipts Tax, PUCT Assessment Fees and Franchise Fees.

24. **“TCAP”** means Texas Coalition for Affordable Power, an aggregation pool of governmental and other entities organized and administered by TCAP of which Customer is a member for the ESI IDs.

25. **“TDSP”** or **“Transmission and Distribution Service Provider”** means an entity regulated by the State of Texas, which transmits or distributes electric energy.

“

Attachments:

Attachment A
Attachment B (for new TCAP Customers only)

Terms and Conditions of Service
Offer Sheet (ESI ID list and Expected Start Date)

CUSTOMER (type Customer name in field below):	GEXA: Gexa Energy, LP, By its General Partner Gexa Energy GP, LLC
By:	By:
Printed:	Printed:
Title:	Title:
Date:	Date:

State-Required Acknowledgement of Risk

(Market Energy Index and Holdover Pricing)

Customer hereby agrees and acknowledges that the Energy Price (per unit) charged with respect to the ESI IDs will be based on ERCOT wholesale energy prices in these cases: during the Term, Customer pays Gexa Energy the Energy Price (per unit) under an energy index or market price structure; and/or after the end of the Term, Customer pays Gexa Energy the greater of the Energy Price (per unit) or the aggregate weighted average of the Market Rate (per unit), as such terms are defined in the CESA.

Accordingly, the undersigned, on behalf of Customer, hereby acknowledges and agrees as follows: **I understand that the volatility and fluctuation of wholesale energy pricing may cause my energy bill to be multiple times higher in a month in which wholesale energy prices are high. I understand that I will be responsible for charges caused by fluctuations in wholesale energy prices.**

(Ancillary Service Charges)

If costs and charges for Ancillary Services Charges are Pass-Through Charges or subject to reconciliation or adjustment pursuant to Section 2 of the CESA for which Customer is required to pay, Customer hereby agrees and acknowledges that such costs and charges are variable and potentially volatile.

I understand that my energy bill may include a separate assessment of ancillary service charges, which may cause my energy bill to be multiple times higher in a month in which ancillary services charges are high. I understand that I will be responsible for charges caused by fluctuations in ancillary service charges.

Customer Name: _____

AUTHORIZED
SIGNATURE: _____

PRINT NAME: _____

TITLE: _____

DATE: _____

Terms and Conditions of Service

Attachment A

These Terms and Conditions of Service form an integral part of the Commercial Electricity Service Agreement between Customer and Gexa. In addition to the terms defined elsewhere in this Agreement, when used with initial capitalization, whether singular or plural, capitalized terms have the meanings set forth in Section 7.1 of this Agreement. Customer should thoroughly review the entire Agreement, including these Terms and Conditions of Service, before executing this Agreement.

A. REPRESENTATIONS AND WARRANTIES

A.1 Customer's Representations and Warranties. As a material inducement to entering into this Agreement, Customer represents and warrants to Gexa as follows: (a) it is a duly organized entity and is in good standing under the laws of Texas; (b) the execution and delivery of the Agreement are within its powers, have been duly authorized by all necessary action, and do not violate the terms or conditions of contracts it is party to or laws applicable to it; (c) performance of this Agreement will be duly authorized by all necessary action and will not violate the terms or conditions of contracts it is party to; (d) as of the date sales of electricity by Gexa to Customer under the Agreement start, Customer will have all regulatory authorizations necessary for it to legally perform its operations and such performance will not violate the terms or conditions of contracts it is party to or laws applicable to it; (e) this Agreement is a legal, valid, and binding obligation of Customer enforceable against it in accordance with its terms, subject to bankruptcy, insolvency, reorganization, and other laws affecting creditor's rights generally, and with regard to equitable remedies, subject to the discretion of the court before which proceedings to obtain the same may be pending; (f) there are no bankruptcy, insolvency, reorganization, receivership, or other similar proceedings pending or being contemplated by it, or to its knowledge threatened against it; (g) there are no suits, proceedings, judgments, rulings, or orders by or before any court or any government authority that could materially adversely affect its ability to perform the Agreement; and (h) as of the Effective Date and throughout the Term, there is no other contract for the purchase of electricity by Customer for the ESI ID(s), or, if such a contract presently exists, that it will terminate prior to delivery under this Agreement.

A.2 Gexa's Representations and Warranties. As a material inducement to entering into this Agreement, Gexa represents and warrants to Customer as follows: (a) it is duly organized, validly existing, and in good standing under the laws of the jurisdiction of its formation and is qualified to conduct its business in those jurisdictions necessary to perform the Agreement; (b) the execution and delivery of the Agreement are within its powers, have been duly authorized by all necessary action, and do not violate the terms or conditions of its governing documents or contracts it is party to or any laws applicable to it; (c) performance of the Agreement will be duly authorized by all necessary action and will not violate the terms or conditions of its governing documents or contracts it is party to; (d) as of the date sales of electricity by Gexa to Customer under the Agreement start, Gexa will have all regulatory authorizations necessary for it to legally perform its operations and such performance will not violate the terms or conditions of its governing documents, contracts it is party to, or laws applicable to it; and (e) the Agreement constitutes a legal, valid, and binding obligation of Gexa enforceable against it in accordance with its terms, subject to bankruptcy, insolvency, reorganization, and other laws affecting creditor's rights generally, and with regard to equitable remedies, subject to the discretion of the court before which proceedings to obtain the same may be pending.

A.3 Forward Contract. (i) This Agreement constitutes a forward contract within the meaning of the United States Bankruptcy Code ("**Code**"); (ii) Gexa is a forward contract merchant; and (iii) either Party is entitled to the rights under, and protections afforded by, the Code.

B. DISCLAIMERS OF WARRANTIES; LIMITATION OF LIABILITIES

B.1 LIMITATIONS OF LIABILITY. LIABILITIES NOT EXCUSED BY REASON OF FORCE MAJEURE OR AS OTHERWISE PROVIDED, ARE LIMITED TO DIRECT ACTUAL DAMAGES. GEXA IS NOT LIABLE TO CUSTOMER FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES OR LOSS OF REVENUES OR PROFIT. THESE LIMITATIONS APPLY WITHOUT REGARD TO THE CAUSE OF ANY LIABILITY OR DAMAGE. EXCEPT FOR (a) THE GEXA EARLY TERMINATION DAMAGES DUE IF GEXA DEFAULTS, (b) THE CUSTOMER EARLY TERMINATION DAMAGES DUE IF CUSTOMER DEFAULTS, AND (c) THE WHOLESALE TRANSACTION TERMINATION PAYMENT, THE LIABILITY OF EITHER PARTY TO THE OTHER FOR ANY OBLIGATIONS UNDER THIS AGREEMENT SHALL BE LIMITED TO THE AGGREGATE AMOUNT OF ALL DOLLARS PAID BY CUSTOMER TO GEXA (IF CUSTOMER) OR RECEIVED BY GEXA (IF GEXA) PURSUANT TO THIS AGREEMENT. THERE ARE NO THIRD PARTY BENEFICIARIES TO THIS AGREEMENT.

B.2 Duty to Mitigate. Each Party shall mitigate damages and use commercially reasonable efforts to minimize any damages it may incur as a result of the other Party's performance or non-performance.

B.3 WAIVER OF CUSTOMER PROTECTION RULES AND CONSUMER RIGHTS. THE PARTIES FURTHER ACKNOWLEDGE THAT THE CUSTOMER PROTECTION RULES ADOPTED BY THE PUBLIC UTILITY COMMISSION (AS CONTAINED IN ITS SUBSTANTIVE RULES 25.471 ET SEQ.) ("**CUSTOMER PROTECTION RULES**") THAT PERTAIN TO RETAIL ELECTRIC SERVICE RELATED TO RESCISSION RIGHTS, CUSTOMER DISCLOSURES, DELIVERY OF CUSTOMER CONTRACTS TO CUSTOMERS, RECORDKEEPING, INTEREST PAID ON DEPOSITS AND CUSTOMER NOTICES DO NOT APPLY TO THIS AGREEMENT. EXCEPT AS SET FORTH IN THIS SECTION, CUSTOMER EXPRESSLY WAIVES THE CUSTOMER PROTECTION RULES THAT PERTAIN TO RETAIL ELECTRIC SERVICE RELATED TO RESCISSION RIGHTS, CUSTOMER DISCLOSURES, DELIVERY OF CUSTOMER CONTRACTS TO CUSTOMERS, RECORDKEEPING, INTEREST PAID ON DEPOSITS AND CUSTOMER NOTICES TO THE FULLEST EXTENT ALLOWED

BY APPLICABLE LAW. CUSTOMER FURTHER WAIVES ITS RIGHTS UNDER THE DECEPTIVE TRADE PRACTICES--CONSUMER PROTECTION ACT, SECTION 17.41, ET. SEQ., BUSINESS & COMMERCE CODE, A LAW THAT GIVES CONSUMERS SPECIAL RIGHTS AND PROTECTIONS. CUSTOMER REPRESENTS AND WARRANTS TO GEXA THAT: (a) CUSTOMER IS NOT IN A SIGNIFICANTLY DISPARATE BARGAINING POSITION IN RELATION TO GEXA; (b) CUSTOMER IS REPRESENTED BY LEGAL COUNSEL THAT WAS NEITHER DIRECTLY NOR INDIRECTLY IDENTIFIED, SUGGESTED OR SELECTED BY GEXA; AND (c) CUSTOMER VOLUNTARILY CONSENTS TO THIS WAIVER AFTER CONSULTATION WITH ITS LEGAL COUNSEL.

B.4 UCC/Disclaimer of Warranties. The electricity delivered is a "good" as that term is understood in the Texas B&CC (UCC §2.105). The Parties waive the UCC to the fullest extent allowed by law and the UCC requirements do not apply to this Agreement, unless otherwise provided. If there is a conflict between the UCC and this Agreement, this Agreement controls. Neither Party controls nor physically takes possession of the electric energy prior to delivery to Customer's ESI ID(s). Therefore, neither Party is responsible to the other for any damages associated with failure to deliver the electric energy, nor for damages it may cause prior to delivery to Customer's ESI ID(s). Once the electric energy is delivered to Customer's ESI ID(s) it is deemed in possession and control of Customer. ELECTRICITY SOLD UNDER THIS AGREEMENT WILL MEET THE QUALITY STANDARDS OF THE APPLICABLE LOCAL DISTRIBUTION UTILITY AND WILL BE SUPPLIED FROM A VARIETY OF SOURCES. GEXA MAKES NO REPRESENTATIONS OR WARRANTIES OTHER THAN THOSE EXPRESSLY SET FORTH IN THIS AGREEMENT, AND GEXA EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. GEXA EXPRESSLY NEGATES ALL OTHER REPRESENTATIONS OR WARRANTIES, WRITTEN OR ORAL, EXPRESS OR IMPLIED, INCLUDING ANY REPRESENTATION OF WARRANTY WITH RESPECT TO CONFORMITY, TO MODELS OR SAMPLES, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE.

B.5 Force Majeure. Gexa shall make commercially reasonable efforts to provide electric service, but does not guarantee a continuous supply of electricity. Gexa does not generate electricity nor does it transmit or distribute electricity. Causes and events out of the control of Gexa and Customer ("**Force Majeure Event(s)**") may result in interruptions in service or the ability to accept electricity. If either Party is unable to perform its obligations, in whole or in part, due to a Force Majeure Event, then the obligations of the affected Party (other than the obligation to pay any amounts owed to Gexa that relate to periods prior to the Force Majeure Event) are suspended to the extent made necessary by such Force Majeure Event. Therefore, neither Party is liable to the other Party for damages caused by Force Majeure Events, including acts of God, acts of, or the failure to act by, any governmental authority (including the PUCT or ERCOT and specifically including failure by ERCOT to make Customer meter read data available), accidents, strikes, labor troubles, required maintenance work, events of "force majeure" or "uncontrollable force" or a similar term as defined under the applicable transmission provider's tariff, inability to access the local distribution utility system, non-performance by the supplier or the local distribution utility, changes in laws, rules, or regulations of any governmental authority (including the PUCT or ERCOT) that would prevent the physical delivery of energy to Customer's facilities, or any cause beyond such Party's control. The Parties agree that Appropriations Failures and Scheduling Failures are not Force Majeure Events.

C. CONFIDENTIALITY AGREEMENT

C.1 Confidentiality. Customer is a governmental body subject to public information laws, including Chapter 552 of the Texas Government Code. If Customer receives a valid request under applicable public information laws for information related to this Agreement, it shall provide Gexa notice of the request including a description of the information sought prior to Customer's release of information so that Gexa has the opportunity to determine whether such information is subject to an exception as trade secret, competitive, commercial, or financial information. With the exception of the preceding disclosures pursuant to public information laws, a Party (that party, the "**Receiving Party**") shall keep confidential and not disclose any to third parties Confidential Information which is disclosed to the Receiving Party by the other Party (that party, the "**Disclosing Party**") except for disclosures to Authorized Parties or as required by law. "**Confidential Information**" means information in written or other tangible form which is marked as "Confidential" when it is disclosed to the Receiving Party, except that Confidential Information shall not include information which (i) is available to the public, (ii) becomes available to the public other than as a result of a breach by the Receiving Party of its obligations hereunder, (iii) was known to the Receiving Party prior to its disclosure by the Disclosing Party, or (iv) becomes known to the Receiving Party thereafter other than by disclosure by the Disclosing Party. The provisions of this Section apply regardless of fault and survive termination, cancellation, suspension, completion or expiration of this Agreement for a period of two (2) years. Customer authorizes Gexa to provide TCAP with all information requested by TCAP about Customer's account and billings. "**Authorized Parties**" means those officers, directors, employees, agents, representatives and professional consultants of the Parties, and of the Parties' affiliates, that have a need to know the Confidential Information for the purpose of evaluating and performing this Agreement.

D. DEFAULT AND REMEDIES

D.1 Events of Default. An event of default ("**Event of Default**") means: (a) the failure of Customer to make, when due, any payment required under this Agreement for any undisputed amount if that payment is not made within fifteen (15) business days after receipt of written notice (facsimile or electronic mail are valid forms of notice for this paragraph) from Gexa; or (b) any representation or warranty made by a Party proves to be false or misleading in any material respect; (c) except as provided in clause (a) above or otherwise in this section D.1, the failure of any Party to perform its obligations under this Agreement and that failure is not excused by Force Majeure and remains uncured following 20 business days written notice of the failure; (d) the defaulting Party (i) makes an assignment or any general arrangement for the benefit of creditors; or (ii) files a petition or otherwise commences, authorizes or

acquiesces to a bankruptcy proceeding or similar proceeding for the protection of creditors, or has such a petition filed against it and that petition is not withdrawn or dismissed within 20 business days after filing; or (iii) otherwise becomes insolvent; or (iv) is unable to pay its debts when due; or (v) fails to establish, maintain or extend Credit in form and in an amount acceptable to Gexa when required; or (e) the Wholesale Transaction is terminated due to a default by Gexa under CESAs with other TCAP members or due to a default by the Energy Manager under the Wholesale Transaction. If an Event of Default listed in subsection (d) of this Section occurs, it is deemed to have automatically occurred prior to such event.

D.2 Remedies upon an Event of Default. If an Event of Default occurs and is continuing, upon written notice to the defaulting Party, the non-defaulting Party may (a) commence an action to require the defaulting Party to remedy such default and specifically perform its duties and obligations in accordance with the Agreement; (b) exercise any other rights and remedies it has at equity or at law, subject to the Agreement's Limitations of Liabilities; and/or (c) suspend performance; provided, however, that suspension shall not continue for longer than ten (10) Business Days unless the non-defaulting Party has declared an early termination with proper notice. If Customer is responsible for an Event of Default and fails to cure within ten (10) days of written notice (such additional cure period does not apply to default for non-payment), in addition to its other remedies, Gexa may (i) terminate this Agreement; and (ii) charge Customer the Customer Early Termination Penalty pursuant to Section 5 of this Agreement. Notwithstanding the above, Gexa shall not disconnect or order disconnection of service to Customer unless the following events have all occurred: (1) Customer has an Event of Default for nonpayment under Section D.1(a) above, (2) Gexa gives Customer a ten (10) day written disconnection notice; and (3) Customer does not pay all undisputed outstanding payments owed by the end of the ten (10) day notice period. .

E. MISCELLANEOUS PROVISIONS

E.1 Disclaimer. This Agreement does not constitute, create, or otherwise recognize the existence of a joint venture, association, partnership, or other formal business entity of any kind among the Parties and the rights and obligations of the Parties are limited to those set forth in this Agreement.

E.2 Headings. The descriptive headings of the Articles and Sections of this Agreement are inserted for convenience only and are not intended to affect the meaning, interpretation or construction of this Agreement.

E.3 Waiver. Except as otherwise provided, failure of a Party to comply with an obligation, covenant, agreement, or condition may be waived by the other Party only in a writing signed by the Party granting the waiver, but that waiver does not constitute a waiver of, or estoppel with respect to a subsequent failure of the first Party to comply with that obligation, covenant, agreement, or condition.

E.4 Assignment. Except as provided in the REP Services Agreement, Customer shall not assign this Agreement, in whole or in part, or any of its rights or obligations pursuant to the Agreement without Gexa's prior written consent, which shall not be unreasonably withheld. Gexa may withhold consent if a proposed assignee fails to be at least as creditworthy as Customer as of the Effective Date. Gexa may: (a) transfer, sell, pledge, encumber or assign the revenues or proceeds of this Agreement in connection with any financing or other financial arrangement; (b) transfer or assign this Agreement to a Gexa affiliate with operating capability and financial condition substantially similar to Gexa; (c) transfer or assign this Agreement to any person or entity succeeding to all or substantially all of the assets of Gexa with an operating capability and financial condition substantially similar to Gexa as of the execution date of this Agreement; and/or (d) transfer or assign this Agreement to a certified REP with an operating capability and financial condition substantially similar to Gexa as of the execution date of this Agreement. In the case of (b), (c), or (d), any such assignee shall agree in writing to be bound by these Terms and Conditions of Service, and upon assignment, Gexa shall have no further obligations under this Agreement. Gexa shall not assign the Agreement to a non-affiliated entity (including its guarantor) that has a credit rating lower than BBB- without the prior written consent of TCAP, which shall not be unreasonably withheld.

E.5 No Third-Party Beneficiaries. This Agreement does not confer any rights or remedies on any person or party other than the Parties, their successors and permitted assigns; except that the Parties recognize that TCAP is entitled to receive the Aggregator Fee .

E.6 Severability. If a provision of this Agreement is held to be unenforceable or invalid by a court or regulatory authority of competent jurisdiction, the validity and enforceability of the remaining provisions are unaffected by that holding, and the Parties shall, to the extent possible, negotiate an equitable adjustment to the provisions of this Agreement in order to preserve the original intent and purpose of this Agreement.

E.7 Entire Agreement; Amendments. This Agreement constitutes the entire understanding between the Parties, and supersedes any and all previous understandings, oral or written, with respect to the subjects it covers. This Agreement may be amended only upon the mutually signed, written agreement of the Parties.

E.8 Further Assurances. The Parties shall promptly execute and deliver, at the expense of the Party requesting such action, any and all other and further instruments and documents which are reasonably requested in order to effectuate the transactions contemplated in this Agreement.

E.9 Emergency, Outage and Wire Service. In the event of an emergency, outage or service need, Customer shall call the TDSP for the service area of the ESI ID experiencing the emergency, outage or service need.

E.10 Customer Care. Customer may contact Gexa Customer Care if Customer has specific comments, questions, disputes, or complaints toll free at 1-866-961-9399, Monday to Friday 7:00 a.m. – 8:00 p.m. CST and Saturday from 8:00 a.m. – 2:00 p.m.. Gexa shall assist and cooperate with Customer regarding communications with a TDSP relating to service to any ESI ID served by Gexa under this Agreement.

E.11 Governing Law.

a. This Agreement is governed by and construed and enforced in accordance with the laws of the State of Texas applicable to contracts made and performed in the State of Texas, without regard to the State of Texas conflict of laws provisions.

b. All disputes between the Parties under this Agreement which are not otherwise settled will be decided by a court of competent jurisdiction in Harris County, Texas, and the Parties submit to the jurisdiction of the courts of the State of Texas and the Federal District Courts in Houston, Harris County, Texas. All disputes are governed under the laws of the State of Texas.

c. Subject to the provisions of E.11.a. above, this Agreement is subject to, and in the performance of their respective obligations under this Agreement the Parties shall comply with, all applicable federal, state and local laws, regulations and requirements (including the rules, regulations and requirements of quasigovernmental and regulatory authorities with jurisdiction over the Parties, including ERCOT) (collectively, "*Applicable Law*").

E.12 No Presumption Against Drafting. Both Parties contributed to the drafting of this Agreement. The rule of construction that any ambiguity is construed against the party who drafted this Agreement does not apply to this Agreement.

E.13 Counterparts; Facsimile Copies. This Agreement may be executed in counterparts, all of which constitute one and the same Agreement and each is deemed an original. A facsimile copy of either Party's signature is considered an original for all purposes, and each Party shall provide its original signature upon request.

E.15 Offer for Electric Service; Refusal of Service. This Agreement, including these Terms and Conditions of Service, constitute an offer for electric service, and is expressly conditioned on acceptance of this Agreement by Gexa. Gexa may refuse to provide electric service to Customer subject to the requirements of Applicable Law.

PRESENTER: Pam Curbow, Finance Director

ITEM/SUBJECT: Consider resolution(s) to participate in a Purchasing Cooperative offered by the Region15 Education Service Center for the procurement of electric services and to authorize the City Manager to execute any associated agreements. (Director of Finance)

SUMMARY/BACKGROUND: With the deregulation of the electric market in 2002, the City of Nacogdoches joined the Cities Aggregation Power Project (CAPP), which later became the Texas Coalition for Affordable Power (TCAP) for the procurement of electricity. In 2013, the City was approached with the opportunity to move the electric contract to a state power program to realize additional savings. The City then entered into a retail sales agreement for the purchase of electricity with the Texas General Land Office (GLO) in January, 2014. This agreement afforded the City the benefit of waived Gross Receipts Taxes on all electric accounts.

Legislation was passed in 2019 that removed municipalities from the exemption as of December, 31, 2023. We are able to retain these savings until that date through the extension of our current agreement. Since the City can no longer participate in the State Power Program we must change providers. The 791 Purchasing Cooperative through the Region 15 Education Service Center has provided an opportunity for the City to join them to procure future electric services.

Due to the volatile nature of the electric market, we are unable to provide a rate until the morning of the Council Meeting so the rate will be presented at the meeting. We anticipate a significant increase in our energy rate due to the current market conditions. Our current contract rate is \$0.03457 per kWh and we have received preliminary pricing in the \$0.070 - \$0.090 per kWh range over the last two weeks.preliminary pricing in the \$0.070 - \$0.090 per kWh range over the last two weeks.

FINANCIAL:

Item is not budgeted (*Budget Amendment required – future meeting*)

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

Not Applicable

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

- ATTACHMENTS:**
1. Resolution
 2. Interlocal Agreement
 3. Champion Electricity Sales and Purchase Agreement
 4. Sample Transaction Addendum

**791 PURCHASING
COOPERATIVE
BOARD RESOLUTION**

STATE OF TEXAS

FOR: THE REGION 15
EDUCATION SERVICE
CENTER

WHEREAS, the Board of Directors of _____, _____, Texas,
(Named Public Agency) (City)

pursuant to the authority granted by TEX. GOV'T CODE § 791.001, *et seq*, desires to participate in the 791

Purchasing Cooperative offered by Region 15 Education Service Center, and in the

Opinion that participating in this program will be highly beneficial to the taxpayers through the anticipated savings to be realized.

Therefore, be it RESOLVED that the _____ requests a stated need for
(Named Public Agency)

participation in 791 Purchasing Cooperative (791 Coop) whereby _____
(Name of Authorized Person)

is authorized and directed to sign and deliver any and all necessary requests and documents in connection therewith for and on behalf of _____.
(Named Public Agency)

I certify that the foregoing is a true and correct original Resolution duly adopted by the

_____ and is filed on record at the 791 Coop office.
(Named Public Agency)

In witness thereof, I have set my hand and signature this _____ day of _____, 20 _____.

By: _____
(Authorized Signature)

(Printed Authorized Name)

(Title)

This legal document will remain current on file until either party severs the agreement.

MASTER INTERLOCAL AGREEMENT
BETWEEN REGION 15 EDUCATION SERVICE CENTER (ESC) AND
_____, TEXAS

In 1967 the Texas Legislature directed that the State Board of Education provide, by rules and regulations, for the establishment and operation of regional Education Service Centers (ESCs). Chapter 8 of the Texas Education Code, enacted by the 75th Texas Legislature in 1997, specified the following purposes of ESCs: Regional Education Service Centers shall: Enable school districts to operate more efficiently and economically. Region 15 Education Service Center awards contracts for the members of the 791 Purchasing Cooperative under this authority.

THIS MASTER INTERLOCAL AGREEMENT ("ILA"), made and entered into pursuant to the Texas Interlocal Cooperation Act, Chapter 791, Texas Government Code (the "Act"), by and between Region 15 Education Service Center, hereinafter referred to as "Region 15 ESC," with its principal place of business: 612 South Irene Street, San Angelo, TX 76903. Region 15 ESC is a lead agency of 791 Purchasing Cooperative, hereinafter referred to as "791 COOP," having its principal place of business at P.O. Box 592867 San Antonio, TX 78259, and _____, a local government, a state agency, or a non-profit corporation created and operated to provide one or more governmental functions and services, hereinafter referred to as "Cooperative Member," having its principal place of business at _____.

WHEREAS, Region 15 ESC is Regional Education Service Center of the State of Texas operating under Chapter 8 of the Texas Education Code; and

WHEREAS, pursuant to Chapter 8 of the Texas Education Code, Region 15 ESC is authorized to contract with eligible entities to perform governmental functions and services, including the purchase of goods and services; and

WHEREAS, in reliance on such authority, Region 15 ESC is a Lead Agency for 791 Coop. Region 15 ESC has instituted a cooperative purchasing program with 791 Purchasing Cooperative, hereinafter referred to as the "791 COOP" under which Region 15 ESC contracts with eligible entities under the Act; and

WHEREAS, Cooperative Member has represented that it is an eligible entity under the Act, that its governing body has authorized this Agreement on _____ (Date), and that it desires to contract with Region 15 ESC on the terms set forth below;

WHEREAS, Master Agreements are made available by Lead Contract Awarding Agency (Region 15 ESC) through the 791 Purchasing Cooperative

NOW, THEREFORE, Region 15 ESC and the Cooperative Member do hereby agree as follows:

ARTICLE 1: LEGAL AUTHORITY

The Cooperative Member represents and warrants to Region 15 ESC that it is eligible to contract with Region 15 ESC under the Act for the purposes recited herein because it is one of the following: a local government, as defined in the Act (a county, a municipality, a special district, or other political subdivision of the State of Texas or any other state, or a combination of two or more of those entities, a state agency (an agency of the State of Texas as defined in Section 791 of the Texas Government Code, or a similar agency of another state), or a non-profit corporation created and operated to provide one or more governmental functions and services, and it possesses adequate legal authority to enter into this Agreement.

ARTICLE 2: APPLICABLE LAWS

Region 15 ESC and the Cooperative Member agree to conduct all activities under this Agreement in accordance with all applicable rules, regulations, and ordinances and laws in effect or promulgated during the term of this Agreement.

ARTICLE 3: WHOLE AGREEMENT

This Agreement and any attachments, as provided herein, constitute the complete agreement between the parties hereto, and supersede any and all oral and written agreements between the parties relating to matters herein.

ARTICLE 4: PERFORMANCE PERIOD

This Agreement shall be effective when signed by the last party, making this Agreement fully executed and will remain in full force and effect for one (1) year. This Agreement shall automatically renew for successive one-year terms unless sooner terminated in accordance with the provisions of this Agreement. The conditions set forth below shall apply to the initial term and all renewals. Notwithstanding this provision, any party may terminate this Agreement and both parties can agree to amend this agreement as provided in Article(s) 7 or 8.

ARTICLE 5: SCOPE OF SERVICES

The Cooperative Member contracts with awarded contract holders for the purchase of certain products and services through the 791 COOP cooperative purchasing program. All purchases hereunder shall be in accordance with Texas statutes and procedures governing competitive bids and competitive proposals and in accordance with specifications and contract terms established by the contract, and at the prices available and published by 791 COOP. Ownership (title) to products purchased through contracts awarded pursuant to the 791 COOP program shall transfer directly from the contractor to the Cooperative Member. Nothing in this Agreement shall prevent the Cooperative Member from purchasing and/or accepting and awarding bids, proposals and contracts subject to this Agreement on its own behalf.

ARTICLE 6: PAYMENTS

Upon delivery of goods or services purchased and presentation of a properly documented invoice, the Cooperative Member shall promptly, and in any case within thirty (30) days, pay the vendor and/or contractor the full amount of the invoice. All payments for goods or services will be made from current revenues available to the paying party. In no event shall Region 15 ESC have any financial liability to the Cooperative Member for any goods or services Cooperative Member procures through its cooperative purchasing program.

ARTICLE 7: CHANGES AND AMENDMENTS

This Agreement may be amended only by a written amendment executed by both parties, except that any alternations, additions, or deletions to the terms of this Agreement which are required by changes in Federal and State law or regulations are automatically incorporated into this Agreement without written amendment hereto and shall become effective on the date designated by such law or regulation. Region 15 ESC reserves the right to make changes in the scope of products and services offered through the 791 COOP program to be performed hereunder. Amendments shall be labeled numerically as Amendment #1, #2, and succeeding numbers as necessary.

ARTICLE 8: TERMINATION PROCEDURES

Region 15 ESC or the Cooperative Member may cancel this Agreement at any time upon thirty (30) days written notice by certified mail to the other party to this Agreement. The obligations of the Cooperative Member, including obligations to pay any vendor or contractor for all goods and/or services purchased under this Agreement, shall survive such cancellation, as well as any other obligation incurred under this Agreement, until performed or discharged by the Cooperative Member.

ARTICLE 9: SEVERABILITY

All parties agree that should any provision of this Agreement be determined to be invalid or unenforceable, such determination shall not affect any other term of this Agreement, which shall continue in full force and effect.

ARTICLE 10: FORCE MAJEURE

To the extent that either party to this Agreement shall be wholly or partially prevented from the performance within the term specified of any obligation or duty placed on such party by reason of or through strikes, stoppage of labor, riot, fire, flood, acts of war, pandemic, insurrection, accident, order of any court, act of God, or specific cause reasonably beyond the party's control and not attributable to its neglect or nonfeasance, in such event, the time for the performance of such obligation or duty shall be suspended until such disability to perform is removed; provided, however, force majeure shall not excuse an obligation solely to pay funds.

ARTICLE 11: CONSENT TO SUIT

Nothing in this Agreement will be construed as a waiver or relinquishment by either party of its right to claim such exemptions, privileges and immunities as may be provided by law.

ARTICLE 12: LIMITATION OF LIABILITY

WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, BOTH PARTIES: REGION 15 AND 791 COOP; EXPRESSLY DISCLAIM ALL EXPRESS OR IMPLIED REPRESENTATIONS AND WARRANTIES REGARDING ANY PRODUCT, MASTER AGREEMENT AND COOP CONTRACT. THE 791 PURCHASING COOPERATIVE PARTIES SHALL NOT BE LIABLE IN ANY WAY FOR ANY SPECIAL, INCIDENTAL, INDIRECT, CONSEQUENTIAL, EXEMPLARY, PUNITIVE, OR RELIANCE DAMAGES, EVEN IF THE 791 PURCHASING COOPERATIVE PARTIES ARE ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. FURTHER, THE PROCURING PARTY ACKNOWLEDGES AND AGREES THAT THE 791 PURCHASING COOPERATIVE PARTIES SHALL HAVE NO LIABILITY FOR ANY ACT OR OMISSION BY A SUPPLIER OR OTHER PARTY UNDER A MASTER AGREEMENT OR COOP CONTRACT.

ARTICLE 13 MISCELLANEOUS

- a) The Cooperative Member hereby acknowledges and agrees that it is their intent of the parties that all provisions of this Agreement and that Contract Awarding Agency' participation in the program described herein comply with all applicable laws, including but not limited to the requirements of 42 C.F.R. § 1001.952(h), as may be amended from time to time. The Cooperative Member further acknowledges and agrees that they are solely responsible for their compliance with all applicable "safe harbor" regulations, including but not limited to any and all obligations to fully and accurately report discounts and incentives.
- b) This Agreement has been made under and shall be governed by the laws of the State of Texas. Venue and jurisdiction of any suit or cause of action arising under, or in connection with, this Agreement shall lie exclusively in Tom Green County, Texas.
- c) The persons executing this Agreement hereby represent that they have authorization to sign on behalf of their respective entities.
- d) This Agreement and the rights and obligations contained herein may not be assigned by either party without the prior written approval of the other party to this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their authorized officers the day and year first above written.

[SIGNATURE PAGE IMMEDIATELY FOLLOWING]

SIGNATURE PAGE

REGION 15 ESC

Lead Agency

By: _____
Signature of REGION 15 ESC

Name and Title

Date: _____

325-658-6571
Telephone

E-mail Address

P. O. Box 5199
Mailing Address

San Angelo, TX 76902-5199
City, State, ZIP Code

Name of Cooperative Member

By: _____
Signature of Chief Elected Official or Designee

Name of Chief Elected Official or Designee

Title of Chief Elected Official or Designee

Date: _____

Mailing Address

City, State, ZIP Code

Name of Primary Contact Person

Title of Primary Contact Person

Telephone

Mailing Address

City, State, ZIP Code

E-mail Address

791 Purchasing Cooperative **(Administration Purposes)**

By: _____
Signature of 791 Coop Program Manager

Name of 791 Coop Program Manager

Date: _____

Name of Cooperative Member

P. O. Box 593867
Mailing Address

San Antonio, TX 78259
City, State, ZIP Code

210-255-3596
Telephone

E-mail Address

Electricity Sales and Purchase Agreement

Seller: **CHAMPION ENERGY SERVICES, LLC**

Buyer:

Effective Date:

This Agreement is made by and between Seller and Buyer (referred to collectively as the "Parties" and individually as a "Party"). For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

ARTICLE 1: SCOPE OF THE AGREEMENT

1.1 Electricity Supply. Upon enrollment of Buyer's Facilities, Seller shall sell and deliver, or cause a third party (including Buyer's Local Utility) to deliver, and Buyer shall purchase and receive, 100% of Buyer's Electricity requirements for enrolled Buyer's Facilities at the Delivery Point(s) solely for use at Buyer's Facilities.

1.2 Transactions. From time to time, the Parties may, but are not obligated to, enter into one or more Transactions. Transactions will ordinarily be entered into by the execution of a Transaction Addendum. The Parties may also enter into Transactions orally or through the use of Electronic Communication, and in those cases Buyer shall execute, promptly upon Seller's request, a Transaction Addendum confirming the terms of such Transaction. The Parties agree that a Transaction Addendum may take the form of a facsimile or an Imaged Document. Notwithstanding the foregoing, the failure of either Party to execute a Transaction Addendum shall not invalidate an otherwise valid Transaction. Each Party agrees not to contest, or assert any defense to, the validity or enforceability of a Transaction entered into in accordance with this Agreement based on any Law requiring agreements to be in writing or to be signed by the Parties, or based on any lack of authority of the Party or any lack of authority of any employee of the Party to enter into a Transaction.

ARTICLE 2: TERM OF AGREEMENT

Either Party may terminate this Agreement by providing thirty days written notice to the other Party; provided that this Agreement will remain in effect with respect to the Transaction(s) entered into prior to such termination until both Parties have fulfilled all of their obligations with respect to such Transaction(s) or such Transaction(s) have each been terminated under Articles 6 or 7 of this Agreement; provided that all obligations of the Parties which must survive such termination in order to give full force and effect to the intent of the Parties as expressed herein will survive such termination.

ARTICLE 3: PRICING

3.1 Contract Price. The price that Buyer pays for Electricity is set forth in each Transaction. If Seller delivers and Buyer receives Electricity and there is no Transaction in effect with respect to such deliveries (including, without limitation, for any deliveries made subsequent to termination of this Agreement), then the Contract Price for such deliveries will be the Base Price.

3.2 Taxes. As between the Parties, Seller is responsible for all Taxes incurred up to the Delivery Point and Buyer is responsible for all Taxes incurred at and after the Delivery Point whether

imposed on Buyer or Seller. Seller may recoup such Taxes as a separate line item on Seller's invoice to the extent allowed by Law. Seller will recognize a sales tax exemption of Buyer only upon receipt of proper documentation from Buyer.

ARTICLE 4: SERVICE OBLIGATIONS

4.1 Enrollment. Buyer shall timely provide Seller with all information (including account information), documentation, and authorization required to appoint Seller as Buyer's Electricity service provider and to allow Seller to receive information from Buyer's Local Utility that is required for Seller to perform its obligations hereunder. Seller shall enroll Buyer's Facilities upon: (1) execution of a Transaction; (2) receipt of all information, documentation, and authorization required to appoint Seller as Buyer's retail supplier of electricity; and (3) a designated active switch date from Buyer's Local Utility.

4.2 Reimbursement. Seller shall reimburse Buyer for all costs and losses incurred by Buyer resulting from a delayed or unsuccessful enrollment or de-enrollment that is a direct result of a negligent act or omission by Seller. Buyer shall reimburse Seller for all costs and losses incurred by Seller resulting from a delayed or unsuccessful enrollment or de-enrollment that is not a direct result of a negligent act or omission by Seller.

4.3 Operational Requirements. Buyer shall use commercially reasonable efforts to operate Buyer's Facilities such that Electricity consumption is consistent with Buyer's Baseline. Unless otherwise specified in a Transaction Addendum, Buyer is responsible to Seller for any additional costs and losses incurred by Seller arising from (i) a change in Buyer's operational requirements such that Buyer's Electricity usage is different from Buyer's Baseline (a "Change in Operations"), or (ii) removal of a Buyer's Facility from service during the effective period of a Transaction Addendum.

4.4 Metering. Buyer or Buyer's Local Utility is responsible for the cost of installing meters and related equipment (including any telemetry and associated telephonic connections) at Buyer's Facilities that are required by Buyer's Local Utility for Seller to perform its obligations under this Agreement. Such meters shall measure all Electricity at Buyer's Facilities. Buyer must provide Seller with reasonable access to Buyer's Facilities to install any additional metering equipment reasonably required by Seller. Seller shall be responsible for any costs associated with such additional metering equipment.

4.5 Delivery and Title. As between the Parties, Seller will be in exclusive control, hold title to, and be responsible for any damage or injury caused by Electricity before the Delivery Point(s). Seller shall have no further obligation or responsibility relating to the

Electricity at and after the Delivery Point(s). Buyer acknowledges that Seller does not own or control any of the transmission or distribution facilities used to deliver Electricity to the Delivery Points, has no responsibility for system reliability, and that these functions are solely the responsibility of the RTO and/or Buyer's Local Utility, and accordingly that Seller shall have no liability on account of any acts or omissions of these parties or for any interruption or failure to deliver arising therefrom. Seller indemnifies, defends, and holds harmless Buyer from and against all claims, damages, liabilities and actions of any kind, including, without limitation, property damage, personal injury or death ("Claims") arising out of or related to the delivery of electricity to the Delivery Point; and Buyer indemnifies, defends and holds harmless Seller from and against all Claims arising out of or related to the delivery of electricity to, and receipt or use of electricity at, the Buyer's Facilities, **in each case without respect to the nature of the liability or an indemnitee's negligence.**

4.6 Curtailment, Demand Response. Buyer may participate in curtailment or demand response programs, provided that Buyer provides prior written notice to Seller. Buyer shall be responsible for any costs incurred by Seller associated with Buyer's participation in such programs.

ARTICLE 5: BILLING, PAYMENT AND CREDIT

5.1 Seller Invoices. Seller's invoices will be sent to the address set forth in the applicable Transaction Addendum or otherwise specified by Buyer in writing. Seller shall calculate the amount(s) due based upon Buyer's actual usage and other necessary information or data. Seller may reasonably estimate usage and other charges at the time of invoicing; provided that Seller shall adjust subsequent invoices to reflect actual usage and charges after such information is received by Seller.

5.2 Payment Terms. Subject to Article 5.4, all Seller invoices are due and payable by Buyer to Seller, without Set-off, in accordance with Seller's invoice instructions and the payment terms specified in the relevant Transaction Addendum. For any amounts that are not paid by the due date, Seller may assess a one-time late fee equal to the percentage specified in the relevant Transaction Addendum, multiplied by the past due amount. Seller may assess and collect from Buyer all costs and reasonable attorney's fees incurred by Seller in collecting any outstanding balance owed by Buyer.

5.3 Local Utility Invoices. Where applicable, and as further specified in a Transaction Addendum, Buyer will receive separate invoices from Seller and from Buyer's Local Utility for the services each entity provides ("Dual Billing"), or Buyer will receive a single invoice from Buyer's Local Utility that includes Seller's charges ("Consolidated Billing"). The due date of such utility-provided invoices will be determined by the Local Utility, and Buyer is responsible for timely payment of such invoices. Seller reserves the right to convert Buyer from Consolidated Billing to Dual Billing or from Dual Billing to Consolidated Billing, if such a conversion will facilitate more timely billing, collections, and/or payment.

5.4 Billing Disputes. If there is a good faith dispute regarding any invoice, Buyer shall pay to Seller the undisputed amount of such invoice. If any part of the dispute is resolved in Seller's favor, Buyer shall pay the resolved amount within two Business Days after such resolution and shall include interest at the Interest Rate calculated as of the due date specified in the invoice. Buyer's right to dispute an invoice will be deemed waived (1) if not made within one year after the invoice date, and (2) when upstream recovery by Seller is prevented by either the applicable RTO or Buyer Local Utility settlement date or by other applicable Law.

5.5 Credit. Upon any request from time to time by Seller, Buyer shall promptly provide to Seller such financial statements and other information as Seller may reasonably require to adequately assess Buyer's creditworthiness. If Seller has reasonable grounds for insecurity regarding the performance, whether or not then due, of any obligation of Buyer under this Agreement (including, without limitation on account of the occurrence of a material change in Buyer's creditworthiness or any Default), Seller may demand Adequate Assurances in an amount determined by Seller in a commercially reasonable manner, which Adequate Assurances shall be provided by Buyer within two (2) Business Days after such demand. In the event that Adequate Assurances are provided in the form of cash collateral, Buyer shall be deemed to have granted Seller a continuing first priority security interest in, lien on, and right of Set-off against such collateral.

ARTICLE 6: FORCE MAJEURE

Except for payment obligations, if either Party is rendered unable, wholly or in part, to perform its obligations under this Agreement due to Force Majeure, to the extent affected by the Force Majeure the obligations of each Party will be suspended for the duration of such Force Majeure. A Party claiming Force Majeure shall promptly notify the other Party by telephone and confirm within a reasonable period of time by a written notice describing in reasonable detail the nature and estimated duration of such Force Majeure. The Party claiming Force Majeure shall remedy the Force Majeure with all reasonable dispatch. If the duration of the Force Majeure event exceeds twenty days, the Party not claiming Force Majeure may terminate the affected portions of any Transaction upon written notice to the other Party. Any termination due to Force Majeure will not be subject to an early termination payment.

ARTICLE 7: DEFAULT AND TERMINATION

7.1 Early Termination. If a Default with respect to a Party shall have occurred and be continuing, the non-defaulting Party shall have the right to suspend its delivery obligations and/or designate a date upon which all outstanding Transactions will liquidate and terminate and all amounts owing will accelerate and be netted into a single amount in accordance with Article 7.3 as of such date ("Early Termination Date").

7.2 Settlement Amount. The non-defaulting Party shall calculate in a commercially reasonable manner a Settlement Amount for each terminated Transaction as of the Early Termination Date. For purposes of calculating such Settlement Amount for any terminated Transaction for which the Contract Quantity

thereunder is not a fixed quantity, the Contract Quantity shall be the estimated baseline quantity set forth in the Transaction Addendum.

7.3 Termination Payment. The non-defaulting Party shall calculate a termination payment owed by the defaulting Party to the non-defaulting Party by: netting out (1) all Settlement Amounts that would be due to the defaulting Party, plus, at the option of the non-defaulting Party, any cash or other form of security then available to the non-defaulting Party, plus any or all other amounts due to the defaulting Party under this Agreement against (2) all Settlement Amounts that would be due to the non-defaulting Party, plus any or all other amounts due to the non-defaulting Party under this Agreement, so that all such amounts shall be netted to a single amount, which shall not be less than zero (the "Termination Payment"). The Parties acknowledge and agree that the Termination Payment, if there is one, reflects actual damages to the non-defaulting Party. The Termination Payment shall be due and payable by the defaulting Party to the non-defaulting Party within three Business Days following the date of a Termination Payment invoice.

7.4 Post-Termination Deliveries. Notwithstanding any provision to the contrary, if Seller is required under Law to continue to make deliveries to Buyer under this Agreement or any Transaction after the Early Termination Date ("Post-Termination Deliveries"), the Parties agree that such obligation will not prohibit, limit or otherwise impair Seller's rights under this Article 7 (including, without limitation, the right to terminate and liquidate any Transaction and accelerate any amounts owing).

7.5 Buyer acknowledges and agrees that all amounts included in a Settlement Amount or Termination Payment owed to Seller shall constitute amounts that are due and owed by Buyer under the Agreement, including, without limitation, (i) amounts owed for Electricity delivered but for which Seller has not been paid, (ii) Seller's Losses related to Electricity purchased by Seller to supply Buyer's Electricity needs during the term of a Transaction Addendum and (iii) amounts owed with respect to the Contract Quantity that Buyer fails to receive during the remainder of the term of a terminated Transaction.

ARTICLE 8: LIMITATION OF LIABILITY

FOR BREACH OR DEFAULT ARISING FROM ANY PROVISION FOR WHICH AN EXPRESS REMEDY IS PROVIDED HEREIN, SUCH REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, LIABILITY SHALL BE LIMITED TO DIRECT, ACTUAL DAMAGES ONLY, SUCH DIRECT, ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. EXCEPT AS MAY BE INCLUDED IN AN EXPRESS REMEDY PROVIDED FOR HEREIN, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, SPECIAL, CONSEQUENTIAL, PUNITIVE OR EXEMPLARY DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT, INCLUDING LOST PROFITS OR BUSINESS INTERRUPTION DAMAGES, WHETHER

BASED ON STATUTE, CONTRACT, TORT, UNDER ANY INDEMNITY OR OTHERWISE, WITHOUT REGARD TO CAUSE OR THE NEGLIGENCE OF ANY PARTY, WHETHER SOLE, JOINT, ACTIVE OR PASSIVE, AND EACH PARTY HEREBY RELEASES THE OTHER PARTY FROM ANY SUCH LIABILITY, EVEN IF DURING THE TERM HEREOF IT ADVISES THE OTHER OF THE POSSIBILITY OF SUCH DAMAGES. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS. THE PROVISIONS OF THIS ARTICLE 8 SHALL APPLY TO THE FULLEST EXTENT PERMITTED BY LAW.

ARTICLE 9: REPRESENTATIONS AND WARRANTIES

9.1 Mutual. Each Party represents and warrants to the other that: (1) it is validly existing and in good standing in the jurisdiction of its formation as well as the jurisdiction in which any applicable Delivery Point is located; (2) the execution, delivery and performance of this Agreement and each Transaction are within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents or any agreements to which it is a party or any Law applicable to it; (3) it has not filed, does not plan to file, nor has it had filed against it, any bankruptcy proceeding; (4) this Agreement and each Transaction constitutes its legally valid and binding obligation enforceable against it in accordance with its terms (subject to any equitable defenses); (5) it is not a party to or subject to any commitment that may restrict or interfere with the delivery or receipt of Electricity under this Agreement; and (6) it is a "forward contract merchant" (within the meaning of such term as used in the U.S. Bankruptcy Code) and each Party is acting in its capacity as a forward contract merchant in entering into this Agreement. The representations and warranties made in this Article are deemed to be repeated upon the execution of any Transaction.

9.2 Buyer. Buyer represents to Seller that: (1) Seller is not acting as Buyer's advisor, expert, fiduciary, representative or consultant and has not provided, and nothing herein will be claimed by Buyer as the provision of, advice regarding the value or advisability of trading in commodities; (2) Buyer shall be solely responsible for retaining adequate advisors and counsel to advise it with respect to the obligations assumed hereunder regardless of any information provided by Seller; (3) it has knowledge and experience in business matters sufficient to enable it to evaluate the risks associated with this Agreement and this Agreement is entered into by Buyer at Buyer's sole election and in the exercise of its independent judgment without duress; (4) it is not relying on any representations of Seller other than those expressly set forth herein; (5) Buyer owns or controls Buyer's Facilities or has control over the purchase and receipt of Electricity therefor; (6) all of the information furnished by Buyer concerning Buyer's Facilities (including applicable load factors, Buyer's Local Utility rate classes and schedules, time of use, and service information) is, to the best

of Buyer's information and belief, true and accurate when furnished to Seller; (7) it is a producer, processor, commercial user of or merchant handling the commodity subject hereto and has entered into this Agreement and any Transactions solely for non-speculative purposes related to such business; (8) it shall not resell any Electricity received from Seller to a third party; (9) each of Buyer's Facilities can be enrolled on the Start Date specified for each Transaction; (10) it understands that if a broker or consultant was involved in a Transaction, the fee or commission associated with such broker or consultant may be included in the Contract Price; and (11) it has disclosed to Seller the existence of any on-site generation (other than emergency back-up generation) ("On-Site Generation") that is capable of serving Buyer's Facilities, and Buyer will not purchase or install any additional On-Site Generation without providing Seller with 60 days' notice and obtaining Seller's written consent. The representations and warranties made in this Article are deemed to be repeated upon the execution of any Transaction.

9.3 Warranties. NEITHER PARTY GIVES NOR RECEIVES ANY WARRANTY REGARDING THE SALE, PURCHASE OR DELIVERY OF ELECTRICITY, WHETHER EXPRESS, IMPLIED, OR STATUTORY, EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS AGREEMENT. SELLER DISCLAIMS ANY AND ALL IMPLIED WARRANTIES AND SPECIFICALLY DISCLAIMS ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS OF ELECTRICITY FOR A PARTICULAR PURPOSE OR USE. THE OBLIGATIONS OF THE PARTIES UNDER THIS AGREEMENT ARE OBLIGATIONS OF THE PARTIES ONLY, AND NO RECOURSE SHALL BE AVAILABLE AGAINST ANY EMPLOYEE, OFFICER, DIRECTOR, SHAREHOLDER, MEMBER, PARTNER, OR AFFILIATE OF A PARTY UNLESS SPECIFICALLY PROVIDED FOR IN A SEPARATE AGREEMENT.

ARTICLE 10: BANKRUPTCY CODE ACKNOWLEDGEMENTS

The Parties acknowledge and agree that all Transactions constitute "forward contracts" within the meaning of the United States Bankruptcy Code. Each Party further agrees that, for purposes of this Agreement, the other Party is not a "utility" as such term is used in Section 366 of the U.S. Bankruptcy Code, and each Party waives and agrees not to assert the applicability of the provisions of such Section 366 in any bankruptcy proceeding wherein such Party is a debtor. The Parties further agree that all Electricity delivered hereunder constitutes a "good" under Section 503(b)(9) of the U.S. Bankruptcy Code.

ARTICLE 11: DEFINITIONS

Capitalized terms used in this Agreement have the following meanings:

"Adequate Assurances" means collateral in the form of cash, letters of credit, or other security acceptable to Seller.

"Affiliates" means, with respect to any person, any other person (other than an individual) that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, such person. For this purpose, "control" means the direct or indirect ownership of fifty percent (50%) or

more of the outstanding capital stock or other equity interests having ordinary voting power.

"Agreement" means this Electricity Sales and Purchase Agreement, including all appendices, Addenda, Voice Records, Electronic Communications, and schedules, which are incorporated herein by reference as part of this Agreement, and all Transactions and any credit support or similar agreement between the Parties in respect thereto.

"Base Price" means an amount per MWh in \$US (unless otherwise provided for) equal to the sum of (1) the applicable market index price for the Delivery Point(s), and (2) a retail adder to be fixed by Seller based upon Seller's then applicable month-to-month rate; provided that taxes, capacity, and other similar charges incurred by Seller may be passed through to Buyer if such charges are not already included in Seller's month-to-month rate.

"Business Day" means any day except Saturday, Sunday, or Federal Bank Holidays.

"Buyer's Baseline" means the stipulated MWh usage set forth in each Transaction.

"Buyer's Facilities" means the enrolled account(s) identified in an applicable Transaction Addendum.

"Buyer's Local Utility" means the electric distribution utility or utilities responsible for delivering Electricity to Buyer's Facilities.

"Contract Price" means the price per MWh in \$US (unless otherwise provided for) to be paid by Buyer to Seller for the purchase of Electricity as specified in a Transaction.

"Contract Quantity" means the quantity of Electricity specified in a Transaction.

"Costs" means, with respect to the non-defaulting Party only, brokerage fees, commissions and other similar third party transaction costs and expenses reasonably incurred by such Party either in terminating any arrangement pursuant to which it has hedged its obligations or entering into new arrangements which replace a terminated Transaction; and all reasonable attorneys' fees and expenses incurred by the non-defaulting Party in connection with enforcing its rights under this Agreement in the event of termination.

"Default" means, with respect to a Party (the defaulting Party), the occurrence of any of the following; (1) the failure to make, when due, any payment required pursuant to this Agreement or otherwise, if such failure is not remedied within five Business Days after written notice; (2) any representation or warranty is false or misleading when made or repeated; (3) the failure to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Default) if such failure is not remedied within five Business Days after written notice; (4) the failure by Buyer to provide Adequate Assurances in accordance with Article 5.5; (5) such Party (or such Party's credit support provider) files a petition or otherwise commences, authorizes or acquiesces to the commencement of a proceeding or cause of action with respect to it under any bankruptcy proceeding or similar Laws for the protection of

creditors, or has such a petition filed against it; (6) such Party makes an assignment or any general arrangement for the benefit of creditors; (7) such Party otherwise becomes bankrupt or insolvent (however evidenced); (8) such Party becomes unable to pay its debts as they fall due; (9) termination of a Transaction prior to its End Date unless otherwise expressly agreed to in the Agreement; or (10) any default under any other agreement between the Parties.

"Delivery Point(s)" means the physical point(s) specified in a Transaction at which Seller shall deliver, or cause to be delivered, Electricity to Buyer.

"Electricity" means electric energy (expressed in MWh) and any related components thereto or products specified in a Transaction.

"Electronic Communication" means communication conducted by electronic means whereby electronic records are created, including without limitation, electronic mail and instant messaging.

"Force Majeure" means events or circumstances, beyond the reasonable control of a Party and not caused by the negligence of such Party, which prevent that Party from performing its obligations under this Agreement, and which the Party claiming Force Majeure is unable to avoid or prevent through the exercise of due diligence. Force Majeure includes, without limitation, a Force Majeure affecting an RTO or Buyer's Local Utility that in turn prevents a Party's performance of its obligations hereunder. A claim of Force Majeure may not be based on: (1) Buyer's inability to economically use or dispose of Electricity purchased under this Agreement; (2) Buyer's closure or material curtailment or discontinuation of operation of any of Buyer's Facilities due to economic circumstance or condition; or (3) Seller's ability to sell Electricity at a price greater than the Contract Price.

"Gains" means, with respect to a Party, an amount equal to the present value of the economic benefit to it, if any (exclusive of Costs), resulting from the termination of a Transaction, determined in a commercially reasonable manner.

"Governmental Entity" means a municipality, county, governmental board, governmental department, commission, agency, bureau, administrative body, joint action agency, court, or other similar political subdivision or public entity or instrumentality of the United States or one or more states.

"Imaged Document" means any document generated by the Parties which is scanned and stored in electronic form, including, by way of illustration and not limitation, portable document format (.pdf) or similar type (e.g. jpg, tiff, gif).

"Interest Rate" means two percent (2%) per annum over the prime-lending rate as published in *The Wall Street Journal* under "Money Rates"; provided that, the Interest Rate may never exceed the maximum rate permitted by Law.

"Law" means any law, constitution, charter, statute, ordinance, code, rule, regulation, tariff, protocols, decision, order, decree, judgment or other legislative or administrative action of any

Governmental Entity, or any interpretation thereof by any court, agency or instrumentality having jurisdiction, as well as all rules, policies and procedures lawfully adopted by an RTO governing or controlling the area in which Buyer's Facilities are located.

"Losses" means, with respect to a Party, an amount equal to the present value of the economic loss to it, if any (exclusive of Costs), resulting from termination of a Transaction, determined in a commercially reasonable manner.

"MWh" means a megawatt-hour of Electricity.

"Off-Peak Hours" means hours not defined as On-Peak Hours.

"On-Peak Hours" means hours determined to be "on peak" by Buyer's regional reliability council of the North American Electric Reliability Council, or any successor entity, governing the area in which Buyer's Facilities are located.

"RTO" means a power pool, independent system operator, transmission provider, or Buyer's Local Utility acting as the grid manager, or any comparable entity that provides system management and oversight for Electricity delivered to Buyer's Facilities.

"Settlement Amount" means, with respect to a Transaction, the Losses or Gains, and Costs, which the non-defaulting Party incurs as a result of the termination of such Transaction.

"Set-off" means offset, combination of accounts, netting, right of retention or withholding, or any similar right.

"Start Date" means the date specified in a Transaction; provided, that if a Transaction does not specify such a date, then the date upon which all of the conditions set forth under Articles 4.1(1)-(2) are satisfied.

"Taxes" means all federal, state and local taxes, assessments, levies, duties, fees, charges or withholdings of any kind, including gross receipts taxes, utility and regulatory taxes, assessments and surcharges however denominated and all penalties, fines, additions to tax, or interest on unpaid taxes, but excluding any taxes on net income.

"Termination Payment" has the meaning set forth in Article 7.3.

"Transaction" means an agreement between the Parties for the purchase and sale of Electricity pursuant to this Agreement, which may include, among other terms, the Electricity product, Contract Price, delivery term, Contract Quantity and Delivery Point(s).

"Transaction Addendum" means, in respect to a specific Transaction, a supplement to, or modification of, this Agreement signed, or deemed accepted, by both Parties setting forth the terms of such Transaction.

"Voice Record" means a recorded telephone conversation between representatives of the Parties evidencing the terms of a Transaction.

ARTICLE 12: MISCELLANEOUS

12.1 Definitions. When the singular number is used, it is deemed to include the plural and vice versa. The words "include" and

"including" mean "including, without limitation" with respect to whatever follows.

12.2 Confidentiality. This Agreement, each Transaction, and all confidential business information of the Parties in connection with the Agreement are strictly confidential and shall not be disclosed by a Party (except to such Party's Affiliates, employees, lenders, counsel and other advisors, permitted assignees, or prospective purchasers who have agreed to treat such information as confidential) without the prior written consent of the other Party, except as required by Law; provided that Seller may publicize the existence of this Agreement in press releases and sales and marketing materials, and identify Buyer as a customer of Seller and as a reference to third parties. The Parties agree that damages would be an inadequate remedy for breach of this provision and that either Party is entitled to equitable relief in connection herewith, provided that any damages are limited to actual damages as provided herein.

12.3 Notices. Unless otherwise specified herein, any notice required or permitted under this Agreement, must be in writing and addressed as provided in Article 13. Notice by receipt confirmed facsimile, email or hand delivery shall be effective on the Business Day actually received. Notice by overnight United States mail or courier shall be effective on the next Business Day after it was sent.

12.4 Entire Agreement. This Agreement contains the complete understanding between the Parties and supersedes all previous discussions, communications, writings and agreements previously executed between the Parties related to the sale and purchase of Electricity. In addition, if the Parties have outstanding Addenda or appendices under an agreement that is superseded by this Agreement, those Addenda and appendices shall be governed by this Agreement. Except to the extent otherwise provided for herein, this Agreement may not be amended, modified or supplemented except in a writing signed by both Parties.

12.5 Assignment. This Agreement (including any Transaction, or portion thereof) may not be assigned or transferred by a Party without the prior written approval of the other Party, which approval shall not be unreasonably withheld, except it may be assigned or transferred without such approval: (i) by either Party to a successor acquiring all or substantially all of the shares and/or the assets (including, without limitation, all or a substantial portion of Seller's portfolio of retail supply contracts) of the transferring Party, whether by merger or acquisition, (ii) by either Party to any Affiliate; or (iii) by Seller in connection with any financing or other financial arrangements involving the accounts, revenues or proceeds hereof; provided, that in the case of items (i) and (ii), the assignee or transferee is at least as creditworthy as the assigning or transferring Party and such assignee or transferee agrees in writing to be bound by the terms and conditions of this Agreement (including all outstanding Transactions). Notwithstanding anything to the contrary in this Agreement, Buyer agrees that Seller may require any approved assignee or transferee to execute a new Electricity Sales and Purchase Agreement, Transaction Addendum and/or appendix with Seller,

as the case may be, as a condition precedent to the assignment or transfer of any (whole or partial) Transaction

12.6 Disputes. If an action, suit or other proceeding is brought to enforce or interpret this Agreement or any part hereof or the rights or obligations of any Party to this Agreement, the prevailing Party will be entitled to recover from the other Party reasonable attorneys' fees and direct out-of-pocket costs and disbursements associated with the dispute that are incurred by the prevailing Party.

12.7 Waiver. No waiver by either Party of any right or obligation hereunder, including in respect to any Default by the other Party, shall be considered a waiver of any future right or obligation, whether of a similar or different character. Any waiver shall be in writing..

12.8 Third Party Beneficiaries. This Agreement does not grant, create or otherwise provide any rights enforceable by any person or entity not a Party to this Agreement.

12.9 Controlling Documents. This Agreement and all Transactions (including any Addenda) form a single integrated agreement between the Parties. Any inconsistency between any terms of this Agreement and any terms of a Transaction shall be resolved in favor of the terms of such Transaction. Upon full execution (or deemed acceptance) of a Transaction Addendum, such Transaction Addendum (absent manifest error) shall control in the event of any conflict with the terms of a Voice Record or Electronic Communication, or in the event of any conflict with the terms of this Agreement. In the absence of a Transaction Addendum, the Voice Record or Electronic Communication shall evidence the terms of the Transaction.

12.10 Electronic Communications. Each Party hereby consents to the recording and storage of Voice Records and Electronic Communication and waives any objection to recording of Voice Records and use of Electronic Communication. An Electronic Communication record shall be deemed received upon arrival at the receiving Party's electronic mailbox or internet address.

12.11 Governing Law. THIS AGREEMENT AND THE RIGHTS AND DUTIES OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY AND CONSTRUED, ENFORCED AND PERFORMED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW. EACH PARTY WAIVES ITS RESPECTIVE RIGHT TO ANY JURY TRIAL WITH RESPECT TO ANY LITIGATION ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT. THIS ARTICLE 12.10 SHALL SURVIVE THE EXPIRATION OR TERMINATION OF THIS AGREEMENT FOR ANY REASON.

12.12 Immunity. Buyer covenants that if it is a Governmental Entity it shall not claim immunity on the grounds of sovereignty or similar grounds from enforcement of this Agreement. Buyer further covenants that if it is a Governmental Entity it shall obtain all necessary budgetary approvals, appropriations, and funding for all of its obligations under this Agreement, the failure of which shall not be an excuse for Buyer's performance hereunder.

12.13 Severability; Survival. Any provision declared or rendered unlawful, invalid, void or unenforceable by any applicable court of law or regulatory agency will not otherwise affect any other provision, agreement, covenant or remaining lawful obligations under this Agreement; provided, that in any such event, the Parties shall use good faith efforts to reform this Agreement in order to give effect to the original intention of the Parties. All obligations of the Parties that must survive termination of this Agreement or any Transaction Addendum in order to give effect to the intent of the Parties shall survive such termination.

12.14 Execution. This Agreement may be signed in counterparts, each of which will constitute an original and together will constitute one and the same Agreement. The Parties agree that if a copy of this Agreement, including any appendix and/or Transaction Addendum, is executed by a Party and transmitted to the other Party by facsimile, the copy received shall be deemed for all legal purposes to be an original executed by the transmitting Party.

12.15 Imaged Document. The Parties agree that if a copy of this Agreement, including any appendix and/or Transaction Addendum, is executed by a Party and transmitted to the other Party in the form of an Imaged Document, to which a Party has affixed its written or electronic signature, the copy received by the other Party shall be deemed for all legal purposes to be as valid and authentic as an original executed by the transmitting Party, and will be given the same legal effect as a written and signed paper original, and may be introduced as evidence in any proceeding as if such were original business records. Neither Party shall contest the admissibility of such Imaged Documents as evidence in any proceeding, and waive any objection they may have to the use of same.

12.16 791 Purchasing Cooperative. Seller represents that this Agreement, pursuant to the award to Seller of the 791 Purchasing Cooperative RFP #791-2020-03-001 Retail Electric Power, complies with the applicable terms and conditions contained in a separate Vendor Agreement between Seller and 791 Purchasing Cooperative. Buyer agrees that Seller may provide a copy of this Agreement, the terms of any Transaction, and information relating to Buyer's invoices and usage to 791 Purchasing Cooperative.

ARTICLE 13: NOTICES

Legal Notices

Notices and payments shall be made by facsimile, email, courier, first class mail, or hand delivery. Notice should be sent to the addresses noted below, or any other address a Party provides to the other Party in writing:

If To Buyer

Attention	
Address	
City, State, Zip	
Telephone / Fax	/
E-Mail	

If To Seller

Attention	Contract Manager
Address	1500 Rankin Rd., Suite 200
City, State, Zip	Houston, TX 77073
Telephone / Fax	281.653.5090 / 281.653.1810
E-Mail	info@championenerservices.com

ARTICLE 14: EXECUTION AND SIGNATURES

This Agreement will be binding if Seller and Buyer have each signed below and shall be effective as of the Effective Date specified above. The Parties intend that this Agreement shall not bind either Party unless it is executed by both Parties.

Buyer:

By:

(Signature)

(Name)

(Title)

**Seller: Champion Energy Services, LLC
(and its affiliate, Champion Energy, LLC)**

By:

(Signature)

(Name)

(Title)

Transaction Addendum Pursuant to 791 Purchasing Cooperative RFP #791-2020-03-001

FIXED PRICE, LOAD FOLLOWING WITH MONTHLY BANDS (ERCOT)

Agreement: ELECTRICITY SALES AND PURCHASE AGREEMENT
 Seller: Champion Energy Services, LLC
 Buyer:
 Agreement Effective Date:

Addendum Date:
 Quote No:

This Addendum (the "Addendum") supplements the Agreement referred to above (the "Agreement"). The Parties hereby agree to the terms and conditions set forth herein for Buyer's Facilities served at the Delivery Point. Capitalized terms not otherwise defined in this Addendum shall have their meanings set forth elsewhere in the Agreement.

1. DELIVERY POINT & DELIVERY PERIOD

Sale and delivery of Electricity will be made to the interconnection point(s) between the RTO Transmission Grid and Buyer's Local Utility (the "Delivery Point"). Delivery to meters at Buyer's facility(ies) will be made by Buyer's Local Utility. This Addendum shall be in full force and effect as of the Addendum Date. The terms set forth herein apply from the Start Date through the End Date ("Delivery Period").

Market Area	Supply Point	Utility	Delivery Point
ERCOT	TBD Trading Hub	TBD	TBD Load Zone

Start Date:	End Date:
Meter Read On or After TBD	TBD

2. CONTRACT PRICE

Buyer shall pay the Contract Price specified below for all Electricity usage, subject to section 6 ("Monthly Settlement").

Contract Price (\$/MWh)
\$



3. DELIVERY SERVICES

The Contract Price includes only the components set forth below that are marked with an [X]. Seller will pass through to Buyer all other charges relating to the delivery of Electricity to Buyer. The Contract Price reflects the value of Congestion Revenue Rights. Locational Basis shall be calculated for each settlement interval as an amount equal to the real-time settlement point price at the Delivery Point less the real-time settlement point price at the Supply Point.

☒	Electric Energy
☒	Ancillary Services (Reg-Up, Reg-Down, Responsive Reserve, and Non-Spin)
☒	ISO QSE Charges and Fees
☒	RUC Make-Whole Uplift, RUC Clawback, and RUC Decommitment
☒	Distribution/Transmission Losses/UFE (collectively, "Line Losses")
☒	Renewable Portfolio Standard
☐	Locational Basis

4. CONTRACT QUANTITIES

The Contract Quantities for this Transaction are set forth below. If Line Losses are not included in Section 3, Buyer's Baseline Monthly Quantity reflects an adjustment for Line Losses determined at the Delivery Point. Buyer's Baseline Monthly Quantity shall be included in the Contract Quantity for the purposes of calculation any termination payments owed pursuant to the Agreement.

Month	Buyer's Baseline Monthly Quantity (MWh)





5. CUSTOMER ACCOUNTS

No	ESI - ID	Address	City	Zip	Anticipated Start Date
1					
2					
3					
4					
5					
6					
7					
8					
9					
10					
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35					
36					
37					
38					

Tax Exemption Designation

Customer Accounts are tax exempt
(Initial)

Customer Accounts are NOT tax exempt
(Initial)



6. MONTHLY SETTLEMENT

Seller will calculate Buyer's monthly invoice based on Buyer's usage and the Tolerance Band as described below. If Line Losses are not included in Section 3, Buyer's metered usage will be adjusted for Line Losses.

Tolerance Band	
Lower Limit (Percent below Buyer's Baseline Monthly Quantity)	Upper Limit (Percent above Buyer's Baseline Monthly Quantity)
10%	10%

Usage Above Upper Limit: During any month, if Buyer's usage exceeds the Upper Limit set forth above (such excess amount being the "Excess Quantity"), Buyer shall pay Seller an amount equal to the Upper Limit multiplied by the Contract Price. For the Excess Quantity, Buyer shall pay Seller the monthly weighted average of the real-time energy prices at the Delivery Point, as defined by ERCOT, plus all related delivery costs and ERCOT charges for the Excess Quantity, plus \$1.60 per MWh. Buyer shall also pay the monthly weighted average of the RUC capacity short charges on the Excess Quantity.

Usage Below Lower Limit: During any month, if Buyer's usage is less than the Lower Limit (such under usage being the "Deficit Quantity"), Buyer shall pay Seller an amount equal to the Lower Limit multiplied by the Contract Price. For the Deficit Quantity, Seller shall also credit Buyer's account in an amount equal to the Deficit Quantity multiplied by the monthly weighted average of the real-time energy prices, as defined by the ERCOT.

Locational Basis: Locational Basis will be calculated for each settlement interval as an amount equal to the real-time settlement point price at the Delivery Point minus the real-time settlement point price at the Supply Point. If the Locational Basis component is *not* marked as included in Section 3 but Line Losses *are* marked as included in Section 3, Locational Basis will be adjusted by the appropriate loss factor.

7. CHANGES IN CIRCUMSTANCES

The Contract Price and all other terms and conditions of this Addendum are established in reliance on the accuracy of information provided to Seller concerning Buyer's load requirements. Any incremental costs incurred by Seller as a result of inaccuracies in any such information provided to Seller may be passed through to Buyer.

The Contract Price and all other terms and conditions of this Addendum are established in reliance on the existing Laws, rates, charges, independent system operator processes, market structure, congestion zone design and protocols that are in effect as of the Addendum Date. In the event of changes in the above that cause additional costs to Seller, Seller may pass through such costs to Buyer.

8. CHANGE IN OPERATIONS

Under the Agreement, Seller may hold Buyer responsible for any additional costs and/or losses incurred by Seller arising from a Change in Operation. Costs and losses will be calculated based on the usage deviation from Buyer's Baseline Monthly Quantity starting from the beginning of the Change in Operations. For purposes of this Transaction Addendum, a "Change in Operations" is any instance where the actual monthly usage deviates from Buyer's Baseline Monthly Quantity by at least [25%].

9. ADDITIONAL TERMS

Settlement Amount

Notwithstanding any provision in the Agreement, when determining a Settlement Amount under the Agreement, the non-defaulting party shall use the Contract Quantities specified above when determining the remaining quantity of electricity to be purchased and/or delivered.

Payment Terms

Buyer shall pay Seller's invoices within 16 days of the date the invoice is issued.



For any amounts that are not paid by the due date, Seller may assess a one-time late fee equal to 5 percent multiplied by the past due amount.

Billing

Invoice Type:	☐ One summary bill to be sent to the Billing Address. ☐ Individual bills per account, to be sent to the Billing Address. ☐ Individual bills per account, to be sent to the Respective Service Address.
Invoice Delivery Method:	☐ E-mail bill delivery ☐ Mail bill delivery
Billing Contact Information:	<i>Attention:</i> <i>Address:</i> <i>City, State, Zip:</i> <i>Telephone:</i> <i>Facsimile:</i> <i>E-mail:</i>

Adding and Deleting Buyer Delivery Points

Buyer is entitled to add or delete Customer Accounts as long as (1) there is no Event of Default by Buyer, (2) any facility to be added is within the applicable Local Utility and/or ISO zone currently served by Seller under this Transaction Addendum, and (3) the expected future monthly Electricity usage attributable to the added or deleted Customer Accounts is within 3 percent of the then remaining Baseline Monthly Quantities for each remaining month.

10. EXECUTION & SIGNATURES

As supplemented by this Transaction Addendum and its Schedules, if any, all terms and conditions in the Agreement remain in full force and effect.

This Transaction Addendum will become effective when Seller and Buyer have each signed below and shall be effective as of the Addendum Date specified above. The Parties intend that this Transaction Addendum shall not bind either Party unless it is executed by both Parties.

Buyer:**Seller:**

Champion Energy Services, LLC, or its affiliate, Champion Energy, LLC

(Signature)_____
(Signature)_____
(Name)_____
(Name)_____
(Title)_____
(Title)

Contact Information and Other Disclosures

Champion Energy Services, LLC

1500 Rankin Road, Suite 200
 Houston, Texas 77073
 Phone: 281-653-5090
 Toll-Free: 877-653-5090
 E-mail: support@championenergyservices.com
 Website: www.championenergyservices.com

Champion Energy is licensed by the Texas Public Utility Commission as a REP to offer and supply electric generation services in Texas. Champion Energy's license number is 10098.

Public Utility Commission of Texas

PO Box 13326
 Austin, Texas 78711-3326
 Toll Free: 1-888-782-8477
 Fax: 512-936-7003
 TTY: 1-800-735-2988
 E-mail: customer@puc.texas.gov
 Website: www.puc.texas.gov
 Customer Protection Division: 512-936-7120

For Emergencies, Outages and Equipment Service, call your respective EDC ("Poles & Wires" company) below.

CenterPoint Energy, Inc.

Houston and surrounding areas
 Service: 800-332-7143
 Outages: 800-332-7143
 Website: www.centerpointenergy.com

Oncor

Dallas – Fort Worth and West Texas
 Service: 888-313-6862
 Outages: 888-313-4747
 Website: www.oncor.com

Nueces Electric

Phone: 800-632-9288
 Website: www.nueceselectric.org

AEP Texas

Central, South and West Texas
 Service: 877-373-4858
 Outages: 866-223-8508
 Website: www.aeptexas.com

TNMP

South Central Coast, Far West and North Texas
 Service: 888-866-7456
 Outages: 888-866-7456
 Website: www.tnmp.com

Waiver of Buyer Protection Rules: Buyer and Seller acknowledge and agree that the Buyer Protection Rules enacted by the PUC (Substantive Rules, Section 25, Subchapter R) protect residential and small commercial consumers. Unless otherwise specified below, the Buyer Protection Rules do not apply to this Transaction Addendum, and Buyer waives all such protections. If there is any conflict between the Buyer Protection Rules and this Transaction Addendum or the Agreement, the Parties acknowledge that this Transaction Addendum and/or the Agreement will control.

Disclosure of Interested Parties: In accordance with the Texas Government Code § 2252.908, if Buyer qualifies as a "state agency," "government entity," or other affected party, and contract disclosure is required as prescribed in the above referenced Code, then Seller shall submit to Buyer the necessary information for the Certificate of Interested Parties (the "Form" or "Form 1295") as provided by the Texas Ethics Commission ("TEC"). Buyer is responsible for submitting the Form 1295 to the TEC within thirty days of receiving the Form from Seller (see Texas Government Code § 2252.908(f)).

Texas Prompt Payment Act Terms: In accordance with the Texas Prompt Payment Act, if Buyer qualifies as a governmental entity (See Texas Government Code, Chapter 2251), payment is due to Seller no more than thirty days from the date the electricity is delivered or a correct invoice is received, whichever is the later of the two. If Buyer, in good faith, disputes a payment, Buyer must notify Seller of an error in an invoice submitted for payment by Seller not later than the 21st day after the date Buyer receives the invoice. If the dispute is resolved in favor of Seller, then Seller is entitled to receive interest on the unpaid balance of the invoice beginning on the date the payment for the invoice is overdue. A payment is considered overdue beginning the 31st day (from the date the electricity was delivered or a correct invoice is received, whichever is the later of the two). If the dispute is resolved in favor of the Buyer, Seller shall submit a corrected invoice that must be paid in accordance with Section 2251.021. The unpaid balance accrues interest as provided by this chapter if the corrected invoice is not paid by the appropriate date. The rate of interest used to calculate the interest amount due, is the rate in effect on September 1st of the fiscal year in which the payment becomes overdue. The interest rate is one percentage point higher than the prime rate published in the Wall Street Journal on the first business day of July of the preceding fiscal year.

Repair Services: Seller consents to Buyer directly instructing the Local Utility to perform repair services and Seller will invoice Buyer for the actual costs billed to Seller by the Local Utility for the performance of such repair services.



City Council Meeting

Date: May 3, 2022

Agenda Item: 9.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: Larissa Philpot-Brown, Economic Development Director
lphilpot@nedco.org
936-559-1255

ATTACHMENTS: