



**July 19, 2022**

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

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

Members of the public who wish to submit comments on a listed agenda item by telephone must contact the City Secretary's office by email at [vinsonj@nactx.us](mailto: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 July 19, 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. 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.
4. ITEMS TO BE REMOVED FROM CONSENT AGENDA.
5. CONSENT AGENDA: Items included under Consent Agenda require little or no deliberation by Council. Approval of Consent Agenda authorizes the City Manager or his designee to proceed with conclusion of each in accordance with staff recommendations as reflected in the minutes of this meeting.
  - A. Consider approval of minutes for July 7, 2022, July 8, 2022 and July 11, 2022 City Board Interviews. (City Secretary)
  - B. Consider accepting \$30,000 donation from Nacogdoches County Historical Foundation for the Zion Hill Church Restoration project. (Community Services Assistant Director)
6. REGULAR AGENDA: City Council will receive staff recommendations and public input on the following items, and may deliberate and take formal action on the item.

- A. **Public Hearing:** Consider a request to amend and/or revoke the Specific Use Permit, pursuant to Section 118-174 of the Code of Ordinances, for a 'Garden Shop & Plant Sales – Display or Greenhouse', in a B-1 Local Business zoning district, for Lot 1, Block 1 of The Plant Shed Subdivision, located at 3123 Appleby Sand Rd. This request has been initiated by the Nacogdoches City Planner. **(PLEASE NOTE THAT THIS ITEM WAS POSTPONED FROM THE REGULAR MEETING OF THE CITY COUNCIL ON JUNE 21, 2022.)** (City Planner)
- B. Consider approval of an ordinance amending Chapter 74 of the Code of Ordinances of the City of Nacogdoches to expand the Parks and Recreation Advisory Board. (Mayor)
- C. Consider appointing members to the Parks and Recreation Advisory Board. (Mayor)
- D. Consider approval of a contract by and between the City of Nacogdoches and Drewery Construction Co., Inc. for the 2022 Seal Coat Project in a not-to-exceed amount of \$414,644.00. (Assistant Director of Public Works)
- E. Consider approval of an administration/project delivery service provider(s) to complete application and project implementation for the City of Nacogdoches' 2023-2024 Community Development Block Grant (TxCDBG) funded and administered through the Texas Department of Agriculture. (Purchasing Contract Specialist)
- F. Consider approval of the City's partially self-insured health insurance plans and ancillary benefits between the City and Blue Cross Blue Shield of Texas, Metlife Insurance and Lincoln Financial, and authorize the City Manager to execute any and all necessary renewal/contract documents. (Bonita Hall, Director of Human Resources and Jeff Summers, BXS Insurance, subsidiary of BancorpSouth)
- G. Hold a discussion and give staff direction regarding the City departmental budgets for fiscal 2022-2023. (Finance Director)
- H. Hold a discussion and give staff direction regarding the consideration of a property tax ceiling and/or property tax exemptions for homeowners aged 65 and older and for disabled persons. (Finance Director and Interim Chief Appraiser of Nacogdoches Central Appraisal District).
- I. Discussion and consideration of a resolution of the City of Nacogdoches, Texas approving and authorizing the publication of notice of intention to issue certificates of obligation and resolving other matters incident and related thereto. (Director of Finance)
- J. Hold a discussion and give staff direction regarding the City Council meeting schedule for the remainder of 2022. (City Manager)



7. 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. Real Property – Pursuant to Texas Government Code Section 551.072, deliberations regarding the purchase, exchange, lease, or value of real property. The subject of this Executive Session is to discuss City fire station location properties.

B. Personnel Matters – Pursuant to Texas Government Code Section 551.074, deliberations regarding the duties of a public officer or employee. The subject of this Executive Session is to discuss and give feedback to the City Manager regarding his annual evaluation.

8. 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](http://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 July 14, 2022 at 1:30 p.m. and remained posted until meeting convened.

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Jan Vinson, City Secretary



## City Council Meeting

Date: July 19, 2022

Agenda Item: 5.A.

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**PRESENTER:** Jan Vinson, City Secretary

**ITEM/SUBJECT:** Consider approval of minutes for July 7, 2022, July 8, 2022 and July 11, 2022 City Board Interviews. (City Secretary)

**SUMMARY/BACKGROUND:** No financial impact associated with this item

**FINANCIAL:**

No financial impact associated with this item

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

Not Applicable

**CITY CONTACT:** Jan Vinson, City Secretary  
[vinsonj@nactx.us](mailto:vinsonj@nactx.us)  
936-559-2506

**ATTACHMENTS:**

1. Minutes 07.07.22
2. Minutes 07.08.22
3. Minutes 07.11.22



**MINUTES**  
**Board Interviews**  
**Nacogdoches City Council**  
**July 7, 2022 at 2 p.m.**  
City Hall  
202 E. Pilar Street

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**PRESENT:** Mayor Jimmy Mize, Council Member Roy Boldon, Council Member Amelia Fischer, Council Member Kathleen Belanger, Council Member Chad Huckaby and City Secretary Jan Vinson.

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

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

Victor Galan  
MaryAnn Bentley  
Sally Ann Swearingen  
Jordan Coleman  
Gretchen Patterson  
Eric Gaylord  
Teresa Colvin  
Deidra Harrison  
Lara Sowell  
Olivia Kiritsy  
Laura Turner  
Steve Corey  
Lisa Oldmixon  
Herbert Midgley  
Lara McKinney  
Janie Richardson  
Angela Williams

No appointments were made at this meeting.

Adjourned at 6:50 p.m.

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Mayor Jimmy Mize  
City Council  
City of Nacogdoches

ATTEST:

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Jan Vinson, City Secretary



**MINUTES**  
**Board Interviews**  
**Nacogdoches City Council**  
**July 8, 2022 at 2 p.m.**  
City Hall  
202 E. Pilar Street

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**PRESENT:** Mayor Pro Tem Roy Boldon, Council Member Amelia Fischer, Council Member Kathleen Belanger, Council Member Chad Huckaby and City Secretary Jan Vinson. **ABSENT:** Mayor Jimmy Mize

Mayor Pro Tem Boldon called meeting to order at 2 p.m.

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

Mary Roan  
Margaret Forbes  
Chay Runnels  
Johnny Bell  
Charles Gregory  
Tammy Purser  
Abby Echiverria  
Mary McKinnon  
Harry Tervalon  
Rodney Ray  
John Windham  
Matt Perry  
Rhonda Ward  
Lauren Tyler  
Clayton Jones  
Christy Turner

No appointments were made at this meeting.

Adjourned at 6:06 p.m.

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Mayor Pro Tem Roy Boldon  
City Council  
City of Nacogdoches

ATTEST:

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Jan Vinson, City Secretary



**MINUTES**  
**Board Interviews**  
**Nacogdoches City Council**  
**July 11, 2022 at 4 p.m.**  
City Hall  
202 E. Pilar Street

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**PRESENT:** Mayor Jimmy Mize, Council Member Amelia Fischer, Council Member Kathleen Belanger, Council Member Chad Huckaby and City Secretary Jan Vinson. Council Member Roy Boldon attended via videoconference.

Mayor Mize called meeting to order at 4:02 p.m.

City Council discussed applications received and interviews completed on July 7, 2022 and July 8, 2022 for the various boards.

No appointments were made at this meeting.

Adjourned at 5:31 p.m.

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Mayor Jimmy Mize  
City Council  
City of Nacogdoches

ATTEST:

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Jan Vinson, City Secretary

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**PRESENTER:** Jessica Sowell, Community Services Asst Director

**ITEM/SUBJECT:** Consider accepting \$30,000 donation from Nacogdoches County Historical Foundation for the Zion Hill Church Restoration project. (Community Services Assistant Director)

**SUMMARY/BACKGROUND:** The Nacogdoches County Historical Foundation voted at their June 6, 2022 meeting to donate \$30,000 to the City of Nacogdoches to be used for the Zion Hill Baptist Church restoration project. This money, raised during the last several years of the Beefsteak Dinner Fundraiser, will be an incredible asset to the Zion Hill restoration project right at a time we needed it the most.

The Zion Hill Baptist Church was built in 1914 and was the first African American church in the City of Nacogdoches. The Zion Hill congregation is one of the oldest African American congregations in Texas and was organized in 1878 by Reverend Lawson Reed. This building quickly became the social and religious center for the Zion Hill community and surrounding African American families.

Nacogdoches County Historical Foundation, over a period of ten years beginning in 2000, meticulously restored the exterior of the building before deeding it to the City in March of 2010 for continued restoration and management. In 2014 the City entered into an Architectural agreement with Curtis Architecture for the architectural, mechanical, electrical and plumbing design. City Council approved a contract for Construction Manager at Risk for Cox Contractors in May 2019.

The Foundation, as an organization, saved the Zion Hill Baptist Church from falling into total disrepair and has been an ardent supporter of the restoration. We continue to appreciate their involvement and generosity towards our project.

**FINANCIAL:**

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

Account No.: 18.559.70

Account Name: *Historic Sites*

Amount: \$30,000

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

Infrastructure

**CITY CONTACT:** Jessica Sowell, Community Services Assistant Director  
[sowellj@nactx.us](mailto:sowellj@nactx.us)  
936-559-2940

**ATTACHMENTS:** 1. Zion Hill Budget Amendment

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; and

WHEREAS the historic Zion Hill Church will be restored and opened to the public as a museum and community center focused on the history of African Americans in Nacogdoches and the history of the Zion Hill congregation and neighborhood; and

WHEREAS, the Nacogdoches County Historical Foundation started the Zion Hill Baptist Church restoration project and remains the projects' biggest supporter; and

WHEREAS, with the adoption of this ordinance, the City is authorized to accept funding assistance from The Nacogdoches County Historical Foundation for the restoration of the Zion Hill Church in the total amount of \$30,000; and

WHEREAS, with the adoption of this ordinance, the Community Services Department is authorized to expend funds in the amount of \$30,000 on the Zion Hill Church restoration project and any remaining funds will be carried over to the 2022-2023 fiscal year.

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

| <b>Fund</b> | <b>Dept.</b> | <b>Acct.</b> | <b>Department</b> | <b>Description</b>                                | <b>Amt.</b> |
|-------------|--------------|--------------|-------------------|---------------------------------------------------|-------------|
| 18          |              | 559.70       | Historic Sites    | Nacogdoches County Historical Foundation Donation | \$30,000    |
|             |              |              |                   |                                                   |             |

PASSED AND APPROVED this the 19th day of July 2022.

\_\_\_\_\_  
Jimmy Mize, Mayor  
City of Nacogdoches

ATTEST:

\_\_\_\_\_  
Jan Vinson, City Secretary

Approved as to form: \_\_\_\_\_  
Steve Kirkland, City Attorney

Approved as to content: \_\_\_\_\_  
Pamela Curbow, Director of Finance



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**PRESENTER:** Alaina Helton, City Planner

**ITEM/SUBJECT: Public Hearing:** Consider a request to amend and/or revoke the Specific Use Permit, pursuant to Section 118-174 of the Code of Ordinances, for a ‘Garden Shop & Plant Sales – Display or Greenhouse’, in a B-1 Local Business zoning district, for Lot 1, Block 1 of The Plant Shed Subdivision, located at 3123 Appleby Sand Rd. This request has been initiated by the Nacogdoches City Planner. **(PLEASE NOTE THAT THIS ITEM WAS POSTPONED FROM THE REGULAR MEETING OF THE CITY COUNCIL ON JUNE 21, 2022.)** (City Planner)

**SUMMARY/BACKGROUND:** On May 19, 2020, the City Council granted approval of a Specific Use Permit (SUP) for the operation of a “Garden Shop & Plant Sales - Display or Greenhouse” at the location referenced above. The approved ordinance (Ord.1826-05-20) for this SUP allows the construction and operation of a “Garden Shop & Plant Sales - Display or Greenhouse” facility at the above-described location, with the following conditions:

The applicant will provide a plan to control sediment and runoff that is acceptable to the City Engineering Department.

Upon approval of the SUP, development plans were submitted to the City for review and the City Engineer determined that the development satisfied the conditions of the SUP. These development plans were approved by Staff in July, 2020. Since that time, City Staff has received multiple complaints of substantial drainage and sediment runoff issues from a number of the residents located northwest of the subject property. City Staff met with the property owner onsite to observe the drainage patterns on the property, at which time, staff noted substantially more semi-impervious gravel installed on the property than what was depicted on the approved development plans.

Upon completion of the site visit Staff has requested additional documentation from the property owner to demonstrate the property drainage and runoff is still functioning in accordance with the development plans. Based on the summary letter of the inspection by the engineering firm who designed the site, the development is no longer in compliance with the conditions of the SUP. City Staff has requested that the property owner provide a plan for compliance that must address the addition of impervious surface since the original approval of the SUP and show a plan to mitigate the increased drainage to surrounding properties. Since this initial request, the property owner has failed to respond in a timely manner which resulted in two (2) violation notices. Since the property owner has failed to rectify the violation, pursuant to Section 118-174(c) of the Code of Ordinances, City Staff has initiated proceedings to revoke and/or amend the terms of the SUP.

**Zoning & Existing Land Use**

The subject property is zoned B-1 Local Business and is currently vacant. The surrounding zoning and land uses are as follows:

| Direction                         | Zoning                                    | Land Use                                         |
|-----------------------------------|-------------------------------------------|--------------------------------------------------|
| North                             | B-1 Local Business                        | Hair Salon                                       |
| East<br>(Across Appleby Sand Rd.) | R-1 Single Family                         | Single Family &<br>Civic/Office Building         |
| South<br>(Across East Austin St.) | B-1 Local Business                        | Duplex & Convenient Store<br>with Gasoline Pumps |
| West                              | B-1 Local Business &<br>R-1 Single Family | Vacant & Single Family                           |

Property located immediately the north of the subject property is zoned B-1 and is currently being used as a hair salon. A portion of the property to the west located along East Austin Street is zoned B-1 and is vacant, while the remaining property to the west is zoned R-1 Single Family and is developed as a single family neighborhood known as the Colonial Hills Subdivision. The subject property abuts Appleby Sand Road to the east and East Austin Street to the south.

**REVIEW CRITERIA:** Per Section 118.139 of the Nacogdoches Zoning Ordinance, the following conditions shall be considered when reviewing an application for a Specific Use Permit:

1. **Compatibility:** The specific use will be compatible with and not injurious to the use and enjoyment of other property in the immediate vicinity, nor significantly diminish or impair property values within the immediate vicinity;
2. **Orderly Growth and Development:** The establishment of the specific use will not impede the normal and orderly development and improvement of surrounding vacant property;
3. **Supporting Facilities:** Adequate utilities, access roads, drainage and other necessary supporting facilities have been or will be provided;
4. **Drives and Parking:** The design, location and arrangement of all driveways and parking spaces provides for the safe and convenient movement of vehicular and pedestrian traffic without adversely affecting the general public or adjacent developments;
5. **Nuisances:** Adequate nuisance-prevention measures have been or will be taken to prevent or control offensive odor, fumes, dust, noise and vibration;
6. **Lighting:** Any lighting to be provided will be directional so as not to disturb or adversely affect neighboring properties;
7. **Landscaping:** Sufficient landscaping and screening to ensure harmony and compatibility with adjacent property exists or will be provided;
8. **Comprehensive Plan:** The proposed use is in accordance with the comprehensive plan.

Based on the drainage issues outlined above, Staff finds that the development is no longer in compliance with the conditions of the SUP, or with Criteria #1 (*Compatibility*), and Criteria #3 (*Supporting Facilities*). The applicant has submitted a preliminary drainage plan which proposes improvements to mitigate the drainage issues created by the development. These improvements include the construction of an earthen berm to divert water and sediment runoff to E. Austin Street.

**COMMUNITY INPUT:**

Staff mailed 14 notices to property owners within the 200-foot notification area. At the time of this report, Staff has received four (4) written responses from property owners within the 200-foot notice area, three (3) of which are in support of revoking and/or amending the terms of the SUP, citing specific concerns about drainage. City Staff also mailed 44 courtesy notices to property owners within 500 feet of the subject property, and received one (1) written response in opposition to amending and/or revoking the SUP. In addition, City Staff received written responses from four (4) residents who do not own property or reside in either the 200-foot or 500-foot notification area.

**RECOMMENDATIONS:**

P&Z Recommendation: The Planning and Zoning Commission considered this item at their regular meeting on July 11, 2022 and voted unanimously (5-0) to amend the SUP and accept the proposed drainage plan with the condition that the drainage improvements be completed within 6 months.

Staff Recommendation: Staff recommends that the SUP be amended to incorporate the proposed drainage plan with the condition that the drainage improvements be completed within 6 months.

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

**ATTACHMENTS:**

1. Aerial Map
2. Zoning Map
3. Site Photos
4. Ordinance 1826-05-20
5. Approved Site Plan (2020)
6. Proposed Drainage Plan (2022)
7. Notification Map
8. Written Responses
9. Amending Ordinance



# SUP 2020-03



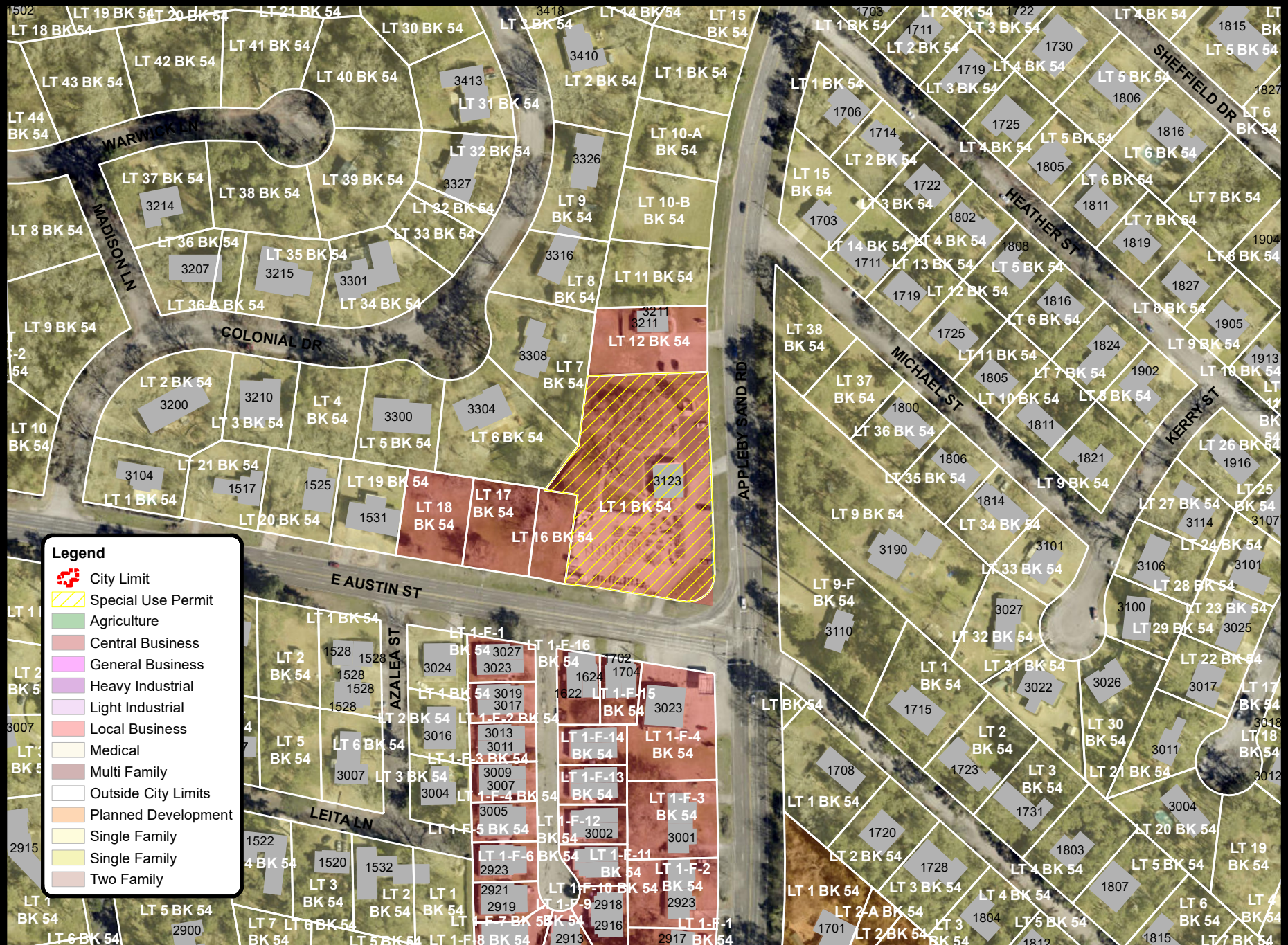
Notice: This product is for informational purposes only and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries.



Date Created: May 25, 2022 Software: ArcGIS 10.8.1



# SUP 2020-03



## Legend

- City Limit
- Special Use Permit
- Agriculture
- Central Business
- General Business
- Heavy Industrial
- Light Industrial
- Local Business
- Medical
- Multi Family
- Outside City Limits
- Planned Development
- Single Family
- Single Family
- Two Family

Notice: This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries.



0 50 100 200 Feet

Date Created: June 7, 2022 Software: ArcGIS 10.8.1



# SUP2020-03: Site Photos

Street View: Corner of Appleby Sand & E. Austin St.



Street View: E. Austin St.



Street View: Appleby Sand Rd.





# Office/Sales Building





# Parking Area



# Outdoor Sales Area: Facing E. Austin St.





# Gravel walkway: South/ West side of building





# Silt fencing & drainage area: West side of property





ORDINANCE NO. 1826-05-20

**AN ORDINANCE OF THE CITY OF NACOGDOCHES, TEXAS, GRANTING AN AMENDMENT TO A SPECIFIC USE PERMIT FOR A GARDEN SHOP AND PLANT SALES – DISPLAY OR GREENHOUSE, LOCATED AT THE NORTHWEST CORNER OF APPLEBY SAND ROAD AND EAST AUSTIN STREET WITHIN THE B-1 LOCAL BUSINESS ZONING DISTRICT, SAID TRACT BEING LOTS 13, 14, 15 AND A PORTION OF LOT 16, BLOCK 1, SECTION 1 OF THE COLONIAL HILLS SUBDIVISION RECORDED IN VOLUME 2536, PAGE 264 OF THE DEED OF RECORDS OF NACOGDOCHES COUNTY, TEXAS, CONTAINING APPROXIMATELY 8.1 ACRES LOCATED IN NACOGDOCHES, TEXAS, PROVIDING REQUIREMENTS AND CONDITIONS FOR SAID SPECIFIC USE PERMIT; CONTAINING FINDINGS; PROVIDING A REPEAL CLAUSE; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, the Specific Use Permit process allows the Planning and Zoning Commission and City Council to consider the conditions specific to individual tracts of land and operational characteristics of various businesses; and

**WHEREAS**, Charles Shugart of StarTex Ventures, filed an application for a Specific Use Permit for a Garden Shop & Plant Sales - Display or Greenhouse facility on property that is currently zoned as Local Business (B-1); located at the northwest corner of Appleby Sand Road and East Austin Street, said tract being legally described as Lots 13, 14, 15 and a portion of Lot 16, Block 1, Section 1, of the Colonial Hills Subdivision recorded in Volume 2536, Page 264 of the Deed of Records of Nacogdoches County, Texas (the "Property"), and situated within the corporate limits of the City of Nacogdoches, Texas (the "City"), being more particularly described in **Exhibit "A"** and **Exhibit "B"**, attached hereto and made a part hereof for all purposes; and

**WHEREAS**, the Owner of the Property, through its above mentioned and duly authorized representatives, has presented an application to the City for the granting a Specific Use Permit to use said Property for the purpose of a Garden Shop & Plant Sales - Display or Greenhouse facility (the "Specific Use"), as authorized by the City's Zoning Ordinance; and

**WHEREAS**, after satisfaction of all conditions precedent required by law, the Planning and Zoning Commission held a public hearing and did make recommendation to City Council for approval of the Specific Use Permit application submitted for the above referenced site; and

**WHEREAS**, after satisfaction of all conditions precedent required by law and receiving the recommendation of the Planning and Zoning Commission, the City Council conducted a public hearing, and immediately thereafter approved the application for a Specific Use Permit allowing for the construction, operation and maintenance of a Mini Warehouse facility.

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

## **SECTION I**

### **Findings.**

The facts and matters set forth in the preamble of this Ordinance are hereby found to be true and correct, and same are deemed to be in furtherance of a public purpose.

## **SECTION II**

### **Approval of Specific Use Permit**

Pursuant to the requirements of Chapter 118 of the Code of Ordinances of the City of Nacogdoches, Texas, a Specific Use Permit is hereby approved allowing for the construction, operation and maintenance of a Garden Shop & Plant Sales - Display or Greenhouse facility at the above described location, with the following conditions:

1. The applicant will provide a plan to control sediment runoff that is acceptable to the City Engineering Department.

## **SECTION III**

### **Repeal**

This Ordinance shall in no manner repeal, amend, change, supplement, or revise any provision of any ordinance of the City, save and except the granting of the Specific Use Permit as herein provided.

## **SECTION IV**

### **Effective Date**

This Ordinance shall take effect following its passage and publication as may be required by governing law.

## **SECTION V**

### **Severability**

If any word, article, phrase, paragraph, sentence, clause, or provision of this Ordinance shall be adjudged by a court of competent jurisdiction to be invalid, the invalidity shall not 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 VI**

### **Proper Notice and Open Meetings**

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 VII**  
**Filing**

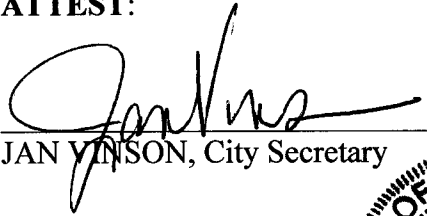
The City Secretary is hereby authorized and instructed to file a signed and sealed copy of this Ordinance in and among the records of the City of Nacogdoches, Texas.

**PASSED AND APPROVED**, this the 19 day of May, 2020, by a vote of 5 (ayes) to 0 (nays) of the City Council of the City of Nacogdoches, Texas.

**CITY OF NACOGDOCHES**

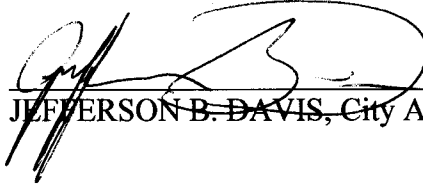
By:   
SHELLEY BROPHY, Mayor

**ATTEST:**

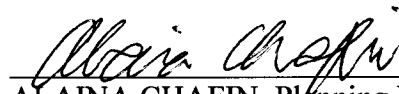
  
JAN VINSON, City Secretary



**APPROVED AS TO FORM:**

  
JEFFERSON B. DAVIS, City Attorney

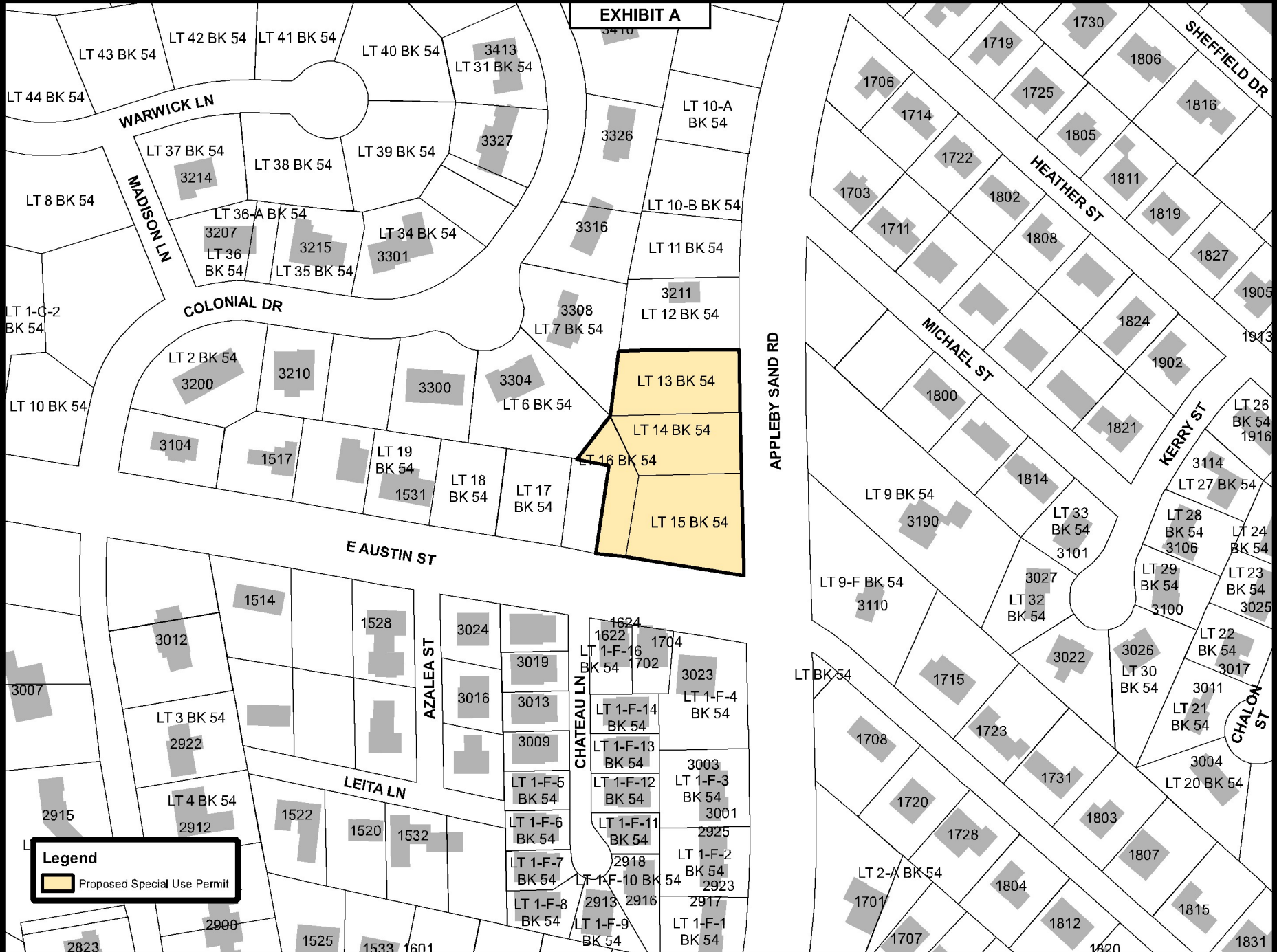
**APPROVED AS TO CONTENT:**

  
ALAINA CHAFIN, Planning Director



# SUP 2020-03

## EXHIBIT A



### Legend

Proposed Special Use Permit

Notice: This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries.



0 50 100 200 Feet

Date Created: April 24, 2020 Software: ArcGIS 10.7.1



**Proposed Site Plan**

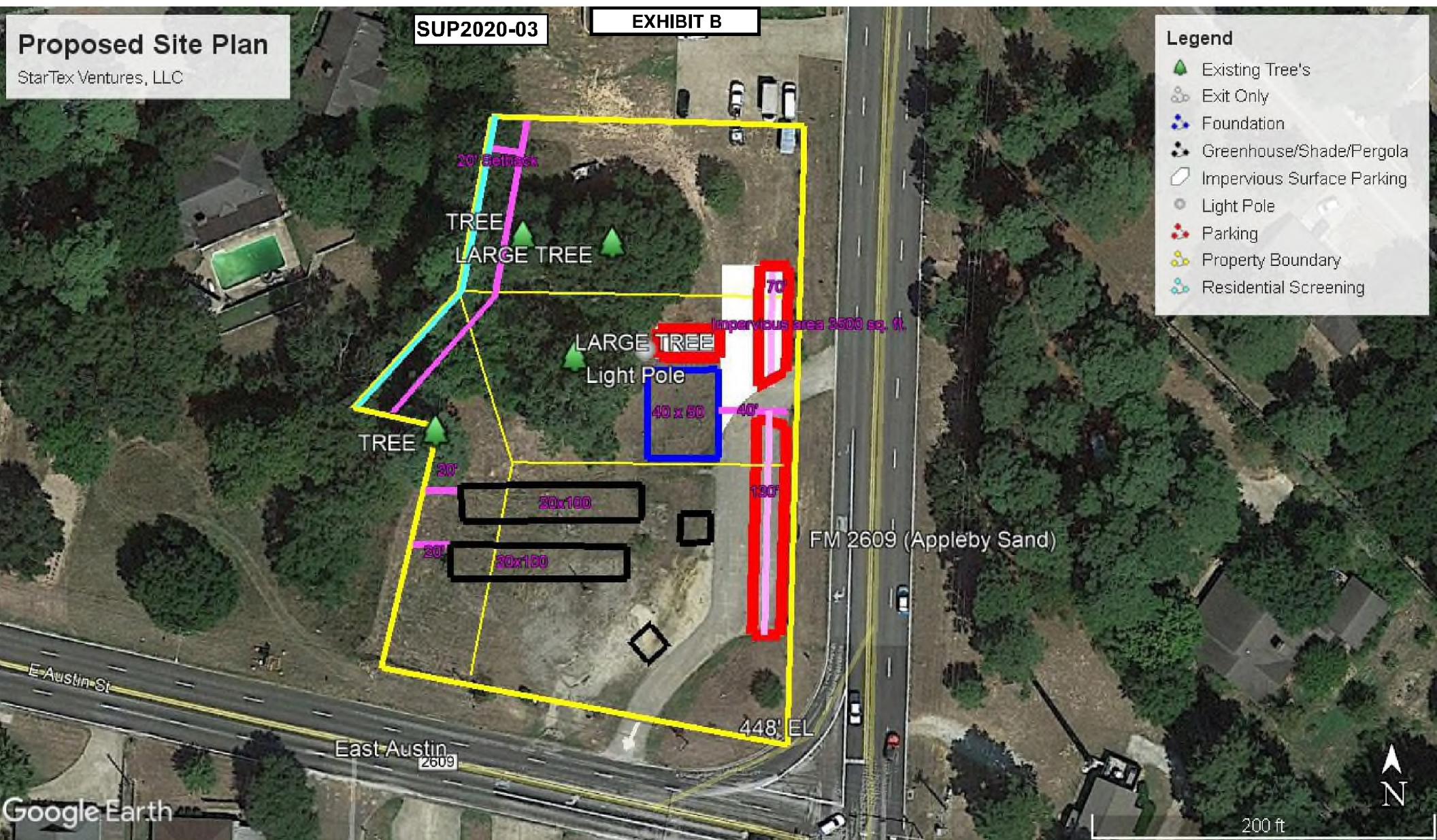
StarTex Ventures, LLC

SUP2020-03

EXHIBIT B

**Legend**

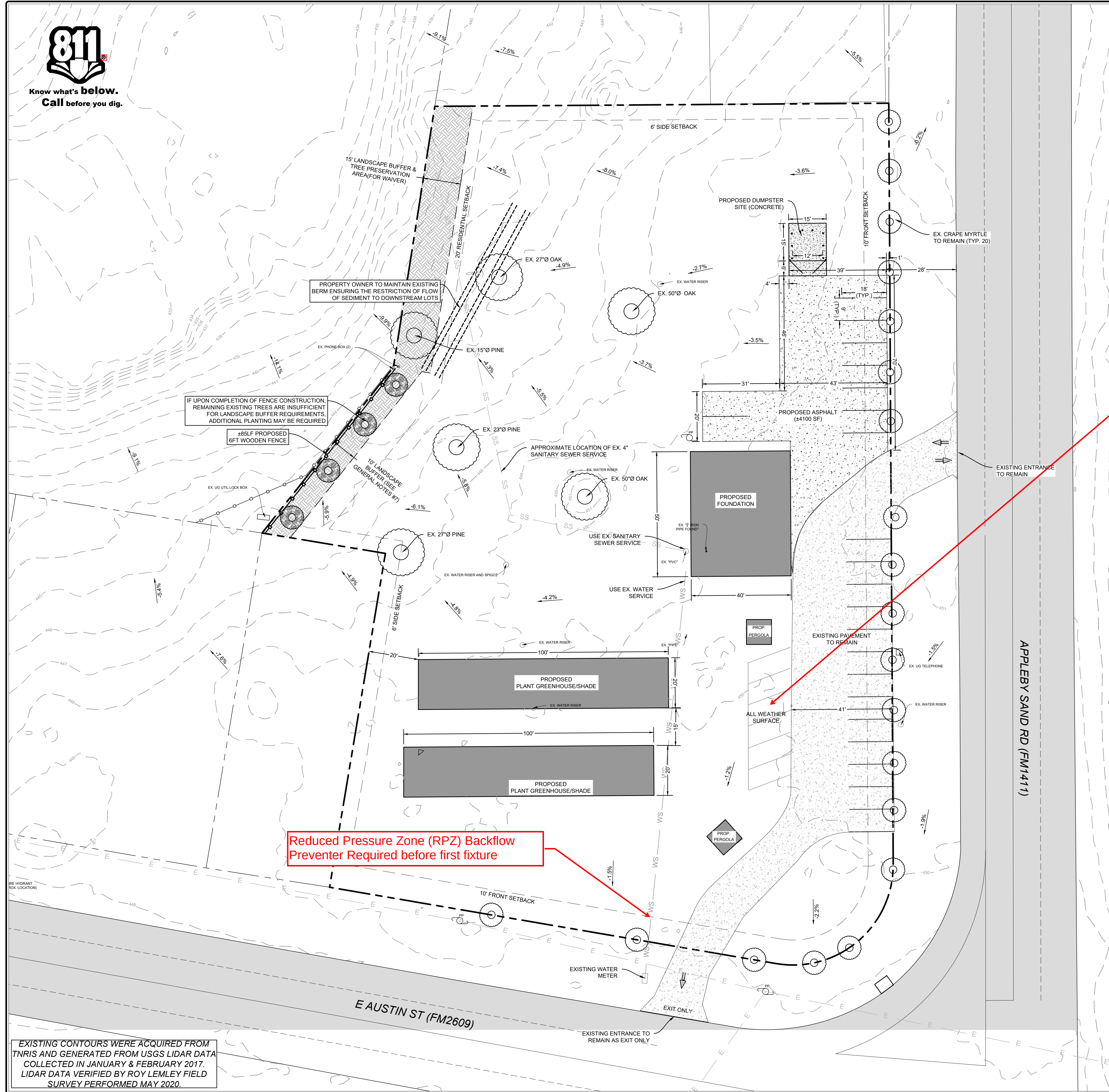
- Existing Tree's
- Exit Only
- Foundation
- Greenhouse/Shade/Pergola
- Impervious Surface Parking
- Light Pole
- Parking
- Property Boundary
- Residential Screening







Know what's below.  
Call before you dig.

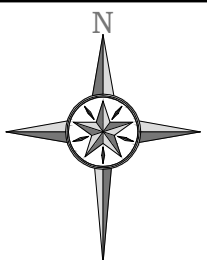


EXISTING CONTOURS WERE ACQUIRED FROM  
TNRIS AND GENERATED FROM USGS LIDAR DATA  
COLLECTED IN JANUARY & FEBRUARY 2017.  
LIDAR DATA VERIFIED BY ROY LEMLEY FIELD  
SURVEY PERFORMED MAY 2020.



AKRON CONSULTING, LLC.  
431 N. CENTER ST.  
LONGVIEW, TX 75601  
TBE Firm Reg. # 14014  
(O) 903-236-9744  
(F) 903-236-9745  
www.akron-consulting.com

0 20' 40'  
1"=20'  
CONTOUR INTERVAL 1 FOOT



| NO. | REVISION | BY | DATE |
|-----|----------|----|------|
|     |          |    |      |
|     |          |    |      |
|     |          |    |      |
|     |          |    |      |
|     |          |    |      |
|     |          |    |      |
|     |          |    |      |
|     |          |    |      |
|     |          |    |      |

PIPE AND FITTING SCHEDULE  
ALL 2" - 3" PVC WATER PIPE SHALL BE ASTM D-2241 SDR 21  
ALL PVC SANITARY SEWER PIPE SHALL BE SDR 26 ASTM D-3034  
ALL PVC SANITARY SEWER FITTINGS SHALL BE SDR 26

| PARKING COUNT  |          |          |
|----------------|----------|----------|
| PARKING SPACES | REQUIRED | PROVIDED |
|                | 31       | 28       |

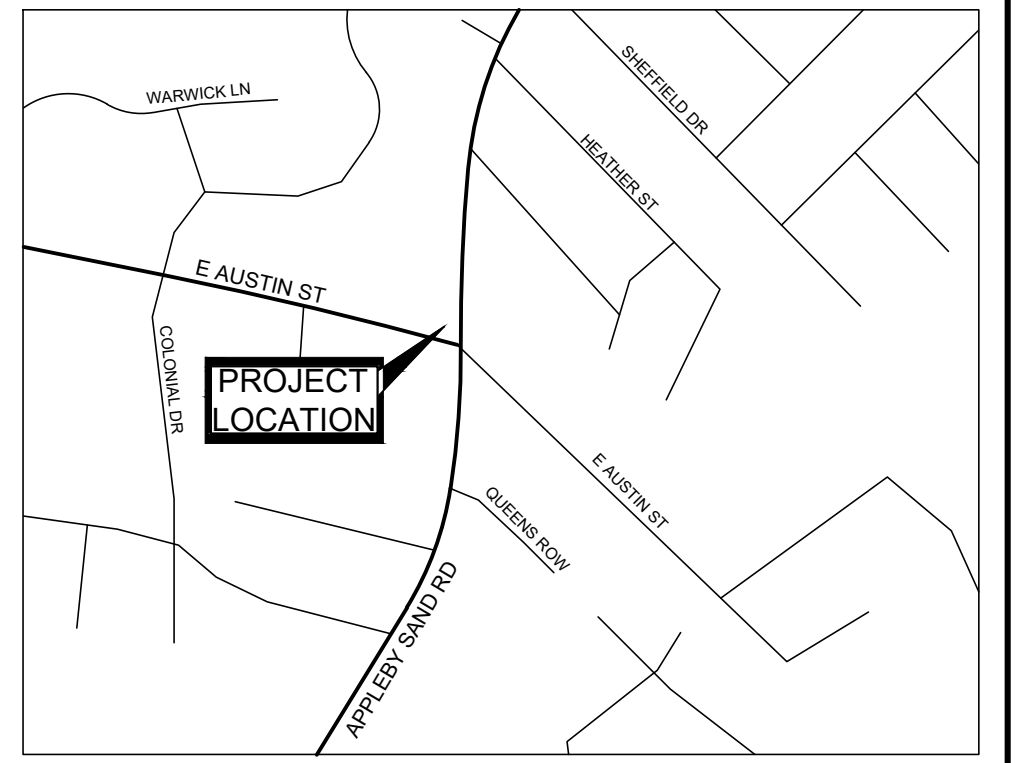
\*1 SPACE PER 1,000 SQ FT OF  
SITE AREA (330,000 SQ FT)  
\*LANDSCAPE CREDIT  
REDUCTION OF 10% (3  
SPACES)

Planning Review:  
Alaina Chafin  
Approved  
as Noted

REVIEWED  
By Case at 11:39 am, 7/17/20

Site area is based on  
developed portion of  
the property.

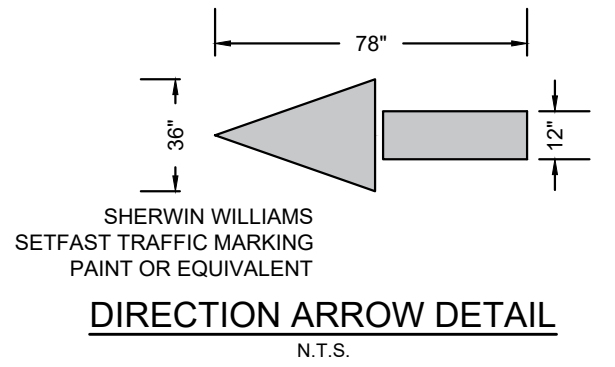
All required parking must be hard surface pavement  
(ex. asphalt, concrete)



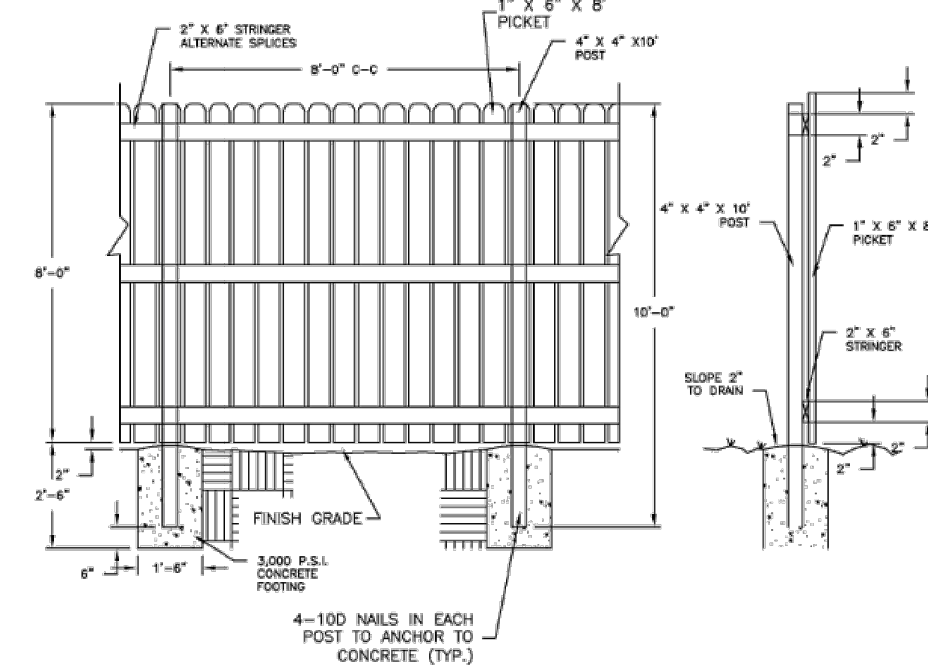
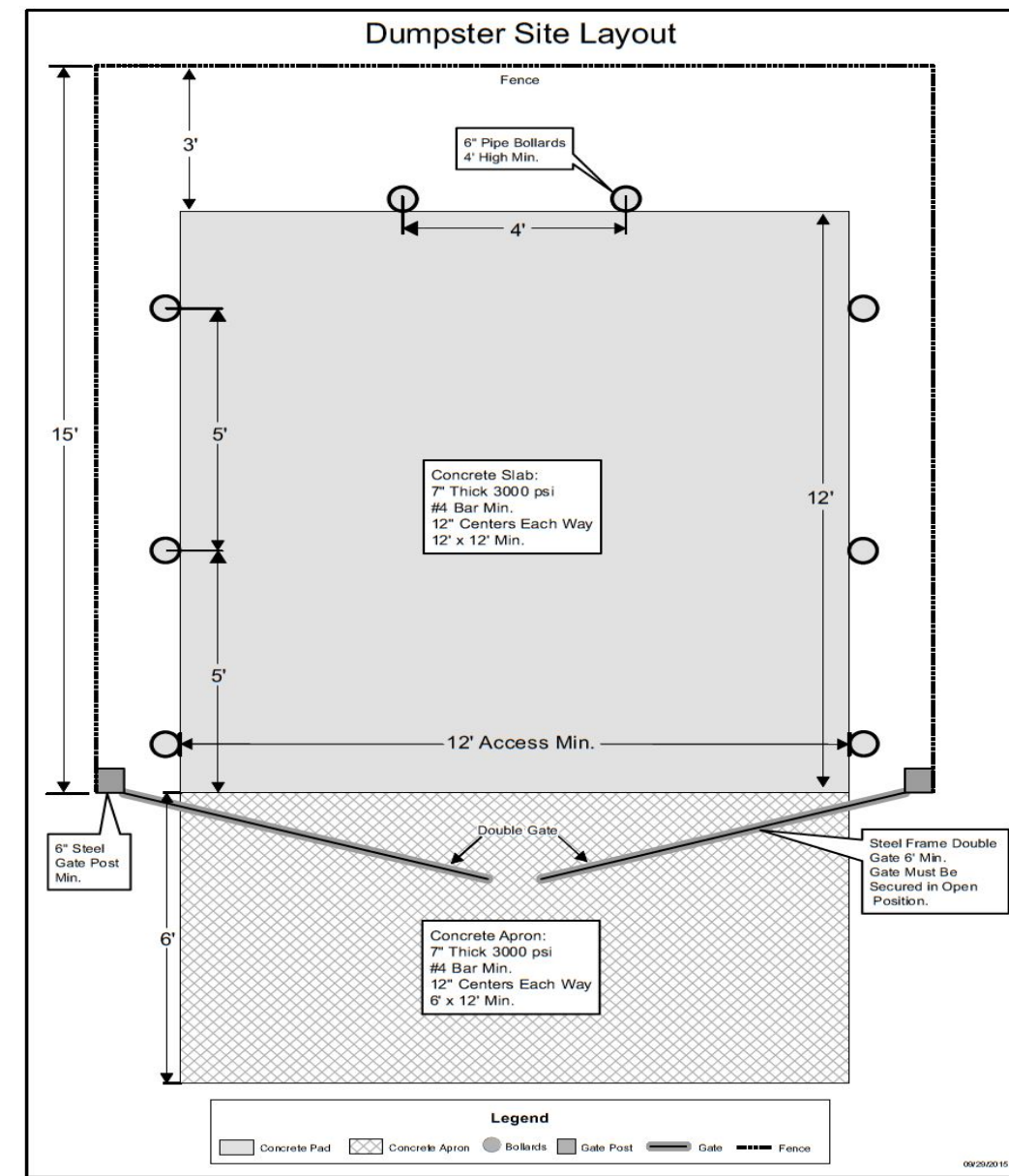
VICINITY MAP  
N.T.S.

#### STRIPING GENERAL NOTES

- ALL PAVEMENT STRIPING SHALL UTILIZE SHERWIN WILLIAMS SETFAST TRAFFIC MARKING PAINT OR EQUIVALENT.
- ALL PAVEMENT STRIPING SHALL BE WHITE IN COLOR UNLESS OTHERWISE NOTED.



SHERWIN WILLIAMS  
SETFAST TRAFFIC MARKING  
PAINT OR EQUIVALENT  
DIRECTION ARROW DETAIL  
N.T.S.



#### GENERAL NOTES

- PRIOR TO STARTING CONSTRUCTION, THE GENERAL CONTRACTOR SHALL BE RESPONSIBLE TO VERIFY THAT ALL NECESSARY PERMITS AND APPROVALS HAVE BEEN OBTAINED. NO CONSTRUCTION SHALL BEGIN UNTIL ALL PERMITS HAVE BEEN RECEIVED.
- IF THE CONTRACTOR, IN THE COURSE OF THE WORK, FINDS ANY DISCREPANCIES BETWEEN THE PLANS AND THE PHYSICAL CONDITIONS OF THE LOCALITY, OR ANY ERRORS OR OMISSIONS IN THE PLANS OR IN THE LAYOUT AS GIVEN BY THE ENGINEER, IT SHALL BE HIS DUTY TO IMMEDIATELY INFORM THE ENGINEER, IN WRITING, AND THE ENGINEER WILL PROMPTLY VERIFY THE SAME. ANY WORK DONE AFTER SUCH DISCOVERY, UNTIL AUTHORIZED, WILL BE AT THE CONTRACTOR'S RISK.
- CONTRACTOR SHALL BE RESPONSIBLE FOR VERIFICATION OF ALL SETBACKS, EASEMENTS, AND DIMENSIONS SHOWN HEREON BEFORE BEGINNING CONSTRUCTION.
- ALL CONSTRUCTION MATERIALS AND WORKMANSHIP SHALL BE IN ACCORDANCE WITH THE STATE AND AUTHORITY HAVING JURISDICTION'S LATEST CONSTRUCTION SPECIFICATIONS AND DETAILS.
- ALL HANDICAP SITE FEATURES SHALL BE CONSTRUCTED TO MEET ALL FEDERAL AND STATE CODES.
- THE CONTRACTOR SHALL CAREFULLY PRESERVE BENCHMARKS, REFERENCE POINTS, AND STAKES.
- CONTRACTOR SHALL MAINTAIN THE SITE IN A MANNER TO PREVENT INJURY TO WORKMEN AND THE PUBLIC AND TO PREVENT DAMAGE ON ADJOINING PROPERTY.
- CONTRACTOR IS RESPONSIBLE FOR DAMAGE TO ANY EXISTING ITEM AND/OR MATERIAL INSIDE OR OUTSIDE CONTRACT LIMITS DUE TO THE CONSTRUCTION OPERATION.
- CONTRACTOR SHALL CONTACT DIGTESS (811) PRIOR TO ANY CONSTRUCTION ACTIVITIES.
- CONTRACTOR TO FIELD VERIFY ALL EXISTING UTILITIES..
- DIMENSIONS SHOWN ARE FROM FACE OF CURB TO FACE OF CURB, UNLESS OTHERWISE NOTED.
- SIZE AND LOCATION OF EXISTING TREES WERE PROVIDED BY THE OWNER.
- IN ACCORDANCE WITH SECTION 118-429 OF THE ZONING ORDINANCE, EXISTING TREES SHOULD BE PRESERVED IN THE 10-FOOT LANDSCAPE BUFFER REQUIRED ALONG THE PROPERTY LINE ADJACENT RESIDENTIAL NEIGHBORHOOD TO MEET THE COMMERCIAL SCREENING PLANTING REQUIREMENTS. HOWEVER, THESE TREES (NEW OR EXISTING) MUST BE NON-DECIDUOUS (EVERGREEN) IN ORDER TO PROVIDE YEAR-ROUND SCREENING AND SHALL BE OF A TYPE AND SPECIES LISTED IN SUBSECTION 118-430(F)(2).

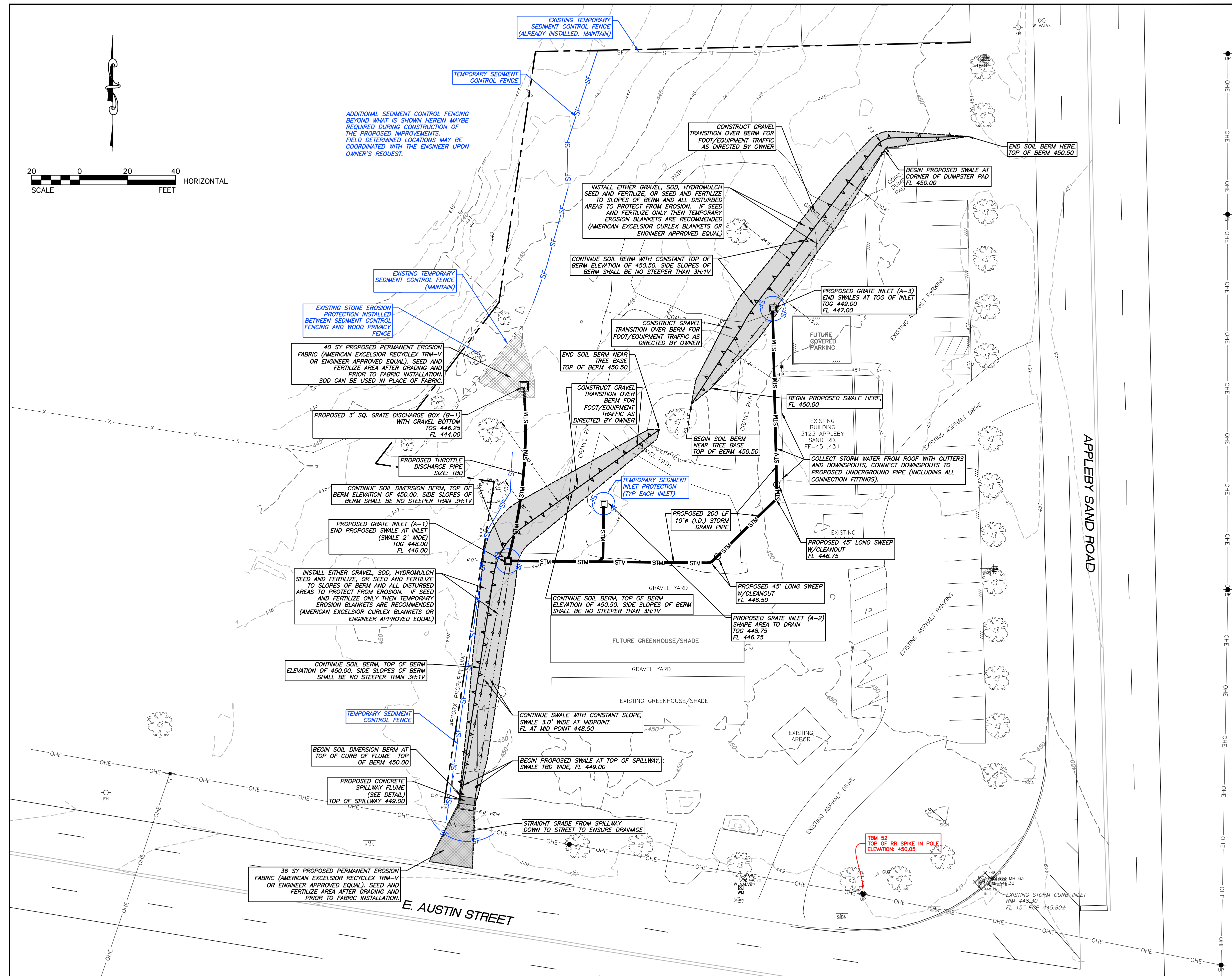
THIS DOCUMENT IS RELEASED  
FOR REVIEW PURPOSES ONLY  
UNDER THE AUTHORITY OF  
LANE D. ROBERTS, P.E. 105135  
IN JULY, 2020. IT IS NOT TO BE  
USED FOR CONSTRUCTION.

THE PLANT SHED  
3123 APPLEBY SAND RD  
MACDOUGHERS, TEXAS

SITE & UTILITY PLAN

DR. BY DE DATE 07/13/2020 DWG. NAME c1.0 site plan.dwg SHEET: C1.0





## General Notes

1. EXISTING UTILITY LOCATIONS AND/OR MATERIALS SHOWN ON THE PLANS ARE APPROXIMATE. THE CONTRACTOR IS HEREBY NOTIFIED THAT ALL EXISTING UTILITIES, WHETHER BURIED OR OVERHEAD, MAY NOT BE SHOWN AND THAT THE CONTRACTOR IS RESPONSIBLE FOR LOCATING AND PROTECTING ALL UTILITIES WITHIN THE PROJECT AREA. THE CONTRACTOR SHALL ALSO BE RESPONSIBLE FOR REPAIRING AND/OR REPLACING ANY AND ALL UTILITIES DAMAGED BY THE CONTRACTOR'S OPERATIONS AND THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE COSTS FOR WHICH SHALL BE BORNE BY THE CONTRACTOR.
2. THE CONTRACTOR IS HEREBY NOTIFIED THAT DANGEROUS UTILITIES MAY EXIST IN THE PROJECT AREA. THESE MAY INCLUDE BUT ARE NOT LIMITED TO: OVERHEAD OR BURIED HIGH VOLTAGE ELECTRIC LINES, TELEPHONE LINES, FIBER-OPTIC LINES, AND GAS LINES.
3. THE CONTRACTOR SHALL NOTIFY THE CITY ENGINEERING DEPT. FOR INSPECTION PRIOR TO COVERING UNDERGROUND IMPROVEMENTS, BEFORE POURING CONCRETE SLABS, OR MAKING ANY UTILITY TAPS OR CURB CUTS.
4. THIS IS NOT A BOUNDARY SURVEY.
5. THE CONTRACTOR IS RESPONSIBLE FOR PROVIDING TEMPORARY EROSION CONTROL (SILT OR SEDIMENT CONTROL FENCING) ON ALL DOWNHILL SLOPE AREAS OF THIS SITE AND WHERE SHOWN ON PLAN. THESE CONTROLS SHALL BE MAINTAINED UNTIL THE SITE IS READY FOR PERMANENT GROUND COVER IS ESTABLISHED.

| 1   | ISSUED FOR OWNER REVIEW | 07/06/22 |
|-----|-------------------------|----------|
| No. | Revision/Issue          | Date     |

**TWO FIFTEEN  
CONSULTING**  
ENGINEERS + SURVEYORS

412 North St.  
Nacogdoches, TX 7596  
p: 936-569-0505

TBPE F-17461  
TBPLS 10194339

Engineer Seal:

PRELIMINARY  
FOR REVIEW

THIS DOCUMENT IS RELEASED FOR THE  
PURPOSES OF INTERIM REVIEW UNDER  
THE AUTHORITY OF MICHAEL P. DELANEY,  
P.E. 120455 ON 7/6/2022. IT IS NOT  
TO BE USED FOR BIDDING, PERMIT OR  
CONSTRUCTION PURPOSES.

# ***SITE STORM DRAINAGE PLAN***

**THE PLANT SHED**  
**3123 APPLEBY SAND RD.**  
**NACOGDOCHES, TEXAS**

|                        |                             |
|------------------------|-----------------------------|
| Scale:<br>SEE PLAN     | Issue Date:<br>07/06/2022   |
| Drawn By:<br>CMS       | Checked By:<br>MPD          |
| File:<br>21102_200.dwg | Drawing No.<br><b>C-200</b> |

THIS DRAWING AND OTHER RELATED DOCUMENTS, INCLUDING DOCUMENTS ON ELECTRONIC MEDIA, WERE PREPARED BY TWO FIFTEEN CONSULTING AND SHALL REMAIN THE PROPERTY OF TWO FIFTEEN CONSULTING. ALL INFORMATION SHALL BE USED ONLY FOR DESCRIBING, CONSTRUCTING, OR INSTALLING THE WORK SHOWN AT THE SITE OF THE WORK SPECIFIED HEREON. ANY OTHER USE OF THIS DRAWING, INCLUDING WITHOUT LIMITATION, ANY REPRODUCTION OR ALTERATION IS STRICTLY PROHIBITED, AND TWO FIFTEEN CONSULTING SHALL BE HELD RESPONSIBLE FROM ANY DAMAGE TO THE CONSTRUCTION, USE, OR RESULT OF SUCH UNAUTHORIZED USE OR CHANGES.



# 200 Foot Notification Map

SUP2020-03: 3123 Appleby Sand Rd.

## Legend



200 Foot Buffer



Existing SUP



Single Family-Rental



Two Family- Rental



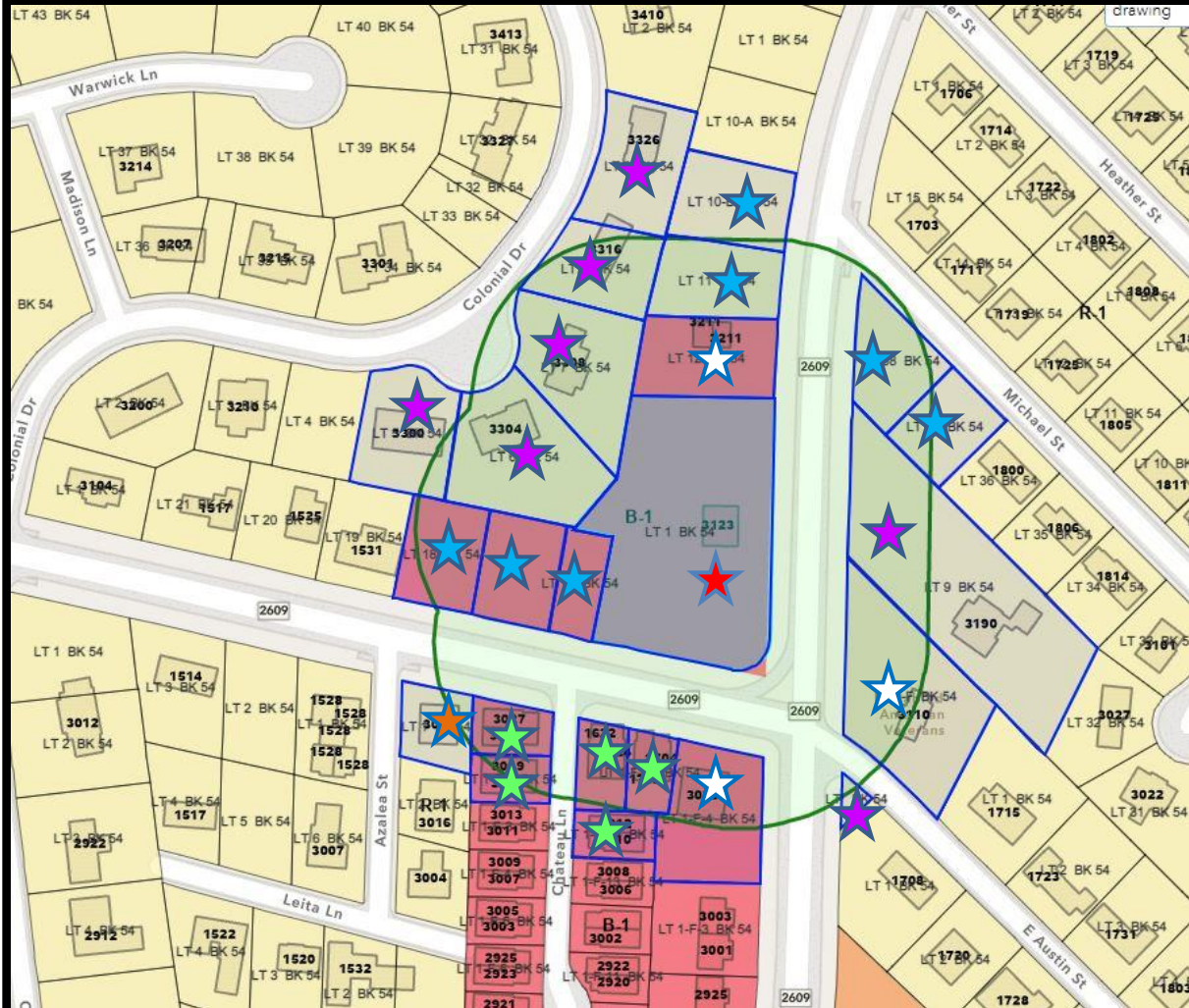
Single Family-  
Owner Occupied



Commercial



Undeveloped



## Response Form

Project Number: SUP2020-03: The Plant Shed  
3123 Appleby Sand Rd.

You may make your views known by completing this form and returning it to the Planning & Zoning department. You may also make your views known in person by attending the public hearings. **Please complete and return form to:**

City of Nacogdoches Planning & Zoning Department  
Attn: Rhonda Lewis  
PO Drawer 635030  
Nacogdoches, TX 75963

You may also email a copy to Rhonda Lewis, [lewisr@nactx.us](mailto:lewisr@nactx.us)

-----  
**Project Number: SUP2020-03: The Plant Shed**

**Please circle one:** ☐ In favor of request ☐ Opposed to request

### Comments:

I recommend the business work  
with an engineer to develop ~~xxx~~ and  
implement a viable plan to properly  
deal with this.

Signature: Bud Wright

Printed Name: Bud Wright, Mgr: Five Star Real Estate

Street Address: 915 S. Fredonia

City, State and Zip Code: Nacogdoches, Tx 75964

Phone Number: 936-554-4455

Email Address: bwright@tfnutrition.com

Physical Address of Property within 200 Feet: \_\_\_\_\_



Please circle one:

☒ In favor of request

☐ Opposed to request

Comments:

My home suffers continual damage from the ongoing water and sand runoff from the lots on Appleby Sand Rd. and East Austin St. behind my property. I have spent approx. \$9000. on a drainage system repair.

Signature:

Janet Wyatt Fults

Printed Name:

Janet Wyatt Fults

Street Address:

3316 Colonial Drive

City, State and Zip Code:

Nacogdoches, TX 75965

Phone Number:

936) 615-4540 (cell)

Email Address:

jbrad01@suddenlink.net

Physical Address of Property within 200 Feet:

3316 Colonial Dr.

LT 8 BK 1 Colonial H:  
Section 1

**City of Nacogdoches**

202 E. Pilar – PO Drawer 635030 – Nacogdoches, TX 75963

936-559-2574 Fax 936-559-2910 [www.nactx.us](http://www.nactx.us)

Home of Stephen F. Austin State University [www.sfasu.edu](http://www.sfasu.edu)

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Nacogdoches, TX 75963

You may also email a copy to Rhonda Lewis, [lewisl@nactx.us](mailto:lewisl@nactx.us)

Project Number: SUP2020-03: The Plant Shed

**Please circle one:**

☒ In favor of request

☐ Opposed to request

### Comments:

*I have incurred many expenses, especially my backyard retaining wall landscape timbers have rotted, fell off - I put in concrete steps at back porch years ago, drains installed in back yard + on lots 4 + 5. Blk 54.*

Signature: Vera C. Schwab

Printed Name: Vera C. Schwab

Street Address: 3300 Colonial Dr.

City, State and Zip Code: Nacogdoches, TX 75965-3079

Phone Number: 936-564-4527 (home); 936-615-6335 (cell)

Email Address: mimischwab@suddenlink.net

Physical Address of Property within 200 Feet: 3300 Colonial Dr.

Lots 4 + 5 BK 1  
Colonial Hills  
Section 1

City of Nacogdoches

202 E. Pilar – PO Drawer 635030 – Nacogdoches, TX 75963  
936-559-2574 Fax 936-559-2910 [www.nactx.us](http://www.nactx.us)  
Home of Stephen F. Austin State University [www.sfasu.edu](http://www.sfasu.edu)

*Lots 4 + 5 in Blk. 54 are mine, were shown separately but now together in Nacogdoches appraisal district. See attachd.*





Notice: This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries.



0 50 100 200 Feet

Date Created: May 25, 2022 Software: ArcGIS 10.8.1





Nacogdoches Central Appraisal District  
216 W HOSPITAL ST  
NACOGDOCHES, TX 75961  
Phone: (936)560-3447  
Fax: (936)560-1894

## NOTICE OF APPRAISED VALUE

This is NOT a Tax Statement - Do NOT Pay From This Notice.

Appraisal Year - 2022

Location of ARB Hearings:

216 W HOSPITAL ST

NACOGDOCHES, TX 75961

IF YOU HAVE GENERAL QUESTIONS

PLEASE CALL THE CENTRAL APPRAISAL DISTRICT

AT: (936) 560-3447

Protest Deadline: 06/10/2022

ARB Hearings to Begin: 6/7/2022 9:00:00AM

Owner ID: 65109

Website: www.nacocad.org

Postmark Date: 05/11/2022

Dear Property Owner:

We have appraised the property listed below for the 2022 tax year. The appraisal is for the following property:

Beginning August 7th, visit [Texas.gov/PropertyTaxes](https://www.texas.gov/PropertyTaxes) to find a link to your local property tax database on which you can easily access information regarding your property taxes, including information regarding the amount of taxes that each entity that taxes your property will impose if the entity adopts its proposed tax rate. Your local property tax database will be updated regularly during August and September as local elected officials propose and adopt the property tax rates that will determine how much you pay in property taxes.

Percent difference from 2017 is a 28.00% increase.

| APPRAISAL INFORMATION                               | LAST YEAR | PROPOSED THIS YEAR      | PROPOSED 2022 TAXABLE VALUE | ACCOUNT NUMBER / PROPERTY DESCRIPTION             |
|-----------------------------------------------------|-----------|-------------------------|-----------------------------|---------------------------------------------------|
| Total Market Value                                  | 210,240   | 252,270                 |                             | ACCT #: 18-148-5401-005000 PARCEL: 28214          |
| HS Land Market Value                                | 59,620    | 71,540                  |                             | ADDR: 3300 COLONIAL DR                            |
| HS Structures(Buildings) Value                      | 150,620   | 180,730                 |                             | NACOGDOCHES, TX                                   |
| Total Homestead Cap Value                           | 210,240   | 231,260                 | 231,260                     | ABST/Block/Lot: COLONIAL HILLS SEC 1-01/089 1-4,5 |
| Total Proposed Taxable Value (with Homestead Limit) | 210,240   |                         | 231,260                     | LEGAL: LTS 4 & 5 BK 1 COLONIAL HILLS SECTION 1    |
| Exemptions: OVER 65                                 |           | * HOMESTEAD CAP APPLIED |                             | ACRES: 0.000 INTEREST: 1.000000                   |
|                                                     |           |                         |                             | CATEGORY: A1                                      |

| Taxing Units                    | Exemption Type for Last Year | Exemption Amount for Last Year | Exemption Type for Current Year | Exemption Amount for Current Year | Exemption Amount Cancelled or Reduced from Last Year | Last Year Taxable Value (less exemptions) | Current Year Taxable Value (less exemptions) |
|---------------------------------|------------------------------|--------------------------------|---------------------------------|-----------------------------------|------------------------------------------------------|-------------------------------------------|----------------------------------------------|
| NAC COUNTY - HS Ceiling Freeze  | OVER65                       | 82,050                         | OVER65                          | 86,250                            | 0                                                    | 128,190                                   | 145,010                                      |
| CITY OF NAC                     | OVER65                       | 62,050                         | OVER65                          | 66,250                            | 0                                                    | 148,190                                   | 165,010                                      |
| NAC ISD I&S - HS Ceiling Freeze | OVER65                       | 87,050                         | OVER65                          | 91,250                            | 0                                                    | 123,190                                   | 140,010                                      |
| NAC ISD M&O - HS Ceiling Freeze | OVER65                       | 87,050                         | OVER65                          | 91,250                            | 0                                                    | 123,190                                   | 140,010                                      |

The Texas Legislature does not set the amount of your local taxes. Your property tax burden is decided by your locally elected officials, and all inquiries concerning your taxes should be directed to those officials.

If you qualified your home for an age 65 or older or disabled person homestead exemption for school taxes, the school taxes on that property cannot increase as long as you own and live in that home. The tax ceiling is the amount you pay in that year that you qualified for the age 65 or older or disabled person exemption. The school taxes on your home may not go above the amount of the ceiling, unless you improve the home (other than normal repairs or maintenance).

Enclosed are copies of the following documents published by the Texas Comptroller of Public Accounts: (1) Property Taxpayer Remedies; and (2) notice of protest. The Appraisal Review Board will begin hearing protests on 6/7/2022 9:00:00AM. To file a protest, complete the notice of protest form by following the instructions included on the form and, no later than 06/10/2022, mail or deliver the form to the appraisal review board at the following address: 216 W HOSPITAL ST, NACOGDOCHES, TX 75961.

Property owners who file a notice of protest with the appraisal review board (ARB) may request an informal conference with the appraisal district to attempt to resolve a dispute prior to a formal ARB hearing. In counties with populations of 1 million or more, property owners may request an ARB special panel for certain property protests. Contact your appraisal district for further information.

Sincerely,  
Chief Appraiser - Nacogdoches Central Appraisal District

If you currently receive a residence homestead exemption, the exemption amounts shown on this notice are those provided by law as of the date of this notice. If Texas voters approve the proposed constitutional amendment to increase the general residence homestead exemption for school taxes from \$25,000 to \$40,000, your exemption amount will automatically increase, and school districts will compute your taxes using the greater exemption amount.



Cynthia Pettit German

3308 Colonial Dr.

Nacogdoches, TX 75965

I am writing in regards to the June 13, 2022 Planning & Zoning meeting. I will be in Washington State, have a two hour time difference, and where I am staying internet is unavailable.

I am definately in favor of revoking the Plant Shed's license to do business until they correct the problem. I don't even know what the purpose of the meeting. The Plant Shed owner's engineer's were allowed to open with certain conditions. An approved engineer plan and design was supposed to be submitted before they opened in November of 2020. These conditions have not been met. The Plant Shed is in clear violation and has been.

I would like to know who approved and signed off on what they have done? I have had a four inch PVC pipe pointed directly at my yard since May 10, 2021 that is causing flooding my yard and home as well as Katheryn Cox's home at 3304 Colonial Dr. I sent pictures and a video on 5-10-2021 of the water shooting out of the pipe showing the water's path to Steve, and he told me there were no pipes on site plan. Another sign that no one from the City was following through with checking for an acceptable plan presented by an engineer. The pipe is still there, funnelling massive amounts of water into my yard with each rain. Since the Plant Shed went in, it has been a constant ongoing battle.

On 4-13-2022, we flooded again so I called Alaina again to inquire what The Plant Shed had done to correct the problem. She apologized and told me the city had "dropped the ball", and that no one had been there to check. She told me she was going to meet with Steve. On 4-21-2022 Steve came to my home to look again. He also apologized on behalf of himself and the city. He told me he had talked to Alaina, and the city would be sending a letter to Plant Shed that would give them fifteen days to come up with an inspection letter ASAP. After Alaina, Steve, the City Manager and City Attorney met, I was told the zoning meeting has to happen first. We shouldn't have to start over. It's been over a year and a half so far.

The following is a list of dates where I contacted Steve or Alaina. I can provide texts, pictures and videos if needed.

5-20-21 I forwarded video of flooding as well as pipe pointing at me. Part of Steve's response was "the site has changed since it was first occupied. We will be working with them to get it back to approved condition". When I asked about a time frame, he stated he wasn't sure but that it needed immediate attention.

6-1-21 I texted Steve again asking about Plant Shed's pipe pointing at us.

6-3-21 I received a message from Steve stating that Alaina and Case Opperman were going to meet with Charles about the excursions from the approved plan. He also stated they have an evaluation and remediation plan.

6-29-21 Steve sent me an update that Plant Shed received their engineering report and would be forwarding to the city to review.

8-18-21 Reached out to Steve again and he referred me to Alaina. I called her office and left multiple messages with no response.

The city has been well aware of the problem and have done nothing to enforce the decisions they made.

My parents bought this home in 2002, and it had runoff issues on the north side of backyard. My dad paid over \$10,000 to install a retaining wall and catch basins. My basins were working until we flooded, and they filled up with sand. My retaining wall is leaning, and I need to replace it but it's a \$13,000.00 investment I don't want to make until the issues are addressed with the Plant Shed. Since they have gone into business, and have paved and/or covered so much square footage, I have spent close to \$3000.00 on rocks, grass, topsoil, and labor.

On 5-24-22, I went to CAD office to protest my property tax increase. I showed Paul the pictures and he told me it will be reduced, and I'm still suffering the effects of erosion and flooding, and the consequences of nothing being done to correct the situation. I also found out the Plant Shed bought .81 acre which measures out at 35,283.6 square feet. It now is well covered over half of the property. Another violation? I forwarded the information to Alaina and Kathleen Balenger. Any help with this matter is greatly appreciated.



Please circle one:

☒ In favor of request

☐ Opposed to request

Comments:

I will be out of state but have provided my neighbor + Kathleen Belanger a copy of my letter and concerns. Please let me know before

Please on 6th

Signature:

Cathy German

Printed Name:

Cynthia Pettit GERMAN

Street Address:

3308 Colonial Dr.

City, State and Zip Code:

Nacogdoches, TX 75965

Phone Number:

360-941-0869

Email Address:

cpgerman2000@yahoo.com

Physical Address of Property within 200 Feet:

3123 Appleby Sand Rd

**City of Nacogdoches**

202 E. Pilar – PO Drawer 635030 – Nacogdoches, TX 75963

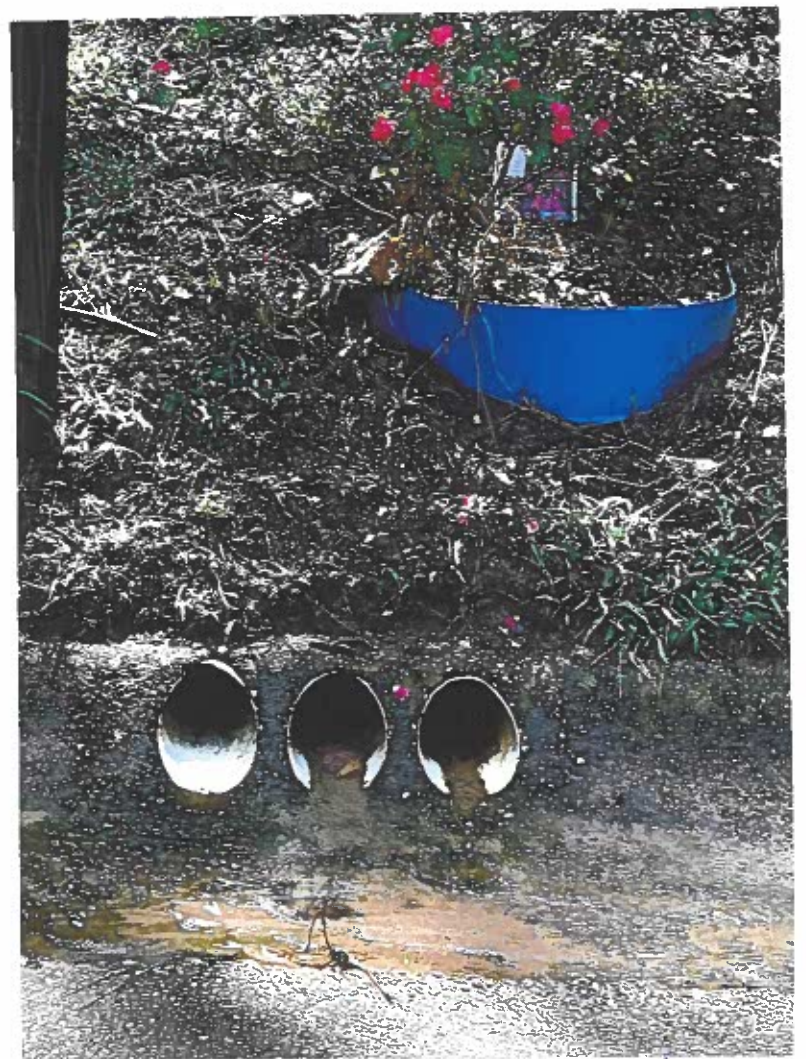
936-559-2574 Fax 936-559-2910 [www.nactx.us](http://www.nactx.us)

Home of Stephen F. Austin State University [www.sfasu.edu](http://www.sfasu.edu)





TAKEN FROM MY FENCE



3 CATCH BASINS FILLED WITH SAND - HAVE TO REPLACE



RETAINING WALL IS COMING DOWN DUE TO RUN OFF  
HAVE A \$13,500.00 BID TO REPLACE



RUN OFF

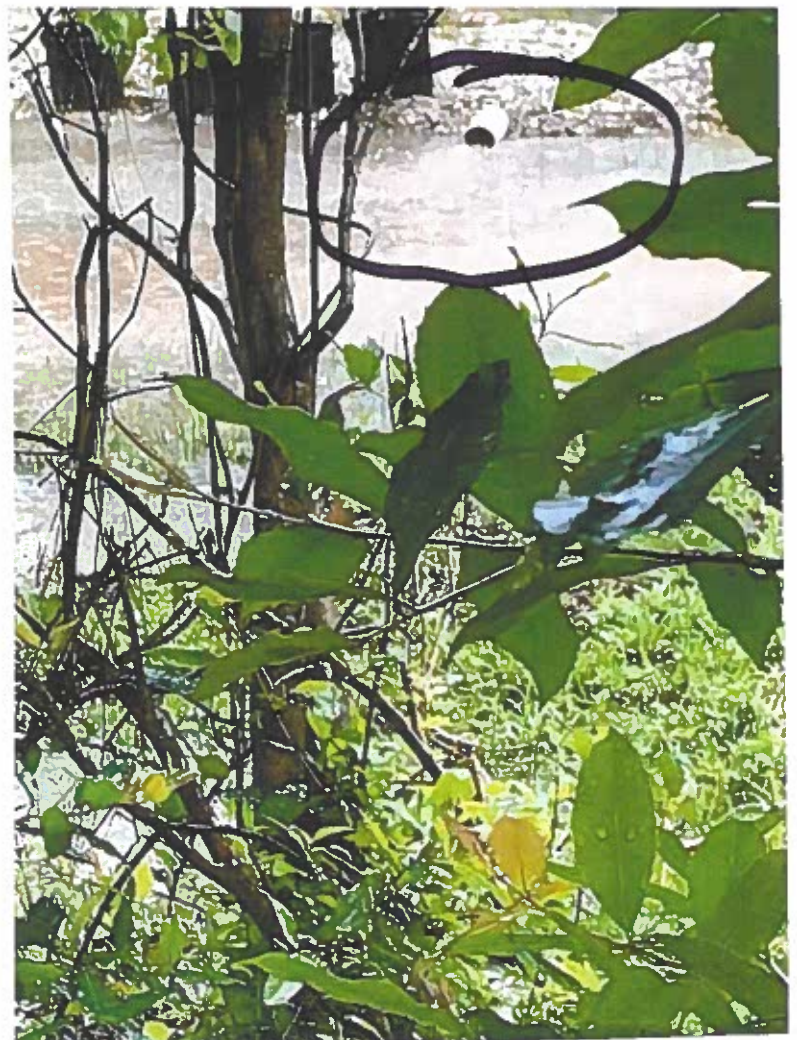


WATER COMES OVER AND UNDER RETAINING WALL





RUN OFF between 3304 + 3308  
Colonial Dr.



TAKEN FROM MY back yard  
fence. PIPE POINTED AT US.



12/30/21 - PLANT SHED HAD BEEN  
OPENED SINCE NOV 2020

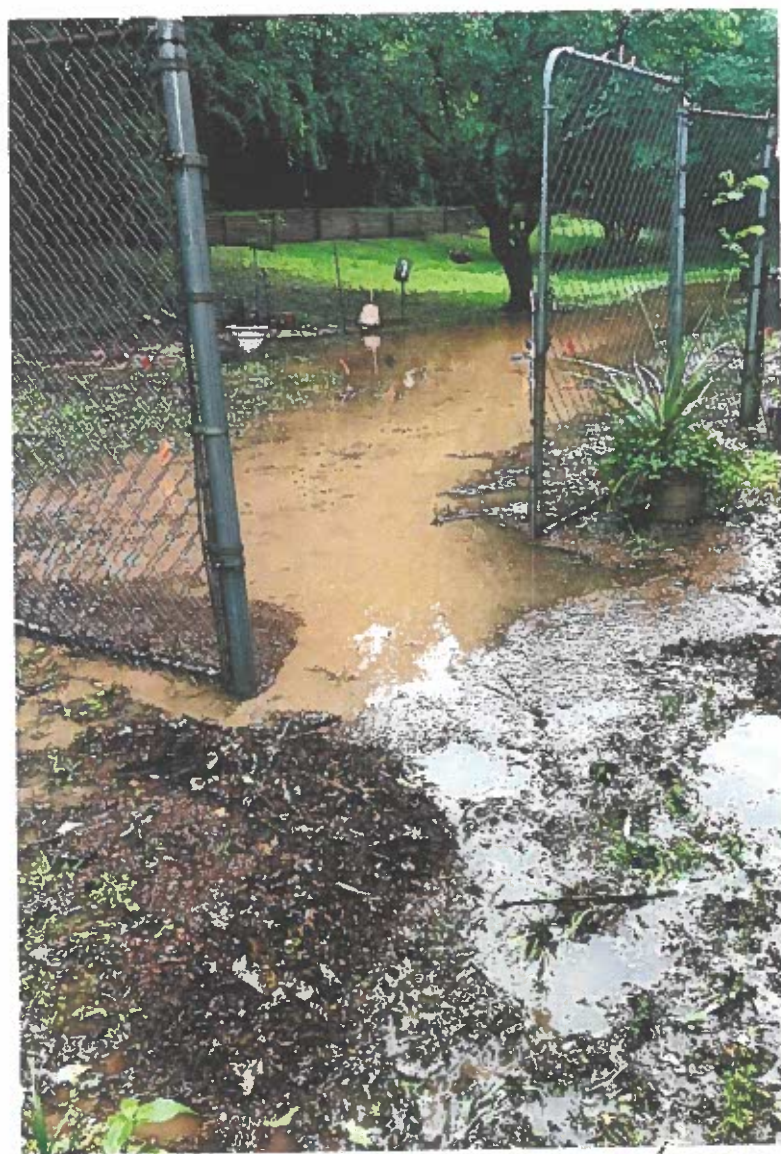


NOTE AMOUNT OF SAND ON driveway  
WE NEVER HAD A PROBLEM  
WITH STANDING WATER





BACK PORCH FLOODING  
4-13-2022



RUNOFF FILLED CATCH BASIN S  
LAST YEAR

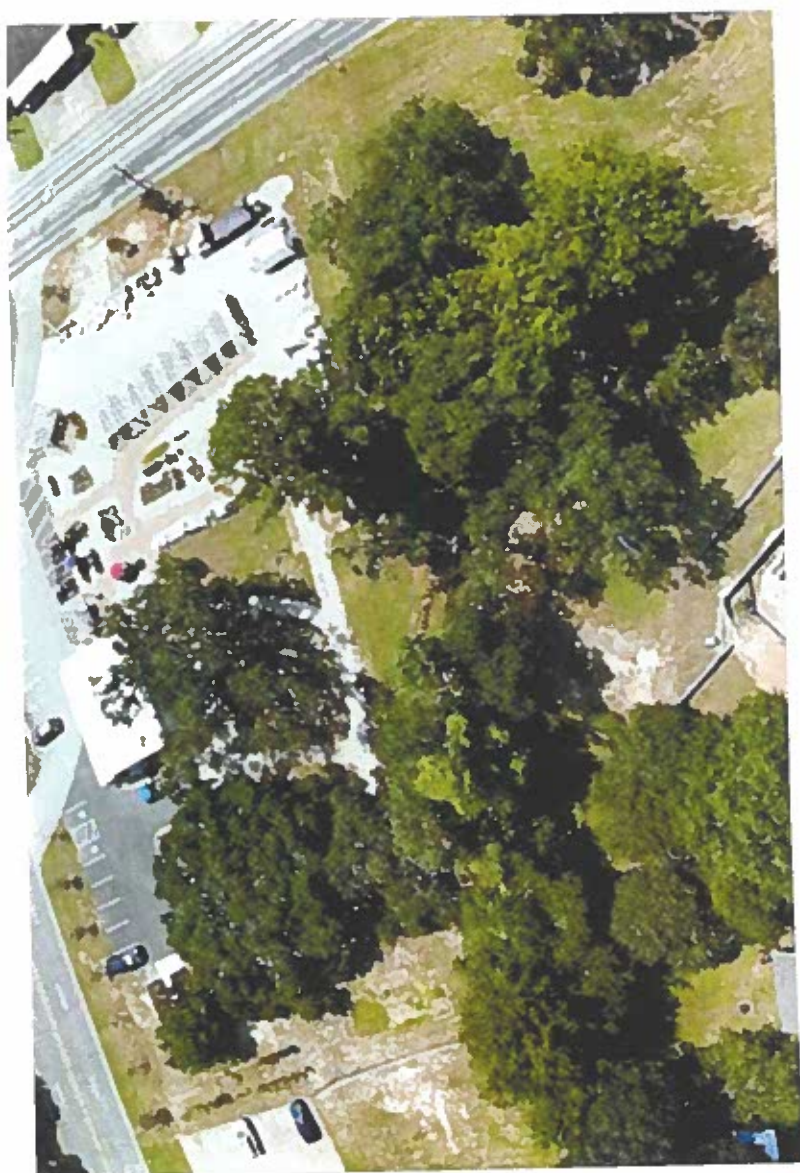


4/14/2022



4/14/22







# SUP 2020-03



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0 50 100 200 Feet

Date Created: May 25, 2022 Software: ArcGIS 10.8.1





### Response Form

Project Number: SUP2020-03: The Plant Shed  
3123 Appleby Sand Rd.

You may make your views known by completing this form and returning it to the Planning & Zoning department. You may also make your views known in person by attending the public hearings. **Please complete and return form to:**

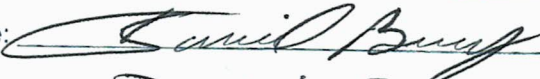
City of Nacogdoches Planning & Zoning Department  
Attn: Rhonda Lewis  
PO Drawer 635030  
Nacogdoches, TX 75963

You may also email a copy to Rhonda Lewis, [lewisr@nactx.us](mailto:lewisr@nactx.us)

-----  
Project Number: SUP2020-03: The Plant Shed

**Please circle one:** ☐ In favor of request ☒ Opposed to request

Comments:

Signature: 

Printed Name: Daniel Bency

Street Address: 3016 AZALEA

City, State and Zip Code: Nacogdoches

Phone Number: 936-560-1592

Email Address: crwoods.rider@hotmail.com

Physical Address of Property within 200 Feet: yes

#### City of Nacogdoches

202 E. Pilar – PO Drawer 635030 – Nacogdoches, TX 75963  
936-559-2574 Fax 936-559-2910 [www.nactx.us](http://www.nactx.us)  
Home of Stephen F. Austin State University [www.sfasu.edu](http://www.sfasu.edu)



JUNE 8, 2022

PLANNING AND ZONING  
CITY COUNCIL

DEAR SIRS:

IN REFERENCE TO THE PUBLIC HEARING  
CONCERNING THE PLANT SHED WE, AS NEARBY  
RESIDENTS, HAVE NO ISSUE WITH THE BUSI-  
NESS LOCATION OR OPERATION.

THE PREMISES ARE KEPT NEAT AND TIDY  
AND THE COLORFUL PLANTS ARE CERTAINLY MORE  
APPEALING THAN THE GAS PUMPS ON THE OPPOSITE  
LOT.

I'VE NOT OBSERVED THAT TRAFFIC FLOW  
HAS BEEN IMPACTED IN ANY WAY. WE CAN  
NOT FATHOM WHY THIS IS AN ISSUE.

DUE TO COVID VARIANTS WE CHOOSE NOT  
TO ATTEND THIS HEARING; AUDIOWING GROUPS  
IS CONSIDERABLE.



SINCERELY,  
ROBERT & CHERYL VERNER  
1715 E. AUSTIN  
NAROG DOCKS, TEXAS  
936-564-3680



# Nacogdoches

the oldest town in Texas

## Response Form

Project Number: SUP2020-03: The Plant Shed  
3123 Appleby Sand Rd.

You may make your views known by completing this form and returning it to the Planning & Zoning department. You may also make your views known in person by attending the public hearings. **Please complete and return form to:**

City of Nacogdoches Planning & Zoning Department  
Attn: Rhonda Lewis  
PO Drawer 635030  
Nacogdoches, TX 75963

You may also email a copy to Rhonda Lewis, [lewisr@nactx.us](mailto:lewisr@nactx.us)

Project Number: SUP2020-03: The Plant Shed

**Please circle one:** ☐ In favor of request ☒ Opposed to request

Comments: *This request is ridiculous!*

Signature: *David Yates*

Printed Name: *DAVID YATES*

Street Address: *203 Hughes St.*

City, State and Zip Code: *Nacogdoches TX 75961*

Phone Number: *936-554-2194*

Email Address: *davidbyates50@hotmail.com*

Physical Address of Property within 200 Feet: \_\_\_\_\_

City of Nacogdoches  
202 E. Pilar – PO Drawer 635030 – Nacogdoches, TX 75963  
936-559-2574 Fax 936-559-2910 [www.nactx.us](http://www.nactx.us)  
Home of Stephen F. Austin State University [www.sfasu.edu](http://www.sfasu.edu)





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Nacogdoches, TX 75963

You may also email a copy to Rhonda Lewis, [lewisr@nactx.us](mailto:lewisr@nactx.us)

-----  
**Project Number: SUP2020-03: The Plant Shed**

**Please circle one:**    ☐ In favor of request    ☒ Opposed to request

**Comments:** The Plant Shed is an asset to our community! I have heard nothing but positive things about this business!

Signature: Kaki Blake Nelson

Printed Name: Kaki Blake Nelson

Street Address: 4003 Redwood Drive

City, State and Zip Code: Nacogdoches, Tx. 75965

Phone Number: 936-552-6802

Email Address: Kakinel@gmail.com

Physical Address of Property within 200 Feet: \_\_\_\_\_

**City of Nacogdoches**  
202 E. Pilar – PO Drawer 635030 – Nacogdoches, TX 75963  
936-559-2574 Fax 936-559-2910 [www.nactx.us](http://www.nactx.us)  
Home of Stephen F. Austin State University [www.sfasu.edu](http://www.sfasu.edu)



# Nacogdoches

the oldest town in Texas

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Nacogdoches, TX 75963

You may also email a copy to Rhonda Lewis, [lewisr@nactx.us](mailto:lewisr@nactx.us)

Project Number: SUP2020-03: The Plant Shed

**Please circle one:** ☐ In favor of request ☒ Opposed to request

### Comments:

The Plant Shed is a wonderful addition to Nacogdoches in so many ways. Surely they

Signature: [Signature]

Printed Name: Lou Ann Jones

Street Address: 3933 Redwood Dr

City, State and Zip Code: Nacogdoches, TX 75965

Phone Number: 936-584-7798

Email Address: louann1972@gmail.com

Physical Address of Property within 200 Feet: \_\_\_\_\_

I am sure that every citizen has done everything possible to please the city and address the issue. What a shame it would be to lose this business because an agreement cannot be reached.

City of Nacogdoches  
202 E. Pilar - PO Drawer 635030 - Nacogdoches, TX 75963  
936-559-2574 Fax 936-559-2910 [www.nactx.us](http://www.nactx.us)  
Home of Stephen F. Austin State University [www.sfasu.edu](http://www.sfasu.edu)





### Response Form

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Nacogdoches, TX 75963

You may also email a copy to Rhonda Lewis, [lewisr@nactx.us](mailto:lewisr@nactx.us)

-----  
Project Number: SUP2020-03: The Plant Shed

**Please circle one:**

☐ In favor of request

☒ Opposed to request

Comments:

Signature: Nancy A. Smith

Printed Name: Nancy A. Smith

Street Address: 103 CR 920

City, State and Zip Code: Nac

75964

Phone Number: 936-288-1718

Email Address: mandn4him@gmail.com

Physical Address of Property within 200 Feet: \_\_\_\_\_

#### City of Nacogdoches

202 E. Pilar – PO Drawer 635030 – Nacogdoches, TX 75963  
936-559-2574 Fax 936-559-2910 [www.nactx.us](http://www.nactx.us)  
Home of Stephen F. Austin State University [www.sfasu.edu](http://www.sfasu.edu)



ORDINANCE NO. 1917-07-22

**AN ORDINANCE OF THE CITY OF NACOGDOCHES, TEXAS, GRANTING AN AMENDMENT TO A SPECIFIC USE PERMIT FOR AN GARDEN SHOP AND PLANT SALES – DISPLAY OR GREENHOUSE LOCATED WITHIN THE B-1, LOCAL BUSINESS ZONING DISTRICT, BEING LOT 1, BLOCK 1, OF THE PLANT SHED SUBDIVISION, LOCATED AT 3123 APPLEBY SAND ROAD IN NACOGDOCHES, TEXAS, PROVIDING REQUIREMENTS AND CONDITIONS FOR SAID SPECIFIC USE PERMIT; CONTAINING FINDINGS; PROVIDING A REPEAL CLAUSE; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, the Specific Use Permit process allows the Planning and Zoning Commission and City Council to consider the conditions specific to individual tracts of land and operational characteristics of various businesses; and

**WHEREAS**, the City Planner, filed an application to amend a Specific Use Permit for a Garden Shop & Plant Sales - Display or Greenhouse facility on property that is currently zoned as Local Business (B-1); located at 3123 Appleby Sand Road, said tract being legally described as Lot 1, Block 1, of The Plant Shed Subdivision (the “Property”), and situated within the corporate limits of the City of Nacogdoches, Texas (the “City”), being more particularly described in **Exhibit “A”** and **Exhibit “B”**, attached hereto and made a part hereof for all purposes; and

**WHEREAS**, the City Planner, has presented an application to the City for the granting an amendment to a Specific Use Permit to use said Property for the purpose of a Garden Shop & Plant Sales - Display or Greenhouse facility (the “Specific Use”), as authorized by the City's Zoning Ordinance; and

**WHEREAS**, after satisfaction of all conditions precedent required by law, the Planning and Zoning Commission held a public hearing and did make recommendation to City Council for approval of the amendment to the Specific Use Permit application submitted for the above referenced site; and

**WHEREAS**, after satisfaction of all conditions precedent required by law and receiving the recommendation of the Planning and Zoning Commission, the City Council conducted a public hearing, and immediately thereafter approved the amendment for the Specific Use Permit allowing for the construction, operation and maintenance of an Garden Shop & Plant Sales - Display or Greenhouse facility.

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

**SECTION I**  
**Findings.**

The facts and matters set forth in the preamble of this Ordinance are hereby found to be true and correct, and same are deemed to be in furtherance of a public purpose.



## **SECTION II**

### **Approval of Specific Use Permit**

Pursuant to the requirements of Chapter 118 of the Code of Ordinances of the City of Nacogdoches, Texas, a Specific Use Permit is hereby approved allowing for the construction, operation and maintenance of a Garden Shop & Plant Sales - Display or Greenhouse facility at the above described location, as outlined in “**Exhibit B**”, with the following conditions:

1. The proposed drainage improvements are completed within six (6) months of approval of this ordinance.

## **SECTION III**

### **Repeal**

This Ordinance shall in no manner repeal, amend, change, supplement, or revise any provision of any ordinance of the City, save and except the granting of the Specific Use Permit as herein provided.

## **SECTION IV**

### **Effective Date**

This Ordinance shall take effect following its passage and publication as may be required by governing law.

## **SECTION V**

### **Severability**

If any word, article, phrase, paragraph, sentence, clause, or provision of this Ordinance shall be adjudged by a court of competent jurisdiction to be invalid, the invalidity shall not 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 VI**

### **Proper Notice and Open Meetings**

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 VII**

### **Filing**

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, Texas.

**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:**

\_\_\_\_\_  
JAN VINSON, City Secretary

**APPROVED AS TO FORM:**

\_\_\_\_\_  
STEVEN KIRKLAND, City Attorney

**APPROVED AS TO CONTENT:**

\_\_\_\_\_  
ALAINA HELTON, City Planner



# Exhibit A



Notice: This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries.

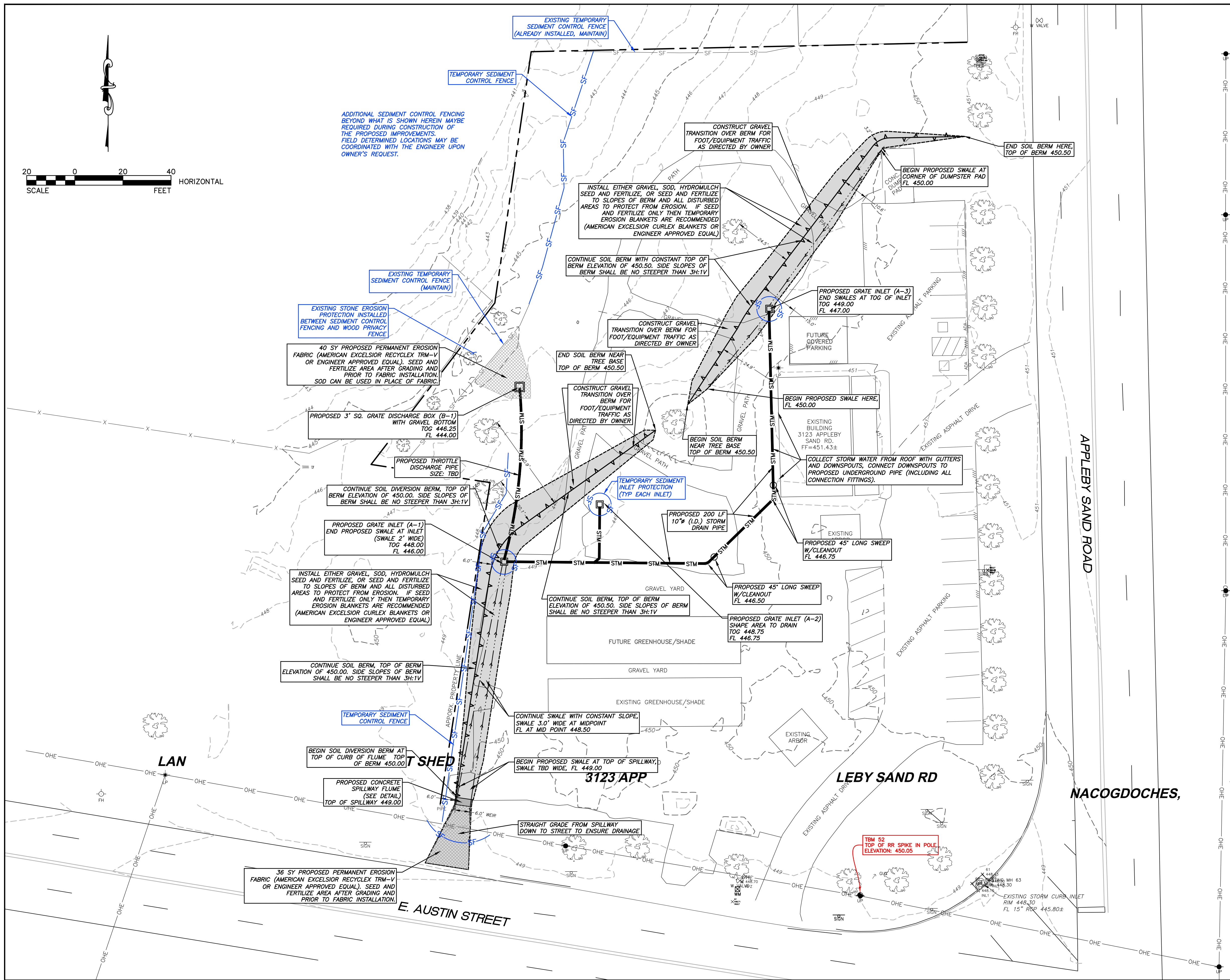


0 50 100 200 Feet

Date Created: May 25, 2022 Software: ArcGIS 10.8.1



Exhibit B



General Notes

1. EXISTING UTILITY LOCATIONS AND/OR MATERIALS SHOWN ON THE PLANS ARE APPROXIMATE. THE CONTRACTOR IS HEREBY NOTIFIED THAT ALL EXISTING UTILITIES, WHETHER BURIED OR OVERHEAD, MAY OR MAY NOT BE SHOWN AND THAT THE CONTRACTOR IS RESPONSIBLE FOR LOCATING AND PROTECTING ALL UTILITIES WITHIN THE PROJECT AREA. THE CONTRACTOR SHALL ALSO BE RESPONSIBLE FOR REPAIRING AND/OR REPLACING ANY AND ALL UTILITIES DAMAGED BY THE CONTRACTOR'S OPERATIONS AND THE COST(S) FOR WHICH SHALL BE BORNE BY THE CONTRACTOR.
2. THE CONTRACTOR IS HEREBY NOTIFIED THAT DANGEROUS UTILITIES MAY EXIST IN THE PROJECT AREA. THESE MAY INCLUDE BUT ARE NOT LIMITED TO: OVERHEAD OR UNDERGROUND ELECTRIC LINES, TELEPHONE LINES, FIBER-OPTIC LINES, AND GAS LINES.
3. THE CONTRACTOR SHALL NOTIFY THE CITY ENGINEERING DEPT. FOR INSPECTION PRIOR TO COVERING UNDERGROUND IMPROVEMENTS, BEFORE POURING BUILDING SLABS, OR MAKING ANY UTILITY TAPS OR CURB CUTS.
4. THIS IS NOT A BOUNDARY SURVEY.
5. THE CONTRACTOR IS RESPONSIBLE FOR PROVIDING TEMPORARY EROSION CONTROL (SILT OR SEDIMENT CONTROL FENCING) ON ALL DOWNHILL SLOPE AREAS OF THIS SITE AND WHERE SHOWN ON PLAN. THESE CONTROLS SHALL BE MAINTAINED AND REMAIN IN PLACE UNTIL PERMANENT GROUND COVER IS ESTABLISHED.

| 1   | ISSUED FOR OWNER REVIEW | 07/06/22 |
|-----|-------------------------|----------|
| No. | Revision/Issue          | Date     |

Engineer Seal:

PRELIMINARY  
FOR REVIEW

THIS DOCUMENT IS RELEASED FOR THE PURPOSES OF INTERIM REVIEW UNDER THE AUTHORITY OF MICHAEL P. DELANEY, P.E. 120455 ON 7/8/2022. IT IS NOT TO BE USED FOR BIDDING, PERMIT OR CONSTRUCTION PURPOSES.

TEXAS

|                        |                           |
|------------------------|---------------------------|
| Scale:<br>SEE PLAN     | Issue Date:<br>07/06/2022 |
| Drawn By:<br>CMS       | Checked By:<br>MPD        |
| File:<br>21102_200.dwg | Drawing No.<br>C          |

THIS DRAWING AND OTHER RELATED DOCUMENTS, INCLUDING DOCUMENTS ON ELECTRONIC MEDIA, WERE PREPARED BY TWO FIFTEEN CONSULTING AND SHALL REMAIN THE PROPERTY OF TWO FIFTEEN CONSULTING. ALL INFORMATION SHALL BE USED ONLY FOR DESIGNING, CONSTRUCTING, OR INSTALLING THE WORK SHOWN AT THE SITE OF THE WORK SPECIFIED HEREON. ANY OTHER USE OF THIS DRAWING, INCLUDING WITHOUT LIMITATION, ANY REPRODUCTION OR ALTERATION IS STRICTLY PROHIBITED, AND TWO FIFTEEN CONSULTING SHALL BE INDemnIFIED FROM LIABILITY ARISING FROM THE CONSTRUCTION, USE, OR RESULT OF SUCH UNAUTHORIZED USE OR CHANGES.





## City Council Meeting

Date: July 19, 2022

Agenda Item: 6.B.

---

**PRESENTER:** Jimmy Mize, Mayor

**ITEM/SUBJECT:** Consider approval of an ordinance amending Chapter 74 of the Code of Ordinances of the City of Nacogdoches to expand the Parks and Recreation Advisory Board. (Mayor)

**SUMMARY/BACKGROUND:** City Council met on July 8, 2022 to conduct City boards and commissions interviews and discussed the need to change the composition of the Parks and Recreation Advisory Board.

The current size of the Advisory Board was deemed too small and the number of applicants willing to serve was found to be ample.

Currently, Chapter 74-27 reads, "The parks and recreation advisory board shall consist of seven adult citizens of the city." City Council is requesting that it be amended to read, "The parks and recreation advisory board shall consist of not less than seven nor more than eleven adult citizens of the city."

**FINANCIAL:**

No financial impact associated with this item

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

Not Applicable

**CITY CONTACT:** Jan Vinson, City Secretary  
[vinsonj@nactx.us](mailto:vinsonj@nactx.us)  
936-559-2506

**ATTACHMENTS:** 1. Ordinance Amendment

## **ORDINANCE NO. 1919-07-22**

### **ORDINANCE OF THE CITY OF NACOGDOCHES, TEXAS, AMENDING CHAPTER 74 OF THE CODE OF ORDINANCES OF THE CITY OF NACOGDOCHES, TEXAS TO EXPAND THE PARKS AND RECREATION ADVISORY BOARD; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.**

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

**WHEREAS**, City Council met on July 8, 2022 to conduct City boards and commissions interviews and discussed the need to change the composition of the Parks and Recreation Advisory Board; and,

**WHEREAS**, the current size of the Advisory Board was deemed to be too small and the number of applicants willing to serve was found to be ample, and,

**WHEREAS**, City Council determined that a larger Advisory Board would enhance the operations of the Parks Department,

**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**

Sec. 74-27 of Chapter 74 of the Code of Ordinances is amended to read as follows, with any struck through text being deleted and any underlined text being inserted into the Code:

Sec. 74-27. - Composition.

The parks and recreation advisory board shall consist of not less than seven nor more than eleven adult citizens of the city.

#### **SECTION III**

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 IV**

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 V

All provisions of Chapter 74 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 VI

This Ordinance shall take effect immediately upon its passage.

## SECTION VII

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 VII

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 \_\_\_\_\_, 2021, by a vote of \_\_\_\_ (ayes) to \_\_\_\_ (nays) of the City Council of the City of Nacogdoches, Texas.

## CITY OF NACOGDOCHES

By: \_\_\_\_\_  
JIMMY MIZE, Mayor

**ATTEST:**

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Jan Vinson, City Secretary

\_\_\_\_\_  
Steven Kirkland, City Attorney



## City Council Meeting

Date: July 19, 2022

Agenda Item: 6.C.

---

**PRESENTER:** Jimmy Mize, Mayor

**ITEM/SUBJECT:** Consider appointing members to the Parks and Recreation Advisory Board.  
(Mayor)

**SUMMARY/BACKGROUND:** The City Council appointed members to several other boards/commissions on July 12, 2022. The Parks and Recreation Advisory Board was inadvertently left off the agenda item. Therefore, City Council will appoint members at the July 19, 2022 City Council meeting.

**FINANCIAL:**

No financial impact associated with this item

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

Not Applicable

**CITY CONTACT:** Jan Vinson, City Secretary  
[vinsonj@nactx.us](mailto:vinsonj@nactx.us)  
936-559-2506

**ATTACHMENTS:**



---

**PRESENTER:** Case Opperman, Public Works Asst Director

**ITEM/SUBJECT:** Consider approval of a contract by and between the City of Nacogdoches and Drewery Construction Co., Inc. for the 2022 Seal Coat Project in a not-to-exceed amount of \$414,644.00. (Assistant Director of Public Works)

**SUMMARY/BACKGROUND:** On July 11, 2022, the City received bids for the 2022 Seal Coat Project. One (1) contractor submitted a base bid as follows:

***Drewery Construction Co., Inc.      \$ 481,144.00***

Drewery Construction Co., Inc. is a qualified and experienced street paving contractor that has successfully completed numerous street paving projects for the City in the past.

This project will include a single-course surface treatment (seal coat) on thirty-four (34) residential streets throughout the City. These streets were originally part of a project which was cancelled earlier this Spring due to unavailability of aggregate material coupled with significantly increased oil pricing over the contract price. Staff has been in contact with area paving contractors about material availability and, while the aggregate the City normally utilizes for seal coating is still in low supply, there are other material options more readily available which are also appropriate for this application and allowed staff confidence in moving forward with bidding this work. A lighter-weight aggregate material was bid as an alternate bid item to ensure the City could award the contract based on the best value for the City with regard to price and availability. This base plus alternate bid would utilize the same asphalt cement but with the lighter-weight aggregate instead of the aggregate originally specified. It should be noted that this lighter-weight aggregate is regularly used by the Texas Department of Transportation with great success. The base plus alternate bid price was a total of \$414,644.00 for this project.

Due to the cost savings and availability of the material, staff recommends awarding the base plus alternate bid for this project to Drewery Construction Co., Inc. in the amount of \$414,644.00.

This bid is within the project budget.

**FINANCIAL:**

Item is budgeted:

Account No.: 01.86 680.30

Account Name: *Annual Street Rehab*

Amount: \$446,102.09

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

Infrastructure

**CITY CONTACT:** Case Opperman, Assistant Director of Public Works  
[oppermanc@nactx.us](mailto:oppermanc@nactx.us)  
936-559-2515

**ATTACHMENTS:**

1. Bid Tab
2. Contract Documents
3. PowerPoint Slide



|                       |        |      |                                                                                                                                                                          | Drewery Construction Co., Inc. |                     |
|-----------------------|--------|------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------|---------------------|
| Item                  | Quan   | Unit | Description                                                                                                                                                              | Unit Price                     | TOTAL               |
| <b>Base Bid</b>       |        |      |                                                                                                                                                                          |                                |                     |
| 1.                    | 30,870 | GAL  | AC-15P Asphalt Cement for single-course surface treatment, including all materials & labor; complete, in place                                                           | \$6.20                         | \$191,394.00        |
| 2.                    | 95,000 | SY   | Type PB, Grade 5, pre-coated aggregate for single-course surface treatment, including herbicide treatment, vegetation removal, all materials & labor; complete, in place | \$3.05                         | \$289,750.00        |
| <b>Base Bid Total</b> |        |      |                                                                                                                                                                          |                                | <b>\$481,144.00</b> |

|                                     |        |      |                                                                                                                                                                                                                               | Drewery Construction Co., Inc. |                     |
|-------------------------------------|--------|------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------|---------------------|
| Item                                | Quan   | Unit | Description                                                                                                                                                                                                                   | Unit Price                     | TOTAL               |
| <b>Alternate Bid</b>                |        |      |                                                                                                                                                                                                                               |                                |                     |
| 3.                                  | 95,000 | SY   | <b>Remove and Replace Item 2 of Base Bid</b><br>with Type PL, Grade 5, pre-coated aggregate for single-course surface treatment, including herbicide treatment, vegetation removal, all materials & labor; complete, in place | \$2.35                         | \$223,250.00        |
| <b>Base and Alternate Bid Total</b> |        |      |                                                                                                                                                                                                                               |                                | <b>\$414,644.00</b> |



**BIDDING  
and  
CONTRACT DOCUMENTS  
  
FOR  
  
CONSTRUCTION SERVICES  
FOR  
2022 SEAL COAT PROJECT  
  
Bid #: 22-10-114**

**DUE DATE  
July 11, 2022 @ 2:00 PM**

City of Nacogdoches, Texas  
City Hall  
202 E. Pilar  
Nacogdoches, TX 75961  
936-559-2516

[www.nactx.us](http://www.nactx.us)







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CERTIFICATION

GENERAL AND SPECIAL CONDITIONS OF AGREEMENT

STANDARD FORM OF AGREEMENT FOR CONSTRUCTION

DRAWINGS





## **INSTRUCTION TO BIDDERS**





## INSTRUCTIONS TO BIDDERS

### 1.0 NOTICE

Sealed bids addressed to the City of Nacogdoches Engineering Office, 202 Pilar St., Suite 239, Nacogdoches, TX 75961, will be received for **Construction Services for 2022 Seal Coat Project** until **2:00 PM, Monday, July 11, 2022** after which time all qualified bids will be publicly opened and read aloud at **City Hall Conference Room 203**. Bids received after that time will be returned unopened. No fax or email bids will be accepted.

### LOCATION AND DESCRIPTION OF PROJECT

Seal Coating of thirty-four (34) streets located throughout the City. Locations of proposed seal coat streets can be seen in the location map that is part of this package.

### COPIES OF BIDDING DOCUMENTS

A complete set of Bidding and Contract Documents will be made available for no charge on a flash drive (or other electronic means) at:

City of Nacogdoches City Hall  
Engineering Office  
202 Pilar Street, Suite 239  
Nacogdoches, TX 75961

The successful bidder will be required to furnish a Payment Bond and Performance Bond in the amount of the contract. Bidders may not withdraw their Bid Proposal within 60 calendar days of the bid opening date.

**Sealed bids shall be clearly marked with the words “Sealed Bid, 2022 Seal Coat Project” and addressed to the City of Nacogdoches. Bids shall be delivered using one of the following methods:**

**Hand-deliver to:**  
Engineering Office  
202 Pilar Street, Suite 239  
Nacogdoches, TX 75961

**Mail to:**  
Attn: Engineering  
PO Box 635030  
Nacogdoches, Texas 75963

**Ship to (FedEx, UPS, DHL, etc.):**  
Attn: Engineering  
202 East Pilar, Suite 239  
Nacogdoches, Texas 75961

A Certified Cashier's Check or an acceptable Bid Bond in an amount of not less than five (5) percent of the total amount bid shall accompany each bid proposal.



## **2.0 DEFINITION OF TERMS**

In order to simplify the language throughout this bid, the following definitions and those defined in the Contract Documents shall apply:

**BIDDER** - A contractor who submits a Bid directly to the City.

**BIDDING DOCUMENTS** - the Advertisement, Instructions to Bidders, the Proposal, Special Provisions, Technical Specifications and the proposed Contract Documents (including all Addenda issued prior to the receipt of Bids).

**CITY** – Same as City of Nacogdoches.

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

**CONTRACT** – An agreement between the City and a Supplier to furnish supplies and/or services over a designated period of time during which repeated purchases are made of the commodity specified.

**CONTRACTOR** – The successful Bidder(s) of this bid request.

**CITY** – The government of the City of Nacogdoches, Texas.

**OWNER** – City of Nacogdoches.

**SUB-CONTRACTOR** – Any contractor hired by the Contractor or Supplier to furnish materials and services specified in this bid request.

**SUCCESSFUL BIDDER** - the lowest, qualified, responsible and responsive Bidder to whom the City (on the basis of the City's evaluation as hereinafter provided) makes an award.

**SUPPLIER** – Same as Contractor.

## **3.0 COPIES OF BIDDING DOCUMENTS**

A complete set of Bidding Documents are available for no charge on a flash drive (or other electronic means) by contacting the following:

City of Nacogdoches City Hall  
Engineering Office  
202 Pilar Street, Suite 239  
Nacogdoches, TX 75961

Complete sets of Bidding Documents must be used in preparing Bids; the City assumes no responsibility for errors or misinterpretations resulting from the use of incomplete sets of Bidding Documents.

## **4.0 COMMUNICATION**

The Owner's Representative for all communication regarding the Bidding and Contract Documents, including specifications and drawings is:

Case Opperman, PE – Assistant Director of Public Works  
oppermanc@nactx.us  
(936) 559-2515

No oral questions and other interpretations or clarification will be considered official or binding.

## **5.0 PRE-BID CONFERENCE**

A Pre-bid Meeting will not be held for this project.

## **6.0 GENERAL BID PROVISIONS**

- a. The Invitation to Bid as advertised will be considered an inclusion of the specifications and conditions.
- b. Bid proposals will be submitted on the forms provided by Owner. All figures must be written in ink or typewritten. However, mistakes may be crossed out, corrections inserted adjacent thereto and initiated in ink by the person signing the proposal. Do not use a whiteout or other cover products on mistakes.
- c. Formal advertised bids indicate date and time by which the bids must be received at the designated location. Bids received after that time will be returned unopened to the bidder.
- d. The bidder will note any exceptions to the conditions of this bid. If no exceptions are stated, it will be understood that all general and specific conditions will be complied with, without exception.
- e. Bidders may request withdrawal of a posted sealed proposal prior to the scheduled bid opening time, provided the request for withdrawal is submitted to the City of Nacogdoches in writing. Owner reserves the right to reject any and all bids by reason of this request.
- f. If it becomes necessary to revise any part of this bid, a written addendum will be provided to all bidders. Owner is not bound by any oral representations, clarifications, or changes made in the written specifications by Owner's employees, unless such clarification of change is provided to bidders in written addendum form from the City of Nacogdoches.
- g. Pursuant to Local Government Code 271.9051, if the bid is less than \$100,000 and the City Council determines that a local bidder whose principal place of business is in the City offers the City the best combination of contract price and additional economic development opportunities for the City created by the contract award, including the employment of residents of the municipality and increased tax revenues to the municipality, the city **may** award the bid to the local bidder whose bid is within 5% of the lowest bid. Otherwise, all bids will be awarded to the lowest responsible bidder. The determination of the lowest responsible bidder may involve all or some of the following factors: price, conformity to specifications, financial ability to perform the contract, previous performance, facilities and equipment, availability of repair parts, qualifications and experience, delivery promise, payment terms, compatibility as required, other costs, and other objectives and accountable factors which are reasonable.
- h. Owner may give an environmental preference to products or services that have a lesser or reduced effect on human health and the environment when compared with competing products and services that serve the same purpose. This comparison may consider raw materials acquisition, product, manufacturing, packaging, distribution, reuse, operation, maintenance, or disposal of the product or service;
- i. Bidders may be disqualified and rejection of proposals may be recommended to the Owner for any (but not limited to) of the following causes: 1) Failure to use the proposal form furnished by the Owner; 2) Lack of signature by an authorized representative on the proposal form; 3) Failure to properly complete the proposal; 4) Evidence of collusion among proposers; 5) Omission of a certified Cashier's Check or Bid Bond (if required) proposal guarantee; 6) Unauthorized alteration of bid form; 7) Lack of appropriate qualifications and experience relative to the size and scope of the work proposed; 8) Unsatisfactory performance; 9) Failure to complete projects or 10) Loaded or unbalanced bids. Owner reserved the right to waive any minor informality or irregularity.



- j. Whenever in this invitation, any particular materials, process and/or equipment are indicated or specified by patent, proprietary or brand name, or by name of manufacture, such wording will be deemed to be used for the purpose of facilitating description of the material, process and/or equipment desired and will be deemed to be followed by the words “or equal.” Contractor shall provide exactly such items in his bid as described, unless approved pursuant to Paragraph 12.0 herein.
- k. Samples of items shall be furnished, if requested by the Owner, without charge, and if not destroyed, shall be returned upon request at the bidder’s expense.
- l. It is agreed that the successful bidder will not assign, transfer, convey or otherwise dispose of the contract or its right, title or interest in or to the same, or any part thereof, without previous written consent of Owner and any sureties.
- m. Contractor must provide audited financial statements, if requested, to the City.
- n. Prices in the Bid Proposal shall be presented in the format requested (Unit Price, Lump Sum, etc.)
- o. No freight or delivery charges will be accepted unless shown on bid.
- p. Owner is exempt from State Retail Tax and Federal Excise Tax. The price bid must be net, exclusive of taxes.
- q. All bidders will comply with all Federal, State, and local laws relative to conducting business in the City of Nacogdoches. The laws of the State of Texas will govern as to the interpretation, validity, and effect of this bid, its award and any contract entered into.
- r. Advanced disclosures of any information to any particular bidder which gives that particular bidder any advantage over any other interested bidder in advance of the opening of bids, whether in response to advertising or an informal request for bids, made or permitted by a member of the governing body or an employee or representative thereof, will operate to void all proposals of that particular bid solicitation or request.
- s. Minority business enterprises will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, creed, sex, or national origin in consideration for an award.

## **7.0 QUALIFICATIONS OF BIDDERS**

To demonstrate qualifications to perform the Work, each Bidder must be prepared to submit within five days of City's request, written evidence, such as financial data, previous experience, present commitments and other such data as may be called for below. Each Bid must contain evidence of the Bidder's qualifications to do business in the State of Texas or covenant to obtain such qualification prior to award of the contract.

In determining a bidder's qualifications, the following factors will be considered:

- A. Work previously completed by the bidder and whether the bidder:
  - a. maintains a permanent place of business,
  - b. has adequate plant and equipment to do the work properly and expeditiously,
  - c. has paid or settled all claims for payment promptly,
  - d. has appropriate technical experience,
  - e. has job references for work of similar size and scope to the project, and
  - f. satisfactory performance and completion of public, or comparable, projects.

B. The safety record of the Bidder, of the corporation, partnership, or institution represented by the Bidder, or of any one acting for such firm, corporation, or partnership.

Each Bidder may be required to show that he has properly completed similar type work and that no claims are now pending against such work. No bid will be accepted from any bidder who is engaged in any work that would impair his ability to fully execute, perform or finance this work. The General/Subcontractors Experience Data Sheet following the proposal must be filled out and submitted with the bid for consideration. Failure to include a completed Data Sheet may result in the rejection of the bid.

## **8.0 EXAMINATION OF CONTRACT DOCUMENTS AND SITE**

A. It is the responsibility of each Bidder before submitting a Bid, to:

- a. examine the Contract Documents thoroughly,
- b. visit the site to become familiar with local conditions that may affect cost, progress, performance or furnishing of the Work,
- c. consider federal, state and local Laws and Regulations that may affect cost, progress, performance or furnishing of the Work,
- d. study and carefully correlate Bidder's observations with the Contract Documents, and
- e. notify the Owner's Representative of all conflicts, errors or discrepancies in the Contract Documents.
- f. visit with local utilities, including cable companies, and other entities that may have underground or above-ground infrastructure in the work area for infrastructure location.

B. Information and data reflected in the Contract Documents with respect to underground facilities at or contiguous to the site is based upon information and data from the Owner's files for its underground facilities and information and data furnished by owners of other underground facilities. Owner does not assume responsibility for the accuracy or completeness thereof.

C. Before submitting a Bid each Bidder will be responsible to make or obtain such explorations, at bidders expense and not to be added into cost of bid if accepted (tests and data concerning physical conditions - surface, subsurface and underground facilities - at or contiguous to the site, or otherwise) which may affect cost, progress, performance or furnishing of the Work and which Bidder deems necessary to determine its Bid for performing and furnishing the Work in accordance with the time, price and other terms and conditions of the Contract Documents.

D. The lands upon which the Work is to be performed, rights-of-way and easements for access thereto and other lands designated for use by Contractor in performing the Work are identified in the Contract Documents. All additional lands and access thereto required for temporary construction facilities or storage of materials and equipment or disposal of spoil are to be provided by the Contractor. Contractor is responsible for obtaining all permits required for any of the before mentioned purposes prior to beginning work in accordance with the Standard Form Of Agreement, Paragraph 35 Permits and Licenses.

E. The submission of a Bid will constitute an incontrovertible representation by Bidder that Bidder has complied with every requirement of this section, that without exception the Bid is premised upon performing and furnishing the Work required by the Contract Documents and such means, methods, techniques, sequences or procedures of construction as may be indicated



in or required by the Contract Documents, and that the Contract Documents are sufficient in scope and detail to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

## **9.0 INTERPRETATIONS and ADDENDA**

All questions about the meaning or intent of the Contract Documents are to be directed to the Owner. Interpretations or clarification considered necessary by the Owner's Representative in response to such questions will be issued by Addenda and mailed or otherwise delivered to all parties recorded by the Owner's Representative as having received the Bidding Documents. Questions received less than 48 hours prior to opening of Bids will not be answered. Only questions answered by formal written Addenda will be binding. No oral and other interpretations or clarification will be considered official or binding.

Addenda may also be issued to modify the Bidding Documents as deemed advisable by the City.

To properly qualify his bid, each Bidder shall, prior to filing his Bid, check the receipt of all Addenda or letters of clarification issued and acknowledge such receipt on the Proposal Form or on a separate attachment to the bid. Bids without such acknowledgment of all issued Addenda and letters of clarification may cause your bid to be considered non-responsive. Such Addenda and letters of clarification shall become a part of the executed contract and modify the contract documents accordingly.

## **10.0 BID SECURITY**

Bidders must submit with their Bids a Cashier's Check or a Certified Check in the amount of five (5%) percent of the maximum amount of Bid payable without recourse to the City of Nacogdoches, Texas, or a bid bond in the same amount from a surety company holding permit from the State of Texas to act as a surety, as a guarantee that Bidder will enter into a contract and execute bond and guarantee forms within fifteen (15) days after notice of award of contract. Bids without checks, as stated above, or acceptable bid bond may not be considered.

Bid Security shall be in effect from the opening of the Bid and will be retained until a Bidder has executed the Agreement and furnished the required contract security, whereupon the Bid Security will be returned. A Bidder may withdraw its Bid at any time until the Agreement is signed. However, it will forfeit its Bid Security in doing so if no material mistake was made in the Bid.

The Bid Security of the Successful Bidder will be retained until such Bidder has executed the Agreement and furnished the required contract security, whereupon the Bid Security will be returned. If the Successful Bidder fails to execute and deliver the Agreement and furnish the required contract security within fifteen (15) days after the Notice of Award, the Owner may annul the Notice of Award and the Bid Security of that Bidder will be forfeited. The Bid Security of other Bidders whom Owner believes to have a reasonable chance of receiving the award may be retained by Owner until 5 days after the Agreement is executed whereupon Bid Security furnished by such Bidders will be returned. Bid Security with Bids which are not competitive will be returned within seven days after the Bid opening.

## **11.0 CONTRACT TIME**

The times for Substantial Completion and Final Completion are set forth in the Special Provisions and will be included in the Agreement. It will be necessary for the Successful Bidder

to satisfy the City of the Bidder's ability to achieve Substantial Completion and Final Completion within the times designated in the Special Provisions.

## **12.0 SUBSTITUTE OR "OR EQUAL" ITEMS**

The materials and equipment described in the Bidding Documents establish a standard of required function, dimension, appearance and quality to be met by any proposed substitution. No substitution will be considered unless a written request for approval has been submitted by the Bidder and has been received by the Owner's Representative at least five (5) working days prior to the date for receipt of Bids or until after the contract for the work has been signed. Each such request shall include the name of the material or equipment for which it is to be substituted and a complete description of the proposed substitute including drawings, cuts, performance and test data and any other information necessary for an evaluation. A statement setting forth any changes in other materials, equipment or work that incorporation of the substitute would require shall be included. The burden of proof of the merit of the proposed substitute is upon the Bidder. The Owner's Representative's decision of approval or disapproval of a proposed substitution shall be final. If the Owner's Representative approves any proposed substitution before the date for receipt of bids, such approval will be set forth in an Addendum issued to all prospective Bidders. Bidders shall not rely upon approvals made in any other manner.

## **13.0 BID FORM**

All blanks on the Bid Form must be completed in ink or by typewriter. Unfilled blanks may result in the bid being disqualified.

Any financial amounts written in words will supersede amounts written by numbers in the Bid Form.

Bids by corporations must be executed in the corporate name by the corporate officer authorized to sign for the corporation, accompanied by evidence of authority to sign. The corporate address and state of incorporation must be shown below the signature.

Bids by partnerships must be executed in the partnership name and signed by a partner, whose title must appear under the signature and accompanied by evidence of authority to sign. The fiscal address of the partnership must be shown below the signature.

All names must be typed or printed below the signature.

The Bid shall contain an acknowledgment of receipt of all Addenda. The numbers and dates of which must be filled in on the Bid Form or on a separate attachment to the Bid.

The address and telephone number(s) for communication regarding the Bid must be shown.

All of the data on the GENERAL/SUBCONTRACTORS EXPERIENCE AND DATA INFORMATION sheet must be completely filled in.

## **14.0 SUBMISSION OF BIDS**

A Bid shall be submitted at the time and place indicated in the Advertisement. It shall be enclosed in an opaque sealed envelope, marked with the project title, name and address of the Bidder. The Bid shall be accompanied by the Bid Security and other required documents. If the Bid is sent through the mail or other delivery system the sealed envelope shall be enclosed in a separate envelope with the notation "BID ENCLOSED" on the face of it.



Each Bidder should, prior to filing his Bid check the receipt of all Addenda or letters of clarification issued and acknowledge such receipt on the outside of the envelope containing his Bid proposal.

### **15.0 MODIFICATION AND WITHDRAWAL OF BIDS**

Bids may be modified or withdrawn by an appropriate document duly executed, in the described manner that a Bid must be executed and delivered to the place where Bids are to be submitted at any time prior to the opening of Bids.

If prior to the award of the contract by the City Council, any Bidder files a duly signed, written notice with Owner's Representative and promptly thereafter demonstrates to the reasonable satisfaction of Owner's Representative that there was a material mistake in the preparation of his Bid, that Bidder may withdraw his Bid and the Bid Security will be returned. Thereafter, that Bidder will be disqualified from further bidding on the Work to be provided under the Contract Documents.

### **16.0 OPENING OF BIDS**

Properly prepared Bids will be opened publicly and read aloud. A summary of the amounts of the base Bids and major alternates (if any) will be made available to Bidders after the opening of Bids. A tabulation of the Bids which are read will be available upon request as soon as it has been assembled and verified.

Bids received after the specified time of the opening will be returned unopened.

### **17.0 BIDS TO REMAIN SUBJECT TO ACCEPTANCE**

All bids will remain subject to acceptance, for 60 days after the date of the Bid opening, but the Owner may, in its sole discretion, release any Bid and return the Bid Security prior to that date.

### **18.0 AWARD OF CONTRACT**

Owner reserves the right to reject any and all Bids, to waive any and all informalities and irregularities not involving price, time, or changes in the Work and to disregard all non-conforming, non-responsive, unbalanced or conditional Bids. Owner reserves the right to reject the Bid of any Bidder if Owner believes that it would not be in the best interest of the Project to make an award to that Bidder, whether because the Bid is not responsive or the Bidder is unqualified or of doubtful financial ability or fails to meet any other pertinent standard or criteria established by Owner. Discrepancies in the multiplication of units of Work and unit prices will be resolved in favor of the unit prices. Discrepancies between the indicated sum of any column of figures and the correct sum thereof will be resolved in favor of the correct sum.

In evaluating Bids, the Owner will consider the qualifications of the Bidders, whether or not the Bids comply with the prescribed requirements, time of construction, and such alternates, unit prices and other data, as may be requested in the Bid Form or prior to the Notice of Award.

Owner may consider the qualifications and experience of subcontractors, suppliers, and other persons and organizations proposed for those portions of the Work as to which the identity of subcontractors, suppliers, and other persons and organizations must be submitted as provided. Owner may also consider the operating costs, maintenance requirements, performance data and

guarantees of major items of materials and equipment proposed for incorporation in the Work when such data is required to be submitted prior to the Notice of Award.

Owner may conduct such investigations as Owner deems necessary to assist in the evaluation of any Bid and to establish the responsibility, qualifications and financial ability of Bidders, proposed subcontractors, suppliers and other persons and organizations to perform and furnish the Work in accordance with the Contract Documents to Owner's satisfaction within the prescribed time.

Pursuant to Local Government Code 271.9051, if the bid is less than \$100,000 and the City Council determines that a local bidder whose principal place of business is in the City offers the City the best combination of contract price and additional economic development opportunities for the City created by the contract award, including the employment of residents of the municipality and increased tax revenues to the municipality, the city **may** award the bid to the local bidder whose bid is within 5% of the lowest bid.

Otherwise, all bids will be awarded to the lowest responsible bidder. The determination of the lowest responsible bidder may involve all or some of the following factors: price, conformity to specifications, financial ability to perform the contract, previous performance, facilities and equipment, availability of repair parts, qualifications and experience, delivery promise, payment terms, compatibility as required, other costs, and other objectives and accountable factors which are reasonable.

If the contract is to be awarded, Owner will give the Successful Bidder a Notice of Award within 60 days after the day of the Bid opening.

Bid prices may be compared after adjusting for differences in the time designated in the Bid for Substantial Completion. The adjusting amount will be determined at the rate set forth in the Standard Form of Agreement for liquidated damages indicated for Substantial Completion for each day after the desired date appearing in the City's Standard Form of Agreement, Paragraph 23.

#### **19.0 CONTRACT SECURITY**

Paragraph 28 BOND PROVISIONS of the Standard Form of Agreement set forth Owner's requirements as to performance and payment Bonds. When the Successful Bidder delivers the executed Agreement to the Owner, it must be accompanied by the required performance and payment Bonds.

#### **20.0 SIGNING OF AGREEMENT**

The Successful Bidder shall execute the Contract and provide proof of insurance as detailed in the Standard Form of Agreement based on Staff recommendation prior to Council action. Within 15 days of Award, all required Bonds shall be delivered to the Owner. A fully executed contract will be presented to the Successful Bidder.

#### **21.0 PERSONAL INTEREST**

Bidders shall comply with all applicable ordinances and with state law pertaining to conflict of interest and required disclosures, including, but not limited to, TEXAS LOCAL GOVERNMENT CODE, Chapter 171.



## **22.0 DISCLOSURE OF INTERESTED PARTIES**

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

For purposes of this section, the following definitions apply:

“Interested party” means a person who has a controlling interest in a business entity with whom the City contracts or who actively participates in facilitating the contract or negotiating the terms of the contract, including a broker intermediary, advisor, or attorney for the business entity.

"Controlling interest" means: (1) an ownership interest or participating interest in a business entity by virtue of units, percentage, shares, stock, or otherwise that exceeds 10 percent; (2) membership on the board of directors or other governing body of a business entity of which the board or other governing body is composed of not more than 10 members; or (3) service as an officer of a business entity that has four or fewer officers, or service as one of the four officers most highly compensated by a business entity that has more than four officers.

"Intermediary," means a person who actively participates in the facilitation of the contract or negotiating the contract, including a broker, adviser, attorney, or representative of or agent for the business entity who:

1. Receives compensation from the business entity for the person's participation;
2. Communicates directly with the City on behalf of the business entity regarding the contract; and
3. Is not an employee of the business entity.

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

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

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

**CONTRACTOR'S PROPOSAL**





# City of Nacogdoches 2022 Seal Coat Project

## BID FORM

| ITEM                        | QUANTITY | UNIT | DESCRIPTION                                                                                                                                                                                                         | UNIT PRICE | TOTAL         |
|-----------------------------|----------|------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------|---------------|
| <b><u>Base Bid</u></b>      |          |      |                                                                                                                                                                                                                     |            |               |
| 1.                          | 30,870   | GAL  | AC-15P Asphalt Cement for single-course surface treatment, including all materials & labor; complete, in place                                                                                                      | \$ 6.20    | \$ 191,394.00 |
|                             |          |      | Six Dollars                                                                                                                                                                                                         |            |               |
|                             |          |      | Twenty Cents                                                                                                                                                                                                        |            |               |
|                             |          |      | per GAL (written in words)                                                                                                                                                                                          |            |               |
| 2.                          | 95,000   | SY   | Type PB, Grade 5, pre-coated aggregate for single-course surface treatment, including herbicide treatment, vegetation removal, all materials & labor; complete, in place                                            | \$ 3.05    | \$ 289,750.00 |
|                             |          |      | Three Dollars                                                                                                                                                                                                       |            |               |
|                             |          |      | Five Cents                                                                                                                                                                                                          |            |               |
|                             |          |      | per SY (written in words)                                                                                                                                                                                           |            |               |
| <b><u>Alternate Bid</u></b> |          |      |                                                                                                                                                                                                                     |            |               |
| 3.                          | 95,000   | SY   | Remove and Replace Item 2 of Base Bid with Type PL, Grade 5, pre-coated aggregate for single-course surface treatment, including herbicide treatment, vegetation removal, all materials & labor; complete, in place | \$ 2.35    | \$ 223,250.00 |
|                             |          |      | Two Dollars                                                                                                                                                                                                         |            |               |
|                             |          |      | Thirty-Five Cents                                                                                                                                                                                                   |            |               |
|                             |          |      | per SY (written in words)                                                                                                                                                                                           |            |               |



# City of Nacogdoches 2022 Seal Coat Project

BID FORM

| ITEM | QUANTITY | UNIT | DESCRIPTION | UNIT PRICE | TOTAL |
|------|----------|------|-------------|------------|-------|
|------|----------|------|-------------|------------|-------|

## BID SUMMARY

The City reserves the right to award any combination of Bid Items to obtain the best value for the City.

**BASE BID TOTAL (Items 1 & 2)** 481,144.00

Four Hundred Eighty-One Thousand One Hundred Forty Four Dollars & No Cents

BASE BID TOTAL (written in words)

**BASE AND ALTERNATE BID TOTAL (Items 1 & 3)** 414,644.00

Four Hundred Fourteen Thousand Six Hundred Forty-Four Dollars & No Cents

BASE AND ALTERNATE BID TOTAL (written in words)

TOTAL CALENDAR DAYS TO SUBSTANTIAL COMPLETION 45

BY: Summer Wheaton

Summer Wheaton / Vice President

Printed Name

Title

COMPANY: Drewery Construction Company, Inc. Phone No. 936-560-1534

902 SE Stallings Dr. Nacogdoches, TX 75964  
Address City State Zip



# GREAT AMERICAN INSURANCE COMPANY

## OHIO

### BID BOND

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

**CONTRACTOR:**

(Name, legal status and address)

Drewery Construction Company, Inc.  
902 SE Stallings Dr  
Nacogdoches, TX 75964

**SURETY:**

(Name, legal status and principal place of business):

Great American Insurance Co.  
301 E 4th Street  
Cincinnati, OH 45202

**OWNER:**

(Name, legal status and address)

City of Nacogdoches  
202 E Pilar  
Nacogdoches, TX 75961

**BOND AMOUNT:** \$ 5% of GAB

**PROJECT:** Nacogdoches 2022 Seal Coat Project

(Name, location or address, and Project number, if any)

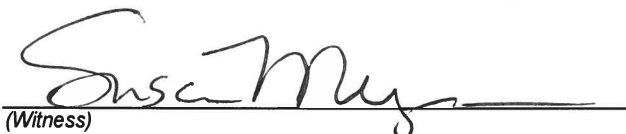
Seal Coat 34 Streets

The Contractor and Surety are bound to the Owner in the amount set forth above, for the payment of which the Contractor and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, as provided herein. The conditions of this Bond are such that if the Owner accepts the bid of the Contractor within the time specified in the bid documents, or within such time period as may be agreed to by the Owner and Contractor, and the Contractor either (1) enters into a contract with the Owner in accordance with the terms of such bid, and gives such bond or bonds as may be specified in the bidding or Contract Documents, with a Surety admitted in the jurisdiction of the Project and otherwise acceptable to the Owner, for the faithful performance of such Contract and for the prompt payment of labor and material furnished in the prosecution thereof; or (2) pays to the Owner the difference, not to exceed the amount of this Bond, between the amount specified in said bid and such larger amount for which the Owner may in good faith contract with another party to perform the work covered by said bid, then this obligation shall be null and void, otherwise to remain in full force and effect. The Surety hereby waives any notice of an agreement between the Owner and Contractor to extend the time in which the Owner may accept the bid. Waiver of notice by the Surety shall not apply to any extension exceeding sixty (60) days in the aggregate beyond the time for acceptance of bids specified in the bid documents, and the Owner and Contractor shall obtain the Surety's consent for an extension beyond sixty (60) days.

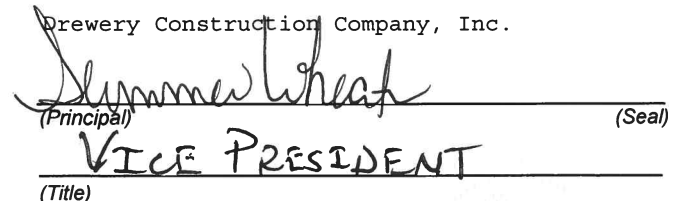
If this Bond is issued in connection with a subcontractor's bid to a Contractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

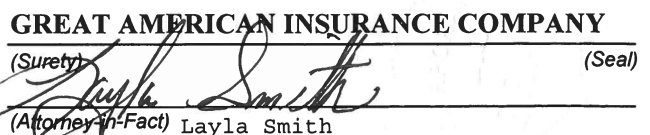
When this Bond has been furnished to comply with a statutory or other legal requirement in the location of the Project, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirements shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

Signed and sealed this 6th day of July, 2022.

  
(Witness)

  
(Witness) Sarah Morgan

Drewery Construction Company, Inc.  
  
(Principal) (Seal)  
VICE PRESIDENT  
(Title)

GREAT AMERICAN INSURANCE COMPANY  
(Surety) (Seal)  
  
(Attorney-in-Fact) Layla Smith



# GREAT AMERICAN INSURANCE COMPANY®

Administrative Office: 301 E 4TH STREET • CINCINNATI, OHIO 45202 • 513-369-5000 • FAX 513-723-2740

The number of persons authorized by  
this power of attorney is not more than THREE

No. 0 21799

## POWER OF ATTORNEY

**KNOW ALL MEN BY THESE PRESENTS:** That the GREAT AMERICAN INSURANCE COMPANY, a corporation organized and existing under and by virtue of the laws of the State of Ohio, does hereby nominate, constitute and appoint the person or persons named below, each individually if more than one is named, its true and lawful attorney-in-fact, for it and in its name, place and stead to execute on behalf of the said Company, as surety, any and all bonds, undertakings and contracts of suretyship, or other written obligations in the nature thereof; provided that the liability of the said Company on any such bond, undertaking or contract of suretyship executed under this authority shall not exceed the limit stated below.

| Name         | Address | Limit of Power   |
|--------------|---------|------------------|
| LAYLA SMITH  | ALL OF  | ALL              |
| TERRY MORGAN | LUFKIN, | \$100,000,000.00 |
| BEN BARTLETT | TEXAS   |                  |

This Power of Attorney revokes all previous powers issued on behalf of the attorney(s)-in-fact named above.

IN WITNESS WHEREOF the GREAT AMERICAN INSURANCE COMPANY has caused these presents to be signed and attested by its appropriate officers and its corporate seal hereunto affixed this 20TH day of MAY, 2022

Attest

GREAT AMERICAN INSURANCE COMPANY



*My L C. B.*

Assistant Secretary

*Mark V. Vicario*

Divisional Senior Vice President

STATE OF OHIO, COUNTY OF HAMILTON - ss:

MARK VICARIO (877-377-2405)

On this 20TH day of MAY, 2022, before me personally appeared MARK VICARIO, to me known, being duly sworn, deposes and says that he resides in Cincinnati, Ohio, that he is a Divisional Senior Vice President of the Bond Division of Great American Insurance Company, the Company described in and which executed the above instrument; that he knows the seal of the said Company; that the seal affixed to the said instrument is such corporate seal; that it was so affixed by authority of his office under the By-Laws of said Company, and that he signed his name thereto by like authority.



SUSAN A. KOHORST  
Notary Public  
State of Ohio  
My Comm. Expires  
May 18, 2025

*Susan A. Kohorst*

This Power of Attorney is granted by authority of the following resolutions adopted by the Board of Directors of Great American Insurance Company by unanimous written consent dated June 9, 2008.

**RESOLVED:** That the Divisional President, the several Divisional Senior Vice Presidents, Divisional Vice Presidents and Divisional Assistant Vice Presidents, or any one of them, be and hereby is authorized, from time to time, to appoint one or more Attorneys-in-Fact to execute on behalf of the Company, as surety, any and all bonds, undertakings and contracts of suretyship, or other written obligations in the nature thereof; to prescribe their respective duties and the respective limits of their authority; and to revoke any such appointment at any time.

**RESOLVED FURTHER:** That the Company seal and the signature of any of the aforesaid officers and any Secretary or Assistant Secretary of the Company may be affixed by facsimile to any power of attorney or certificate of either given for the execution of any bond, undertaking, contract of suretyship, or other written obligation in the nature thereof, such signature and seal when so used being hereby adopted by the Company as the original signature of such officer and the original seal of the Company, to be valid and binding upon the Company with the same force and effect as though manually affixed.

## CERTIFICATION

I, STEPHEN C. BERAHA, Assistant Secretary of Great American Insurance Company, do hereby certify that the foregoing Power of Attorney and the Resolutions of the Board of Directors of June 9, 2008 have not been revoked and are now in full force and effect.

Signed and sealed this

day of



*My L C. B.*

Assistant Secretary



Administrative Offices  
301 E 4th Street  
Cincinnati, Ohio 45202-4201  
Tel: 1-513-369-5000

## IMPORTANT NOTICE

### TO OBTAIN INFORMATION OR TO MAKE A COMPLAINT

You may call Great American Insurance Companies' toll-free telephone number for information or to make a complaint at:

**1-800-972-3008**

You may contact the Texas Department of Insurance to obtain information on companies, coverages, rights or complaints at:

**1-800-252-3439**

You may write the Texas Department of Insurance:

P.O. Box 149104  
Austin, TX 78714-9104  
Fax: (512) 475-1771  
Web: <http://www.tdi.state.tx.us>  
E-mail: [ConsumerProtection@tdi.state.tx.us](mailto:ConsumerProtection@tdi.state.tx.us)

### PREMIUM OR CLAIM DISPUTES

Should you have a dispute concerning your premium or about a claim, you should contact the company first. If the dispute is not resolved, you may contact the Texas Department of Insurance.

### ATTACH THIS NOTICE TO YOUR POLICY

This notice is for information only and does not become a part or condition of the attached document.

## AVISO IMPORTANTE

### PARA OBTENER INFORMACION O PARA SOMETER UNA QUEJA

Usted puede llamar al numero del telefono gratis de Great American Insurance Companies' para informacion o para someter una queja al:

**1-800-972-3008**

Puede comunicarse con el Departamento de Seguros de Texas para obtener informacion acerca de companias, coberturas, derechos o quejas al:

**1-800-252-3439**

Puede escribir al Departamento de Seguros de Texas:

P.O. Box 149104  
Austin, TX 78714-9104  
Fax: (512) 475-1771  
Web: <http://www.tdi.state.tx.us>  
E-mail: [ConsumerProtection@tdi.state.tx.us](mailto:ConsumerProtection@tdi.state.tx.us)

### DISPUTAS SOBRE PRIMAS O RECLAMOS

Si tiene una disputa concerniente a su prima o a un reclamo, debe comunicarse con la compania primero. Si no se resuelve la disputa, puede entonces comunicarse con el departamento (TDI).

### UNA ESTE AVISO A SU POLIZA

Este aviso es solo para proposito de informacion y no se convierte en parte o condicion del documento adjunto.





## **CONTRACTOR DATA SHEET**





**GENERAL/SUB-CONTRACTOR'S EXPERIENCE  
AND  
DATA INFORMATION**

Name of Company: Drewery Construction Company, Inc.

Company Years in Business: 43 Years

List Municipal Projects  
(Similar Projects in Size and Scope Completed in Last Five Years)

| Project                       | Municipality        | \$ Amount      | Type               | Date      |
|-------------------------------|---------------------|----------------|--------------------|-----------|
| Long Cove Entry Rd. & Bridges | Long Cove           | \$3,018,202.70 | Reconstruction     | Nov 2017  |
| City of Henderson Master #20  | Henderson           | \$527,066.50   | Reconstruction     | May 2018  |
| City of Center 2017           | Center              | \$547,934.50   | Reconstruction     | July 2018 |
| Nacogdoches FM 1878 Bridge    | Nacogdoches / TxDOT | \$2,079,356.30 | Bridge Replacement | July 2018 |
| City of Nacogdoches Sts 2018  | Nacogdoches         | \$476,600.00   | Paving             | Jan 2019  |
| West Frasier - Austin Ave.    | Henderson           | \$1,458,025.29 | Repair & Pave      | Mar 2019  |

**Superintendent & Project Manager Information**

Include Superintendent proposed for the project, years of experience as superintendent,  
project manager proposed for the project, and years experience as project manager

| Superintendent  | Years Experience | Projects                                  |
|-----------------|------------------|-------------------------------------------|
| Randy Westbrook | 30               | Numerous highway, city & private projects |
|                 |                  |                                           |
|                 |                  |                                           |
|                 |                  |                                           |

| Project Manager | Years Experience | Projects                                  |
|-----------------|------------------|-------------------------------------------|
| Tommy Jacobs    | 40               | Numerous highway, city & private projects |
|                 |                  |                                           |
|                 |                  |                                           |

References: Name 5 projects of similar work, giving owner's name, representative's name, project engineer's name, and telephone numbers for each

|                                                |  |                                                    |
|------------------------------------------------|--|----------------------------------------------------|
| 1. Long Cove Entry Road & Bridges              |  | Reconstruction of Roadway/Replacement of 3 bridges |
| Long Cove Development, Inc. on behalf of LVMDD |  | Laurie Martin 214-220-4955                         |
| Owners Rep Team Phillips, Inc.                 |  | Nancy Phillips 972-385-0909                        |
|                                                |  |                                                    |

|                                 |  |                                                       |
|---------------------------------|--|-------------------------------------------------------|
| 2. West Fraser - Austin Ave.    |  | Reconstruction of City Street including Curb & Gutter |
| West Fraser Wood Products, Inc. |  | Raymond Mitchell                                      |
| Stokes & Associates             |  | Neal Holland 903-657-6551                             |
|                                 |  |                                                       |

|                               |  |                            |
|-------------------------------|--|----------------------------|
| 3. TxDOT Nacogdoches FM 1878  |  | Bridge Replacement         |
| TxDOT Nacogdoches Area Office |  | Randal Cooper 936-564-7782 |
|                               |  |                            |
|                               |  |                            |

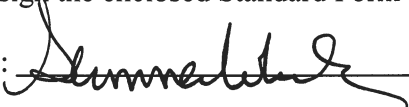
|                             |  |                              |
|-----------------------------|--|------------------------------|
| 4. City of Carthage Streets |  | Reconstruction & Paving      |
| Two Fifteen Consulting      |  | Michael Delaney 936-569-0505 |
|                             |  |                              |
|                             |  |                              |

|    |  |  |
|----|--|--|
| 5. |  |  |
|    |  |  |
|    |  |  |
|    |  |  |



## CERTIFICATION OF BID

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

Signed By:  Title: Vice President

Typed Name: Summer Wheaton Company Name: Drewery Construction Co., Inc.

Phone No: 936-560-1534 Fax No: 936-560-3282

Email: summer.d@dreweryinc.com

|              |                             |                    |           |              |
|--------------|-----------------------------|--------------------|-----------|--------------|
| Bid Address: | <u>902 SE Stallings Dr.</u> | <u>Nacogdoches</u> | <u>TX</u> | <u>75964</u> |
|              | P.O. Box or Street          | City               | State     | Zip          |

|                |                             |                    |           |              |
|----------------|-----------------------------|--------------------|-----------|--------------|
| Remit Address: | <u>902 SE Stallings Dr.</u> | <u>Nacogdoches</u> | <u>TX</u> | <u>75964</u> |
|                | P.O. Box or Street          | City               | State     | Zip          |

Federal Tax ID No: 75-1704639

DUNS No: 02-603-4835

Date: 7/11/2022



## **CONDITIONS OF AGREEMENT**





## **CONDITIONS OF AGREEMENT**

### **CONTRACT DOCUMENTS**

#### **STANDARD SPECIFICATIONS FOR CONSTRUCTION--CITY OF NACOGDOCHES**

**FACILITIES:** All building construction and related installations shall conform to the City's latest adopted editions of the International Building Code, National Electric Code, and the Uniform Plumbing Code and the Nacogdoches Standards for the Design and Construction of Public Improvements. All other City of Nacogdoches codes and ordinances shall also apply.

**CIVIL CONSTRUCTION:** These specifications shall be used in conjunction with the City of Nacogdoches' Standard Specifications of Water and Sewer Construction and Street Construction and is hereby incorporated by reference. All City of Nacogdoches codes and ordinances shall apply.

Any discrepancies between the City standards and these specifications shall be clarified per the instructions in Paragraph 9.0, "INTERPRETATIONS AND ADDENDA" in the instructions to Bidders.

#### **GENERAL CONDITIONS OF AGREEMENT**

The Standard Form of Agreement between Owner and Contractor shall be governing conditions of this contract.

#### **SPECIAL PROVISIONS OF AGREEMENT**

A. **MEASUREMENTS:** All work not specifically set forth as a pay item in the Proposal shall be considered a subsidiary obligation of the Contractor and all costs in connection therewith shall be included in the various unit prices listed in the Proposal.

B. **QUANTITIES:** Where unit quantities are shown on each bid item of the Proposal, they shall be construed to represent approximate quantities of Work to be completed. Final quantities will be determined by measurement on the site of the completed Work. Work performed outside of specified limits will not be included in final measurement. Bidders are hereby notified that no incidental items of the Work will be paid for unless it is listed in the Proposal form as a pay item.

C. **EXPLOSION, COLLAPSE AND UNDERGROUND HAZARDS (XCU):** Contracts where trenching depths exceed twelve (12) feet shall require additional coverage for the following General Liability hazards:

|                        |                                                                                                                                     |
|------------------------|-------------------------------------------------------------------------------------------------------------------------------------|
| <u>Explosion</u>       | Applies to blasting operations                                                                                                      |
| <u>    Collapse</u>    | Applies to excavation and grading work adjacent to structure                                                                        |
| <u>    Underground</u> | Applies to excavation, burrowing, trenching, tunneling, etc. For example, severing an electrical line during excavation operations. |

An additional premium may be assessed by contractor's insurance provider. Successful contractor is responsible for assessing depth based on plans and specifications contained herein.

D. **TRAFFIC CONTROL.** When work is performed in or immediately adjacent to a public street right-of-way, the Contractor shall submit to the City Engineer a traffic control plan for each public right-of-way he enters prior to the pre-construction meeting. This plan shall be in conformance to the Texas Manual on Uniform Traffic Control Devices. Once reviewed, the plans will be returned to the Contractor with comments.

Approved Traffic Control Plans shall be in the possession of the contractor on site during all work within the designated right of way.

E. **MATERIAL STAGING.** Contractor is responsible for identifying and securing a suitable site for the storage of materials and other construction related items unless such a site is specifically identified in the plans.

F. **PERMITS.** Contractor will be required to get permits pursuant to contract documents; however, the city will waive the fees.

G. **STORM WATER PERMIT.** For construction areas disturbing more than one (1) acre of land, Contractor shall provide a Storm Water Pollution Prevention Plan and all related inspections, rain gages, signage, subsidiary to the contract.

H. **SURVEY.** The Owner will provide a one-time survey staking of key construction points, bench marks, horizontal controls, building corners, or utility appurtenances as deemed necessary by the City Engineer. Additional construction staking, or replacement staking, will be at the contractor's expense.

I. **CONTRACTOR PARKING and BATHROOMS.** Unless noted otherwise in the bid documents and plans, the installation of temporary bathroom facilities on the site will not be allowed. Parking for construction related vehicles, worker vehicles, and other equipment may be limited at the construction site. The Contractor should anticipate the need to provide an off-site parking subsidiary to the bid price in the contract.

J. **FIELD OFFICES.** The Contractor will not be required to maintain a field office at the construction site. In the event that the Contractor wishes to have a temporary project office, approval will be required by the Owner. The cost for the installation of all utilities will be paid by the Contractor.

K. **DRAINAGE AND EROSION CONTROLS.** The contractor will be responsible for designing, installing and maintaining interim drainage and erosion controls for the construction site. Surface drainage channels, culverts, or other features will be maintained by the contractor in such a way to minimize the impacts from storm water to offsite properties.

L. **CONTRACT FORMS, BONDS AND CERTIFICATES.** The Standard Form of Agreement bond forms listed below will be made a part of the executed contract documents and are made a part of these specifications:



CITY OF NACOGDOCHES STANDARD FORM OF AGREEMENT BETWEEN THE  
OWNER AND THE CONTRACTOR

PERFORMANCE BOND

PAYMENT BOND

These forms are not to be filled in by the bidder at the time of submitting his proposal.



## **STANDARD FORM OF AGREEMENT FOR CONSTRUCTION**





## CITY OF NACOGDOCHES CONSTRUCTION AGREEMENT

This Agreement is entered into by and between the **City of Nacogdoches**, a Texas home-rule municipal corporation (the "City") and Drewery Construction Co., Inc., a limited liability corporation (the "Contractor"), for **Construction Services for 2022 Seal Coat Project** located in Nacogdoches, Texas (the "Project").

### 1. DEFINITIONS

1.01. Calendar Day. A "calendar day" is any day of the week or month, no days being excepted.

1.02. City. Whenever the word "City" is used, it shall mean and be understood as referring to the City of Nacogdoches, Texas.

1.03. City's Representative. Whenever the words "City's Representative" or "Representative" are used, it shall mean and be understood as referring to the City Manager or his delegate, who shall act as City's agent. The City's Representative may inspect and issue instructions but shall not directly supervise the Contractor.

1.04. Contract Amount. The term "Contract Amount" shall mean the amount of Contractor's lump sum base bid proposal, together with all alternates, as accepted by the City in accordance with the Contractor's Proposal. In the case of a unit price contract, Contract Amount shall mean the sum of the product of all unit prices times the respective estimated final quantities of work, for all base bid and alternates, as accepted by the City.

1.05. Contract Documents. The term "Contract Documents" shall mean those documents listed in Paragraph 2.01.

1.06. Contractor. Whenever the word "Contractor" is used, it shall mean the person(s), partnership, or corporation who has agreed to perform the work embraced in this Agreement and the other Contract Documents.

1.07. Extra Work. The term "Extra Work" shall mean and include work that is **not** covered or contemplated by the Contract Documents but that may be required by City's Representative and approved by the City in writing *prior* to the work being done by the Contractor.

1.08. Final Completion. The term "Final Completion" shall mean that all the work has been completed, all final punch list items have been inspected and satisfactorily completed, all payments to materialmen and subcontractors have been made, all documentation and warranties have been submitted, and all closeout documents have been executed and approved by the City.

1.09. Interpretation of Phrases. Whenever the words "directed", "permitted", "designated", "required", "considered necessary", "prescribed", or words of like import are used, it is understood that the direction, requirement, permission, order, designation, or prescription of City's Representative is intended. Similarly, the words "approved", "acceptable", "satisfactory", or words of like import shall mean approved by, accepted by, or satisfactory to City's Representative.

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

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

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

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

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

1.15. Work. The term "work" as used in this Agreement shall mean and include all that is required herein to obtain a final product that is acceptable to the City. The term "Project" shall have like meaning. This Project includes the following: **Construction Services for 2022 Seal Coat Project** located in Nacogdoches, Texas.

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

## 2. **CONTRACT DOCUMENTS**

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

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

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

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



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

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

### 3. AWARD OF CONTRACT

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

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

3.03. **Contract Amount.** Except in the event of a duly authorized change order approved by the City as provided in this Contract, and in consideration of the Contractor’s final completion of all work in conformity with this Contract, the City shall pay the Contractor an amount not to exceed **Four Hundred Fourteen Thousand Six Hundred Forty-Four and 00/100 Dollars (\$414,644.00).**

### 4. CITY'S REPRESENTATIVE

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

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

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

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

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

## **5. INDEPENDENT CONTRACTOR**

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

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

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

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

## **6. DISORDERLY EMPLOYEES**

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

## **7. HOURS OF WORK**

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

## **8. NATURE OF THE WORK**

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

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

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

## **9. POST-AGREEMENT AWARD MEETINGS**

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



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

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

## **10. PROGRESS OF WORK**

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

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

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

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

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

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

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

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

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

## 11. SITE CONDITIONS AND MANAGEMENT

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

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

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

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

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

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

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

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

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



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

## 12. MATERIALS

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

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

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

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

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

signs a receipt accepting delivery of said materials until the Project is accepted by the City's Representative.

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

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

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

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

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

### **13. ENTRY, OBSERVATION, TESTING & POSSESSION**

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

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

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

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

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

## **14. REJECTED WORK**

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

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

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

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

## **15. SUBCONTRACTING & SUBCONTRACTORS**

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

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



## 16. PAYMENT

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

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

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

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

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

16.06. Reduction in the scope or quantity of work on unit price items shall merely reduce the number of units. In the event that materials have been delivered prior to notice of such reduction, the City will have

the option either to pay freight & transportation costs and any re-stocking charges actually incurred by the Contractor or to purchase the materials. The Contractor shall never be entitled to anticipated or lost profits on the deleted or reduced portion of a job, whether bid on a unit price or lump sum basis.

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

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

16.09. Unless otherwise provided in the Contract Documents:

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

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

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

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

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

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

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

## 17. EXTRA WORK CHARGES

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

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

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



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

(b) **No claim for Extra Work of any kind will be allowed unless ordered in writing by the City.** In case any orders or instructions appear to the Contractor to involve Extra Work for which it should receive compensation or an adjustment in the construction time, it shall make written request to City's Representative for a written order from City authorizing such Extra Work.

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

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

Method A - By agreed unit prices, or

Method B - By agreed lump sum, or

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

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

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

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

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

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

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

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

## **18. TIME OF COMPLETION**

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

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

18.03. The work shall be Substantially Completed within the time bid, which shall run from the date when the notice to proceed is given by City's Representative. The Contractor has bid **45 calendar days** for the time within which it shall reach Substantial Completion of the Project.

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

## **19. SUBSTANTIAL COMPLETION**

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

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

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

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

## **20. FINAL COMPLETION**

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

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

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

## **21. DELAYS**

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

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

21.03. In the event of delays resulting from changes ordered in the work by the City or other delays caused by the City or for the City's convenience, the Contractor may apply to the City for recovery of incidental expenses resulting from increased storage costs or other costs necessary to protect the value of the work. In no event shall any consequential or other damages be allowed or any other charges or claims be made by the Contractor for hindrances or delays resulting from any other cause.



## 22. EXTENSIONS OF TIME

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

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

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

## 23. LIQUIDATED DAMAGES

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

23.02. As a result of the difficulty in estimation, calculation and ascertainment of City's damages due to a failure of Contractor to achieve timely completion of the Work, if the Contractor should neglect, fail, or refuse to either Substantially Complete or Finally Complete the work within the time herein specified, or any proper extension thereof granted by the City's Representative pursuant to the terms of Paragraph 22 of this Agreement, then the Contractor does hereby agree as part of the consideration for the awarding of this Agreement that the City may permanently withhold from the Contractor's total compensation the sum of

**Five Hundred and no/100 DOLLARS (\$500.00)** for each and every calendar day that the Contractor shall be in default after the time stipulated for Substantial Completion and/or Final Completion, not as a penalty, but as liquidated damages for the breach of this Agreement. It being specifically understood that the assessment of liquidated damages may be made for any failure to meet either or both of the deadlines specified for Substantial Completion and/or Final Completion.

## **24. CHARGES FOR INJURY OR REPAIR**

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

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

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

## **25. WARRANTY**

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

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

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

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

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

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

25.06. **Defective Work Discovered During Warranty Period.** If any of the work is found or determined to be either defective, including obvious defects, or otherwise not in accordance with this Agreement within one (1) year after the date of the issuance of a certificate of Final Completion of the Work or a designated portion of the Work, whichever is longer, or within one (1) year after acceptance by the City of designated equipment, or within such longer period of time as may be prescribed by law or by the terms of any applicable special warranty required by this Agreement, the Contractor shall promptly correct the defective work at no cost to the City.

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

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

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

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

## **26. PAYMENT OF EMPLOYEES, SUBCONTRACTORS & SUPPLIERS**

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

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

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

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

26.05. **Payment of Subcontractors.** The Contractor shall be solely and exclusively responsible for compensating any of the Contractor's employees, subcontractors, materialmen and/or suppliers of any type or nature whatsoever and for insuring that no claims or liens of any type arising out of or incidental to the performance of any services performed pursuant to this Agreement are filed against any property owned by the City. In the event a statutory lien notice is sent to the City, the Contractor shall, where no payment bond covers the work, upon written notice from the City, immediately obtain a bond at its expense and hold



the City harmless from any losses that may result from the filing or enforcement of any said lien notice. In the event that the Contractor defaults in the provision of the bond, the City may withhold such funds as are necessary to assure the payment of such claim until litigation determines to whom payment shall be made.

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

## 27. INSURANCE

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

## 28. BOND PROVISIONS

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

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

28.02. The Contractor may make such changes and alterations as the City may require in the work or any part thereof without affecting the validity of this Agreement and any accompanying bond. If such changes or alterations diminish the quantity of the work to be done, they shall not constitute the basis for any claim

for damages or anticipated profits. If the City makes changes or alterations that render useless any work already done or material already used in said work, then the City shall compensate the Contractor for any material or labor so used, and for any actual loss occasioned by such change due to actual expenses incurred in preparation for the work as originally planned, in accordance with the provisions of Article 17.

## **29. SURETY**

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

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

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

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

29.03. In the event the account shows that the cost to complete the work is less than that which would have been the cost to City had the work been completed by the Contractor under the terms of this Agreement, or when the Contractor shall pay the balance shown to be due by them to the City, then all machinery, equipment, tools, materials, or supplies left on the site of the work shall be turned over to the Contractor.

## 30. COMPLIANCE WITH LAW

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

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

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

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

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

## 31. SAFETY PRECAUTIONS

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

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

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

31.04. Contractor agrees that it shall not transport to, use, generate, dispose of, or install at the Project site any Hazardous Substance (as defined in Paragraph 31.07, except in accordance with applicable Environmental Laws. Further, in performing the Work, Contractor shall not cause any release of Hazardous Substances into, or contamination of, the environment, including the soil, the atmosphere, any water course or ground water, except in accordance with applicable Environmental Laws (as hereafter defined at Paragraph 31.07). **In the event Contractor engages in any of the activities prohibited in this Paragraph 31.04 to the fullest extent permitted by law, Contractor hereby indemnifies and holds**



**City and all of its respective officials, agents and employees harmless from and against any and all claims, damages, losses, causes of action, suits and liabilities of every kind, including, but not limited to, expenses of litigation, court costs, punitive damages and attorneys' fees, arising out of, incidental to or resulting from the activities prohibited in this Paragraph 31.04.**

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

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

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

## **32. TRENCH SAFETY**

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

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

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

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

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

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

### **33. INDEMNITY**

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

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

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

- (a) In the event the City is damaged due to the act, omission, mistake, fault or default of the Contractor, then the Contractor shall indemnify and hold harmless and defend the City for such damage.

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

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

33.05. It is agreed with respect to any legal limitations now or hereafter in effect and affecting the validity or enforceability of the indemnification obligation under Paragraph 33.01, such legal limitations are made a part of the indemnification obligation and shall operate to amend the indemnification obligation to the minimum extent necessary to bring the provision into conformity with the requirements of such limitations, and as so modified, the indemnification obligation shall continue in full force and effect.

#### 34. RELEASE

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



perform or furnish work on the Project, this release shall apply regardless of whether such injury, death, loss, or damage was caused in whole or in part by the negligence of the City.

### **35. PERMITS AND LICENSES**

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

### **36. ROYALTIES AND LICENSING FEES**

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

### **37. BREACH OF CONTRACT & DAMAGES**

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

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

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

### **38. TERMINATION FOR CAUSE**

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

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

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

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

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

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

38.06. If the Contractor abandons the Work.

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

### **39. TERMINATION FOR CONVENIENCE**

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

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

### **40. RIGHT TO COMPLETE**

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

## **41. CLOSE OUT**

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

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

## **42. TERMINATION CONVERSION**

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

## **43. HIRING**

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

#### 44. **ASSIGNMENT**

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

#### 45. **EFFECTIVE DATE**

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

#### 46. **OTHER TERMS**

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

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

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

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

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



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

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

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

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

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

- (a) Contractor has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with this Contract
- (b) Contractor represents and warrants that it has no actual or potential conflicts of interest in the goods and or services described in the scope of work to this contract.
- (c) **Antitrust.** Pursuant to 15 U.S.C. §1, et seq. and Tex. Bus. & Comm. Code §15.01, et seq. neither the contractor nor the firm, corporation, partnership, or institution represented by the contractor, or anyone acting for such a firm, corporation or institution has violated the antitrust laws of this state, federal antitrust laws, nor communicated directly or indirectly the bid made to any competitor or any other person engaged in such line of business.
- (d) **Child Support.** Pursuant to §231.006(d), Texas Family Code, regarding child support, the Contractor certifies that the individual or business entity named in this Contract is not ineligible to receive the specified payment and acknowledges that the contract may be terminated, and payment may be withheld if this certification is inaccurate. Furthermore, any Contractor subject to §231.006, Gov't Code, must include names and Social Security numbers of each person with at least 25% ownership of the business entity submitting the bid. This information must be provided prior to award. Enter the Name & Social Security Numbers for each person below:

|       |                         |
|-------|-------------------------|
| Name: | Social Security Number: |
| Name: | Social Security Number: |
| Name: | Social Security Number: |

- (e) **Debarment.** Contractor certifies that Contractor and its principals are eligible to participate in this transaction and have not been subjected to suspension, debarment, or similar ineligibility determined by any federal, state or local governmental entity and that Contractor is in compliance with the State of Texas statutes and rules relating to procurement. Entities ineligible for state procurement are listed on the State of Texas Debarred Vendor List maintained by the Texas Comptroller of Public Accounts and the System for Award Management (SAM) maintained by the General Services Administration. Entities ineligible for federal procurement are listed at <http://www.sam.gov/content/exclusions>.
- (f) **Terrorism Watch List.** Contractor represents and warrants that it does not do business with Iran, Sudan or a foreign terrorist organization as prohibited by Texas Government Code 2252.152. Contractor certifies that it is not listed on the federal government's terrorism watch list as described in Executive Order 13224.
- (g) **Critical Infrastructure.** If Contractor will be granted direct or indirect access to a communication infrastructure system, cybersecurity system, electric grid, hazardous waste treatment system, or water treatment facility, Contractor certifies that neither it or its parent company, is (1) majority owned by citizens or governmental entities of China, North Korea, Russia or any other country designated by the Governor under Government Code 2274.0103, or (2) headquartered in any of those countries.
- (h) **Convictions.** Under Sections 2155.006, 23155.0061 and 2261.053 of the Texas Government Code, Contractor certifies that it is not ineligible to receive the specified contract and may be terminated and payment withheld if this certification is inaccurate. These sections prohibit contracts that include proposed financial participation by an individual or business entity who has been convicted in the past five years of (a) violating a federal law or assessed a penalty in connection with a contract involving relief for Hurricane Rita, Hurricane Katrina, or any other disaster, as defined by §418.004, Gov't Code, occurring after September 24, 2005; and (b) of any offense related to the direct support or promotion of human trafficking.
- (i) **COVID Vaccinations.** Contractor certifies that it does not require its customers to provide any documentation certifying the Customer's COVID-19 vaccination or post-transmission recovery on entry to, or to receive service from the Contractor's business.
- (j) **Boycotts.** (1) To the extent this Contract is considered a Contract for goods or services subject to § 2270.002 Texas Government Code, Contractor verifies that it: (i) does not boycott Israel; and (ii) will not boycott Israel during the term of this Contract. (2) To the extent this Contract has a value of \$100,000 or more and Contractor is an organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations, that exists to make a profit that employs 10 or more full time employees, Contractor certifies that it: (i) does not and will not boycott energy companies during the term of the contract (*See Texas Government Code 2274.002, et seq.*); and (ii) does not and will not discriminate against a firearm entity or firearm trade association (*See Texas Government Code 2274.002, et seq.*).

46.11. **Waiver.** Failure of any party, at any time, to enforce a provision of this Agreement shall in no way constitute a waiver of that provision nor in any way affect the validity of this Agreement, any part hereof, or the right of the City thereafter to enforce each and every provision hereof. No term of this Agreement shall be deemed waived or breach excused unless the waiver shall be in writing and signed by the party claimed to

have waived. Furthermore, any consent to or waiver of a breach will not constitute consent to or waiver of or excuse of any other different or subsequent breach.

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

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

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

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

**DREWERY CONSTRUCTION CO., INC.**

**CITY OF NACOGDOCHES**

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

By: \_\_\_\_\_  
City Manager  
Date: \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney  
Date: \_\_\_\_\_





**Exhibit A**  
**DAVIS BACON WAGE RATES**

General Decision Number: TX20220028 02/25/2022

Superseded General Decision Number: TX20210028

State: Texas

Construction Type: Highway

Counties: Anderson, Angelina, Bosque, Camp, Cass, Cherokee, Erath, Falls, Fannin, Franklin, Freestone, Grimes, Hamilton, Henderson, Hill, Hood, Hopkins, Houston, Jack, Jasper, Lamar, Leon, Limestone, Madison, Marion, Milam, Morris, Nacogdoches, Navarro, Newton, Palo Pinto, Panola, Polk, Rains, Red River, Sabine, San Augustine, Shelby, Somervell, Titus, Trinity, Tyler, Van Zandt, Walker, Washington and Wood Counties in Texas.

HIGHWAY CONSTRUCTION PROJECTS (excluding tunnels, building structures in rest area projects & railroad construction; bascule, suspension & spandrel arch bridges designed for commercial navigation, bridges involving marine construction; and other major bridges).

Note: Contracts subject to the Davis-Bacon Act are generally required to pay at least the applicable minimum wage rate required under Executive Order 14026 or Executive Order 13658. Please note that these Executive Orders apply to covered contracts entered into by the federal government that are subject to the Davis-Bacon Act itself, but do not apply to contracts subject only to the Davis-Bacon Related Acts, including those set forth at 29 CFR 5.1(a)(2)-(60).

|                                                                                                                                                                                                                              |                                                                                                                                                                                                                                                                                                                                        |                               |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------|
| If the contract is entered<br>  into on or after January 30,<br>  2022, or the contract is<br>  renewed or extended (e.g., an<br>  option is exercised) on or<br>  after January 30, 2022:<br> <br> <br> <br> <br> <br> <br> | . Executive Order 14026<br>  generally applies to the<br>  contract.<br>  . The contractor must pay<br>  all covered workers at<br>  least \$15.00 per hour (or<br>  the applicable wage rate<br>  listed on this wage<br>  determination, if it is<br>  higher) for all hours<br>  spent performing on the<br>  contract in 2022.<br> | <br> <br> <br> <br> <br> <br> |
| If the contract was awarded on<br>  or between January 1, 2015 and<br>  January 29, 2022, and the<br>  contract is not renewed or<br>  extended on or after January<br>  30, 2022:<br>                                       | . Executive Order 13658<br>  generally applies to the<br>  contract.<br>  . The contractor must pay all<br>  covered workers at least<br>  \$11.25 per hour (or the<br>  applicable wage rate listed<br>                                                                                                                               | <br> <br> <br> <br> <br> <br> |

|  |                             |
|--|-----------------------------|
|  | on this wage determination, |
|  | if it is higher) for all    |
|  | hours spent performing on   |
|  | that contract in 2022.      |

The applicable Executive Order minimum wage rate will be adjusted annually. If this contract is covered by one of the Executive Orders and a classification considered necessary for performance of work on the contract does not appear on this wage determination, the contractor must still submit a conformance request.

Additional information on contractor requirements and worker protections under the Executive Orders is available at <https://www.dol.gov/agencies/whd/government-contracts>.

| Modification Number | Publication Date |
|---------------------|------------------|
| 0                   | 01/07/2022       |
| 1                   | 02/25/2022       |

\* SUTX2011-009 08/08/2011

|                                                       | Rates    | Fringes |
|-------------------------------------------------------|----------|---------|
| CONCRETE FINISHER (Paving and Structures).....        | \$ 13.38 | **      |
| ELECTRICIAN.....                                      | \$ 20.92 |         |
| FORM BUILDER/FORM SETTER                              |          |         |
| Paving & Curb.....                                    | \$ 11.33 | **      |
| Structures.....                                       | \$ 13.07 | **      |
| LABORER                                               |          |         |
| Asphalt Raker.....                                    | \$ 11.34 | **      |
| Flagger.....                                          | \$ 9.03  | **      |
| Laborer, Common.....                                  | \$ 10.30 | **      |
| Laborer, Utility.....                                 | \$ 11.53 | **      |
| Pipelayer.....                                        | \$ 13.24 | **      |
| Work Zone Barricade Servicer.....                     | \$ 11.22 | **      |
| POWER EQUIPMENT OPERATOR:                             |          |         |
| Agricultural Tractor.....                             | \$ 12.35 | **      |
| Asphalt Distributor.....                              | \$ 14.36 | **      |
| Asphalt Paving Machine.....                           | \$ 12.92 | **      |
| Broom or Sweeper.....                                 | \$ 10.30 | **      |
| Concrete Pavement Finishing Machine.....              | \$ 19.31 |         |
| Concrete Paving, Curing, Float, Texturing Machine.... | \$ 16.34 |         |
| Crane, Hydraulic 80 Tons or Less.....                 | \$ 20.21 |         |
| Crane, Lattice boom 80 Tons or less.....              | \$ 14.67 | **      |

|                              |          |    |
|------------------------------|----------|----|
| Crane, Lattice boom over     |          |    |
| 80 Tons.....                 | \$ 17.49 |    |
| Crawler Tractor.....         | \$ 13.38 | ** |
| Excavator 50,000 pounds or   |          |    |
| less.....                    | \$ 13.88 | ** |
| Excavator, Over 50,000       |          |    |
| pounds.....                  | \$ 16.22 |    |
| Foundation Drill, Truck      |          |    |
| Mounted.....                 | \$ 20.76 |    |
| Front End Loader 3 cu yd     |          |    |
| or Less.....                 | \$ 12.89 | ** |
| Front End Loader, over 3     |          |    |
| cu yd.....                   | \$ 12.32 | ** |
| Loader/Backhoe.....          | \$ 12.87 | ** |
| Mechanic.....                | \$ 18.58 |    |
| Milling Machine.....         | \$ 12.86 | ** |
| Motor Grader, Fine Grade.... | \$ 17.07 |    |
| Motor Grader, Rough.....     | \$ 15.12 |    |
| Pavement Marking Machine.... | \$ 13.17 | ** |
| Reclaimer/Pulverizer.....    | \$ 10.46 | ** |
| Roller, Asphalt.....         | \$ 11.68 | ** |
| Roller, other.....           | \$ 10.30 | ** |
| Scraper.....                 | \$ 12.43 | ** |
| Spreader Box.....            | \$ 13.68 | ** |

Servicer.....\$ 13.83 \*\*

Steel Worker (Reinforcing).....\$ 15.83

#### TRUCK DRIVER

|                              |          |    |
|------------------------------|----------|----|
| Lowboy-Float.....            | \$ 14.30 | ** |
| Off Road Hauler.....         | \$ 12.23 | ** |
| Single Axle.....             | \$ 10.30 | ** |
| Single or Tandem Axle Dump.. | \$ 12.28 | ** |
| Tandem Axle Tractor with     |          |    |
| Semi Trailer.....            | \$ 12.50 | ** |

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WELDERS - Receive rate prescribed for craft performing  
operation to which welding is incidental.

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\*\* Workers in this classification may be entitled to a higher minimum wage under Executive Order 14026 (\$15.00) or 13658 (\$11.25). Please see the Note at the top of the wage determination for more information.

Note: Executive Order (EO) 13706, Establishing Paid Sick Leave for Federal Contractors applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2017. If this contract is covered by the EO, the contractor must provide employees with 1 hour of paid sick leave for every 30 hours they work, up to 56 hours of paid sick leave each year. Employees must be permitted to use paid sick leave for their own illness, injury or other health-related needs, including

preventive care; to assist a family member (or person who is like family to the employee) who is ill, injured, or has other health-related needs, including preventive care; or for reasons resulting from, or to assist a family member (or person who is like family to the employee) who is a victim of, domestic violence, sexual assault, or stalking. Additional information on contractor requirements and worker protections under the EO is available at <https://www.dol.gov/agencies/whd/government-contracts>.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (ii)).

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The body of each wage determination lists the classification and wage rates that have been found to be prevailing for the cited type(s) of construction in the area covered by the wage determination. The classifications are listed in alphabetical order of ""identifiers"" that indicate whether the particular rate is a union rate (current union negotiated rate for local), a survey rate (weighted average rate) or a union average rate (weighted union average rate).

#### Union Rate Identifiers

A four letter classification abbreviation identifier enclosed in dotted lines beginning with characters other than ""SU"" or ""UAVG"" denotes that the union classification and rate were prevailing for that classification in the survey. Example: PLUM0198-005 07/01/2014. PLUM is an abbreviation identifier of the union which prevailed in the survey for this classification, which in this example would be Plumbers. 0198 indicates the local union number or district council number where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. 07/01/2014 is the effective date of the most current negotiated rate, which in this example is July 1, 2014.

Union prevailing wage rates are updated to reflect all rate changes in the collective bargaining agreement (CBA) governing this classification and rate.

#### Survey Rate Identifiers

Classifications listed under the ""SU"" identifier indicate that no one rate prevailed for this classification in the survey and the published rate is derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As this weighted average rate includes all rates reported in the survey, it may include both union and non-union rates. Example: SULA2012-007 5/13/2014. SU indicates



the rates are survey rates based on a weighted average calculation of rates and are not majority rates. LA indicates the State of Louisiana. 2012 is the year of survey on which these classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. 5/13/2014 indicates the survey completion date for the classifications and rates under that identifier.

Survey wage rates are not updated and remain in effect until a new survey is conducted.

#### Union Average Rate Identifiers

Classification(s) listed under the UAVG identifier indicate that no single majority rate prevailed for those classifications; however, 100% of the data reported for the classifications was union data. EXAMPLE: UAVG-OH-0010 08/29/2014. UAVG indicates that the rate is a weighted union average rate. OH indicates the state. The next number, 0010 in the example, is an internal number used in producing the wage determination. 08/29/2014 indicates the survey completion date for the classifications and rates under that identifier.

A UAVG rate will be updated once a year, usually in January of each year, to reflect a weighted average of the current negotiated/CBA rate of the union locals from which the rate is based.

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#### WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

- \* an existing published wage determination
- \* a survey underlying a wage determination
- \* a Wage and Hour Division letter setting forth a position on a wage determination matter
- \* a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour National Office because National Office has responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations  
Wage and Hour Division  
U.S. Department of Labor

200 Constitution Avenue, N.W.  
Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

4.) All decisions by the Administrative Review Board are final.

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END OF GENERAL DECISIO

**Exhibit B**  
**INSURANCE REQUIREMENTS**

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

**I. Standard Insurance Policies Required:**

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

**II. General Requirements Applicable to All Policies:**

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

**III. Commercial General Liability**

- A. General Liability insurance shall be written by a carrier with a "A:VIII" or better rating in accordance with the current Best Key Rating Guide.
- B. Limit of \$500,000.00 per occurrence for bodily injury and property damage with an annual

aggregate limit of \$1,000,000.00 which limits shall be endorsed to be per Project.

- C. Coverage shall be at least as broad as ISO form GC 00 01.
- D. No coverage shall be excluded from the standard policy without notification of individual exclusions being attached for review and acceptance.
- E. The coverage shall include but not be limited to the following: premises/operations with separate aggregate; independent contracts; products/completed operations; contractual liability (insuring the indemnity provided herein) Host Liquor Liability, Personal & Advertising Liability; and Explosion, Collapse, and Underground coverage.

#### IV. Business Automobile Liability

- A. Business Automobile Liability insurance shall be written by a carrier with a “A:VIII” or better rating in accordance with the current Best Key Rating Guide.
- B. Minimum Combined Single Limit of \$1,000,000.00 per occurrence for bodily injury and property damage.
- C. Coverage shall be at least as broad as Insurance Service’s Office Number CA 00 01.
- D. The Business Auto Policy must show Symbol 1 in the Covered Autos Portion of the liability section in Item 2 of the declarations page.
- E. The coverage shall include owned autos, leased or rented autos, non-owned autos, any autos and hired autos.
- F. Pollution Liability coverage shall be provided by endorsement MCS-90, with a limit of \$1,000,000.00.

#### V. Excess Liability

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

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



furnished to the City's Representative at the time of execution of this Agreement, attached hereto as Exhibit D, and approved by the City before work commences.

## VII. Workers Compensation Insurance

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

*"A. Definitions:*

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

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

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

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

- I. *The Contractor shall contractually require each person with whom it contracts to provide services on a project, to:*
- (1) *provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, that meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all of its employees providing services on the project, for the duration of the project;*
  - (2) *provide to the Contractor, prior to that person beginning work on the project, a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the project, for the duration of the project;*
  - (3) *provide the Contractor, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project;*
  - (4) *obtain from each other person with whom it contracts, and provide to the Contractor:*
    - (a) *A certificate of coverage, prior to the other person beginning work on the project; and*
    - (b) *A new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the project;*
  - (5) *retain all required certificates of coverage on file for the duration of the project and for one year thereafter;*
  - (6) *notify the governmental entity in writing by certified mail or personal delivery, within 10 calendar days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project; and*
  - (7) *Contractually require each person with whom it contracts to perform as required by paragraphs (a) - (g), with the certificates of coverage to be provided to the person for whom they are providing services.*
- J. *By signing this contract, or providing, or causing to be provided a certificate of coverage, the Contractor is representing to the governmental entity that all employees of the Contractor who will provide services on the project will be covered by workers' compensation coverage for the duration of the project; that the coverage will be based on proper reporting of classification codes and payroll amounts; and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the Commission's Division of Self-Insurance Regulation. Providing false or misleading information may subject the Contractor to administrative penalties, criminal penalties, civil penalties, or other civil actions.*
- K. *The Contractor's failure to comply with any of these provisions is a breach of contract by the*

*Contractor that entitles the governmental entity to declare the contract void if the Contractor does not remedy the breach within ten calendar days after receipt of notice of breach from the governmental entity.”*

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



**Exhibit C**  
**PERFORMANCE AND PAYMENT BONDS**



PERFORMANCE BOND

Project No. \_\_\_\_\_

THE STATE OF TEXAS

§  
§

KNOW ALL MEN BY THESE PRESENTS:

THE COUNTY OF NACOGDOCHES

§

**THAT WE,** \_\_\_\_\_, as Principal, hereinafter called “Contractor” and the other subscriber hereto \_\_\_\_\_, as Surety, do hereby acknowledge ourselves to be held and firmly bound to the City of Nacogdoches, a municipal corporation, in the sum of **Four Hundred Fourteen Thousand Six Hundred Forty-Four and 00/100 Dollars (\$414,644.00)** for the payment of which sum, well and truly to be made to the City of Nacogdoches and its successors, the said Contractor and Surety do bind themselves, their heirs, executors, administrators, successors, and assigns, jointly and severally.

**THE CONDITIONS OF THIS OBLIGATION ARE SUCH THAT:**

**WHEREAS,** the Contractor has on or about this day executed a Contract in writing with the City of Nacogdoches for **Construction Services for 2022 Seal Coat Project** all of such work to be done as set out in full in said Contract Documents therein referred to and adopted by the City Council, all of which are made a part of this instrument as fully and completely as if set out in full herein.

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

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

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

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

any suit or other proceeding at law on the Contract or this bond or both, the Contractor and Surety agree to pay to the City the actual amounts of attorneys' fees incurred by the city in connection with such suit.

This bond and all obligations created hereunder shall be performable in NACOGDOCHES County, Texas. This bond is given in compliance with the provisions of Chapter 2253 of the Texas Government Code, as amended, which is incorporated herein by this reference. However, all of the express provisions hereof shall be applicable whether or not within the scope of said statute.

Notices required or permitted hereunder shall be in writing and shall be deemed delivered when actually received or, if earlier, on the third day following deposit in a United State Postal Service post office or receptacle, with proper postage affixed (certified mail, return receipt requested), addressed to the respective other party at the address prescribed in the Contract Documents, or at such other address as the receiving party may hereafter prescribe by written notice to the sending party.

**IN WITNESS THEREOF**, the said Contractor and Surety have signed and sealed this instrument on the respective dates written below their signatures and have attached current Power of Attorney.

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

\_\_\_\_\_  
(Name of Contractor)

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:  
Date:

ATTEST/WITNESS (SEAL)

\_\_\_\_\_  
(Full Name of Surety)

By: \_\_\_\_\_  
Name:  
Title:  
Date:

\_\_\_\_\_  
(Address of Surety for Notice)

By: \_\_\_\_\_  
Name:  
Title:  
Date:

REVIEWED:

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

\_\_\_\_\_  
City Attorney's Office

\_\_\_\_\_  
City Manager

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



TEXAS STATUTORY PAYMENT BOND

Project No. \_\_\_\_\_

THE STATE OF TEXAS

§  
§

KNOW ALL MEN BY THESE PRESENTS:

THE COUNTY OF NACOGDOCHES

§

**THAT WE,** \_\_\_\_\_, as Principal, hereinafter called "Principal" and the other subscriber hereto \_\_\_\_\_, a corporation organized and existing under the laws of the State of \_\_\_\_\_, licensed to business in the State of Texas and admitted to write bonds, as Surety, herein after called "Surety", do hereby acknowledge ourselves to be held and firmly bound to the City of Nacogdoches, a municipal corporation, in the sum of **Four Hundred Fourteen Thousand Six Hundred Forty-Four and 00/100 Dollars (\$414,644.00)** for payment whereof, the said Principal and Surety bind themselves, and their heirs, administrators, executors, successors and assigns jointly and severally.

**THE CONDITIONS OF THIS OBLIGATION ARE SUCH THAT:**

**WHEREAS,** Principal has entered into a certain contract with the City of Nacogdoches, dated the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, for **Construction Services for 2022 Seal Coat Project** which contract is hereby referred to and made a part hereof as fully and to the same extent as if copied at length herein.

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

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

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

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

\_\_\_\_\_  
(Name of Contractor)

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:  
Date:

ATTEST/WITNESS (SEAL)

\_\_\_\_\_  
(Full Name of Surety)

By: \_\_\_\_\_  
Name:  
Title:  
Date:

\_\_\_\_\_  
(Address of Surety for Notice)  
\_\_\_\_\_

By: \_\_\_\_\_  
Name:  
Title:  
Date:

REVIEWED:

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

\_\_\_\_\_  
City Attorney's Office

\_\_\_\_\_  
City Manager

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

**Exhibit D**  
**CERTIFICATES OF INSURANCE AND ENDORSEMENTS**





**Exhibit E**  
**PLANS, SPECIFICATIONS AND DRAWINGS**









# 2022 Seal Coat Project

| Street               | Width (ft) | Length (ft) | Area (SY) | Proposed Work                                     |
|----------------------|------------|-------------|-----------|---------------------------------------------------|
| A Street             | 23         | 299         | 764       | Seal Coat                                         |
| Blount Street        | 23         | 754         | 1927      | Seal Coat - Raguet Street to N. Pecan Street      |
| Castleberry Street   | 23         | 1088        | 2780      | Seal Coat                                         |
| Chimney Rock Lane    | 23         | 1620        | 4140      | Seal Coat                                         |
| Chimney Rock Lane    | 24         | 654         | 1744      | Seal Coat                                         |
| Chimney Rock Lane    | 30         | 823         | 2743      | Seal Coat                                         |
| Cobblestone Street   | 23         | 397         | 1015      | Seal Coat                                         |
| W. Cox Street        | 18         | 688         | 1376      | Seal Coat - Thomas Street to Dennis Street        |
| Eliza Street         | 23         | 1175        | 3003      | Seal Coat                                         |
| Gasaway Road         | 23         | 1350        | 3450      | Seal Coat - Marty Street to Ammons Street         |
| Gasaway Road         | 24         | 234         | 624       | Seal Coat - Ritchie Street to Marty Street        |
| Goldsberry Street    | 22         | 472         | 1154      | Seal Coat                                         |
| Granite Hill Street  | 23         | 438         | 1119      | Seal Coat                                         |
| Jordan Street        | 23         | 1481        | 3785      | Seal Coat                                         |
| King Street          | 21         | 948         | 2212      | Seal Coat - N. Mound Street to Logansport Street  |
| Lake Forest Drive    | 28         | 2045        | 6362      | Seal Coat                                         |
| Lampkin Street       | 23         | 1983        | 5068      | Seal Coat                                         |
| Logansport Street    | 17         | 663         | 1252      | Seal Coat                                         |
| Logansport Street    | 22         | 708         | 1731      | Seal Coat                                         |
| Logansport Street    | 25         | 1233        | 3425      | Seal Coat                                         |
| Lola Street          | 23         | 598         | 1528      | Seal Coat                                         |
| Maroney Drive        | 45         | 2319        | 11,595    | Seal Coat - Appleby Sand Road to Ridgebrook Drive |
| Martinsville Street  | 23         | 1728        | 4416      | Seal Coat - University Dr. to Logansport          |
| Marty Street         | 23         | 409         | 1045      | Seal Coat                                         |
| Nash Street          | 23         | 257         | 657       | Seal Coat                                         |
| W. Parker Road       | 46         | 659         | 3368      | Seal Coat - North Street to Pearl Street          |
| Pat Street           | 23         | 1093        | 2793      | Seal Coat - East and West of Ritchie Street       |
| Pebble Creek Street  | 23         | 396         | 1012      | Seal Coat                                         |
| W. Pilar Street      | 24         | 810         | 2160      | Seal Coat - South Street to Bridge                |
| Piping Rock Street   | 23         | 394         | 1007      | Seal Coat                                         |
| Queen Street         | 21         | 436         | 1017      | Seal Coat                                         |
| Raguet Street        | 21         | 443         | 1034      | Seal Coat - King Street to Memorial Hospital      |
| Rock Ridge Street    | 23         | 381         | 974       | Seal Coat                                         |
| Rudolph Street       | 20         | 317         | 704       | Seal Coat                                         |
| N. Stone Street      | 23         | 326         | 833       | Seal Coat - W. Main Street to Spokane Street      |
| Stone's Throw Street | 23         | 605         | 1546      | Seal Coat                                         |
| Terry Crawford Drive | 22         | 2559        | 6255      | Seal Coat                                         |
| Thomas Street        | 18         | 343         | 686       | Seal Coat                                         |
| Wade Street          | 23         | 1049        | 2681      | Seal Coat                                         |



**CITY OF NACOGDOCHES**  
TABLE OF CONTENTS  
TECHNICAL SPECIFICATIONS

DIVISION 1 - GENERAL REQUIREMENTS

Restoration and Clean Up

DIVISION 2 - SITEWORK

Clearing and Grubbing

Herbicide Treatment

Single Course Surface Treatment

Seeding





PART ONE - GENERAL

- 1.1 The Contractor shall furnish all labor, equipment, materials and incidentals to restore any disturbed or damaged surfaces and/or items to a condition equal to or better than that which existed before work began. The Contractor shall leave the construction site clean.

PART TWO - PRODUCTS

- 2.1 The Contractor may use equipment and materials as necessary to properly complete the restoration and cleanup phase of the project.

PART THREE - EXECUTION

3.1 General

A. As soon as the pipe is laid and backfilled or structures built, clean the construction site and any adjoining areas used by the Contractor in construction and make any restorations necessary to leave the site in a condition equal to or better than prior to construction.

B. As a matter of record, the Contractor shall photograph improved or planted areas before and after working across them.

3.2 Restoration

A. The Contractor shall restore and/or replace any paving, curbing, sidewalks, culverts, gutters, shrubbery, plants, fences, sod or other disturbed surfaces or structures. The size, thickness, strength, texture or condition of restored items shall equal to that which existed before the work began.

B. All terraces, levees and water courses shall be restored to their former condition so that they shall function as originally intended.

C. Private roads used by the Contractor shall be restored to former condition.

3.3 Cleanup

A. The cleaning up shall be done by a special labor crew organized by the Contractor at the time he starts backfill operations and such work shall be diligently prosecuted until the entire construction site has been covered.

B. Any rock, including loose rock having a dimension three (3) inches or more, encountered by the grading, trenching or boring operations, not backfilled according to the specifications, shall be removed from the construction site and disposed of at locations and in a manner that is satisfactory to the Owner.

C. Unless directed otherwise by the Owner, all materials used for providing temporary roadways for construction equipment shall be removed and disposed of.

**CITY OF NACOGDOCHES**  
**RESTORATION AND CLEANUP**

- D. All debris, pavement and excess earth from excavations shall be removed and disposed of by the Contractor.
- E. Seeding or sodding will be necessary in areas of excavation as required by the Owner. The seeding or sodding is to be performed according to specifications dealing with this work.
- F. To prevent erosion of soil disturbed by construction, the Contractor shall construct terraces or shall place over the construction site and trench backfill suitable control devices composed of sacks filled with earth or sand, silt fences, silt dams or hay bales.
- G. The Contractor should not attempt to perform cleanup operations during adverse weather or wet ground conditions.
- H. At no time during the progress of the work shall the completed cleanup operation be a greater distance behind the completed pipe trench than is deemed advisable by the Engineer.
- I. Before the final acceptance of the project, the entire project site shall be cleared of all surplus and waste materials from the work and otherwise restored as required above.

# CITY OF NACOGDOCHES

## CLEARING AND GRUBBING

### PART ONE - GENERAL

- 1.1 "CLEARING AND GRUBBING" shall consist of the removal and disposal of trees, stumps, brush, roots, vegetation, logs, rubbish and other objectionable matter.

### PART TWO - EXECUTION

- 2.1 Construction Methods - The site or right of way shall be cleared of stumps, brush, logs, rubbish, trees and shrubs, except such trees and shrubs and certain areas designated by the Engineer for preservation. Those trees, shrubs and other landscape features specifically designated by the Engineer for preservation shall be carefully protected from abuse, marring or damage during construction operations. On areas required for embankment construction, all stumps, roots, etc. (except for designated trees and brush) shall be removed to a depth of at least 2 feet below the existing ground surface. All holes remaining after clearing and grubbing shall be backfilled and tamped as directed by the Engineer and the entire area bladed to prevent ponding of water and to provide drainage, except, in areas to be immediately excavated, the Engineer may direct that the holes not be backfilled. When permitted by the plans, trees and stumps may be cut off as close to natural ground as practicable on areas which are to be covered by at least 3 feet of embankment and/or waste excavation.

All cleared and grubbed material shall be disposed of in a manner satisfactory to the Engineer. Unless otherwise provided, all merchantable timber removed as required above shall become the property of the Contractor.

### PART THREE - MEASUREMENT AND PAYMENT

- 3.1 Measurement - "Clearing and Grubbing" will be measured by the acre. Measurement for payment will be made only on areas indicated and classified on plans as "Clearing and Grubbing", except that required work on additional areas (such as additional right of way, additional borrow and material sources, additional cut and embankment areas, etc.) not originally proposed by plans but found necessary during construction, and which comes within the purview of "Clearing and Grubbing" as established on plans for the contract shall be measured accordingly. When indicated on the plans, "Clearing and Grubbing (Tree)" will be measured by each tree removed.
- 3.2 Payment - All work performed and measured as provided under "MEASUREMENT" will be paid for at the unit price bid for "Clearing and Grubbing". Said price shall be full compensation for furnishing all labor, equipment, tools, supplies, arranging for providing disposal sites and incidentals necessary to complete the work.





# CITY OF NACOGDOCHES

## HERBICIDE TREATMENT

### PART ONE - GENERAL

- 1.1 Description Of Work - This item shall govern the applications of an approved herbicide and or soil sterilizer to all streets requiring crack and joint sealing.

### PART TWO - PRODUCTS

- 2.1 Herbicides - "Round-Up ®" or an approved equal that is commercially available, may be used.
- 2.2 Soil Sterilizers - "Arsenol ®" or an approved equal that is commercially available, may be used.

### PART THREE - EXECUTION

- 3.1 License Requirements - The contractor shall possess a permit or employ a person who possesses a permit to apply herbicide as required by the Texas Herbicide Law of the Texas Department of Agriculture. The Engineer may require documentation of such certification as necessary for his records.
- 3.2 Material Data Safety Sheets - Copies of material safety data sheets (MSDS) covering the chemicals being used shall be located within the vehicle/s being used on the application job sites and the vehicle/s transporting the chemicals from job site to job site. The material safety data sheets shall be made readily available at all times. Two (2) copies of the material safety data sheets covering the chemicals being used shall be supplied to the Engineer prior to the commencement of the application of the chemicals.
- 3.3 Application - The approved herbicide and/or soil sterilizer shall be applied in an environmentally safe manner conforming to both the manufacturer's recommendations and all applicable laws. Care shall be taken to prevent drift and run-off onto residential yards, flowerbeds, trees, etc..and any damages will be the responsibility of the contractor.

Unless otherwise allowed by the chemical manufacturer, crack sealing shall not commence until after a minimum of fourteen (14) days has passed since initial application of chemicals. If in the event all grass, weeds, etc. have not been killed, a second application shall be applied. Under no circumstances shall any form of grass, weeds, roots, etc. be sealed over. For areas where a good kill has not taken place and the potential for re-growth exists even after the second application, the cracks and joints may be cleaned, blasted, routed, etc. to an extra depth and a layer of Rock Salt may be poured in the cracks and joints. If Rock Salt is used at any time there must be a minimum of 1" from the top of the Rock Salt layer to the top of the surrounding pavement. All dead grass, weeds, roots, etc. are to be removed from the cracks and joints before sealing takes place. No "weed eating" grass or weeds prior to sealing will be allowed.

**CITY OF NACOGDOCHES**  
HERBICIDE TREATMENT

PART FOUR - MEASUREMENT AND PAYMENT

- 4.1 There will be no separate payment for this item. This item is subsidiary to the bid item "Crack Sealing".

**CITY OF NACOGDOCHES**  
**SINGLE COURSE SURFACE TREATMENT**

PART ONE - GENERAL

- 1.1 Description Of Work - This item shall govern for the application of a Single Course Surface Treatment consisting of Asphaltic Material and Pre-coated Aggregate, constructed on the prepared base course over existing pavement as specified in this item.

PART TWO - PRODUCTS

- 2.1 The Asphaltic Material used shall be AC-15P meeting *TxDOT Standard Specifications for Construction of Highways, Streets and Bridges*, Item 300, latest edition. The application rate for the Asphaltic Material shall be .30 gallons per square yard.

The aggregate used shall be Type "PB" Grade 5 meeting TxDOT Specification Item 302, latest edition. Application rate for the aggregate shall be one (1) cubic yard of aggregate for 130 square yards of surface area. Light weight aggregates will not be acceptable for use.

PART THREE - EXECUTION

- 3.1 Surface Treatment Application Methods and Equipment shall be in accordance with TxDOT Specification Item 316, latest edition.
- 3.2 Surface Treatment shall be applied no sooner than 24 hours from completion of the Prime Coat, or as otherwise directed by the Owner.

PART FOUR - MEASUREMENT AND PAYMENT

- 4.1 Single Course Surface Treatment will be measured by the square yards of covered area.
- 4.2 The work performed and materials furnished in accordance with this item and as provided under "Measurement" will be paid for at the unit price bid for "SINGLE COURSE SURFACE TREATMENT". This price shall be full compensation for cleaning, sprinkling the existing surface; for furnishing, preparing, hauling, supplying and placing all materials; for Prime Coat; for rolling and removing excess aggregate and cleanup; for all freight and hauling involved; and for all manipulations, labor, tools, equipment and incidentals necessary to complete the work.





PART ONE - GENERAL

- 1.1 Description of Work - This item shall provide for furnishing and planting seed of the kinds specified along and across all disturbed grassed areas within the project. The work covered by this specification also includes preparation of the ground, fine grading, all required fertilizer, geo-synthetic fabrics, watering and maintenance of the seeded areas.

PART TWO - MATERIALS

- 2.1 The soil for areas to be repaired shall be at least of equal quality to the soil existing in areas adjacent to the areas to be repaired. The soil shall be reasonably free from subsoil, clay lumps, brush, objectionable weeds and other litter, and shall not contain stones, stumps, roots, toxic substances, other objects larger than 1-inch in diameter or any other material or substance that might be harmful to plant growth or be a hindrance to grading, planting or maintenance operations.
- 2.2 Geo-synthetic fabrics shall be as stated on the plans or approved equal, and shall be applied over the entire area disturbed by construction in those areas designated on the plans. Staples shall be installed in accordance with manufacturer's recommendation.
- 2.3 The seed shall consist of a 50/50 mixture of Bermuda and unhulled rye grass or other seed mixtures as shown on the plans or as directed by the Engineer. The seed mixture shall be free from noxious weed seeds, other grasses and any matter deleterious to its growth or which might affect its subsistence or hardiness when planted. The Bermuda/rye seed mixture shall be applied at a rate of 5 pounds per acre.
- 2.4 Fertilizer shall be uniform in composition, free flowing and suitable for application with acceptable equipment and delivered to the site in bags or containers. Each container shall be labeled, conform to the state fertilizer laws and bear the name or trademark and warranty of the producer. Fertilizer shall be 13-13-13 at 300 pounds per acre.

PART THREE - CONSTRUCTION METHODS

- 3.1 Site grading shall include all cutting, filling, importing and moving of earth necessary to bring the disturbed areas to required grades. Grading shall be such as to conduct drainage away from structures and into drainage channels. Grading shall be done with selected materials as directed by the Engineer and, if necessary, top soil shall be imported to the site.
- 3.2 Any area being prepared to receive seed shall be brought to an elevation that will leave the grass surface flush with the adjacent ground surfaces. After areas to be seeded have been brought to the proper grade, they shall be thoroughly tilled to a depth of two (2) inches by disking, harrowing or by other approved method until the condition of the soil is sufficiently pulverized for planting. The work shall be performed only during

periods when satisfactory results are likely to be obtained. When conditions are such, by reason of drought, excessive moisture or other factors, that results are not likely to be satisfactory, the Engineer may stop the work and it shall resume only when, in the Engineer's opinion, the desired results are likely to be obtained. Any irregularities in the surface resulting from tilling or other operations shall be leveled out before planting operations are begun.

- 3.3 After completion of tilling operations, the surface shall be cleared of stones, stumps, other objects larger than 1-inch in thickness or diameter, roots, brush, wire and grade stakes. If required, geo-synthetic fabric shall be installed in accordance with manufacturer's instructions and as directed by the Engineer, over the prepared areas. The seed mixture shall be carefully placed on the prepared areas and lightly raked under the soil. The fertilizer shall then be distributed uniformly at the rate specified over all areas being planted and thoroughly watered. Any excess soil from planting operations shall be spread uniformly over adjacent areas or disposed of as directed by the Engineer so that the completed surfaces will present a neat appearance.

#### PART FOUR - ESTABLISHMENT

- 4.1 The Contractor shall be responsible for the proper care of the planted areas and shall maintain, repair and water the areas as required during the construction period and, at final acceptance of the project, turn over to the Owner a prime stand of grass.
- 4.2 The newly planted areas shall be watered frequently to promote healthy growth. Light sprinkling shall be performed in a manner that will not cause displacement and surface erosion. As turf develops, the frequency of watering will be reduced and application volumes increased, as growth and moisture requirements dictate. Watering equipment shall be of a type that will not damage the finished surface.
- 4.3 The Contractor is responsible for establishing and maintaining a dense healthy stand of grass for the duration of the project including the one (1) year warranty period. Areas that require re-seeding will be designated by the Engineer. Re-seeding shall be completed within a period of time designated by the Engineer and in a manner that will cause minimum disturbance to the existing grass. Re-seeding shall be accomplished at no additional cost to the Owner.
- 4.4 If, at any time before completion and acceptance of the entire work covered by this contract, any portion of the surface becomes gullied or otherwise damaged following planting, the affected portion shall be repaired to re-establish the condition and grade of the soil prior to seeding and re-seeded as specified above.

# 2022 Seal Coat Project

- Single-Course Surface Treatment on Thirty-four (34) Streets
- Alternate Bid replaces aggregate originally specified with lighter-weight alternative
- Lighter-weight aggregate regularly used by TxDOT

Base Bid Amount:

Drewery Construction      \$ 481,144.00

Base Plus Alternate Bid:      **\$ 414,644.00**

## **Recommend Base Plus Alternate Award**

- Lower Cost
- Higher Material Availability



Photo: asphaltpavingsystems.com

**PRESENTER:** Drew Flores, Purchasing Specialist

**ITEM/SUBJECT:** Consider approval of an administration/project delivery service provider(s) to complete application and project implementation for the City of Nacogdoches' 2023-2024 Community Development Block Grant (TxCDBG) funded and administered through the Texas Department of Agriculture. (Purchasing Contract Specialist)

**SUMMARY/BACKGROUND:** The Texas Department of Agriculture offers a rural economic development grant known as the Community Development Block Grant (TxCDBG) Program for Rural Texas. The primary objective of this program is to develop viable communities by providing decent housing and suitable living environments, expanding economic opportunities principally for persons of low-to-moderate income.

Eligible applicants are non-entitlement cities under 50,000 in population and non-entitlement counties that have a non-metropolitan population under 200,000 and are not eligible for direct CDBG funding from HUD may apply for funding.

Due to the extreme complexities of the regulations on the use of these funds, the City determined that there was a need for an experienced Grant Administrator to help guide staff through the procurement and construction process as well as the provision of reporting and administrative support. An RFP for Administrative Services was released and we received two responses from seven vendors. After an extensive review and scoring process by the reviewing committee comprised of Purchasing Specialist Flores and Project Engineer Cramer, Grantworks, Inc. was chosen to provide grant administration services for CDBG Grant funding.

As part of legislative guidelines, the costs of these services are an eligible use of CDBG funds, leaving no budgetary impact on the City.

**FINANCIAL:**

No financial impact associated with this item

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

Not Applicable

**CITY CONTACT:** Drew Flores, Purchasing and Contract Specialist  
[floresd@nactx.us](mailto:floresd@nactx.us)  
936-559-2539

**ATTACHMENTS:**

1. Resolution CDBG Admin
2. CDBG Admin RFP Scoring Totals
3. TxCDBG Info Sheet





## RESOLUTION NO. 1305-07-22

### **A RESOLUTION OF THE CITY OF NACOGDOCHES, TEXAS, AUTHORIZING PROFESSIONAL SERVICE PROVIDER(S) SELECTION FOR COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) PROGRAM(S).**

WHEREAS, participation in Community Development Block Grant (CDBG) program(s) requires implementation by professionals experienced in the administration of federally-funded projects; and

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

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

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

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

PASSED AND APPROVED THIS 19<sup>TH</sup> DAY OF JULY, 2022.

\_\_\_\_\_  
Jimmy Mize, Mayor  
City of Nacogdoches

ATTEST:

\_\_\_\_\_  
Jan Vinson, City Secretary

Approved as to form: \_\_\_\_\_  
Steven Kirkland, City Attorney

**Texas Community Development Block Grant**  
**Phase Two Solicitation for Administrative Services**  
**Evaluation of Proposals**

|                                     |                                                                                                                                                                                                                                                                      |                        |                     |               |       |                                    |                 |
|-------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------|---------------------|---------------|-------|------------------------------------|-----------------|
| Applicant Community:                | City of Nacogdoches                                                                                                                                                                                                                                                  |                        |                     |               |       |                                    |                 |
| Evaluation Team:                    | <b>Name of Evaluator</b>                                                                                                                                                                                                                                             |                        |                     |               |       | <b>Title</b>                       |                 |
|                                     | Drew Flores                                                                                                                                                                                                                                                          |                        |                     |               |       | Purchasing and Contract Specialist |                 |
|                                     | Samuel Cramer                                                                                                                                                                                                                                                        |                        |                     |               |       | Project Engineer                   |                 |
|                                     |                                                                                                                                                                                                                                                                      |                        |                     |               |       |                                    |                 |
| Description of Anticipated Project: | Community Development                                                                                                                                                                                                                                                |                        |                     |               |       |                                    |                 |
| Date Solicitation Sent:             | 6/23/2022                                                                                                                                                                                                                                                            |                        |                     |               |       |                                    |                 |
| Responses received:                 | <b>Name of Firm</b>                                                                                                                                                                                                                                                  |                        |                     |               |       | <b>Date Response Received</b>      |                 |
|                                     | KSBR, LLC                                                                                                                                                                                                                                                            |                        |                     |               |       | 6/27/2022                          |                 |
|                                     | Grantworks                                                                                                                                                                                                                                                           |                        |                     |               |       | 7/1/2022                           |                 |
|                                     |                                                                                                                                                                                                                                                                      |                        |                     |               |       |                                    |                 |
|                                     |                                                                                                                                                                                                                                                                      |                        |                     |               |       |                                    |                 |
|                                     |                                                                                                                                                                                                                                                                      |                        |                     |               |       |                                    |                 |
| Evaluation of Proposals:            | Enter for each criterion and proposal: <ul style="list-style-type: none"> <li>• Points awarded (if scoring was used on Form P506), or</li> <li>• Evaluation such as Highly Advantageous (H), Advantageous (A), Not Advantageous (N), or Unacceptable (U).</li> </ul> |                        |                     |               |       |                                    |                 |
| Name of Firm                        | Experience                                                                                                                                                                                                                                                           | Prior Work Performance | Capacity to Perform | Proposed Cost | Other | Other                              | Notes           |
| KSBR, LLC                           | 27                                                                                                                                                                                                                                                                   | 24                     | 17                  | 13            |       |                                    | Total Score: 81 |
| Grantworks                          | 29                                                                                                                                                                                                                                                                   | 29                     | 20                  | 20            |       |                                    | Total Score: 98 |
|                                     |                                                                                                                                                                                                                                                                      |                        |                     |               |       |                                    |                 |
|                                     |                                                                                                                                                                                                                                                                      |                        |                     |               |       |                                    |                 |
|                                     |                                                                                                                                                                                                                                                                      |                        |                     |               |       |                                    |                 |
|                                     |                                                                                                                                                                                                                                                                      |                        |                     |               |       |                                    |                 |
|                                     |                                                                                                                                                                                                                                                                      |                        |                     |               |       |                                    |                 |
| Firm Recommended:                   | Grantworks                                                                                                                                                                                                                                                           |                        |                     |               |       |                                    |                 |
| Firm Selected:                      | Grantworks                                                                                                                                                                                                                                                           |                        |                     |               |       |                                    |                 |
|                                     | * If Firm Selected differs from Firm recommended by Evaluators, provide explanation                                                                                                                                                                                  |                        |                     |               |       |                                    |                 |
| Conflict of Interest Evaluated by:  | <input checked="" type="checkbox"/> No conflict exists <input type="checkbox"/> Request for waiver submitted to TDA                                                                                                                                                  |                        |                     |               |       |                                    |                 |
| Date Awarded by Governing Body:     |                                                                                                                                                                                                                                                                      |                        |                     |               |       |                                    |                 |
| Signature of Lead Evaluator:        |                                                                                                                                                                                                                                                                      |                        |                     |               |       |                                    |                 |



## TEXAS DEPARTMENT OF AGRICULTURE COMMISSIONER SID MILLER

### **Community Development Block Grant (CDBG) Program for Rural Texas**

The primary objective of the Community Development Block Grant program is to develop viable communities by providing decent housing and suitable living environments, and expanding economic opportunities principally for persons of low- to moderate-income.

**Eligible Applicants:** Non-entitlement cities and counties whose populations are less than 50,000 and 200,000 respectively, and that are not designated as eligible for the entitlement portion of the federal Community Development Block Grant Program (CDBG).

### **Community Development Fund (2023-2024)**

**Application Deadline:** Spring 2023

**Max Award:** \$500,000

The Community Development Fund is the largest fund category in the TxCDBG Program. This fund is available through a competition in each of the 24 state planning regions. Although most funds are used for Public Facilities (water/wastewater infrastructure, street and drainage improvements and housing activities), there are numerous other activities for which these funds may be used.

### **Downtown Revitalization Program**

**Application Deadline:** July 8, 2022

**Max Award:** \$500,000

Provides grant funds for public infrastructure to eliminate deteriorated conditions and foster economic development in historic main street areas and rural downtown areas.

### **Fire, Ambulance, and Service Truck (FAST) Fund**

**Application Deadline:** July 29, 2022

**Max Award:** \$750,000

Provides funds for eligible vehicles to provide emergency response and special services to LMI rural communities.

### **Planning and Capacity Building Fund**

**Application Deadline:** TBD

**Max Award:** \$75,000

An annual competitive grant program for local public facility and housing planning activities. Localities apply for financial assistance to prepare a “comprehensive plan” or any of its components.

## Community Development Block Grant (CDBG) Program for Rural Texas (cont.)

### Colonia Funds

Funds available to eligible county applicants for projects in severely distressed unincorporated areas. The term “colonia” generally means an identifiable unincorporated community that is within 150 miles of the border between the United States and Mexico.

#### Colonia Planning Fund

**Application Deadline: By Invitation**

**Max Award: \$150,000**

Assistance for the completion of planning activities to prepare colonia areas for water, sewer and housing improvements.

#### Colonia Construction Fund

**Application Deadline: July 8, 2022**

**Max Award: \$1,000,000**

Assistance to fund water and wastewater improvements, housing rehabilitation, and other improvements in colonia areas.

#### Colonia Economically Distressed Areas Program

**Application Deadline: As Needed**

**Max Award: \$1,000,000**

Assistance to colonia areas to connect to a water and sewer system project funded by other state and federal funds.

### State Urgent Need (SUN) Fund

**Application Deadline: As Needed**

**Max Award: \$500,000**

**(\$1,000,000 for certain multi-jurisdiction awards)**

Assistance to communities impacted by state-declared disaster events that are not eligible for federal disaster assistance. Infrastructure repair, replacement, and improvement are eligible projects, with priority for drinking water systems and debris removal.

**PRESENTER:** Bonita Hall, Director of Human Resources

**ITEM/SUBJECT:** Consider approval of the City's partially self-insured health insurance plans and ancillary benefits between the City and Blue Cross Blue Shield of Texas, Metlife Insurance and Lincoln Financial, and authorize the City Manager to execute any and all necessary renewal/contract documents. (Bonita Hall, Director of Human Resources and Jeff Summers, BXS Insurance, subsidiary of BancorpSouth)

**SUMMARY/BACKGROUND:** The City of Nacogdoches offers Health and Dental insurance for employees and their dependents. The Health Insurance policy is a partially self-insured plan and the Dental Insurance policy is a self-insured plan. Blue Cross Blue Shield is the administrator and insurance company for both Health and Dental insurance. This is an annual update of the activity of the self-insured health plan as well as the ancillary lines of insurance.

The City of Nacogdoches conducted a formal request for proposal (RFP) for Health and Dental insurance. Blue Cross Blue Shield of Texas and United HealthCare provided proposals. The City conducted a formal RFP for Employer Paid Long Term Disability and three proposals were submitted. Currently, the City offers Long Term Disability on a voluntary basis. The City offers additional ancillary insurance coverage to employees and their dependents including, Employer-paid Life Insurance, Voluntary Life and Disability Insurance and Voluntary Vision insurance.

**FINANCIAL:**

Item is not budgeted \*Note to be included in 2022 - 2023 Proposed Budget

Account No.: Fund 65

Account Name: *Self Insurance Fund*

Amount: Expected Estimate Approximately 4% increase in expected claims and administrative fees

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

Not Applicable

**CITY CONTACT:** Bonita Hall, Human Resources Director  
[hallb@nactx.us](mailto:hallb@nactx.us)  
936-559-2565

**ATTACHMENTS:** 1. Employee Benefits Renewal 2022-2023





## EMPLOYEE BENEFITS RENEWAL

2022-2023



## BACKGROUND

- The City of Nacogdoches offers Health and Dental Insurance for Employees and Dependents.
- The Health insurance policy is a partially self-insured plan and the Dental Insurance policy is a self-insured plan. Blue Cross Blue Shield is the administrator and insurance company for both Health and Dental Insurance.
- The City of Nacogdoches conducted a formal Request for Proposal (RFP) for Health and Dental Insurance. Blue Cross Blue Shield of Texas and United HealthCare provided proposals. After negotiations with both insurance companies, the committee concluded that Blue Cross Blue Shield of Texas provided the most competitive proposal.
- The City of Nacogdoches conducted a formal Request for Proposal (RFP) for Employer Paid Long Term Disability. MetLife provided the most competitive fully insured proposal. Currently The City of Nacogdoches offers Long Term Disability on a voluntary basis.
- The City of Nacogdoches offers additional ancillary coverage to the employees and dependents.
- Other ancillary coverages included are Employer Paid Life Insurance, Voluntary Life Insurance for employees and dependents, Voluntary Long Term Disability Insurance for employees and Voluntary Vision Insurance for employees and dependents. All of these coverages are fully insured.

## HEALTH INSURANCE / CLAIMS EXPERIENCE

|                                              | June '20 – May '21 | June '21 – May '22 | Trend  |
|----------------------------------------------|--------------------|--------------------|--------|
| <b>Gross Medical Claims Paid<sup>1</sup></b> | \$1,698,375        | \$3,234,875        | +90.5% |
| <b>Net Medical Claims Paid<sup>2</sup></b>   | \$1,406,977        | \$1,953,291        | +38.8% |
| <b>Pharmacy Claims Paid</b>                  | \$765,403          | \$797,409          | +4.2%  |
| <b>Admin &amp; Reinsurance Cost</b>          | \$643,186          | \$719,691          | +11.9% |
| <b>Total Cost</b>                            | \$2,815,566        | \$3,478,673        | +23.6% |

<sup>1</sup> Medical Claims paid before stop loss reimbursement

<sup>2</sup> Medical Claims paid after stop loss reimbursement

## HEALTH INSURANCE / HIGH COST CLAIMANTS HISTORY

| <u><b>Paid Band</b></u>     | <u><b>June '20 – May '21</b></u> | <u><b>June '21– May '22</b></u> |
|-----------------------------|----------------------------------|---------------------------------|
| \$50,001 - \$75,000         | 6                                | 7                               |
| \$75,001 - \$100,000        | 2                                | 3                               |
| \$100,001 - \$150,000       | 1                                | 1                               |
| \$150,001 - \$200,000       | 1                                | 1                               |
| \$200,001 - \$250,000       | 0                                | 0                               |
| \$250,001 - \$500,000       | 1                                | 1                               |
| \$500,001 +                 | 0                                | 2                               |
| Summary \$50,001 or greater | 11                               | 15                              |

## HEALTH INSURANCE / FUND BALANCE HISTORY

|                 |             |
|-----------------|-------------|
| October 1, 2013 | \$1,230,660 |
| October 1, 2014 | \$1,135,543 |
| October 1, 2015 | \$770,358   |
| October 1, 2016 | \$414,840   |
| October 1, 2017 | \$1,055,437 |
| October 1, 2018 | \$1,558,280 |
| October 1, 2019 | \$1,488,969 |
| October 1, 2021 | \$1,953,688 |
| May 31, 2022    | \$1,528,300 |



## CURRENT FUNDING RATES / MEDICAL

| <b><u>Base Plan</u></b> | <b><u>City of Nacogdoches</u></b> | <b><u>Employee</u></b> | <b><u>Total</u></b> |
|-------------------------|-----------------------------------|------------------------|---------------------|
| Employee Only           | \$660.00                          | \$0.00                 | \$660.00            |
| Employee + Spouse       | \$660.00                          | \$497.05               | \$1,157.05          |
| Employee + Child(ren)   | \$660.00                          | \$454.38               | \$1,114.38          |
| Employee + Family       | \$660.00                          | \$867.08               | \$1,527.08          |

| <b><u>Buy Up Plan</u></b> | <b><u>City of Nacogdoches</u></b> | <b><u>Employee</u></b> | <b><u>Total</u></b> |
|---------------------------|-----------------------------------|------------------------|---------------------|
| Employee Only             | \$660.00                          | \$68.20                | \$728.20            |
| Employee + Spouse         | \$660.00                          | \$650.69               | \$1,310.69          |
| Employee + Child(ren)     | \$660.00                          | \$599.25               | \$1,259.75          |
| Employee + Family         | \$660.00                          | \$1092.35              | \$1,752.35          |

## ESTIMATED ANNUAL

|                                             |             |
|---------------------------------------------|-------------|
| Contributions from the City and Employees*  | \$3,094,654 |
| Expected cost for the 2021 / 2022 plan year | \$3,276,514 |
| Maximum cost for the 2021 / 2022 plan year  | \$3,765,285 |
| Actual Cost for the past 12 months          | \$3,478,673 |

\* Contributions from City based on 324 budgeted employees (\$2,566,080)  
Contributions from employees based on actual enrollments (\$528,574)

## RECOMMENDED FUNDING RATES / MEDICAL

| <u>Base Plan</u>      | <u>City of Nacogdoches</u> | <u>Employee</u> | <u>Total</u> |
|-----------------------|----------------------------|-----------------|--------------|
| Employee Only         | \$725.00                   | \$0.00          | \$725.00     |
| Employee + Spouse     | \$725.00                   | \$497.05        | \$1,222.05   |
| Employee + Child(ren) | \$725.00                   | \$454.38        | \$1,179.38   |
| Employee + Family     | \$725.00                   | \$867.08        | \$1,592.08   |

| <u>Buy Up Plan</u>    | <u>City of Nacogdoches</u> | <u>Employee</u> | <u>Total</u> |
|-----------------------|----------------------------|-----------------|--------------|
| Employee Only         | \$725.00                   | \$68.20         | \$793.20     |
| Employee + Spouse     | \$725.00                   | \$650.69        | \$1,375.69   |
| Employee + Child(ren) | \$725.00                   | \$599.75        | \$1,324.75   |
| Employee + Family     | \$725.00                   | \$1,092.35      | \$1,817.35   |

## ESTIMATED ANNUAL

|                                             |             |
|---------------------------------------------|-------------|
| Contributions from the City and Employees*  | \$3,669,024 |
| Expected cost for the 2022 / 2023 plan year | \$3,376,914 |
| Maximum cost for the 2022 / 2023 plan year  | \$3,911,619 |

\* Contributions from the City based on 324 budgeted employees and \$350,000 from the Cares Act Fund (\$3,140,450)  
Contributions from employees based on actual enrollments (\$528,574)

## HEALTH INSURANCE / PLAN DESIGN

| <b><u>In-Network Benefits</u></b> | <b><u>Current Buy Up Plan</u></b> | <b><u>Proposed Buy Up Plan</u></b>                      | <b><u>Current Base Plan</u></b> | <b><u>Proposed Base Plan</u></b>                        |
|-----------------------------------|-----------------------------------|---------------------------------------------------------|---------------------------------|---------------------------------------------------------|
| Deductible (Individual / Family)  | \$1,500 / \$3,000                 | \$1,500 / \$3,000                                       | \$3,000 / \$6,000               | \$3,000 / \$6,000                                       |
| Co-Insurance                      | 80 / 20 %                         | 80 / 20 %                                               | 70 / 30 %                       | 70 / 30 %                                               |
| Out of Pocket Maximum             | \$7,150 / \$14,300                | \$7,750 / \$15,500                                      | \$7,900 / \$15,800              | \$8,500 / \$17,000                                      |
| Primary Care Office Visit Copay   | \$45.00                           | \$45.00                                                 | \$45.00                         | \$45.00                                                 |
| Specialist Office Visit Copay     | \$45.00                           | \$65.00                                                 | \$45.00                         | \$65.00                                                 |
| Virtual Visit MDLive              | 100%                              | 100%                                                    | 100%                            | 100%                                                    |
| Preventative Services             | 100%                              | 100%                                                    | 100%                            | 100%                                                    |
| Routine Lab / X-Ray               | 100%                              | 100%                                                    | 100%                            | 100%                                                    |
| Emergency Room Copay              | \$300.00                          | \$500.00                                                | \$400.00                        | \$500.00                                                |
| Urgent Care Copay                 | \$65.00                           | \$65.00                                                 | \$75.00                         | \$75.00                                                 |
| Prescription Copay                | \$20 / \$50 / \$75 / \$150        | \$20 / \$60 / \$85 /<br>20% to \$600<br>monthly maximum | \$20 / \$50 / \$75 / \$150      | \$20 / \$60 / \$85 /<br>20% to \$600<br>monthly maximum |

## RECOMMENDED FUNDING RATES / DENTAL

| <u>Coverage Tier</u>  | <u>City of Nacogdoches</u> | <u>Employee</u> | <u>Total</u> |
|-----------------------|----------------------------|-----------------|--------------|
| Employee Only         | \$30.00                    | \$0.00          | \$30.00      |
| Employee + Spouse     | \$30.00                    | \$30.97         | \$60.97      |
| Employee + Child(ren) | \$30.00                    | \$40.80         | \$70.80      |
| Employee + Family     | \$30.00                    | \$82.02         | \$112.02     |

| ESTIMATED ANNUAL                                                  | Current Plan | Proposed Plan |
|-------------------------------------------------------------------|--------------|---------------|
| Estimated contributions from the City of Nacogdoches <sup>1</sup> | \$116,640    | \$116,640     |
| Estimated contributions from the employees <sup>2</sup>           | \$56,261     | \$56,261      |
| Estimated contributions from the City and employees               | \$172,901    | \$172,901     |
| Estimated Fixed cost and projected claims 2022 / 2023             | \$125,033    | \$133,918     |

\*Recommend no change to the funding rates

<sup>1</sup> Contributions from City based on 324 budgeted employees

<sup>2</sup> Contributions from employees based on current enrollments

## DENTAL / PLAN DESIGN

|                                             | <b>Current</b> | <b>Proposed</b> |
|---------------------------------------------|----------------|-----------------|
| Deductible (Individual / Family)            | \$50 / \$150   | \$50 / \$150    |
| Preventive Care                             | 100%           | 100%            |
| Basic Services                              | 80%            | 80%             |
| Major Services                              | 50%            | 50%             |
| Orthodontia                                 | 50%            | 50%             |
| Max Benefit Per Person Annually             | \$1,000        | \$1,500         |
| Orthodontia Lifetime Max Benefit Per Person | \$1,000        | \$1,500         |
| <b>Benefit Waiting Period:</b>              |                |                 |
| Preventive                                  | None           | None            |
| Basic                                       | None           | None            |
| Major                                       | None           | None            |
| Orthodontia                                 | None           | None            |



## SUMMARY

|                                            | <b><u>Rate Adjustments</u></b>                                         | <b><u>Comments</u></b>                                                                              |
|--------------------------------------------|------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------|
| Medical Insurance                          | 0% for employees & dependents<br>+9.8% for City of Nacogdoches         | \$350,000 requested from Cares Act Fund<br>Adjustments made to plan design                          |
| Dental Insurance                           | 0%                                                                     | Increase benefits 50%                                                                               |
| Employer Paid Life Insurance<br>(\$20,000) | -16%                                                                   | Recommend changing to Blue Cross for<br>packaging discount on medical with 2 year<br>rate guarantee |
| Voluntary Term Life Insurance              | 0%                                                                     | Recommend changing to Blue Cross for<br>packaging discount on medical with 2 year<br>rate guarantee |
| Voluntary Vision                           | -7.4% for Employee Only<br>-7.1% - 16.5% for Employees &<br>Dependents | Recommend changing to Blue Cross for<br>packaging discount on medical with 4 year<br>rate guarantee |
| Voluntary Long Term Disability             | Annual cost based on current monthly<br>covered payroll is \$38,831    | Recommend changing from voluntary to<br>employer paid with 2 year rate guarantee                    |



QUESTIONS?





## City Council Meeting

Date: July 19, 2022

Agenda Item: 6.G.

---

**PRESENTER:** Pam Curbow, Finance Director, Bonita Hall, Director of Human Resources, Scott Weems, Asst Police Chief

**ITEM/SUBJECT:** Hold a discussion and give staff direction regarding the City departmental budgets for fiscal 2022-2023. (Finance Director)

**SUMMARY/BACKGROUND:** This item is a placeholder to provide any discussion for City Council and staff regarding the proposed fiscal year 2022-23 budgets.

As requested by City Council from the June 28th Budget Work Shop, staff will be presenting an update on the work that has been completed to date on addressing employee compensation. This will include proposed options to begin addressing the police staffing concerns brought forward by Interim Police Chief, Scott Weems.

**FINANCIAL:**

No financial impact associated with this item

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

Not Applicable

**CITY CONTACT:** Pam Curbow, Finance Director  
[curbowp@nactx.us](mailto:curbowp@nactx.us)  
936-559-2526

Bonita Hall, Human Resources Director  
[hall@nactx.us](mailto:hall@nactx.us)  
936-559-2565

Scott Weems, Interim Police Chief  
[weens@nactx.us](mailto:weens@nactx.us)  
936-559-2619

**ATTACHMENTS:** 1. Budget Workshop 07 19 2022 (1)

# 2022-2023 Budget Workshop

July 19, 2022



# Budget Timeline

- Property Tax Assessed Values Received
  - July 25
- Budget Workshops
  - August 2 (Draft budget presented)
  - August 16 (Vote for Proposed Tax Rate)
  - August 23 or 30 – if needed
  - September 6 – Budget Public Hearing/Adoption
  - September 13 – Tax Rate Public Hearing/Ratification



# Priorities & Challenges

- Recruiting employees to address vacancies.
- Maintaining competitive pay and cost of living adjustments to address record high inflation.
- Addressing high claims from the City's self-insurance fund.
- Addressing the astronomical increases in energy costs such as fuel and electricity charges.
- The increased costs that are a result of supply chain issues that have been caused by high inflation and the lack of availability of commodities and services.
- The prioritizing of planning, designing, and fulfillment of the City's Capital Improvement Plan.

# Personnel Cost Analysis

City of Nacogdoches  
Personnel Cost Analysis  
FYE 2018 - Current

|                  | FYE 2018<br>ACTUAL   | FYE 2019<br>ACTUAL     | FYE 2020<br>ACTUAL   | FYE 2021<br>ACTUAL      | FYE 2022<br>BUDGET   | FYE 2023<br>PROPOSED |
|------------------|----------------------|------------------------|----------------------|-------------------------|----------------------|----------------------|
| General Fund     | \$ 18,800,203        | \$ 21,304,922          | \$ 19,565,519        | \$ 20,423,405           | \$ 21,515,472        | \$ 21,545,915        |
| Utility Fund     | 2,621,283            | 2,363,977              | 2,771,351            | 2,764,736               | 3,062,668            | 3,134,893            |
| Sanitaiton Fund  | 1,065,280            | 1,086,224              | 1,101,380            | 1,572,688               | 1,564,225            | 1,612,435            |
| Airport FBO Fund | 151,899              | 150,107                | 172,226              | 153,514                 | 166,075              | 150,073              |
| <b>TOTAL</b>     | <b>\$ 22,638,665</b> | <b>\$ 24,905,230 *</b> | <b>\$ 23,610,476</b> | <b>\$ 24,914,343 **</b> | <b>\$ 26,308,440</b> | <b>\$ 26,443,316</b> |

## Personnel as a % of Total Budget

|                  |     |     |     |     |     |     |
|------------------|-----|-----|-----|-----|-----|-----|
| General Fund     | 80% | 81% | 80% | 76% | 79% | 79% |
| Utility Fund     | 23% | 22% | 24% | 24% | 19% | 19% |
| Sanitaiton Fund  | 25% | 24% | 24% | 29% | 30% | 29% |
| Airport FBO Fund | 32% | 33% | 41% | 36% | 34% | 30% |

\*Audit Adjustment  
TMRS payment \$2,036,145

\*\* Implementation of Compensation Plan

# Personnel Costs Proposed 2022-2023

|                 |                   |     |
|-----------------|-------------------|-----|
| General Fund    | \$21,545,915      | 79% |
| Utility Fund    | \$ 3,134,893      | 19% |
| Sanitation Fund | \$ 1,612,435      | 29% |
| Airport Fund    | <u>\$ 150,073</u> | 30% |
| Total           | \$26,443,316      |     |

Mgr \$4,336,970 - 16%

Non-Mgr \$22,106,346 – 84%

# Self Insurance Reimb – Covid Claims

- Goal: Maintain fund balance & reduce premium increase
  - The City's Self Insurance fund experienced an extremely high claim year.
  - Reimburse the Self Ins Fund for actual Covid Claims paid by the City since 2020 - \$350,000\*
  - City paid health insurance premiums for employees increased;
    - 2022 - \$660/employee/month
    - 2023 - \$725/employee/month
    - 2023 w/o transfer - \$1,010/employee/month

\*General Fund Reserves Allocation (CARES)

# Personnel – CDL Pay

- Goal: Attract & Retain CDL Drivers
  - Implement certification pay in the following amounts:
    - Class A - \$1,800
    - Class B - \$1,200
    - Tanker - \$ 120
  - Total cost with benefits in all funds - \$97,450
    - General Fund - \$37,500
    - Utility Fund - \$24,700
    - Sanitation Fund - \$35,250

\*Operational Expense



# Public Safety Issues

## Goal #1 – Recruitment

- Sign-on Incentives (new)
  - \$74,000 Police
- Lateral Transfer (existing)

## Goal # 2 – Retention & Development

- Assignment Pay (new)
  - \$155,000 Police
  - \$95,000 Fire

## Goal #3 – Advancement

- Modified Step System
  - Multi-year implementation

# Employee Retention Payments

- Goal: Retention of current City staff
  - Current inflation approx 9%
  - No COLA is proposed in the 2023 operating budget
  - Total Cost \$823,000 (including TMRS/FICA)
  - To be paid in tiers
    - \$0 - \$49,999 (128) \$2,600 Avg 5%-9%
    - \$50,000 - \$74,999 (25) \$1,950 Avg 2.5% - 4%
    - \$75,000 – up (28) \$1,300 Avg 1% - 1.7%
  - Public Safety at \$2,600 tier (96) Avg 3%-5%
  - Paid quarterly

\*Reserves Allocation

# New Positions Requested

- Tier 1
  - Office Assistant III – City Sec/Finance
  - Horticulturalist – Parks
  - Adoption Coordinator – Animal Shelter
  
- Tier 2
  - Evidence Supervisor – Police
  - Systems Tech II – Info Tech
  - PT Custodian – Building Maintenance
  - Billing Analyst – Utility Billing
  - Laborer – Landfill

\*Operational Expense

**2022-2023 Proposed Budget**  
**Supplemental Requests for New Programs/Employees**

|               |                                    |
|---------------|------------------------------------|
| <b>Tier 1</b> | <b>Immediate Need in 2022-2023</b> |
| <b>Tier 2</b> | <b>Review in 2023-2024</b>         |
| <b>Tier 3</b> | <b>Review for future years</b>     |

| <b>GENERAL FUND</b>          |                                                         | <b>One Time<br/>Cost<br/>(Reserves)</b> | <b>Annual Recurring<br/>Cost<br/>(Operations)</b> |
|------------------------------|---------------------------------------------------------|-----------------------------------------|---------------------------------------------------|
| <b>PUBLIC SAFETY</b>         |                                                         |                                         |                                                   |
| <b>Tier 1</b>                | Sign-on Incentives - Police (12 vacant positions)       | \$ 74,000                               |                                                   |
| <b>Tier 1</b>                | Asssignment Pay-Police                                  |                                         | \$ 155,000                                        |
| <b>Tier 1</b>                | Asssignment Pay-Fire                                    |                                         | \$ 95,000                                         |
| <b>Tier 2</b>                | Modified Step System - Police (year 1)                  |                                         | \$ 135,000                                        |
| <b>Tier 2</b>                | Modified Step System - Fire (year 1)                    |                                         | \$ 132,500                                        |
| <b>Public Safety:</b>        |                                                         | <b>\$ 74,000</b>                        | <b>\$ 517,500</b>                                 |
| <b>PERSONNEL RELATED</b>     |                                                         |                                         |                                                   |
| <b>Tier 1</b>                | Employee Retention Payment - All Depts                  | \$ 823,000                              |                                                   |
| <b>Tier 1</b>                | Reimb Self Ins Fund for COVID Claims (from CARES funds) | \$ 350,000                              |                                                   |
| <b>Tier 1</b>                | CDL Certification Pay - All Depts                       |                                         | \$ 37,500                                         |
| <b>Tier 1</b>                | Office Assistant III - City Sec/Finance                 |                                         | \$ 53,175                                         |
| <b>Tier 1</b>                | City Gardener* - Parks                                  |                                         | \$ 29,110                                         |
| <b>Tier 1</b>                | PT Adoption Coordinator* - Animal Shelter               |                                         | \$ 15,000                                         |
| <b>Tier 2</b>                | Evidence Supervisor - Police                            |                                         | \$ 45,750                                         |
| <b>Tier 2</b>                | Systems Tech II - Info Tech                             |                                         | \$ 70,600                                         |
| <b>Tier 2</b>                | PT Custodian - Bldg Maint.                              |                                         | \$ 15,000                                         |
| <b>Personnel:</b>            |                                                         | <b>\$ 1,173,000</b>                     | <b>\$ 266,135</b>                                 |
| <b>Total all Categories:</b> |                                                         | <b>\$ 1,247,000</b>                     | <b>\$ 783,635</b>                                 |

| <b>Annual Recurring<br/>Cost<br/>(Operations)</b>                 |                |
|-------------------------------------------------------------------|----------------|
| <b>Tier 1 \$</b>                                                  | <b>384,785</b> |
| <b>Tier 2 \$</b>                                                  | <b>398,850</b> |
| <b>Tier 3 \$</b>                                                  | <b>-</b>       |
| <i>* \$0.01 Property Tax Increase generates approx. \$200,000</i> |                |

## UTILITY FUND

|                                          | One Time<br>Cost<br>(Reserves) | Annual Recurring<br>Cost<br>(Operations) |
|------------------------------------------|--------------------------------|------------------------------------------|
| PERSONNEL RELATED                        |                                |                                          |
| Tier 1 CDL Certification Pay - All Depts |                                | \$ 24,700                                |
| Tier 2 Billing Analyst - Utility Billing |                                | \$ 48,200                                |
| Personnel:                               |                                | \$ 72,900                                |

| Annual Recurring<br>Cost<br>(Operations) |         |
|------------------------------------------|---------|
| Tier 1 \$                                | 24,700  |
| Tier 2 \$                                | 121,100 |
| Tier 3 \$                                | -       |

## SANITATION FUND

|                                          | One Time<br>Cost<br>(Reserves) | Annual Recurring<br>Cost<br>(Operations) |
|------------------------------------------|--------------------------------|------------------------------------------|
| PERSONNEL RELATED                        |                                |                                          |
| Tier 1 CDL Certification Pay - All Depts |                                | \$ 35,250                                |
| Tier 2 Laborer - Landfill                |                                | \$ 43,650                                |
|                                          |                                | \$ 78,900                                |

| Annual Recurring<br>Cost<br>(Operations) |        |
|------------------------------------------|--------|
| Tier 1 \$                                | 35,250 |
| Tier 2 \$                                | 43,650 |
| Tier 3 \$                                | -      |



# Discussion



## City Council Meeting

Date: July 19, 2022

Agenda Item: 6.H.

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**PRESENTER:** Pam Curbow, Finance Director

**ITEM/SUBJECT:** Hold a discussion and give staff direction regarding the consideration of a property tax ceiling and/or property tax exemptions for homeowners aged 65 and older and for disabled persons. (Finance Director and Interim Chief Appraiser of Nacogdoches Central Appraisal District).

**SUMMARY/BACKGROUND:** At the June 21, 2022, City Council meeting, Jason Malott, Interim Chief Appraiser for Nacogdoches Central Appraisal District, provided an overview for City Council regarding the property tax ceiling (property tax freeze) program for seniors (65+) and disabled persons. Mr. Malott also discussed that the Council could also increase the exemptions for seniors and disabled persons. The City Council requested that additional financial information be presented at the July 19, 2022 City Council meeting to determine the potential financial impact on the overall property tax payers.

Pam Curbow, Finance Director and Mr. Malott will be providing additional details and information on these two programs. The intent is to demonstrate the potential financial impact on property tax payers if either or both of these programs are implemented for the upcoming tax year. In addition, staff is requesting direction from the City Council on whether or not to proceed with building the fiscal year 2022-2023 budget with these programs in effect.

**FINANCIAL:**

No financial impact associated with this item

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

Not Applicable

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

**ATTACHMENTS:** 1. Tax Ceiling & Exemption Workshop 07 19 2022 \_wCCadditions

# City of Nacogdoches Property Tax Residence Homestead Tax Ceiling Additional Exemption

July 19, 2022



# Residence Homestead Tax Ceiling

- Texas Property Tax Code allows for the adoption of a residence homestead tax ceiling for taxpayers 65 & older or disabled persons
- Sets a limit on the amount of taxes you must pay on your residence.
- If you qualify, city property taxes on that residence homestead cannot increase as long as you own and live in that home.
- The tax ceiling is the amount you pay in the year that you qualified for the age 65 or older or disabled person exemption.
- City taxes on your residence homestead may go below but not above the ceiling amount.
  - If you improve the residence homestead, the tax ceiling may go higher because of the new additions.

# Residence Homestead Tax Ceiling

- Only applies to the taxpayers homestead, not other properties owned.
- The tax ceiling amount will be set based on the tax due for the 2022 tax year.
  - City will set property tax rate on September 13, 2022
  - The taxes billed on October 1, 2022 will be year one and will set the ceiling for all future years
- City Council may enact this ceiling by resolution
- Once enacted the tax ceiling can not be repealed.



# O65/DP Homestead Value & Population

| TAX YEAR    | 65+ VALUE    | 65+ COUNT                   |  | DP VALUE    | DP COUNT |
|-------------|--------------|-----------------------------|--|-------------|----------|
| 2022 Prelim | \$42,077,050 | 2,147                       |  | \$3,641,870 | 194      |
| 2021        | \$41,162,770 | 2,102                       |  | \$3,674,010 | 195      |
| 2020        | \$40,603,430 | 2,074                       |  | \$3,704,450 | 201      |
| 2019        | \$39,151,810 | 2,000                       |  | \$3,834,820 | 207      |
| 2018        | \$38,692,790 | 1,981                       |  | \$3,918,800 | 211      |
| 2017        | \$37,859,830 | 1,936                       |  | \$4,189,390 | 223      |
|             |              | * Approx. 50% of Homesteads |  |             |          |

# Summary – O65/DP Homestead Tax Ceiling

- Based on prior tax year history
  - Slight increase in NNR rate when values are flat
    - \$0.0005/\$100 increase in 2020
  - Slight decrease in NNR rate when values rise
    - \$0.0003/\$100 decrease in 2021
  - Future impact is unknown
    - Future debt issuance could increase the amount redistributed to other rate classes.

Questions?

# Over 65 – Disabled Persons Exemption

- Texas Property Tax Code allows for an additional exemption for taxpayers 65 & older or disabled persons
- Only applies to the taxpayers homestead, not other properties owned
- City currently offers \$20,000 exemption in both Over 65 and Disabled Persons.
- City Council may increase or decrease this exemption by resolution or ordinance
- Future exemption changes allowed under law

# Over 65 – Disabled Persons Exemption

- Based on estimated increase of \$20,000
  - NNR rate will be increased by approx. \$0.015/\$100 for ALL rate classes (including Over 65 and DP)
  - Exemption increases but tax rate also increases for O65 & DP
- Estimated \$280,000 impact
  - Redistributed over all rate classes

Estimates based on prior two years data – future impact unknown



# Over 65 – Disabled Persons Exemption

- Over 65 / DP Homestead Home Value \$50,000 - **CURRENT**
  - with Homestead Exemption – (\$10,000)
  - With Optional O65/DP Exemption – (\$20,000)
  - 2021 NNR Tax Rate - \$0.59378/\$100
  - Tax Due - \$118.76
- Over 65 / DP Homestead Home Value \$50,000
  - with Homestead Exemption – (\$10,000)
  - With Optional O65/DP Exemption – (\$40,000)
  - 2021 NNR Tax Rate - \$0.60887/\$100
  - Tax Due - \$0

Savings of **(\$118.76)**

# Over 65 – Disabled Persons Exemption

- General Homestead Home Value \$50,000 - **CURRENT**
  - with Homestead Exemption – (\$10,000)
  - With Optional O65/DP Exemption – (\$0)
  - 2021 NNR Tax Rate - \$0.59378/\$100
  - Tax Due - \$237.51
- General Homestead Home Value \$50,000
  - with Homestead Exemption – (\$10,000)
  - With Optional O65/DP Exemption – (\$0)
  - 2021 NNR Tax Rate - \$0.60887/\$100
  - Tax Due - \$243.55

Increase of \$6.04

# Over 65 – Disabled Persons Exemption

- Over 65 / DP Homestead Home Value \$160,000 - **CURRENT**
  - with Homestead Exemption – (\$32,000)
  - With Optional O65/DP Exemption – (\$20,000)
  - 2021 NNR Tax Rate - \$0.59378/\$100
  - Tax Due - \$641.28
- Over 65 / DP Homestead Home Value \$160,000
  - with Homestead Exemption – (\$32,000)
  - With Optional O65/DP Exemption – (\$40,000)
  - 2021 NNR Tax Rate - \$0.60887/\$100
  - Tax Due - \$535.81

Savings of **(\$105.47)**

# Over 65 – Disabled Persons Exemption

- General Homestead Home Value \$160,000 - **CURRENT**
  - with Homestead Exemption – (\$32,000)
  - With Optional O65/DP Exemption – (\$0)
  - 2021 NNR Tax Rate - \$0.59378/\$100
  - Tax Due - \$760.04
- General Homestead Home Value \$160,000
  - with Homestead Exemption – (\$32,000)
  - With Optional O65/DP Exemption – (\$0)
  - 2021 NNR Tax Rate - \$0.60887/\$100
  - Tax Due - \$779.35

Increase of \$19.31

# Over 65 – Disabled Persons Exemption

- Over 65 / DP Homestead Home Value \$350,000 - **CURRENT**
  - with Homestead Exemption – (\$70,000)
  - With Optional O65/DP Exemption – (\$20,000)
  - 2021 NNR Tax Rate - \$0.59378/\$100
  - Tax Due - \$1,543.83
- Over 65 / DP Homestead Home Value \$350,000
  - with Homestead Exemption – (\$70,000)
  - With Optional O65/DP Exemption – (\$40,000)
  - 2021 NNR Tax Rate - \$0.60887/\$100
  - Tax Due - \$1,461.29

Savings of **(\$82.54)**



# Over 65 – Disabled Persons Exemption

- General Homestead Home Value \$350,000 - **CURRENT**
  - with Homestead Exemption – (\$70,000)
  - With Optional O65/DP Exemption – (\$0)
  - 2021 NNR Tax Rate - \$0.59378/\$100
  - Tax Due - \$1,662.58
- General Homestead Home Value \$350,000
  - with Homestead Exemption – (\$70,000)
  - With Optional O65/DP Exemption – (\$0)
  - 2021 NNR Tax Rate - \$0.60887/\$100
  - Tax Due - \$1,704.84

Increase of \$42.26

# Over 65 – Disabled Persons Exemption

- Local Owned Small Business Value \$660,000 - **CURRENT**
  - with Homestead Exemption – (\$0)
  - With Optional O65/DP Exemption – (\$0)
  - 2021 NNR Tax Rate - \$0.59378/\$100
  - Tax Due - \$3,918.95
- Local Owned Small Business Value \$660,000
  - with Homestead Exemption – (\$0)
  - With Optional O65/DP Exemption – (\$0)
  - 2021 NNR Tax Rate - \$0.60887/\$100
  - Tax Due - \$4,018.54

Increase of \$99.59

# Over 65 – Disabled Persons Exemption

- Local Owned Large Business Value \$6,300,000 - **CURRENT**
  - with Homestead Exemption – (\$0)
  - With Optional O65/DP Exemption – (\$0)
  - 2021 NNR Tax Rate - \$0.59378/\$100
  - Tax Due - \$37,408.14
- Local Owned Large Business Value \$6,300,000
  - with Homestead Exemption – (\$0)
  - With Optional O65/DP Exemption – (\$0)
  - 2021 NNR Tax Rate - \$0.60887/\$100
  - Tax Due - \$38,358.81

Increase of \$950.67

# Over 65 – Disabled Persons Exemption

- Large Industry Business Value \$39,345,760 - **CURRENT**
  - with Homestead Exemption – (\$0)
  - With Optional O65/DP Exemption – (\$0)
  - 2021 NNR Tax Rate -\$0.59378/\$100
  - Tax Due - \$233,627.25
- Large Industry Business Value \$39,345,760
  - with Homestead Exemption – (\$0)
  - With Optional O65/DP Exemption – (\$0)
  - 2021 NNR Tax Rate -\$0.60887/\$100
  - Tax Due - \$239,564.53

Increase of \$5,937.28

# Comparison of Local Options

| Jurisdiction        | 2021<br>Tax Rate | Homestead      | Over 65   | Disabled<br>Person | Ceiling | Freeport |
|---------------------|------------------|----------------|-----------|--------------------|---------|----------|
| City of Nacogdoches | \$ 0.6160        | 20%            | \$ 20,000 | \$ 20,000          | NO      | YES      |
| City of Lufkin*     | \$ 0.531135      | NO             | \$ 20,000 | NO                 | YES     | YES      |
| Nacogdoches County  | \$ 0.5642        | 20%            | \$ 40,000 | \$ 40,000          | YES     | NO       |
| Angelina County     | \$ 0.43712       | NO             | \$ 48,000 | \$ 48,000          | YES     | YES      |
| NISD                | \$ 1.2663        | 20% + \$40,000 | \$ 20,000 | \$ 20,000          | YES     | YES      |
| LISD                | \$ 1.2533        | \$ 25,000      | \$ 10,000 | \$ 10,000          | YES     | YES      |
| Angelina College    | \$ 0.164033      | NO             | \$ 24,000 | NO                 | NO      | YES      |

|                 |            |      |
|-----------------|------------|------|
| City Res in Nac | \$ 2.44650 | 20%  |
| City Res in Luf | \$ 2.38559 | NONE |

\*Portion of Sales Tax Dedicated to Prop Tax Relief



# Summary – O65/DP Additional Exemption

- Based on prior tax year history
  - Significant increase in NNR rate when values are flat
    - \$0.016/\$100 increase in 2020
  - Significant increase in NNR rate when values rise
    - \$0.015/\$100 increase in 2021
  - Future impact is unknown

# Direction Needed

- Resolution required
  - Enact tax ceiling (less rate impact)
  - Enact additional exemption (more rate impact)
    - Amount?
  - Passed prior to property tax rate legal posting
    - August 2, 2022 or August 16, 2022



## City Council Meeting

Date: July 19, 2022

Agenda Item: 6.I.

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**PRESENTER:** Pam Curbow, Finance Director

**ITEM/SUBJECT:** Discussion and consideration of a resolution of the City of Nacogdoches, Texas approving and authorizing the publication of notice of intention to issue certificates of obligation and resolving other matters incident and related thereto. (Director of Finance)

**SUMMARY/BACKGROUND:** In April 2022, City Council gave the City Manager and Director of Finance direction to proceed with the issuance of Certificates of Obligation bonds (COs) in an amount not to exceed \$21,100,000 to fund various capital improvement projects including the construction of a Central Fire Station, Parks Improvements, Street Improvements and Drainage System Improvements. The passing of this resolution will begin the legal process of notification and sale of these COs and the Council's commitment to construct &/or repair the above-mentioned capital items. City Council will set the property tax debt rate in September based on the issuance of these COs.

**FINANCIAL:**

No financial impact associated with this item

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

Infrastructure

**CITY CONTACT:** Pamela Curbow, Director of Finance  
[curbowp@nactx.us](mailto:curbowp@nactx.us)  
936-652-5950

**ATTACHMENTS:**

1. Resolution
2. CO Issuance 07 19 2022

## RESOLUTION NO. 1304-07-22

### A RESOLUTION OF THE CITY OF NACOGDOCHES, TEXAS APPROVING AND AUTHORIZING PUBLICATION OF NOTICE OF INTENTION TO ISSUE CERTIFICATES OF OBLIGATION.

WHEREAS, the City Council of the City of Nacogdoches, Texas (the "City"), has determined that certificates of obligation should be issued under and pursuant to the provisions of Texas Local Government Code, Subchapter C of Chapter 271, as amended, for the purpose of paying contractual obligations to be incurred for (i) constructing, improving and equipping fire-fighting facilities, including acquisition of land; (ii) constructing, improving and renovating streets, alleys, culverts and bridges, including drainage and erosion control, landscaping, screening walls, curbs, gutters, sidewalks, lighting, signage and traffic signalization incidental thereto and the acquisition of land and rights-of-way therefor; (iii) constructing, improving and equipping park facilities; (iv) constructing and improving flood control and drainage facilities and improvements, including the acquisition of land and rights-of-way therefor (collectively, the "Projects") and (v) professional services rendered in connection therewith; and

WHEREAS, the City further intends to make certain capital expenditures with respect to the Projects and currently desires and expects to reimburse the capital expenditures with proceeds of the Certificates; and

WHEREAS, under Treas. Reg. § 1.150-2 (the "Regulation"), to fund such reimbursement with proceeds of tax-exempt obligations, the City must declare its expectation to make such reimbursement; and

WHEREAS, the City desires to preserve its ability to reimburse the capital expenditures with proceeds of tax-exempt obligations; and

WHEREAS, prior to the issuance of such certificates, the City Council is required to publish notice of its intention to issue the same in a newspaper of general circulation in the City, said notice stating (i) the time and place the City Council tentatively proposes to pass the ordinance authorizing the issuance of the certificates, (ii) the maximum amount proposed to be issued, (iii) the purposes for which the certificates are to be issued and (iv) the manner in which the City Council proposes to pay the certificates;

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

SECTION 1: That the City Secretary is hereby authorized and directed to cause notice to be published of the City Council's intention to issue certificates of obligation, in one or more series, in the principal amount not to exceed TWENTY ONE MILLION ONE HUNDRED THOUSAND DOLLARS (\$21,100,000) for the purpose of paying contractual obligations to be incurred for (i) constructing, improving and equipping fire-fighting facilities, including acquisition of land; (ii) constructing, improving and renovating streets, alleys, culverts and bridges, including drainage and erosion control, landscaping, screening walls, curbs, gutters, sidewalks, lighting, signage and traffic signalization incidental thereto and the acquisition of land and rights-of-way therefor; (iii) constructing, improving and equipping park facilities; (iv) constructing and improving flood control and drainage facilities and improvements, including the acquisition of land and rights-of-way therefor and (v) professional services rendered in connection therewith; such certificates to be payable from ad valorem taxes and a limited pledge of the net revenues of the City's combined waterworks and sewer system. The notice hereby approved and authorized to be published shall read substantially in the form and content of **Exhibit A** hereto attached and incorporated herein by reference as a part of this resolution for all purposes.

SECTION 2: The City reasonably expects to reimburse capital expenditures with respect to the Projects with proceeds of debt hereafter to be incurred by the City, and this Resolution shall constitute a declaration of official intent under the Regulation. The maximum principal amount of obligations expected to be issued for the Projects is the amount set forth in Exhibit A attached hereto

SECTION 3: That the City Secretary shall cause the notice described above to be (i) published in a newspaper of general circulation in the City, once a week for two consecutive weeks, the date of the first publication to be at least forty-six (46) days prior to the date stated therein for the passage of the ordinance authorizing the issuance of the Certificates and (ii) posted continuously on the City's website for at least forty-five (45) days before the date stated therein for the passage of the ordinance authorizing the issuance of the Certificates.

PASSED AND ADOPTED, this 19<sup>th</sup> day of July, 2022.

---

Jimmy Mize, Mayor  
City of Nacogdoches, Texas

ATTEST:

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Jan Vinson, City Secretary  
City of Nacogdoches, Texas

(City Seal)

## EXHIBIT A

### NOTICE OF INTENTION TO ISSUE CITY OF NACOGDOCHES, TEXAS CERTIFICATES OF OBLIGATION

TAKE NOTICE that the City Council of the City of Nacogdoches, Texas, shall convene at 6:00 p.m. on September 20, 2022, at its regular meeting place in City Council Chamber located at 202 East Pilar Street, Nacogdoches, Texas, and, during such meeting, the City Council will consider the passage of an ordinance authorizing the issuance of certificates of obligation, in one or more series, in an amount not to exceed TWENTY ONE MILLION ONE HUNDRED THOUSAND DOLLARS (\$21,100,000) for the purpose of paying contractual obligations to be incurred for (i) constructing, improving and equipping fire-fighting facilities, including acquisition of land; (ii) constructing, improving and renovating streets, alleys, culverts and bridges, including drainage and erosion control, landscaping, screening walls, curbs, gutters, sidewalks, lighting, signage and traffic signalization incidental thereto and the acquisition of land and rights-of-way therefor; (iii) constructing, improving and equipping park facilities; (iv) constructing and improving flood control and drainage facilities and improvements, including the acquisition of land and rights-of-way therefor and (v) professional services rendered in connection therewith, such certificates to be payable from ad valorem taxes and a limited pledge of the net revenues of the City's combined waterworks and sewer system. In accordance with Texas Local Government Code Section 271.049, (i) the current principal amount of all of the City's outstanding public securities secured by and payable from ad valorem taxes is \$24,346,000; (ii) the current combined principal and interest required to pay all of the City's outstanding public securities secured by and payable from ad valorem taxes on time and in full is \$26,134,162; (iii) the estimated combined principal and interest required to pay the certificates of obligation to be authorized on time and in full is \$32,782,733; (iv) the maximum interest rate for the certificates may not exceed the maximum legal interest rate; and (v) the maximum maturity date of the certificates to be authorized is September 1, 2047. The certificates are to be issued, and this notice is given, under and pursuant to the provisions of Texas Local Government Code, Subchapter C of Chapter 271, as amended.

Jan Vinson, City Secretary  
City of Nacogdoches, Texas



# Certificates of Obligation Bond Issuance Resolution

July 19, 2022



# Background

- Compilation of all Capital Improvement Projects presented to Council
  - November 8, 9, 29, 30, 2021 – Dept Presentations
  - December 7, 2021– Dept Presentations
  - April 6, 2022 – Summarization and Direction
- Certificate of Obligation (CO) Issuance Process
  - 12 weeks for legal notices and preparation of Official Statement
  - Projects and funding must be determined prior to rating process. (Aug 16)

# CO Issuance Timeline

- Pass Resolution for Notice of Intention to Issue Certificates of Obligation
  - July 19\*
- Final Decision on projects to be included
  - August 16\*
- Pass Ordinance Authorizing Issuance of Cos
  - September 20\*
- Closing and Delivery
  - October 13

\*Council Meeting

- **Proposed 2022 CO Bond Issue - \$19,880,000**
  - Replaces expiring debt, no property tax debt rate increase (current rate \$0.08229/\$100)

|                                |              |
|--------------------------------|--------------|
| – Central Fire Station         | \$ 8,080,000 |
| – Parks Restrooms              | \$ 1,320,000 |
| – Parks Playgrounds            | \$ 480,000   |
| – Critical Storm System Recon. | \$ 4,000,000 |
| – Annual Storm Sewer Repairs   | \$ 1,000,000 |
| – City-Wide Street Rebuild     | \$ 5,000,000 |

# Discussion



## City Council Meeting

Date: July 19, 2022

Agenda Item: 6.J.

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**PRESENTER:** Mario Canizares, City Manager

**ITEM/SUBJECT:** Hold a discussion and give staff direction regarding the City Council meeting schedule for the remainder of 2022. (City Manager)

**SUMMARY/BACKGROUND:** The City Council requested an item for discussion regarding the City Council's meeting schedule. Currently, the City Council meets on the 1st and 3rd Tuesday of every month. On occasion, special meetings are added because a topic of importance necessitates the need to convene the Council to discuss the issue at hand. For example, the annual budget process which occurs in the summer requires special called meetings because state laws require a certain timeline to be followed.

The purpose of this discussion is to show the remaining scheduled meetings for 2022 and seek direction to maintain the schedule as is or modify the schedule as needed to accommodate a scheduling conflict in the community, a Federal holiday, and/or known topic for discussion.

**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:** Mario Canizares, City Manager  
[canizaresm@nactx.us](mailto:canizaresm@nactx.us)  
936-559-2501

**ATTACHMENTS:** 1. 2022 CC Calendar



## **Upcoming City Council Meetings for Remainder of 2022**

### **July**

Regular Council Meeting: July 19

### **August**

Regular Council Meeting: August 2

~~Budget Workshop: August 9~~ (Cancelled per City Council)

Regular Council Meeting: August 16

Budget Workshop: August 23 or August 30 (please choose)

### **September**

Regular Council Meeting: September 6

Special Meeting/Budget Adoption: September 13 (legally required)

Regular Council Meeting: September 20

### **October**

Regular Council Meeting: October 4 (keep or move date due to the same day as NNC)

Regular Council Meeting: October 18

### **November**

Regular Council Meeting: November 1

Regular Council Meeting: November 15

### **December**

Regular Council Meeting: December 6

Regular Council Meeting: December 20



## City Council Meeting

Date: July 19, 2022

Agenda Item: 7.A.

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**PRESENTER:** Keith Kiplinger, Fire Chief

**ITEM/SUBJECT:** Real Property – Pursuant to Texas Government Code Section 551.072, deliberations regarding the purchase, exchange, lease, or value of real property. The subject of this Executive Session is to discuss City fire station location properties.

**SUMMARY/BACKGROUND:**

**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:** Keith Kiplinger, Fire Chief  
[kiplingerk@nactx.us](mailto:kiplingerk@nactx.us)  
936-559-2540

**ATTACHMENTS:**



## City Council Meeting

Date: July 19, 2022

Agenda Item: 7.B.

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**PRESENTER:** Mario Canizares, City Manager

**ITEM/SUBJECT:** Personnel Matters – Pursuant to Texas Government Code Section 551.074, deliberations regarding the duties of a public officer or employee. The subject of this Executive Session is to discuss and give feedback to the City Manager regarding his annual evaluation.

**SUMMARY/BACKGROUND:**

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

**ATTACHMENTS:**