



September 20, 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 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 September 20, 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 September 6, 2022 regular meeting and September 13, 2022 special meeting. (City Secretary)
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 AUGUST 16, 2022.)** (City Planner)

- B. **Public Hearing:** Consider a request for a Specific Use Permit, to operate a Tattoo Salon in a B-2, General Business District, on Lots 11-J-1 and 11-J-15, of the North Loop Business Park Subdivision, located at 5016 Justin Street. This request has been made by Krysta Robertson. Case Number SUP 2022-04. (City Planner)
- C. Consider an ordinance ratifying the property tax revenue increase in the 2022-2023 budget as a result of the City receiving more revenues from property taxes in the 2022-2023 budget than in the previous fiscal year; and providing an effective date. (Director of Finance)
- D. Receive annual report from Keep Nacogdoches Beautiful. (Community Services Director and Ashley Villareal, KNB Director)
- E. Consider approval of an agreement between the City of Nacogdoches and Keep Nacogdoches Beautiful for essential services. (Community Services Director)
- F. Consider approval of a contract by and between the City of Nacogdoches and McKinney & Moore of Texas, LP for the 2022 SWTP Filter 9 Rehabilitation Project in a not-to-exceed amount of \$291,906.16. (Assistant Director of Public Works)
- G. Consider approval of Resolution No. 1312-09-22 to amend the term of a Chapter 380 Economic Development Program agreement by and between the City of Nacogdoches and JBSC Development, LLC regarding the development of a residential subdivision. (Economic Development Director)
- H. Discussion and consideration of all matters incident and related to the issuance and sale of "City of Nacogdoches, Texas, Combination Tax and Revenue Certificates of Obligation, Series 2022," including the adoption of an ordinance authorizing the issuance of such certificates. (Director of Finance)
- I. Consider ordinance ratifying and setting tax rate on all taxable property for tax year 2022 at a rate of \$0.58480 per one hundred dollars (\$100.00) valuation on all taxable property within the corporate limits of the City of Nacogdoches as of January 1, 2022, the said tax rate having a maintenance and operations component and a debt service component; and providing an effective date. (Director of Finance)
- J. Consider ordinance ratifying and setting tax rate on all taxable property for tax year 2022 at a rate of \$0.51851 per one hundred dollars (\$100.00) valuation on all taxable property within the corporate limits of the City of Nacogdoches as of January 1, 2022, the said tax rate having a maintenance and operations component and a debt service component; and providing an effective date.

(Director of Finance)

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. Pursuant to Texas Government Code Section 551.072, deliberations regarding the purchase, exchange, lease, or value of real property if deliberation in an open meeting would have a detrimental effect on the position of the governmental body in negotiations with a third person. The subject of this Executive Session item is to discuss Central Heights Water System.
8. Open for action, if any, on Executive Session item(s).
9. ADJOURN.



Jan Vinson, City Secretary



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

CERTIFICATION

I certify the notice of meeting was posted in the directory outside of City Hall, 202 E. Pilar Street, Nacogdoches, Texas on September 15, 2022 at 9 a.m. and remained posted until meeting convened.

Jan Vinson, City Secretary



City Council Meeting

Date: September 20, 2022

Agenda Item: 5.A.

PRESENTER: Jan Vinson, City Secretary

ITEM/SUBJECT: Consider approval of minutes for September 6, 2022 regular meeting and September 13, 2022 special meeting. (City Secretary)

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

ATTACHMENTS: 1. Minutes 09.06.22
2. Minutes 09.13.22



Regular Session
Nacogdoches City Council
September 6, 2022 – 5:30 p.m.
City Council Room – City Hall
202 East Pilar Street

DRAFT

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

1. Called to order at 5:30 p.m.
2. Pledge of Allegiance.
3. Open Forum
4. No items were removed from the 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. Minutes for August 16, 2022 regular meeting and August 24, 2022 special meeting.
 - B. Consider approval of an Indefinite Deliverable Indefinite Quantity contract by and between the City of Nacogdoches and Norit Americas, Inc., Chameleon Industries, Inc., DXI Industries, Inc. and Univar Solutions for various chemicals used in water and wastewater treatment in a not-to-exceed total budgeted amount of \$905,048.00.
 - C. Consider approval of an Indefinite Deliverable Indefinite Quantity contract by and between the City of Nacogdoches and Longview Asphalt, Inc. for asphalt products and limestone base material used in Public Works operations in a not to exceed total budgeted amount of \$250,000.00.
 - D. Consider approval of a Mutual Aid Agreement between the City of Nacogdoches and the City of Lufkin for the provision of law enforcement during an emergency.
 - E. Consider approval of a Mutual Aid Agreement between the City of Nacogdoches and Rusk County for the provision of law enforcement during an emergency.
 - F. Consider approval of interlocal agreement by and between the City of Nacogdoches and Deep East Texas Self Insurance fund for workers' compensation services for fiscal year 2022-2023 that includes volunteers and additional services.
 - G. Consider contract award of \$47,307.37 to WorkQuest and Oak Creek Center for City park clean-up.
 - H. Consider contract award not to exceed \$19,341.76 to WorkQuest and Oak Creek Center for City roadside clean-up.

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

6. REGULAR AGENDA:

Mayor Mize moved item 6.D to the beginning of the Regular Agenda.

- D. **Public Hearing:** Consider a request to amend the Development Plan of a Planned Development District for approximately 3 acres, being Lots 5 and 6, Block 4, of the Creek Bend Subdivision – Unit 2, generally located at the southeast corner of South Steen Dr. and Creek Bend Blvd. This request has been submitted by SFA Creek Bend Homes, LLC. Case File PD2022-03.

Alaina Helton, City Planner reviewed the request to amend the development plan of a planned development district and changes that have been made to the planned development district over the

Minutes unofficial until approved by City Council

years. The applicant plans to construct four duplexes on eight acres along with maintaining a natural buffer area on the south end of the property.

The Planning and Zoning Commission voted unanimously to approve this request at their August 22, 2022 meeting.

Staff mailed twelve notices and heard from one citizen who stated their main concern was that the duplexes would turn into HUD apartments.

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

- A. Receive an annual report from the Boys and Girls Club of Deep East Texas.

Steve Davidson, Boys and Girls Club President, discussed the history of the Boys and Girls Club in Nacogdoches. He discussed the role of the aquatics center in the community and pool usage statistics, club membership, sports programs, food programs, club hours, revenue and fees.

- B. Consider approval of an agreement between the City of Nacogdoches and the Boys and Girls Club of Deep East Texas for essential services in the amount of \$70,000.

Brian Bray, Community Services Director reviewed the contract for essential services.

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

- C. Consider approval of a resolution of support of the Better Together's Common Agenda to improve the mental health, health, wellness, and well-being of the residents in the County of Nacogdoches.

Erin Windham, Better Together Representative, stated that Better Together is asking community partners to sign a resolution in support of Better Together. Better Together is a local collaborative focused on actively engaging residents in the process of developing a common agenda for improving mental health, health, wellness, and well-being for all who live in Nacogdoches County.

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

- E. Receive a presentation of the 2023 Annual Budget and Marketing Plan for the Convention and Visitors Bureau (CVB).

Sherry Morgan, CVB Executive Director, discussed hotel occupancy tax, how it is used and who oversees the funds. She also reviewed the 2023 Annual Budget and Marketing Plan for the Convention and Visitors Bureau. This budget was approved by the CVB Board of Directors at their meeting on August 26, 2022.

City Council discussed room tax-public funds, recourse for nonpayment of hotel occupancy tax and marketing efforts.

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

- F. **Public Hearing:** Hold a public hearing and receive citizen input on the FY2022-2023 Proposed Budget.

Finance Director Pam Curbow gave a brief overview of the proposed 2022-2023 budget.

Ms. Curbow stated that the terminology of the Certificates of Obligation (CO) has been not to exceed \$21.1 million up to this point but it is time for the City to advise the bond counsel of the exact amount for the Certificate of Obligation.

Brandi Cartwright, member of Parks Advocacy League, spoke in support of the proposed budget including the Certificates of Obligation.

Steve Bartlet, City Engineer, discussed infrastructure needs beyond the amount of the Certificates of Obligation.

Council Member Belanger said that lately it has been implied or said that the state of our fire facilities is due to inaction of the City Council. She stated that City Council has funded every request made to them for the Fire Department. She discussed what was allocated in the proposed budget for certain fire

stations to be repaired. Council Member Belanger asked for that particular line item to be open to all fire stations and not just a few. She also asked the City Manager to make sure the fire fighters are no longer in any immediate danger.

Fire Chief Keith Kiplinger stated the reason that two stations were excluded from the budget is because the City was moving forward with the Certificate of Obligation projects.

Council Member Fischer said that she was under the impression that each fire station had issues that needed to be addressed.

City Council discussed the dollar amount they would like to issue for the Certificate of Obligation.

Council Member Kathleen Belanger moved that the Certificate of Obligation be for \$19,880,000; motion duly seconded by Council Member Huckaby and failed by the following vote:

Ayes: Council Members Belanger and Huckaby

Nays: Mayor Mize and Council Members Boldon and Fischer

Mayor Jimmy Mize moved that the Certificate of Obligation be for \$21,100,000 million; motion duly seconded by Council Member Amelia Fischer and carried by the following vote:

Ayes: Mayor Mize and Council Members Boldon and Fischer

Nays: Council Members Belanger and Huckaby

- G. Consider ordinance of the City of Nacogdoches, Texas approving and adopting annual budget for fiscal year beginning October 1, 2022 and ending September 30, 2023; providing that said expenditures for said fiscal year shall be made in accordance with said budget, unless otherwise authorized by an ordinance adopted by City Council; providing for a repeal clause; providing a severability clause; providing an effective date.

City Council agreed to table the adoption of the budget until the meeting of September 13, 2022 when the tax rate is adopted.

- H. Consider approval of Ordinance No. 1927-09-22 amending Chapter 10 "Aviation", Article II "Administration", Division 2. Airport Advisory Board, Section 10-56, "Composition; Appointment; Term" of the Code of Ordinances of the City of Nacogdoches, Texas.

Larrissa Philpot-Brown, Economic Development Director, stated that his ordinance amendment would change the membership from five regular members and two alternate members to seven regular members.

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

- I. Consider approval of a change order to the construction contract of the ongoing 2022 Street Paving Project #1 in the amount of \$77,251.00.

Case Opperman, Assistant Director of Public Works, stated that Logansport Street was on the 2022 seal coat project list but the condition of the street has deteriorated therefore staff recommends repaving the street rather than seal coating. Mr. Opperman also discussed the upcoming storm sewer project on Logansport Street and reviewed several options for repairing or replacing Logansport Street.

City Council discussed doing the storm sewer project before paving the street, paving the street then patching it when the storm sewer project was done, how long it would be before the storm sewer project was complete and cost for each option presented.

Council Member Belanger asked how far down Logansport Street the mill and inlay would be.

Mr. Opperman said it would be the entire existing street down to the park entrance, just replacing the existing surface.

Council Member Belanger said there is some dirt surface on the way down to the park, will that be included.

Mr. Opperman said it would just be replacing the asphalt surface and that he considers the park entrance where the dirt starts.

Council Member Chad Huckaby moved approval with Option 3; motion duly seconded by Council Member Amelia Fischer and carried by unanimous vote.

City Council convened into Executive Session at 7:09 p.m.

7. EXECUTIVE SESSION:

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

- 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.

City Council reconvened in regular session at 8:03 p.m. with no action taken.

8. City Council reconvened in regular session at 8:03 p.m. with no action taken.

9. Adjourned 8:03 p.m.

ATTEST:

Mayor Jimmy Mize
City Council
City of Nacogdoches

Jan Vinson, City Secretary



Special Session
Nacogdoches City Council
September 13, 2022 – 5:30 p.m.
City Council Room – City Hall
202 East Pilar Street

DRAFT

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

1. Called to order at 5:30 p.m.
2. Pledge of Allegiance.
3. Open Forum

4. REGULAR AGENDA:

- A. Consider ordinance of the City of Nacogdoches, Texas approving and adopting annual budget for fiscal year beginning October 1, 2022 and ending September 30, 2023; providing that said expenditures for said fiscal year shall be made in accordance with said budget, unless otherwise authorized by an ordinance adopted by City Council; providing for a repeal clause; providing a severability clause; providing an effective date.

Pam Curbow, Finance Director, reviewed changes made to the proposed budget regarding bond revenue proceeds and expenditures.

Milton Moorner, citizen, spoke regarding the step pay for the Police and Fire Departments.

Ms. Curbow reviewed the step program for Police and Fire Departments.

Council Member Amelia Fischer moved approval; motion duly seconded by Council Member Roy Boldon and carried by the following vote:

Ayes: Mayor Mize and Council Members Boldon, Fischer, Belanger and Huckaby
Nays: None

- B. **Public Hearing:** Hold public hearing and receive citizen input on FY 2022-2023 Proposed Tax Rate.

Pam Curbow, Finance Director, reviewed the 2022-2023 assed value, prior year tax rate, no-new-revenue tax rate, voter-approval tax rate and proposed tax rate. Ms. Curbow stated that she spoke with Texas Municipal League attorneys regarding the petition that should be submitted next week and how that might affect the proposed tax rate.

No citizens spoke during the Public Hearing.

Mayor Jimmy Mize moved that the vote on the adoption and ratification of the property tax rate for fiscal year 2022-2023 be considered on Tuesday, September 20, 2022 at 5:30 p.m. in the City Council Chambers located at 202 East Pilar Street; motion duly seconded by Council Member Kathleen Belanger and carried by unanimous vote.

Mayor Mize closed the Public Hearing.

- C. Consider an ordinance ratifying the property tax revenue increase in the 2022-2023 budget as a result of the City receiving more revenues from property taxes in the 2022-2023 budget than in the previous fiscal year; and providing an effective date.

Council Member Kathleen Belanger made a motion to table Items 4.C and 4.D until September 20, 2022 at 5:30 p.m.; motion duly seconded by Council Member Chad Huckaby and carried by unanimous vote.

- D. Consider ordinance ratifying and setting tax rate on all taxable property for tax year 2022 at a rate of \$0.58480 per one hundred dollars (\$100.00) valuation on all taxable property within the corporate limits of the City of Nacogdoches as of January 1, 2022, the said tax rate having a

Minutes unofficial until approved by City Council

maintenance and operations component and a debt service component; and providing an effective date.

Council Member Kathleen Belanger made a motion to table Items 4.C and 4.D until September 20, 2022 at 5:30 p.m.; motion duly seconded by Council Member Chad Huckaby and carried by unanimous vote.

City Council convened into Executive Session at 5:41 p.m.

5. **EXECUTIVE SESSION:**

A. 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.

6. City Council reconvened in regular session at 6:12 p.m. with no action taken.

7. Adjourned 6:12 p.m.

ATTEST:

Mayor Jimmy Mize
City Council
City of Nacogdoches

Jan Vinson, City Secretary

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 AUGUST 16, 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 (Across Appleby Sand Rd.)	R-1 Single Family	Single Family & Civic/Office Building
South (Across East Austin St.)	B-1 Local Business	Duplex & Convenient Store with Gasoline Pumps
West	B-1 Local Business & 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, AICP, 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

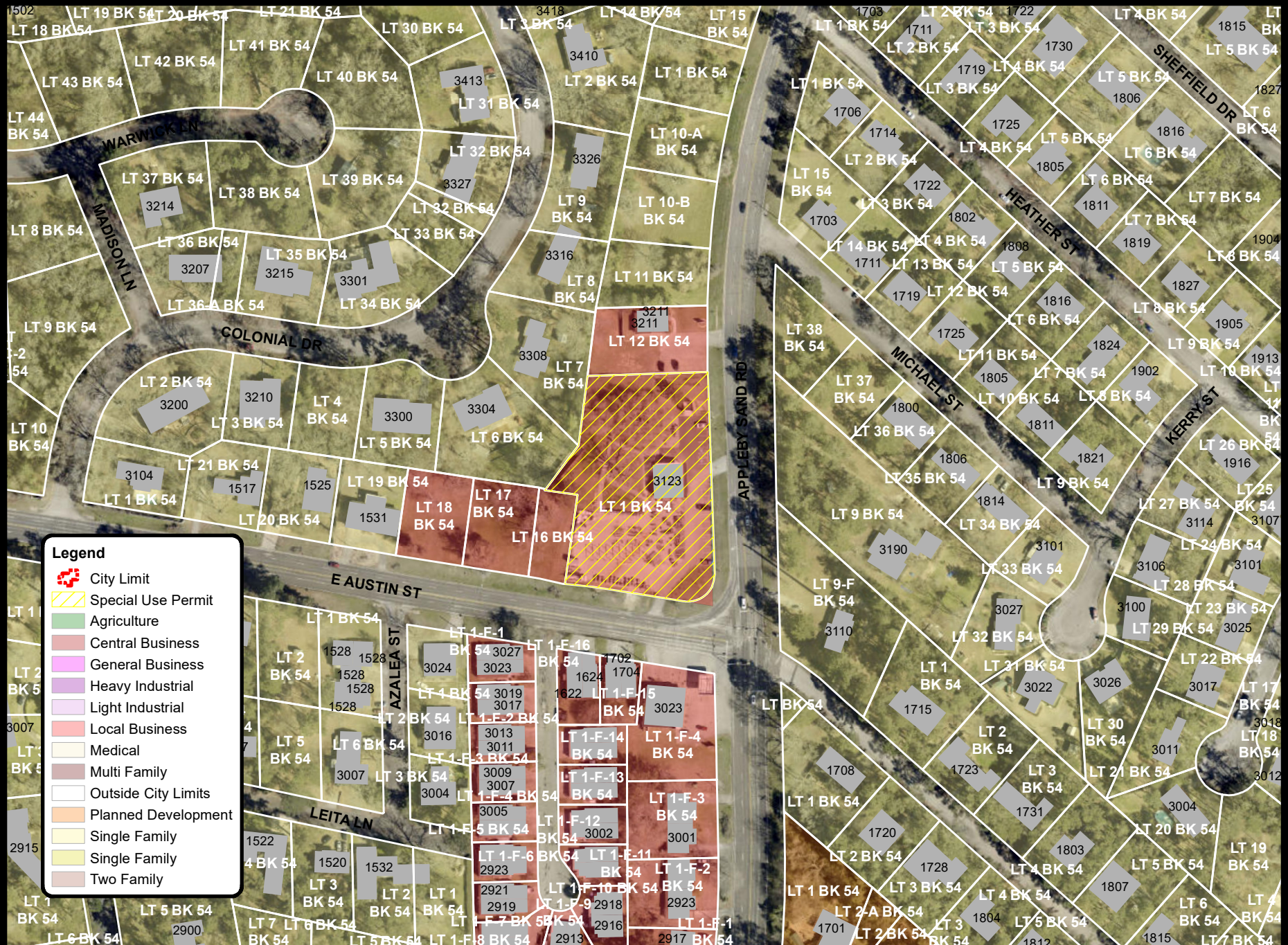


Notice: This product is for informational purposes only and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries.



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

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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 Ease 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

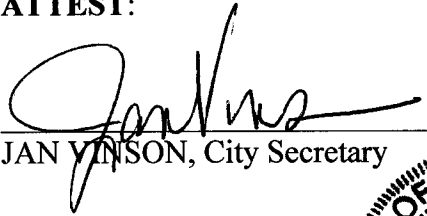
The City Secretary is hereby authorized and instructed to file a signed and sealed copy of this Ordinance in and among the records of the City of Nacogdoches, Texas.

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

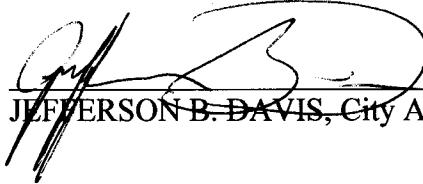
By: 
SHELLEY BROPHY, Mayor

ATTEST:

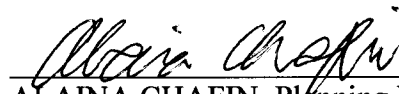

JAN VINSON, City Secretary



APPROVED AS TO FORM:

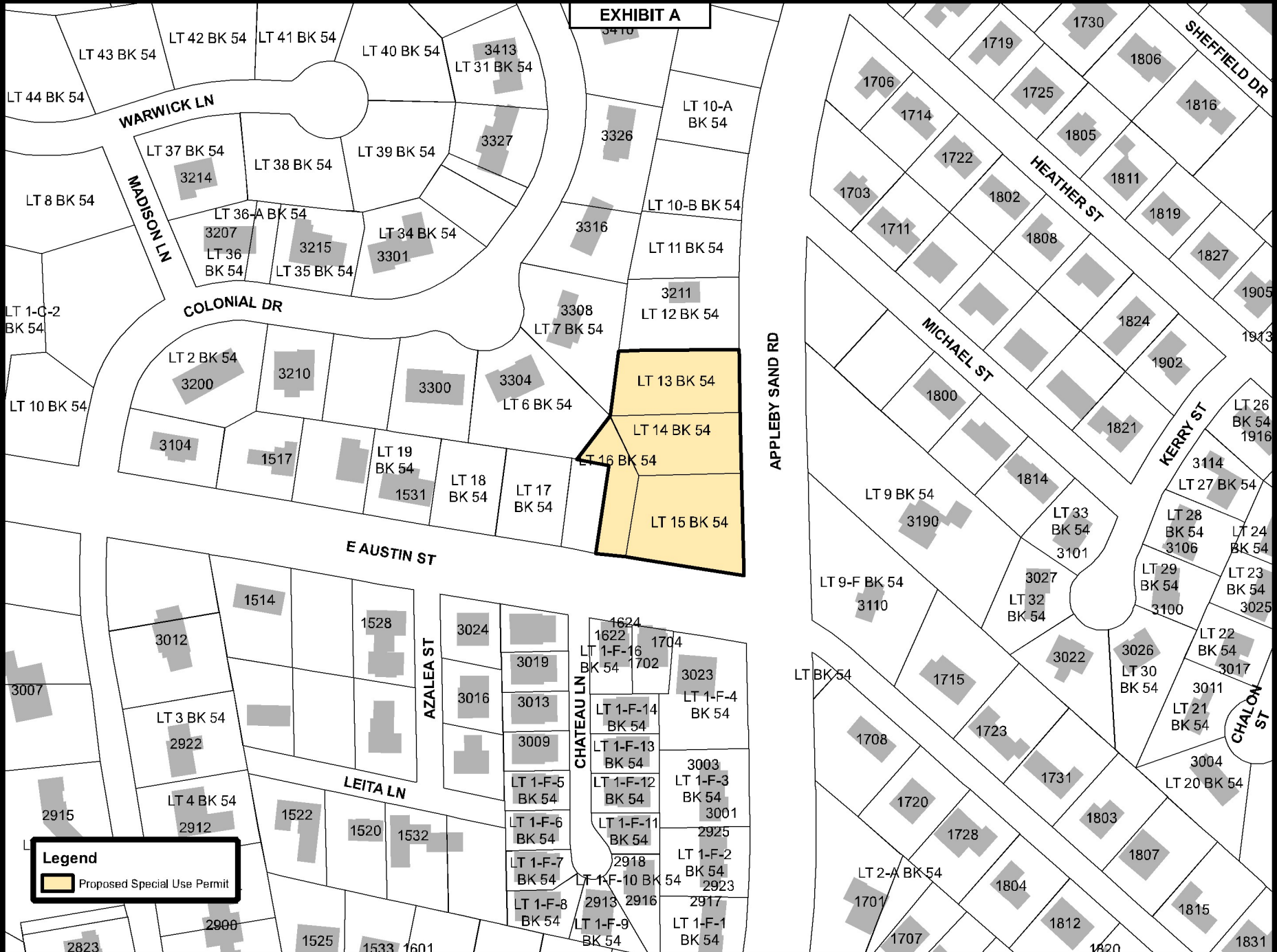

JEFFERSON B. DAVIS, City Attorney

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

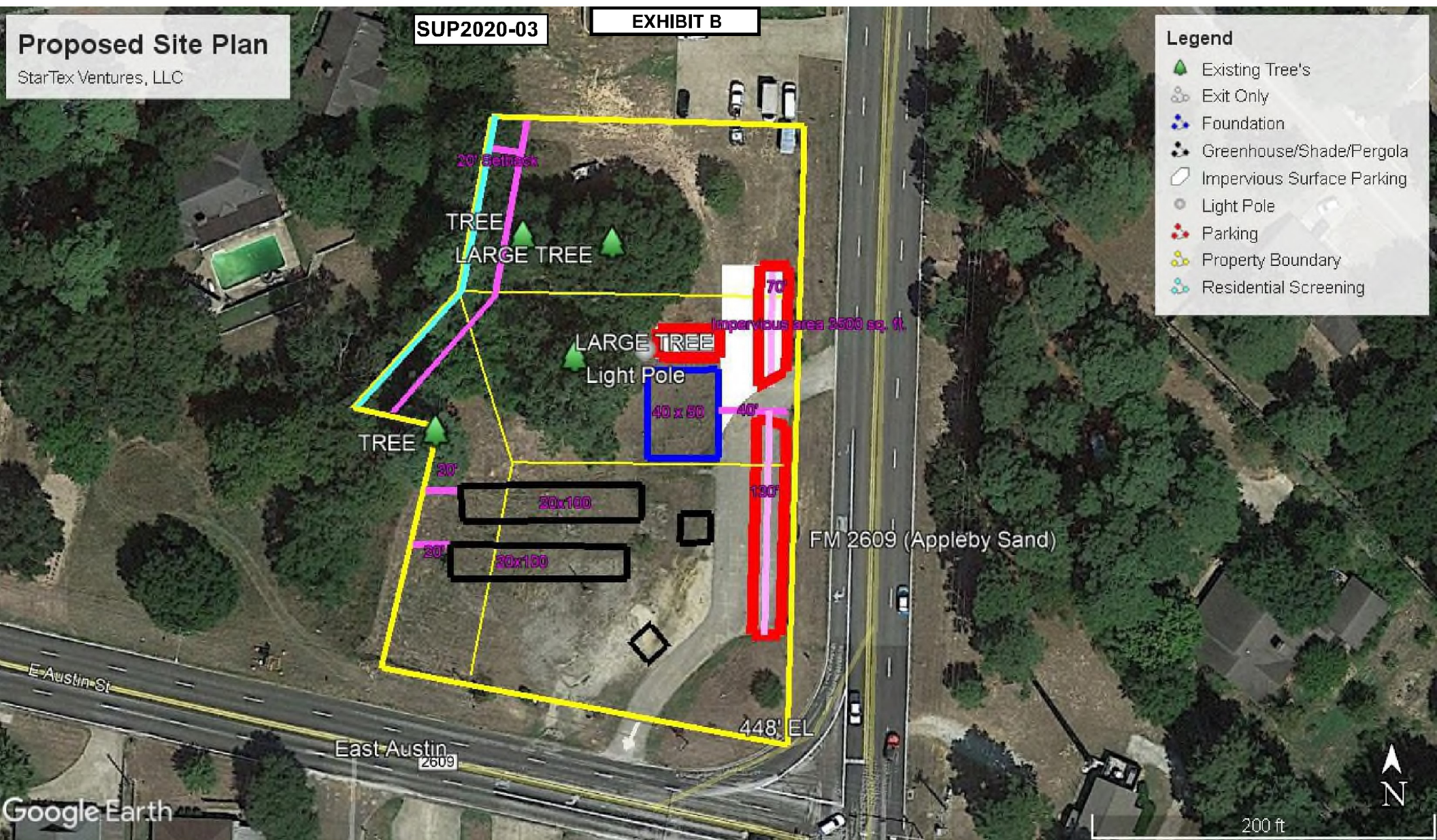
StarTex Ventures, LLC

SUP2020-03

EXHIBIT B

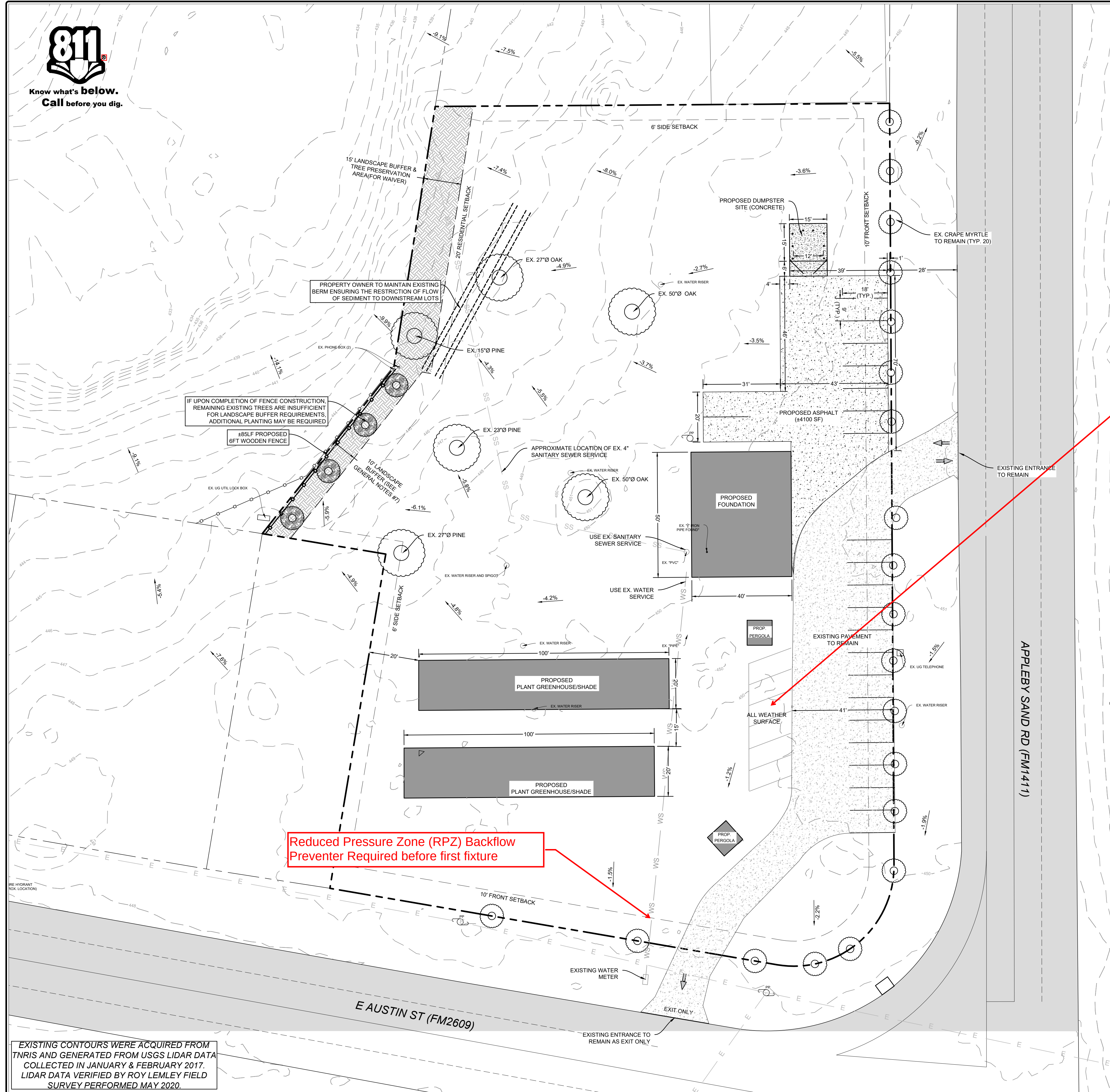
Legend

- 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.

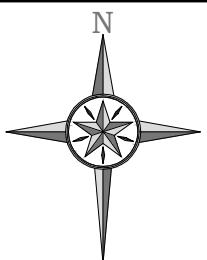


EXISTING CONTOURS WERE ACQUIRED FROM
TNRIS AND GENERATED FROM USGS LIDAR DATA
COLLECTED IN JANUARY & FEBRUARY 2017.
LIDAR DATA VERIFIED BY ROY LEMLEY FIELD
SURVEY PERFORMED MAY 2020.



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

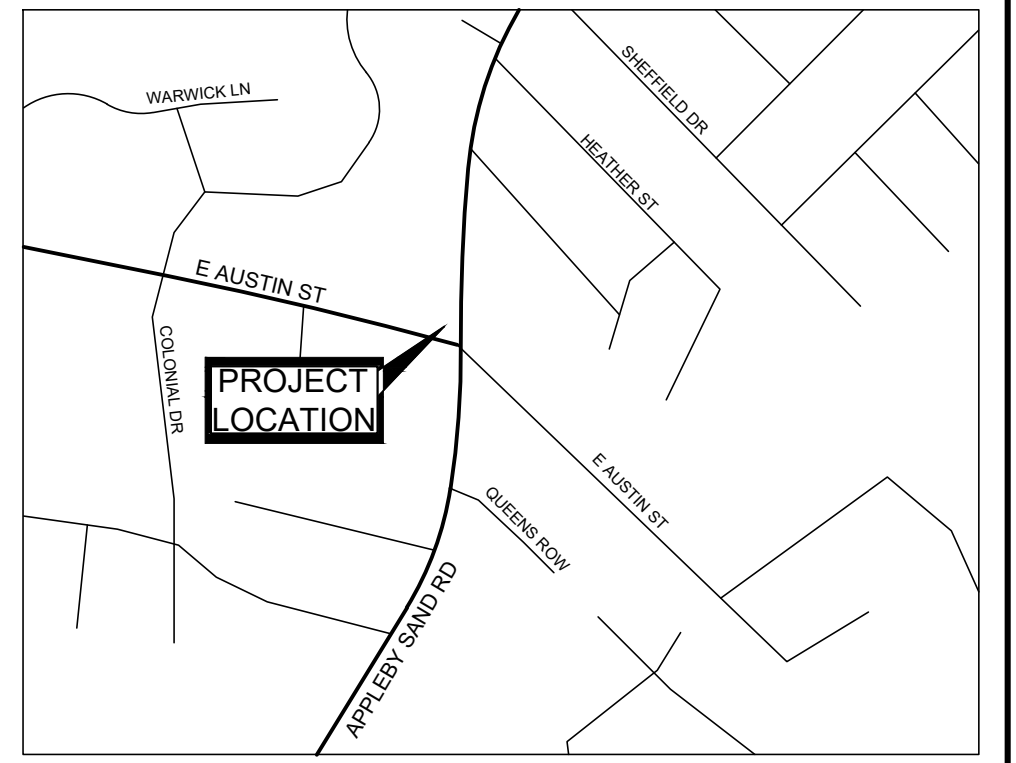
*1 SPACE PER 1,000 SQ FT OF
SITE AREA (330,900 SQ FT)
*LANDSCAPE CREDIT
REDUCTION OF 10% (3
SPACES)

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.

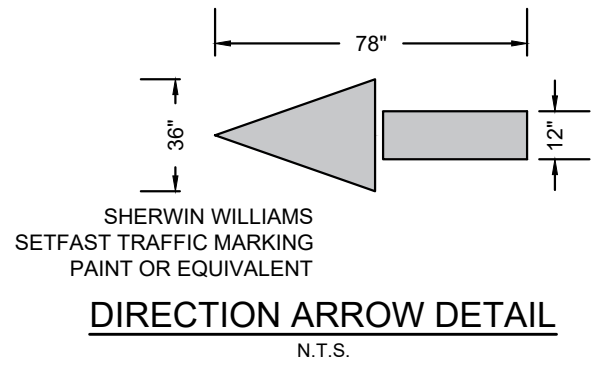
All required parking must be hard surface pavement
(ex. asphalt, concrete)



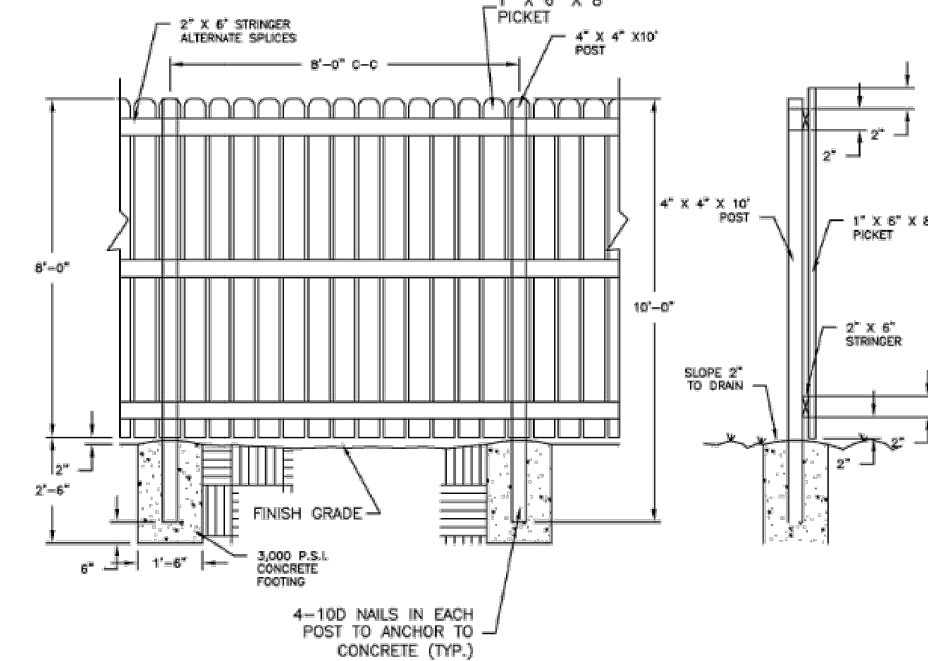
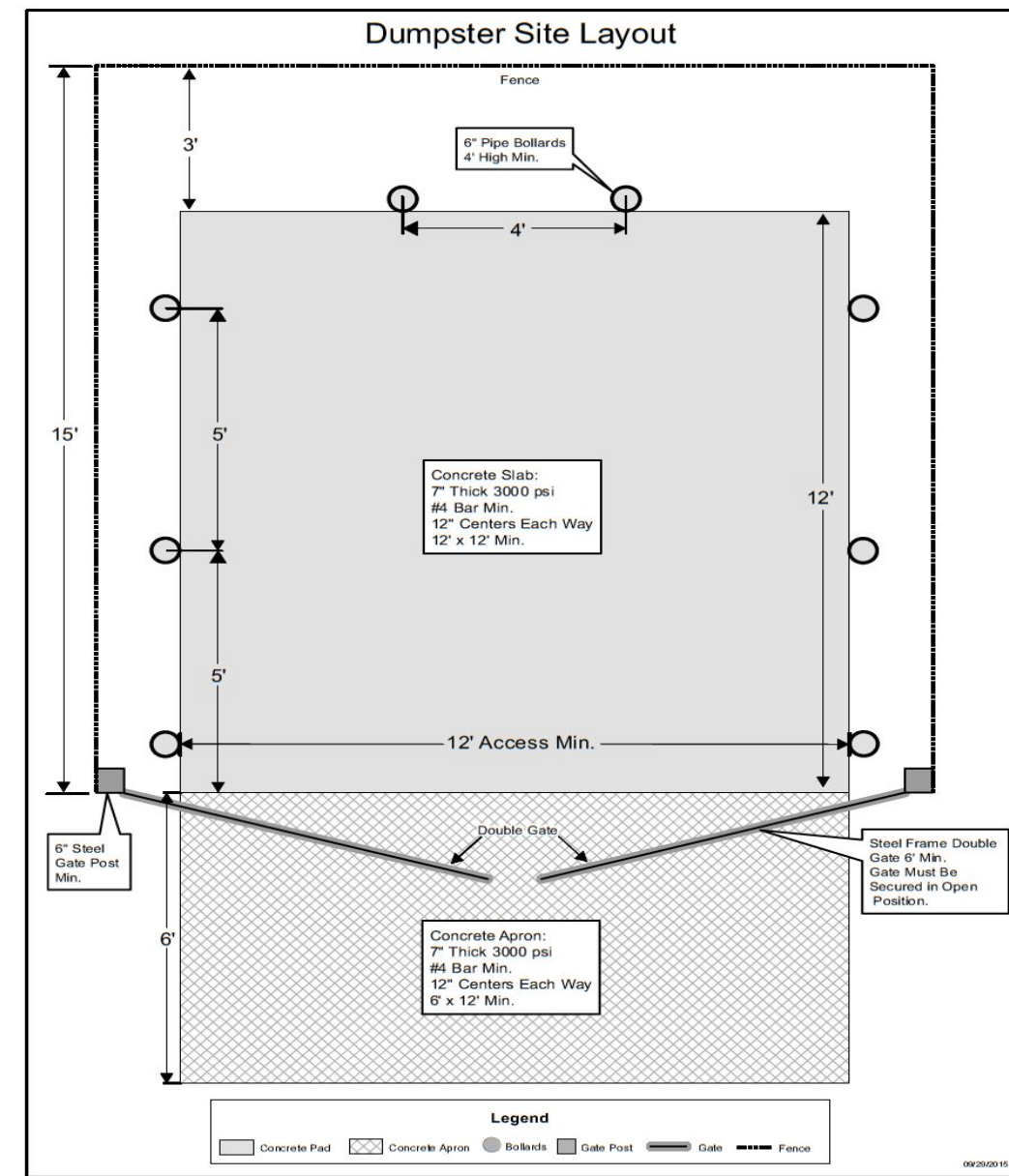
VICINITY MAP
N.T.S.

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

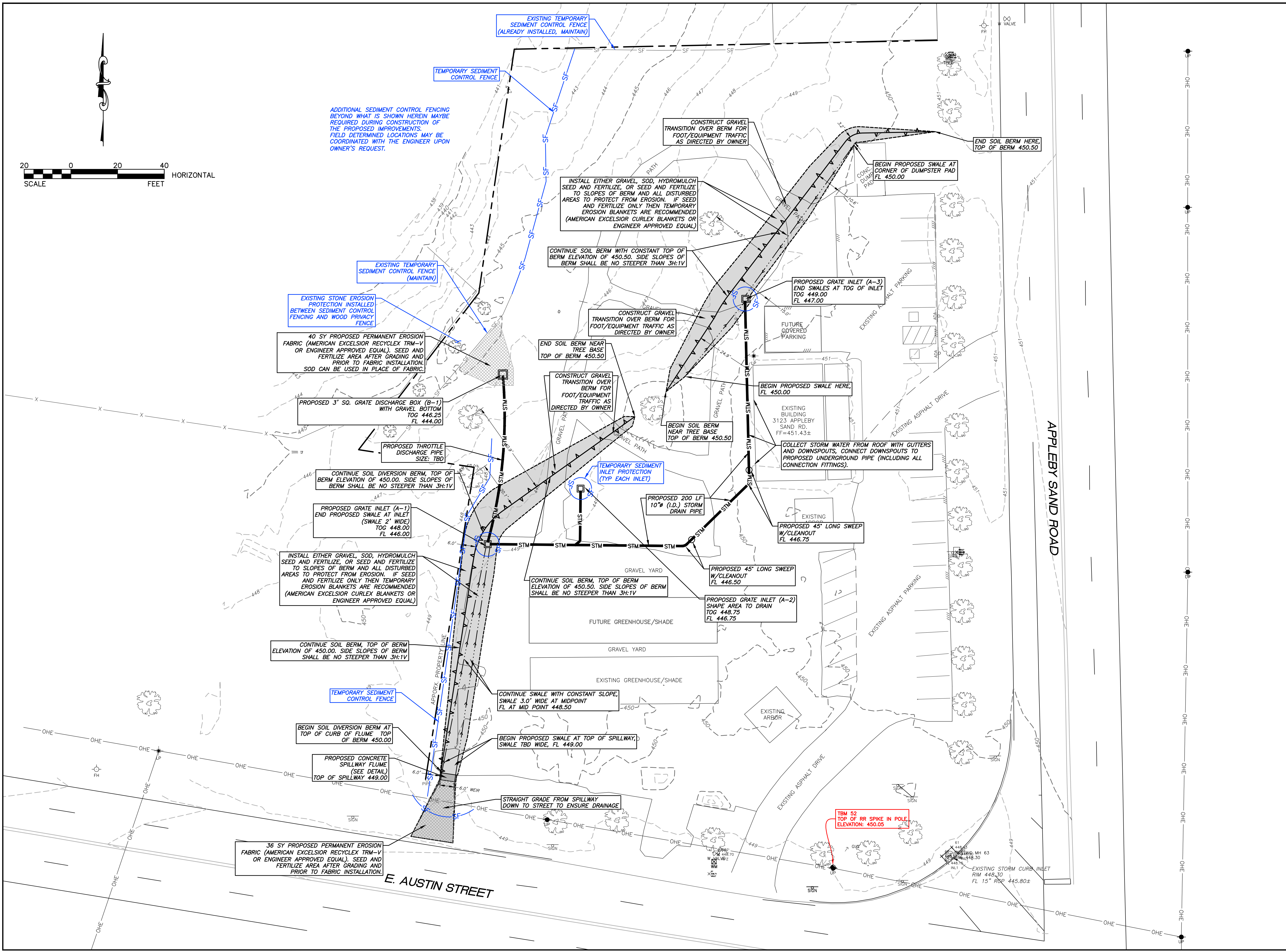
- PRIOR TO STARTING CONSTRUCTION, THE GENERAL
CONTRACTOR SHALL BE RESPONSIBLE TO VERIFY THAT ALL
NECESSARY PERMITS AND APPROVALS HAVE BEEN OBTAINED.
NO CONSTRUCTION SHALL BEGIN UNTIL ALL PERMITS HAVE BEEN
RECEIVED.
- IF THE CONTRACTOR, IN THE COURSE OF THE WORK, FINDS ANY
DISCREPANCIES BETWEEN THE PLANS 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 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

TWO FIFTEEN CONSULTING

ENGINEERS + SURVEYORS

412 North St.
Nacogdoches, TX 75961
p: 838-568-0505

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 7/8/2022. 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:	Issue Date:
SEE PLAN	07/06/2022
Drawn By:	Checked By:
CMS	MPD
File:	Drawing No.
21102_200.dwg	C-200

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 IN THIS DRAWING. SPECIFIED MATERIALS, ANY OTHER USE OF THIS DRAWING, INCLUDING WITHOUT LIMITATION, ANY REPRODUCTION OR ALTERATION IS STRICTLY PROHIBITED. TWO FIFTEEN CONSULTING SHALL BE INDEMNIFIED FROM LIABILITY ARISING FROM THE CONSTRUCTION, USE, OR RESULT OF SUCH UNAUTHORIZED USE OR CHANGES.

Page 29 of 180

200 Foot Notification Map

SUP2020-03: 3123 Appleby Sand Rd.

Legend



200 Foot Buffer



Existing SUP



Single Family-Rental



Two Family- Rental



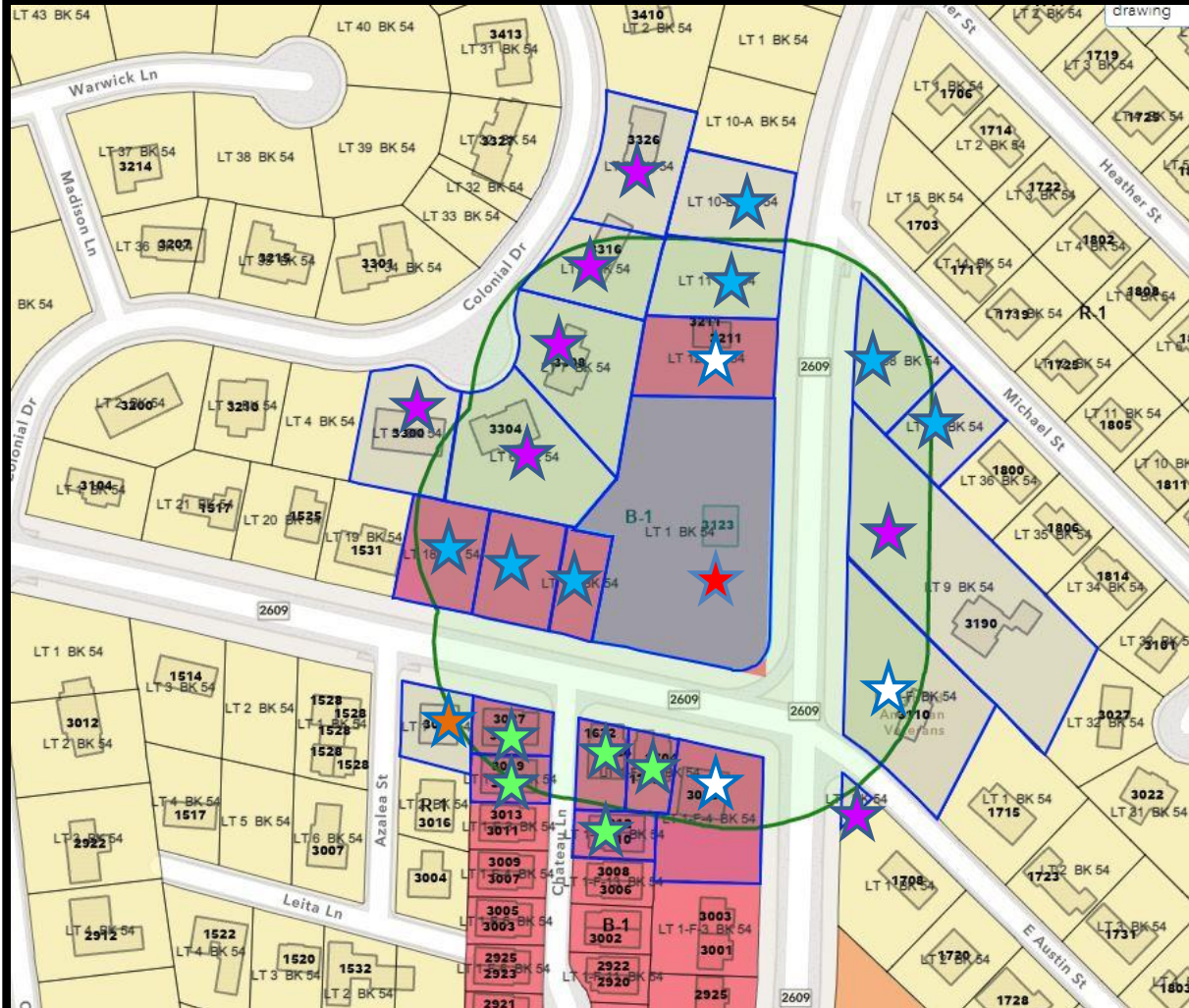
Single Family-
Owner Occupied



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

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

Home of Stephen F. Austin State University www.sfasu.edu



BRICK PATIO COMPLETELY
COVERED IN SAND (COLLORED TWICE)



ONE OF MANY WASHOUTS THAT
HAS TO BE FILLED AFTER
STORMS.



BRICK PATIO COMPLETELY
COVERED IN SAND WASHED
DOWN FROM FIELD OF
APPLEBY SD. RD./E. AUSTIN



13" WASHOUT - ONE OF MANY



BACK PATIO
COVERED IN
SAND THAT
WASHED FROM
FIELD OF
APPLEBY SAND
RD.
AND
EAST AUSTIN



12 INCHES OF TABLE'S FRONT LEG
IS BURIED IN SAND



24 INCH BACK LEG OF TABLE



A "MOAT" HAD TO BE DUG AROUND MY GARAGE IN AN ATTEMPT TO CHANNEL THE WATER.



11 inches
of sediment

PICTURES SHOW HOW MUCH SEDIMENT WAS DEPOSITED AGAINST THE SIDE OF THE GARAGE.

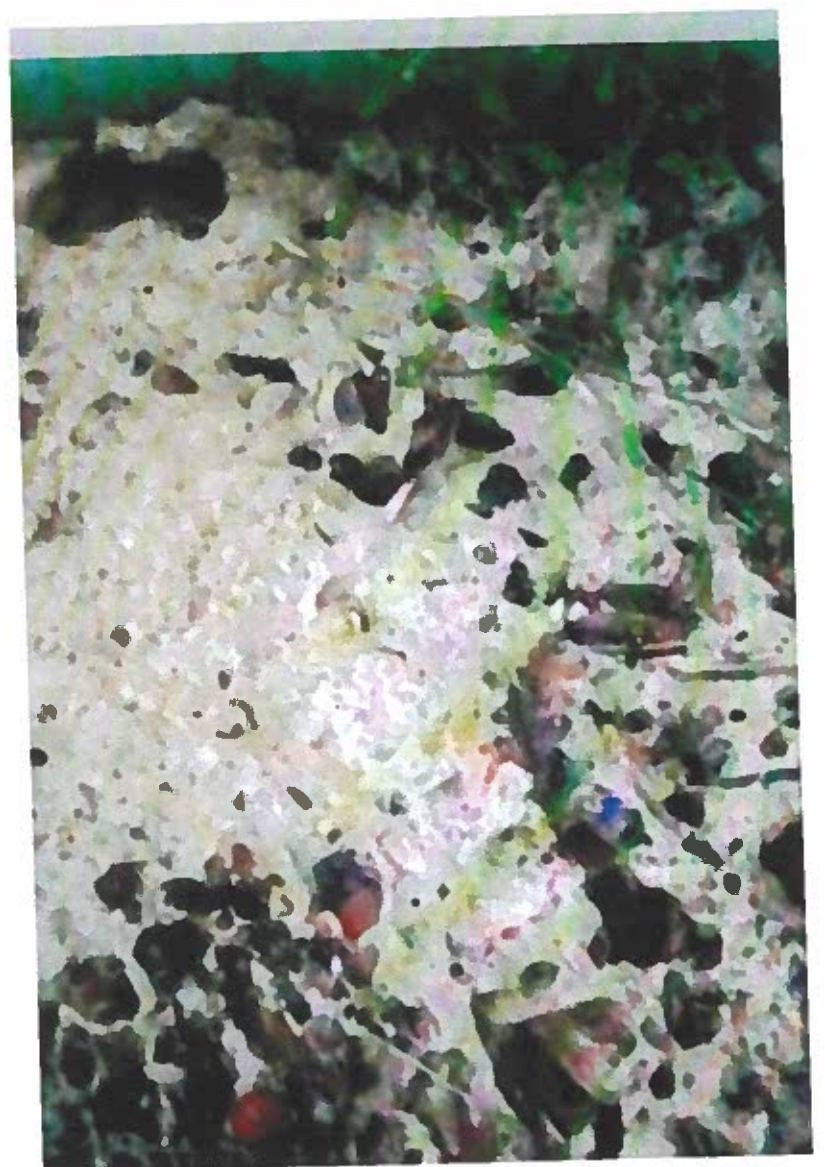
SAND NOW COMES FROM THE SIDE OF THE GARAGE B/C OF WATER RUNOFF FROM THE PLANT SHED



5 INCHES OF WATER ON PATIO



BACKYARD FLOODED AFTER HEAVY
RAINFALL. WATER ALMOST CAME
IN THE HOUSE.
(1ST TIME IN 50 YEARS)



OLD CITY SEWER MANHOLE ON
MY PROPERTY CRACKED AFTER
THE PLANT SHED WAS ADDED
TO THE LINE - SEWAGE WAS
DEPOSITED IN MY YARD.



7ft
to
ground



7ft
to
ground

FRONT OF GARAGE



BACK OF GARAGE
SHOWING AMT. OF DEPOSITED SAND

REPAIR OF SINKHOLE / WASHED OUT



EAST AUSTIN



APPLEBY SAND



THE PLANT
DIED

MASSIVE AMOUNTS OF
WATER ARE ROUTED
UNDER THE FENCE TO
MY BACKYARD

* EROSION PATH OF SAND AND WATER

PLANTISHED EAST AUSTIN →

← APPLIED SAND



SINKHOLE FORMING



SINKHOLE REPAIRED



SINKHOLE REPAIR WASHED OUT BY WATER



THE PLANT SHED



PATH OF EROSION OF SAND AND WATER

↑ SINKHOLE



WASHOUTS AND SINKHOLES FORM



WATER AND SAND FLOOD HOMES
ON COLONIAL DRIVE

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, 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: mimschwab@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
Home of Stephen F. Austin State University www.sfasu.edu

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



Legend
 [Yellow Outline] Special Use Permit
 [Red Outline] City Limit

0 50 100 200 Feet

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 Balanger 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

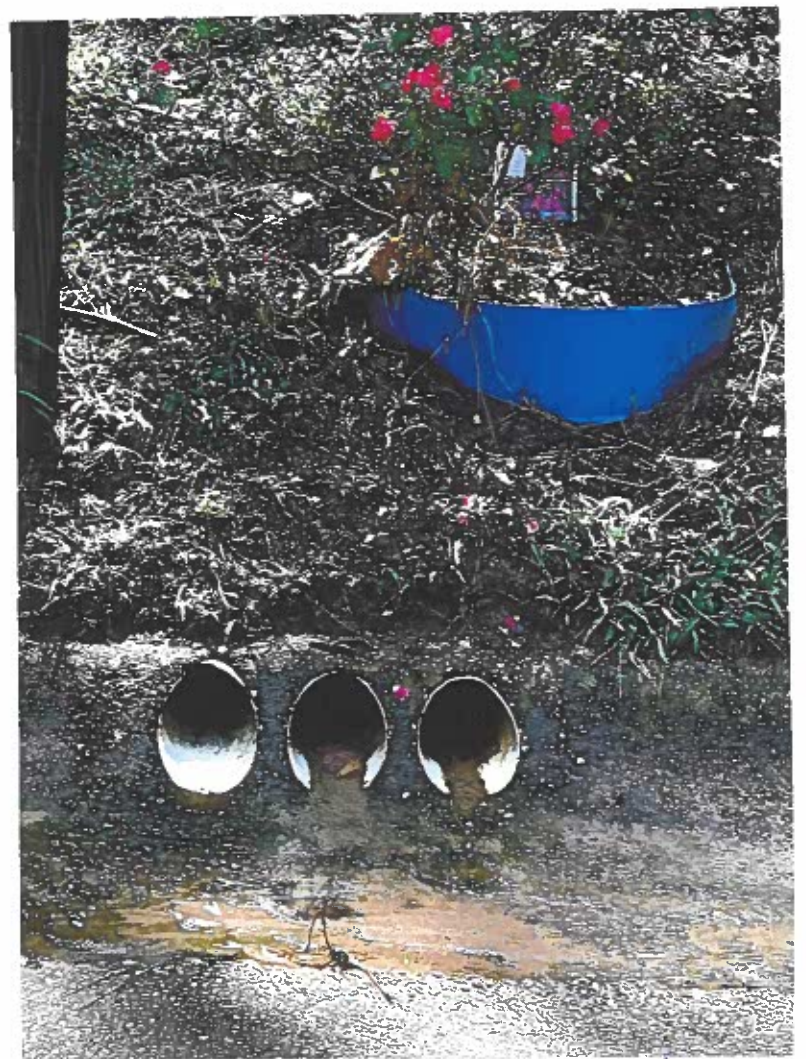
202 E. Pilar – PO Drawer 635030 – Nacogdoches, TX 75963

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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



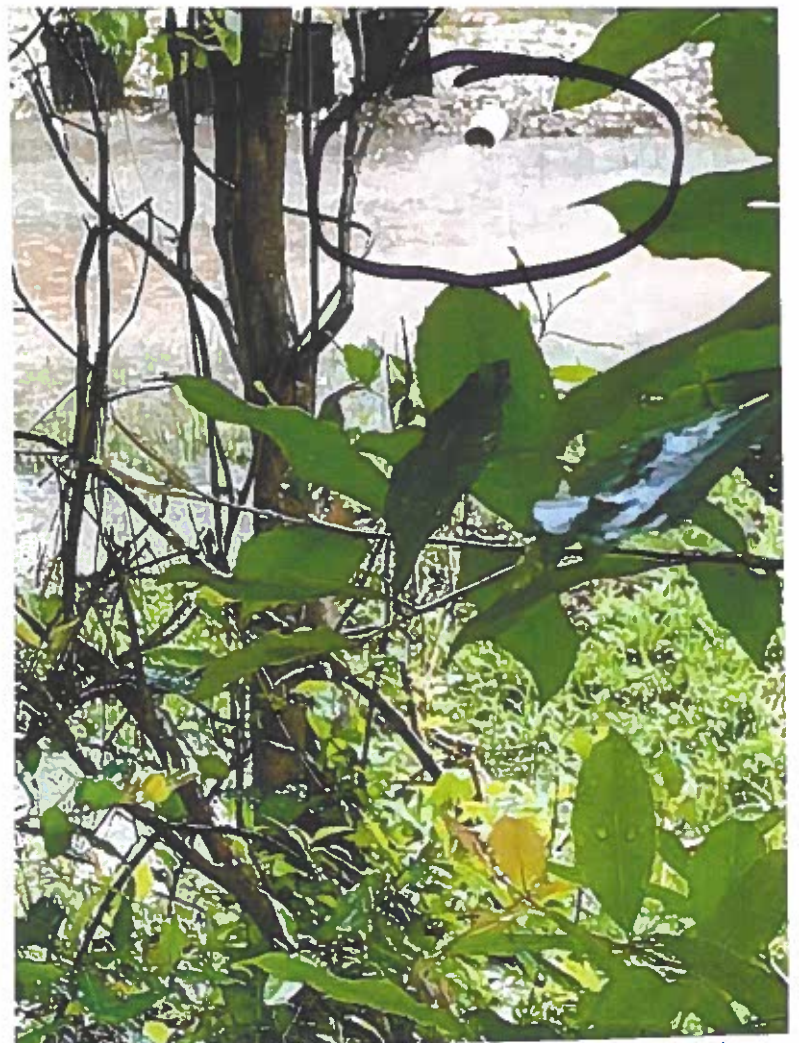
RUN OFF



Water comes over and under retaining wall



RUN OFF between 3304 + 3308
Colonial Dr.



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



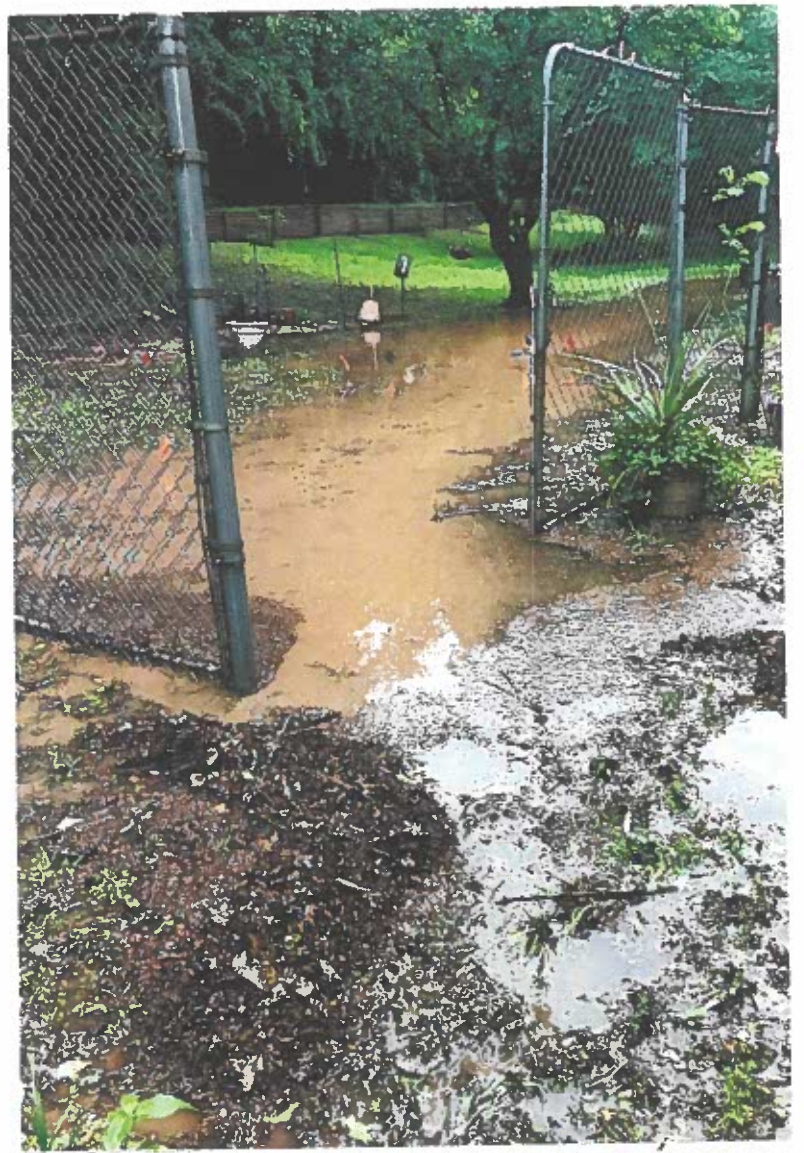
12/30/21 - PLANT SHED HAD BEEN
OPENED SINCE NOV 2020



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



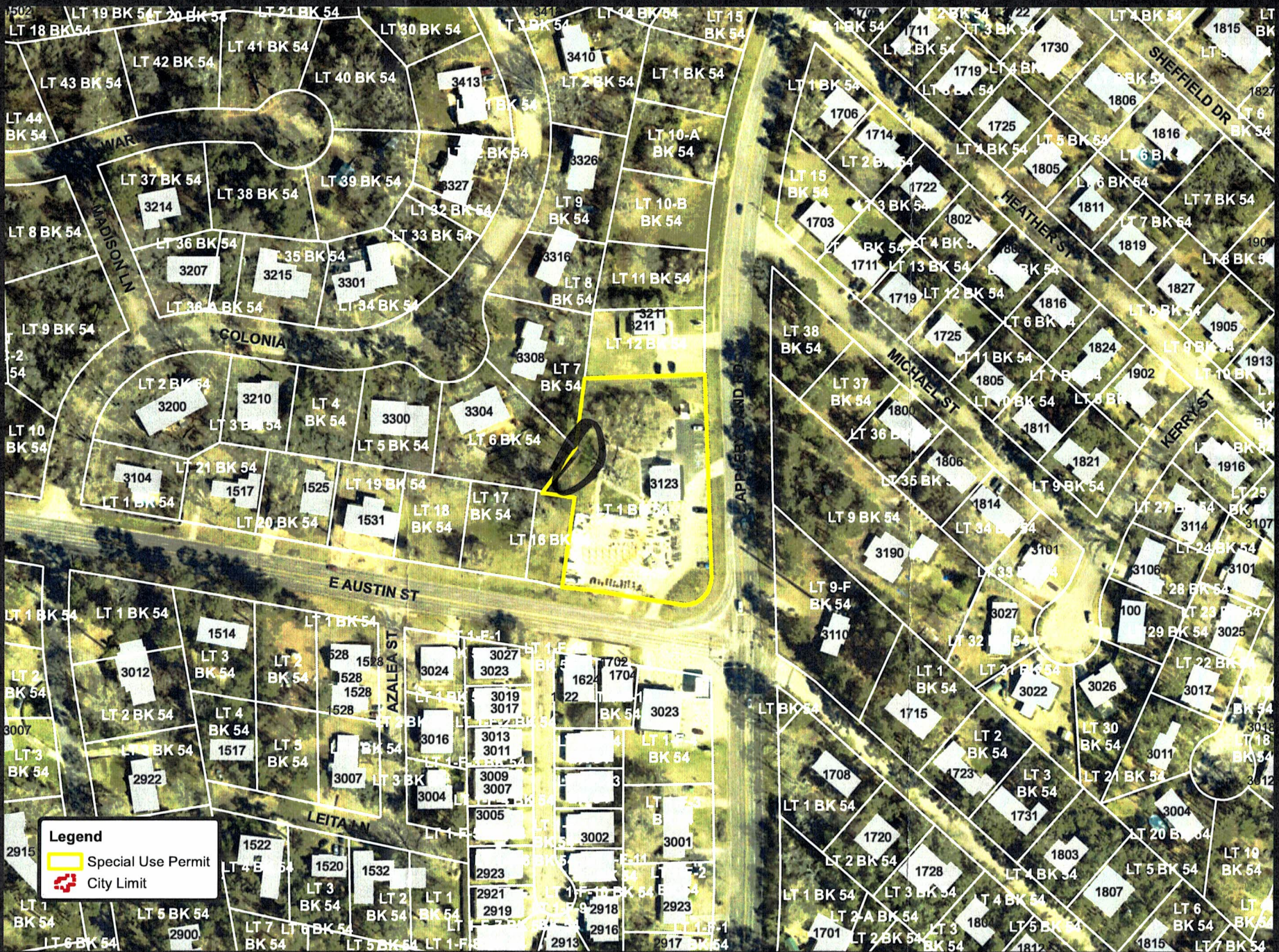
4/14/2022



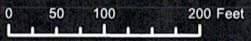
4/14/22



SUP 2020-03



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.



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:**

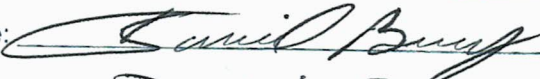
City of Nacogdoches Planning & Zoning Department
Attn: Rhonda Lewis
PO Drawer 635030
Nacogdoches, TX 75963

You may also email a copy to Rhonda Lewis, lewisr@nactx.us

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
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936-559-2574 Fax 936-559-2910 www.nactx.us
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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

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3123 Appleby Sand Rd.

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Attn: Rhonda Lewis
PO Drawer 635030
Nacogdoches, TX 75963

You may also email a copy to Rhonda Lewis, 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
Home of Stephen F. Austin State University www.sfasu.edu



Response Form

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

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Attn: Rhonda Lewis
PO Drawer 635030
Nacogdoches, TX 75963

You may also email a copy to Rhonda Lewis, 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: _____

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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:**

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Attn: Rhonda Lewis
PO Drawer 635030
Nacogdoches, TX 75963

You may also email a copy to Rhonda Lewis, 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.

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Response Form

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

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Attn: Rhonda Lewis
PO Drawer 635030
Nacogdoches, TX 75963

You may also email a copy to Rhonda Lewis, 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

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936-559-2574 Fax 936-559-2910 www.nactx.us
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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



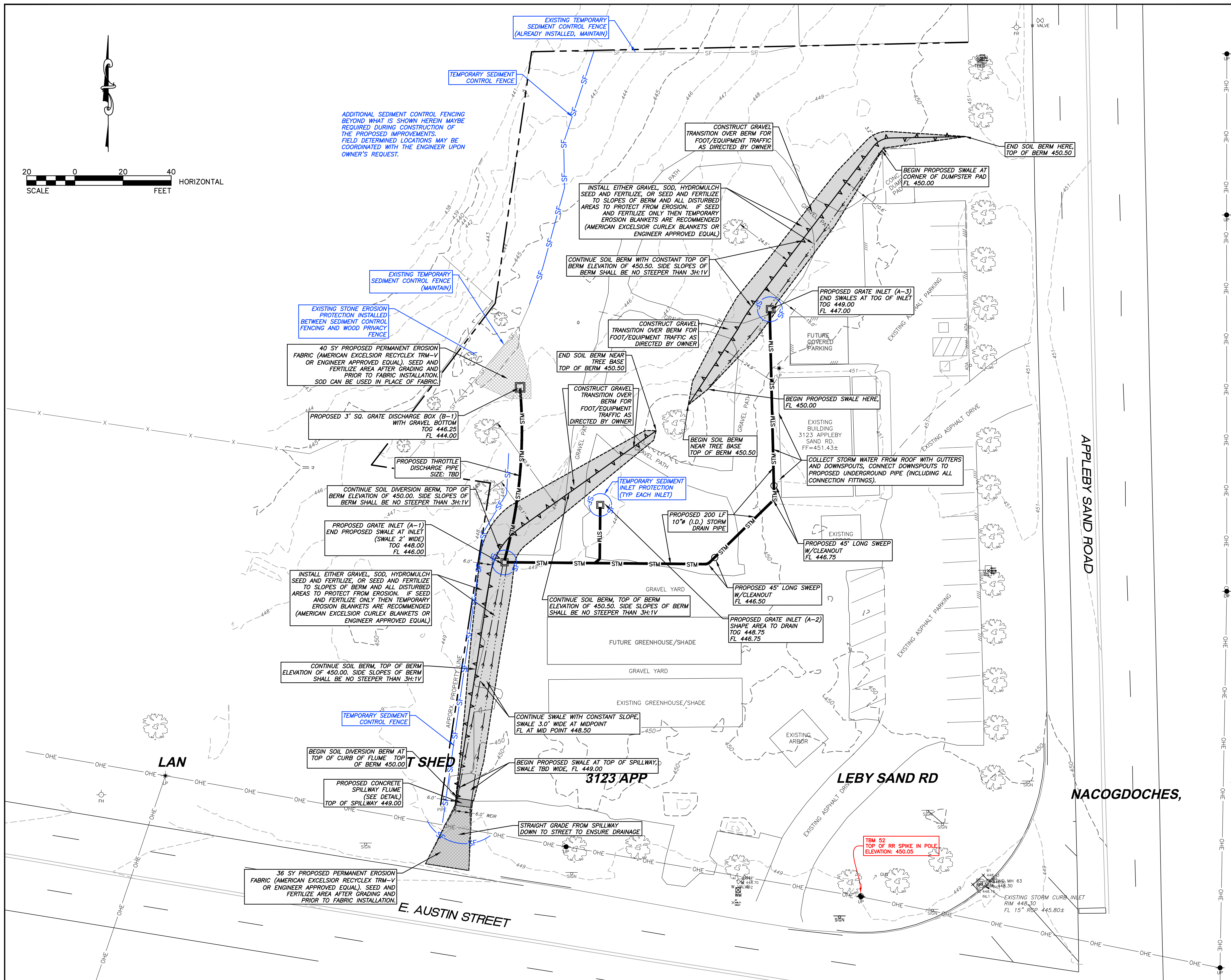
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0 50 100 200 Feet

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: SEE PLAN	Issue Date: 07/06/2022
Drawn By: CMS	Checked By: MPD
File: 21102_200.dwg	Drawing No. 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.

PRESENTER: Alaina Helton, City Planner

ITEM/SUBJECT: Public Hearing: Consider a request for a Specific Use Permit, to operate a Tattoo Salon in a B-2, General Business District, on Lots 11-J-1 and 11-J-15, of the North Loop Business Park Subdivision, located at 5016 Justin Street. This request has been made by Krysta Robertson. Case Number SUP 2022-04. (City Planner)

SUMMARY/BACKGROUND: The request is for a Specific Use Permit (SUP) for the operation of a Tattoo Salon at 5016 Justin Street. The property is zoned B-2, General Business and is developed as a Beauty Parlor. Per the Zoning Ordinance, a Tattoo Salon is allowed in the B-2, General Business zoning district with approval of an SUP. The SUP process allows City Staff, the Commission, and the City Council the opportunity to review and impose conditions if necessary on such development.

The applicant is proposing to utilize an existing 200 square foot tenant space in the Special FX Hair Salon located at 5016 Justin Street. The applicant has proposed that all tattoo services will be by appointment only, with business operating hours between 9 a.m. and 5 p.m., Tuesday through Friday, and from 10 a.m. to 2 p.m. on Saturdays. The Tattoo Salon will be closed on Sunday and Monday.

Adjacent Land Use & Zoning

The subject property is zoned B-2, General Business and is currently developed as a Beauty Parlor. The surrounding zoning and land uses are as follows:

Direction	Comprehensive Plan	Zoning	Land Use
North	Commercial	B-2, General Business	Commercial
South	Commercial	B-2, General Business	Undeveloped
East	Commercial	I-1, Light Industrial	Commercial
West (across Justin St.)	Commercial	B-2, General Business & PD, Planned Development	Commercial & Single Family

The surrounding areas are zoned and developed as commercial properties, with the exception of a single family Planned Development to the northwest. Commercial uses in the area include retail, restaurant, and offices. The proposed SUP will not change the allowed uses permitted under the current B-2 zoning district.

STAFF REVIEW:

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

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;

The proposed SUP is located within one of the city's main commercial corridors, and will utilize an existing 200 square foot tenant space that fronts Justin Street, with all tattoo services provided by appointment only and the following operating hours: 9 a.m. to 5 p.m., Tuesday through Friday, and 10 a.m. to 2 p.m. on Saturdays. There are two existing tattoo parlors on South Street that have not appeared to impair the use of the surrounding properties.

Orderly Growth and Development: The establishment of the specific use will not impede the normal and orderly development and improvement of surrounding vacant property;

The proposed SUP is located within an existing Beauty Parlor and no new construction is proposed. There are two vacant lots located to the south adjacent to the property.

Supporting Facilities: Adequate utilities, access roads, drainage and other necessary supporting facilities have been or will be provided;

The subject property takes direct access from Justin Street, a minor collector street which functions as primary access for the property and adjacent development. The roadway is adequate to accommodate the proposed use.

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;

The new use will not require a redesign of any drives or parking. The existing parking is adequate for the proposed use.

Nuisances: Adequate nuisance-prevention measures have been or will be taken to prevent or control offensive odor, fumes, dust, noise and vibration;

All activities will be limited to the interior of the buildings, with hours of operation limited to no later than 5 p.m. The proposed use should not produce any offensive odor, fumes, dust, noise, or vibration.

Lighting: Any lighting to be provided will be directional so as not to disturb or adversely affect neighboring properties;

There is no new lighting proposed with this SUP. Outdoor lighting must meet the City's lighting ordinance restrictions, i.e. only downlighting, no spillover lighting onto neighboring properties.

Landscaping: Sufficient landscaping and screening to ensure harmony and compatibility with adjacent property exists or will be provided;

This proposed use is located within an existing commercial property and all activities will take place entirely within the structure. The property is bound by commercial development to the north, east and west and by public streets on the west and south. All of the required commercial district landscaping was installed with the construction of the Beauty Parlor.

Comprehensive Plan: The proposed use is in accordance with the comprehensive plan.

Future Land Use

The 2003 Comprehensive Plan designates this area as *Commercial* on the Future Land Use Plan (FLUP). This Land Use category is defined as "Shopping and service facilities for the sale of goods and services, including small shops and larger retail stores and centers, restaurants, hotels and motels, service stations, and various other customer-oriented establishments...Also appropriate for places of worship and other nongovernment facilities where people frequently gather (private schools, lodges, meeting halls)."

Staff finds that the FLUP designation is consistent with the current underlying B-2, General Business zoning of the subject property. Approval of the SUP will not change the land uses permitted by B-2 zoning district.

NOTICES:

Of the 15 notices mailed to property owners within the 200 foot notification area, Staff has received one (1) written response in support of the request from the owner of a commercial property located on the west side of Justin Street.

Neighborhood Input: The applicant held a neighborhood meeting for the property owners within 500 feet on August 10, 2022 to discuss and answer questions about the request. Five (5) of the surrounding property owners attended the meeting. All of the attendees were from the single family community located northwest of the subject property. There was general discussion regarding potential increases in traffic and the operations of the business. The residents were generally supportive of the SUP with the restrictions on operating hours outlined above.

This zoning application was also subject to the additional noticing practices that were approved by City Council in January, 2021. These include: a zoning sign located on the subject property; notices published on the City's webpage and social media platforms; and, mailed courtesy notices to property owners within 500 feet of the subject property.

RECOMMENDATIONS:

P&Z Recommendation: The Planning and Zoning Commission considered this item at their regular meeting on September 12, 2022 and voted unanimously (5-0) to approve the SUP with the restrictions on hours of operation as outlined above.

Staff Recommendation: Staff recommends that the SUP be approved with the restrictions on hours of operation as outlined above.

FINANCIAL:

No financial impact associated with this item

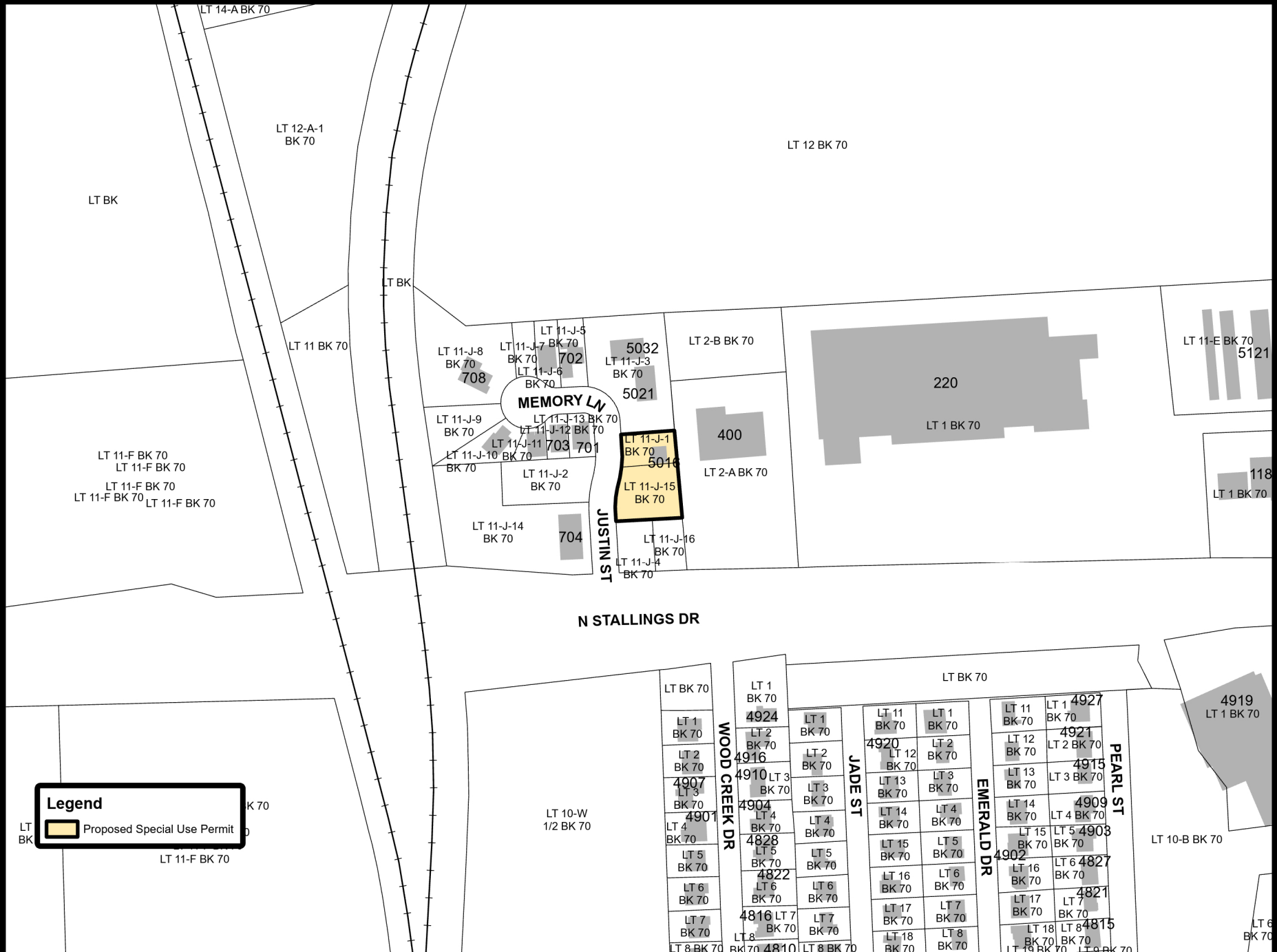
COUNCIL PRIORITIES: THIS AGENDA ITEM IS CONSISTENT WITH THE FOLLOWING CITY COUNCIL PRIORITIES

Not Applicable

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

ATTACHMENTS:

1. Location Map
2. Aerial Map
3. Zoning Map
4. Future Land Use Map
5. Notification Map
6. Response Form
7. Site Photos
8. Ordinance



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0 75 150 300 Feet

Date Created: August 23, 2022 Software: ArcGIS Pro 2.9.4

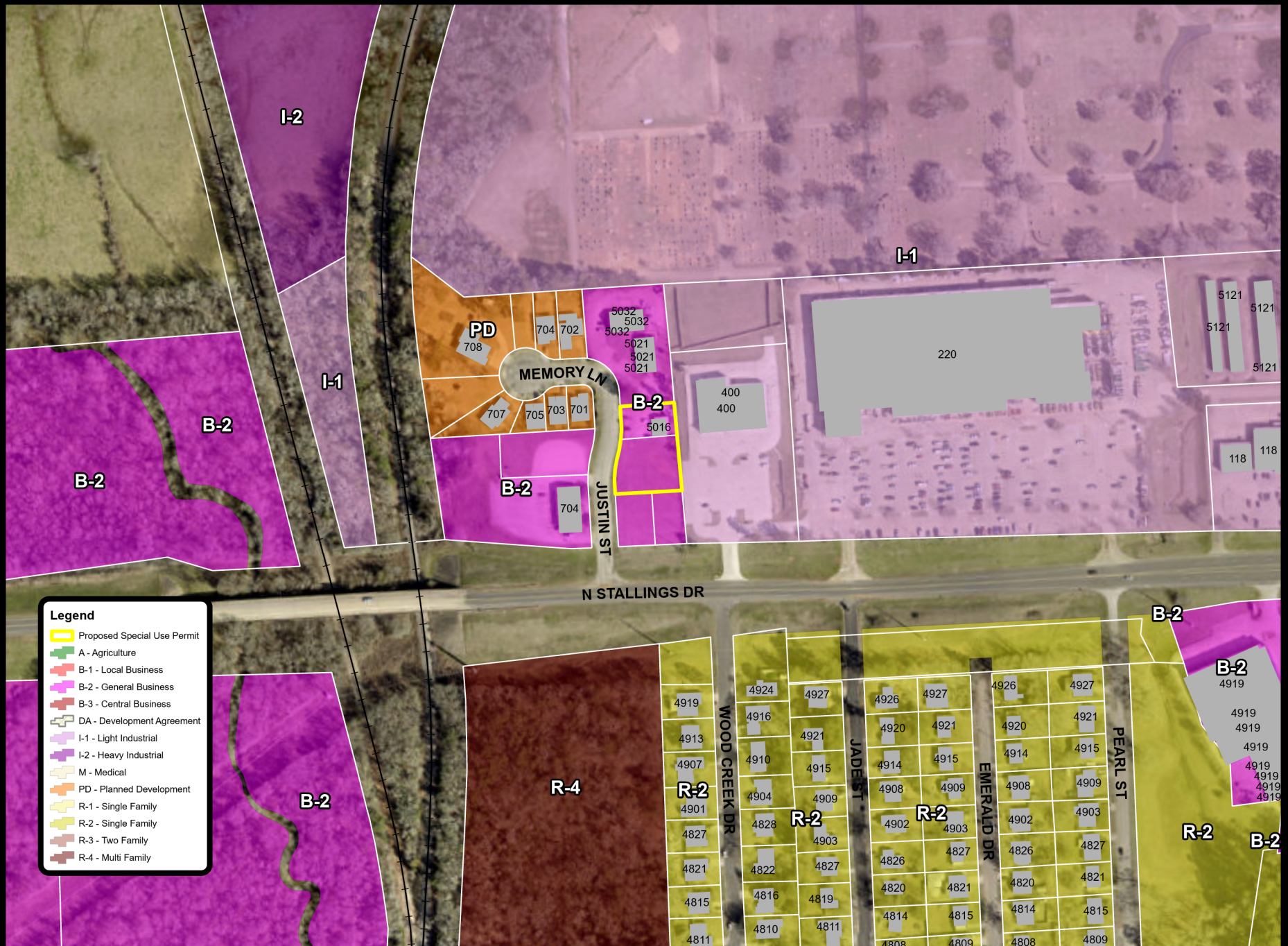


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0 75 150 300 Feet

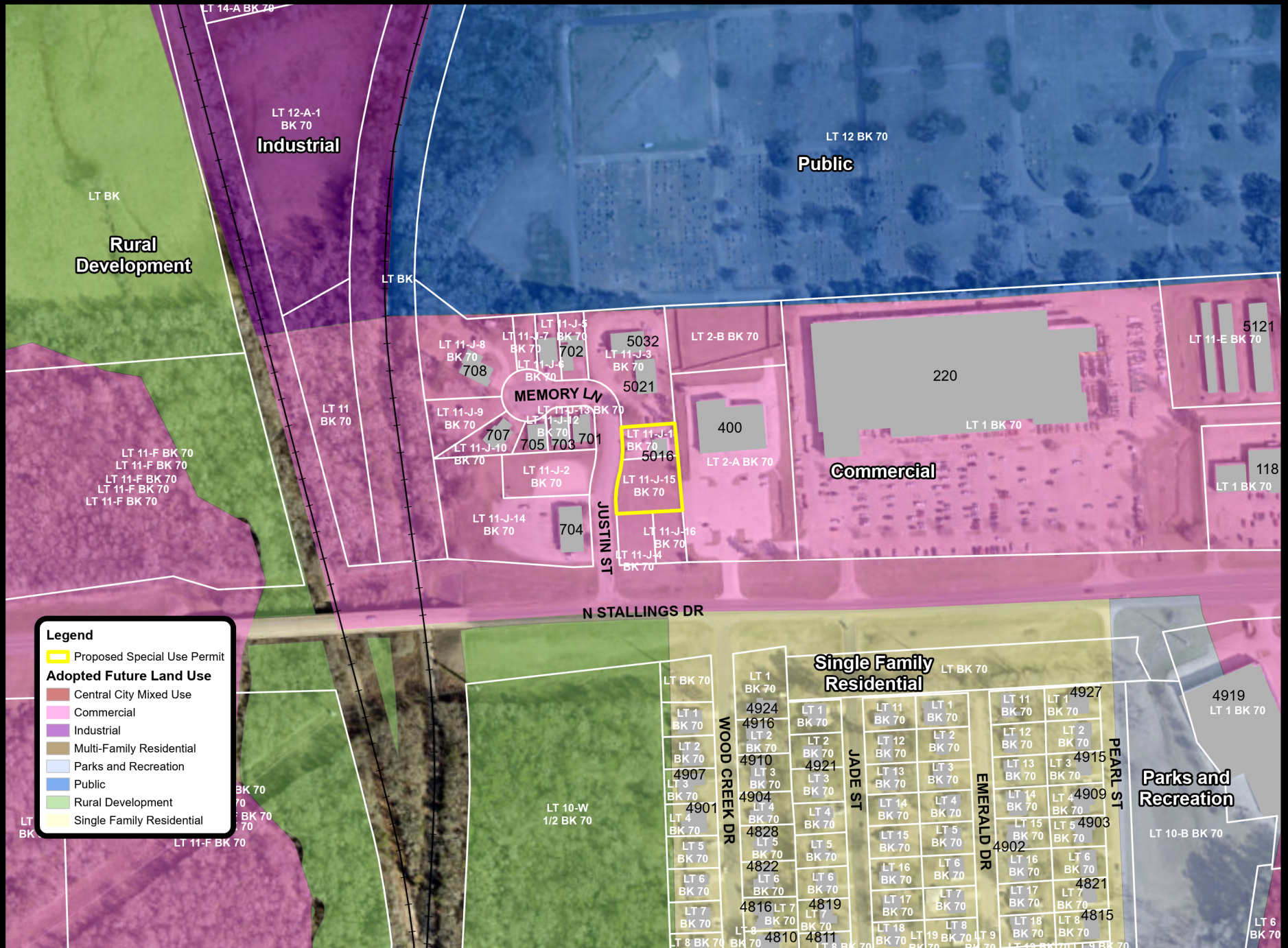
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0 75 150 300 Feet

Date Created: August 23, 2022 Software: ArcGIS Pro 2.9.4

200 Foot Notification Map

Legend

 200 Foot Buffer

 Proposed SUP

 Undeveloped

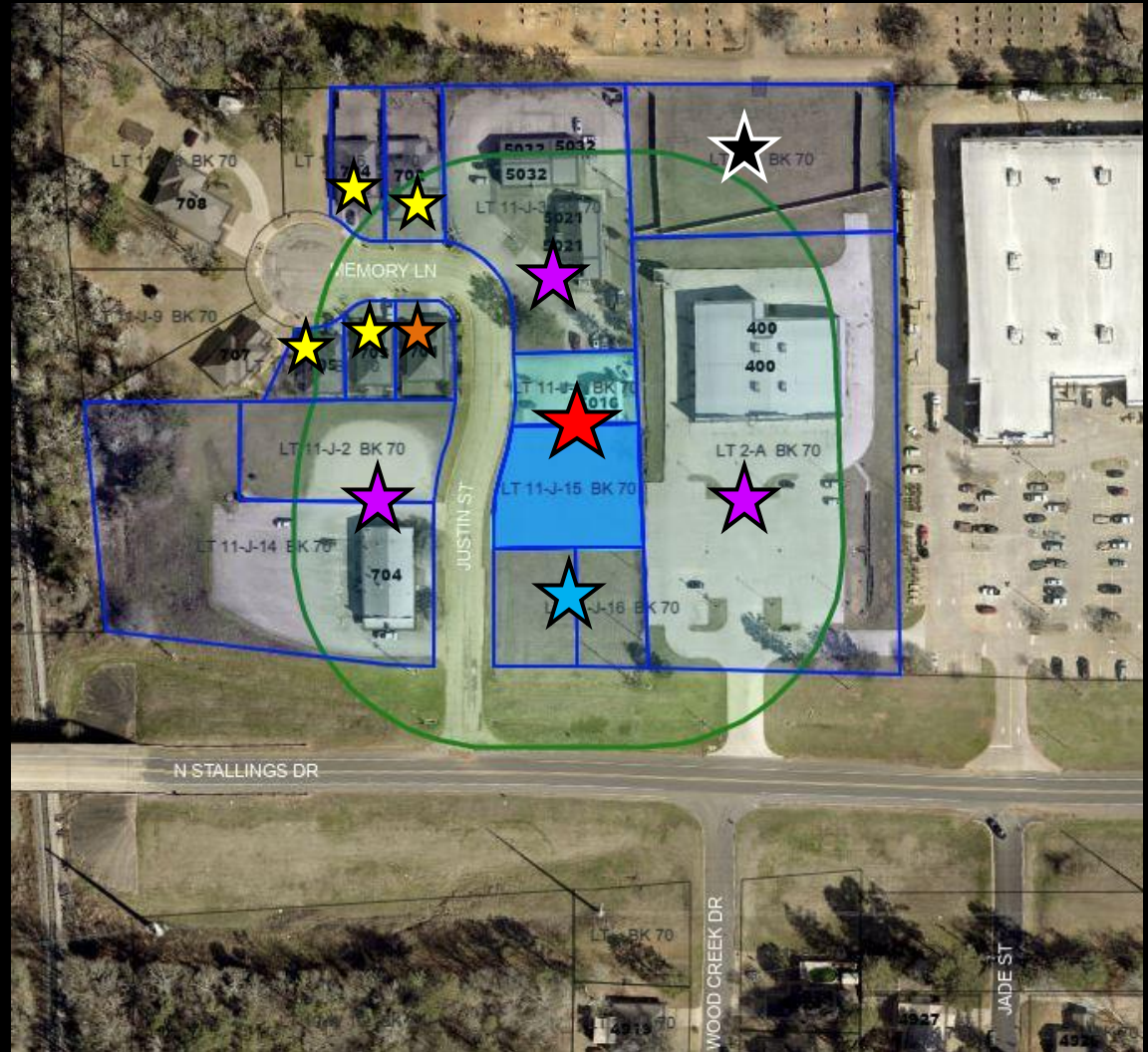
 Single Family- Rental

 Single Family-
Owner Occupied

 Commercial

 City Property

SUP2022-04: 5016 Justin St.



Project Number: SUP2022-04

Please circle one:

☒ In favor of request

☐ Opposed to request

Comments:

Signature: John McClellan

Printed Name: John McClellan

Street Address: 704 North ~~St~~ Stallings Dr.

City, State and Zip Code: Nacogdoches, TX 75965

Phone Number: 936-554-0863

Email Address: _____

Physical Address of Property within 200 Feet: 704 North Stallings Dr.

City of Nacogdoches

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

936-559-2574 Fax 936-559-2910 www.nactx.us

Home of Stephen F. Austin State University www.sfasu.edu

7

SUP2022-04 Site Photos



Street view from
Justin St.





Tenant space
in yellow

Inside tenant
space





Commercial property
to the north along
Justin St.

Residential
properties to the
northwest along
Justin St.





Commercial
properties to the east
along N. Stallings Dr.

Commercial
property to the west
along N. Stallings Dr.





Street view
looking east along
N. Stallings Dr.

Street view looking
west along N.
Stallings Dr.



Wood Creek Subdivision south of subject property across N. Stallings Dr.



ORDINANCE NO. 1932-09-22

AN ORDINANCE OF THE CITY OF NACOGDOCHES, TEXAS, GRANTING A SPECIFIC USE PERMIT FOR AN TATTOO SALON/BODY PIERCING STUDIO LOCATED WITHIN THE B-2, GENERAL BUSINESS ZONING DISTRICT, BEING LOTS 11-J-1 AND 11-J-15, CITY BLOCK 70, OF THE NORTH LOOP BUSINESS PARK SUBDIVISION, LOCATED AT 5016 JUSTIN STREET 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, Krysta Robertson, filed an application for a Specific Use Permit for Tattoo Salon on property that is currently zoned as B-2, General Business; located at 5016 Justin Street, said tract being legally described as Lots 11-J-1 and 11-J-15, City Block 70, of the North Loop Business Park Subdivision (the “Property”), and situated within the corporate limits of the City of Nacogdoches, Texas (the “City”), being more particularly described in **Exhibit “A”**, 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 an Tattoo Salon (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 an Tattoo Salon.

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 Tattoo Salon at the above described location, with the following conditions: The Tattoo Salon shall not exceed 200 square feet in size and comply with the hours of operation outlined as follows:

Hours of Operation

- a) Tuesday through Friday – 9am-5pm
- b) Saturday – 10am-2pm
- c) Sunday & Monday – Closed

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

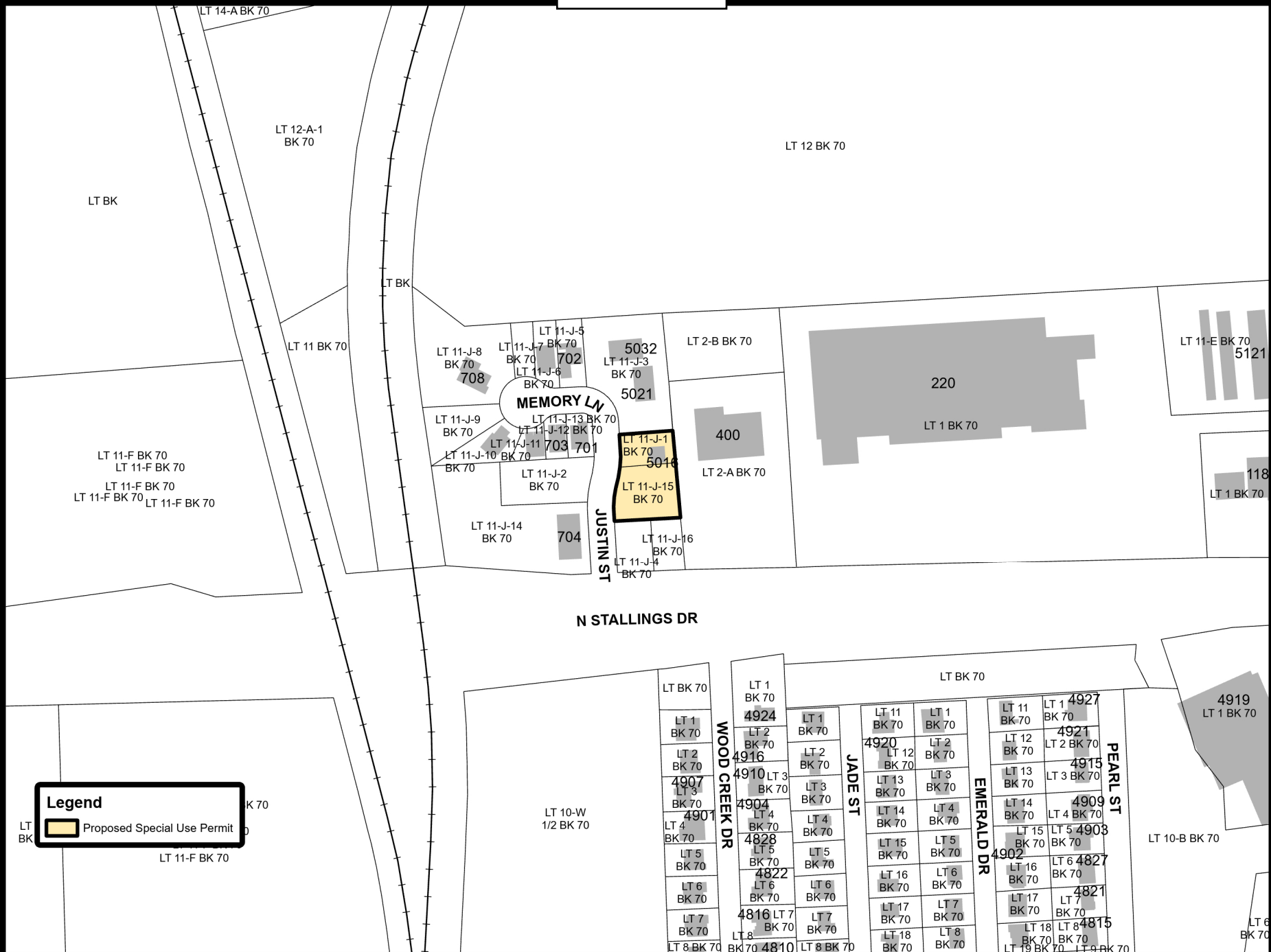
APPROVED AS TO FORM:

STEVEN KIRKLAND, City Attorney

APPROVED AS TO CONTENT:

ALAINA HELTON, City Planner

Exhibit A



Notice: This product is for informational purposes 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.



0 75 150 300 Feet

Date Created: August 23, 2022 Software: ArcGIS Pro 2.9.4



City Council Meeting

Date: September 20, 2022

Agenda Item: 6.C.

PRESENTER: Pam Curbow, Finance Director

ITEM/SUBJECT: Consider an ordinance ratifying the property tax revenue increase in the 2022-2023 budget as a result of the City receiving more revenues from property taxes in the 2022-2023 budget than in the previous fiscal year; and providing an effective date. (Director of Finance)

SUMMARY/BACKGROUND: Texas Local Government Code section 102.005, subsection (b) and section 102.007, subsection (c) (passed by the 80th Texas Legislature as H.B. 3195, relating in part to “truth-in-taxation disclosure”), requires the City Council to ratify by a separate vote and providing the necessary disclosure language in the ratification, when there is an increase to the property tax revenues in the proposed budget as compared to the previous year. The City's 2022-2023 budget has an increase in property tax revenues as compared to the previous fiscal year.

Based on the Tax Rate of \$0.58480:

“THIS BUDGET WILL RAISE MORE TOTAL PROPERTY TAXES THAN LAST YEAR'S BUDGET BY \$821,867 OR 7.13%, AND OF THAT AMOUNT, \$270,347 IS TAX REVENUE TO BE RAISED FROM NEW PROPERTY ADDED TO THE TAX ROLL THIS YEAR.”

FINANCIAL:

No financial impact associated with this item

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

Not Applicable

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

ATTACHMENTS: 1. Ordinance

CITY OF NACOGDOCHES, TEXAS

ORDINANCE NO. 1930-09-22

AN ORDINANCE OF THE CITY OF NACOGDOCHES, TEXAS, RATIFYING THE PROPERTY TAX REVENUE INCREASE IN THE 2022-2023 BUDGET AS A RESULT OF THE CITY RECEIVING MORE REVENUES FROM PROPERTY TAXES IN THE 2022-2023 BUDGET THAN IN THE PREVIOUS FISCAL YEAR; AND PROVIDING AN EFFECTIVE DATE

WHEREAS, Texas Local Government Code section 102.005, subsection (b) and section 102.007, subsection (c) (passed by the 80th Texas Legislature as H.B. 3195, relating in part to “truth-in-taxation disclosure”), requires the City Council to ratify by a separate vote and providing the necessary disclosure language in the ratification, when there is an increase to the property tax revenues in the proposed budget as compared to the previous year; and,

WHEREAS, the City’s 2022-2023 Budget has an increase in property tax revenues as compared to the previous fiscal year; and,

WHEREAS, as a result of the approval of the 2022-2023 Budget, the City Council finds that it must ratify the increased revenue from property taxes.

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

Section 1. The increased revenue from property taxes

in the 2022-2023 City Budget is hereby ratified, with the following declaration:

Based on the Tax Rate of \$0.58480:

“THIS BUDGET WILL RAISE MORE TOTAL PROPERTY TAXES THAN LAST YEAR'S BUDGET BY \$821,867 OR 7.13%, AND OF THAT AMOUNT, \$270,347 IS TAX REVENUE TO BE RAISED FROM NEW PROPERTY ADDED TO THE TAX ROLL THIS YEAR.”

Section 2. This Ordinance shall become effective immediately upon its passage.

PASSED & APPROVED this, the 20th day of September 2022, by a vote of
____(ayes) to ____ (nays) to ____ (abstentions) of the City Council of Nacogdoches, Texas.

Jimmy Mize, Mayor

ATTEST:

By:_____
Jan Vinson, City Secretary

APPROVED AS TO FORM:

By:_____
Steven Kirkland, City Attorney

APPROVED AS TO CONTENT:

By:_____
Pam Curbow, Director of Finance



City Council Meeting

Date: September 20, 2022

Agenda Item: 6.D.

PRESENTER: Brian Bray, Community Services Director

ITEM/SUBJECT: Receive annual report from Keep Nacogdoches Beautiful. (Community Services Director and Ashley Villareal, KNB Director)

SUMMARY/BACKGROUND: The City of Nacogdoches and Keep Nacogdoches Beautiful (KNB) entered into an agreement on October 1, 2021 for a one-year term whereby KNB will provide necessary staff, volunteer support, and technical and education expertise to further recycling programs and beautification within the City. As part of the agreement KNB will provide the City with an annual report concerning KNB's budget, accomplishments and efforts regarding general recycling and beautification.

FINANCIAL:

No financial impact associated with this item

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

Not Applicable

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

ATTACHMENTS: 1. PowerPoint



KNB

KEEP NACOGDOCHES BEAUTIFUL

KEEP NACOGDOCHES BEAUTIFUL MISSION:

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

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

KEEP NACOGDOCHES BEAUTIFUL VOLUNTEER BOARD OF DIRECTORS



- **Brian Bray** **Chairman**
- **Tyrone Curl** **Vice Chair**
- **Jill Milem** **Treasurer**
- **Brandi Derouen** **Secretary**
- **Tyler Brady** **Board Member**
- **Sarah Fuller** **Board Member**
- **Cindy Patterson** **Board Member**
- **Cindy Perry** **Board Member**
- **Alex Ranc** **Board Member**
- **Jana Redfield** **Board Member**
- **Dawn Stover** **Board Member**
- **Kimberly Wagner** **Board Member**

KEEP NACOGDOCHES BEAUTIFUL 2021-2022 PROGRAMS & EVENTS

- **TechCycle**
- **Adopt-A-Highway**
- **SFA's MLK Day of Service**
- **Banita Creek Clean Up**
- **World Water Day**
- **SFA's The Big Event**
- **Tire Recycle Day**
- **Fall Sweep**
- **Festival Litter Management**
- **Christmas Lights Recycle**

TECHCYCLE SATURDAYS



- Partner with STS Electronics in Jacksonville to collect recyclable electronics
- Quarterly collections throughout the year that is open and free to the public
- Reduces illegal dumping and the number of items going to landfill
- Next collection date is November 5th



ADOPT-A-HIGHWAY



- *DON'T MESS WITH TEXAS* Campaign
- Quarterly litter clean up for designated 2 mile site on Loop 224
- Next clean up is September 24th



Fall Sweep

- A Keep Texas Beautiful Program
- KNB had 3 service projects in November 2021
 - MLK/Temple Spray Park Clean Up
 - Adopt A Highway
 - TechCycle Collection



Banita Creek Clean Up



- KNB partnered with Texas Land Conservancy to help clean up Banita Creek Preserve
- Volunteers removed privet along the entrance and cleaned up trash from the creek



MLK DAY OF SERVICE

- An SFA event where student volunteers are assigned to different service projects throughout the community
- KNB had 3 service projects in 2022
 - Temple Spray Park Clean Up
 - Adopt A Highway
 - TechCycle Collection



World Water Day

- In honor of World Water Day, KNB gathered volunteers to pick up litter within and on the banks of Lanana Creek and Lake Nacogdoches
- Before the clean-up began, Board Member, Sarah Fuller gave a brief presentation about water quality
- Volunteers were split into groups and went to different locations of the creek and the lake



SFA's The BIG Event



- The BIG Event is put together by SFA where student volunteers are assigned to different service projects throughout the community
- KNB had 2 service projects in 2022
 - Adopt A Highway
 - TechCycle Collection



Earth Day at Pecan Park



- In April KNB participated in the library's Earth Day event
- KNB set up educational activities for youth
 - “Don’t Mess with Texas” coloring books
 - Take home sunflower starters in upcycled baby food jars
 - Litter pick up game



Tire Recycle Day

- We partnered with The City of Nacogdoches and Cook Tire and held our 2nd annual tire recycle collection
- We were able to collect 500 unwanted tires
- Collected tires were picked up from Liberty Tire in Beaumont to be recycled
- This event helps keep these unwanted tires from being illegally dumped and out of our landfills



Festival Litter Abatement

- KNB volunteers provide litter abatement services for the Texas Blueberry Festival and the 9 Flags Christmas Festival



Christmas Lights Recycle



- In 2021 we offered our 1st Christmas lights recycle
- We placed collection boxes in the lobby of the Nacogdoches Recreation Center & Public Library, the Nacogdoches County Chamber of Commerce, and the Fredonia Brewery
- The public could drop off old strands of lights, free of charge
- STS Recycling picked up the collected lights to be recycled

Friends of the Forest Trail



- A project partnered with Holden Kelly, the Nacogdoches Recreation Center, and Nacogdoches Public Library
- Will be 2 different interactive, educational trails located along city walking trails
- Grand opening will be on November 4th 2022, Texas Arbor Day

A white rectangular box containing the words "thank you" written in a black, cursive script. The word "thank" is on the top line and "you" is on the bottom line, with a long horizontal flourish extending from the end of "thank" over the word "you".

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



City Council Meeting

Date: September 20, 2022

Agenda Item: 6.E.

PRESENTER: Brian Bray, Community Services Director

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

SUMMARY/BACKGROUND: The City of Nacogdoches and Keep Nacogdoches Beautiful (KNB) entered into an agreement on October 1, 2021 for a one-year term whereby KNB will provide necessary staff, volunteer support, and technical and education expertise to further recycling programs and beautification within the City. If the City Council approves the renewal of the agreement for an additional one-year term, the City would agree to collect and distribute to KNB all donations made to KNB on City sanitation and water bills and to supplement the above stated donations in the amount of \$2,000 per month.

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

If renewed, the contract will be for an additional 12 months beginning October 1, 2022 and ending on September 30, 2023.

FINANCIAL:

Item is budgeted:

Account No.: 31.75.630.99

Account Name: KNB Services

Amount: \$2,000 per month

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

Not Applicable

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

ATTACHMENTS: 1. Contract

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

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

1. Term

This Agreement shall be effective and binding upon the parties beginning the 1st day of October, 2022, and shall remain in effect until the 30th day of September, 2023, subject to early termination as described below.

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

2. Statement of Work and Obligations of KNB

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

- a) Plan, promote and conduct recycling efforts for the city;
- b) Plan, promote and conduct activities which promote the general beautification of the City;
- c) Plan, promote and conduct educational activities for the general public in furtherance of recycling and beautification efforts;
- d) No later than the 15th day of June each year, or at such other date approved by the City Manager of the CITY, KNB shall provide the CITY an annual report detailing efforts and accomplishments of KNB regarding general recycling and beautification efforts conducted by KNB within the CITY. Said report shall also provide budgetary information as it pertains to monies received from the CITY. Upon reasonable notice, KNB shall also be responsible for providing special reports to the CITY as required by the City Manager; and
- e) KNB shall maintain complete and accurate books and records of activities and finances which CITY may fully review at any time upon reasonable notice. Financial records shall be maintained on a regular basis in accordance with generally accepted accounting principles, subject to variations as are required by state and federal law, and as are agreed to in writing by CITY.

3. Obligations of CITY

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

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

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

4. Independent Contractor

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

5. Indemnification

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

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

6. Insurance

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

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

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

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

7. Applicable Law

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

8. Non-Waiver

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

9. Venue

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

10. Miscellaneous

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

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

CITY OF NACOGDOCHES, TEXAS

Signature By: _____
Print Name: Mario Canizares
Title: City Manager
Date: _____

KEEP NACOGDOCHES BEAUTIFUL

Signature By: _____
Print Name: Brian Bray
Title: Chair, Keep Nacogdoches Beautiful
Date: _____

Approved as to form:

Steven Kirkland, City Attorney



City Council Meeting

Date: September 20, 2022

Agenda Item: 6.F.

PRESENTER: Case Opperman, Public Works Asst Director

ITEM/SUBJECT: Consider approval of a contract by and between the City of Nacogdoches and McKinney & Moore of Texas, LP for the 2022 SWTP Filter 9 Rehabilitation Project in a not-to-exceed amount of \$291,906.16. (Assistant Director of Public Works)

SUMMARY/BACKGROUND: On September 8, 2022, the City received bids for the 2022 SWTP Filter 9 Rehabilitation Project. Three (3) contractors submitted bids as follows:

Duplichain Contractors, LLC	\$ 207,100.00
McKinney & Moore of Texas, LP	\$ 291,906.16
Stolz Mechanical Contractors, LLC	\$ 325,000.00

Duplichain Contractors submitted the lowest bid, however there was a discrepancy in their bid discovered in the bid tabulations which caused them to withdraw their bid. The next low bid was McKinney & Moore of Texas, LP.

McKinney & Moore of Texas is a Jacksonville-based contractor. They have not done work for the City of Nacogdoches recently, but have successfully completed work of a similar nature for KSA Engineers, the engineering consultant on this project.

The main goal of this project is the rehabilitation of Filter 9 at the Surface Water Treatment Plant (SWTP), which has been out of service, awaiting repairs. Rehabilitation of the filter will include improvements to the underdrains and filter media, as well as disinfection and testing. Also included in the project is the replacement of pressure transmitters for filter effluent flow meters throughout the filter gallery.

It is recommended that the low bid be awarded to McKinney & Moore of Texas, LP in the amount of \$291,906.16.

FINANCIAL:

Item is budgeted:

Account No.: 30 179.36
Account Name: *Water Facilities*
Amount: \$ 321,442.24

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
936-559-2515

ATTACHMENTS:

1. Bid Tab
2. Award Recommendation
3. PowerPoint

BID TABULATION

City of Nacogdoches 2022 SWTP Filter 9 Rehabilitation Project KSA Project No. 101170 Bid Date: September 8, 2022				BID WITHDRAWN Duplichain Contractors, LLC 100 Elkhart Street Alto, TX 75925 936.858.4100		01 McKinney & Moore of Texas, LP 105 N Gillespie Ave Jacksonville, TX 75766 903.586.3911		02 Stolz Mechanical Contractors, LLC 15101 FM 1155 E. Washington, TX 77880 979.551.6494	
ITEM	DESCRIPTION	QTY	UNIT	UNIT PRICE	TOTAL PRICE	UNIT PRICE	TOTAL PRICE	UNIT PRICE	TOTAL PRICE
BASE BID									
1.01	Mobilization, Insurance, and Bonds	1	LS	\$13,000.00	\$13,000.00	\$19,595.84	\$19,595.84	\$16,250.00	\$16,250.00
1.02	Filter Disinfection and Testing	1	LS	\$10,000.00	\$10,000.00	\$24,448.39	\$24,448.39	\$6,350.00	\$6,350.00
1.03	Filter Underdrain and Media Improvements	1	LS	*\$18,000.00	\$18,000.00	\$81,761.93	\$81,761.93	\$136,300.00	\$136,300.00
1.04	Filter Underdrain and Media Allowance	1	AL	\$96,100.00	\$96,100.00	\$96,100.00	\$96,100.00	\$96,100.00	\$96,100.00
1.05	Filter Underdrain and Media Allowance	1	AL	\$50,000.00	\$50,000.00	\$50,000.00	\$50,000.00	\$50,000.00	\$50,000.00
1.06	Miscellaneous Allowance	1	AL	\$20,000.00	\$20,000.00	\$20,000.00	\$20,000.00	\$20,000.00	\$20,000.00
TOTAL BID AMOUNT					*\$207,100.00		\$291,906.16		\$325,000.00

Compiled by:

KSA

TBPE Firm Registration No. F-1356



Jeremy R. Orr, P.E.

Municipal Team Leader

September 13, 2022

Mr. Case Opperman, P.E.
Assistant Director of Public Works
City of Nacogdoches
202 Pilar Street, Suite 239
Nacogdoches, TX 75961

via email

RE: City of Nacogdoches
2022 SWTP Filter 9 Rehabilitation Project
KSA Project No. 101170
Award Consideration & Bid Tabulation

Dear Mr. Opperman:

Sealed bids were received at the City of Nacogdoches Engineering office for the above referenced project on September 8, 2022 at 2:00 PM, publicly opened, and read aloud in Conference Room 203, same location. A total of three (3) bids were received, as shown on the attached bid tabulation.

The notification and advertising process for this bid included advertisement in the local newspaper, electronic notifications to contractors and subcontractors known to perform this type of work, and presentation of the plans and specifications on www.civcastusa.com.

Duplichain Contractors, LLC of Alto, Texas submitted the low total bid in the amount of \$207,100.00; however, has asked to withdraw their bid due to an error in written total for Item 1.03.

McKinney and Moore of Texas, LP submitted the next lowest bid in the amount of \$291,906.16.

From the review of the information provided in the bid proposal, the McKinney and Moore of Texas, LP appears qualified to perform the work required and is capable of successfully completing the project.

Sincerely,

KSA



Jeremy R. Ori, P.E.
Municipal Team Leader

Enclosure: Bid Tabulation

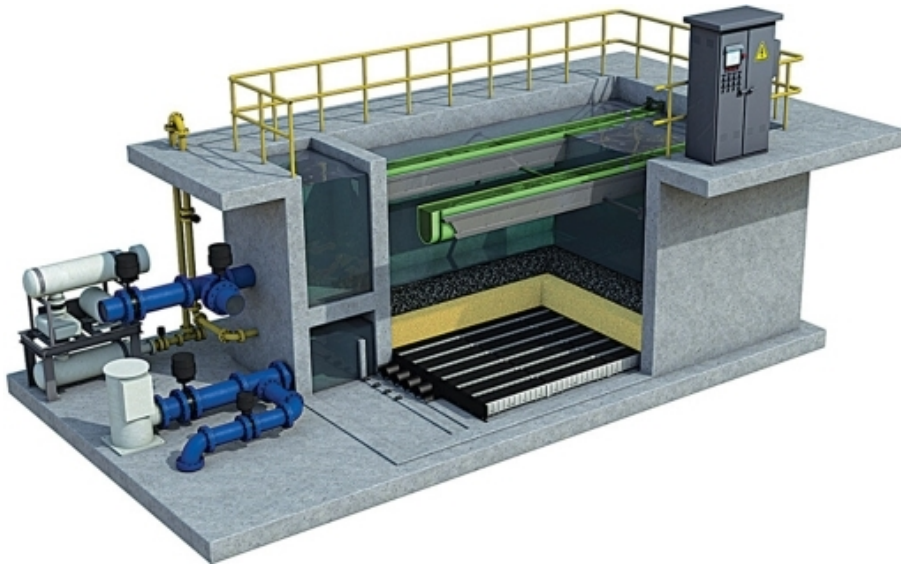
2022 SWTP Filter 9 Rehabilitation Project

- Underdrain and Filter Media Replacement
- Replacement of Pressure Transmitters

Base Bid:

Duplichain Contractors	\$ 207,100.00
McKinney & Moore	\$ 291,906.16
Stolz Mechanical Contractors	\$ 325,000.00

- Duplichain bid withdrawn due to error
- McKinney & Moore recommended for award



https://www.tpomag.com/editorial/2017/03/rehabilitating_gravity_filters

PRESENTER: Larissa Philpot, Economic Development Director

ITEM/SUBJECT: Consider approval of Resolution No. 1312-09-22 to amend the term of a Chapter 380 Economic Development Program agreement by and between the City of Nacogdoches and JBSC Development, LLC regarding the development of a residential subdivision. (Economic Development Director)

SUMMARY/BACKGROUND: City Council entered into a Chapter 380 agreement with JBSC Development, LLC (represented by Jake Crawford) on March 15, 2022. That agreement provided an incentive to assist with the development of a 143-lot subdivision on the south side of the eastern end of Park Street.

The estimated infrastructure costs of the development are \$6,119,380, or \$42,793 per lot. The previously approved Chapter 380 agreement stated the City would reimburse the project developer \$8,000 (or 30% of pro rata lot costs) for each home constructed, available upon the issuance of the first certificate of occupancy for the first home in the subdivision. The agreement stated the reimbursement period would last no more than five years from the approval of the agreement, or December 31, 2027.

Since the approval of the Chapter 380 agreement, the Developer has worked with engineers and surveyors to design the project and negotiated the terms of the project's financing. The Developer has recently requested the five-year term of the reimbursement period begin on the date of the application for the first home in the subdivision. Staff suggested an additional time constraint be added to ensure the building permit for the first home is obtained within eighteen months of the execution of the amended agreement. This should allow the project Developer ample time to complete financing, design, and construction of the infrastructure necessary to begin construction of the first home.

Original Term Language:

This Agreement shall be effective as of this date, and shall continue until all obligations of both parties are met unless terminated sooner under provisions hereof. This Agreement shall terminate on December 31, 2027.

Amended Term Language:

This Agreement shall be effective as of this date, and shall continue until all obligations of both parties are met unless terminated sooner under provisions hereof. This agreement shall terminate upon the earlier of five years (1,825 days) after the application for the first building permit for the first home in the subdivision, or March 20, 2029.

Other minor amendments to reporting deadlines were made to reflect this change in term.

FINANCIAL:

No financial impact associated with this item

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

Infrastructure, Economic Development

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

ATTACHMENTS: 1. Resolution
2. Amended Chapter 380 Agreement

**CITY OF NACOGDOCHES, TEXAS
RESOLUTION NO. 1312-09-22**

A RESOLUTION CREATING A CHAPTER 380 ECONOMIC DEVELOPMENT PROGRAM AND APPROVING AND AUTHORIZING AGREEMENT BY AND BETWEEN THE CITY OF NACOGDOCHES AND JBSC DEVELOPMENT, LLC REGARDING DEVELOPMENT OF A SINGLE FAMILY RESIDENTIAL SUBDIVISION ON THE EASTERN END OF PARK STREET.

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

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

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

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

WHEREAS, the City hereby waives the Economic Investment Review Committee review and recommendation portion of the economic development program due to the confidentiality and time restraints of the proposed development.

WHEREAS, the City has determined that construction of an approximate 143 lot single family subdivision will serve the public purposes of promoting local economic development, helping eliminate unemployment and underemployment in the City, stimulating and enhancing business and commercial activity within the City, offsetting the cost of infill development inside the City, and increasing the tax base by promoting construction of new single family residential homes inside the city limits.

WHEREAS, the City finds it appropriate to leverage the investment that JBSC Development, LLC is willing to provide to install infrastructure necessary to support new single family homes, and,

WHEREAS, the City entered into a Chapter 380 economic development agreement with the Developer on March 15, 2022, and the Developer has continued to refine construction plans and obtain capital financing for the project; and

WHEREAS, the City and Developer now desire to amend the Agreement in order to more accurately reflect the realistic time to commence construction of the first home of the project and set the commencement of the five year term during which the Developer may seek reimbursement

for qualified expenditures as the earlier of the date of the application for the first building permit for the first home within the project or by March 20, 2024.

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

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

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

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

PASSED AND APPROVED, this the 20th day of September, 2022, by a vote of ____ (ayes) to ____ (nays) of the City Council of the City of Nacogdoches, Texas.

CITY OF NACOGDOCHES

By: _____
JIMMY MIZE, Mayor

ATTEST:

APPROVED AS TO FORM:

Jan Vinson, City Secretary

Steven Kirkland, City Attorney

CITY OF NACOGDOCHES, TEXAS

AND

JBSC DEVELOPMENT, LLC

CHAPTER 380 ECONOMIC DEVELOPMENT AGREEMENT

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

RECITALS:

- A.** Developer has agreed to construct or cause to be constructed, improvements to include an approximate 143 lot subdivision and associated infrastructure, (the "Improvements") located on the south side of the eastern end of Park Street, generally as seen in Exhibit A, and herein referred to as the "Property".
- B.** The City possesses the legal and statutory authority under Chapter 212, Subchapter C of the Texas Local Government Code to enter into Developer Participation Contract to construct public improvements related to a development without competitive sealed bidding if the City's participation is 30% or less than the total costs of the Improvements.
- C.** The City possesses the legal and statutory authority under Chapter 380 of the Texas Local Government Code to make loans and grants of public funds for the purposes of promoting local economic development and stimulating and enhancing business and commercial activity within the City.
- D.** The City has established an economic development program which authorizes the City to make such economic development loans and grants.
- E.** The City has determined that a grant of funds to Developer will serve the public purposes of promoting local economic development, helping eliminate unemployment and underemployment in the City, stimulating and enhancing business and commercial activity within the City, offsetting the cost of infill development inside the City, and increasing the tax base by promoting construction of new single family residential homes.
- F.** The City has concluded and hereby finds that this Agreement clearly promotes economic development in the City, and, as such, meets the requisites under Chapter 380 of the Texas Local Government Code, and further, is in the best interests of the City and Developer.
- G.** The City has concluded and hereby finds that this Agreement clearly promotes economic development in the City, and, as such, meets the requirements of Article III, Section 52-a of the Texas Constitution, by assisting in the development and diversification of the economy of the State, by helping to eliminate unemployment or underemployment in the State, and by the development or expansion of commerce within the State.
- H.** The City desires and agrees to enter into this Agreement with Developer in order to implement the economic development program described herein and shall follow all applicable rules and procedures prescribed by the City's Charter and the laws of the State in providing Developer the economic development incentives described herein.

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

SECTION 1. RECITALS INCORPORATED.

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

SECTION 2. TERM.

This Agreement shall be effective as of this date, and shall continue until all obligations of both parties are met unless terminated sooner under the provisions, hereof. This Agreement shall terminate upon the earlier of five years (1,825 days) after the application for the first building permit for the first home in the subdivision, or March 20, 2029.

SECTION 3. DEFINITIONS.

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

- (a) Certificate of Completion.** An affidavit or document which states that all public improvements have been constructed in accordance with the design plans and specifications, and all applicable ordinances, laws, and regulations. This document is signed and sealed by the Texas licensed Professional Engineer who is of record for the design of the project.
- (b) Certificate of Occupancy.** The words “Certificate of Occupancy” mean the certificate of occupancy issued by the City to the Developer as each house on a lot is completed and inspected, which certificate the City shall not unreasonably withhold, condition or delay.
- (c) Full-Time Equivalent Employment Positions.** The words “Full-Time Equivalent Employment Position” or “Full-Time Employment Equivalent Positions” mean and include a job requiring a minimum of Two Thousand Eighty (2,080) hours of work averaged over a twelve (12) month period, with such hours to include any vacation, sick leave, personal days, and similar time off benefits. Full and part-time worker positions may be aggregated to form a Full-Time Equivalent Position.
- (d) Personalty.** The word “Personalty” means the tangible personal property, including inventory and supplies, located on the property other than tangible personal property that was located on the Property prior to the period covered by this Agreement, and which is otherwise subject to a tax abatement consistent with section 312.204(a) of the Texas Tax Code, as amended.
- (e) Program Grant or Program Grant Payment.** The words “Program Grant” or “Program Grant Payment” mean the economic development grants provided by the City to Developer in accordance with this Agreement.
- (f) Public Infrastructure Improvements.** The words “Public Infrastructure Improvements” mean the infrastructure to be constructed within the Project intended to be dedicated to the City for future ownership and maintenance upon completion.
- (g) Qualified Expenditures.** The words “Qualified Expenditures” mean those expenditures consisting of and contributing to the hard and soft costs associated with the development and construction of the Improvements for the Project including design and construction of public infrastructure.

- (h) **Related Documents.** The words “Related Documents” mean and include without limitation any and all promissory notes, loan agreements, grant agreements, performance agreements, tax abatement agreements, and other instruments and documents, whether now or hereafter existing, entered by and between the City and Developer in connection with this Agreement.
- (i) **Sales and Use Tax.** The words “Sales and Use Tax” or “Sales and Use Taxes” mean the City’s municipal sales and use tax, pursuant to Section 321.103(a) of the Texas Tax Code, as amended. The current Sales and Use Tax rate is one percent (1%).
- (j) **State.** The word “State” means the State of Texas.
- (k) **State Comptroller.** The words “State Comptroller” mean the Office of the Texas Comptroller of Public Accounts, or any successor agency.
- (l) **Term.** The word “Term” means the term of this Agreement as specified in Section 2 of this Agreement.

SECTION 4. AFFIRMATIVE OBLIGATIONS OF DEVELOPER.

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

- (a) Developer understands and agrees that City approval of this agreement does not alleviate the requirement to submit and obtain approvals of a subdivision plat and zone change application and does not create any vested rights to build. If the required approvals reduce or increase the number of lots that can be developed, the per lot reimbursement contemplated by the agreement shall be adjusted to the approved number of lots.
- (b) **Construction of the Improvements.**
- i. Developer shall construct or cause to be constructed the Improvements as described on Table 1 below and as seen in Exhibit B and shall submit to the City invoices, receipts, or other similar documentation for the Qualified Expenditures in a form reasonably acceptable to the City for each program grant payment request, and no later than December 31, 2027.

Table 1

Item	Approximate Qualified Expenditure Not to Exceed
General Site Work	\$626,000
Sanitary Sewer	\$840,000
Water Lines	\$549,200
Street Paving, Curb, & Gutter	\$1,830,000
Drainage System	\$676,000
Natural Gas	\$205,000
Cable TV	\$35,000
Telephone/Internet	\$160,000
Soft Costs (Design, surveying, platting, construction administration, staking)	\$400,000
15% Contingency	\$798,150
Total	\$6,119,350

- ii. Developer represents that Developer has the present capacity to construct the Improvements. The Improvements shall be completed on or before December 31, 2027. Only those Improvements listed in Table 1 which are completed prior to December 31, 2027 will be considered by the City for reimbursement.

- iii. All Improvements constructed shall be built to the minimum requirements of the City of Nacogdoches Standards for the Design and Construction of Public Improvements, the International Building Code, as amended, as adopted by the City of Nacogdoches from time to time and the current revision of Title 30, Chapters 285 and 290, of the Texas Administrative Code.
 - iv. In addition to the insurance requirements set out in the other agreements, Developer, his contractors and agents, shall procure and maintain, at their sole cost and expense for the duration of the construction contemplated herein, insurance against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the Construction hereunder by Developer, its agents, representatives, volunteers, employees, or subcontractors. Said insurance shall name Nacogdoches, its employees, and officials as additional insureds. See Exhibit "C" for insurance requirements. Certificates of insurance evidencing the required insurance coverages shall be attached hereto as Exhibit "D."
 - v. 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. Prior to start of construction, Developer will execute a performance bond for the construction of the public infrastructure Improvements to ensure completion of the project in accordance with Chapter 2253 of the Government Code as described in Exhibit E.
 - vi. Upon completion of the Improvements, Developer shall construct or cause to be constructed single family homes on individual lots within the subdivision.
- (c) **Certificate of Completion.**
- Developer shall present a Certificate of Completion signed by a Texas Registered Professional Engineer accompanied by a set of as-built drawings in digital format, prior to applying for plat approval and building permits for individual houses.
- (d) **Job Creation and Retention.**
- On or before December 31, 2023, and during the Term of this Agreement, the Developer through direct employment or through affiliated companies wholly owned or controlled by Developer shall employ and maintain 22 Full-time Equivalent Positions working at the Project. It is understood and agreed that Developer and/or his affiliates, may satisfy the foregoing requirement by an aggregation of all hours worked at all employment positions at the Project, both full time and part time, over the subject twelve-month period. The Full-Time Equivalent Employment Provision shall be continuously maintained through the Term of this Agreement.
- (e) **City Sales Tax Matters.** As a portion of the consideration for this Agreement, and to the maximum extent permitted under applicable law, Developer covenants and agrees with City to structure all contracts to which Developer or related person or entity is a party relating to the construction of the Improvements and facilities to be constructed on the Property pursuant to this Agreement that are not purchased for resale, in a manner that requires City sales and use taxes to be collected and remitted to the City of Nacogdoches with respect to the purchase of all materials and other taxable items for such improvements and facilities. Without limiting the generality of the immediately preceding sentence, Developer shall cause each contract with a contractor to:
- i. be structured as a "separated contract" as such term is defined in 34 Texas Administrative Code 3.291(a)(13) with the result that:
 - i. the agreed contract price under the contract is divided into (A) a separately stated agreed contract price for incorporated materials, and (B) a separately stated amount for all skill and labor that includes fabrication, installation, another other labor that is performed by the contractor; and

- ii. the contractor is required under 34 Texas Administrative Code 3.291(a)(13) to collect City sales and use taxes on the charge to Developer for materials and other taxable items based on the location of the Improvements and facilities to be constructed in the City; and
- ii. contain provisions requiring such contractor to issue, and to cause each subcontractor and each sub-subcontractor to issue, properly completed Texas Sales and Use Tax Resale Certificates and/or other certifications or documentation, as appropriate, to all subcontractors and sub-subcontractors, and to take such other actions as are necessary or advisable, in order to claim, obtain and/or evidence that the materials and other taxable items for the improvements and facilities to be constructed on the Property.

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

- (f) **Annual Compliance Verification.** Beginning on January 1, 2024 and each January 1st for the following five years for a total of ten occurrences until January 1, 2030 Developer shall deliver to the City an Annual Compliance verification signed by a duly authorized representative of Developer that shall certify the following:
 - (1) The taxable appraised value of the Property and Personalty located on the Property for the applicable prior tax year;
 - (2) The ad valorem taxes paid to the City for the Property and Personalty located on the Property for the applicable prior tax year; and
 - (3) The total gross payroll and number of employees of JBSC, LLC and its affiliated companies wholly owned or controlled by Developer
 - (4) The total number of houses issued a Certificate of Occupancy in the previous year and the total number of houses with active building permits.
- (g) **Payment of Ad Valorem Taxes.** Developer, at Developer's sole cost, covenants and agrees to pay by January 31st of each year all of the real and business personal ad valorem taxes due for the previous tax year on the Property. Developer shall not protest said taxes during the term of this agreement.
- (h) **Engineering Requirements.** Developer covenants and agrees to promptly provide to City suitable engineering plans, specifications and necessary documents for bidding purposes related to and necessary for City's provision of Program Grant Payments.
- (i) **Performance.** Developer agrees to perform and comply with all applicable terms, conditions, and provisions set forth in this Agreement, and in all other instruments and agreements by and between Developer and the City.

SECTION 5. AFFIRMATIVE OBLIGATIONS OF THE CITY.

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

- (a) **Program Grant Payments**
 - 1. **Timing of Payments**

The City shall make Program Grant Payments as described in Section 5(a)(2) below within 30 days of the issuance of a final Certificate of Occupancy for a single family home located within the project by the City of Nacogdoches and receipt of a request for Program Grant Payment by Developer.

2. Reimbursement of Qualified Expenditures

- a. The Total Qualified Expenditures will be divided by the total number of units described in Recital A above to determine a pro rata costs for each residential unit constructed. The City shall reimburse the Developer the lesser amount of thirty percent (30%) of the pro rata cost for the Improvements as shown on Exhibit B subject to the limitation in Table 1 and any revision thereof to which the City has agreed to in writing and in conformance with the process described in Article VIII Section 106-674, Refunding Procedure, of the City of Nacogdoches Code of Ordinances, or \$8,000 per lot.
 - b. In no event shall the total reimbursement received by the developer under this agreement exceed 30% of the Total Qualified Expenditures.
 - c. The Developer shall initially pay for all cost associated with the design and construction of the Improvements described in Exhibit B including, but not limited to, easements, surveying, engineering, materials, and labor. The City will not be responsible for any costs, labor, or materials during the time period prior to the Effective Date of this agreement other than reasonable surveying and engineering costs necessary to prepare this agreement.
 - d. The Developer understands the request for reimbursement from the City will require the submission and verification of all appropriate associated costs for public bid advertisements, maintenance bonds, engineering, surveying, labor and materials. Reimbursement will also require a Certificate of Completion sealed by a registered Texas Professional Engineer and written acceptance by the City Engineer.
 - e. The Developer understands and agrees that payment by the City of the agreed reimbursement will be as soon as practical but not to exceed 6 months after issuance of a Certificate of Occupancy by the City provided such funds are appropriated by the City.
- (b) **Performance.** The City agrees to perform and comply with all applicable terms, conditions, and provisions set forth in this Agreement, and in all other instruments and agreements by and between Developer and the City.

SECTION 6. EVENTS OF DEFAULT.

- (a) Each of the following shall constitute an Event of Default under this Agreement by Developer:
- (1) **Construction of Qualified Expenditures.** Failure of Developer to provide copies of the invoices, receipts or other documentation to the City regarding said Qualified Expenditures made to the Property consistent with Section 4(a) of this Agreement within ten (10) days after written notice of the default from the City to the Developer.
 - (2) **Certificate of Occupancy.** Failure of Developer to obtain or cause to be obtained a Certificate of Occupancy from the City for the Project consistent with Section 4(b) of this Agreement and such failure continues for ten (10) days after the written notice of the default from the City to Developer (provided the failure to obtain the Certificate of Occupancy is not due to wrongful or negligent delay or other action or inaction by the City).
 - (3) **Payroll.** Failure of Developer to provide a gross payroll as identified in Table 3 in Section 4(c).
 - (4) **Insolvency.** Developer's insolvency, appointment of receiver for any part of Developer's property, any assignment for the benefit of creditors of Developer, any type of creditor workout for Developer, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Developer.
 - (5) **Other Defaults.** Failure of Developer to comply with or to perform any other term, obligation, covenant or condition contained in this Agreement, or in any of the Related Documents, or failure of Developer to comply with or to perform any other term, obligation, covenant or condition contained in any other

agreement by and between the City and Developer, and such failure is not cured within ten (10) days after written notice of the default from the City to Developer.

(b) Each of the following shall constitute an Event of Default under this Agreement by the City:

- (1) **Program Grant Payments.** Failure of the City to make the Program Grant Payments consistent with Section 5 of this Agreement within ten (10) days after written notice of the default from Developer to the City.
- (2) **Other Defaults.** Failure of the City to comply with or to perform any other term, obligation, covenant or condition contained in this Agreement or in any of the Related Documents, or failure of the City to comply with or to perform any other term, obligation, covenant, or condition contained in any other agreement by and between the City and Developer, and such failure is not cured within ten (10) days after written notice of the default from Developer to the City.

SECTION 7. EFFECT OF AN EVENT OF DEFAULT.

If an Event of Default occurs, the non-defaulting party shall give written notice to the other party of the specific Event of Default, and the defaulting party shall have thirty (30) days to cure said default (as to defaults reasonably curable within such period) or commences to cure alleged default within said thirty (30) days and diligently pursues the cure to its conclusion (as to defaults not reasonably curable within thirty (30) days). In the event Developer defaults and is unable or unwilling to cure said default within the prescribed time period, the amounts of financial assistance provided by the City to Developer to date pursuant to Section 5(a)(1) of this Agreement shall become immediately due and payable by Developer to the City as shown on Table 4 below. In the event the City defaults and is unable or unwilling to cure said default within the prescribed time period, the Developer may terminate this agreement. Defaults by City shall not waive, terminate, or offset repayment obligations of Developer under Section 4(f) or indemnities under Section 8.

SECTION 8. INDEMNIFICATION.

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

SECTION 9. MISCELLANEOUS PROVISIONS.

The following miscellaneous provisions are a part of this Agreement:

(a) **Amendments.** This Agreement, together with the Related Documents, constitutes the entire understanding and agreement of the parties as to the matters set forth in this Agreement. No alteration of or amendment to this Agreement shall be effective unless given in writing and signed by the party or parties sought to be charged or bound by the alteration or amendment.

(b) **Applicable Law and Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in Nacogdoches County, Texas. Venue for any action arising under this Agreement shall lie in the state district courts of Nacogdoches County, Texas.

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

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

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

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

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

(h) **Notices.** Any notice or other communication required or permitted by this Agreement (hereinafter referred to as the "Notice") is effective when in writing and (i) personally delivered by hand or by express courier such as Federal Express, UPS, DHL, or Lone Star Overnight, or (ii) three (3) days after notice is deposited with the U.S. Postal Service, postage prepaid, certified with return receipt requested, and addressed as follows:

If to Developer: JBSC, LLC
Attn: Jake Crawford
2802 Durst Street
Nacogdoches, TX 75964
936-553-1806

If to the City: City of Nacogdoches
Attn: City Manager
202 East Pillar Street
Nacogdoches, TX 75961
936-559-2501

With a copy to: City of Nacogdoches

Attn: City Attorney
202 East Pillar Street
Nacogdoches, TX 75961
936-559-2503

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

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

(k) **Developer 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 Developer hereby certifies that:

1. Developer 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
2. Developer 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.
3. Antitrust. Pursuant to 15 U.S.C. §1, et seq. and Tex. Bus. & Comm. Code §15.01, et seq. neither the Developer nor the firm, corporation, partnership, or institution represented by the Developer, 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.
4. Child Support. Pursuant to §231.006(d), Texas Family Code, regarding child support, the Developer 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.
5. Debarment. Developer certifies that Developer 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 Developer 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>.
6. Terrorism Watch List. Developer 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. Developer certifies that it is not listed on the federal government's terrorism watch list as described in Executive Order 13224.
7. Critical Infrastructure. If Developer will be granted direct or indirect access to a communication infrastructure system, cybersecurity system, electric grid, hazardous waste treatment system, or water treatment facility, Developer 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.
8. Convictions. Under Sections 2155.006, 23155.0061 and 2261.053 of the Texas Government Code, Developer 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.

9. COVID Vaccinations. Developer 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 Developer's business.
10. Boycotts. (1) To the extent this Contract is considered a Contract for goods or services subject to § 2270.002 Texas Government Code, Developer 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 Developer 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, Developer 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.*).

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

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

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

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

CITY:

CITY OF NACOGDOCHES, TEXAS

a Texas home-rule municipality

By: _____
Jimmy Mize, Mayor

Date: _____

ATTEST:

Jan Vinson, City Secretary

APPROVED AS TO FORM:

Steven Kirkland, City Attorney

DEVELOPER:

JBSC Development, LLC

By: _____
Jake Crawford

Date: _____

Exhibit C
INSURANCE REQUIREMENTS

During the term of this Agreement Developer'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 Developer'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 Developer 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 Developer'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 Developer in compliance with the terms of this Agreement. Developer 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 Developer, all employees of any and all subcontractor, and all other persons providing services on the Public Infrastructure Improvement portions of the Project must be covered by a workers compensation insurance policy: either directly through their employer's policy (the Developer'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 Developer'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 Developer has undertaken to perform on the project, regardless of whether that person contracted directly with the Developer 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 Developer 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 Developer providing services on the project, for the duration of the project.*
- C. *The Developer must provide a certificate of coverage to the governmental entity prior to being awarded the contract.*
- D. *If the coverage period shown on the Developer's current certificate of coverage ends during the duration of the project, the Developer 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 Developer 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 Developer, 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 Developer shall retain all required certificates of coverage for the duration of the project and for one year thereafter.*
- G. *The Developer shall notify the governmental entity in writing by certified mail or personal delivery, within 10 calendar days after the Developer 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 Developer 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 Developer 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 Developer, 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 Developer, 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 Developer:*
 - (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 Developer is representing to the governmental entity that all employees of the Developer 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 Developer to administrative penalties, criminal penalties, civil penalties, or other civil actions.*

K. *The Developer's failure to comply with any of these provisions is a breach of contract by the Developer that entitles the governmental entity to declare the contract void if the Developer 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 D
INSURANCE Certificates

Exhibit E
BOND PROVISIONS

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 Developer 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 Developer shall provide original, sealed, and complete counterparts of the executed bonds in the forms required by the Contract Documents, **prior** to the commencement of work.
- (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 Developer shall promptly supply within ten (10) days such other bond or bonds, which bond or bonds shall assure performance or payment as required.

The Developer 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.



City Council Meeting

Date: September 20, 2022

Agenda Item: 6.H.

PRESENTER: Pam Curbow, Finance Director

ITEM/SUBJECT: Discussion and consideration of all matters incident and related to the issuance and sale of “City of Nacogdoches, Texas, Combination Tax and Revenue Certificates of Obligation, Series 2022,” including the adoption of an ordinance authorizing the issuance of such certificates. (Director of Finance)

SUMMARY/BACKGROUND: City Council approved expenditures for a Central Fire Station, Parks Improvements, Street Improvements and Drainage System Improvements at the August 24, 2022 City Council meeting. This ordinance authorizes the issuance of certificates of obligation as the mechanism of financing these projects.

The draft ordinance is attached as the final figures will be included at the time of pricing on September 20 and a final copy will be available at the Council meeting.

FINANCIAL:

Item is budgeted:

Account No.: 01.580.00

Account Name: *Proceeds from Bond Sales*

Amount: \$21,100,000

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

Infrastructure

CITY CONTACT: Pamela Curbow, Director of Finance

curbowp@nactx.us

936-559-2526

ATTACHMENTS: 1. Ordinance

ORDINANCE NO. 1933-09-22

AN ORDINANCE authorizing the issuance of "CITY OF NACOGDOCHES, TEXAS, COMBINATION TAX AND REVENUE CERTIFICATES OF OBLIGATION, SERIES 2022"; providing for the payment of said certificates of obligation by the levy of an ad valorem tax upon all taxable property within the City and a limited pledge of the City's combined waterworks and sewer systems; specifying the terms and conditions of such certificates of obligation; resolving other matters incident and relating to the issuance, payment, security, sale, and delivery of said certificates of obligation, including the approval and execution of a Paying Agent/Registrar Agreement and the approval and distribution of an Official Statement; and providing an effective date.

WHEREAS, notice of the City Council's intention to issue certificates of obligation in the maximum principal amount of \$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, has been (a) duly published in *The Daily Sentinel*, a newspaper of general circulation in the City of Nacogdoches, Texas on July 27, 2022, and August 3, 2022, the date the first publication of such notice being not less than forty-six (46) days prior to the tentative date stated therein for the passage of the ordinance authorizing the issuance of such certificates and (b) duly published continuously on the City's website for at least forty-five (45) days before the tentative date stated therein for the passage of the ordinance authorizing the issuance of such certificates; and

WHEREAS, no petition protesting the issuance of the certificates of obligation described in the aforesaid notice, signed by at least 5% of the qualified electors of the City, has been presented to or filed with the City Secretary on or prior to the date of the passage of this Ordinance; and

WHEREAS, the City Council hereby finds and determines that \$_____ principal amount of the certificates of obligation described in such notice should be authorized at this time; now, therefore,

BE ORDAINED BY THE CITY OF NACOGDOCHES:

SECTION 1. Authorization - Designation - Principal Amount - Purpose. Certificates of obligation of the City shall be and are hereby authorized to be issued in the aggregate principal amount of \$_____ to be designated and bear the title "CITY OF NACOGDOCHES, TEXAS, COMBINATION TAX AND REVENUE CERTIFICATES OF OBLIGATION, SERIES 2022" (hereinafter referred to as the "Certificates"), 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 "Project"); and (v) professional services rendered in connection therewith, all in accordance with the authority conferred by and in conformity with the Constitution and laws of the State of Texas, including Texas Local Government Code, Subchapter C of Chapter 271, as amended.

SECTION 2. Fully Registered Obligations - Certificate Date - Authorized Denominations - Stated Maturities - Interest Rates. The Certificates are issuable in fully registered form only, shall be dated October 1, 2022 (the "Certificate Date"), and shall be in denominations of \$5,000 or any integral multiple thereof (within a Stated Maturity), and the Certificates shall become due and payable on September 1 in each of the years and in principal amounts (the "Stated Maturities") and bear interest at the per annum rate(s) in accordance with the following schedule:

<u>Year of Stated Maturity</u>	<u>Principal Amount (\$)</u>	<u>Interest Rate (%)</u>
2023		
2024		
2025		
2026		
2027		
2028		
2029		
2030		
2031		
2032		
2033		
2034		
2035		
2036		
2037		
2038		
2039		
2040		
2041		
2042		
2043		
2044		
2045		
2046		
2047		

The Certificates shall bear interest on the unpaid principal amount thereof from the Certificate Date at the per annum rates shown above (calculated on the basis of a 360-day year of twelve 30-day months) and shall be payable on March 1 and September 1 in each year until maturity or prior redemption, commencing March 1, 2023.

SECTION 3. Terms of Payment - Paying Agent/Registrar. The principal of, premium, if any, and the interest on the Certificates, due by reason of maturity, redemption or otherwise, shall be payable only to the registered owners or holders of the Certificates (the "Holders") appearing on the registration and transfer books maintained by the Paying Agent/Registrar. Such payments shall be payable, without exchange or collection charges, to the Holder in any coin or currency of the United States of America which at the time of payment is legal tender for the payment of public and private debts.

The selection and appointment of U.S. Bank Trust Company, National Association, Dallas, Texas, to serve as the initial Paying Agent/Registrar for the Certificates is hereby approved and the City agrees and covenants to cause to be kept and maintained by the Paying Agent/Registrar books and records relating to the registration, payment and transfer of the Certificates (the "Security Register"), all as provided herein, in accordance with the terms and provisions of a "Paying Agent/Registrar Agreement" substantially in the form attached hereto as **Exhibit A** and such reasonable rules and regulations as the Paying Agent/Registrar and City may prescribe; and the Finance Director or other authorized representative of the City is authorized to execute and deliver such Agreement in connection with the delivery of the Certificates. The City covenants to maintain and provide a Paying Agent/Registrar at all times until the Certificates are paid and discharged; and, any successor Paying Agent/Registrar shall be a commercial bank, trust company, financial institution, or other entity duly qualified and legally authorized to act as and perform the duties and services of Paying Agent/Registrar. Upon any change in the Paying Agent/Registrar for the Certificates, the City agrees to promptly cause a written notice of the change to be sent to each registered owner of the Certificates by United States mail, first-class postage prepaid; and such notice shall also give the address of the new Paying Agent/Registrar.

Principal of and premium, if any, on the Certificates, shall be payable at the Stated Maturities or on a date of earlier redemption thereof only upon presentation and surrender of the Certificates to the Paying Agent/Registrar at its designated offices initially in St. Paul, Minnesota, or, with respect to a successor Paying Agent/Registrar, at the designated offices of such successor (the "Designated Payment/Transfer Office"). The Paying Agent/Registrar shall pay interest on the Certificates only to the Holders whose names appear in the Security Register at the close of business on the Record Date (the fifteenth day of the month next preceding the interest payment date) and shall pay either by: (1) check sent by United States Mail, first class postage prepaid, to the address of the registered owner recorded in the Security Register or (2) by such other method, acceptable to the Paying Agent/Registrar, requested by the Holder at the Holder's risk and expense. If the date for the payment of the principal of or interest on the Certificates shall be a Saturday, Sunday, a legal holiday, or a day when banking institutions in the city where the Designated Payment/Transfer Office of the Paying Agent/Registrar is located are authorized by law or executive order to close, then the date for such payment shall be the next succeeding day which is not such a Saturday, Sunday, legal holiday, or day when banking institutions in the city where the Designated Payment/Transfer Office of the Paying Agent/Registrar is located are authorized to close, and payment on such date shall have the same force and effect as if made on the original date payment was due.

In the event of a non-payment of interest on a scheduled payment date, and for thirty (30) days thereafter, a new record date for such interest payment (a "Special Record Date") will be established by the Paying Agent/Registrar, if and when funds for the payment of such interest have been received from the City. Notice of the Special Record Date and of the scheduled payment date of the past due interest (which shall be fifteen (15) days after the Special Record Date) shall be sent at least five (5) business days prior to the Special Record

Date by United States Mail, first class postage prepaid, to the address of each Holder appearing on the books of the Paying Agent/Registrar at the close of business on the last business day next preceding the date of mailing of such notice.

SECTION 4. Redemption.

(a) Optional Redemption. The Certificates maturing on and after September 1, 2032 shall be subject to redemption prior to maturity, at the option of the City on September 1, 2031, or any date thereafter, in whole or in part in principal amounts of \$5,000 or any integral multiple thereof (and if in part by lot by the Paying Agent/Registrar) at the redemption price of par, together with interest accrued to the redemption date.

(b) Exercise of Redemption Option. Not less than forty-five (45) days prior to an optional redemption date for the Certificates (unless a shorter notification period shall be satisfactory to the Paying Agent/Registrar), the City shall notify the Paying Agent/Registrar of: (1) the decision to redeem Certificates, (2) the principal amount of each Stated Maturity to be redeemed, and (3) the date of redemption.

(c) Selection of Certificates for Redemption. If less than all Outstanding Certificates of the same Stated Maturity are to be redeemed on a redemption date, the Paying Agent/Registrar shall treat such Certificates as representing the number of Certificates Outstanding, which is obtained by dividing the principal amount of such Certificates by \$5,000, and shall select by lot the Certificates to be redeemed within such Stated Maturity.

(d) Notice of Redemption. Not less than thirty (30) days prior to a redemption date for the Certificates, a notice of redemption shall be sent by United States Mail, first class postage prepaid, in the name of the City and at the City's expense, to each Holder of a Certificate to be redeemed in whole or in part at the address of the Holder appearing on the Security Register at the close of business on the last business day next preceding the date of mailing such notice, and any notice of redemption so mailed shall be conclusively presumed to have been duly given irrespective of whether received by the Holder.

All notices of redemption shall: (1) specify the date of redemption for the Certificates, (2) identify the Certificates to be redeemed and, in the case of a portion of the principal amount to be redeemed, the principal amount thereof to be redeemed, (3) state the redemption price, (4) state that the Certificates, or the portion of the principal amount thereof to be redeemed, shall become due and payable on the redemption date specified, and the interest thereon, or on the portion of the principal amount thereof to be redeemed, shall cease to accrue from and after the redemption date, and (5) specify that payment of the redemption price for the Certificates, or the principal amount thereof to be redeemed, shall be made at the Designated Payment/Transfer Office of the Paying Agent/Registrar only upon presentation and surrender thereof by the Holder. If a Certificate is subject by its terms to prior redemption and has been called for redemption and notice of redemption thereof has been duly given as hereinabove provided, such Certificate (or the principal amount thereof to be redeemed) shall become due and payable and interest thereon shall cease to accrue from and after the specified redemption date; provided moneys sufficient for the payment of such Certificate (or of the principal amount thereof to be redeemed) at the then applicable redemption price are held for the purpose of such payment by the Paying Agent/Registrar.

(e) Conditional Notice of Redemption. With respect to any optional redemption of the Certificates, unless moneys sufficient to pay the principal of and premium, if any, and

interest on the Certificates to be redeemed shall have been received by the Paying Agent/Registrar prior to the giving of such notice of redemption, such notice may state that said redemption is conditional upon the receipt of such moneys by the Paying Agent/Registrar on or prior to the date fixed for such redemption, or upon the satisfaction of any prerequisites set forth in such notice of redemption; and, if sufficient moneys are not received, such notice shall be of no force and effect, the City shall not redeem such Certificates and the Paying Agent/Registrar shall give notice, in the manner in which the notice of redemption was given, to the effect that the Certificates have not been redeemed.

SECTION 5. Registration - Transfer - Exchange of Certificates - Predecessor Certificates. A Security Register relating to the registration, payment, and transfer or exchange of the Certificates shall at all times be kept and maintained by the City at the Designated Payment/Transfer Office of the Paying Agent/Registrar and at a place within the State of Texas, and the Paying Agent/Registrar shall obtain, record, and maintain in the Security Register the name and address of each registered owner of the Certificates issued under and pursuant to the provisions of this Ordinance. Any Certificate may, in accordance with its terms and the terms hereof, be transferred or exchanged for Certificates of other authorized denominations upon the Security Register by the Holder, in person or by his duly authorized agent, upon surrender of such Certificate to the Designated Payment/Transfer Office of the Paying Agent/Registrar for cancellation, accompanied by a written instrument of transfer or request for exchange duly executed by the Holder or by his duly authorized agent, in form satisfactory to the Paying Agent/Registrar.

Upon the surrender for transfer of any Certificate (other than the Initial Certificate(s) authorized in Section 8 hereof) at the Designated Payment/Transfer Office of the Paying Agent/Registrar, the Paying Agent/Registrar shall register and deliver, in the name of the designated transferee or transferees, one or more new Certificates, executed on behalf of, and furnished by, the City, of authorized denominations and having the same Stated Maturity and of a like aggregate principal amount as the Certificate or Certificates surrendered for transfer.

At the option of the Holder, Certificates (other than the Initial Certificate(s) authorized in Section 8 hereof) may be exchanged for other Certificates of authorized denominations and having the same Stated Maturity, bearing the same rate of interest, and of like aggregate principal amount as the Certificates surrendered for exchange upon the surrender of the Certificates to be exchanged at the Designated Payment/Transfer Office of the Paying Agent/Registrar. Whenever any Certificates are so surrendered for exchange, the Paying Agent/Registrar shall register and deliver new Certificates, executed on behalf of, and furnished by the City, to the Holder requesting the exchange.

All Certificates issued upon any transfer or exchange of Certificates shall be delivered at the Designated Payment/Transfer Office of the Paying Agent/Registrar, or sent by United States mail, first class postage prepaid, to the Holder and, upon the delivery thereof, the same shall be valid obligations of the City, evidencing the same obligation to pay, and entitled to the same benefits under this Ordinance, as the Certificates surrendered in such transfer or exchange.

All transfers or exchanges of Certificates pursuant to this Section shall be made without expense or service charge to the Holder, except as otherwise herein provided, and except that the Paying Agent/Registrar shall require payment by the Holder requesting such transfer or exchange of any tax or other governmental charges required to be paid with respect to such transfer or exchange.

Certificates canceled by reason of an exchange or transfer under this Section are hereby defined to be "Predecessor Certificates," evidencing all or a portion, as the case may be, of the same obligation to pay evidenced by the new Certificate or Certificates registered and delivered in the exchange or transfer. Additionally, the term "Predecessor Certificates" shall include any Certificate registered and delivered pursuant to Section 23 hereof in lieu of a mutilated, lost, destroyed, or stolen Certificate which shall be deemed to evidence the same obligation as the mutilated, lost, destroyed, or stolen Certificate.

Neither the City nor the Paying Agent/Registrar shall be required to issue or transfer to an assignee of a Holder any Certificate called for redemption, in whole or in part, within forty-five (45) days of the date fixed for the redemption of such Certificate; provided, however, such limitation on transferability shall not be applicable to an exchange by the Holder of the unredeemed balance of a Certificate called for redemption in part.

SECTION 6. Book-Entry-Only Transfers and Transactions. Notwithstanding the provisions contained in Sections 3, 4 and 5 relating to the payment, and transfer/exchange of the Certificates, the City hereby approves and authorizes the use of "Book-Entry-Only" securities clearance, settlement and transfer system provided by The Depository Trust Company ("DTC"), a limited purpose trust company organized under the laws of the State of New York, in accordance with the operational arrangements referenced in the Blanket Issuer Letter of Representations by and between the City and DTC (the "Depository Agreement").

Pursuant to the Depository Agreement and the rules of DTC, the Certificates shall be deposited with DTC who shall hold said Certificates for its participants (the "DTC Participants"). While the Certificates are held by DTC under the Depository Agreement, the Holder of the Certificates on the Security Register for all purposes, including payment and notices, shall be Cede & Co., as nominee of DTC, notwithstanding the ownership of each actual purchaser or owner of each Certificate (the "Beneficial Owners") being recorded in the records of DTC and DTC Participants.

In the event DTC determines to discontinue serving as securities depository for the Certificates or otherwise ceases to provide book-entry clearance and settlement of securities transactions in general or the City determines that DTC is incapable of properly discharging its duties as securities depository for the Certificates, the City covenants and agrees with the Holders of the Certificates to cause Certificates to be printed in definitive form and issued and delivered to DTC Participants and Beneficial Owners, as the case may be. Thereafter, the Certificates in definitive form shall be assigned, transferred and exchanged on the Security Register maintained by the Paying Agent/Registrar and payment of such Certificates shall be made in accordance with the provisions of Sections 3, 4 and 5 hereof.

SECTION 7. Execution - Registration. The Certificates shall be executed on behalf of the City by the Chairman under its seal reproduced or impressed thereon and countersigned by the City Secretary. The signatures of said officers and the seal of the City on the Certificates may be manual or facsimile. Certificates bearing the manual or facsimile signatures of said individuals who are or were the proper officers of the City on the Certificate Date shall be deemed to be duly executed on behalf of the City, notwithstanding that such individuals or any of them shall cease to hold such offices prior to the delivery of the Certificates to the initial purchaser(s), and with respect to Certificates delivered in subsequent exchanges and transfers, all as authorized and provided in Texas Government Code, Chapter 1201, as amended.

No Certificate shall be entitled to any right or benefit under this Ordinance, or be valid or obligatory for any purpose, unless there appears on such Certificate either a certificate of registration substantially as set forth in the form of the Initial Certificate(s) provided in Section 9B, manually executed by the Comptroller of Public Accounts of the State of Texas or his duly authorized agent, or a certificate of registration substantially as set forth in the form of the definitive Certificates provided in Section 9C, manually executed by an authorized officer, employee, or representative of the Paying Agent/Registrar, and either such certificate duly signed upon any Certificate shall be conclusive evidence, and the only evidence, that such Certificate has been duly certified, registered, and delivered.

SECTION 8. Initial Certificate(s). The Certificates herein authorized shall be initially issued either as (i) a single fully registered certificate in the total principal amount of this series with principal installments to become due and payable as provided in Section 2 and numbered T-1 or, alternatively, (ii) as one certificate for each year of maturity in the applicable principal amount and denomination and to be numbered consecutively from T-1 and upward (hereinafter called the "Initial Certificate(s)") and, in either case, the Initial Certificate(s) shall be registered in the name of the initial purchaser(s) or the designee thereof. The Initial Certificate(s) shall be the Certificate(s) submitted to the Office of the Attorney General of the State of Texas for approval, certified and registered by the Office of the Comptroller of Public Accounts of the State of Texas and delivered to the initial purchaser(s). Any time after the delivery of the Initial Certificate(s), the Paying Agent/Registrar, pursuant to written instructions from the initial purchaser(s), or the designee thereof, shall cancel the Initial Certificate(s) delivered hereunder and exchange therefor definitive Certificates of authorized denominations, Stated Maturities, principal amounts and bearing applicable interest rates for transfer and delivery to the Holders named at the addresses identified therefor; all pursuant to and in accordance with such written instructions from the initial purchaser(s), or the designee thereof, and such other information and documentation as the Paying Agent/Registrar may reasonably require.

SECTION 9. Forms.

A. Forms Generally. The Certificates, the Registration Certificate of the Comptroller of Public Accounts of the State of Texas, the Certificate of Registration of the Paying Agent/Registrar, and the form of Assignment to be printed on the Certificates, shall be substantially in the forms set forth in this Section with such appropriate insertions, omissions, substitutions, and other variations as are permitted or required by this Ordinance and may have such letters, numbers, or other marks of identification (including identifying numbers and letters of the Committee on Uniform Securities Identification Procedures of the American Bankers Association) and such legends and endorsements (including insurance legends in the event the Certificates, or any maturities thereof, are purchased with insurance and any reproduction of an opinion of counsel) thereon as may, consistently herewith, be established by the City or be determined by the officers executing such Certificates as evidenced by their execution thereof. Any portion of the text of any Certificate may be set forth on the reverse thereof, with an appropriate reference to such a portion on the face of the Certificate.

The definitive Certificates shall be printed, lithographed, engraved or produced in any other similar manner, all as determined by the officers executing such Certificates as evidenced by their execution thereof, but the Initial Certificate(s) submitted to the Attorney General of Texas may be typewritten or photocopied or otherwise reproduced.

The City may provide (i) for issuance of one fully registered Certificate for the Stated Maturity in the aggregate principal amount of such Stated Maturity and (ii) for registration of

such Certificate in the name of a securities depository, or the nominee thereof. While any Certificate is registered in the name of a securities depository or its nominee, references herein and in the Certificates to the holder or owner of such Certificate shall mean the securities depository or its nominee and shall not mean any other person.

B. Form of Single Initial Certificate.

REGISTERED
NO. T-1

REGISTERED
\$ _____

UNITED STATES OF AMERICA
STATE OF TEXAS
CITY OF NACOGDOCHES, TEXAS
COMBINATION TAX AND REVENUE
CERTIFICATE OF OBLIGATION
SERIES 2022

Certificate Date: October 1, 2022

Registered Owner:

Principal Amount:

The City of Nacogdoches (hereinafter referred to as the "City"), a body corporate and municipal corporation in the County of Nacogdoches, State of Texas, for value received, acknowledges itself indebted to and hereby promises to pay to the Registered Owner named above, or the registered assigns thereof, the Principal Amount hereinabove stated, on September 1 in each of the years and in principal installments in accordance with the following schedule:

<u>YEAR</u>	<u>PRINCIPAL INSTALLMENTS (\$)</u>	<u>INTEREST RATE (%)</u>
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(Information to be inserted from Section 2 hereof)

(or so much thereof as shall not have been paid upon prior redemption) and to pay interest on the unpaid Principal Amount hereof from the Certificate Date at the per annum rates of interest specified above computed on the basis of a 360-day year of twelve 30-day months; such interest being payable on March 1 and September 1 of each year until maturity or prior redemption, commencing March 1, 2023. Principal installments of this Certificate are payable on the Stated Maturity dates or on a redemption date to the registered owner hereof U.S. Bank Trust Company, National Association, Dallas, Texas (the "Paying Agent/Registrar"), upon its presentation and surrender at its designated offices, initially in Dallas, Texas, or, with respect to a successor paying agent/registrar, at the designated office of such successor (the "Designated Payment/Transfer Office"). Interest shall be payable to the registered owner of this Certificate whose name appears on the "Security Register" maintained by the Paying Agent/Registrar at the close of business on the "Record Date," which is the last business day of the month next preceding the interest payment date hereof and interest shall be paid by the Paying Agent/Registrar by check sent by United States mail, first class postage prepaid, to the address of the registered owner recorded in the Security Register or by such other method, acceptable

to the Paying Agent/Registrar, requested by and at the risk and expense of the registered owner. All payments of principal of, premium, if any, and interest on this Certificate shall be in any coin or currency of the United States of America which at the time of payment is legal tender for the payment of public and private debts. If the date for the payment of the principal of or interest on the Certificates shall be a Saturday, Sunday, a legal holiday, or a day when banking institutions in the city where the Designated Payment/Transfer Office of the Paying Agent/Registrar is located are authorized by law or executive order to close, then the date for such payment shall be the next succeeding day which is not such a Saturday, Sunday, legal holiday, or day when banking institutions are authorized to close, and payment on such date shall have the same force and effect as if made on the original date payment was due.

This Certificate is issued in the aggregate principal amount of \$_____ 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, pursuant to authority conferred by and in conformity with the Constitution and laws of the State of Texas, particularly Texas Local Government Code, Subchapter C of Chapter 271, as amended, and pursuant to an ordinance adopted by the governing body of the City (hereinafter referred to as the "Ordinance").

The Certificates maturing on and after September 1, 2032 shall be subject to redemption prior to maturity, at the option of the City on September, 2031, or any date thereafter, in whole or in part in principal amounts of \$5,000 or any integral multiple thereof (and if in part by lot by the Paying Agent/Registrar) at the redemption price of par, together with interest accrued to the redemption date.

At least thirty (30) days prior to a redemption date, the City shall cause a written notice of such redemption to be sent by United States Mail, first class postage prepaid, to the registered owners of each Certificate to be redeemed at the address shown on the Security Register and subject to the terms and provisions relating thereto contained in the Ordinance. If a Certificate (or any portion of its principal sum) shall have been duly called for redemption and notice of such redemption duly given, then upon the redemption date such Certificate (or the portion of its principal sum to be redeemed) shall become due and payable, and, if moneys for the payment of the redemption price and the interest accrued on the principal amount to be redeemed to the date of redemption are held for the purpose of such payment by the Paying Agent/Registrar, interest shall cease to accrue and be payable from and after the redemption date on the principal amount redeemed.

In the event a portion of the principal amount of a Certificate is to be redeemed and the registered owner is someone other than Cede & Co., payment of the redemption price of such principal amount shall be made to the registered owner only upon presentation and surrender of such Certificate to the Designated Payment/Transfer Office of the Paying Agent/Registrar, and a new Certificate or Certificates of like maturity and interest rate in any authorized denominations provided by the Ordinance for the then unredeemed balance of the principal sum thereof will be issued to the registered owner, without charge. If a Certificate is selected for redemption, in whole or in part, the City and the Paying Agent/Registrar shall not be required to transfer such

Certificate to an assignee of the registered owner within forty-five (45) days of the redemption date; provided, however, such limitation on transferability shall not be applicable to an exchange by the registered owner of the unredeemed balance of a Certificate redeemed in part.

With respect to any optional redemption of the Certificates, unless moneys sufficient to pay the principal of and premium, if any, and interest on the Certificates to be redeemed shall have been received by the Paying Agent/Registrar prior to the giving of such notice of redemption, such notice may state that said redemption is conditional upon the receipt of such moneys by the Paying Agent/Registrar on or prior to the date fixed for such redemption, or upon the satisfaction of any prerequisites set forth in such notice of redemption; and, if sufficient moneys are not received, such notice shall be of no force and effect, the City shall not redeem such Certificates and the Paying Agent/Registrar shall give notice, in the manner in which the notice of redemption was given, to the effect that the Certificates have not been redeemed.

This Certificate is payable from the proceeds of an ad valorem tax levied, within the limitations prescribed by law, upon all taxable property in the City and is additionally payable from and secured by a lien on and limited pledge of the Net Revenues of the City's combined water, sewer, and electric systems (the "System"), as provided in the Ordinance. In the Ordinance, the City reserves and retains the right to issue Additional Certificates equally and ratably secured with the Certificates by a parity lien on and pledge of the Net Revenues.

Reference is hereby made to the Ordinance, a copy of which is on file at the principal offices of the Paying Agent/Registrar, and to all of the provisions of which the registered owner by the acceptance hereof hereby assents, for definitions of terms; the description of and the nature and extent of the tax levied for the payment of the Certificate; the properties constituting the System; the Net Revenues pledged to the payment of the principal of and interest on this Certificate; the nature, extent, and manner of enforcement of the pledge; the terms and conditions relating to the transfer or exchange of this Certificate; the conditions upon which the Ordinance may be amended or supplemented with or without the consent of the registered owners; the rights, duties, and obligations of the City and the Paying Agent/Registrar; the terms and provisions upon which the tax levy and the liens, pledges, charges, and covenants made therein may be discharged at or prior to the maturity of this Certificate, and this Certificate deemed to be no longer Outstanding; and for the other terms and provisions thereof. Capitalized terms used herein have the meanings assigned in the Ordinance.

This Certificate, subject to certain limitations contained in the Ordinance, may be transferred on the Security Register only upon its presentation and surrender at the principal offices of the Paying Agent/Registrar, with the Assignment hereon duly endorsed by, or accompanied by a written instrument of transfer in form satisfactory to the Paying Agent/Registrar duly executed by the registered owner hereof, or his duly authorized agent. When a transfer on the Security Register occurs, one or more new fully registered Certificates of the same Stated Maturity, of authorized denominations, bearing the same rate of interest, and of the same aggregate principal amount will be issued by the Paying Agent/Registrar to the designated transferee or transferees.

The City and the Paying Agent/Registrar, and any agent of either, may treat the registered owner hereof whose name appears on the Security Register (i) on the Record Date as the owner entitled to the payment of the interest hereon, (ii) on the date of surrender of this Certificate as the owner entitled to the payment of the principal hereof at its Stated Maturity, and (iii) on any other date as the owner for all other purposes, and neither the City nor the Paying Agent/Registrar, or any agent of either, shall be affected by notice to the contrary. In the event

of a nonpayment of interest on a scheduled payment date, and for thirty (30) days thereafter, a new record date for such interest payment (a "Special Record Date") will be established by the Paying Agent/Registrar, if and when funds for the payment of such interest have been received from the City. Notice of the Special Record Date and of the scheduled payment date of the past due interest (which shall be 15 days after the Special Record Date) shall be sent at least five (5) business days prior to the Special Record Date by United States mail, first class postage prepaid, to the address of each registered owner appearing on the Security Register at the close of business on the last business day next preceding the date of mailing of such notice.

It is hereby certified, recited, represented, and covenanted that the City is a duly organized and legally existing municipal corporation under and by virtue of the Constitution and laws of the State of Texas; that the issuance of the Certificates is duly authorized by law; that all acts, conditions, and things required to exist and be done precedent to and in the issuance of the Certificates to render the same lawful and valid obligations of the City have been properly done, have happened, and have been performed in regular and due time, form, and manner as required by the Constitution and laws of the State of Texas, and the Ordinance; that the Certificates do not exceed any constitutional or statutory limitation; and that due provision has been made for the payment of the principal of and interest on the Certificates by the levy of a tax and a limited pledge of and lien on the Net Revenues of the System as stated above. In case any provision in this Certificate or any application thereof shall be invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions and applications shall not in any way be affected or impaired thereby. The terms and provisions of this Certificate and the Ordinance shall be construed in accordance with and shall be governed by the laws of the State of Texas.

IN WITNESS WHEREOF, the City Council of the City has caused this Certificate to be duly executed under the official seal of the City as of the Certificate Date.

CITY OF NACOGDOCHES, TEXAS

Chairman

COUNTERSIGNED:

City Secretary

(City Seal)

C. Form of Registration Certificate of Comptroller of Public Accounts to Appear on Initial Certificate(s) Only.

REGISTRATION CERTIFICATE OF
THE COMPTROLLER OF PUBLIC ACCOUNTS

OFFICE OF THE COMPTROLLER
OF PUBLIC ACCOUNTS
THE STATE OF TEXAS

§
§
§
§
§

REGISTER NO. _____

I HEREBY CERTIFY that this Certificate has been examined, certified as to validity, approved by the Attorney General of the State of Texas, and duly registered by the Comptroller of Public Accounts of the State of Texas.

WITNESS my signature and seal of office this _____.

Comptroller of Public Accounts
of the State of Texas

(Seal)

D. Form of Registration Certificate of Paying Agent/Registrar to Appear on Definitive Certificates Only.

REGISTRATION CERTIFICATE OF PAYING AGENT/REGISTRAR

This Certificate has been duly issued and registered under the provisions of the within mentioned Ordinance; the certificate or certificates of the above entitled and designated series originally delivered having been approved by the Attorney General of the State of Texas and registered by the Comptroller of Public Accounts, as shown by the records of the Paying Agent/Registrar.

The office of the Paying Agent/Registrar in St. Paul, Minnesota, is the Designated Payment/Transfer Office for this Certificate.

U.S. BANK TRUST COMPANY, NATIONAL
ASSOCIATION, Dallas, Texas, as Paying
Agent/Registrar

Registered this date:

By: _____
Authorized Signature

E. Form of Assignment.

ASSIGNMENT

FOR VALUE RECEIVED the undersigned hereby sells, assigns, and transfers unto
(Print or typewrite name, address, and zip code of transferee:) _____

(Social Security or other identifying number: _____)
the within Certificate and all rights thereunder, and hereby irrevocably constitutes and appoints
_____ attorney to transfer the within Certificate
on the books kept for registration thereof, with full power of substitution in the premises.

DATED: _____

Signature guaranteed:

NOTICE: The signature on this assignment
must correspond with the name of the
registered owner as it appears on the face
of the within Certificate in every particular.

F. Form of Definitive Certificates.

REGISTERED
NO. _____

REGISTERED
\$ _____

UNITED STATES OF AMERICA
STATE OF TEXAS
CITY OF NACOGDOCHES, TEXAS
COMBINATION TAX AND REVENUE
CERTIFICATE OF OBLIGATION
SERIES 2022

Certificate Date:
September 1, 2022

Interest Rate:
_____%

Stated Maturity:
August 15, 20__

CUSIP NO.

Registered Owner:

Principal Amount:

DOLLARS

The City of Nacogdoches (hereinafter referred to as the "City"), a body corporate and municipal corporation in the County of Nacogdoches, State of Texas, for value received, acknowledges itself indebted to and hereby promises to pay to the Registered Owner named above, or the registered assigns thereof, on the Stated Maturity date specified above, the Principal Amount stated above (or so much thereof as shall not have been paid upon prior redemption) and to pay interest on the unpaid Principal Amount stated above from the interest payment date next preceding the "Registration Date" of this Certificate appearing below (unless this Certificate bears a "Registration Date" as of an interest payment date, in which case it shall bear interest from such date, or unless the "Registration Date" of this Certificate is prior to the initial interest payment date in which case it shall bear interest from the Certificate Date) at the per annum rate of interest specified above computed on the basis of a 360-day year of twelve 30-day months; such interest being payable on March 1 and September 1 in each year until maturity or prior redemption, commencing March 1, 2023. Principal of this Certificate shall be payable at its Stated Maturity or on a redemption date to the Registered Owner hereof upon presentation and surrender at the designated offices of the Paying Agent/Registrar executing the registration certificate appearing hereon, initially in St. Paul, Minnesota, or, with respect to a successor Paying Agent/Registrar, at the designated offices of such successor (the "Designated Payment/Transfer Office"). Interest shall be payable to the registered owner of this Certificate (or of one or more Predecessor Certificates, as defined in the Ordinance hereinafter referenced)

whose name appears on the "Security Register" maintained by the Paying Agent/Registrar at the close of business on the "Record Date," which is the fifteenth day of the month next preceding the interest payment date and interest shall be paid by the Paying Agent/Registrar by check sent by United States mail, first class postage prepaid, to the address of the registered owner, recorded in the Security Register or by such other method acceptable to the Paying Agent/Registrar, requested by, and at the risk and expense of, the registered owner. All payments of principal of, premium, if any, and interest on this Certificate shall be in any coin or currency of the United States of America which at the time of payment is legal tender for the payment of public and private debts. If the date for the payment of the principal of or interest on the Certificates shall be a Saturday, Sunday, a legal holiday, or a day when banking institutions in the city where the Designated Payment/Transfer Office of the Paying Agent/Registrar is located are authorized by law or executive order to close, then the date for such payment shall be the next succeeding day which is not such a Saturday, Sunday, legal holiday, or day when banking institutions in the city where the Designated Payment/Transfer Office of the Paying Agent/Registrar is located are authorized to close, and payment on such date shall have the same force and effect as if made on the original date payment was due.

This Certificate is one of the series specified in its title issued in the aggregate principal amount of \$_____ (herein referred to as the "Certificates") 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, pursuant to authority conferred by and in conformity with the Constitution and laws of the State of Texas, particularly Texas Local Government Code, Subchapter C of Chapter 271, as amended, and pursuant to an ordinance adopted by the governing body of the City (hereinafter referred to as the "Ordinance").

The Certificates maturing on and after September 1, 2032 shall be subject to redemption prior to maturity, at the option of the City on September 1, 2031, or any date thereafter, in whole or in part in principal amounts of \$5,000 or any integral multiple thereof (and if in part by lot by the Paying Agent/Registrar) at the redemption price of par, together with interest accrued to the redemption date.

At least thirty (30) days prior to a redemption date, the City shall cause a written notice of such redemption to be sent by United States Mail, first-class postage prepaid, to the registered owners of each Certificate to be redeemed at the address shown on the Security Register and subject to the terms and provisions relating thereto contained in the Ordinance. If a Certificate (or any portion of its principal sum) shall have been duly called for redemption and notice of such redemption duly given, then upon the redemption date such Certificate (or the portion of its principal sum to be redeemed) shall become due and payable, and, if moneys for the payment of the redemption price and the interest accrued on the principal amount to be redeemed to the date of redemption are held for the purpose of such payment by the Paying Agent/Registrar, interest shall cease to accrue and be payable from and after the redemption date on the principal amount redeemed.

In the event a portion of the principal amount of a Certificate is to be redeemed and the registered owner is someone other than Cede & Co., payment of the redemption price of such

principal amount shall be made to the registered owner only upon presentation and surrender of such Certificate to the Designated Payment/Transfer Office of the Paying Agent/Registrar, and a new Certificate or Certificates of like maturity and interest rate in any authorized denominations provided by the Ordinance for the then unredeemed balance of the principal sum thereof will be issued to the registered owner, without charge. If a Certificate is selected for redemption, in whole or in part, the City and the Paying Agent/Registrar shall not be required to transfer such Certificate to an assignee of the registered owner within forty-five (45) days of the redemption date; provided, however, such limitation on transferability shall not be applicable to an exchange by the registered owner of the unredeemed balance of a Certificate redeemed in part.

With respect to any optional redemption of the Certificates, unless moneys sufficient to pay the principal of and premium, if any, and interest on the Certificates to be redeemed shall have been received by the Paying Agent/Registrar prior to the giving of such notice of redemption, such notice may state that said redemption is conditional upon the receipt of such moneys by the Paying Agent/Registrar on or prior to the date fixed for such redemption, or upon the satisfaction of any prerequisites set forth in such notice of redemption; and, if sufficient moneys are not received, such notice shall be of no force and effect, the City shall not redeem such Certificates and the Paying Agent/Registrar shall give notice, in the manner in which the notice of redemption was given, to the effect that the Certificates have not been redeemed.

The Certificates are payable from the proceeds of an ad valorem tax levied, within the limitations prescribed by law, upon all taxable property in the City and are additionally payable from and secured by a lien on and limited pledge of the Net Revenues of the City's combined water, sewer, and electric systems (the "System"), as provided in the Ordinance. In the Ordinance, the City reserves and retains the right to issue Additional Certificates equally and ratably secured with the Certificates by a parity lien on and pledge of the Net Revenues.

Reference is hereby made to the Ordinance, a copy of which is on file at the principal offices of the Paying Agent/Registrar, and to all of the provisions of which the registered owner by the acceptance hereof hereby assents, for definitions of terms; the description of and the nature and extent of the tax levied for the payment of the Certificates; the properties constituting the System; the Net Revenues pledged to the payment of the principal of and interest on the Certificates; the nature, extent, and manner of enforcement of the pledge; the terms and conditions relating to the transfer or exchange of this Certificate; the conditions upon which the Ordinance may be amended or supplemented with or without the consent of the registered owners; the rights, duties, and obligations of the City and the Paying Agent/Registrar; the terms and provisions upon which the tax levy and the liens, pledges, charges, and covenants made therein may be discharged at or prior to the maturity of this Certificate, and this Certificate deemed to be no longer Outstanding; and, for the other terms and provisions thereof. Capitalized terms used herein have the meanings assigned in the Ordinance.

This Certificate, subject to certain limitations contained in the Ordinance, may be transferred on the Security Register only upon its presentation and surrender at the principal offices of the Paying Agent/Registrar, with the Assignment hereon duly endorsed by, or accompanied by a written instrument of transfer in form satisfactory to the Paying Agent/Registrar duly executed by, the registered owner hereof, or his duly authorized agent. When a transfer on the Security Register occurs, one or more new fully registered Certificates of the same Stated Maturity, of authorized denominations, bearing the same rate of interest, and of the same aggregate principal amount will be issued by the Paying Agent/Registrar to the designated transferee or transferees.

The City and the Paying Agent/Registrar, and any agent of either, may treat the registered owner hereof whose name appears on the Security Register (i) on the Record Date as the owner entitled to the payment of the interest hereon, (ii) on the date of surrender of this Certificate as the owner entitled to the payment of the principal hereof at its Stated Maturity, and (iii) on any other date as the owner for all other purposes, and neither the City nor the Paying Agent/Registrar, or any agent of either, shall be affected by notice to the contrary. In the event of a non-payment of interest on a scheduled payment date, and for thirty (30) days thereafter, a new record date for such interest payment (a "Special Record Date") will be established by the Paying Agent/Registrar, if and when funds for the payment of such interest have been received from the City. Notice of the Special Record Date and of the scheduled payment date of the past due interest (which shall be fifteen (15) days after the Special Record Date) shall be sent at least five (5) business days prior to the Special Record Date by United States mail, first class postage prepaid, to the address of each registered owner appearing on the Security Register at the close of business on the last business day next preceding the date of mailing of such notice.

It is hereby certified, recited, represented, and covenanted that the City is a duly organized and legally existing municipal corporation under and by virtue of the Constitution and laws of the State of Texas; that the issuance of the Certificates is duly authorized by law; that all acts, conditions, and things required to exist and be done precedent to and in the issuance of the Certificates to render the same lawful and valid obligations of the City have been properly done, have happened, and have been performed in regular and due time, form, and manner as required by the Constitution and laws of the State of Texas, and the Ordinance; that the Certificates do not exceed any constitutional or statutory limitation; and that due provision has been made for the payment of the principal of and interest on the Certificates by the levy of a tax and a limited pledge of and lien on the Net Revenues of the System as stated above. In case any provision in this Certificate or any application thereof shall be invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions and applications shall not in any way be affected or impaired thereby. The terms and provisions of this Certificate and the Ordinance shall be construed in accordance with and shall be governed by the laws of the State of Texas.

IN WITNESS WHEREOF, the City Council of the City has caused this Certificate to be duly executed under the official seal of the City as of the Certificate Date.

CITY OF NACOGDOCHES, TEXAS

Chairman

COUNTERSIGNED:

City Secretary

(City Seal)

SECTION 10. Definitions. For purposes of this Ordinance and for clarity with respect to the issuance of the Certificates herein authorized, and the levy of taxes and appropriation of Net Revenues therefor, the following definitions are provided:

(a) The term “Additional Certificates” shall mean combination tax and revenue certificates of obligation hereafter issued under and pursuant to the provisions of Subchapter C of Chapter 271 of the Texas Local Government Code, as amended, or any similar law hereafter enacted, and payable from ad valorem taxes and additionally payable from and secured by a lien on and pledge of the Net Revenues as provided in Section 13 hereof.

(b) The term “Certificates” shall mean the “City of Nacogdoches, Texas, Combination Tax and Revenue Certificates of Obligation, Series 2022” authorized by this Ordinance.

(c) The term “Certificate Account” shall mean the special account created and established under the provisions of Section 11 of this Ordinance.

(d) The term “Collection Date” shall mean, when reference is being made to the levy and collection of annual ad valorem taxes, the date the annual ad valorem taxes levied each year by the City become delinquent.

(e) The term “Fiscal Year” shall mean the twelve month operating period ending on September 30th of each year unless otherwise designated by the City.

(f) The term “Government Securities” shall mean (i) direct noncallable obligations of the United States of America, including obligations the principal of and interest on which are unconditionally guaranteed by the United States of America, (ii) noncallable obligations of an agency or instrumentality of the United States, including obligations unconditionally guaranteed or insured by the agency or instrumentality and, on the date of their acquisition or purchase by the City, are rated as to investment quality by a nationally recognized investment rating firm not less than AAA or its equivalent, (iii) noncallable obligations of a state or an agency or a county, municipality, or other political subdivision of a state that have been refunded and that, on the date of their acquisition or purchase by the City, are rated as to investment quality by a nationally recognized investment rating firm not less than AAA or its equivalent and (iv) any other then authorized securities or obligations that may be used to defease obligations such as the Certificates under the then applicable laws of the State of Texas.

(g) The term “Maintenance and Operating Expenses” shall mean all current expenses of operating and maintaining the System, including all salaries, labor, materials, repairs, and extensions necessary to render efficient service; provided, however, that only such repairs and extensions, as in the judgment of the City Council, reasonably and fairly exercised, are necessary to maintain the operations and render adequate service to the City and the inhabitants thereof, or such as might be necessary to meet some physical accident or condition which would otherwise impair obligations payable from Net Revenues shall be deducted in determining “Net Revenues.” Depreciation charges shall not be considered as Maintenance and Operating Expenses. Maintenance and Operating Expenses shall include payments under contracts for the purchase of water supply, treatment sewage, or other materials, goods, services, or facilities for the System to the extent authorized by law and the provisions of such contracts.

(h) The term "Net Revenues" shall mean all income, revenues and receipts of every nature derived from and received by virtue of the operation of the System (including interest income and earnings received from the investment of moneys in the special funds or accounts created by this ordinance or ordinances authorizing the issuance of additional bonds), after deducting and paying, and making provision for the payment of, current expenses of maintenance and operation thereof, including all salaries, labor, materials, repairs and extensions necessary to render efficient service; provided, however, that only such expenses for repairs and extensions as in the judgment of the City Council, reasonably and fairly exercised, are necessary to keep the System in operation and render adequate service to the City and the inhabitants thereof, or such as might be necessary to meet some physical accident or condition which would otherwise impair any obligations payable from Net Revenues of the System shall be deducted in determining "Net Revenues." Contractual payments for the purchase of water or the treatment of sewage shall be maintenance and operating expenses of the System to the extent provided in the contract incurred therefor and as may be authorized by statute. Depreciation shall never be considered as an expense of operation and maintenance.

(i) The term "Outstanding" when used in this Ordinance with respect to Certificates means, as of the date of determination, all Certificates theretofore issued and delivered under this Ordinance, except:

(1) those Certificates theretofore canceled by the Paying Agent/Registrar or delivered to the Paying Agent/Registrar for cancellation;

(2) those Certificates for which payment has been duly provided by the City in accordance with the provisions of Section 25 hereof by the irrevocable deposit with the Paying Agent/Registrar, or an authorized escrow agent, of money or Government Securities, or both, in the amount necessary to fully pay the principal of, premium, if any, and interest thereon to maturity; and

(3) those Certificates that have been mutilated, destroyed, lost, or stolen and for which (i) replacement Certificates have been registered and delivered in lieu thereof or (ii) have been paid, all as provided in Section 23 hereof.

(j) The term "Prior Lien Obligations" shall mean all bonds or other obligations now outstanding and hereafter issued that are payable from and secured by a lien on and pledge of all or any part of the Net Revenues of the System which by the terms of this Ordinance and the ordinances authorizing their issuance have a prior right and claim on the Net Revenues of the System to the claim and right securing the payment of the Certificates.

(k) The term "System" shall mean shall mean the City's combined Waterworks and Sanitary Sewer System, including all present and future extensions, additions, replacements and improvements thereto.

SECTION 11. Certificate Account. For the purpose of paying the interest on and to provide a sinking fund for the payment and retirement of the Certificates, there shall be and is hereby created a special fund or account to be designated "SPECIAL 2022 COMBINATION TAX AND REVENUE CERTIFICATE OF OBLIGATION ACCOUNT"(the "Certificate Account"), which fund or account shall be maintained on the records of the City and deposited in a special fund maintained at an official depository of the City's funds, and moneys deposited in said fund or account shall be used for no other purpose. The Chairman, City Manager, Finance Director and City Secretary, any one or more of said officials of the City, are hereby authorized and

directed to make withdrawals from said fund or account sufficient to pay the principal of and interest on the Certificates as the same become due and payable, and, shall cause to be transferred to the Paying Agent/Registrar from moneys on deposit in the Certificate Account (on or prior to a principal and/or interest payment date) an amount sufficient to pay the amount of principal and/or interest falling due on the Certificates.

Pending the transfer of funds to the Paying Agent/Registrar, money in the Certificate Account may, at the option of the City, invested in investments authorized by the Public Funds Investment Act, Texas Government Code, Chapter 2256, as amended, and the City's investment policy; provided that all such deposits and investments shall be made in such a manner that the money required to be expended from said Account will be available at the proper time or times. All interest and income derived from deposits and investments in the Certificate Account shall be credited to, and any losses debited to, such account. All investments in the Certificate Account shall be sold promptly when necessary to prevent any default in connection with the Certificates.

SECTION 12. Tax Levy. To provide for the payment of the "Debt Service Requirements" on the Certificates being (i) the interest on said Certificates and (ii) a sinking fund for their redemption at maturity or a sinking fund of 2% (whichever amount shall be the greater), there shall be and there is hereby levied, within the limitations prescribed by law, for the current year and each succeeding year thereafter while said Certificates or any interest thereon shall remain Outstanding, a sufficient tax on each one hundred dollars' valuation of taxable property in said City, adequate to pay such Debt Service Requirements, full allowance being made for delinquencies and costs of collection; said tax shall be assessed and collected each year and applied to the payment of the Debt Service Requirements, and the same shall not be diverted to any other purpose. The taxes so levied and collected shall be paid into the Certificate Account. The City Council hereby declares its purpose and intent to provide and levy a tax legally and fully sufficient to pay the said Debt Service Requirements, it having been determined that the existing and available taxing authority of the City for such purpose is adequate to permit a legally sufficient tax in consideration of all other outstanding indebtedness.

The amount of taxes to be provided annually for the payment of the principal of and interest on the Certificates shall be determined and accomplished in the following manner:

Prior to the date the City Council establishes the annual tax rate and passes an ordinance levying ad valorem taxes each year, the City Council shall determine:

(1) The amount on deposit in the Certificate Account after (a) deducting therefrom the total amount of Debt Service Requirements to become due on Certificates prior to the Collection Date for the ad valorem taxes to be levied and (b) adding thereto the amount of the Net Revenues of the System appropriated and allocated to pay such Debt Service Requirements prior to the Collection Date for the ad valorem taxes to be levied.

(2) The amount of Net Revenues and any other lawfully available revenues which are appropriated and to be set aside during such fiscal year for the payment of the Debt Service Requirements on the Certificates between the Collection Date for the taxes then to be levied and the Collection Date for the taxes to be levied during the next succeeding fiscal year.

(3) The amount of Debt Service Requirements to become due and payable on the Certificates between the Collection Date for the taxes then to be levied and the Collection Date for the taxes to be levied during the next succeeding calendar year.

The amount of taxes to be levied annually each year to pay the Debt Service Requirements on the Certificates shall be the amount established in paragraph (3) above less the sum total of the amounts established in paragraphs (1) and (2), after taking into consideration delinquencies and costs of collecting such annual taxes.

In regard to the payments to become due on the Bonds on March 1, 2023 and September 1, 2023, sufficient current funds, including earnings to be realized from the investment of the proceeds of sale of the Bonds pending their expenditure for authorized purposes, will be available and are hereby appropriated to make such payments; and the Chairman, City Manager, and Chief Financial Officer of the City are hereby authorized and directed to transfer and deposit in the Certificate Account such current funds (including earnings realized from the investment of the proceeds of sale of the Bonds) which, together with the accrued interest received from the initial purchasers, will be sufficient to pay the payments on the Bonds on March 1, 2023 and September 1, 2023.

SECTION 13. Pledge of Revenues. The City hereby covenants and agrees that, subject to the prior lien on and pledge of the Net Revenues to the payment and security of the Prior Lien Obligations, the Net Revenues (within the limitation of a total amount of \$1,000) are hereby irrevocably pledged to the payment of the principal of and interest on the Certificates and the pledge of Net Revenues herein made for the payment of the Certificates, shall constitute a lien on the Net Revenues until such time as the City shall pay all of such \$1,000, after which time the pledge shall cease, all in accordance with the terms and provisions hereof and be valid and binding and fully perfected from and after the date of adoption of this Ordinance without physical delivery or transfer or transfer of control of the Net Revenues, the filing of this Ordinance or any other act; all as provided in Texas Government Code, Chapter 1208, as amended ("Chapter 1208").

Chapter 1208 applies to the issuance of the Certificates and the pledge of the Net Revenues of the System granted by the City under this Section 13, and such pledge is therefore valid, effective and perfected. If Texas law is amended at any time while the Certificates are Outstanding such that the pledge of the Net Revenues of the System granted by the City under this Section 13 is to be subject to the filing requirements of Texas Business and Commerce Code, Chapter 9, as amended, then in order to preserve to the registered owners of the Certificates the perfection of the security interest in said pledge, the City agrees to take such measures as it determines are reasonable and necessary under Texas law to comply with the applicable provisions of Texas Business and Commerce Code, Chapter 9, as amended, and enable a filing to perfect the security interest in said pledge to occur.

SECTION 14. System Fund. The City hereby covenants and agrees that all revenues derived from the operation of the System shall be kept separate and apart from all other funds, accounts, and moneys of the City, and shall be deposited as collected into the "City of Nacogdoches, Texas, Waterworks and Sanitary Sewer System Fund" (heretofore created and established in the connection with the issuance of outstanding Prior Lien Obligations and hereinafter called the "System Fund"). All moneys deposited in the System Fund shall be pledged and appropriated to the extent required for the following purposes and in the order of priority shown, to wit:

First: To the payment of the reasonable and proper Maintenance and Operating Expenses of the System.

Second: To the payment of all amounts required to be deposited in the special funds created and established or to be created and established for the payment, security and benefit of Prior Lien Obligations in accordance with the terms and provisions of the ordinances authorizing the issuance of Prior Lien Obligations.

Third: To the payment of the limited amounts required to be deposited in the special funds and accounts created and established for the payment of the Certificates.

Fourth: To the payment of the amounts required to be deposited in the special funds and accounts created and established for the payment of the (1) "City of Nacogdoches, Texas, Waterworks and Sewer System Revenue Bonds, Series 2004" (the "Series 2004 Bonds"), and (2) "City of Nacogdoches, Texas, Waterworks and Sewer System Revenue Bonds, Series 2006" (the "Series 2006 Bonds").

Any Net Revenues remaining in the System Fund after satisfying the foregoing payments, or making adequate and sufficient provision for the payment thereof, may be appropriated and used for any other City purpose now or hereafter permitted by law.

SECTION 15. Deposits to Certificate Account. The City agrees to cause to be deposited in the Certificate Account prior to a principal and interest payment date for the Certificates from the limited pledge of the Net Revenues in the System Fund, after the deduction of all payments required to be made to the special Funds or accounts created for the payment and security of the Prior Lien Obligations, or from ad valorem taxes or other lawfully available funds, as applicable, any amounts budgeted to be paid from the Certificate Account in such Fiscal Year.

SECTION 16. Security of Funds. All moneys on deposit in the Funds for which this Ordinance makes provision (except any portion thereof as may be at any time properly invested) shall be secured in the manner and to the fullest extent required by the laws of Texas for the security of public funds, and moneys on deposit in such Funds shall be used only for the purposes permitted by this Ordinance.

SECTION 17. Remedies in Event of Default. In addition to all the rights and remedies provided by the laws of the State of Texas, the City covenants and agrees particularly that in the event the City (a) defaults in the payments to be made to the Certificate Account, or (b) defaults in the observance or performance of any other of the covenants, conditions, or obligations set forth in this Ordinance, any Holder shall be entitled to a writ of mandamus issued by a court of proper jurisdiction compelling and requiring the governing body of the City and other officers of the City to observe and perform any covenant, condition, or obligation prescribed in this Ordinance.

No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power, or shall be construed to be a waiver of any such default or acquiescence therein, and every such right and power may be exercised from time to time and as often as may be deemed expedient. The specific remedies herein provided shall be cumulative of all other existing remedies and the specification of such remedies shall not be deemed to be exclusive.

SECTION 18. Special Covenants. The City hereby covenants as follows:

(i) That it has the lawful power to pledge the Net Revenues supporting this issue of Certificates and has lawfully exercised said powers under the Constitution and laws of the State of Texas, including said power existing under Texas Local Government Code, Subchapter C of Chapter 271, as amended, and Texas Government Code, Chapter 1502, as amended.

(ii) That other than for the payment of any outstanding Prior Lien Obligations, the Series 2004 Bonds, and the Series 2006 Bonds, and the Certificates, the Net Revenues are not pledged to the payment of any debt or obligation of the City or of the System.

(iii) That, as long as any Certificates or any interest thereon remain Outstanding, and the pledge of the Net Revenues has not been fully satisfied, the City will not sell, lease, or encumber the System or any substantial part thereof, provided that this covenant shall not be construed to prohibit the sale of such machinery, or other properties or equipment which has become obsolete or otherwise unsuited to the efficient operation of the System.

(iv) The City recognizes that the purchasers and owners of the Certificates will have accepted them on, and paid a price which reflects, the understanding that interest thereon is excludable from federal income taxation under laws in force at the time the Certificates shall have been delivered. In this connection the City covenants to take no action or fail to take any action, which action or failure to act may render the interest on any of such Certificates subject to federal income taxation, particularly pursuant to Section 103 of the Internal Revenue Code of 1986, as amended (the "Code"), nor shall the City take any action or fail to take any action, which action or failure to act, would have the effect of causing the income derived by the City from the System to become subject to federal income taxation in the hands of the City, whether or not provision shall have been made for the payment of such Certificates.

SECTION 19. Issuance of Prior Lien Obligations and Additional Certificates. The City hereby expressly reserves the right to hereafter issue Prior Lien Obligations and Additional Certificates without limitation as to principal amount but subject to any terms, conditions or restrictions applicable thereto under law or otherwise.

Additional Prior Lien Obligations and Additional Certificates, if issued, may be payable, in whole or in part, from Net Revenues (without impairment of the obligation of contract with the holders of Certificates) upon such terms and conditions as the City Council may determine. Additional Certificates, if issued and payable, in whole or in part, from Net Revenues, shall not in any event be construed as payable from the limited pledge of the Net Revenues required by this Ordinance to be budgeted and appropriated for the payment of the Certificates and interest thereon.

That it is the intention of this governing body and accordingly hereby recognized and stipulated that the provisions, agreements and covenants contained herein bearing upon the management and operations of the System, and the administering and application of revenues derived from the operation thereof, shall to the extent possible be harmonized with like provisions, agreements and covenants contained in the ordinances authorizing the issuance of the Prior Lien Obligations, and to the extent of any irreconcilable conflict between the provisions

contained herein and in the ordinances authorizing the issuance of the Prior Lien Obligations, the provisions, agreements and covenants contained therein shall prevail to the extent of such conflict and be applicable to this Ordinance but in all respects subject to the priority of rights and benefits, if any, conferred thereby to the holders of the Prior Lien Obligations.

SECTION 20. Sale of Certificates – Approval of Purchase Agreement and Official Statement. The Certificates authorized by this Ordinance are hereby sold by the City to [Frost Bank and Raymond James]. (together, the “Purchaser”) in accordance with the Purchase Agreement, dated September 20, 2022, substantially in the form attached hereto as **Exhibit B** and incorporated herein by reference as a part of this Ordinance for all purposes, and the City has determined and does determine that the terms of such Purchase Agreement are in the City’s best interests. The Chairman of the City is hereby authorized and directed to execute said Purchase Agreement for and on behalf of the City and as the act and deed of the Council, and in regard to the approval and execution of the Purchase Agreement, the Council hereby finds, determines, and declares that the representations, warranties, and agreements of the City contained therein are true and correct in all material respects and shall be honored and performed by the City.

Furthermore, the use of the Preliminary Official Statement in connection with the public offering and sale of the Certificates is hereby ratified, confirmed and approved in all respects. The final Official Statement reflecting the terms of sale (together with such changes approved by the Chairman, City Manager, Finance Director and City Secretary, any one or more of said officials), shall be and is hereby in all respects approved and the Purchaser is hereby authorized to use and distribute said final Official Statement, dated September 20, 2022, in the offering, sale and delivery of the Certificates to the public. The Chairman and City Secretary are further authorized and directed to manually execute and deliver for and on behalf of the City copies of said Official Statement in final form as may be required by the Purchaser, and such Official Statement in the final form and content manually executed by said officials shall be deemed to be approved by the City Council and constitute the Official Statement authorized for distribution and use by the Purchaser.

SECTION 21. Notices to Owners - Waiver. Wherever this Ordinance provides for notice to Holders of any event, such notice shall be sufficiently given (unless otherwise herein expressly provided) if in writing and sent by United States mail, first class postage prepaid, to the address of each Holder appearing on the Security Register at the close of business on the business day next preceding the mailing of such notice.

In any case where notice to Holders is given by mail, neither the failure to mail such notice to any particular Holders, nor any defect in any notice so mailed, shall affect the sufficiency of such notice with respect to all other Certificates. Where this Ordinance provides for notice in any manner, such notice may be waived in writing by the Holder entitled to receive such notice, either before or after the event with respect to which such notice is given; and, such waiver shall be the equivalent of such notice. Waivers of notice by Holders shall be filed with the Paying Agent/Registrar, but such filing shall not be a condition precedent to the validity of any action taken in reliance upon such waiver.

SECTION 22. Cancellation. All Certificates surrendered for payment, transfer, exchange, or replacement, if surrendered to the Paying Agent/Registrar, shall be promptly canceled by it; and, if surrendered to the City, shall be delivered to the Paying Agent/Registrar and, if not already canceled, shall be promptly canceled by the Paying Agent/Registrar. The City may at any time deliver to the Paying Agent/Registrar for cancellation any Certificates

previously certified or registered and delivered which the City may have acquired in any manner whatsoever, and all Certificates so delivered shall be promptly canceled by the Paying Agent/Registrar. All canceled Certificates held by the Paying Agent/Registrar shall be returned to the City.

SECTION 23. Mutilated, Destroyed, Lost, and Stolen Certificates. If (a) any mutilated Certificate is surrendered to the Paying Agent/Registrar, or the City and the Paying Agent/Registrar receive evidence to their satisfaction of the destruction, loss, or theft of any Certificate, and (b) there is delivered to the City and the Paying Agent/Registrar such security or indemnity as may be required to save each of them harmless, then, in the absence of notice to the City or the Paying Agent/Registrar that such Certificate has been acquired by a bona fide purchaser, the City shall execute and, upon its request, the Paying Agent/Registrar shall register and deliver, in exchange for or in lieu of any such mutilated, destroyed, lost, or stolen Certificate, a new Certificate of the same Stated Maturity and of like tenor and principal amount, bearing a number not contemporaneously outstanding.

In case any such mutilated, destroyed, lost, or stolen Certificate has become or is about to become due and payable, the City in its discretion may, instead of issuing a new Certificate, pay such Certificate.

Upon the issuance of any new Certificate under this Section, the City may require payment by the Holder of a sum sufficient to cover any tax or other governmental charge imposed in relation thereto and any other expenses (including the fees and expenses of the Paying Agent/Registrar) connected therewith.

Every new Certificate issued pursuant to this Section in lieu of any mutilated, destroyed, lost, or stolen Certificate shall constitute a replacement of the prior obligation of the City, whether or not the mutilated, destroyed, lost, or stolen Certificate shall be at any time enforceable by anyone, and shall be entitled to all the benefits of this Ordinance equally and ratably with all other Outstanding Certificates.

The provisions of this Section are exclusive and shall preclude (to the extent lawful) all other rights and remedies with respect to the replacement and payment of mutilated, destroyed, lost, or stolen Certificates.

SECTION 24. Covenants to Maintain Tax-Exempt Status of Interest on the Certificates.

(a) Definitions. When used in this Section, the following terms shall have the following meanings:

“*Closing Date*” means the date on which the Certificates are first authenticated and delivered to the initial purchasers against payment therefor.

“*Code*” means the Internal Revenue Code of 1986, as amended by all legislation, if any, effective on or before the Closing Date.

“*Computation Date*” has the meaning set forth in Section 1.148-1(b) of the Regulations.

“*Gross Proceeds*” means any proceeds as defined in Section 1.148-1(b) of the Regulations, and any replacement proceeds as defined in Section 1.148-1(c) of the Regulations, of the Certificates.

“*Investment*” has the meaning set forth in Section 1.148-1(b) of the Regulations.

“*Nonpurpose Investment*” means any investment property, as defined in Section 148(b) of the Code, in which Gross Proceeds of the Certificates are invested and which is not acquired to carry out the governmental purposes of the Certificates.

“*Rebate Amount*” has the meaning set forth in Section 1.148-1(b) of the Regulations.

“*Regulations*” means any proposed, temporary, or final Income Tax Regulations issued pursuant to Sections 103 and 141 through 150 of the Code, and 103 of the Internal Revenue Code of 1954, which are applicable to the Certificates. Any reference to any specific Regulation shall also mean, as appropriate, any proposed, temporary or final Income Tax Regulation designed to supplement, amend or replace the specific Regulation referenced.

“*Yield*” of

(1) any Investment has the meaning set forth in Section 1.148-5 of the Regulations; and

(2) the Certificates has the meaning set forth in Section 1.148-4 of the Regulations.

(b) Not to Cause Interest to Become Taxable. The City shall not use, permit the use of, or omit to use Gross Proceeds or any other amounts (or any property the acquisition, construction or improvement of which is to be financed directly or indirectly with Gross Proceeds) in a manner which if made or omitted, respectively, would cause the interest on any Certificate to become includable in the gross income, as defined in Section 61 of the Code, of the owner thereof for federal income tax purposes. Without limiting the generality of the foregoing, unless and until the City receives a written opinion of counsel nationally recognized in the field of municipal bond law to the effect that failure to comply with such covenant will not adversely affect the exemption from federal income tax of the interest on any Certificate, the City shall comply with each of the specific covenants in this Section.

(c) No Private Use or Private Payments. Except as permitted by Section 141 of the Code and the Regulations and rulings thereunder, the City shall at all times prior to the last Stated Maturity of Certificates:

(1) exclusively own, operate and possess all property the acquisition, construction or improvement of which is to be financed or refinanced directly or indirectly with Gross Proceeds of the Certificates, and not use or permit the use of such Gross Proceeds (including all contractual arrangements with terms different than those applicable to the general public) or any property acquired, constructed or improved with such Gross Proceeds in any activity carried on by

any person or entity (including the United States or any agency, department and instrumentality thereof) other than a state or local government, unless such use is solely as a member of the general public; and

(2) not directly or indirectly impose or accept any charge or other payment by any person or entity who is treated as using Gross Proceeds of the Certificates or any property the acquisition, construction or improvement of which is to be financed or refinanced directly or indirectly with such Gross Proceeds, other than taxes of general application within the City or interest earned on investments acquired with such Gross Proceeds pending application for their intended purposes.

(d) No Private Loan. Except to the extent permitted by Section 141 of the Code and the Regulations and rulings thereunder, the City shall not use Gross Proceeds of the Certificates to make or finance loans to any person or entity other than a state or local government. For purposes of the foregoing covenant, such Gross Proceeds are considered to be "loaned" to a person or entity if: (1) property acquired, constructed or improved with such Gross Proceeds is sold or leased to such person or entity in a transaction which creates a debt for federal income tax purposes; (2) capacity in or service from such property is committed to such person or entity under a take or pay, output or similar contract or arrangement; or (3) indirect benefits, or burdens and benefits of ownership, of such Gross Proceeds or any property acquired, constructed or improved with such Gross Proceeds are otherwise transferred in a transaction which is the economic equivalent of a loan.

(e) Not to Invest at Higher Yield. Except to the extent permitted by Section 148 of the Code and the Regulations and rulings thereunder, the City shall not at any time prior to the final Stated Maturity of the Certificates directly or indirectly invest Gross Proceeds in any Investment (or use Gross Proceeds to replace money so invested), if as a result of such investment the Yield from the Closing Date of all Investments acquired with Gross Proceeds (or with money replaced thereby), whether then held or previously disposed of, exceeds the Yield of the Certificates.

(f) Not Federally Guaranteed. Except to the extent permitted by Section 149(b) of the Code and the Regulations and rulings thereunder, the City shall not take or omit to take any action which would cause the Certificates to be federally guaranteed within the meaning of Section 149(b) of the Code and the Regulations and rulings thereunder.

(g) Information Report. The City shall timely file the information required by Section 149(e) of the Code with the Secretary of the Treasury on Form 8038-G or such other form and in such place as the Secretary may prescribe.

(h) Rebate of Arbitrage Profits. Except to the extent otherwise provided in Section 148(f) of the Code and the Regulations and rulings thereunder:

(1) The City shall account for all Gross Proceeds (including all receipts, expenditures and investments thereof) on its books of account separately and apart from all other funds (and receipts, expenditures and investments thereof) and shall retain all records of accounting for at least six years after the day on which the last outstanding Certificate is discharged. However, to the extent permitted by law, the City may commingle Gross Proceeds of the Certificates with other money of the City, provided that the City

separately accounts for each receipt and expenditure of Gross Proceeds and the obligations acquired therewith.

(2) Not less frequently than each Computation Date, the City shall calculate the Rebate Amount in accordance with rules set forth in Section 148(f) of the Code and the Regulations and rulings thereunder. The City shall maintain such calculations with its official transcript of proceedings relating to the issuance of the Certificates until six years after the final Computation Date.

(3) As additional consideration for the purchase of the Certificates by the Purchaser and the loan of the money represented thereby and in order to induce such purchase by measures designed to insure the excludability of the interest thereon from the gross income of the owners thereof for federal income tax purposes, the City shall pay to the United States out of the Certificate Account or its general fund, as permitted by applicable Texas statute, regulation or opinion of the Attorney General of the State of Texas, the amount that when added to the future value of previous rebate payments made for the Certificates equals (i) in the case of a Final Computation Date as defined in Section 1.148-3(e)(2) of the Regulations, one hundred percent (100%) of the Rebate Amount on such date; and (ii) in the case of any other Computation Date, ninety percent (90%) of the Rebate Amount on such date. In all cases, the rebate payments shall be made at the times, in the installments, to the place and in the manner as is or may be required by Section 148(f) of the Code and the Regulations and rulings thereunder, and shall be accompanied by Form 8038-T or such other forms and information as is or may be required by Section 148(f) of the Code and the Regulations and rulings thereunder.

(4) The City shall exercise reasonable diligence to assure that no errors are made in the calculations and payments required by paragraphs (2) and (3), and if an error is made, to discover and promptly correct such error within a reasonable amount of time thereafter (and in all events within one hundred eighty (180) days after discovery of the error), including payment to the United States of any additional Rebate Amount owed to it, interest thereon, and any penalty imposed under Section 1.148-3(h) of the Regulations.

(i) Not to Divert Arbitrage Profits. Except to the extent permitted by Section 148 of the Code and the Regulations and rulings thereunder, the City shall not, at any time prior to the earlier of the Stated Maturity or final payment of the Certificates, enter into any transaction that reduces the amount required to be paid to the United States pursuant to subsection (h) of this Section because such transaction results in a smaller profit or a larger loss than would have resulted if the transaction had been at arm's length and had the Yield of the Certificates not been relevant to either party.

(j) Elections. The City hereby directs and authorizes the Chairman, City Manager, Finance Director and City Secretary, either or any combination of them, to make elections permitted or required pursuant to the provisions of the Code or the Regulations, as they deem necessary or appropriate in connection with the Certificates, in the Certificate as to Tax Exemption or similar or other appropriate certificate, form or document.

SECTION 25. Satisfaction of Obligations of City. If the City shall pay or cause to be paid, or there shall otherwise be paid to the Holders, the principal of, premium, if any, and

interest on the Certificates, at the times and in the manner stipulated in this Ordinance, then the pledge of taxes levied and the lien on and pledge of the Net Revenues under this Ordinance and all covenants, agreements, and other obligations of the City to the Holders shall thereupon cease, terminate, and be discharged and satisfied.

Certificates or any principal amount(s) thereof shall be deemed to have been paid within the meaning and with the effect expressed above in this Section when (i) money sufficient to pay in full such Certificates or the principal amount(s) thereof at maturity or on a redemption date therefor, together with all interest due thereon, shall have been irrevocably deposited with and held in trust by the Paying Agent/Registrar, or an authorized escrow agent, or (ii) Government Securities shall have been irrevocably deposited in trust with the Paying Agent/Registrar, or an authorized escrow agent, which Government Securities have been certified by an independent accounting or consulting firm to mature as to principal and interest in such amounts and at such times as will insure the availability, without reinvestment, of sufficient money, together with any moneys deposited therewith, if any, to pay when due the principal of and interest on such Certificates, or the principal amount(s) thereof, on and prior to the Stated Maturity or (if notice of redemption has been duly given or waived or if irrevocable arrangements therefor acceptable to the Paying Agent/Registrar have been made) the redemption date thereof. The City covenants that no deposit of moneys or Government Securities will be made under this Section and no use will be made of any such deposit which would cause the Certificates to be treated as "arbitrage bonds" within the meaning of Section 148 of the Internal Revenue Code of 1986, as amended, or regulations adopted pursuant thereto.

Any moneys so deposited with the Paying Agent/Registrar, or an authorized escrow agent, and all income from Government Securities held in trust by the Paying Agent/Registrar, or an authorized escrow agent, pursuant to this Section which is not required for the payment of the Certificates, or any principal amount(s) thereof, or interest thereon with respect to which such moneys have been so deposited shall be remitted to the City or deposited as directed by the City. Furthermore, any money held by the Paying Agent/Registrar for the payment of the principal of and interest on the Certificates and remaining unclaimed for a period of three (3) years after the Stated Maturity, or applicable redemption date, of the Certificates such moneys were deposited and are held in trust to pay shall upon the request of the City be remitted to the City against a written receipt therefor. Notwithstanding the above and foregoing, any remittance of funds from the Paying Agent/Registrar to the City shall be subject to any applicable unclaimed property laws of the State of Texas.

SECTION 26. Proceeds of Sale. The proceeds of sale of the Certificates, excluding the amounts to pay costs of issuance and the accrued interest being deposited in the Certificate Account, shall be deposited in a construction fund maintained at the City's depository bank. Pending expenditure for authorized projects and purposes, such proceeds of sale may be invested in authorized investments in accordance with the provisions of Texas Government Code, Chapter 2256, as amended, including guaranteed investment contracts permitted by Texas Government Code, Section 2256.015 et seq., and the City's investment policies and guidelines, and any investment earnings realized may be expended for such authorized projects and purposes or deposited in the Certificate Account as shall be determined by the City Council. Accrued interest and all surplus proceeds of sale of the Certificates, including investment earnings, remaining after completion of all authorized projects or purposes shall be deposited to the credit of the Certificate Account.

SECTION 27. Ordinance a Contract - Amendments. The provisions of this Ordinance shall constitute a contract with the Holders; and, the City shall not amend or repeal any of the

provisions of this Ordinance so long as any Certificate remains Outstanding except as permitted in this Section and Section 28 hereof. The City, may, without the consent of or notice to any Holders, from time to time and at any time, amend this Ordinance in any manner not detrimental to the interests of the Holders, including the curing of any ambiguity, inconsistency, or formal defect or omission herein. In addition, with the written consent of the registered owner or owners holding a majority in aggregate principal amount of the Certificates then Outstanding affected thereby, the City may amend, add to, or rescind any of the provisions of this Ordinance; provided that, without the consent of all registered owners of Outstanding Certificates, no such amendment, addition or rescission shall: (1) extend the time or times of payment of the principal of, premium, if any, and interest on the Certificates, reduce the principal amount thereof, the redemption price therefor, or the rate of interest thereon, or in any other way modify the terms of payment of the principal of, premium, if any, or interest on the Certificates; (2) give any preference to any Certificate over any other Certificate; or, (3) reduce the aggregate principal amount of Certificates required for consent to any such amendment, addition or rescission.

SECTION 28. Continuing Disclosure Undertaking.

(a) Definitions. As used in this Section, the following terms have the meanings ascribed to such terms below:

“Financial Obligation” means a (a) debt obligation; (b) derivative instrument entered into in connection with, or pledged as security or a source of payment for, an existing or planned debt obligation; or (c) guarantee of a debt obligation or any such derivative instrument; provided that “financial obligation” shall not include municipal securities (as defined in the Securities Exchange Act of 1934, as amended) as to which a final official statement (as defined in the Rule) has been provided to the MSRB consistent with the Rule.

“MSRB” means the Municipal Securities Rulemaking Board.

“Rule” means SEC Rule 15c2-12, as amended from time to time.

“SEC” means the United States Securities and Exchange Commission.

(b) Annual Reports.

The City shall provide annually to the MSRB (1) within six months after the end of each fiscal year, ending in and after 2022, financial information and operating data with respect to the City of the general type included in Tables 1, 2, 3, and 8 in Appendix A of the Official Statement and the audited financial statements within twelve months, and (2) if audited financial statements are not available by the required time, the City will provide unaudited financial statements by the required time, and audited financial statements when and if such audited statements become available. Any financial statements so provided shall be prepared in accordance with the accounting principles described in Appendix B to the Official Statement or such other accounting principles as the City may be required to employ from time to time pursuant to state law or regulation, and audited, if the City commissions an audit of such statements and the audit is completed within the period during which they must be provided.

If the City changes its fiscal year, it will notify the MSRB of the change (and of the date of the new fiscal year end) prior to the next date by which the City otherwise would be required to provide financial information and operating data pursuant to this Section.

The financial information and operating data to be provided pursuant to this Section may be set forth in full in one or more documents or may be included by specific reference to any document available to the public on the MSRB's Internet Web site or filed with the SEC.

(c) Notice of Certain Events.

The City shall provide notice of any of the following events with respect to the Certificates to the MSRB in a timely manner and not more than 10 business days after occurrence of the event:

1. Principal and interest payment delinquencies;
2. Non-payment related defaults, if material;
3. Unscheduled draws on debt service reserves reflecting financial difficulties;
4. Unscheduled draws on credit enhancements reflecting financial difficulties;
5. Substitution of credit or liquidity providers, or their failure to perform;
6. Adverse tax opinions, the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB), or other material notices or determinations with respect to the tax status of the Certificates, or other material events affecting the tax status of the Certificates;
7. Modifications to rights of holders of the Certificates, if material;
8. Certificate calls, if material, and tender offers;
9. Defeasances;
10. Release, substitution, or sale of property securing repayment of the Certificates, if material;
11. Rating changes;
12. Bankruptcy, insolvency, receivership, or similar event of the City, which shall occur as described below;
13. The consummation of a merger, consolidation, or acquisition involving the City or the sale of all or substantially all of its assets, other than in the ordinary course of business, the entry into of a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material;
14. Appointment of a successor or additional trustee or the change of name of a trustee, if material;
15. Incurrence of a Financial Obligation of the City, if material, or agreement to covenants, events of default, remedies, priority rights, or other similar terms of a Financial Obligation of the City, any of which affect security holders, if material; and
16. Default, event of acceleration, termination event, modification of terms, or other similar events under the terms of a Financial Obligation of the City, any of which reflect financial difficulties.

For these purposes, (a) any event described in item 12 of the immediately preceding paragraph is considered to occur when any of the following occur: the appointment of a receiver, fiscal agent, or similar officer for the City in a proceeding under the United States Bankruptcy Code or in any other proceeding under state or federal law in which a court or

governmental authority has assumed jurisdiction over substantially all of the assets or business of the City, or if such jurisdiction has been assumed by leaving the existing governing body and officials or officers in possession but subject to the supervision and orders of a court or governmental authority, or the entry of an order confirming a plan of reorganization, arrangement, or liquidation by a court or governmental authority having supervision or jurisdiction over substantially all of the assets or business of the City and (b) the City intends the words used in the immediately preceding items 15 and 16 in this Section to have the same meanings as when they are used in the Rule, as evidenced by SEC Release No. 34-83885, dated August 20, 2018.

The City shall notify the MSRB, in a timely manner, of any failure by the City to provide financial information or operating data in accordance with subsection (b) of this Section by the time required by such Section.

(d) Filings with the MSRB.

All financial information, operating data, financial statements, notices and other documents provided to the MSRB in accordance with this Section shall be provided in an electronic format prescribed by the MSRB and shall be accompanied by identifying information as prescribed by the MSRB.

(e) Limitations, Disclaimers, and Amendments.

The City shall be obligated to observe and perform the covenants specified in this Section for so long as, but only for so long as, the City remains an “obligated person” with respect to the Certificates within the meaning of the Rule, except that the City in any event will give the notice required by subsection (c) of this Section of any Certificate calls and defeasance that cause the City to be no longer such an “obligated person.”

The provisions of this Section are for the sole benefit of the Holders and beneficial owners of the Certificates, and nothing in this Section, express or implied, shall give any benefit or any legal or equitable right, remedy, or claim hereunder to any other person. The City undertakes to provide only the financial information, operating data, financial statements, and notices which it has expressly agreed to provide pursuant to this Section and does not hereby undertake to provide any other information that may be relevant or material to a complete presentation of the City’s financial results, condition, or prospects or hereby undertake to update any information provided in accordance with this Section or otherwise, except as expressly provided herein. The City does not make any representation or warranty concerning such information or its usefulness to a decision to invest in or sell Certificates at any future date.

UNDER NO CIRCUMSTANCES SHALL THE CITY BE LIABLE TO THE HOLDER OR BENEFICIAL OWNER OF ANY CERTIFICATE OR ANY OTHER PERSON, IN CONTRACT OR TORT, FOR DAMAGES RESULTING IN WHOLE OR IN PART FROM ANY BREACH BY THE CITY, WHETHER NEGLIGENT OR WITHOUT FAULT ON ITS PART, OF ANY COVENANT SPECIFIED IN THIS SECTION, BUT EVERY RIGHT AND REMEDY OF ANY SUCH PERSON, IN CONTRACT OR TORT, FOR OR ON ACCOUNT OF ANY SUCH BREACH SHALL BE LIMITED TO AN ACTION FOR MANDAMUS OR SPECIFIC PERFORMANCE.

No default by the City in observing or performing its obligations under this Section shall constitute a breach of or default under this Ordinance for purposes of any other provision of this Ordinance.

Nothing in this Section is intended or shall act to disclaim, waive, or otherwise limit the duties of the City under federal and state securities laws.

Notwithstanding anything herein to the contrary, the provisions of this Section may be amended by the City from time to time to adapt to changed circumstances resulting from a change in legal requirements, a change in law, or a change in the identity, nature, status, or type of operations of the City, but only if (1) the provisions of this Section, as so amended, would have permitted an underwriter to purchase or sell Certificates in the primary offering of the Certificates in compliance with the Rule, taking into account any amendments or interpretations of the Rule to the date of such amendment, as well as such changed circumstances, and (2) either (a) the Holders of a majority in aggregate principal amount (or any greater amount required by any other provision of this Ordinance that authorizes such an amendment) of the Outstanding Certificates consent to such amendment or (b) a Person that is unaffiliated with the City (such as nationally recognized bond counsel) determines that such amendment will not materially impair the interests of the Holders and beneficial owners of the Certificates. The provisions of this Section may also be amended from time to time or repealed by the City if the SEC amends or repeals the applicable provisions of the Rule or a court of final jurisdiction determines that such provisions are invalid, but only if and to the extent that reservation of the City's right to do so would not prevent underwriters of the initial public offering of the Certificates from lawfully purchasing or selling Certificates in such offering. If the City so amends the provisions of this Section, it shall include with any amended financial information or operating data next provided pursuant to subsection (b) of this Section an explanation, in narrative form, of the reasons for the amendment and of the impact of any change in the type of financial information or operating data so provided.

SECTION 29. Control and Custody of Certificates. The Chairman of the City shall be and is hereby authorized to take and have charge of all necessary orders and records pending investigation by the Attorney General of the State of Texas, including the printing and supply of definitive Certificates, and shall take and have charge and control of the Initial Certificate(s) pending the approval thereof by the Attorney General, the registration thereof by the Comptroller of Public Accounts, and the delivery thereof to the Purchaser.

SECTION 30. Further Procedures. Any one or more of the Chairman, City Manager, Finance Director and City Secretary are hereby expressly authorized, empowered and directed from time to time and at any time to do and perform all such acts and things and to execute, acknowledge and deliver in the name and on behalf of the City all agreements, instruments, certificates or other documents, whether mentioned herein or not, as may be necessary or desirable in order to carry out the terms and provisions of this Ordinance and the issuance of the Certificates. In addition, prior to the initial delivery of the Certificates, the City Manager, Chairman, Finance Director or Bond Counsel to the City are each hereby authorized and directed to approve any changes or corrections to this Ordinance or to any of the documents authorized and approved by this Ordinance: (i) in order to cure any ambiguity, formal defect or omission in the Ordinance or such other document; or (ii) as requested by the Attorney General of the State of Texas or his representative to obtain the approval of the Certificates by the Attorney General and if such officer or counsel determines that such changes are consistent with the intent and purpose of the Ordinance, which determination shall be final. In the event that any officer of the City whose signature shall appear on any document shall cease to be such officer before the delivery of such document, such signature nevertheless shall be valid and sufficient for all purposes the same as if such officer had remained in office until such delivery.

SECTION 31. Bond Counsel's Opinion. The Purchaser's obligation to accept delivery of the Certificates is subject to being furnished a final opinion of Norton Rose Fulbright US LLP, Attorneys, Dallas, Texas, approving such Certificates as to their validity, said opinion to be dated and delivered as of the date of delivery and payment for such Certificates. A true and correct reproduction of said opinion is hereby authorized to be printed on the definitive Certificates or an executed counterpart thereof shall accompany the global Certificates deposited with DTC. The City Council confirms the continuation of the engagement of Norton Rose Fulbright US LLP as the City's bond counsel.

SECTION 32. CUSIP Numbers. CUSIP numbers may be printed or typed on the definitive Certificates. It is expressly provided, however, that the presence or absence of CUSIP numbers on the definitive Certificates shall be of no significance or effect as regards the legality thereof and neither the City nor the attorneys approving said Certificates as to legality are to be held responsible for CUSIP numbers incorrectly printed or typed on the definitive Certificates.

SECTION 33. Benefits of Ordinance. Nothing in this Ordinance, expressed or implied, is intended or shall be construed to confer upon any person other than the City, the Paying Agent/Registrar, and the Holders, any right, remedy, or claim, legal or equitable, under or by reason of this Ordinance. This Ordinance in its entirety is intended to be and is for the sole and exclusive benefit of the City, the Paying Agent/Registrar, and the Holders.

SECTION 34. Inconsistent Provisions. Except as provided in Section 19 hereof, all ordinances, orders, or resolutions, or parts thereof, which are in conflict or 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 matters contained herein.

SECTION 35. Construction of Terms. If appropriate in the context of this Ordinance, words of the singular number shall be considered to include the plural, words of the plural number shall be considered to include the singular, and words of the masculine, feminine or neuter gender shall be considered to include the other genders.

SECTION 36. Incorporation of Findings and Determinations. The findings and determinations of the City Council contained in the preamble hereof are hereby incorporated by reference and made a part of this Ordinance for all purposes as if the same were restated in full in this Section.

SECTION 37. Governing Law. This Ordinance shall be construed and enforced in accordance with the laws of the State of Texas and the United States of America.

SECTION 38. Effect of Headings. The Section headings herein are for convenience of reference only and shall not affect the construction hereof.

SECTION 39. Severability. If any provision of this Ordinance or the application thereof to any circumstance shall be held to be invalid, the remainder of this Ordinance or the application thereof to other circumstances shall nevertheless be valid, and this governing body hereby declares that this Ordinance would have been enacted without such invalid provision.

SECTION 40. Public Meeting. It is officially found, determined, and declared that the meeting at which this Ordinance is adopted was open to the public and public notice of the time, place, and subject matter of the public business to be considered at such meeting, including this

Ordinance, was given, all as required by Chapter 551 of the Texas Government Code, as amended.

SECTION 41. Effective Date. This Ordinance shall take effect and be in force from and after its passage and approval in accordance with the provisions of Texas Government Code, Section 1201.028, as amended.

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PASSED AND APPROVED, this the 20th day of September, 2022.

CITY OF NACOGDOCHES, TEXAS

Chairman

ATTEST:

City Secretary

(City Seal)

DRAFT

EXHIBIT A
PAYING AGENT/REGISTRAR AGREEMENT

EXHIBIT B
PURCHASE AGREEMENT



City Council Meeting

Date: September 20, 2022

Agenda Item: 6.I.

PRESENTER: Pam Curbow, Finance Director

ITEM/SUBJECT: Consider ordinance ratifying and setting tax rate on all taxable property for tax year 2022 at a rate of \$0.58480 per one hundred dollars (\$100.00) valuation on all taxable property within the corporate limits of the City of Nacogdoches as of January 1, 2022, the said tax rate having a maintenance and operations component and a debt service component; and providing an effective date. (Director of Finance)

SUMMARY/BACKGROUND: Proposed tax rate of \$0.58480 includes an M&O component of \$0.50772 and a debt service component of \$0.07708. This proposed tax rate is higher than the no-new-revenue tax rate of \$0.55479 but less than the voter approval tax rate of \$0.61572. Approximately \$821,867 in additional property tax revenue will be raised than the 2021-2022 fiscal year budget.

FINANCIAL:

No financial impact associated with this item

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

Not Applicable

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

ATTACHMENTS: 1. Ordinance

CITY OF NACOGDOCHES, TEXAS

ORDINANCE NO. 1931-09-22

AN ORDINANCE RATIFYING AND SETTING TAX RATE ON ALL TAXABLE PROPERTY FOR YEAR 2022 AT A RATE OF \$0.58480 PER ONE HUNDRED DOLLARS (\$100.00) VALUATION ON ALL TAXABLE PROPERTY WITHIN THE CORPORATE LIMITS OF THE CITY OF NACOGDOCHES AS OF JANUARY 1, 2022, THE SAID TAX RATE HAVING A MAINTENANCE AND OPERATIONS COMPONENT AND A DEBT SERVICE COMPONENT; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, pursuant to Texas Tax Code Sections 26.04 through 26.06, the Tax Assessor-Collector for the City of Nacogdoches, Texas (the “City”) has calculated the tax rate for the fiscal year 2022-2023 which cannot be exceeded without requisite publications and public hearings; and

WHEREAS, the tax rate for the fiscal year 2022-2023 as initially contemplated (proposed) by the City Council did, and as adopted herein, does not exceed the said rate calculated by the Tax Assessor-Collector; and

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

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

WHEREAS, THIS TAX RATE WILL RAISE MORE TAXES FOR MAINTENANCE AND OPERATIONS THAN LAST YEAR'S TAX RATE; and

WHEREAS, THE TAX RATE WILL EFFECTIVELY BE RAISED BY 5.3 PERCENT AND WILL RAISE TAXES FOR MAINTENANCE AND OPERATIONS ON A \$100,000 HOME BY APPROXIMATELY \$20.45; and

WHEREAS, upon full review and consideration of the matter, the City Council is of the opinion that the tax rate for the fiscal year 2022-2023 set, ratified and adopted herein below is proper.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Nacogdoches, Texas that the tax rate for 2022 for the City of Nacogdoches be set at \$0.58480 per \$100.00 valuation, with the following distribution:

Operation and Maintenance	\$	0.50772
I & S Debt Service	\$	<u>0.07708</u>
	\$	0.58480

BE IT FURTHER ORDAINED that any requirement that this Ordinance be read at more than one reading be hereby suspended and that this Ordinance shall become effective immediately upon its passage, approval, and publication, with the tax rate to become effective October 1, 2022.

PASSED & APPROVED this, the 20th day of September 2022, by a vote of ___ (ayes) to ___ (nays) to ___ (abstentions) of the City Council of Nacogdoches, Texas.

Jimmy Mize, Mayor
City of Nacogdoches

ATTEST:

By: _____
Jan Vinson, City Secretary

APPROVED AS TO FORM:

By: _____
Steven Kirkland, City Attorney

APPROVED AS TO CONTENT:

By: _____
Pam Curbow, Director of Finance



City Council Meeting

Date: September 20, 2022

Agenda Item: 6.J.

PRESENTER: Pam Curbow, Finance Director

ITEM/SUBJECT: Consider ordinance ratifying and setting tax rate on all taxable property for tax year 2022 at a rate of \$0.51851 per one hundred dollars (\$100.00) valuation on all taxable property within the corporate limits of the City of Nacogdoches as of January 1, 2022, the said tax rate having a maintenance and operations component and a debt service component; and providing an effective date. (Director of Finance)

SUMMARY/BACKGROUND: Proposed tax rate of \$0.51851 includes an M&O component of \$0.50772 and a debt service component of \$0.01079. This proposed tax rate is less than the no-new-revenue tax rate of \$0.55479 and less than the voter approval tax rate of \$0.54943.

FINANCIAL:

No financial impact associated with this item

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

Not Applicable

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

ATTACHMENTS: 1. Ordinance

CITY OF NACOGDOCHES, TEXAS

ORDINANCE NO. 1931-09-22

AN ORDINANCE RATIFYING AND SETTING TAX RATE ON ALL TAXABLE PROPERTY FOR YEAR 2022 AT A RATE OF \$0.51851 PER ONE HUNDRED DOLLARS (\$100.00) VALUATION ON ALL TAXABLE PROPERTY WITHIN THE CORPORATE LIMITS OF THE CITY OF NACOGDOCHES AS OF JANUARY 1, 2022, THE SAID TAX RATE HAVING A MAINTENANCE AND OPERATIONS COMPONENT AND A DEBT SERVICE COMPONENT; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, pursuant to Texas Tax Code Sections 26.04 through 26.06, the Tax Assessor-Collector for the City of Nacogdoches, Texas (the "City") has calculated the tax rate for the fiscal year 2022-2023 which cannot be exceeded without requisite publications and public hearings; and

WHEREAS, the tax rate for the fiscal year 2022-2023 as initially contemplated (proposed) by the City Council did, and as adopted herein, does not exceed the said rate calculated by the Tax Assessor-Collector; and

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

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

WHEREAS, THIS TAX RATE WILL RAISE MORE TAXES FOR MAINTENANCE AND OPERATIONS THAN LAST YEAR'S TAX RATE; and

WHEREAS, THE TAX RATE WILL EFFECTIVELY BE RAISED BY 5.3 PERCENT AND WILL RAISE TAXES FOR MAINTENANCE AND OPERATIONS ON A \$100,000 HOME BY APPROXIMATELY \$20.45; and

WHEREAS, upon full review and consideration of the matter, the City Council is of the opinion that the tax rate for the fiscal year 2022-2023 set, ratified and adopted herein below is proper.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Nacogdoches, Texas that the tax rate for 2022 for the City of Nacogdoches be set at \$0.51851 per \$100.00 valuation, with the following distribution:

Operation and Maintenance	\$	0.50772
I & S Debt Service	\$	<u>0.01079</u>
	\$	0.51851

BE IT FURTHER ORDAINED that any requirement that this Ordinance be read at more than one reading be hereby suspended and that this Ordinance shall become effective immediately upon its passage, approval, and publication, with the tax rate to become effective October 1, 2022.

PASSED & APPROVED this, the 20th day of September 2022, by a vote of ____ (ayes) to ____ (nays) to ____ (abstentions) of the City Council of Nacogdoches, Texas.

Jimmy Mize, Mayor
City of Nacogdoches

ATTEST:

By: _____
Jan Vinson, City Secretary

APPROVED AS TO FORM:

By: _____
Steven Kirkland, City Attorney

APPROVED AS TO CONTENT:

By: _____
Pam Curbow, Director of Finance



City Council Meeting

Date: September 20, 2022

Agenda Item: 7.A.

PRESENTER: Steven Kirkland, City Attorney

ITEM/SUBJECT: Pursuant to Texas Government Code Section 551.072, deliberations regarding the purchase, exchange, lease, or value of real property if deliberation in an open meeting would have a detrimental effect on the position of the governmental body in negotiations with a third person. The subject of this Executive Session item is to discuss Central Heights Water System.

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: Steve Kirkland, City Attorney
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