



March 21, 2023

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 March 21, 2023. 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 from March 7, 2023 regular meeting. (City Secretary)
 - B. Consider approval of a Mutual Aid Agreement between the City of Nacogdoches and Trinity County for the provision of law enforcement during an emergency. (Chief of Police)
 - C. Consider approval of a contract between the City of Nacogdoches and Chastang Ford for the purchase of two fleet vehicles. (Director of Finance)

- D. Consider approval of an ordinance amending Ordinance No. 1929-09-22 appropriating various amounts in accordance with the budget adopted for the ensuing fiscal year beginning October 1, 2022 and ending September 30, 2023 for the purchase of two fleet vehicles. (Director of Finance)
 - E. Consider a resolution regarding the application of Centerpoint Energy Resources Corp., Beaumont/East Texas Division, to increase rates under the Gas Reliability Infrastructure Program; suspending Centerpoint's proposed effective date for forty-five days; and authorizing the City's continued participation in a coalition of cities known as the "Alliance Of Centerpoint Municipalities." (City Attorney)
 - F. Consider approval of a resolution closing East Main Street for the annual Texas Blueberry Festival June 9-10, 2023. (Executive Director of Conventions and Visitors Bureau)
 - G. Consider approval of a resolution closing East Main Street for the Old Town Rig Down Event taking place September 15-17, 2023. (Executive Director, Convention and Visitors Bureau)
 - H. Consider approval of a resolution closing East Main Street to traffic for the annual Dia de los Muertos Festival on November 4, 2023. (Executive Director, Convention and Visitors Bureau)
 - I. Consider approval of a resolution to close East Main Street for the annual Veterans Day Parade, November 11, 2023. (Executive Director, Convention and Visitors Bureau)
 - J. Consider a resolution to close East Main Street for the annual Lighted Christmas Parade, December 2, 2023. (Executive Director, Convention and Visitors Bureau)
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 Zone Change from PD, Planned Development to R-1, Single Family for approximately 0.5 acres, being lot 54-A-1, City Block 54, generally located about 1200 feet south of Sir Galahad Drive along Post Oak Road. This request has been submitted by Tim Ward. Case File ZON2023-02. (City Planner)
 - B. Consider approval of a contract between the City of Nacogdoches and NewGen Strategies & Solutions LLC for Utility Rate and Design Study. (Director of Finance)
 - C. Consider approval of an ordinance amending Ordinance No. 1929-09-22 appropriating various amounts in accordance with the budget adopted for the ensuing fiscal year beginning October 1, 2022 and ending September 30, 2023 for Utility Rate and Design Study (Director of Finance)
 - D. Consider approval of a contract between the City of Nacogdoches and CoxJones

Contractors for construction of a parking lot at LT 10-A, BK 5 in the amount of \$64,870. (Community Services Director)

- E. Consider the adoption of a budget amendment in the amount of \$29,870 for the construction of a parking lot at LT 10-A, BK 5 in the amount of \$64,870. (Community Services Director)
 - F. Consider approval of a contract between the City of Nacogdoches and USIC Locating Services, LLC in an amount not to exceed \$125,000 to provide utility location services. (Director of Public Works)
 - G. Consider adoption of a budget amendment ordinance in the amount of \$62,500 to contract with a firm to provide utility location services. (Director of Public Works)
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.
 - B. Deliberation regarding Economic Development negotiations under Government Code Section 551.087 as follows:
 - 1. Discuss or deliberate regarding commercial or financial information the governmental body has received from business prospects that the governmental body seeks to have locate, stay, or expand in or near the territory of the governmental body and with which the governmental body is conducting economic development negotiations; and
 - 2. Deliberate the offer of financial or other incentives to business prospects described by Subdivision 1 above.
 - C. Personnel Matters – Pursuant to Texas Government Code Section 551.074, deliberations regarding the appointment or employment of a public officer or employee. The subject of this executive session is Interim City Manager.
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 March 15, 2023 at 5:00 p.m. and remained posted until meeting convened.

Jan Vinson, City Secretary



City Council Meeting

Date: March 21, 2023

Agenda Item: 5.A.

PRESENTER: Jan Vinson, City Secretary

ITEM/SUBJECT: Consider approval of minutes from March 7, 2023 regular 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



Regular Session
Nacogdoches City Council
March 7, 2023 – 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, Kathleen Belanger and Chad Huckaby. **Absent:** Council Member Amelia Fischer

1. Called to order at 5:31p.m.
2. Pledge of Allegiance.
3. No one spoke during 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 February 21, 2023 regular meeting.
 - B. Consider an ordinance declaring unopposed candidates in the May 6, 2023 General Election, elected to office; canceling the election for At-Large Mayor, providing a severability clause; and providing an effective date.
 - C. Consider approval of a resolution in reference to the Pine Grove Cemetery Board name and scope change.

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

6. **REGULAR AGENDA:**

- A. Receive an update on the NacTogether Master Planning Project.

Alaina Helton, City Planner, discussed where the committee is in the process of reviewing and discussing draft reports from DTJ Designs. She also reviewed focus group topics, housing and economic development survey, SFA campus outreach, I-69 study, the future land use map, deliverables and what’s next.

- B. Receive a report from the Capital Needs Advisory Committee.

Judy McDonald and John Calahan, Co-Chairs of the Capital Needs Advisory Committee, reviewed the meeting schedule and topics. The Committee has visited several City locations with more tours scheduled. Mr. Calahan stated that the Committee has discussed capital financing, bond regulations, streets, drainage and other capital needs not listed by City staff.

- C. Consider approval of a resolution of commendation and appreciation to the Honorable Judy B. McDonald.

Mayor Mize read the proclamation naming Judy B. McDonald as Mayor Emeritus.

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

City Council convened into Executive Session at 6:04 p.m.

Minutes unofficial until approved by City Council

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.

8. City Council reconvened in regular session at 6:31 p.m. taking no action.

9. Adjourned 6:31 p.m.

ATTEST:

Mayor Jimmy Mize
City Council
City of Nacogdoches

Jan Vinson, City Secretary



City Council Meeting

Date: March 21, 2023

Agenda Item: 5.B.

PRESENTER: Scott Weems, Police Chief

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

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

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

FINANCIAL:

No financial impact associated with this item

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

Not Applicable

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

ATTACHMENTS: 1. Mutual Aid Agreement

Mutual Aid Agreement

THE STATE OF TEXAS

COUNTY OF NACOGDOCHES

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

Section 1

Purpose of Agreement

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

Section 2

Definitions

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

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

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

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

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

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

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

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

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

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

Section 3

Agreement to Effectuate the Mutual Aid Plan

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

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

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

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

Section 4

No Indemnity or Debt Created by this Agreement

- A. The participating agencies agree that this Agreement shall not give rise to any liability or responsibility for the failure to respond to any request for assistance made pursuant to this Agreement. This Agreement shall not be construed as deemed to be an Agreement for the benefit of any third party or parties, or no third party or parties shall have any right or action whatsoever hereunder for any cause whatsoever.
- B. The participating agencies further agree that each agency will be responsible for defending its own respective entity and personnel in any action, claim, or dispute that arises in connection with or as the result of this Agreement and that each agency will be responsible for bearing their own costs, damages, losses, expenses, and attorney fees arising from or related to such action, claim, or dispute.
- C. The participating agency regularly employing the law enforcement officer shall pay all wages and disability payments, pension payments, damages to equipment and clothing, medical expenses, and travel, food, and lodging expenses. The stricken law enforcement agency whose authorized official requested the services shall reimburse the aiding law enforcement agency within 30 days of reimbursement being requested in writing. Any payments made under this Agreement (1) will be based on cost recovery, (2) will fairly

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

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

Section 5 Adoption and Termination

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

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

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

City of Nacogdoches

Trinity County

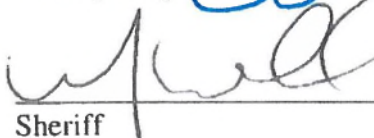
Mayor

Date

 2-08-23
Chief of Police Date

County Judge

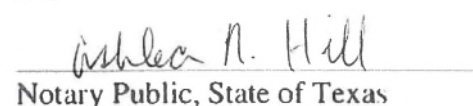
Date

 7/20/22
Sheriff Date

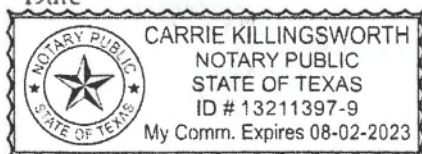
Attest:


Notary Public, State of Texas

Attest:

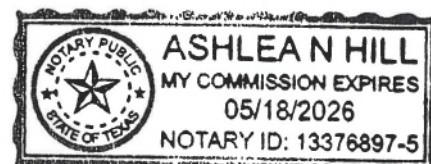

Notary Public, State of Texas

2-8-2023
Date



7-14-22
Date

[4]



PRESENTER: Pam Curbow, Finance Director

ITEM/SUBJECT: Consider approval of a contract between the City of Nacogdoches and Chastang Ford for the purchase of two fleet vehicles. (Director of Finance)

SUMMARY/BACKGROUND: The City's 2022-2023 amended budget includes the purchases of two (2) ¾ ton trucks for Customer Service and for Parks Departments. City staff has spent the last few months working with several vehicle dealerships to determine the potential availability of fleet vehicles. Due to current market conditions, several manufacturers are limiting production of certain fleet vehicles. We have located two (2) fleet vehicles that we are able to order through the BuyBoard state contract with Chastang Ford.

FINANCIAL:

Item is budgeted:

Account No.: 60.60.680.20

Account Name: *Equip Replacement Fund Vehicle Capital*

Amount: \$52,000

Account No.: 30.35.680.20

Account Name: *Utility Fund Customer Service Vehicle Capital*

Amount: \$48,000

*Amendment needed

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

Not Applicable

CITY CONTACT: Drew Flores, Purchasing & Contract Specialist
floresd@nactx.us
936-559-2539

ATTACHMENTS:

1. Quote
2. Buyboard Contract Extension Letter

CHASTANG ENTERPRISES HOUSTON LLC / DBA CHASTANG FORD**BUYBOARD WORKSHEET****601-19****End User:** CITY OF NACOGDOCHES**ASTANG REP** ED MILLER**Contact:** KENNY FERGUSON**Phone/fax:** 713-678-5007**Phone/email:** _____**Date:** Wednesday, February 22, 2023**Product Description:** 2023 FORD F250**email:** emiller@chastangford.com**A. Bid Series:** 125**A. Base Price:** \$ 41,788.00**B. Published Options [Itemize each below]**

Code	Options	Bid Price	Code	Options	Bid Price
CC1	CREW CAB UPGRADE	\$ 5,495.00		6.8L V8	INCL
LBOX	8' PICKUP BOX	\$ 2,995.00		10 SPEED AUTOMATIC	INCL
X3L	3.73 ELECTRONIC LOCKING AXLE	\$ 430.00		CLASS V TRAILER TOW PKG	INCL
52B	BRAKE CONTROLLER	INCL			
43C	110V/400W OUTLET	\$ 175.00			
66S	UPFITTER SWITCHES	\$ 165.00			
64D	250 AMP ALTERNATOR	\$ 85.00			
	POWER EQUIPMENT GROUP	INCL			
	CRUISE CONTROL	INCL			
Total of B. Published Options:					\$ 9,345.00

C. Unpublished Options [Itemize each below, not to exceed 25%]**\$= 0.0 %**

Options	Bid Price	Options	Bid Price
Total of C. Unpublished Options:			\$ -

D. Pre-delivery Inspection:INCL**E. Texas State Inspection:**INCL**F. Manufacturer Destination/Delivery:**INCL**G. Floor Plan Interest (for in-stock and/or equipped vehicles):**\$ -**H. Lot Insurance (for in-stock and/or equipped vehicles):**\$ -**I. Contract Price Adjustment:** 2023 PRICE INCREASE AND CONCESS REDUCTI\$ 3,500.00**J. Additional Delivery Charge:** 0 miles\$ -**K. Subtotal:**\$ 54,633.00**L. Quantity Ordered** 5 x **K =**\$ 273,165.00**M. Trade in:** _____**N. BUYBOARD FEE**\$ 400.00**O. TOTAL PURCHASE PRICE****\$ 273,565.00**

October 21, 2022

Sent via email to: emiller@chastangford.com

Ed Miller
Chastang Enterprises-Houston, LLC
6200 North Loop East
Houston TX 77026

Re: Vehicles, Heavy-Duty Trucks, Police Motorcycles, Parts, and Service Labor
BuyBoard Contract No. 601-19

The Local Government Purchasing Cooperative (BuyBoard) awarded your company a contract under Contract No. 601-19, Vehicles, Heavy-Duty Trucks, Police Motorcycles, Parts, and Service Labor, for which the current term is set to expire November 30, 2022. We previously notified you that, in accordance with the General Terms and Conditions of the Contract, BuyBoard intended to consider extensions to this contract on a month-to-month basis after the expiration of the current term until a successor contract is awarded.

We are writing to inform you that, at this time, BuyBoard is extending your contract on a month-to-month basis beginning December 1, 2022. All discounts, terms, and conditions of your contract will remain the same. If you agree to this extension, there is nothing you need to do. However, if you do not agree to this extension, you must notify me via email at connie.burkett@tasb.org on or before November 30, 2022.

BuyBoard expects to issue a new proposal invitation for Vehicles, Heavy-Duty Trucks, Police Motorcycles, Parts, and Service Labor in 2023. Please keep an eye out for the proposal invitation, as you must submit a proposal to have the opportunity to be considered for award on future contracts. You will be separately notified when your current contract (Contract No. 601-19) expires which in all events, regardless of whether notice is provided or received, shall be no later than the last day before the start date of the successor contract.

If you have questions, please contact me at connie.burkett@tasb.org. We appreciate your interest in The Local Government Purchasing Cooperative.

Sincerely,



Connie W Burkett, *CTSB*
TASB Department Director,
Cooperative Operations

PRESENTER: Pam Curbow, Finance Director

ITEM/SUBJECT: Consider approval of an ordinance amending Ordinance No. 1929-09-22 appropriating various amounts in accordance with the budget adopted for the ensuing fiscal year beginning October 1, 2022 and ending September 30, 2023 for the purchase of two fleet vehicles. (Director of Finance)

SUMMARY/BACKGROUND: The City's 2022-2023 amended budget includes the purchases of two (2) $\frac{3}{4}$ ton trucks for Customer Service and Parks Departments. City staff has spent the last few months working with several vehicle dealerships to determine the potential availability of fleet vehicles. Due to current market conditions, several manufacturers are limiting production of certain fleet vehicles. We have located two (2) fleet vehicles that we are able to order through the BuyBoard state contract with Chastang Ford. The amounts originally budgeted are not sufficient to cover the increase cost of these vehicles so a budget amendment is needed.

FINANCIAL:

Item is not sufficiently budgeted:

Account No.: 60.60.680.20

Account Name: *Equip Replacement Fund Vehicle Capital*

Amount Budgeted : \$52,000

Amendment Needed: \$2,633

Account No.: 30.35.680.20

Account Name: *Utility Fund Customer Service Vehicle Capital*

Amount: \$48,000

Amendment Needed: \$7,033

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

Not Applicable

CITY CONTACT: Drew Flores, Purchasing & Contract Specialist
floresd@nactx.us
936-559-2539

ATTACHMENTS: 1. Ordinance

AN ORDINANCE AMENDING ORDINANCE NO. 1929-09-22 APPROPRIATING VARIOUS AMOUNTS IN ACCORDANCE WITH BUDGET ADOPTED FOR THE ENSUING FISCAL YEAR BEGINNING OCTOBER 1, 2022 AND ENDING SEPTEMBER 30, 2023.

WHEREAS, the City Council of the City of Nacogdoches, Texas has approved and adopted the budget for said city for the ensuing fiscal year beginning October 1, 2022 and ending September 30, 2023.

WHEREAS, the City Council previously approved \$100,000 for fleet vehicle purchases for Customer Service and Parks Departments in the budget for fiscal year beginning October 1, 2022 and ending September 30, 2023, and

WHEREAS, prices for the purchase of vehicles exceed the budgeted amount for the current fiscal year, and

WHEREAS, with the adoption of this ordinance, the City is authorized to utilize available reserve funds in the amount of \$9,666, and

WHEREAS, with the adoption of this ordinance, the Finance Department is authorized to expend a total of \$109,666 for the fleet vehicle purchases.

NOW, THEREFORE BE IT ORDAINED by the City Council of the City of Nacogdoches that sums of money as herein set forth in said budget are hereby appropriated and amended for the payment of capital outlays of the city government of the City of Nacogdoches as follows:

Fund	Dept.	Acct.	Department	Description	Amt.
30	35	680.20	Utility Customer Service	Utility Fund Vehicle Capital	\$ 7,033
60	60	680.20	Equipment Replacement	Equip Replacement Fund Vehicle Capital	\$ 2,633

PASSED AND APPROVED this the 21st day of March 2023.

Jimmy Mize, Mayor
City of Nacogdoches

ATTEST:

Jan Vinson, City Secretary

Approved as to form: _____
Steven Kirkland, City Attorney

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

PRESENTER: Steven Kirkland, City Attorney

ITEM/SUBJECT: Consider a resolution regarding the application of Centerpoint Energy Resources Corp., Beaumont/East Texas Division, to increase rates under the Gas Reliability Infrastructure Program; suspending Centerpoint's proposed effective date for forty-five days; and authorizing the City's continued participation in a coalition of cities known as the "Alliance Of Centerpoint Municipalities." (City Attorney)

SUMMARY/BACKGROUND:

Last year, the City rejoined the Alliance of Centerpoint Municipalities which monitors rate increases by Centerpoint and adopted a Resolution suspending a rate increase for 45 days while a review of the rate filing was conducted. Centerpoint has again filed for an interim rate increase and this resolution will suspend the increase for Centerpoint customers within the City for 45 days while a review of Centerpoint's PUC filing is conducted.

ALLIANCE OF CENTERPOINT MUNICIPALITIES

The City is a member of the Alliance of CenterPoint Municipalities ("ACM"). ACM was organized by a number of municipalities served by CenterPoint Energy Resources Corp., Beaumont/East Texas Division ("CenterPoint") and has been represented by the law firm of Herrera Law & Associates, PLLC (through Mr. Alfred R. Herrera) to assist in reviewing applications to change rates submitted by CenterPoint.

"GRIP" RATE APPLICATION

Under section 104.301 of the Gas Utility Regulatory Act (GURA), a gas utility is allowed to request increases in its rates to recover a return on investments it makes between rate cases. This section of GURA is commonly referred to as the "GRIP" statute, that is, the "Gas Reliability Infrastructure Program," and is also referred to as an "Interim Rate Adjustment" ("IRA"). The Supreme Court of Texas concluded that a filing made under the GRIP statute permitted gas utilities the opportunity to recover return on capital expenditures made during the interim period between rate cases by applying for interim rate adjustment and that proceedings under the GRIP statute did not contemplate either adjudicative hearings or substantive review of utilities' filings for interim rate adjustments. Instead, the Court concluded, the GRIP statute provides for a ministerial review of the utility's filings to ensure compliance with the GRIP statute and the Railroad Commission's rules, and that it is within the Railroad Commission's authority to preclude cities from intervening and obtaining a hearing before the Railroad Commission. The Court's opinion has severely limited a city's ability to perform a meaningful review of a gas-utility's GRIP filing.

CENTERPOINT'S "GRIP" APPLICATION

On or about March 2, 2023, CenterPoint filed for an increase in gas utility rates under the Gas Reliability Infrastructure Program ("GRIP"). CenterPoint's application, when approved by the Railroad Commission, will result in an increase in the monthly customer charges as shown below:

Rate Schedule	Current Customer Charge	Proposed 2023 Interim Rate Adjustment	Adjusted Charge	Increase Per Bill
R-2098-I-GRIP 2023; R-2098-U-GRIP 2023 Residential	\$21.95 per customer per month	\$2.92 per customer per month	\$24.87 per customer per month	\$2.92 per customer per month
GSS-2098-I-GRIP 2023; GSS-2098-U-GRIP 2023 General Service Small	\$43.03 per customer per month	\$4.78 per customer per month	\$47.81 per customer per month	\$4.78 per customer per month
GSLV-629-I-GRIP 2023; GSLV-629-U-GRIP 2023 General Service Large Volume	\$164.73 per customer per month	\$24.12 per customer per month	\$188.85 per customer per month	\$24.12 per customer per month

CenterPoint refers to its application as its "2023" interim adjustment. The increase in rates CenterPoint presents in its application is based on capital expenditures it made from January 1, 2022 through December 31, 2022.

REVIEW AND ACTION RECOMMENDED

Although the City's ability to review and effectuate a change in CenterPoint's requested increase is limited, the City should exercise due diligence with regard to rate increases of monopoly utilities who operate within its boundaries, including increases requested under the GRIP statute to ensure compliance with the requirements of that law. This includes whether CenterPoint's current rates produce a rate of return in excess of its authorized rate of return. To exercise its due diligence, it is necessary to suspend CenterPoint's proposed effective date of May 1, 2023, for forty-five days, so that the City can evaluate whether the data and calculations in CenterPoint's rate application are correctly done, and whether CenterPoint's application otherwise conforms to the requirements of the GRIP statute.

Therefore, ACM's Special Counsel, the law firm of Herrera Law & Associates, PLLC (through Alfred R. Herrera) recommends that the City adopt a resolution suspending CenterPoint's proposed effective date for 45 days. Assuming a proposed effective date of May 1, 2023, CenterPoint's proposed effective date is suspended until June 15, 2023.

The City must take action to suspend no later than May 1, 2023.

FINANCIAL:

No financial impact associated with this item

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

Not Applicable

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

ATTACHMENTS: 1. Resolution

RESOLUTION NO. 1332-03-23

A RESOLUTION BY THE CITY OF NACOGDOCHES, TEXAS, ("CITY") RESPONDING TO THE APPLICATION OF CENTERPOINT ENERGY RESOURCES CORP., D/B/A CENTERPOINT ENERGY ENTEX AND CENTERPOINT ENERGY TEXAS GAS – BEAUMONT/EAST TEXAS DIVISION (CENTERPOINT), TO INCREASE RATES UNDER THE GAS RELIABILITY INFRASTRUCTURE PROGRAM; SUSPENDING THE EFFECTIVE DATE OF THIS RATE APPLICATION FOR FORTY-FIVE DAYS; AUTHORIZING THE CITY'S PARTICIPATION IN A COALITION OF CITIES KNOWN AS THE "ALLIANCE OF CENTERPOINT MUNICIPALITIES;" REQUIRING THE REIMBURSEMENT OF COSTS; DETERMINING THAT THE MEETING AT WHICH THE RESOLUTION WAS ADOPTED COMPLIED WITH THE TEXAS OPEN MEETINGS ACT; MAKING SUCH OTHER FINDINGS AND PROVISIONS RELATED TO THE SUBJECT; AND DECLARING AN EFFECTIVE DATE.

WHEREAS: on or about March 2, 2023, CenterPoint Energy Resources Corp., d/b/a CenterPoint Energy Entex and CenterPoint Energy Texas Gas – Beaumont/East Texas Division (CenterPoint or Company) filed for an increase in gas utility rates under the Gas Reliability Infrastructure Program ('GRIP'), resulting in a requested increase in the monthly customer charges as shown in the table below:

Rate Schedule	Current Customer Charge	Proposed 2023 Interim Rate Adjustment	Adjusted Charge	Increase Per Bill
R-2098-I-GRIP 2023; R-2098-U-GRIP 2023 Residential	\$21.95 per customer per month	\$2.92 per customer per month	\$24.87 per customer per month	\$2.92 per customer per month
GSS-2098-I-GRIP 2023; GSS-2098-U-GRIP 2023 General Service Small	\$43.03 per customer per month	\$4.78 per customer per month	\$47.81 per customer per month	\$4.78 per customer per month
GSLV-629-I-GRIP 2023; GSLV-629-U-GRIP 2023 General Service Large Volume	\$164.73 per customer per month	\$24.12 per customer per month	\$188.85 per customer per month	\$24.12 per customer per month

and

WHEREAS: the City has a special responsibility to exercise due diligence with regard to rate increases of monopoly utilities who operate within its boundaries; and

WHEREAS: the application to increase rates by CenterPoint is complex; and

WHEREAS: it is necessary to suspend the effective date for the increase in rates for forty-five days, so that the City can assure itself that the data and calculations in CenterPoint's rate

application are correctly done, and whether CenterPoint's application otherwise conforms to the requirements of Texas Utilities Code § 104.301, commonly referred to as the GRIP statute; and

WHEREAS: the effective date proposed by CenterPoint is May 1, 2023, but a suspension by the City will mean that the rate increase cannot go into effect prior to June 15, 2023.

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

Section 1. That the statements and findings set out in the preamble to this resolution are hereby in all things approved and adopted.

Section 2. The City suspends the requested effective date by CenterPoint for forty-five days pursuant to the authority granted the City under Section 104.301 of the Texas Utilities Code. The City finds that additional time is needed in order to review the data and calculations that provide the basis for the rate increase application, and to determine whether CenterPoint's application otherwise conforms to the requirements of the GRIP statute.

Section 3. The City shall continue to act jointly with other cities that are part of a coalition of cities known as the Alliance of CenterPoint Municipalities (ACM).

Section 4. The City authorizes the law firm of Herrera Law & Associates, PLLC, to act on its behalf in connection with CenterPoint's application to increase rates.

Section 5. CenterPoint is ordered to reimburse the City's reasonable rate case expenses incurred in response to CenterPoint's rate increase application within 30 days of receipt of invoices for such expenses to the extent allowed by law.

Section 6. The meeting at which this resolution was approved was in all things conducted in compliance with the Texas Open Meetings Act, Texas Government Code, Chapter 551.

Section 7. This resolution shall be effective immediately upon passage.

PASSED AND APPROVED this 21st day of March 2023.

Jimmy Mize, Mayor
City of Nacogdoches

ATTEST:

APPROVED AS TO FORM:

Jan Vinson, City Secretary

Steven Kirkland, City Attorney



City Council Meeting

Date: March 21, 2023

Agenda Item: 5.F.

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

ITEM/SUBJECT: Consider approval of a resolution closing East Main Street for the annual Texas Blueberry Festival June 9-10, 2023. (Executive Director of Conventions and Visitors Bureau)

SUMMARY/BACKGROUND: Consider approval of a resolution to close East Main Street for the Annual Blueberry Festival to be held on June 10, 2023 as outlined in the attached, proposed resolution. An approved resolution from city council is required in order to complete the application to the Texas Department of Transportation requesting permission to temporarily close a state highway.

FINANCIAL:

No financial impact associated with this item

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

Not Applicable

CITY CONTACT: Sherry Chaney Morgan, Executive Director Nacogdoches Convention and Visitors Bureau
sherry@visitnacogdoches.org
936-564-7351

ATTACHMENTS:

1. Resolution
2. Permit
3. Maps

RESOLUTION NO. 1333-03-23

WHEREAS, organizers of the Texas Blueberry Festival desire to have a safe and successful event for all vendors and participants and

WHEREAS, organizers of the Texas Blueberry Festival are requesting that the city of Nacogdoches close Main Street (SH 21) from its intersection with North Street eastward to its intersection at Mound Street from 6:00 PM June 9, 2023 until 5:30 PM June 10, 2023 in order to provide safety for the vendors and participants; and

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

NOW, THEREFORE BE IT RESOLVED by the City Council of the City of Nacogdoches, Texas that this resolution be adopted requesting the Texas Department of Transportation to allow the closing of Main Street (SH 21) from its intersection with North Street eastward to its intersection at Mound Street from 6:00 PM June 9, 2023 until 5:30 PM June 10, 2023 in order to provide safety for the vendors and participants, for the Texas Blueberry Festival.

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

PASSED AND APPROVED this March 21, 2023.

Mayor Jimmy Mize
City of Nacogdoches

ATTEST:

Jan Vinson, City Secretary



Thank you for submitting your Festival and Event Permit, we will contact you if we have any questions

Festival & Event Permit

Date: 02/01/2023

First Name	Event Set Up Time:	If available at
Kelly	9 a.m., Friday, June 9	your event
Last Name	Event Start Time:	location, will
Augustine	8 am Saturday, June 10, 2023	you need
Email Address	Event End Time:	electricity?
business@nactx.com	4 p.m., Saturday, June 10, 2023	Yes
Sign me up for email updates	Number of Expected	Is 220 Volt
Yes	Attendees:	needed?
Contact Person Daytime Phone:	15 - 20K	Yes
9365605533	Will you need any streets	Security or
Name of Event	closed?	Police needed?
Texas Blueberry Festival	Yes	Yes
Date of Event	If yes, what street(s) do you	
6/10/2023	need closed?:	
Desired Location of Event:	Should be the same area	
Downtown brick street area and Festival Park	closed and barricaded in	
Organization Hosting Event:	2022. E. Main from North St.	
Nacogdoches County Chamber of Commerce	to Mound St. Pecan from	
	Spring and Prince through	
Please include general schedule information	Festival Park. Fredonia St.	
and any additional details here:	from Commerce through	
Set up begins on Friday, June 9. University	Festival Park. Church St from	

Rental will set up canopies in Festival Park and on the Brick Streets.

Commerce to Pilar. Pilar St. from Pecan through

Please describe your event in detail:

The Texas Blueberry Festival is the most delicious festival in the Lone Star State. June 10, 2023 marks a day-long celebration of the blueberry harvest. As the only state-sanctioned blueberry festival in Texas, this delicious annual event attracts more th

Will alcohol be served?

No

Please list an estimated number of vendors who will be selling items:

200+

Will you need city trash receptacles to dispose of garbage onsite?

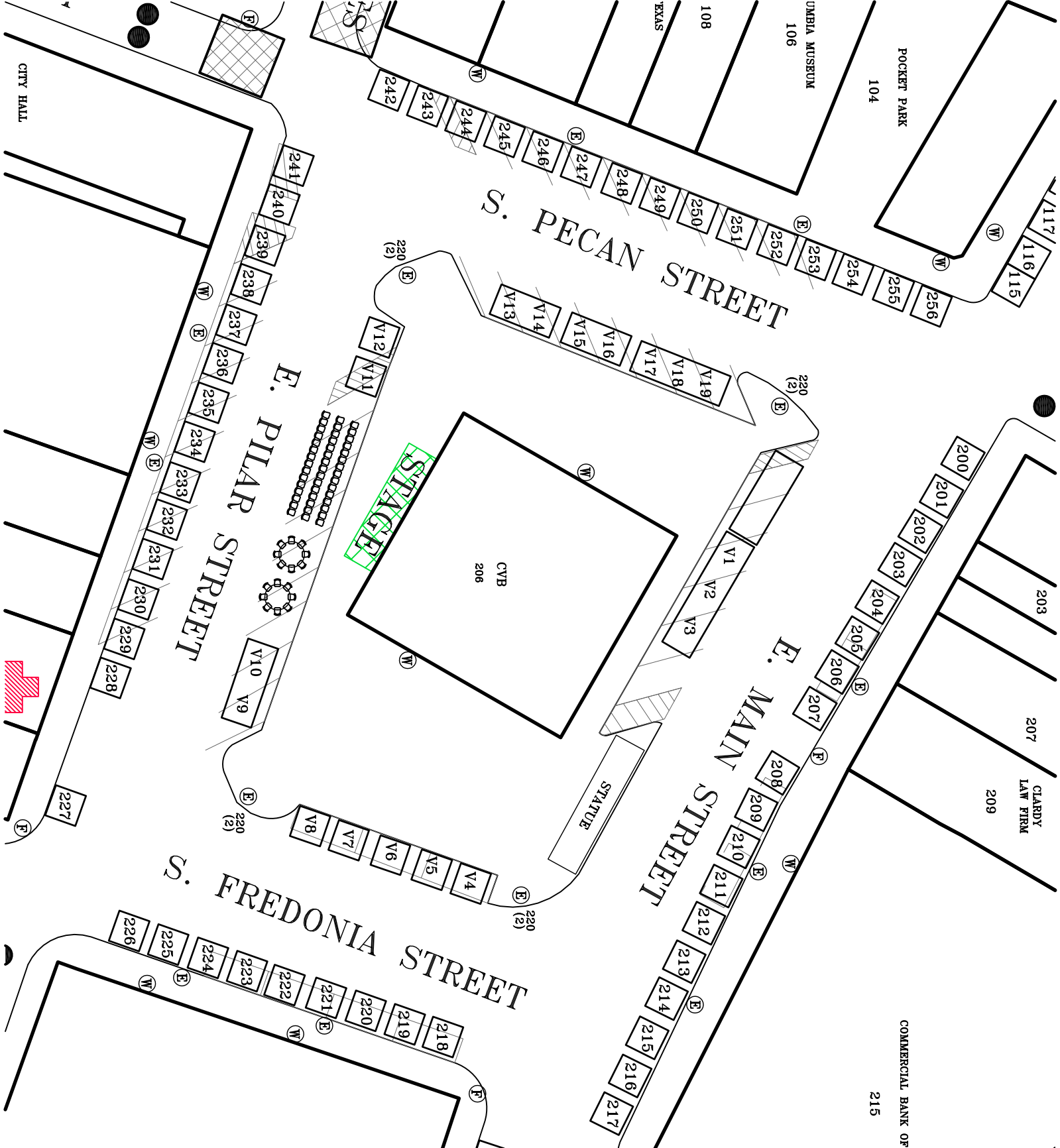
Yes

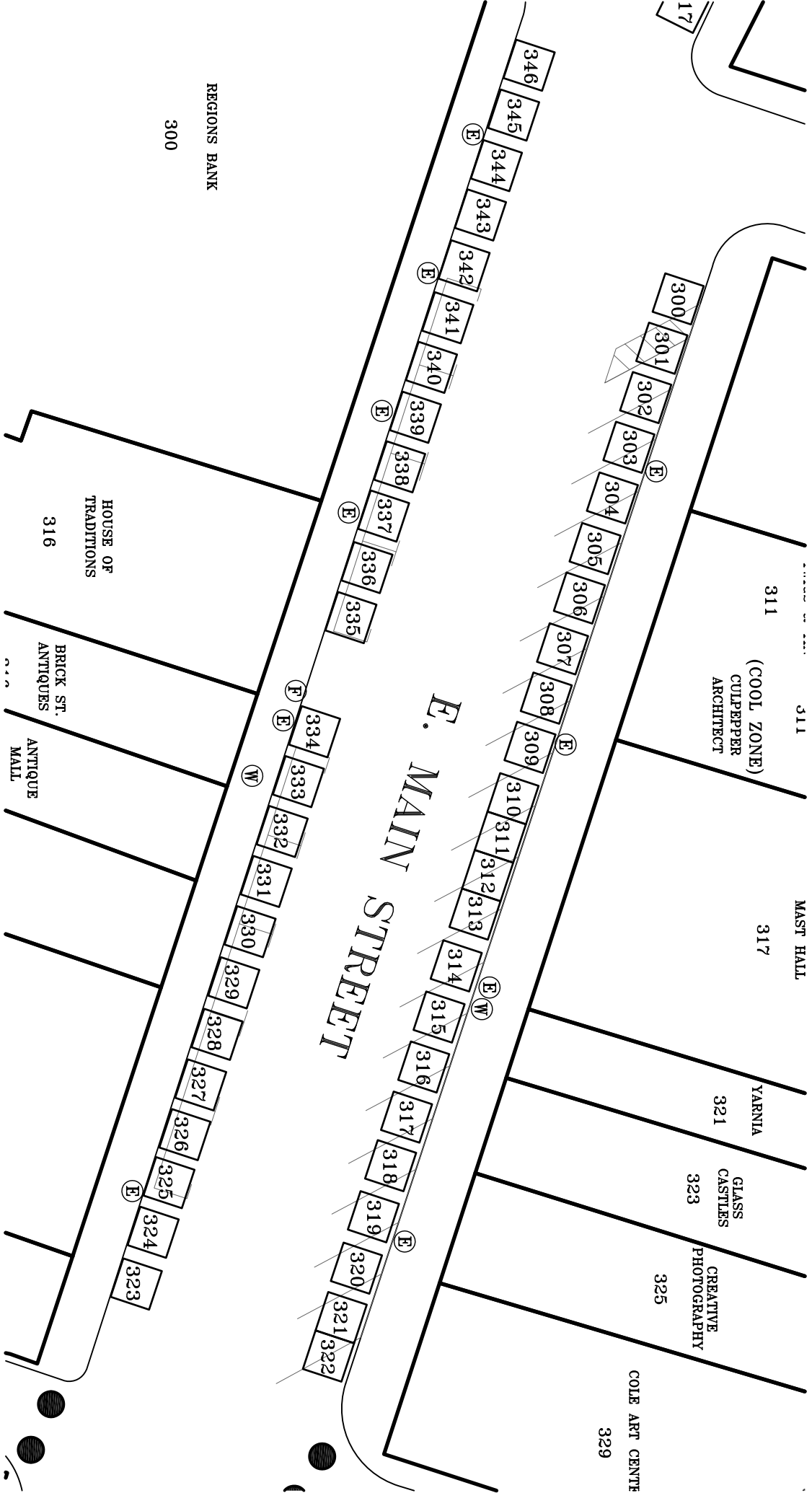
Yes

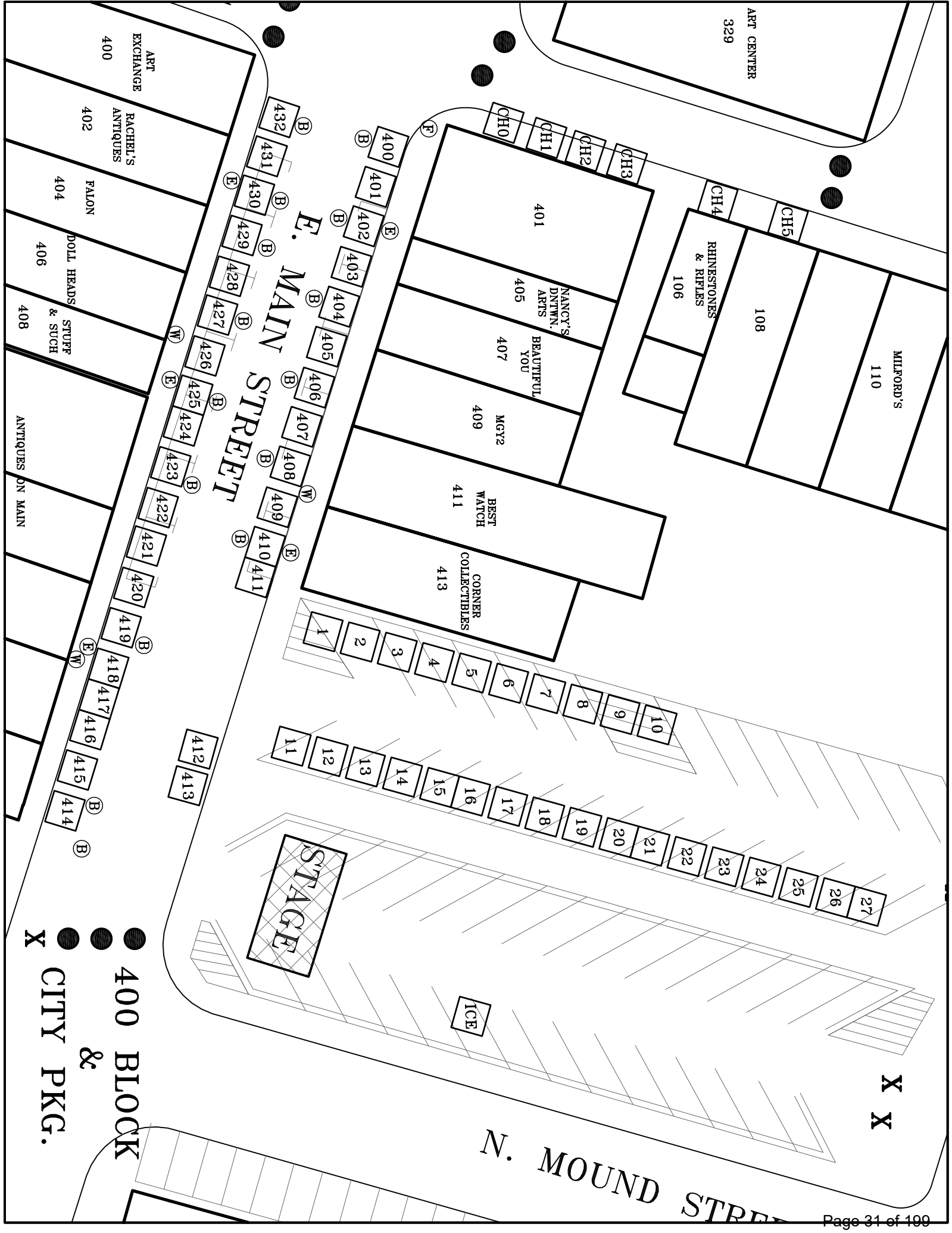
This form does not guarantee event approval. Once submitted, the form will be forwarded to corresponding city departments to determine if your event is feasible. You will receive a response once a decision is made, or if additional information is needed. If you have questions or concerns, please contact Sherry Morgan at sherry@visitnacogdoches.org or call 936-564-7351.

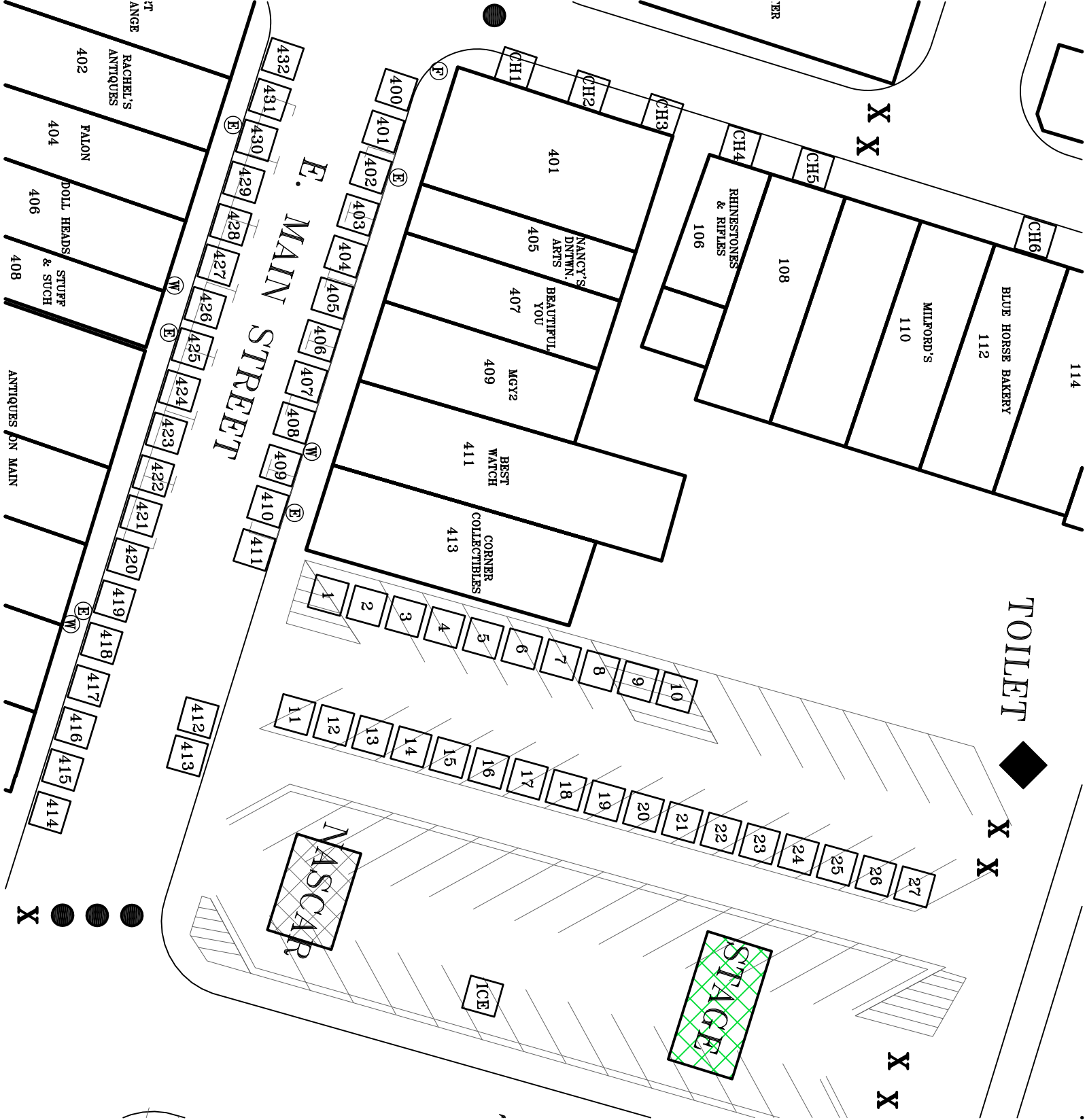
© Visit Nacogdoches
200 East Main
Nacogdoches, TX 75961

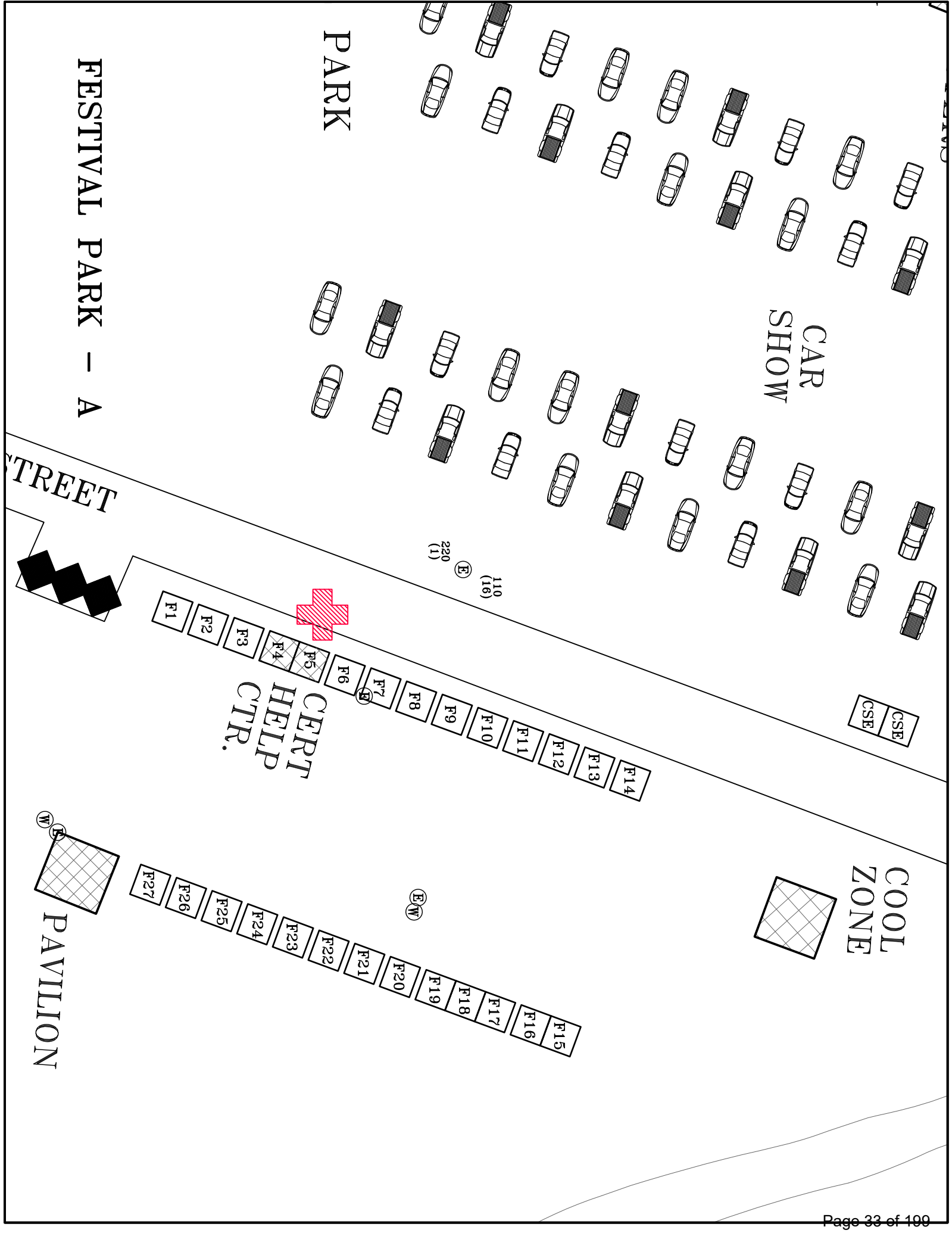
info@visitnacogdoches.org
<https://www.visitnacogdoches.org/>











CAR
SHOW

COOL
ZONE

PARK

FESTIVAL PARK - A

STREET

CERT
HELP
CTR.

PAVILION

CSE
CSE

E/W

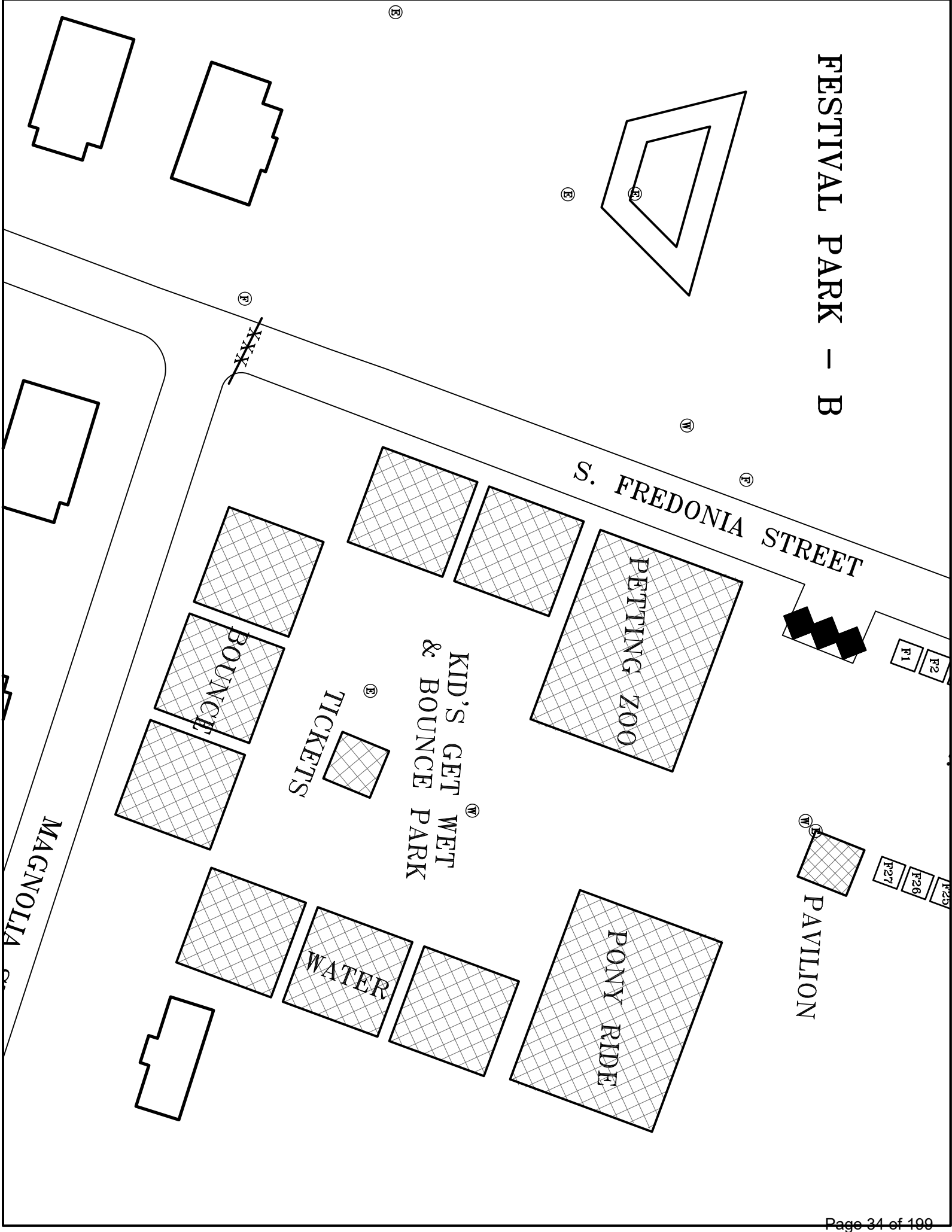
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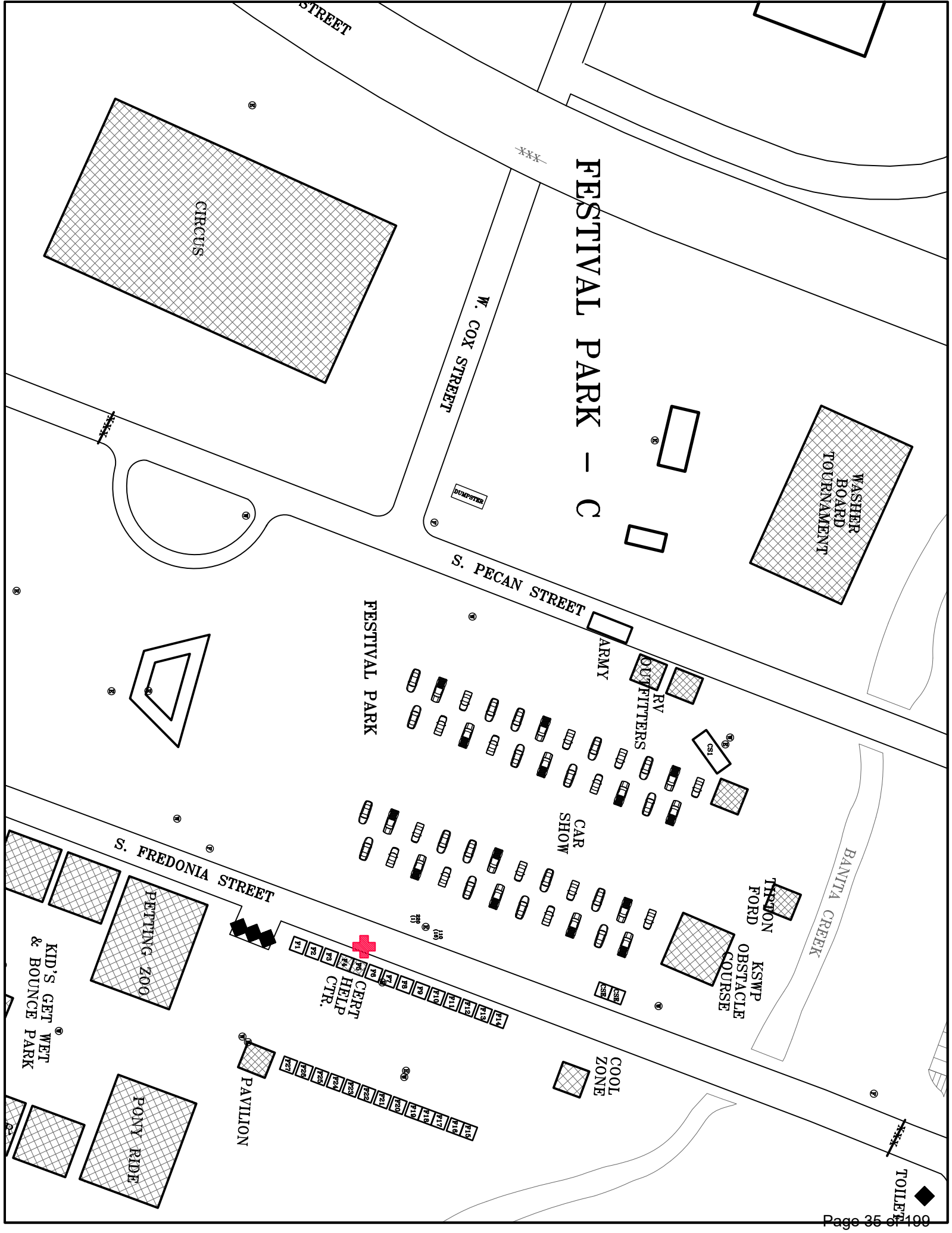
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FESTIVAL PARK – B





FESTIVAL PARK - C

W. COX STREET

S. PECAN STREET

S. FREDONIA STREET

FESTIVAL PARK

WASHER BOARD TOURNAMENT

CIRCUS

PETTING ZOO

PONY RIDE

KID'S GET WET & BOUNCE PARK

PAVILION

CERT HELP CTR.

ARMY

RV
OUTFITTERS

CAR SHOW

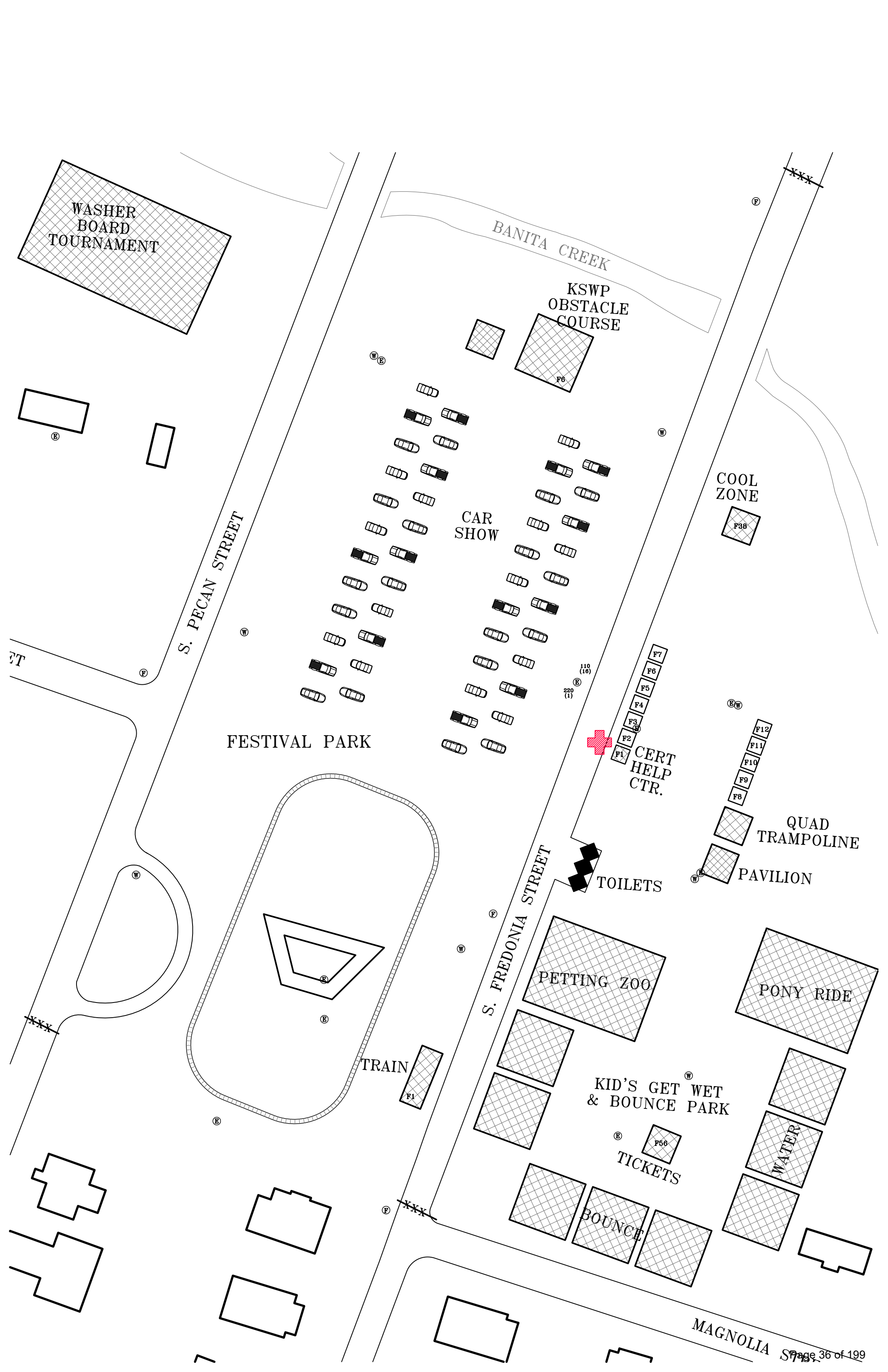
THERION FORD

KSWP OBSTACLE COURSE

COOL ZONE

BANITA CREEK

TOILET



WASHER
BOARD
TOURNAMENT

BANITA CREEK

KSWP
OBSTACLE
COURSE

CAR
SHOW

FESTIVAL PARK

COOL
ZONE

CERT
HELP
CTR.

QUAD
TRAMPOLINE

PAVILION

TOILETS

PETTING ZOO

PONY RIDE

KID'S GET WET
& BOUNCE PARK

TICKETS

BOUNCE

WATER

TRAIN



City Council Meeting

Date: March 21, 2023

Agenda Item: 5.G.

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

ITEM/SUBJECT: Consider approval of a resolution closing East Main Street for the Old Town Rig Down Event taking place September 15-17, 2023. (Executive Director, Convention and Visitors Bureau)

SUMMARY/BACKGROUND: Consider approval of a resolution to close East Main Street to traffic for the Old Town Rig Down Event as outlined in the proposed resolution, September 15-17, 2023. An approved resolution by city council is required in order to complete the application to the Texas Department of Transportation requesting the temporary closing of a state highway.

FINANCIAL:

No financial impact associated with this item

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

Not Applicable

CITY CONTACT: Sherry Chaney Morgan, Executive Director Nacogdoches Convention and Visitors Bureau sherry@visitnacogdoches.org
936-564-7351

ATTACHMENTS:

1. Resolution
2. Permit
3. Maps

RESOLUTION NO. 1334-03-23

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

WHEREAS, organizers of the Old Town Rig Down are requesting that the city of Nacogdoches close Main Street (SH 21) from its intersection with North Street eastward to its intersection at Mound Street as well as all side streets and all streets leading in and out of Festival Park from 8:00 AM September 15, 2023 until noon September 17, 2023 in order to provide safety for the vendors and participants; and

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

NOW, THEREFORE BE IT RESOLVED by the City Council of the City of Nacogdoches, Texas that this resolution be adopted requesting the Texas Department of Transportation to allow the closing of Main Street (SH 21) from its intersection with North Street eastward to its intersection at Mound Street as well as all side streets and all streets leading in and out of Festival Park from 8:00 AM September 15, 2023 until noon September 17, 2023 in order to provide safety for the vendors and participants for the Old Town Rig Down.

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

PASSED AND APPROVED this March 21, 2023.

Mayor Jimmy Mize
City of Nacogdoches

ATTEST:

Jan Vinson, City Secretary

First Name: Steven

Last Name: Molanders

Email Address: masseyrosefoundation@gmail.com

Sign me up for email updates: No

Contact Person Daytime Phone:: 936-615-0580

Name of Event: Old Town Rig Down

Date of Event: 9/15/2023

Desired Location of Event:: Downtown Main Street from North to Mound and Festival Park

Organization Hosting Event:: Massey Rose Foundation

Please include general schedule information and any additional details here:: Stage, Lighting,

and sound will be set up Thursday, September 14th in Festival Park ahead of the Friday night

concert. The restroom trailer will be delivered to Festival park on Thursday, September 14th.

Load In of trucks will occur from 8 am - 4 pm on Friday, September 15th. Golf carts and

porta-potties will be delivered. It's important downtown merchants are aware that Friday is

primarily a load-in day and that customers need to be aware that the streets will be closed for

both Friday and Saturday. Stores are invited to stay open late as foot traffic is greatest between

the hours of 6 pm and 9 pm. The entire family is invited to come and enjoy the light show put on

by the participating trucks. Friday night concert in Festival Park starting around 6:30p.

Event Set Up Time:: 8:00 am

Event Start Time:: 5:00 pm

Event End Time:: 12:00 pm

Number of Expected Attendees:: 5000

Will you need any streets closed?: Yes

If yes, what street(s) do you need to be closed? Main St from North to Mound, All side streets,

all streets leading in and out of Festival Park

Please describe your event in detail:: Truck Show to display the custom-built 18-wheelers.

Vendors, food, and entertainment for the entire family. An excellent online example of an event

can be found at: largecarsguitars.com

Will alcohol be served?: Yes

Please list an estimated number of vendors who will be selling items:: 5 food vendors 5

to10-merchandise 4 entertainers

Will you need city trash receptacles to dispose of garbage onsite?: Yes

If available at your event location, will you need electricity?: Yes

Is 220 Volt needed?: Fredonia St. (west side by CVB) and Festival Park (locate 2 food trucks

East side of Fredonia Street. **Requesting SFA restroom trailer for the event.**

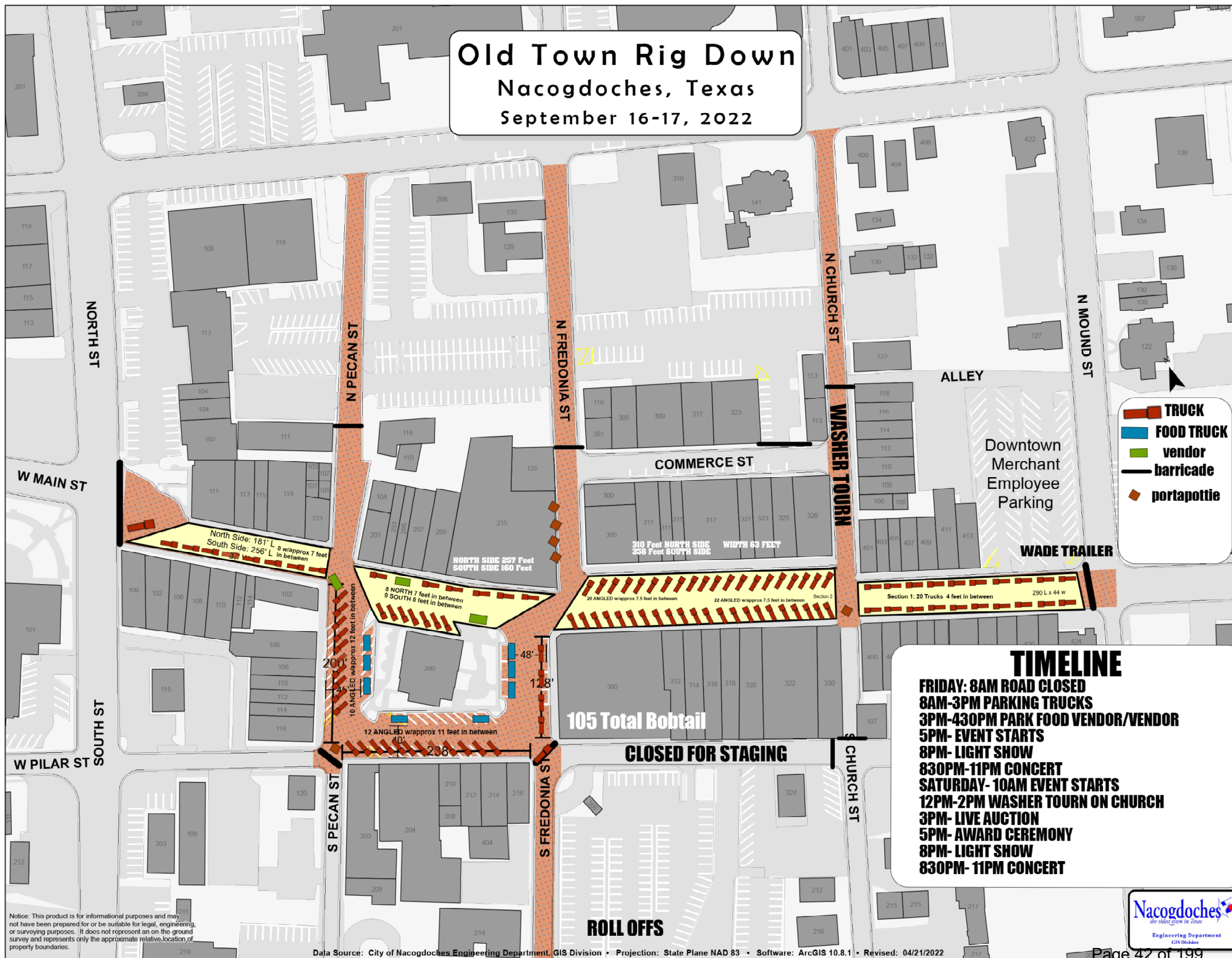
Security or Police needed?: Yes

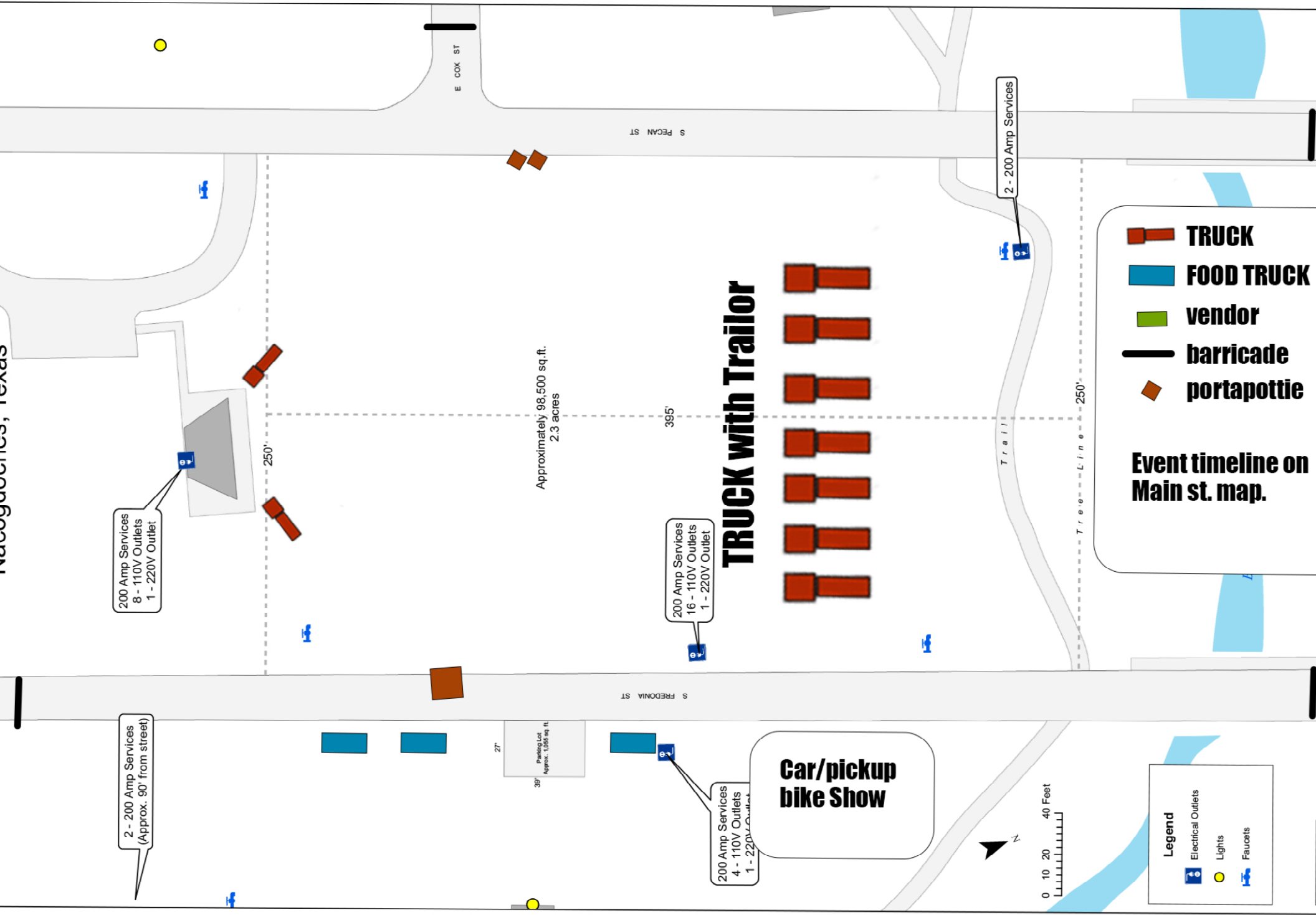
Security or Police - Other Explained:: potentially a 5k-10k event. Bring your own cooler will be allowed. Access into the park off of Cox needs to be discussed as it pertains to load-in for each band. Safety is always on everyone's mind, so determining a schedule is imperative for the talent.

Old Town Rig Down
Nacogdoches, Texas
September 16-17, 2022



Old Town Rig Down
Nacogdoches, Texas
September 16-17, 2022





- TRUCK**
- FOOD TRUCK**
- vendor**
- barricade**
- portapottie**

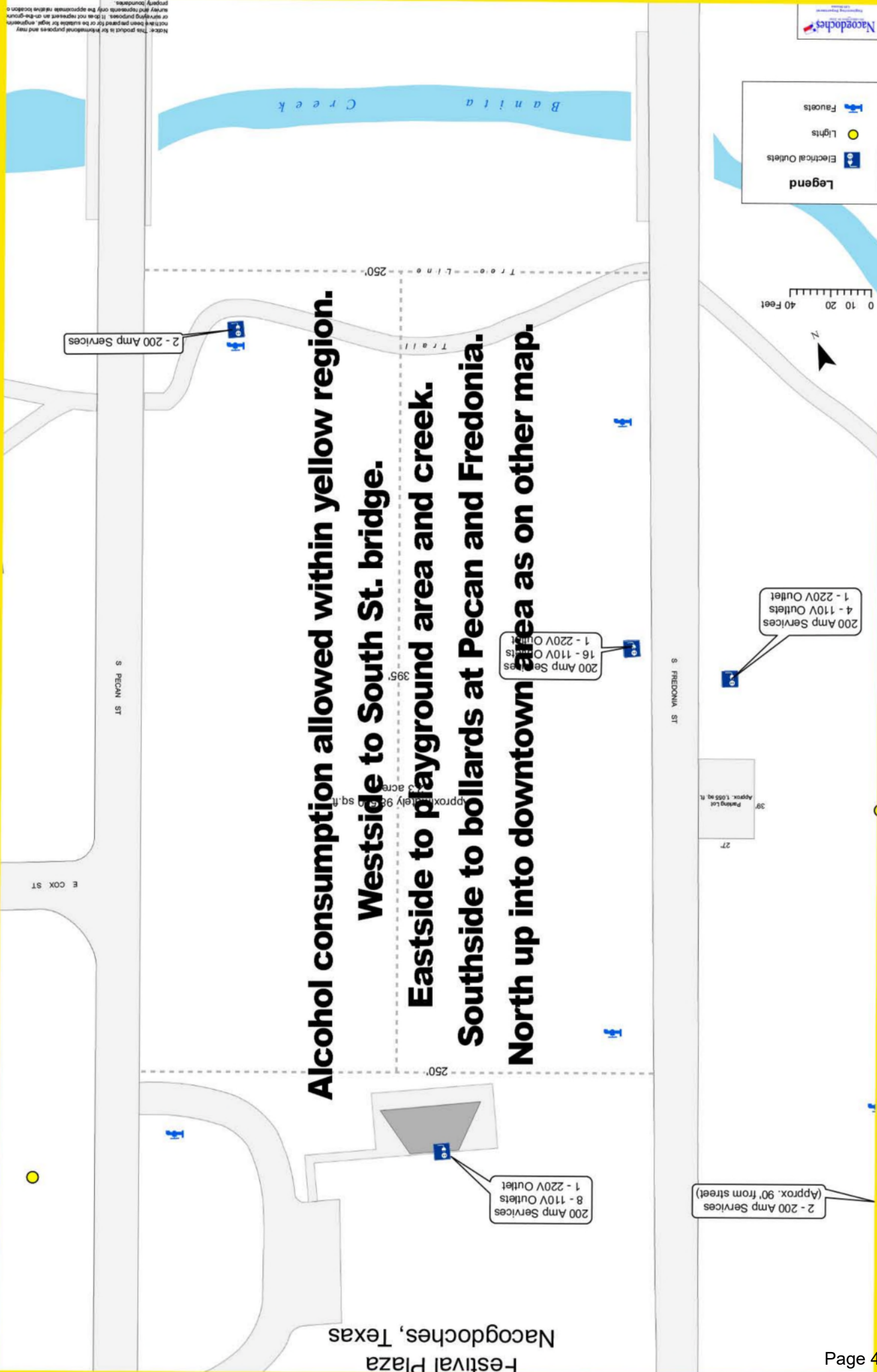
Event timeline on Main st. map.

Legend

- Electrical Outlets
- Lights
- Faucets



Festival Plaza
Nacogdoches, Texas



Alcohol consumption allowed within yellow region.
Westside to South St. bridge.
Eastside to playground area and creek.
Southside to bollards at Pecan and Fredonia.
North up into downtown area as on other map.

Note: This product is for informational purposes and may not have been prepared for or suitable for legal, engineering or surveying purposes. It does not represent an on-the-ground property boundaries.

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

ITEM/SUBJECT: Consider approval of a resolution closing East Main Street to traffic for the annual Dia de los Muertos Festival on November 4, 2023. (Executive Director, Convention and Visitors Bureau)

SUMMARY/BACKGROUND: Consider approval of a resolution closing East Main Street to traffic for the Annual Dia de los Muertos Festival as outlined in the proposed resolution attached, on November 4, 2023. An approved resolution from city council is required in order to complete the application to the Texas Department of Transportation requesting permission for the temporary closing of a state highway.

FINANCIAL:

No financial impact associated with this item

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

Not Applicable

CITY CONTACT: Sherry Chaney Morgan, Executive Director Nacogdoches Convention and Visitors Bureau sherry@visitnacogdoches.org
936-564-7351

ATTACHMENTS:

1. Resolution
2. Permit
3. Street Closure Map
4. Vendor Map - Draft

RESOLUTION NO. 1335-03-23

WHEREAS, organizers of the Dia de los Muertos event desire to have a safe and successful event for all vendors and participants and

WHEREAS, organizers of the Dia de los Muertos event are requesting that the city of Nacogdoches close Main Street (SH 21) from its intersection with North Street eastward to its intersection at Mound Street as well as the plaza square from noon November 4, 2023 until 9:00 PM November 4, 2023 in order to provide safety for the vendors and participants; and

WHEREAS, after duly considering such a request, it is the consent of the City Council that a resolution be adopted requesting the Texas Department of Transportation to allow the closing of Main Street for the Dia de los Muertos event.

NOW, THEREFORE BE IT RESOLVED by the City Council of the City of Nacogdoches, Texas that this resolution be adopted requesting the Texas Department of Transportation to allow the closing of Main Street (SH 21) from its intersection with North Street eastward to its intersection at Mound Street as well as the plaza square from noon November 4, 2023 until 9:00 PM November 4, 2023 in order to provide safety for the vendors and participants for the Dia de los Muertos event.

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

PASSED AND APPROVED this March 21, 2023.

Mayor Jimmy Mize
City of Nacogdoches

ATTEST:

Jan Vinson, City Secretary



Thank you for submitting your Festival and Event Permit, we will contact you if we have any questions

Festival & Event Permit

Date: 02/07/2023

First Name	Event Set Up Time:	If available at
Crystal	12:00pm	your event
Last Name	Event Start Time:	location, will
Hicks	4:00pm	you need
Email Address	Event End Time:	electricity?
hicksc@nactx.us	8:00pm	Yes
Sign me up for email updates	Number of Expected	Is 220 Volt
No	Attendees:	needed?
Contact Person Daytime Phone:	2000	Yes
9365592970	Will you need any streets	Security or
Name of Event	closed?	Police needed?
Dia de los Muertos Fiesta	Yes	Yes
Date of Event	If yes, what street(s) do you	
11/4/2023	need closed?:	
Desired Location of Event:	Main Street from North to	
Main Street, Downtown Square	Mound and downtown square	
Organization Hosting Event:	Please describe your event in	
Nacogdoches Public Library	detail:	
Please include general schedule information	Street festival with food and	
and any additional details here:	retail vendors, bounce house,	
Setting up vendor booths, bounce house, etc.	music and dance	
	performances	

Will alcohol be served?

No

Please list an estimated
number of vendors who will
be selling items:

75

Will you need city trash
receptacles to dispose of
garbage onsite?

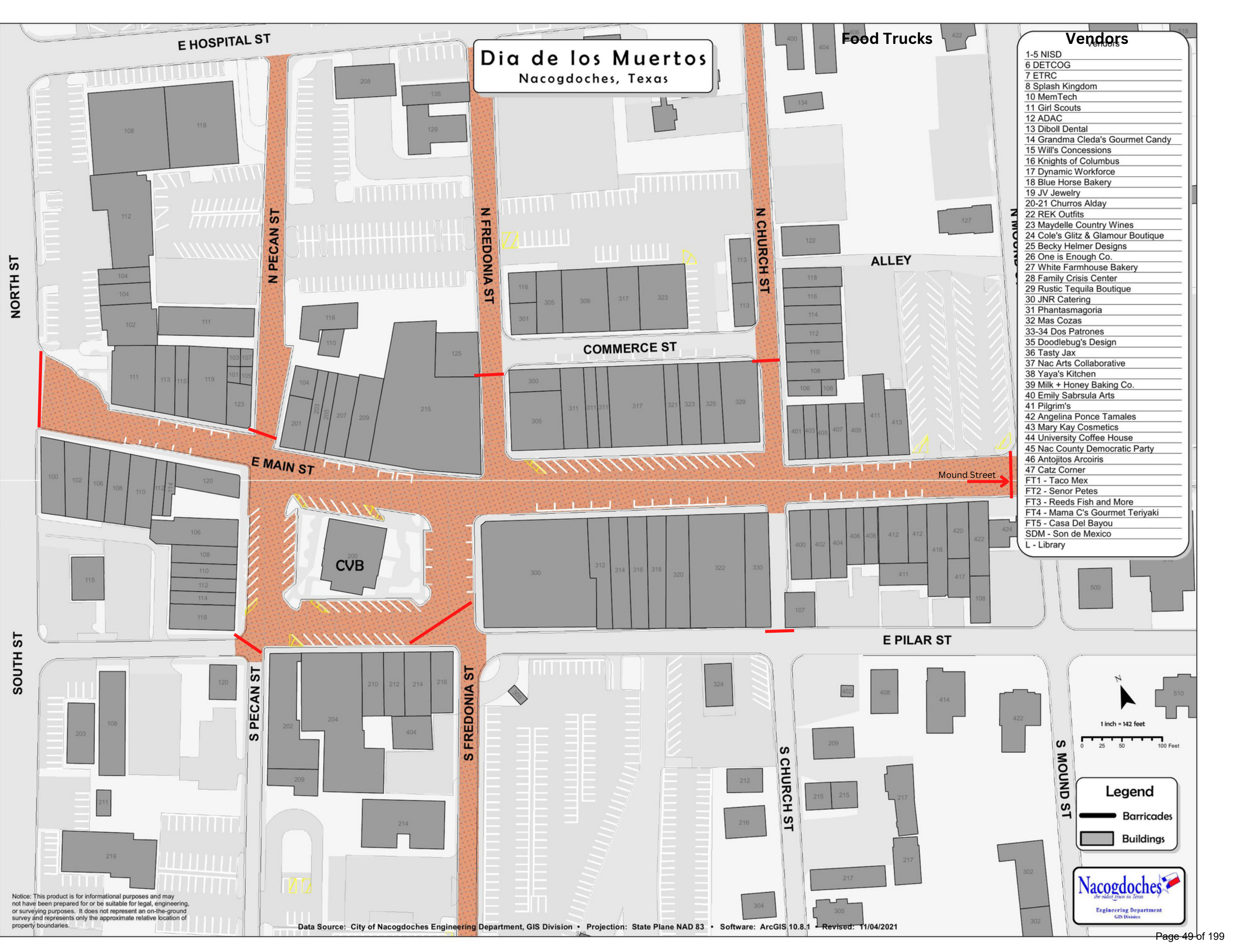
Yes

Yes

This form does not guarantee event approval. Once submitted, the form will be forwarded to corresponding city departments to determine if your event is feasible. You will receive a response once a decision is made, or if additional information is needed. If you have questions or concerns, please contact Sherry Morgan at sherry@visitnacogdoches.org or call 936-564-7351.

© Visit Nacogdoches
200 East Main
Nacogdoches, TX 75961

info@visitnacogdoches.org
<https://www.visitnacogdoches.org/>



Dia de los Muertos
Nacogdoches, Texas

Food Trucks

Vendors

- 1-5 NISD
- 6 DETCOG
- 7 ETRC
- 8 Splash Kingdom
- 10 MemTech
- 11 Girl Scouts
- 12 ADAC
- 13 Diboll Dental
- 14 Grandma Cleda's Gourmet Candy
- 15 Will's Concessions
- 16 Knights of Columbus
- 17 Dynamic Workforce
- 18 Blue Horse Bakery
- 19 JV Jewelry
- 20-21 Churros Alday
- 22 REK Outfits
- 23 Maydelle Country Wines
- 24 Cole's Glitz & Glamour Boutique
- 25 Becky Helmer Designs
- 26 One is Enough Co.
- 27 White Farmhouse Bakery
- 28 Family Crisis Center
- 29 Rustic Tequila Boutique
- 30 JNR Catering
- 31 Phantasmagoria
- 32 Mas Cozas
- 33-34 Dos Patrones
- 35 Doodlebug's Design
- 36 Tasty Jax
- 37 Nac Arts Collaborative
- 38 Yaya's Kitchen
- 39 Milk + Honey Baking Co.
- 40 Emily Sabrula Arts
- 41 Pilgrim's
- 42 Angelina Ponce Tamales
- 43 Mary Kay Cosmetics
- 44 University Coffee House
- 45 Nac County Democratic Party
- 46 Antojitos Arcoiris
- 47 Catz Corner
- FT1 - Taco Mex
- FT2 - Senior Petes
- FT3 - Reeds Fish and More
- FT4 - Mama C's Gourmet Teriyaki
- FT5 - Casa Del Bayou
- SDM - Son de Mexico
- L - Library

Legend

- Barricades
- Buildings

Nacogdoches
the oldest town in Texas
Engineering Department
GIS Division

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.

Dia de los Muertos
Nacogdoches, Texas

Food Trucks

- 1 Mama C's Gourmet Teriyaki
- 2 Attoyac Bayou BBQ
- 3 Taco Mex
- 4 Waffles with a Twist
- 5 Shali's Indian Kitchen
- 6 Casa del Bayou
- 7 Tasty Jax
- 8 Coco Loco

Vendors

- 1 Farmers Insurance
- 2 Becky Helmer Designs
- 3 Westminster Presbyterian Church
- 4 Rustic Tequila Boutique
- 5 ADAC
- 6 Besos Boutique
- 7 Church of Jesus Christ of Latter Day Saints
- 8 Ello Baby Boutique
- 9 Doodlebugs Design by Amy Bridges
- 10 Splash Kingdom Timber Falls
- 11 Joselyn
- 12 Color Street
- 13 Knots with Sofia
- 14 Cecil's Candies
- 15 Cuttin' Classics with Lupe
- 16 Studio Yvette
- 17 One Made
- 18 K's Cookie Jars
- 19 Cosmos
- 20 Mrs. A's Wreaths and More
- 21 A & A Gifts
- 22 Tacos Dona Pancha
- 23 Kristen Gans Ceramics
- 24 Nacogdoches County Democratic Party
- 25 Family Crisis Center of East Texas
- 26 Taqueria Mi Tierra
- 27 Mama Rose Italian Ice
- 28 Hortencia Rodriguez
- 29 Nacogdoches Arts Collaborative
- 30 Lady Bones Baubles & Smoke & Moon
- 31 Pilgrim's Pride
- 32 Maydelle Country Wines
- 33 Custom Vinyl T's
- 34 Custom Vinyl T's
- 35 Venezuelan Food
- 36 Kumon Math
- 37 Nay Nay's Novel Creations
- 38 El Roble Tortilleria
- 39 DETCOG
- 40 Treats by Sofia
- 41 Joella Villanueva
- 42 Yaya's Kitchen
- 43 Yaya's Kitchen
- 44 Lufkin Clinic of Chiropractic
- 45 Shen Chuan Self Defense
- 46 Knights of Columbus
- 47 Knights of Columbus
- 48 Workforce Solutions
- 49 Will's Concessions
- 50 Darlin' Mobile Market
- 51 Taqueria Mexicana
- 52 5K Creations
- 53 Echinata Arts
- 54 Fasgot Entertainment
- 55 Fasgot Entertainment
- 56 Flora's Tamales
- 57 Tasty Jax
- 58 The Vision Box
- 59 SFA Art Alliance
- 60 Friends of the Visual Arts
- 61 Mi-Chelada Mix

Legend

- Barricades
- Buildings





City Council Meeting

Date: March 21, 2023

Agenda Item: 5.I.

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

ITEM/SUBJECT: Consider approval of a resolution to close East Main Street for the annual Veterans Day Parade, November 11, 2023. (Executive Director, Convention and Visitors Bureau)

SUMMARY/BACKGROUND: Consider approval of a resolution to close East Main Street for the annual Veteran's Day Parade as outlined in the attached proposed resolution, to take place November 11, 2023. An approved resolution is required in order to complete the application to the Texas Department of Transportation requesting permission for the temporary closing of a state highway.

FINANCIAL:

No financial impact associated with this item

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

Not Applicable

CITY CONTACT: Sherry Chaney Morgan, Executive Director Nacogdoches Convention and Visitors Bureau
sherry@visitnacogdoches.org
936-564-7351

ATTACHMENTS:

1. Resolution
2. Permit

RESOLUTION NO. 1336-03-23

WHEREAS, organizers of the 2023 Veterans Day Parade desire to have a safe and successful event for all vendors and participants and

WHEREAS, organizers of the 2023 Veterans Day Parade are requesting that the city of Nacogdoches close Main Street (SH 21) from its intersection with North Street eastward to its intersection at Mound Street as well as the TJR parade route from 8:30 AM November 11, 2023 until 11:00 AM November 11, 2023 in order to provide safety for the vendors and participants; and

WHEREAS, after duly considering such a request, it is the consent of the City Council that a resolution be adopted requesting the Texas Department of Transportation to allow the closing of Main Street for the 2023 Veterans Day Parade.

NOW, THEREFORE BE IT RESOLVED by the City Council of the City of Nacogdoches, Texas that this resolution be adopted requesting the Texas Department of Transportation to allow the closing of Main Street (SH 21) from its intersection with North Street eastward to its intersection at Mound Street as well as the TJR parade route from 8:30 AM November 11, 2023 until 11:00 AM November 11, 2023 in order to provide safety for the vendors and participants for the 2023 Veterans Day Parade.

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

PASSED AND APPROVED this March 21, 2023.

Mayor Jimmy Mize
City of Nacogdoches

ATTEST:

Jan Vinson, City Secretary

First Name: Samantha
Last Name: Knight
Email Address: sknight@nac-sheriff.com
Sign me up for email updates: Yes
Contact Person Daytime Phone:: 9365607822
Name of Event: 2023 Veterans Day
Date of Event: 11/11/2023
Desired Location of Event:: Downtown Parade Route
Organization Hosting Event:: Nacogdoches County Sheriff's Office
Please include general schedule information and any additional details here:: Road blocks

Event Set Up Time:: 9am
Event Start Time:: 10am
Event End Time:: 11am
Number of Expected Attendees:: 350
Will you need any streets closed?: Yes
If yes, what street(s) do you need closed?: Along the parade route
Please describe your event in detail:: Veterans Day Parade
Will alcohol be served?: No
Please list an estimated number of vendors who will be selling items:: none
Will you need city trash receptacles to dispose of garbage onsite?: No

If available at your event location, will you need electricity?: No
Is 220 Volt needed?
Security or Police needed?: Yes
Security or Police - Other Explained:



City Council Meeting

Date: March 21, 2023

Agenda Item: 5.J.

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

ITEM/SUBJECT: Consider a resolution to close East Main Street for the annual Lighted Christmas Parade, December 2, 2023. (Executive Director, Convention and Visitors Bureau)

SUMMARY/BACKGROUND: Consider a resolution to close East Main Street for the 2023 Lighted Christmas Parade as outlined in the attached, proposed resolution, December 2, 2023. An approved resolution from city council is required in order to complete the application to the Texas Department of Transportation requesting permission for the temporary closure of a state highway.

FINANCIAL:

No financial impact associated with this item

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

Not Applicable

CITY CONTACT: Sherry Chaney Morgan, Executive Director Nacogdoches Convention and Visitors Bureau
sherry@visitnacogdoches.org
936-564-7351

ATTACHMENTS:

1. Resolution
2. Permit
3. Map

RESOLUTION NO. 1337-03-23

WHEREAS, organizers of the 2023 Lighted Christmas Parade desire to have a safe and successful event for all vendors and participants and

WHEREAS, organizers of the 2023 Lighted Christmas Parade are requesting that the city of Nacogdoches close Main Street (SH 21) from its intersection with North Street eastward to its intersection at Mound Street as well as the TJR parade route from 2:00 PM December 2, 2023 until 8:30 PM December 2, 2023 in order to provide safety for the vendors and participants; and

WHEREAS, after duly considering such a request, it is the consent of the City Council that a resolution be adopted requesting the Texas Department of Transportation to allow the closing of Main Street for the 2023 Lighted Christmas Parade.

NOW, THEREFORE BE IT RESOLVED by the City Council of the City of Nacogdoches, Texas that this resolution be adopted requesting the Texas Department of Transportation to allow the closing of Main Street (SH 21) from its intersection with North Street eastward to its intersection at Mound Street as well as the TJR parade route from 2:00 PM December 2, 2023 until 8:30 PM December 2, 2023 in order to provide safety for the vendors and participants for the 2023 Lighted Christmas Parade.

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

PASSED AND APPROVED this March 21, 2023.

Mayor Jimmy Mize
City of Nacogdoches

ATTEST:

Jan Vinson, City Secretary



Thank you for submitting your Festival and Event Permit, we will contact you if we have any questions

Festival & Event Permit

Date: 02/14/2023

First Name	Event Set Up Time:	If available at
Caroline	2:00 pm	your event
Last Name	Event Start Time:	location, will
Garner	6:30 pm	you need
Email Address	Event End Time:	electricity?
cgarner@unitedwaynac.com	8:00	Yes
Sign me up for email updates	Number of Expected	Is 220 Volt
Yes	Attendees:	needed?
Contact Person Daytime Phone:	10000	No.
9365645869	Will you need any streets	Security or
Name of Event	closed?	Police needed?
Lighted Christmas Parade	Yes	Yes
Date of Event	If yes, what street(s) do you	Security or
12/2/2023	need closed?:	Police - Other
Desired Location of Event:	Per the usual route... most of	Explained:
Downtown Nacogdoches	central downtown plus the	NPD always
Organization Hosting Event:	lineup area around TJR	attends to
Nacogdoches Area United Way	campus.	ensure a safe
Please include general schedule information	Please describe your event in	environment
and any additional details here:	detail:	for parade
Stages for judging	This is for the big annual	spectators.
	Lighted Christmas Parade	
	and Fireworks! About 75	

entries will wind through the brick streets to the delight of crowds of people. There will be two announcers stages. We plan to have fireworks after the event.

Will alcohol be served?

No

Please list an estimated number of vendors who will be selling items:

We traditionally have one vendor that sells light-up items from small carts.

Will you need city trash receptacles to dispose of garbage onsite?

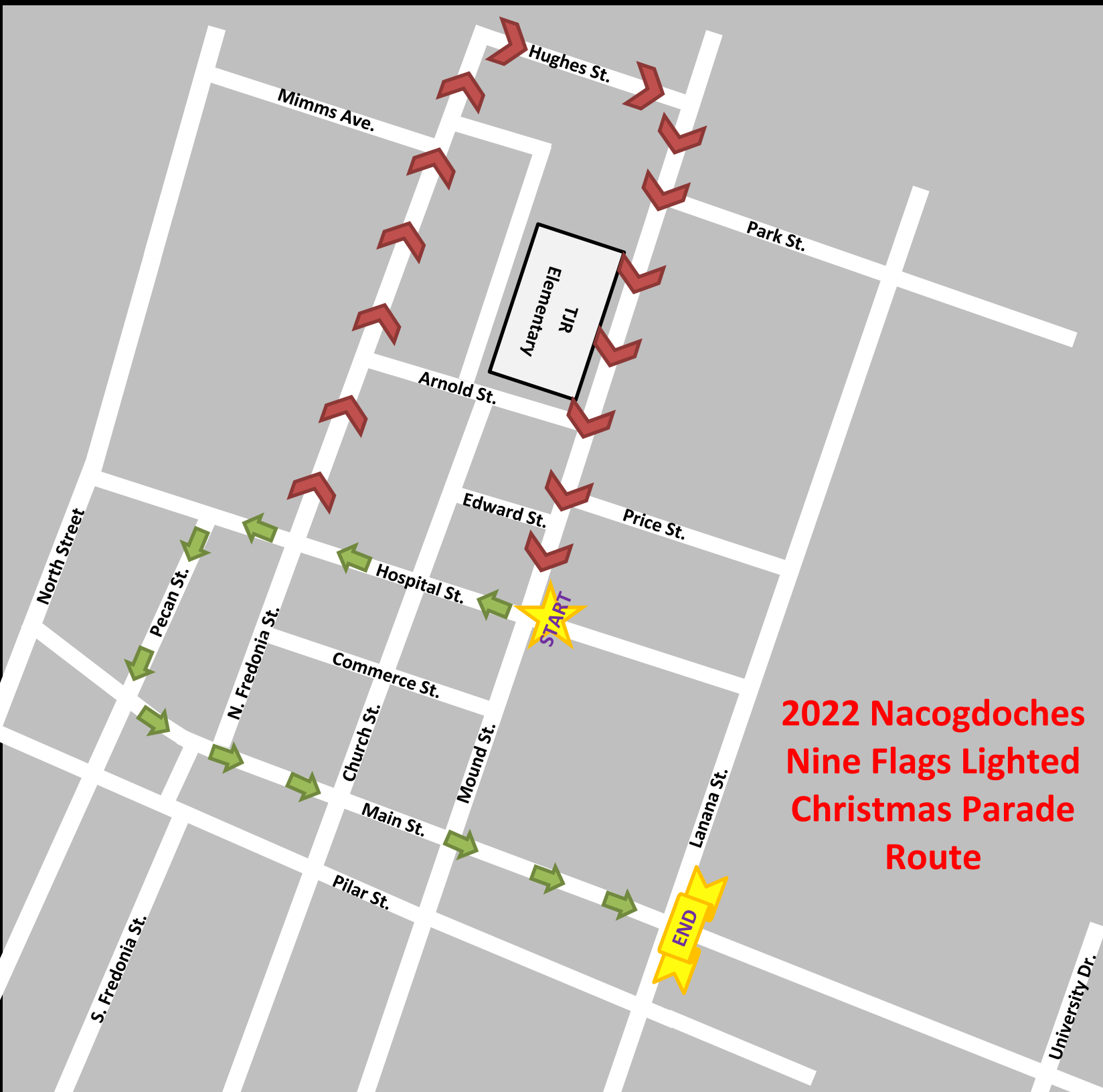
Yes

Yes

This form does not guarantee event approval. Once submitted, the form will be forwarded to corresponding city departments to determine if your event is feasible. You will receive a response once a decision is made, or if additional information is needed. If you have questions or concerns, please contact Sherry Morgan at sherry@visitnacogdoches.org or call 936-564-7351.

© Visit Nacogdoches
200 East Main
Nacogdoches, TX 75961

info@visitnacogdoches.org
<https://www.visitnacogdoches.org/>



**Parade Route
LEGEND**

-  Parade Route
-  Starting Point
-  Ending Point
-  Parade Staging

Parade Route
Hospital St., Left on Pecan St., Left on Main St., Left on Lanana St.

Starting Point
Mound St. & Hospital St.

End Point
Main St. & Lanana St.

Parade Staging
Mound St., Hughes St., & Fredonia St.

**2022 Nacogdoches
Nine Flags Lighted
Christmas Parade
Route**

PRESENTER: Alaina Helton, City Planner

ITEM/SUBJECT: Public Hearing: Consider a Zone Change from PD, Planned Development to R-1, Single Family for approximately 0.5 acres, being lot 54-A-1, City Block 54, generally located about 1200 feet south of Sir Galahad Drive along Post Oak Road. This request has been submitted by Tim Ward. Case File ZON2023-02. (City Planner)

SUMMARY/BACKGROUND: The request is for a zone change from PD, Planned Development to R-1, Single Family for approximately .5 acres located along Post Oak Road. The R-1, Single Family district is intended as an area for low density single-family uses. Lots in this district must be 8,250 square feet in lot area or larger.

Based on city records, the subject property is part of a three (3) lot Planned Development district that was approved with the adoption of the first zoning map in 1970. The lot is currently undeveloped and the applicant is requesting a zone change to R-1, Single Family in order to market the property for single family development.

Adjacent Land Use & Zoning

The subject property is zoned PD, Planned Development and is undeveloped. The surrounding zoning and land uses are as follows:

Direction	Comprehensive Plan	Zoning	Land Use
North	Rural Development	PD, Planned Development	Single Family
South	Rural Development	R-1, Single Family	Church
East (across Post Oak Rd.)	Rural Development	A, Agricultural	Agriculture
West	Rural Development	PD, Planned Development	Single Family

The subject property is located along the west side of Post Oak Road. The property to the north and west are part of the PD and are developed as a single family residence. The property to the south is zoned R-1, Single Family and is developed as a church. The area to the east across Post Oak Road is zoned A, Agricultural and is undeveloped.

STAFF REVIEW: Per Section 118.139 of the Nacogdoches Zoning Ordinance, the following conditions shall be considered when reviewing an application for zoning change:

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 properties within the immediate vicinity are primarily single family residential uses, with the exception of a church to the south that takes access to NE Stallings Drive. Staff finds that the zone change request is consistent with the existing single family zoning and development pattern in the area.

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 majority of the property to the north, west and south is developed, and the property to the east (across Post Oak Road) is an undeveloped open field. The rezoning should not impede the orderly growth of adjacent properties.

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

The subject property currently takes direct access from Post Oak Road. The property has access to public utilities, with 12-inch water main along Post Oak Road and a 6-inch sewer main via the adjacent lot to the west.. There are also sewer mains located to the north and south along Post Oak Road that could be extended to the property.

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;

Future development will meet all current driveway and parking requirements.

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

If the zone change is approved, future development will comply with City regulations regarding the prevention of offensive odor, fumes, dust, noise and vibrations.

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

If the zone change request is approved, any new outdoor lighting would be subject to the City's current standards, which requires light fixtures to utilize a down lighting design, and prohibits fixtures that directly project light in all directions.

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

Single family construction is not subject to commercial district landscaping requirements.

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

Future Land Use

Per the 2003 Comprehensive Plan, the Future Land Use Plan (FLUP) Map designates the subject property as *Rural Development*. This land use category is described as, "Sparsely-populated areas with limited development that are still distinct from more urbanized areas. This typically encompasses relatively large tracts of unsubdivided land used for agriculture, forestry, resource extraction, widely-scattered homesteads and business establishments, natural open space, or activities not requiring permanent structures or improvements. Also includes areas that are gradually transitioning into urban uses and development." The property is designated as *Rural* due to the property being located along the perimeter of the city limits, just outside of the 224 Loop.

Thoroughfare Plan:

Post Oak Road is a local road that serves as direct access for the subject property and the other residential uses in the area.

Land Use Policies, Goals & Objectives

The applicant has stated that the purpose of the rezoning is to market the property for future single family residential development. The request fits into the Goals of the Comprehensive Plan by encouraging *Growth Inward*, which includes promoting long-term growth in appropriate areas to achieve an efficient, diverse and balanced pattern of land uses, including infill development where appropriate (utilities, compatibility, etc.).

NOTICES & COMMUNITY INPUT:

Staff mailed six (6) notices to property owners within the 200-foot notification area. To date, staff has not received any written responses in opposition or in favor of the zone change. Staff received two (2) phone calls with general questions about the future development of the property.

This zoning application was also subject to the additional noticing practices that were approved by City Council in 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 Commission: The P&Z Commission heard this item on March 13th, and recommended approval of the request unanimously (5-0).

Staff: Staff also recommends approval of the zone change from PD, Planned Development to R-1, Single Family.

FINANCIAL:

No financial impact associated with this item

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

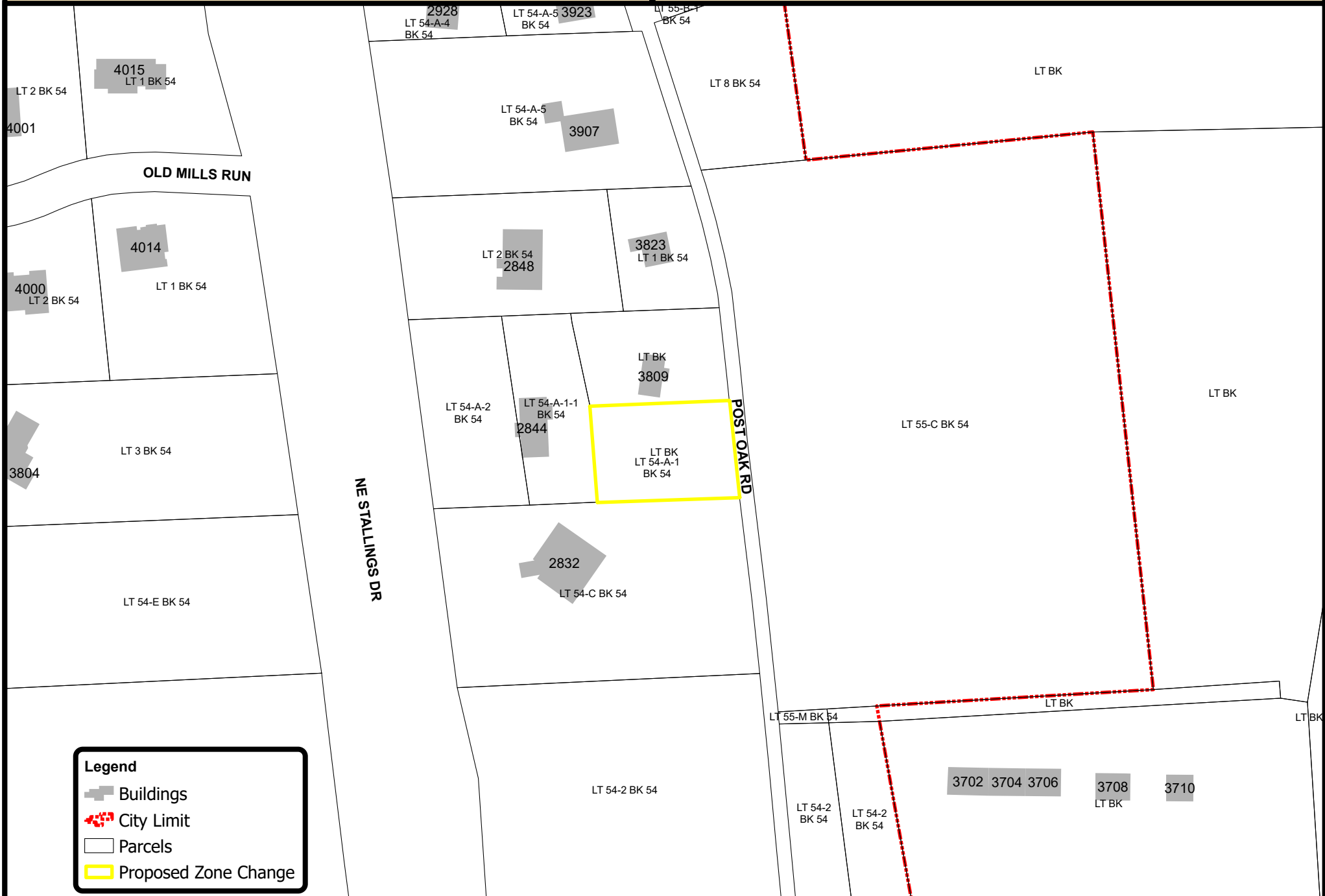
Neighborhood Revitalization and Attainable Housing

CITY CONTACT: 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. Site Photos
7. Ordinance

Location Map ZON2023-02



0 60 120 180 240 Feet

Date Created: 02/09/23 09:13 | Document Generated Automatically

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Aerial Map ZON 2023-02



0 60 120 180 240 Feet

Date Created: 02/09/23 09:13 | Document Generated Automatically

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Proposed Zoning

Nacogdoches
the oldest town in Texas
Engineering Department
GIS Division

Future Land Use Map ZON 2023-02



0 60 120 180 240 Feet

Date Created: 02/09/23 09:13 | Document Generated Automatically

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200 Foot Notification Map

ZON2023-02: Post Oak Road

Legend

 200 Foot Buffer

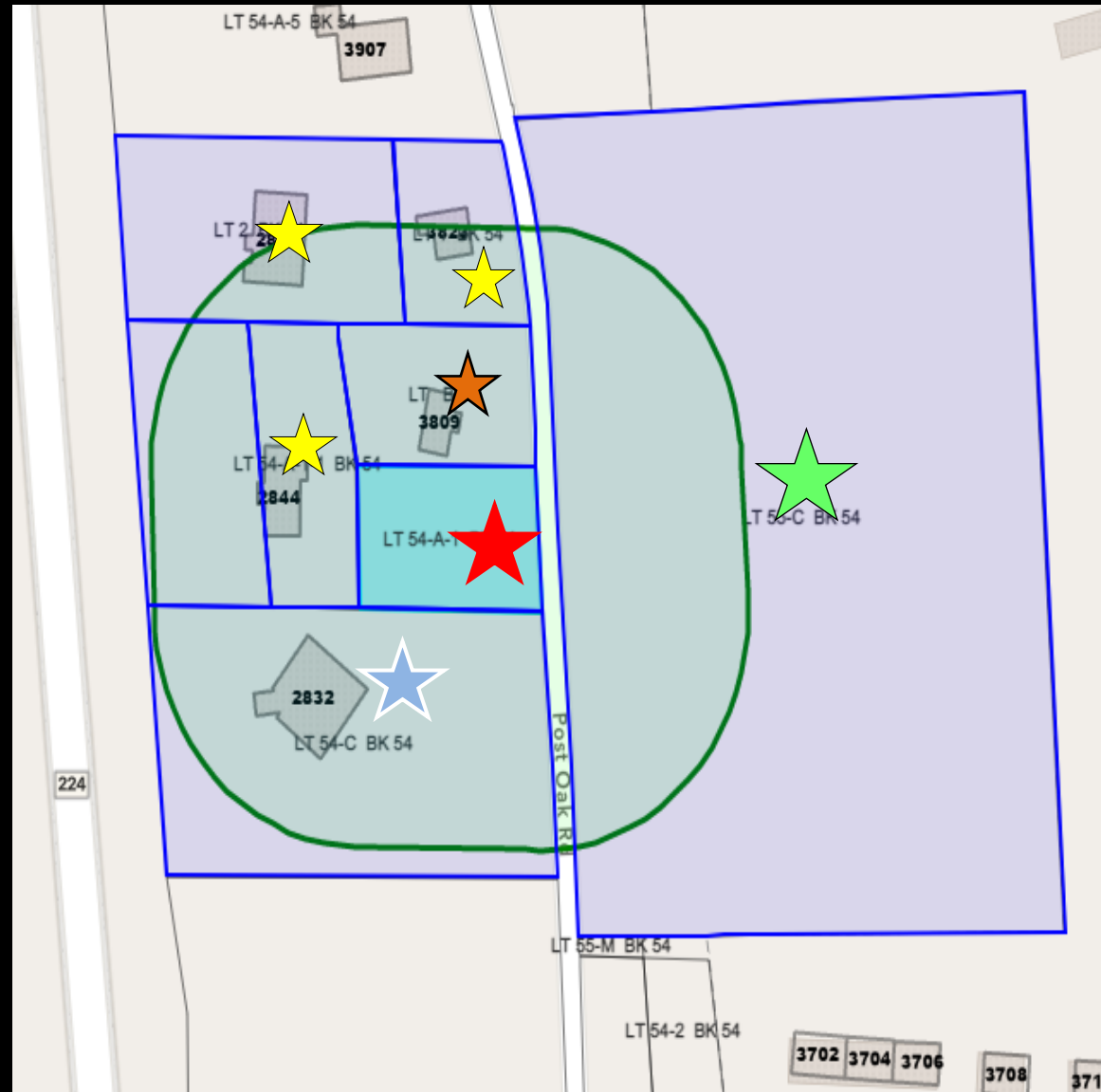
 Proposed Zone Change

 Single Family- Rental

 Single Family- Owner Occupied

 Agriculture

 Church



ZON2023-02 Site Photos

Subject Property





Residential
property to the
north

Church to the
south (fronts NE
Stallings)



Open field - east (across Post Oak Rd.)



Street view - south



Street view - north



ORDINANCE NO. 1960-03-23

AN ORDINANCE OF THE CITY OF NACOGDOCHES, TEXAS, AMENDING THE BOUNDARIES OF A ZONING DISTRICT WITHIN THE CITY OF NACOGDOCHES FROM PD, PLANNED DEVELOPMENT TO R-1, SINGLE FAMILY FOR APPROXIMATELY 0.5 ACRES OF LAND, BEING LOT 54-A-1, CITY BLOCK 54, GENERALLY LOCATED ALONG THE WEST SIDE POST OAK ROAD, APPROXIMATELY 1,200 FEET SOUTH OF SIR GALAHAD DRIVE, LOCATED IN NACOGDOCHES, TEXAS; CONTAINING FINDINGS; PROVIDING A REPEAL CLAUSE; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Zoning Ordinance of the City of Nacogdoches allows the City Council to amend the official zoning map; and

WHEREAS, the property described above and depicted in “**Exhibit A**” is currently zoned PD, Planned Development; and

WHEREAS, the property owner has requested the zoning classification of said property to be changed to R-1, Single Family; and

WHEREAS, the City Council of the City has conducted, in the time and manner and after the notice required by law and the Zoning Ordinance of the City, a public hearing on such request for change in zoning classification; and

WHEREAS, the City Council now deems it appropriate to grant such requested change in classification.

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 Zoning Change

Pursuant to the requirements of Chapter 118 of the Code of Ordinances of the City of Nacogdoches, Texas, a change in Zoning Classification from PD, Planned Development to R-1, Single Family is hereby approved by the City Council.

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 change in Zoning Classification 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 _____, 2023, 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:

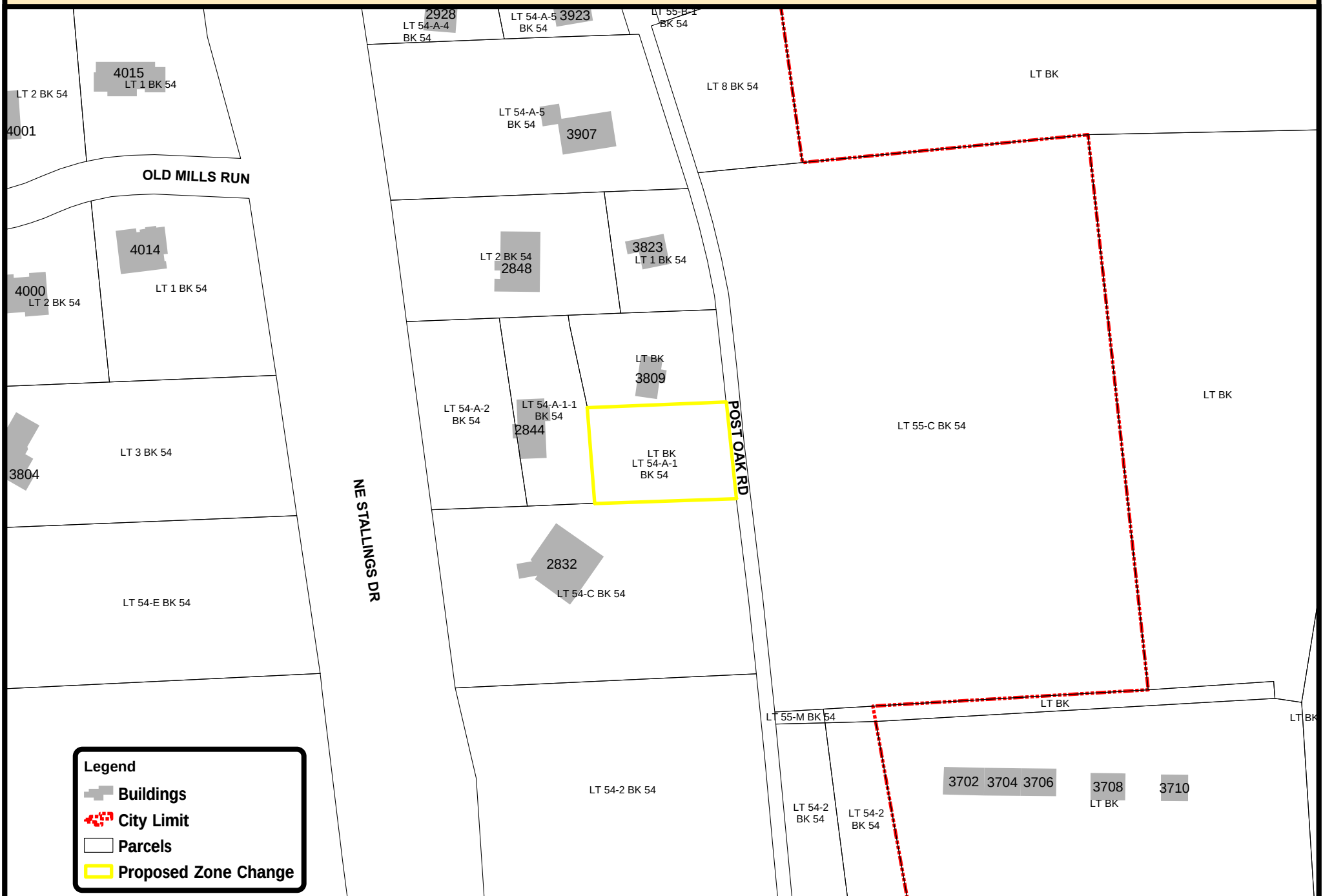
JAN VINSON, City Secretary

STEVEN KIRKLAND, City Attorney

APPROVED AS TO CONTENT:

ALAINA HELTON, City Planner

Exhibit A: ZON2023-02





City Council Meeting

Date: March 21, 2023

Agenda Item: 6.B.

PRESENTER: Pam Curbow, Finance Director

ITEM/SUBJECT: Consider approval of a contract between the City of Nacogdoches and NewGen Strategies & Solutions LLC for Utility Rate and Design Study. (Director of Finance)

SUMMARY/BACKGROUND: The City last contracted for a utility rate study in 2014. Periodic review of utility rates is necessary to insure that rates charged are at adequate levels to support operations and investment in assets. With the City currently looking to invest in significant infrastructure projects, a rate study is required to insure that there are revenues available to fund these projects. A formal RFP solicitation was sent out in December 2022 and one response was received from NewGen Strategies and Solutions LLC who was also the vendor that performed the 2014 rate study. The total cost of the study is \$92,265 and includes water, sewer and sanitation rates.

FINANCIAL:

Item is not budgeted (*Budget Amendment required*)

Account No.: 30.75 630.70/31.75.630.70

Account Name: *Utility Fund Special Services*

Amount: \$61,510

Account No.: 31.75 630.70

Account Name: *Sanitation Fund Special Services*

Amount: \$30,755

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. PowerPoint Presentation
2. Contract

Utility Rate Study

March 21, 2023



Utility Rate Study

- Formal RFP offered in December 2022
 - One response received
 - NewGen Strategies & Solutions LLC
- Last rate study contracted in 2014
 - Performed by NewGen Strategies & Solutions LLC
- Water, Sewer and Sanitation rates to be reviewed
 - Optional services available
 - Drainage Utility Design
 - Impact Fee Design
 - Model Software purchase

Utility Rate Study

Scope of Services:

Revenue Requirements

Cost of Service Study

Financial Plan for CIP

Recommend Service Rates/Fees

Benchmarking & Forecasting Models & Methods

Reporting and Presentation

Total Cost: \$92,265

Questions?



CITY OF NACOGDOCHES GENERAL SERVICE CONTRACT

This General Service Contract is by and between the City of Nacogdoches, a Texas Home-Rule Municipal Corporation (the “City”), and **NewGen Strategies and Solutions, LLC.** (the “Contractor”), for the following work: **Utility Rate and Design Study Tasks 1-8** as described in The Scope of Services attached as Exhibit “A”.

ARTICLE I PAYMENT AND TERM

1.1 Consideration. In consideration for the services performed in the Scope of Services and Contractor’s completion of work in conformity with this Contract, the City shall pay the Contractor an amount not to exceed **Ninety-Two Thousand Two-Hundred Sixty-Five and 00/100 Dollars (\$92,265.00).** In no event shall payment under this contract exceed appropriations made by City Council.

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

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

1.4 Time is of the Essence. The Contractor must complete all the services described in the Scope of Services by the following dates: **9/15/2023.** This date is determined based on the proposed 19-week timetable outlined on page 26 of the proposal received by NewGen Strategies and Solutions, LLC.

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

ARTICLE II CHANGE ORDERS

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

(a) **City Manager Approval.** When the original Contract amount plus all change orders is \$50,000 or less, the City Manager or his designee may approve the written change order provided the change order does not increase the total amount set forth in the Contract to more than \$50,000. For such contracts, when a change order results in a total contract amount that exceeds \$50,000, the City Council of the City must approve such change order prior to commencement of the services or work; and

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

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

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

ARTICLE III INDEPENDENT CONTRACTOR AND SUBCONTRACTORS

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

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

ARTICLE IV INSURANCE

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

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

ARTICLE V INDEMNIFICATION AND RELEASE

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

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

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

ARTICLE VI GENERAL TERMS

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

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

6.3 Venue, Claims and Audit. (a) This Contract has been made under and shall be governed by the laws of the State of Texas.

(b) The parties agree that performance and all matters related thereto shall be in Nacogdoches County, Texas.

(c) Venue of any dispute will be in Nacogdoches County, Texas.

(d) The City, or if State funds are used to pay any part of this contract, the State Auditor, may conduct an audit or investigation of any entity receiving funds directly under this contract or indirectly through a subcontract under the contract. Acceptance of funds under the contract or through a subcontract under the contract acts as acceptance of the authority of the City or the State Auditor to conduct an audit or investigation. Contractor agrees to cooperate and must provide the City or State Auditor with access to any information the City or State Auditor considers relevant to the investigation or audit.

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

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

6.6 Compliance with Laws. The Contractor will comply with all applicable federal, state, and local statutes, regulations, ordinances, and other laws, including but not limited to the following:

(a) Contractor shall be responsible for obtaining all necessary permits, certificates and/or licenses to fulfill contractual obligations to the City.

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

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

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

6.7.1 Contractor has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with this Contract.

6.7.2 Contractor represents and warrants that it has no actual or potential conflicts of interest in the goods and or services described in the scope of work to this contract.

6.7.1 **Antitrust.** Pursuant to 15 U.S.C. §1, *et seq.* and Tex. Bus. & Comm. Code §15.01, *et seq.* neither the contractor nor the firm, corporation, partnership, or institution represented by the contractor, or anyone acting for such a firm, corporation or institution has violated the antitrust laws of this state, federal antitrust laws, nor communicated directly or indirectly the bid made to any competitor or any other person engaged in such line of business.

6.7.2 **Child Support.** Pursuant to §231.006(d), Texas Family Code, regarding child support, the Contractor certifies that the individual or business entity named in this Contract is not ineligible to receive the specified payment and acknowledges that the contract may be terminated and payment may be withheld if this certification is inaccurate.

Furthermore, any Contractor subject to §231.006, Gov't Code, must include names and Social Security numbers of each person with at least 25% ownership of the business entity submitting the bid. This information must be provided prior to award. Enter the Name & Social Security Numbers for each person below: **This is not applicable to NewGen Strategies and Solutions, LLC.**

Name:	Social Security Number:
Name:	Social Security Number:
Name:	Social Security Number:

6.7.3 Debarment. Contractor certifies that Contractor and its principals are eligible to participate in this transaction and have not been subjected to suspension, debarment, or similar ineligibility determined by any federal, state or local governmental entity and that Contractor is in compliance with the State of Texas statutes and rules relating to procurement. Entities ineligible for state procurement are listed on the State of Texas Debarred Vendor List maintained by the Texas Comptroller of Public Accounts and the System for Award Management (SAM) maintained by the General Services Administration. Entities ineligible for federal procurement are listed at <http://www.sam.gov/content/exclusions>.

6.7.4 Convictions. Under Sections 2155.006, 2155.0061 and 2261.053 of the Texas Government Code, Respondent 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.

6.7.5 COVID Vaccinations. Respondent 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 Respondent's business.

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

(b) To the extent this Contract has a value of \$100,000 or more and Respondent 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,

Respondent 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.*).

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

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

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

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

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

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

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

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

NewGen Strategies and Solutions, LLC.
Attn: Matthew Garrett, Managing Partner
275 W. Campbell Road, Suite 440
Richardson, TX 75080
mgarrett@newgenstrategies.net

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

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

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

List of Exhibits

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

**NEWGEN STRATEGIES AND
SOLUTIONS, LLC.**

By:_____

Printed Name:_____

Title:_____

Date:_____

CITY OF NACOGDOCHES

By:_____

City Manager

Date:_____

APPROVED AS TO FORM:

City Attorney

Date:_____

EXHIBIT A SCOPE OF SERVICES

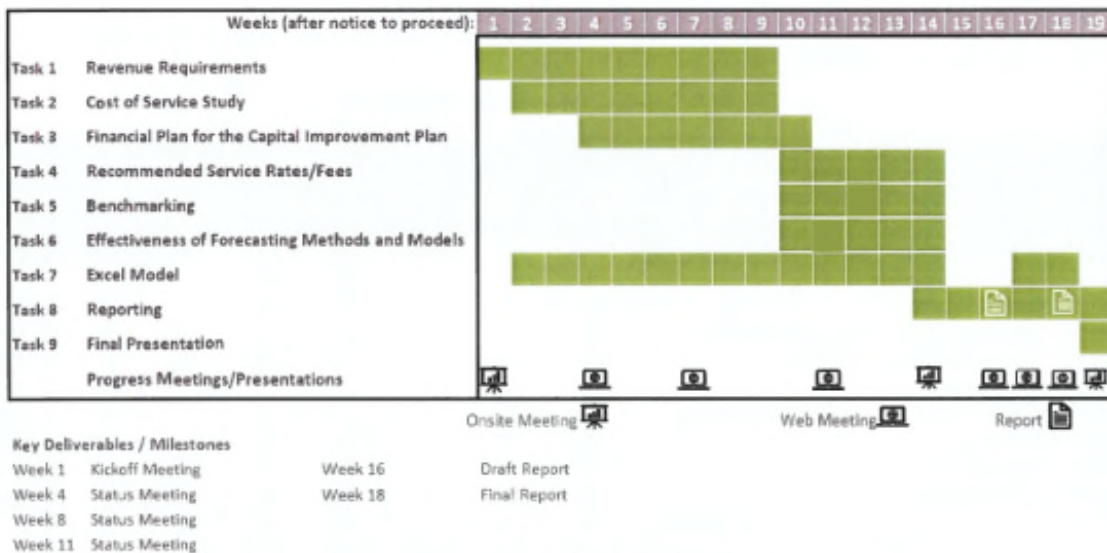
The terms and conditions of this Contract shall take precedence and control over any term or provision of the Scope of Services that in any way conflicts with, differs from, or attempts to alter the terms of this Contract.

CITY OF NACOGDOCHES, TX UTILITY RATE AND DESIGN STUDY ITB No. 22-10-105

Proposed Timetable

It is expected based on the timing of the RFP that the project may commence with a notice to proceed in November or later. As discussed above, we believe that (assuming the availability of required data and the timely review by the City of draft/partial products) a draft report should be delivered within sixteen weeks of notice to proceed. This schedule appears below as Exhibit 9.

Exhibit 9. Project Schedule



NewGen can adjust these expected delivery dates and the number of meetings if needed to accommodate the City's schedule. At this time, NewGen is uncertain when the City desires to complete the multiple rate studies. Lastly, we would like to note that the potential for optional tasks for a new utility such as the Drainage Utility or Impact Fees may take significantly longer to gain political or public acceptance. NewGen has a very capable public engagement service team that can support the City if desired, which we are happy to provide under a separate scope.

EXHIBIT B PAYMENT SCHEDULE

The Contractor must submit monthly invoices to the City, accompanied by an explanation of charges, fees, services, and expenses. The City will pay such invoices in compliance with the Texas Prompt Payment Act.

DocuSign Envelope ID: 23C4A5C6-4DCC-4D47-BC71-92AEA15ECCDF

**CITY OF NACOGDOCHES, TX
UTILITY RATE AND DESIGN STUDY
REVISED – ITB No. 22-10-105**

REVISED TAB D – COST PROPOSAL

We develop our cost proposals by estimating the number of hours of effort that will be required by key individual/classification of employee and multiplying this number by the standard hourly rate that has been established for each administrative classification of employee. To this estimate of professional fees, we add estimated out-of-pocket expenses (e.g., travel, telephone, printing, express services, etc.) at actual cost, with no profit or overhead added to out-of-pocket expenses. Any discounts received (car rentals, hotels, etc.) are passed through to the client.

We estimate our costs for the rate/fee Study specified by the City will be **\$92,265**. A detailed breakdown with hours assigned by task is shown in Exhibit 5 below.

Exhibit 5. Detailed Not-to-Exceed Study Cost

Task	Garrett	Elvitt	Yarke	Senior Consultant	Analyst	Admin	Hours	Total
Task 1 Revenue Requirements	14	4	4	24	54		100	\$ 19,700
Task 2 Service Demand and Allocations	16	4	2	20	66		108	\$ 20,730
Task 3 Financing Plan for the Capital Improvement Plans	8		2	6	18		34	\$ 7,030
Task 4 Recommended Service Rates/Fees	14	2	2	14	22		54	\$ 11,570
Task 5 Benchmarking	4		1	2	14		21	\$ 4,110
Task 6 Effectiveness of Forecasting Methods and Models	6	1	1	6	8		22	\$ 4,835
Task 7 Reporting	6		2	10	14	14	46	\$ 8,200
Task 8 Final Presentation	16	2	2	12	16	10	58	\$ 12,090
Labor Hours	84	13	16	94	212	24	443	
Labor Cost	\$25,620	\$4,225	\$5,760	\$16,920	\$32,860	\$2,880		
							Labor Subtotal	\$ 88,265
							Out-of-Pocket Expenses	\$ 4,000
							Total Proposed Budget	\$ 92,265

Based on discussions with the City, we understand the City may desire a multi-year agreement for annual updates. We welcome the opportunity to contract with the City for a multi-year period to assist in annual review and updates to utility costs and rates. Should the City desire to contract for a multi-year engagement, NewGen offers the following discounted, fixed-fee pricing for our scope in Tasks 1-8.

Year	Rate Study Update
Year 1	\$75,000
Year 2	\$42,500
Year 3	\$42,500
Year 4 (Optional)	\$45,000
Year 5 (Optional)	\$45,000

8 *Thoughtful Decision Making for Uncertain Times*

EXHIBIT C INSURANCE REQUIREMENTS

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

I. Standard Insurance Policies Required:

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

II. General Requirements Applicable to All Policies:

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

III. Commercial General Liability

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

IV. Business Automobile Liability

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

V. Workers’ Compensation Insurance

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

EXHIBIT D
CERTIFICATES OF INSURANCE



City Council Meeting

Date: March 21, 2023

Agenda Item: 6.C.

PRESENTER: Pam Curbow, Finance Director

ITEM/SUBJECT: Consider approval of an ordinance amending Ordinance No. 1929-09-22 appropriating various amounts in accordance with the budget adopted for the ensuing fiscal year beginning October 1, 2022 and ending September 30, 2023 for Utility Rate and Design Study (Director of Finance)

SUMMARY/BACKGROUND: The City last contracted for a utility rate study in 2014. Periodic review of utility rates is necessary to insure that rates charged are at adequate levels to support operations and investment in assets. With the City currently looking to invest in significant infrastructure projects, a rate study is required to insure that there are revenues available to fund these projects. A formal RFP solicitation was sent out in December 2022 and one response was received from NewGen Strategies and Solutions LLC who was also the vendor that performed the 2014 rate study. The total cost of the study is \$92,265 and includes water, sewer and sanitation rates. This study was not included in the 2022-2023 adopted budget therefore a budget amendment is required.

FINANCIAL:

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

Account No.: 30.75.630.70

Account Name: Utility Fund Non Departmental Special Services

Amount: \$61,510

Account No.: 31.75 630.70

Account Name: Sanitation Fund Non Departmental Special Services

Amount: \$30,755

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

**AN ORDINANCE AMENDING ORDINANCE NO. 1929-09-22 APPROPRIATING
VARIOUS AMOUNTS IN ACCORDANCE WITH BUDGET ADOPTED FOR THE
ENSUING FISCAL YEAR BEGINNING OCTOBER 1, 2022 AND ENDING SEPTEMBER
30, 2023.**

WHEREAS, the City Council of the City of Nacogdoches, Texas has approved and adopted the budget for said city for the ensuing fiscal year beginning October 1, 2022 and ending September 30, 2023.

WHEREAS, the City of Nacogdoches contracted for the most recent utility rate study in 2014; and

WHEREAS, it is important to have utility rates reviewed periodically; and

WHEREAS, the City is pursuing investment in multiple infrastructure projects that will need to be funded by utility rates; and

WHEREAS, with the adoption of this ordinance, the Finance Department is authorized to expend funds as needed.

NOW, THEREFORE BE IT ORDAINED by the City Council of the City of Nacogdoches that sums of money as herein set forth in said budget are hereby appropriated and amended for the payment of operations of the city government of the City of Nacogdoches as follows:

Fund	Dept	Acct.	Department	Description	Amt.
30	75	630.70	Utility Fund NonDepartmental	Utility Rate Study	\$61,510
31	75	630.70	Sanitation Fund NonDepartmental	Utility Rate Study	\$30,755

PASSED AND APPROVED this the 21st day of March, 2023.

Jimmy Mize, Mayor
City of Nacogdoches

ATTEST:

Jan Vinson, City Secretary

Approved as to form: _____
Steven Kirkland, City Attorney

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

PRESENTER: Brian Bray, Community Services Director

ITEM/SUBJECT: Consider approval of a contract between the City of Nacogdoches and CoxJones Contractors for construction of a parking lot at LT 10-A, BK 5 in the amount of \$64,870. (Community Services Director)

SUMMARY/BACKGROUND: The Zion Hill Baptist Church restoration project is in its final stages and one of the last large items that needs to be done is the construction of an additional parking lot. This parking lot, located at the corner of N. Lanana and Bois d'arc (LT 10-A, BK 5) will have 10 spaces, including 1 ADA space. While we know this parking lot is not enough for large events at the Historic Site, it will supplement the 2 ADA spaces located adjacent to the Zion Hill Building.

The Zion Hill parking lot drawing was drawn by the City Engineering Department. The bid packet was released on Wednesday, January 25th and advertised in accordance with our Purchasing Policy. We received three bids for the project and opened those bids on February 9th. The bidders were CoxJones Construction, Drewery Construction and L.S. Equipment Co. Inc. with CoxJones being the low bidder.

The original budgeted amount for this project was \$35,000, which would cover material costs with City staff providing the labor. Staffing shortages in the streets division have left them unable to provide paving services on city facilities, so during last year's budget cycle, a request for an increased budget amount of \$60,000 was submitted for the CIP, but due to a clerical error on the City's side, the increased amount was not included in the CIP document. If the request had been included, the requested budget amendment would be \$4,870.00 instead of the \$29,870 Budget Amendment for this project.

FINANCIAL:

Item is budgeted:

Account No.: 18.49.680.05
Account Name: Capital Item
Amount: \$35,000

Item is not budgeted (Budget Amendment required – see next item)

Account No.: 18.49.680.05
Account Name: Hotel Tax Fund Land Capital
Amount: \$29,870

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

Infrastructure

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

ATTACHMENTS:

1. Bid Tabulation Sheet
2. Contract
3. PowerPoint Presentation



City of Nacogdoches, Texas Bid Tabulation Sheet

DATE: 2/20/2023

DEPARTMENT: Community Services- Historic Sites

BIDS RECEIVED: February 9, 2023

General Contractor (Bidder)	Bid		Total Bid
Drewery Construction	74,173.00		\$74,173.00
CoxJones Construction	64, 870.00		\$64,870.00
L.S. Equipment Co. Inc.	372,560.40		\$372,560.40

CITY OF NACOGDOCHES CONSTRUCTION AGREEMENT

This Agreement is entered into by and between the **City of Nacogdoches**, a Texas home-rule municipal corporation (the "City") and Cox Concrete Contractors, Inc. DBA CoxJones, (the "Contractor"), for **Construction Services for Zion Hill Baptist Church Parking Lot** located in Nacogdoches, Texas (the "Project").

1. DEFINITIONS

- 1.01. Calendar Day. A "calendar day" is any day of the week or month, no days being excepted.
- 1.02. City. Whenever the word "City" is used, it shall mean and be understood as referring to the City of Nacogdoches, Texas.
- 1.03. City's Representative. Whenever the words "City's Representative" or "Representative" are used, it shall mean and be understood as referring to the City Manager or his delegate, who shall act as City's agent. The City's Representative may inspect and issue instructions but shall not directly supervise the Contractor.
- 1.04. Contract Amount. The term "Contract Amount" shall mean the amount of Contractor's lump sum base bid proposal, together with all alternates, as accepted by the City in accordance with the Contractor's Proposal. In the case of a unit price contract, Contract Amount shall mean the sum of the product of all unit prices times the respective estimated final quantities of work, for all base bid and alternates, as accepted by the City.
- 1.05. Contract Documents. The term "Contract Documents" shall mean those documents listed in Paragraph 2.01.
- 1.06. Contractor. Whenever the word "Contractor" is used, it shall mean the person(s), partnership, or corporation who has agreed to perform the work embraced in this Agreement and the other Contract Documents.
- 1.07. Extra Work. The term "Extra Work" shall mean and include work that is **not** covered or contemplated by the Contract Documents but that may be required by City's Representative and approved by the City in writing **prior** to the work being done by the Contractor.
- 1.08. Final Completion. The term "Final Completion" shall mean that all the work has been completed, all final punch list items have been inspected and satisfactorily completed, all payments to materialmen and subcontractors have been made, all documentation and warranties have been submitted, and all closeout documents have been executed and approved by the City.
- 1.09. Interpretation of Phrases. Whenever the words "directed", "permitted", "designated", "required", "considered necessary", "prescribed", or words of like import are used, it is understood that the direction, requirement, permission, order, designation, or prescription of City's Representative is intended. Similarly, the words "approved", "acceptable", "satisfactory", or words of like import shall mean approved by, accepted by, or satisfactory to City's Representative.

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

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

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

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

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

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

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

2. CONTRACT DOCUMENTS

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

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

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

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

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

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

3. AWARD OF CONTRACT

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

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

3.03. **Contract Amount.** Except in the event of a duly authorized change order approved by the City as provided in this Contract, and in consideration of the Contractor’s final completion of all work in conformity with this Contract, the City shall pay the Contractor an amount not to exceed Sixty Four Thousand Eight Hundred Seventy **and 00/100 Dollars (\$64,870.00)**.

4. CITY'S REPRESENTATIVE

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

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

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

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

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

5. INDEPENDENT CONTRACTOR

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

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

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

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

6. DISORDERLY EMPLOYEES

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

7. HOURS OF WORK

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

8. NATURE OF THE WORK

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

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

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

9. POST-AGREEMENT AWARD MEETINGS

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

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

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

10. PROGRESS OF WORK

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

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

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

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

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

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

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

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

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

11. SITE CONDITIONS AND MANAGEMENT

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

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

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

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

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

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

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

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

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

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

12. MATERIALS

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

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

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

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

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

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

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

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

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

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

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

13. ENTRY, OBSERVATION, TESTING & POSSESSION

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

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

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

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

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

14. REJECTED WORK

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

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

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

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

15. SUBCONTRACTING & SUBCONTRACTORS

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

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

16. PAYMENT

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

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

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

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

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

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

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

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

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

16.09. Unless otherwise provided in the Contract Documents:

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

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

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

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

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

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

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

17. EXTRA WORK CHARGES

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

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

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

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

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

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

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

Method A - By agreed unit prices, or

Method B - By agreed lump sum, or

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

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

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

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

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

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

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

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

18. TIME OF COMPLETION

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

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

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

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

19. SUBSTANTIAL COMPLETION

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

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

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

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

20. FINAL COMPLETION

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

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

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

21. DELAYS

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

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

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

22. EXTENSIONS OF TIME

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

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

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

23. LIQUIDATED DAMAGES

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

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

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

24. CHARGES FOR INJURY OR REPAIR

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

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

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

25. WARRANTY

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

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

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

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

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

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

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

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

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

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

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

26. PAYMENT OF EMPLOYEES, SUBCONTRACTORS & SUPPLIERS

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

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

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

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

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

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

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

27. INSURANCE

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

28. BOND PROVISIONS

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

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

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

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

29. SURETY

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

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

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

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

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

30. COMPLIANCE WITH LAW

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

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

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

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

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

31. SAFETY PRECAUTIONS

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

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

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

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

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

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

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

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

32. TRENCH SAFETY

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

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

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

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

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

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

33. INDEMNITY

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

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

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

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

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

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

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

34. RELEASE

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

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

35. PERMITS AND LICENSES

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

36. ROYALTIES AND LICENSING FEES

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

37. BREACH OF CONTRACT & DAMAGES

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

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

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

38. TERMINATION FOR CAUSE

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

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

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

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

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

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

38.06. If the Contractor abandons the Work.

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

39. TERMINATION FOR CONVENIENCE

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

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

40. RIGHT TO COMPLETE

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

41. CLOSE OUT

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

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

42. TERMINATION CONVERSION

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

43. HIRING

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

44. **ASSIGNMENT**

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

45. **EFFECTIVE DATE**

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

46. **OTHER TERMS**

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

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

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

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

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

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

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

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

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

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

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

Name:	Social Security Number:
Name:	Social Security Number:
Name:	Social Security Number:

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

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

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

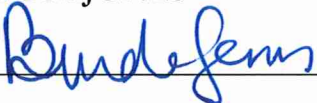
46.12. Headings, Gender, Number. The article headings are used in this Agreement for convenience and reference purposes only and are not intended to define, limit, or describe the scope or intent of any provision of this Agreement and shall have no meaning or effect upon its interpretation. Words of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

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

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

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

COX CONCRETE CONTRACTORS, INC.
DBA COXJONES

By: 

Printed Name: Brenda B. Jones

Title: President

Date: February 24, 2023

CITY OF NACOGDOCHES

By: _____

City Manager

Date: _____

APPROVED AS TO FORM:

City Attorney

Date: _____

Exhibit A
DAVIS BACON WAGE RATES

{Insert Appropriate Classification of Wage Rates
From
<https://www.wdol.gov/dba.aspx>}

Exhibit B
INSURANCE REQUIREMENTS

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

I. Standard Insurance Policies Required:

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

II. General Requirements Applicable to All Policies:

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

III. Commercial General Liability

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

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

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

IV. Business Automobile Liability

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

V. Excess Liability

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

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

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

VII. Workers Compensation Insurance

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

"A. Definitions:

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

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

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

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

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

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

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

Exhibit C
PERFORMANCE AND PAYMENT BONDS

TEXAS STATUTORY PAYMENT BOND

Project No. _____

THE STATE OF TEXAS

§

THE COUNTY OF NACOGDOCHES

§

§

KNOW ALL MEN BY THESE PRESENTS:

THAT WE, Cox Concrete Contractors, Inc. dba CoxJones, as Principal, hereinafter called "Principal" and the other subscriber hereto Continental Casualty Co., a corporation organized and existing under the laws of the State of Illinois, licensed to business in the State of Texas and admitted to write bonds, as Surety, herein after called "Surety", do hereby acknowledge ourselves to be held and firmly bound to the City of Nacogdoches, a municipal corporation, in the sum of **Sixty Four Thousand Eight Hundred Seventy and 00/100 (\$64,870.00)** for payment whereof, the said Principal and Surety bind themselves, and their heirs, administrators, executors, successors and assigns jointly and severally.

THE CONDITIONS OF THIS OBLIGATION ARE SUCH THAT:

WHEREAS, Principal has entered into a certain contract with the City of Nacogdoches, dated the 22nd day of February, 20 23, for **Construction Services for Zion Hill Baptist Church Parking Lot** which contract is hereby referred to and made a part hereof as fully and to the same extent as if copied at length herein.

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

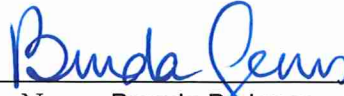
PROVIDED, HOWEVER, that this bond is executed pursuant to the provisions of Chapter 2253 of the Texas Government Code and all liabilities on this bond shall be determined in accordance with the provisions, conditions and limitations of said Code to the same extent as if it were copied at length herein.

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

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

By: 
Name: Shelby Chasell
Title: Office Manager

Cox Concrete Contractors, Inc. dba CoxJones
(Name of Contractor)

By: 
Name: Brenda B. Jones
Title: President
Date:

ATTEST/WITNESS (SEAL)

By: 
Name: Stacy Triana
Title: Witness
Date: 2/23/2023

Continental Casualty Co.
(Full Name of Surety)

PO Box 655908 Dallas, TX 75265
(Address of Surety for Notice)

By: 
Name: Denise Moreau
Title: Attorney in Fact
Date: 2/23/2023

REVIEWED:

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

City Attorney's Office

City Manager

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

POWER OF ATTORNEY APPOINTING INDIVIDUAL ATTORNEY-IN-FACT

Know All Men By These Presents, That Continental Casualty Company, an Illinois insurance company, National Fire Insurance Company of Hartford, an Illinois insurance company, and American Casualty Company of Reading, Pennsylvania, a Pennsylvania insurance company (herein called "the CNA Companies"), are duly organized and existing insurance companies having their principal offices in the City of Chicago, and State of Illinois, and that they do by virtue of the signatures and seals herein affixed hereby make, constitute and appoint

Joe Max Green, Gary L La Four, Michael Edwin Henson, Denise S Moreau, Scott Naugle, Belinda Irwin, Jennifer Michelle Ward, Individually

of Nacogdoches, TX, their true and lawful Attorney(s)-in-Fact with full power and authority hereby conferred to sign, seal and execute for and on their behalf bonds, undertakings and other obligatory instruments of similar nature

- In Unlimited Amounts -

and to bind them thereby as fully and to the same extent as if such instruments were signed by a duly authorized officer of their insurance companies and all the acts of said Attorney, pursuant to the authority hereby given is hereby ratified and confirmed.

This Power of Attorney is made and executed pursuant to and by authority of the By-Law and Resolutions, printed on the reverse hereof, duly adopted, as indicated, by the Boards of Directors of the insurance companies.

In Witness Whereof, the CNA Companies have caused these presents to be signed by their Vice President and their corporate seals to be hereto affixed on this 23rd day of June, 2021.



Continental Casualty Company
National Fire Insurance Company of Hartford
American Casualty Company of Reading, Pennsylvania

Paul T. Bruflat

Vice President

State of South Dakota, County of Minnehaha, ss:

On this 23rd day of June, 2021, before me personally came Paul T. Bruflat to me known, who, being by me duly sworn, did depose and say: that he resides in the City of Sioux Falls, State of South Dakota; that he is a Vice President of Continental Casualty Company, an Illinois insurance company, National Fire Insurance Company of Hartford, an Illinois insurance company, and American Casualty Company of Reading, Pennsylvania, a Pennsylvania insurance company described in and which executed the above instrument; that he knows the seals of said insurance companies; that the seals affixed to the said instrument are such corporate seals; that they were so affixed pursuant to authority given by the Boards of Directors of said insurance companies and that he signed his name thereto pursuant to like authority, and acknowledges same to be the act and deed of said insurance companies.



My Commission Expires March 2, 2026

M. Bent

Notary Public

CERTIFICATE

I, D. Johnson, Assistant Secretary of Continental Casualty Company, an Illinois insurance company, National Fire Insurance Company of Hartford, an Illinois insurance company, and American Casualty Company of Reading, Pennsylvania, a Pennsylvania insurance company do hereby certify that the Power of Attorney herein above set forth is still in force, and further certify that the By-Law and Resolution of the Board of Directors of the insurance companies printed on the reverse hereof is still in force. In testimony whereof I have hereunto subscribed my name and affixed the seal of the said insurance companies this 23rd day of February, 2023.



Continental Casualty Company
National Fire Insurance Company of Hartford
American Casualty Company of Reading, Pennsylvania

D. Johnson

Assistant Secretary

Form F6853-4/2012

Go to www.cnasurety.com > Owner / Obligor Services > Validate Bond Coverage, if you want to verify bond authenticity.

Authorizing By-Laws and Resolutions

ADOPTED BY THE BOARD OF DIRECTORS OF CONTINENTAL CASUALTY COMPANY:

This Power of Attorney is made and executed pursuant to and by authority of the following resolution duly adopted by the Board of Directors of the Company at a meeting held on May 12, 1995:

“RESOLVED: That any Senior or Group Vice President may authorize an officer to sign specific documents, agreements and instruments on behalf of the Company provided that the name of such authorized officer and a description of the documents, agreements or instruments that such officer may sign will be provided in writing by the Senior or Group Vice President to the Secretary of the Company prior to such execution becoming effective.”

This Power of Attorney is signed by Paul T. Bruflat, Vice President, who has been authorized pursuant to the above resolution to execute power of attorneys on behalf of Continental Casualty Company.

This Power of Attorney is signed and sealed by facsimile under and by the authority of the following Resolution adopted by the Board of Directors of the Company by unanimous written consent dated the 25th day of April, 2012:

“Whereas, the bylaws of the Company or specific resolution of the Board of Directors has authorized various officers (the “Authorized Officers”) to execute various policies, bonds, undertakings and other obligatory instruments of like nature; and

Whereas, from time to time, the signature of the Authorized Officers, in addition to being provided in original, hard copy format, may be provided via facsimile or otherwise in an electronic format (collectively, “Electronic Signatures”); Now therefore be it resolved: that the Electronic Signature of any Authorized Officer shall be valid and binding on the Company. “

ADOPTED BY THE BOARD OF DIRECTORS OF NATIONAL FIRE INSURANCE COMPANY OF HARTFORD:

This Power of Attorney is made and executed pursuant to and by authority of the following resolution duly adopted by the Board of Directors of the Company by unanimous written consent dated May 10, 1995:

“RESOLVED: That any Senior or Group Vice President may authorize an officer to sign specific documents, agreements and instruments on behalf of the Company provided that the name of such authorized officer and a description of the documents, agreements or instruments that such officer may sign will be provided in writing by the Senior or Group Vice President to the Secretary of the Company prior to such execution becoming effective.”

This Power of Attorney is signed by Paul T. Bruflat, Vice President, who has been authorized pursuant to the above resolution to execute power of attorneys on behalf of National Fire Insurance Company of Hartford.

This Power of Attorney is signed and sealed by facsimile under and by the authority of the following Resolution adopted by the Board of Directors of the Company by unanimous written consent dated the 25th day of April, 2012:

“Whereas, the bylaws of the Company or specific resolution of the Board of Directors has authorized various officers (the “Authorized Officers”) to execute various policies, bonds, undertakings and other obligatory instruments of like nature; and

Whereas, from time to time, the signature of the Authorized Officers, in addition to being provided in original, hard copy format, may be provided via facsimile or otherwise in an electronic format (collectively, “Electronic Signatures”); Now therefore be it resolved: that the Electronic Signature of any Authorized Officer shall be valid and binding on the Company. “

ADOPTED BY THE BOARD OF DIRECTORS OF AMERICAN CASUALTY COMPANY OF READING, PENNSYLVANIA:

This Power of Attorney is made and executed pursuant to and by authority of the following resolution duly adopted by the Board of Directors of the Company by unanimous written consent dated May 10, 1995:

“RESOLVED: That any Senior or Group Vice President may authorize an officer to sign specific documents, agreements and instruments on behalf of the Company provided that the name of such authorized officer and a description of the documents, agreements or instruments that such officer may sign will be provided in writing by the Senior or Group Vice President to the Secretary of the Company prior to such execution becoming effective.”

This Power of Attorney is signed by Paul T. Bruflat, Vice President, who has been authorized pursuant to the above resolution to execute power of attorneys on behalf of American Casualty Company of Reading, Pennsylvania.

This Power of Attorney is signed and sealed by facsimile under and by the authority of the following Resolution adopted by the Board of Directors of the Company by unanimous written consent dated the 25th day of April, 2012:

“Whereas, the bylaws of the Company or specific resolution of the Board of Directors has authorized various officers (the “Authorized Officers”) to execute various policies, bonds, undertakings and other obligatory instruments of like nature; and

Whereas, from time to time, the signature of the Authorized Officers, in addition to being provided in original, hard copy format, may be provided via facsimile or otherwise in an electronic format (collectively, “Electronic Signatures”); Now therefore be it resolved: that the Electronic Signature of any Authorized Officer shall be valid and binding on the Company. “

CNA SURETY

- **IMPORTANT NOTICE**

To obtain information or make a complaint:

- You may call CNA Surety's toll-free telephone number for information or to make a complaint at
1-800-331-6053
- You may also write to CNA Surety at
P.O. Box 655908
Dallas, TX 75265-5908
or
P.O. Box 5077
Sioux Falls, SD 57117-5077
- You may contact the Texas Department of Insurance to obtain information on companies, coverages, rights or complaints at
1-800-252-3439
- You may write the Texas Department of Insurance
P.O. Box 149104
Austin, TX 78714-9104
FAX # (512) 475-1771
- **PREMIUM OR CLAIM DISPUTES:**
Should you have a dispute concerning your premium or about a claim, you should contact the agent first. If the dispute is not resolved, you may contact the Texas Department of Insurance.
- **ATTACH THIS NOTICE TO YOUR POLICY OR BOND:**
This notice is for information only and does not become a part or condition of the attached document.

Exhibit D
CERTIFICATES OF INSURANCE AND ENDORSEMENTS



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

2/24/2023

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

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

PRODUCER Cadence Insurance (formerly BXS Insurance) 3310 N. University Drive Nacogdoches TX 75965	CONTACT NAME: Stacy Triana PHONE (A/C, No, Ext): 936-564-0221 E-MAIL ADDRESS: stacy.triana@cadenceinsurance.com FAX (A/C, No):														
INSURED Cox Concrete Contractors, Inc. dba: Cox Contractors, Inc., dba CoxJones P. O. Box 631447 Nacogdoches TX 75963	<table><tr><th>INSURER(S) AFFORDING COVERAGE</th><th>NAIC #</th></tr><tr><td>INSURER A : FCCI Insurance Company</td><td>10178</td></tr><tr><td>INSURER B : Monroe Guaranty Insurance Company</td><td>32506</td></tr><tr><td>INSURER C : Texas Mutual Insurance Company</td><td>22945</td></tr><tr><td>INSURER D : Travelers Lloyds Insurance Company</td><td>41262</td></tr><tr><td>INSURER E : Arch Specialty Insurance Co</td><td>21199</td></tr><tr><td>INSURER F :</td><td></td></tr></table>	INSURER(S) AFFORDING COVERAGE	NAIC #	INSURER A : FCCI Insurance Company	10178	INSURER B : Monroe Guaranty Insurance Company	32506	INSURER C : Texas Mutual Insurance Company	22945	INSURER D : Travelers Lloyds Insurance Company	41262	INSURER E : Arch Specialty Insurance Co	21199	INSURER F :	
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INSURER E : Arch Specialty Insurance Co	21199														
INSURER F :															

COVERAGES**CERTIFICATE NUMBER:** 2028814182**REVISION NUMBER:**

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

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
B	☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☒ OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: ☐ POLICY ☒ PRO-JECT ☐ LOC OTHER:			CPP100071949	7/31/2022	7/31/2023	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 GL PD deductible \$ 1,000
A	☒ AUTOMOBILE LIABILITY ☒ ANY AUTO ☐ OWNED AUTOS ONLY ☐ SCHEDULED AUTOS ☐ HIRED AUTOS ONLY ☐ NON-OWNED AUTOS ONLY			CA100071951	7/31/2022	7/31/2023	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
A	☒ UMBRELLA LIAB ☒ OCCUR ☐ EXCESS LIAB ☐ CLAIMS-MADE DED ☒ RETENTION \$ 10,000			UMB100071952	7/31/2022	7/31/2023	EACH OCCURRENCE \$ 5,000,000 AGGREGATE \$ 5,000,000 \$
C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y / N ☐ N / A		0001203435	7/31/2022	7/31/2023	☒ PER STATUTE ☐ OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
B D E	Leased/Rented Equipment Builders Risk Professional/Pollution Liab			CPP100071949 QT6604267B801 PDCPP0016405	7/31/2022 7/31/2022 9/15/2022	7/31/2023 7/31/2023 9/15/2023	Max Per Item \$150,000 Limit per location \$11,000,000 \$1,000,000 p/Claim. \$2,000,000 Aggreg.

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

Zion Hill Baptist Church Parking Lot - Nac., TX

General liability policy includes certificate holder as an additional insured when required by written contract including Products/Completed Operations coverage and in no way will the additional insured status exceed the limits, terms or conditions of the policy. Primary & Non-Contributory wording applies when required by written contract.

Auto liability policy includes certificate holder as an additional insured when required by written contract but in no event shall such coverage exceed the limits, terms or conditions of the policy.
See Attached...

CERTIFICATE HOLDER**CANCELLATION**City of Nacogdoches
P.O. Box 635070
Nacogdoches TX 75963

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

AUTHORIZED REPRESENTATIVE

© 1988-2015 ACORD CORPORATION. All rights reserved.

AGENCY CUSTOMER ID: _____

LOC #: _____



ADDITIONAL REMARKS SCHEDULE

Page 1 of 1

AGENCY Cadence Insurance (formerly BXS Insurance)		NAMED INSURED Cox Concrete Contractors, Inc. dba: Cox Contractors, Inc., dba CoxJones P. O. Box 631447 Nacogdoches TX 75963
POLICY NUMBER		
CARRIER	NAIC CODE	EFFECTIVE DATE:

ADDITIONAL REMARKS

THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,
 FORM NUMBER: 25 FORM TITLE: CERTIFICATE OF LIABILITY INSURANCE

Workers Compensation, General Liability and Auto Liability policies include a waiver of subrogation in favor of certificate holder when required by written contract but in no event shall such coverage exceed the limits, terms or conditions of the policy.

30 Day Notice of Cancellation is provided when required by written contract except in the event of cancellation for Non-Payment of Premium.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

BLANKET NOTIFICATION TO OTHERS OF CANCELLATION

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM
BUSINESS AUTO PHYSICAL DAMAGE COVERAGE FORM
BUSINESSOWNERS COVERAGE FORM
COMMERCIAL CRIME COVERAGE FORM
COMMERCIAL GENERAL LIABILITY COVERAGE PART
COMMERCIAL INLAND MARINE COVERAGE PART
COMMERCIAL LIABILITY UMBRELLA COVERAGE FORM
COMMERCIAL OUTPUT POLICY
COMMERCIAL PROPERTY COVERAGE PART
FARM COVERAGE PART
FARM UMBRELLA COVERAGE FORM
GARAGE COVERAGE FORM
LIQUOR LIABILITY COVERAGE PART
PRODUCT WITHDRAWAL COVERAGE PART
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

If we cancel this policy for any statutorily permitted reason other than nonpayment of premium we will mail notice of cancellation to any person or organization to whom you have agreed in a written contract that notice of cancellation of this policy will be given, but only if:

1. You send us a written request to provide such notice, including the name and address of such person or organization, after the first Named Insured shown in the Declarations receives notice from us of the cancellation of this policy; and,
2. We receive such written request at least 45 days before the effective date of cancellation.

We will mail such notice at least 30 days before the effective date of the cancellation.

Irrespective of any of the provisions above, nothing herein is intended to vest any right in the person or organization to be given notice, and said person or organization shall have no rights under this policy if he/it does not receive notice per this endorsement.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

AUTO FIRST CHOICE COVERAGE ENDORSEMENT

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM

NOTE: The following are additions, replacements and amendments to the Business Auto Coverage Form, and will apply unless excluded by separate endorsement(s) to the Business Auto Coverage Form.

With respect to coverages provided by this endorsement, the provisions of the Business Auto Coverage Form apply unless modified by this endorsement.

The Business Auto Coverage Form is amended as follows:

SECTION II – COVERED AUTOS LIABILITY COVERAGE is amended as follows:

A. Paragraph 1. Who Is An Insured in section **A. Coverage** is amended by the addition of the following:

- d. Any legally incorporated subsidiary of yours in which you own more than 50% of the voting stock on the effective date of this coverage form. However, "insured" does not include any subsidiary that is an "insured" under any other liability policy or would be an "insured" under such a policy but for its termination or the exhaustion of its limits of insurance. In order for such subsidiaries to be considered insured under this policy, you must notify us of such subsidiaries within 60 days of policy effective date.
- e. Any organization you newly acquire or form during the policy period, other than a partnership or joint venture, and over which you maintain sole ownership or a majority interest. However, coverage under this provision:
 - (1) Does not apply if the organization you acquire or form is an "insured" under another liability policy or would be an "insured" under such a policy but for its termination or the exhaustion of its limits of insurance;
 - (2) Does not apply to "bodily injury" or "property damage" that occurred before you acquired or formed the organization; and
 - (3) Is afforded only for the first 90 days after you acquire or form the organization or until the end of the policy period, whichever comes first.
- f. Any person or organization who is required under a written contract or agreement between you and that person or organization, that is signed and executed by you before the "bodily injury" or "property damage" occurs and that is in effect during the policy period, to be named as an additional insured is an "insured" for Liability Coverage, but only for damages to which this insurance applies and only to the extent that person or organization qualifies as an "insured" under the Who Is An Insured provision contained in Section II.
- g. Any "employee" of yours using:
 - (1) a covered "auto" you do not own, hire or borrow, or a covered "auto" not owned by an "employee" or a member of his or her household, while performing duties related to the conduct of your business or your personal affairs; or
 - (2) an "auto" hired or rented under a contract or agreement in that "employee's" name, with your permission, while performing duties related to the conduct of your business. However, your "employee" does not qualify as an insured under this paragraph (2) while using a covered "auto" rented from you or from any member of the "employee's" household
- h. Your members, if you are a limited liability company, while using a covered "auto" you do not own, hire or borrow, while performing duties related to the conduct of your business or your personal affairs.

B. Paragraphs (2) and (4) under section 2. Coverage Extensions, a. Supplementary Payments are deleted and replaced by the following:

- (2) Up to \$3,000 for cost of bail bonds (including bonds for related traffic violations) required because of an "accident" we cover. We do not have to furnish these bonds.
- (4) All reasonable expenses incurred by the "insured" solely at our request, including actual loss of earnings up to \$500 a day because of time off from work.

C. Paragraph 5. under section B. **Exclusions** is deleted and replaced by the following:

5. Fellow Employee

"Bodily injury" to:

- a. Any fellow "employee" of the "insured" arising out of and in the course of a fellow "employee's" employment or while performing duties related to the conduct of your business. However, this exclusion does not apply to your "employees" that are officers or managers if the "bodily injury" results from the use of a covered "auto" you own, hire or borrow. Coverage is excess over any other collectible insurance; or
- b. The spouse, child, parent, brother or sister of that fellow "employee" as a consequence of Paragraph a. above.

SECTION III – PHYSICAL DAMAGE COVERAGE is amended as follows:

A. Paragraph 4. **Coverage Extensions** under section A. **Coverage** is deleted and replaced by the following:

4. Coverage Extensions

a. Transportation Expenses

We will pay up to \$75 per day to a total maximum of \$2,000 for temporary transportation expense incurred by you due to covered loss to any covered auto. We will pay only for those covered "autos" for which you carry either Comprehensive or Specified Causes Of Loss Coverage. We will pay for temporary transportation expenses incurred during the period beginning 24 hours after a loss and ending, regardless of the policy's expiration, when the covered "auto" is returned to use or we pay for its "loss".

b. Loss of Use Expenses

For Hired Auto Physical Damage, we will pay expenses for which an "insured" becomes legally responsible to pay for loss of use of a vehicle rented or hired without a driver under a written rental contract or agreement. We will pay for loss of use expenses if caused by:

- (1) Other than collision only if the Declarations indicate that Comprehensive Coverage is provided for hired "autos";
- (2) Specified Causes of Loss only if the Declarations indicate that Specified Causes of Loss Coverage is provided for hired "autos"; or
- (3) Collision only if the Declarations indicate that Collision Coverage is provided for hired "autos".

However, the most we will pay for any expenses for loss of use to any one vehicle is \$75 per day, to a total maximum of \$2,000.

B. The following is added to paragraph 4. **Coverage Extensions** under section A. **Coverage**:

c. Fire Department Service Charge

When a fire department is called to save or protect a covered "auto", its equipment, its contents, or occupants from a covered cause of loss, we will pay up to \$1,000 for your liability for fire department service charges assumed by contractor or agreement prior to loss.

No deductible applies to this additional coverage.

d. Auto Loan/Lease Gap Coverage

The following provisions apply:

- (1) If a long term leased "auto", under an original lease agreement, is a covered "auto" under this coverage form and the lessor of the covered "auto" is named as an additional insured under this policy, in the event of a total loss to the leased covered "auto", we will pay any unpaid amount due on the lease, less the amount paid under the Physical Damage Coverage Section of the policy; and less any:
 - (a) Overdue lease or loan payments including penalties, interest, or other charges resulting from

overdue payments at the time of the "loss";

- (b) Financial penalties imposed under a lease for excessive use, abnormal wear and tear or high mileage;
- (c) Security deposits not refunded by the lessor;
- (d) Costs for extended warranties, Credit Life Insurance, Health Accident or Disability Insurance purchased with the loan or lease; and
- (e) Carry-over balances from previous loans or leases.

(2) If an owned "auto" is a covered "auto" under this coverage form and the loss payee of the covered "auto" is named a loss payee under this policy, in the event of a total loss to the covered "auto", we will pay any unpaid amount due on the loan, less the amount paid under the Physical Damage Coverage Section of the policy; and less any;

- (a) Overdue loan payments at the time of the "loss";
- (b) Costs for extended warranties, Credit Life Insurance, Health Accident or Disability Insurance purchased with the loan; and
- (c) Carry-over balances from previous loans.

C. Paragraph 3. under section **B. Exclusions** is deleted and replaced by the following:

3. We will not pay for "loss" due and confirmed to:

- a. Wear and tear, freezing, mechanical or electrical breakdown
- b. Blowouts, punctures or other road damage to tires

This exclusion does not apply to such "loss" resulting from the total theft of a covered "auto".

However, this exclusion does not include the discharge of an airbag in a covered "auto" you own that inflates due to a cause other than a cause of "loss" set forth in Paragraphs **A.1.b** and **A.1.c.** but only:

- a. If that "auto" is a covered "auto" for Comprehensive Coverage under this policy;
- b. The airbags are not covered under any warranty; and
- c. The airbags were not intentionally inflated

We will pay up to a maximum of \$1,000 for any one "loss".

D. Section **D. Deductible** is deleted and replaced by the following:

D. Deductible

For each covered "auto", our obligation to pay for, repair, return or replace damaged or stolen property will be reduced by the applicable deductible shown in the Declarations subject to the following:

Any Comprehensive Coverage deductible shown in the Declarations does not apply to:

- (1) "Loss" caused by fire or lightning; and
- (2) "Loss" arising out of theft of your vehicle if your vehicle is equipped with an active GPS tracking system.
- (3) Glass damage to the side or rear windows if the glass is repaired rather than replaced. However, no deductible shall apply to damage to the windshield of any covered "auto" or to safety glass.

SECTION IV – BUSINESS AUTO CONDITIONS is amended as follows:

A. The following is added to paragraph a. under section **A. Loss Conditions, 2. Duties in the Event of Accident, Claim, Suit or Loss**:

This duty applies when the "accident", claim, "suit" or "loss" is first known to:

- (a) You, if you are an individual;
- (b) A partner, if you are a partnership;
- (c) An executive officer or insurance manager, if you are a corporation; or

(d) A member or manager, if you are a limited liability company.

- B. Condition 5. Transfer of Rights of Recovery against Others to Us** under section **A. Loss Conditions** is deleted and replaced by the following:

5. Transfer of Rights of Recovery against Others to Us

If a person or organization to or for whom we make payment under this coverage form has rights to recover damages from another, those rights are transferred to us. That person or organization must do everything necessary to secure our rights and must do nothing after "accident" or "loss" to impair them. However, if the insured has waived rights to recover through a written contract, or if your work was commenced under a letter of intent or work order, subject to a subsequent reduction in writing of such a waiver with customers whose customary contracts require a waiver, we waive any right of recovery we may have under this coverage form.

- C. The following is added to Condition 2. Concealment, Misrepresentation or Fraud** under section **B. General Conditions**:

However, if you unintentionally fail to disclose any hazards at the inception of your policy, we will not deny coverage under this coverage form because of such failure. This provision does not affect our right to collect additional premium or exercise our right of cancellation or non-renewal.

- D. Paragraph b. of Condition 5. Other Insurance** under section **B. General Conditions** is deleted and replaced by the following:

b. For Hired Auto Physical Damage Coverage, the following are deemed to be covered "autos" you own;

(1) Any covered "auto" you lease, hire, rent or borrow; and

(2) Any covered "auto" hired or rented by your "employee" under a contract in that individual "employee's" name, with your permission, while performing duties related to the conduct of your business. However, any "auto" that is leased, hired, rented or borrowed with a driver is not a covered "auto", nor is any "auto" you hire from any of your "employees", partners (if you are a partnership), members (if you are a limited liability company), or members of their households.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS –
AUTOMATIC STATUS WHEN REQUIRED IN CONTRACT OR AGREEMENT –
ONGOING OPERATIONS AND PRODUCTS-COMPLETED OPERATIONS
(TEXAS LIMITED SOLE NEGLIGENCE)**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE FORM

SCHEDULE (OPTIONAL)

Name of Additional Insured Persons or Organizations
(As required by written contract or agreement per Paragraph A. below.) Any person or organization when required by written contract.

Locations of Covered Operations
(As per the written contract or agreement, provided the location is within the "coverage territory".) As per the written contract or agreement, provided the location is within the coverage territory.

(Information required to complete this Schedule, if not shown above, will be shown in the Declarations.)

A. **Section II – Who Is An Insured** is amended to include as an additional insured:

1. Any person or organization for whom you are performing operations when you and such person or organization have agreed in writing in a contract or agreement in effect during the term of this policy that such person or organization be added as an additional insured on your policy; and
2. Any other person or organization you are required to add as an additional insured under the contract or agreement described in Paragraph 1. above; and
3. The particular person or organization, if any, scheduled above.

Such person(s) or organization(s) is an additional insured only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" occurring after the execution of the contract or agreement described in Paragraph 1. above and caused, in whole or in part, by:

- a. Your acts or omissions; or
- b. The acts or omissions of those acting on your behalf;
in the performance of your ongoing operations for the additional insured; or
- c. "Your work" performed for the additional insured and included in the "products-completed operations hazard" if such coverage is specifically required in the written contract or agreement.

With respect to liability of the additional insured for "bodily injury" of an employee or agent of a named insured or the employee of a named insured's subcontractor, coverage shall apply for the partial or sole negligence of the additional insured, but only if such coverage is specifically required in the written contract or agreement.

However, the insurance afforded to such additional insured(s) described above:

- a. Only applies to the extent permitted by law;
 - b. Will not be broader than that which you are required by the contract or agreement to provide for such additional insured;
 - c. Will not be broader than that which is afforded to you under this policy; and
 - d. Nothing herein shall extend the term of this policy.
- B. The insurance provided to the additional insured does not apply to "bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of, or the failure to render, any professional architectural, engineering or surveying services, including:
1. The preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
 2. Supervisory, inspection, architectural or engineering activities.
- C. This insurance is excess over any other valid and collectible insurance available to the additional insured whether on a primary, excess, contingent or any other basis; unless the written contract or agreement requires that this insurance be primary and non-contributory, in which case this insurance will be primary and non-contributory relative to insurance on which the additional insured is a Named Insured.
- D. With respect to the insurance afforded to these additional insureds, the following is added to **Section III – Limits of Insurance**:

The most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the contract or agreement described in Paragraph A.1.; or
2. Available under the applicable Limits of Insurance shown in the Declarations;

whichever is less.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.

- E. **Section IV – Commercial General Liability Conditions** is amended as follows:

The Duties In The Event of Occurrence, Offense, Claim or Suit condition is amended to add the following additional conditions applicable to the additional insured:

An additional insured under this endorsement must as soon as practicable:

1. Give us written notice of an "occurrence" or an offense which may result in a claim or "suit" under this insurance, and of any claim or "suit" that does result;
2. Send us copies of all legal papers received in connection with the claim or "suit", cooperate with us in the investigation or settlement of the claim or defense against the "suit", and otherwise comply with all policy conditions; and

3. Tender the defense and indemnity of any claim or "suit" to any provider of other insurance which would cover the additional insured for a loss we cover under this endorsement and agree to make available all such other insurance. However, this condition does not affect Paragraph C. above.

We have no duty to defend or indemnify an additional insured under this endorsement until we receive from the additional insured written notice of a claim or "suit".

- F. This endorsement does not apply to any additional insured or project that is specifically identified in any other additional insured endorsement attached to the Commercial General Liability Coverage Form.

POLICY NUMBER:

COMMERCIAL GENERAL LIABILITY
CG 24 04 10 93

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

WAIVER OF TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Name of Person or Organization:

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement.)

The TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US Condition (Section IV - COMMERCIAL GENERAL LIABILITY CONDITIONS) is amended by the addition of the following:

We waive any right of recovery we may have against the person or organization shown in the Schedule above because of payments we make for injury or damage arising out of your ongoing operations or "your work" done under a contract with that person or organization and included in the "products-completed operations hazard". This waiver applies only to the person or organization shown in the Schedule above.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**ADDITIONAL INSUREDS – PRIMARY/NON-CONTRIBUTORY
COVERAGE WHEN REQUIRED BY CONTRACT**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE FORM

The following is added to SECTION IV – Commercial General Liability Conditions, Paragraph 4, entitled "Other Insurance", subsection b. entitled "Excess Insurance", paragraph (1):

This insurance is excess over:

- (v) Any other insurance naming an additional insured as an insured on a primary basis, excess, contingent or on any other basis unless a written contract specifically requires that this insurance be primary and noncontributing. The written contract must be currently in effect or become effective during the term of this policy and must be executed prior to the "bodily injury", "property damage" or "personal and advertising injury."

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

FIRST CHOICE CONTRACTORS LIABILITY ENDORSEMENT

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE FORM

NOTE: The following are additions, replacements and amendments to the Commercial General Liability Coverage Form, and will apply unless excluded by separate endorsement(s) to the Commercial General Liability Coverage Form.

The **COMMERCIAL GENERAL LIABILITY COVERAGE FORM** is amended as follows:

SECTION I - COVERAGES, COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE is amended as follows:

1. Extended "Property Damage"

Exclusion 2.a., Expected or Intended Injury, is replaced with the following:

- a. "Bodily injury" or "property damage" expected or intended from the standpoint of the insured. This exclusion does not apply to "bodily injury" or "property damage" resulting from the use of reasonable force to protect persons or property.

2. Non-owned Watercraft

Exclusion 2.g. (2) (a) is replaced with the following:

- (a) Less than 51 feet long; and

3. Property Damage Liability – Borrowed Equipment

The following is added to Exclusion 2.j. (4):

Paragraph (4) of this exclusion does not apply to "property damage" to borrowed equipment while at a jobsite and not being used to perform operations. The most we will pay for "property damage" to any one borrowed equipment item under this coverage is \$25,000 per "occurrence". The insurance afforded under this provision is excess over any other valid and collectible property insurance (including deductible) available to the insured, whether primary, excess, contingent or on any other basis.

4. Limited Electronic Data Liability

Exclusion 2.p. is replaced with the following:

- p. Electronic Data

Damages arising out of the loss of, loss of use of, damage to, corruption of, inability to access, or inability to manipulate "electronic data" that does not result from physical injury to tangible property.

The most we will pay under Coverage A for "property damage" because of all loss of "electronic data" arising out of any one "occurrence" is \$10,000.

We have no duty to investigate or defend claims or "suits" covered by this Limited Electronic Data Liability coverage.

The following definition is added to **SECTION V – DEFINITIONS** of the Coverage Form:

"Electronic data" means information, facts or programs stored as or on, created or used on, or transmitted to or from computer software (including systems and applications software), hard or floppy disks, CD-ROMS, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.

For purposes of this **Limited Electronic Data Liability** coverage, the definition of "Property Damage" in **SECTION V – DEFINITIONS** of the Coverage Form is replaced by the following:

17. "Property damage" means:

- a. Physical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it;
- b. Loss of use of tangible property that is not physically injured. All such loss of use shall be deemed to occur at the time of the "occurrence" that caused it;
- c. Loss of, loss of use of, damage to, corruption of, inability to access, or inability to properly manipulate "electronic data", resulting from physical injury to tangible property. All such loss of "electronic data" shall be deemed to occur at the time of the "occurrence" that caused it.

For purposes of this insurance, "electronic data" is not tangible property.

SECTION I – COVERAGES, COVERAGE B. PERSONAL AND ADVERTISING INJURY LIABILITY is amended as follows:

Paragraph 2.e. Exclusions – the Contractual Liability Exclusion is deleted.

SECTION I – COVERAGES, the following coverages are added:

COVERAGE D. VOLUNTARY PROPERTY DAMAGE

1. Insuring Agreement

We will pay, at your request, for "property damage" caused by an "occurrence", to property of others caused by you, or while in your possession, arising out of your business operations. The amount we will pay for damages is described in **SECTION III LIMITS OF INSURANCE**.

2. Exclusions

This insurance does not apply to:

"Property Damage" to:

- a. Property at premises owned, rented, leased or occupied by you;
- b. Property while in transit;
- c. Property owned by, rented to, leased to, loaned to, borrowed by, or used by you;

- d. Premises you sell, give away, or abandon, if the "property damage" arises out of any part of those premises;
- e. Property caused by or arising out of the "products-completed operations hazard";
- f. Motor vehicles;
- g. "Your product" arising out of it or any part of it; or
- h. "Your work" arising out of it or any part of it.

3. Deductible

We will not pay for loss in any one "occurrence" until the amount of loss exceeds \$250. We will then pay the amount of loss in excess of \$250 up to the applicable limit of insurance.

4. Cost Factor

In the event of a covered loss, you shall, if requested by us, replace the damaged property or furnish the labor and materials necessary for repairs thereto at your actual cost, excluding profit or overhead charges.

The insurance afforded under COVERAGE D is excess over any other valid and collectible property or inland marine insurance (including the deductible applicable to the property or inland marine coverage) available to you whether primary, excess, contingent or any other basis.

Coverage D covers unintentional damage or destruction, but does not cover disappearance, theft, or loss of use.

The insurance under COVERAGE D does not apply if a loss is paid under COVERAGE E.

COVERAGE E. CARE, CUSTODY OR CONTROL

1. Insuring Agreement

We will pay those sums that the insured becomes legally obligated to pay as damages because of "property damage" caused by an "occurrence", to property of others while in your care, custody, or control or property of others as to which you are exercising physical control if the "property damage" arises out of your business operations. The amount we will pay for damages is described in SECTION III LIMITS OF INSURANCE.

2. Exclusions

This insurance does not apply to:

"Property Damage" to:

- a. Property at premises owned, rented, leased or occupied by you;
- b. Property while in transit;
- c. Premises you sell, give away, or abandon, if the "property damage" arises out of any part of those premises;
- d. Property caused by or arising out of the "products-completed operations hazard";

- e. Motor vehicles;
- f. "Your product" arising out of it or any part of it; or
- g. "Your work" arising out of it or any part of it.

3. Deductible

We will not pay for loss in any one "occurrence" until the amount of loss exceeds \$250. We will then pay the amount of loss in excess of \$250 up to the applicable limit of insurance.

4. Cost Factor

In the event of a covered loss, you shall, if requested by us, replace the damaged property or furnish the labor and materials necessary for repairs thereto at your actual cost, excluding profit or overhead charges.

The insurance afforded under COVERAGE E is excess over any other valid and collectible property or inland marine insurance (including the deductible applicable to the property or inland marine coverage) available to you whether primary, excess, contingent or any other basis.

The insurance under COVERAGE E does not apply if a loss is paid under COVERAGE D.

COVERAGE F. LIMITED PRODUCT WITHDRAWAL EXPENSE

1. Insuring Agreement

- a. If you are a "seller", we will reimburse you for "product withdrawal expenses" associated with "your product" incurred because of a "product withdrawal" to which this insurance applies.

The amount of such reimbursement is limited as described in SECTION III - LIMITS OF INSURANCE. No other obligation or liability to pay sums or perform acts or services is covered.

- a. This insurance applies to a "product withdrawal" only if the "product withdrawal" is initiated in the "coverage territory" during the policy period because:

(1) You determine that the "product withdrawal" is necessary; or

(2) An authorized government entity has ordered you to conduct a "product withdrawal".

- c. We will reimburse only those "product withdrawal expenses" which are incurred and reported to us within one year of the date the "product withdrawal" was initiated.
- d. The initiation of a "product withdrawal" will be deemed to have been made only at the earliest of the following times:
 - (1) When you have announced, in any manner, to the general public, your vendors or to your employees (other than those employees directly involved in making the determination) your decision to conduct a "product withdrawal" This applies regardless of whether the determination to conduct a "product withdrawal" is made by you or is requested by a third party;
 - (2) When you received, either orally or in writing, notification of an order from an authorized government entity to conduct a "product withdrawal"; or

- (3) When a third party has initiated a "product withdrawal" and you communicate agreement with the "product withdrawal", or you announce to the general public, your vendors or to your employees (other than those employees directly involved in making the determination) your decision to participate in the "product withdrawal", whichever comes first.
- e. "Product withdrawal expenses" incurred to withdraw "your products" which contain:
 - (1) The same "defect" will be deemed to have arisen out of the same "product withdrawal"; or
 - (2) A different "defect" will be deemed to have arisen out of a separate "product withdrawal" if newly determined or ordered in accordance with paragraph 1.b of this coverage.

2. Exclusions

This insurance does not apply to "product withdrawal" expenses arising out of:

- a. Any "product withdrawal" initiated due to:
 - (1) The failure of "your products" to accomplish their intended purpose, including any breach of warranty of fitness, whether written or implied. This exclusion does not apply if such failure has caused or is reasonably expected to cause "bodily injury" or physical damage to tangible property.
 - (2) Copyright, patent, trade secret or trademark infringements;
 - (3) Transformation of a chemical nature, deterioration or decomposition of "your product", except if it is caused by:
 - (a) An error in manufacturing, design, processing or transportation of "your product"; or
 - (b) "Product tampering".
 - (4) Expiration of the designated shelf life of "your product".
 - b. A "product withdrawal", initiated because of a "defect" in "your product" known to exist by the Named Insured or the Named Insured's "executive officers", prior to the inception date of this Coverage Part or prior to the time "your product" leaves your control or possession.
 - c. Recall of any specific products for which "bodily injury" or "property damage" is excluded under Coverage A - Bodily Injury And Property Damage Liability by endorsement.
 - d. Recall of "your products" which have been banned from the market by an authorized government entity prior to the policy period.
 - e. The defense of a claim or "suit" against you for "product withdrawal expenses".
3. For the purposes of the insurance afforded under COVERAGE F, the following is added to 2. Duties In The Event Of Occurrence, Offense, Claim Or Suit Condition under SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS:
- e. Duties In The Event Of A "Defect" Or A "Product Withdrawal"
 - (1) You must see to it that we are notified as soon as practicable of any actual, suspected or threatened "defect" in "your products", or any governmental investigation, that may result in a "product withdrawal". To the extent possible, notice should include:

- (a) How, when and where the "defect" was discovered;
 - (b) The names and addresses of any injured persons and witnesses; and
 - (c) The nature, location and circumstances of any injury or damage arising out of use or consumption of "your product".
- (2) If a "product withdrawal" is initiated, you must:
 - (a) Immediately record the specifics of the "product withdrawal" and the date it was initiated;
 - (b) Send us written notice of the "product withdrawal" as soon as practicable; and
 - (c) Not release, consign, ship or distribute by any other method, any product, or like or similar products, with an actual, suspected or threatened defect.
- (3) You and any other involved insured must:
 - (a) Immediately send us copies of pertinent correspondence received in connection with the "product withdrawal";
 - (b) Authorize us to obtain records and other information; and
 - (c) Cooperate with us in our investigation of the "product withdrawal".
- 4. For the purposes of this Coverage F, the following definitions are added to the Definitions Section:
 - a. "Defect" means a defect, deficiency or inadequacy that creates a dangerous condition.
 - b. "Product tampering" is an act of intentional alteration of "your product" which may cause or has caused "bodily injury" or physical injury to tangible property.

When "product tampering" is known, suspected or threatened, a "product withdrawal" will not be limited to those batches of "your product" which are known or suspected to have been tampered with.
 - c. "Product withdrawal" means the recall or withdrawal of "your products", or products which contain "your products", from the market or from use, by any other person or organization, because of a known or suspected "defect" in "your product", or a known or suspected "product tampering", which has caused or is reasonably expected to cause "bodily injury" or physical injury to tangible property.
 - d. "Product withdrawal expenses" means those reasonable and necessary extra expenses, listed below paid and directly related to a "product withdrawal":
 - (1) Costs of notification;
 - (2) Costs of stationery, envelopes, production of announcements and postage or facsimiles;
 - (3) Costs of overtime paid to your regular non-salaried employees and costs incurred by your employees, including costs of transportation and accommodations;
 - (4) Costs of computer time;
 - (5) Costs of hiring independent contractors and other temporary employees;
 - (6) Costs of transportation, shipping or packaging;

- (7) Costs of warehouse or storage space; or
- (8) Costs of proper disposal of "your products", or products that contain "your products", that cannot be reused, not exceeding your purchase price or your cost to produce the products; but "product withdrawal expenses" does not include costs of the replacement, repair or redesign of "your product", or the costs of regaining your market share, goodwill, revenue or profit.
- e. "Seller" means a person or organization that manufactures, sells or distributes goods or products. "Seller" does not include a "contractor" as defined elsewhere in this endorsement.

The insurance under COVERAGE F does not apply if a loss is paid under COVERAGE G.

COVERAGE G. CONTRACTORS ERRORS AND OMISSIONS

1. Insuring Agreement

If you are a "contractor", we will pay those sums that you become legally obligated to pay as damages because of "property damage" to "your product", "your work" or "impaired property", due to faulty workmanship, material or design, or products including consequential loss, to which this insurance applies. The damages must have resulted from your negligent act, error or omission while acting in your business capacity as a contractor or subcontractor or from a defect in material or a product sold or installed by you while acting in this capacity. The amount we will pay for damages is described in SECTION III LIMITS OF INSURANCE.

We have no duty to investigate or defend claims or "suits" covered by this Contractors Errors or Omissions coverage.

This coverage applies only if the "property damage" occurs in the "coverage territory" during the policy period.

This coverage does not apply to additional insureds, if any.

Supplementary Payments – Coverage A and B do not apply to Coverage G. Contractors Errors and Omissions.

2. Exclusions

This insurance does not apply to:

- a. "Bodily injury" or "personal and advertising injury".
- b. Liability or penalties arising from a delay or failure to complete a contract or project, or to complete a contract or project on time.
- c. Liability because of an error or omission:
 - (1) In the preparation of estimates or job costs;
 - (2) Where cost estimates are exceeded;
 - (3) In the preparation of estimates of profit or return on capital;
 - (4) In advising or failure to advise on financing of the work or project; or
 - (5) In advising or failing to advise on any legal work, title checks, form of insurance or suretyship.

- d. Any liability which arises out of any actual or alleged infringement of copyright or trademark or trade dress or patent, unfair competition or piracy, or theft or wrongful taking of concepts or intellectual property.
- e. Any liability for damages:
 - (1) From the intentional dishonest, fraudulent, malicious or criminal acts of the Named Insured, or by any partner, member of a limited liability company, or executive officer, or at the direction of any of them; or
 - (2) Which is in fact expected or intended by the insured, even if the injury or damage is of a different degree or type than actually expected or intended.
- f. Any liability arising out of manufacturer's warranties or guarantees whether express or implied.
- g. Any liability arising from "property damage" to property owned by, rented or leased to the insured.
- h. Any liability incurred or "property damage" which occurs, in whole or in part, before you have completed "your work." "Your work" will be deemed completed at the earliest of the following times:
 - (1) When all of the work called for in your contract or work order has been completed;
 - (2) When all the work to be done at the job site has been completed if your contract calls for work at more than one job site; or
 - (3) When that part of the work done at a job site has been put to its intended use by any person or organization other than another contractor or subcontractor working on the same project.

Work that may need service or maintenance, correction, repair or replacement, but which is otherwise complete, will be treated as complete.
- i. Any liability arising from "property damage" to products that are still in your physical possession.
- j. Any liability arising out of the rendering of or failure to render any professional services by you or on your behalf, but only with respect to either or both of the following operations:
 - (1) Providing engineering, architectural or surveying services to others; and
 - (2) Providing or hiring independent professionals to provide engineering, architectural or surveying services in connection with construction work you perform.

Professional services include the preparing, approving or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders, or drawings and specifications. Professional services also include supervisory or inspection activities performed as part of any related architectural or engineering activities.

But, professional services do not include services within construction means, methods, techniques, sequences and procedures employed by you in connection with construction work you perform.
- k. Your loss of profit or expected profit and any liability arising therefrom.
- l. "Property damage" to property other than "your product," "your work" or "impaired property."
- m. Any liability arising from claims or "suits" where the right of action against the insured has been relinquished or waived.

- n. Any liability for "property damage" to "your work" if the damaged work or the work out of which the damage arises was performed on your behalf by a subcontractor.
- o. Any liability arising from the substitution of a material or product for one specified on blueprints, work orders, contracts or engineering specifications unless there has been written authorization, or unless the blueprints, work orders, contracts or engineering specifications were written by you, and you have authorized the changes.
- p. Liability of others assumed by the insured under any contract or agreement, whether oral or in writing. This exclusion does not apply to liability for damages that the insured would have in the absence of the contract or agreement.

3. For the purposes of Coverage G, the following definition is added to the Definitions section:

- a. "Contractor" means a person or organization engaged in activities of building, clearing, filing, excavating or improvement in the size, use or appearance of any structure or land. "Contractor" does not include a "seller" as defined elsewhere in this endorsement.

4. Deductible

We will not pay for loss in any one "occurrence" until the amount of loss exceeds \$250. The limits of insurance will not be reduced by the application of the deductible amount.

We may pay any part or all of the deductible amount to effect settlement of any claim or "suit", and upon notification of the action taken, you shall promptly reimburse us for such part of the deductible amount as has been paid by us.

5. Cost Factor

In the event of a covered loss, you shall, if requested by us, replace the damaged property or furnish the labor and materials necessary for repairs thereto at your actual cost, excluding profit or overhead charges.

The insurance under COVERAGE G does not apply if a loss is paid under COVERAGE F.

EXPANDED COVERAGE FOR TENANT'S PROPERTY AND PREMISES RENTED TO YOU

The first paragraph after subparagraph (6) in Exclusion j., Damage to Property is amended to read as follows:

Paragraphs (1), (3) and (4) of this exclusion do not apply to "property damage" (other than damage by fire) to premises, including the contents of such premises, rented to you. A separate limit of insurance applies to Damage To Premises Rented To You as described in Section III – Limits Of Insurance.

SECTION I - COVERAGES, SUPPLEMENTARY PAYMENTS – COVERAGE A and B is amended as follows:

All references to SUPPLEMENTARY PAYMENTS – COVERAGES A and B are amended to SUPPLEMENTARY PAYMENTS – COVERAGES A, B, D, E, and G.

1. Cost of Bail Bonds

Paragraph 1.b. is replaced with the following:

- b. Up to \$2,500 for cost of bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which the Bodily Injury Liability Coverage applies. We do not have to furnish these bonds.

2. Loss of Earnings

Paragraph 1.d. is replaced with the following:

- d. All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the claim or "suit", including actual loss of earnings up to \$500 a day because of time off from work.

SECTION II – WHO IS AN INSURED is amended as follows:

1. Incidental Malpractice

Paragraph 2.a.(1)(d) is replaced with the following:

- (d) Arising out of his or her providing or failing to provide professional health care services. However, this exclusion does not apply to a nurse, emergency medical technician or paramedic employed by you to provide medical services, unless:
 - (i) You are engaged in the occupation or business of providing or offering medical, surgical, dental, x-ray or nursing services, treatment, advice or instruction; or
 - (ii) The "employee" has another insurance that would also cover claims arising under this provision, whether the other insurance is primary, excess, contingent or on any other basis.

2. Broadened Who Is An Insured

The following are added to Paragraph 2.:

Subsidiaries

e. Your subsidiaries if:

- (1) They are legally incorporated entities; and
- (2) You own more than 50% of the voting stock in such subsidiaries as of the effective date of this policy. If such subsidiaries are not shown in the Declarations, you must report them to us within 180 days of the inception of your original policy.

Additional Insureds

- f. Any person or organization described in paragraphs g. through k. below whom you are required to add as an additional insured on this policy under a written contract or agreement in effect during the term of this policy, provided the written contract or agreement was executed prior to the "bodily injury", "property damage" or "personal and advertising injury" for which the additional insured seeks coverage.

However, the insurance afforded to such additional insured(s):

- (1) Only applies to the extent permitted by law;
- (2) Will not be broader than that which you are required by the contract or agreement to provide for such additional insured;
- (3) Will not be broader than that which is afforded to you under this policy;
- (4) Is subject to the conditions described in paragraphs g. through k. below; and

(5) Nothing herein shall extend the term of this policy.

g. Owner, Lessor or Manager of Premises

If the additional insured is an owner, lessor or manager of premises, such person or organization shall be covered only with respect to liability arising out of the ownership, maintenance or use of that part of any premises leased to you and subject to the following additional exclusions:

- (1) Any "occurrence" that takes place after you cease to occupy those premises; or
- (2) Structural alterations, new construction or demolition operations performed by or on behalf of such person or organization.

h. State or Governmental Agency or Subdivision or Political Subdivision – Permits or Authorizations

If the additional insured is the state or any political subdivision, the state or political subdivision shall be covered only with respect to operations performed by you or on your behalf for which the state or political subdivision has issued a permit or authorization. This insurance does not apply to:

- (1) "Bodily injury", "property damage", or "personal and advertising injury" arising out of operations performed for the federal government, state or municipality; or
- (2) "Bodily injury" or "property damage" included within the "products-completed operations hazard".

i. Lessor of Leased Equipment

If the additional insured is a lessor of leased equipment, such lessor shall be covered only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your maintenance, operation or use of equipment leased to you by such person(s) or organization(s). With respect to the insurance afforded to these additional insureds, this insurance does not apply to any "occurrence" which takes place after the equipment lease expires.

j. Mortgagee, Assignee, or Receiver

If the additional Insured is a mortgagee, assignee, or receiver of premises, such mortgagee, assignee or receiver of premises is an additional insured only with respect to their liability as mortgagee, assignee, or receiver and arising out of the ownership, maintenance, or use of the premises by you. This insurance does not apply to structural alterations, new construction and demolition operations performed by or for that person or organization.

k. Vendor

If the additional insured is a vendor, such vendor is an additional insured only with respect to "bodily injury" or "property damage" caused by "your products" which are distributed or sold in the regular course of the vendor's business, subject to the following additional exclusions:

- (1) The insurance afforded to the vendor does not apply to:
 - (a) "Bodily injury" or "property damage" for which the vendor is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that the vendor would have in absence of the contract or agreement.
 - (b) Any express warranty unauthorized by you;

- (c) Any physical or chemical change in "your product" made intentionally by the vendor;
 - (d) Repackaging, unless unpacked solely for the purpose of inspection, demonstration, testing, or the substitution of parts under instructions from the manufacturer, and then repackaged in the original container;
 - (e) Any failure to make such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products;
 - (f) Demonstration, installation, servicing or repair operations, except such operations performed at the vendor's premises in connection with the sale of the product;
 - (g) Products which, after distribution or sale by you, have been labeled or relabeled or used as a container, part or ingredient of any other thing or substance by or for the vendor; or
 - (h) "Bodily injury" or "property damage" arising out of the sole negligence of the vendor for its own acts or omissions or those of its own acts or omissions or those of its employees or anyone else acting on its behalf. However, this exclusion does not apply to:
 - i. The exceptions contained in Subparagraphs d. or f.; or
 - ii. Such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products.
- (2) This insurance does not apply to any insured person or organization, from whom you have acquired such products, or any ingredient, part or container, entering into, accompanying or containing such products.

3. Newly Formed or Acquired Organizations

Paragraph 3. is amended as follows:

- a. Coverage under this provision is afforded until the end of the policy period.
- d. Coverage A does not apply to product recall expense arising out of any withdrawal or recall that occurred before you acquired or formed the organization.

SECTION III – LIMITS OF INSURANCE is amended as follows:

1. Paragraph 2. is replaced with the following:

- 2. The General Aggregate Limit is the most we will pay for the sum of:
 - a. Medical expenses under Coverage C;
 - b. Damages under Coverage A, except damages because of "bodily injury" or "property damage" included in the "products-completed operations hazard";
 - c. Damages under Coverage B;
 - d. Voluntary "property damage" payments under Coverage D; and
 - e. Care, Custody or Control damages under Coverage E.

2. Paragraph 5. is replaced with the following:

5. Subject to Paragraph 2. or 3. above, whichever applies, the Each Occurrence Limit is the most we will pay for the sum of:
- a. Damages under Coverage A;
 - b. Medical expenses under Coverage C;
 - c. Voluntary "property damage" payments under Coverage D;
 - d. Care, Custody or Control damages under Coverage E;
 - e. Limited Product Withdrawal Expense under Coverage F; and
 - f. Contractors Errors and Omissions under Coverage G.

because of all "bodily injury" and "property damage" arising out of any one "occurrence".

3. Paragraph 6. is replaced with the following:

6. Subject to Paragraph 5. above the Damage To Premises Rented To You Limit is the most we will pay under Coverage A for damages because of "property damage" to any one premises, while rented to you, or in the case of damage by fire or explosion, while rented to you or temporarily occupied by you with permission of the owner.

The Damage to Premises Rented to You Limit is the higher of the Each Occurrence Limit shown in the Declarations or the amount shown in the Declarations as Damage To Premises Rented To You Limit.

4. Paragraph 7. is replaced with the following:

7. Subject to Paragraph 5. above, the higher of \$10,000 or the Medical Expense Limit shown in the Declarations is the most we will pay under Coverage C for all medical expenses because of "bodily injury" sustained by any one person.

5. Paragraph 8. is added as follows:

8. Subject to Paragraph 5. above, the most we will pay under Coverage D. Voluntary Property Damage for loss arising out of any one "occurrence" is \$1,500. The most we will pay in any one-policy period, regardless of the number of claims made or suits brought, is \$3,000.

6. Paragraph 9. is added as follows:

9. Subject to Paragraph 5. above, the most we will pay under Coverage E. Care, Custody or Control for "property damage" arising out of any one "occurrence" is \$1,000. The most we will pay in any one-policy period, regardless of the number of claims made or suits brought, is \$5,000.

7. Paragraph 10. is added as follows:

10. Subject to Paragraph 5. above, the most we will pay under Coverage F. Limited Product Withdrawal Expense for "product withdrawal expenses" in any one-policy period, regardless of the number of insureds, "product withdrawals" initiated or number of "your products" withdrawn is \$10,000.

8. Paragraph 11. is added as follows:

11. Subject to Paragraph 5. above, the most we will pay under Coverage G. Contractors Errors and Omissions for damage in any one-policy period, regardless of the number of insureds, claims or "suits" brought, or persons or organizations making claim or bringing "suits" is \$10,000.

For errors in contract or job specifications or in recommendations of products or materials to be used, this policy will not pay for additional costs of products and materials to be used that would not have been incurred had the correct recommendations or specifications been made.

9. Paragraph 12. is added as follows:

12. The General Aggregate Limit applies separately to:

- a. Each of your projects away from premises owned by or rented to you; or
- b. Each "location" owned by or rented to you.

"Location" as used in this paragraph means premises involving the same or connecting lots, or premises whose connection is interrupted only by a street, roadway, waterway or right-of-way of a railroad.

10. Paragraph 13. is added as follows:

13. With respect to the insurance afforded to any additional insured provided coverage under this endorsement:

If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:

- a. Required by the contract or agreement; or
- b. Available under the applicable Limits of Insurance shown in the Declarations;

whichever is less.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.

SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS is amended as follows:

1. Subparagraph 2.a. of Duties In The Event Of Occurrence, Offense, Claim, or Suit is replaced with the following:

- a. You must see to it that we are notified as soon as practicable of an "occurrence" or an offense which may result in a claim. This requirement applies only when the "occurrence" or offense is known to the following:
 - (1) An individual who is the sole owner;
 - (2) A partner, if you are a partnership or joint venture;
 - (3) An "executive officer" or insurance manager, if you are a corporation;
 - (4) A manager, if you are a limited liability company;

- (5) A person or organization having proper temporary custody of your property if you die;
- (6) The legal representative of you if you die; or
- (7) A person (other than an "employee") or an organization while acting as your real estate manager.

To the extent possible, notice should include:

- (1) How, when and where the "occurrence" or offense took place;
- (2) The names and addresses of any injured persons and witnesses; and
- (3) The nature and location of any injury or damage arising out of the "occurrence" or offense.

2. The following is added to Subparagraph 2.b. of Duties In The Event Of Occurrence, Offense, Claim, or Suit:

The requirement in 2.b. applies only when the "occurrence" or offense is known to the following:

- (1) An individual who is the sole owner;
- (2) A partner or insurance manager, if you are a partnership or joint venture;
- (3) An "executive officer" or insurance manager, if you are a corporation;
- (4) A manager or insurance manager, if you are a limited liability company;
- (5) Your officials, trustees, board members or insurance manager, if you are a not-for-profit organization;
- (6) A person or organization having proper temporary custody of your property if you die;
- (7) The legal representative of you if you die; or
- (8) A person (other than an "employee") or an organization while acting as your real estate manager.

3. The following is added to paragraph 2. of Duties in the Event of Occurrence, Offense, Claim or Suit:

- e. If you report an "occurrence" to your workers compensation carrier that develops into a liability claim for which coverage is provided by the Coverage Form, failure to report such an "occurrence" to us at the time of the "occurrence" shall not be deemed a violation of paragraphs a., b., and c. above. However, you shall give written notice of this "occurrence" to us as soon as you become aware that this "occurrence" may be a liability claim rather than a workers compensation claim.

4. Paragraph 6. is replaced with the following:

6. Representations

By accepting this policy, you agree:

- a. The statements in the Declarations are accurate and complete;
- b. Those statements are based upon representations you made to us; and
- c. We have issued this policy in reliance upon your representations.

Any error or omission in the description of, or failure to completely describe or disclose any premises, operations or products intended to be covered by the Coverage Form will not invalidate or affect coverage for those premises, operations or products, provided such error or omission or failure to completely describe or disclose premises, operations or products was not intentional.

You must report such error or omission to us as soon as practicable after its discovery. However, this provision does not affect our right to collect additional premium charges or exercise our right of cancellation or nonrenewal.

5. The following is added to paragraph 8. Transfer Of Rights Of Recovery Against Others To Us:

However, we waive any right of recovery we may have because of payments we make for injury or damage arising out of your ongoing operations or "your work" included in the "products-completed operations hazard" under the following conditions:

- a) Only when you have agreed in writing to waive such rights of recovery in a contract or agreement;
- b) Only as to the person/entity as to whom you are required by the contract to waive rights of recovery; and
- c) Only if the contract or agreement is in effect during the term of this policy, and was executed by you prior to the loss.

6. Paragraph 10. is added as follows:

10. Liberalization

If we revise this Coverage Form to provide more coverage without additional premium charge, your policy will automatically provide the additional coverage as of the day the revision is effective in the applicable state(s).

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

BLANKET NOTIFICATION TO OTHERS OF CANCELLATION

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM
 BUSINESS AUTO PHYSICAL DAMAGE COVERAGE FORM
 BUSINESSOWNERS COVERAGE FORM
 COMMERCIAL CRIME COVERAGE FORM
 COMMERCIAL GENERAL LIABILITY COVERAGE PART
 COMMERCIAL INLAND MARINE COVERAGE PART
 COMMERCIAL LIABILITY UMBRELLA COVERAGE FORM
 COMMERCIAL OUTPUT POLICY
 COMMERCIAL PROPERTY COVERAGE PART
 FARM COVERAGE PART
 FARM UMBRELLA COVERAGE FORM
 GARAGE COVERAGE FORM
 LIQUOR LIABILITY COVERAGE PART
 PRODUCT WITHDRAWAL COVERAGE PART
 PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

If we cancel this policy for any statutorily permitted reason other than nonpayment of premium we will mail notice of cancellation to any person or organization to whom you have agreed in a written contract that notice of cancellation of this policy will be given, but only if:

1. You send us a written request to provide such notice, including the name and address of such person or organization, after the first Named Insured shown in the Declarations receives notice from us of the cancellation of this policy; and,
2. We receive such written request at least 45 days before the effective date of cancellation.

We will mail such notice at least 30 days before the effective date of the cancellation.

Irrespective of any of the provisions above, nothing herein is intended to vest any right in the person or organization to be given notice, and said person or organization shall have no rights under this policy if he/it does not receive notice per this endorsement.

Exhibit E
PLANS, SPECIFICATIONS AND DRAWINGS

Zion Hill Baptist Church Parking Lot

BID FORM

ITEM	QUANTITY	UNIT	DESCRIPTION	UNIT PRICE	TOTAL
BASE BID					
1.	1	LS	Mobilization/Demobilization	\$ <u>2,849.00</u>	\$ <u>2,849.00</u>
			<u>Two Thousand Eight Hundred Forty-Nine Dollars</u> per LS (written in words)		
2.	575	SY	Site prep and grading to include vegetation and debris removal, installation of temporary erosion control devices, site grading and scarification and recompaction of soil complete in place according to plans and specifications.	\$ <u>17.00</u>	\$ <u>9,775.00</u>
			<u>Seventeen Dollars</u> per SY (written in words)		
3.	1	EA	Tree removal including stump and root removal, complete in place according to plans and specifications.	\$ <u>2,776.00</u>	\$ <u>2,776.00</u>
			<u>Two Thousand Seven Hundred Seventy-Six Dollars</u> per EA (written in words)		
4.	575	SY	Parking lot paving to include installation of crushed limestone flexible base (6" depth), prime coat, and 2" hot mix asphalt concrete pavement overlay in parking lot area and driveway, providing asphalt to concrete transition at drive approach, complete in place according to plans and specifications.	\$ <u>50.00</u>	\$ <u>28,750.00</u>
			<u>Fifty Dollars</u> per SY (written in words)		
5.	1	EA	Concrete drive approach to include sawcut and removal of existing curb, installation of 8' concrete drive approach, curb returns and reinforcing steel, tying into existing curb and gutter complete in place according to plans, specifications and city standard details for commercial driveway construction.	\$ <u>8,334.00</u>	\$ <u>8,334.00</u>
			<u>Eight Thousand Three Hundred Thirty-Four Dollars</u> per EA (written in words)		
6.	13	SY	Concrete sidewalk including installation of accessible sidewalk and curb ramp, sawcut existing curb to accommodate curb ramp, complete in place according to plans and specifications.	\$ <u>267.00</u>	\$ <u>3,471.00</u>
			<u>Two Hundred Sixty-Seven Dollars</u> per SY (written in words)		
7.	78	SF	Thermoplastic roadway markings including sidewalk bars and stop bar, complete in place according to plans and specifications.	\$ <u>21.00</u>	\$ <u>1,638.00</u>
			<u>Twenty-One Dollars</u> per SF (written in words)		

Zion Hill Baptist Church Parking Lot

BID FORM

ITEM	QUANTITY	UNIT	DESCRIPTION	UNIT PRICE	TOTAL
8.	1	LS	Parking lot markings including striping between parking stalls and hatched accessible route, complete in place according to plans and specifications.	\$ <u>2,772.00</u>	\$ <u>2,772.00</u>
			<u>Two Thousand Seven Hundred Seventy-Two Dollars</u> per LS (written in words)		
9.	11	EA	Installation of wheel stops , complete in place according to plans and specifications.	\$ <u>107.00</u>	\$ <u>1,177.00</u>
			<u>One Hundred Seven Dollars</u> per EA (written in words)		
10.	1	EA	Installation of van accessible parking sign , complete in place according to plans and specifications.	\$ <u>1,856.00</u>	\$ <u>1,856.00</u>
			<u>One Thousand Eight Hundred Fifty-Six Dollars</u> per EA (written in words)		
11.	1	LS	Site restoration , including fine grading, installation of temporary erosion control mats, seeding and fertilizing of any disturbed surface areas, removal of any construction debris, complete in place according to plans and specifications.	\$ <u>1,472.00</u>	\$ <u>1,472.00</u>
			<u>One Thousand Four Hundred Seventy-Two Dollars</u> per LS (written in words)		

Zion Hill Baptist Church Parking Lot

BID FORM

ITEM	QUANTITY	UNIT	DESCRIPTION	UNIT PRICE	TOTAL
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BID SUMMARY

TOTAL BID \$ 64,870.00

Sixty-Four Thousand Eight Hundred Seventy Dollars

TOTAL BID (written in words)

TOTAL MATERIALS BID: \$ 25,360.17

TOTAL LABOR BID: \$ 39,509.83

TOTAL number of calendar days to substantial completion 45

BY:

Brenda Jones

Brenda B. Jones, President

Printed Name

Title

COMPANY: Cox Concrete Contractors, Inc. dba CoxJones Phone No. (936) 564-6500

P.O. Box 631447 Nacogdoches, TX 75963-1447

Address

City

State

Zip

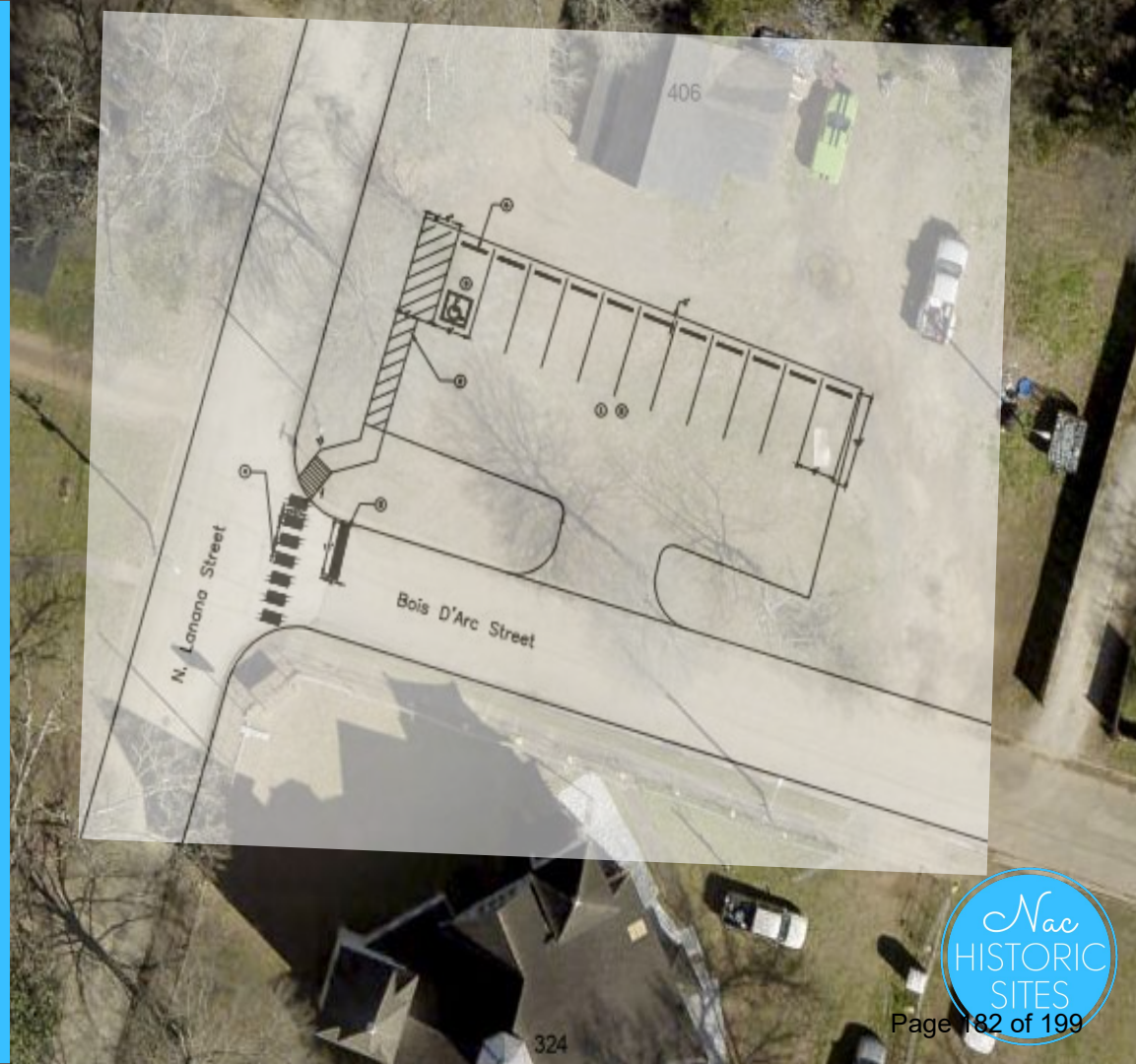
Nacogdoches Historic Sites Zion Hill Parking Lot Construction Project





Parking lot: \$64,870.00

- Mobilization/demobilization
- Site Prep and Grading
- Tree Removal
- Parking lot paving
- Concrete drive approach
- Concrete sidewalk
- Thermoplastic Roadway markings
- Parking lot markings
- Installation of wheel stop
- Installation of van accessible parking sign





City of Nacogdoches, Texas Bid Tabulation Sheet

DATE: 2/20/2023

REQUISITION NUMBER: _____

DEPARTMENT: Community Services- Historic Sites

Item No.	Qty.	UOM	Description	BIDDER A		BIDDER B		BIDDER C	
				Unit Cost	Extension	Unit Cost	Extension	Unit Cost	Extension
1	1	ea	ZION HILL BAPTIST CHURCH PARKING LOT CONSTRUCTION PROJECT	\$64,870.00	\$64,870.00	\$74,173.00	\$74,173.00	\$372,560.40	\$372,560.40
2	0	ea			\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
3	0	ea			\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
4	0			\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
5	0			\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
TOTAL:					\$64,870.00	TOTAL:	\$74,173.00	TOTAL:	\$372,560.40

BIDDER A:

Company Name: Cox Concrete Contractors, Inc. dba CoxJones
Contact: Brenda Jones, Presidnet
Phone: 936-564-6500
Address: P.O. Box 631447 Nacogdoches, TX 75961

Low Bidder**BIDDER B:**

Company Name: Drewery Construction Company, Inc.
Contact: Summer Wheaton
Phone: 936-560-1534
Address: 902 SE Stallings Dr. Nacogdoches, TX 75964

BIDDER C:

Company Name: L.S. Equipment Co Inc. Lone Star Equipment Co
Contact: Ronnie Pruitt, President
Phone: 936-657-1555
Address:



PRESENTER: Brian Bray, Community Services Director

ITEM/SUBJECT: Consider the adoption of a budget amendment in the amount of \$29,870 for the construction of a parking lot at LT 10-A, BK 5 in the amount of \$64,870. (Community Services Director)

SUMMARY/BACKGROUND: The Zion Hill Baptist Church restoration project is in its final stages and one of the last large items that needs to be done is the construction of an additional parking lot. This parking lot, located at the corner of N. Lanana and Bois d'arc (LT 10-A, BK 5) will have 10 spaces, including 1 ADA space. While we know this parking lot is not enough for large events at the Historic Site, it will supplement the 2 ADA spaces located adjacent to the Zion Hill Building.

The Zion Hill parking lot drawing was drawn by the City Engineering Department. The bid packet was released on Wednesday, January 25th and advertised in accordance with our Purchasing Policy. We received three bids for the project and opened those on February 9th. The bidders were CoxJones Construction, Drewery Construction and L.S. Equipment Co. Inc. with CoxJones being the low bidder.

The original budgeted amount for this project was \$35,000, which would cover material costs with City staff providing the labor. Staffing shortages in the streets division have left them unable to provide paving services on city facilities, so during last year's budget cycle, a request for an increased budget amount of \$60,000 was submitted for the CIP, but due to a clerical error on the City's side, the increased amount was not included in the CIP document. If the request had been included, the requested budget amendment would be \$4,870.00 instead of the \$29, 870 Budget Amendment for this project.

FINANCIAL:

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

Account No.: 18.49.680.05

Account Name: Hotel Tax Fund Land Capital

Amount: \$29,870

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

Infrastructure

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

ATTACHMENTS: 1. Zion Hill Budget Amendment Ordinance

AN ORDINANCE AMENDING ORDINANCE NO. 1929-09-22 APPROPRIATING VARIOUS AMOUNTS IN ACCORDANCE WITH BUDGET ADOPTED FOR THE ENSUING FISCAL YEAR BEGINNING OCTOBER 1, 2022 AND ENDING SEPTEMBER 30, 2023.

WHEREAS, the City Council of the City of Nacogdoches, Texas has approved and adopted the budget for said city for the ensuing fiscal year beginning October 1, 2022 and ending September 30, 2023.

WHEREAS, \$35,000 was budgeted for the construction of a parking lot across the street from Zion Hill Baptist Church Historic Site at 324 S. Lanana St. and;

WHEREAS, the City of Nacogdoches invited contractors to bid on the Zion Hill Parking Lot Construction Project in January 2023; and

WHEREAS, the City of Nacogdoches opened bids on February 9th, 2023; and

WHEREAS, the lowest bid amount, provided by CoxJones was \$64,870; and

WHEREAS, the difference between the budgeted amount and the lowest bid is \$29,870; and

WHEREAS, with the adoption of this ordinance, the Community Services Department is authorized to expend funds as needed.

NOW, THEREFORE BE IT ORDAINED by the City Council of the City of Nacogdoches that sums of money as herein set forth in said budget are hereby appropriated and amended for payment of capital outlays of the city government of the City of Nacogdoches as follows:

Fund	Dept	Acct.	Department	Description	Amt.
18	49	680.05	Hotel Tax Fund Land Capital	Zion Hill Parking Lot	\$29,870

PASSED AND APPROVED this the 7th day of March, 2023.

Jimmy Mize, Mayor
City of Nacogdoches

ATTEST:

Jan Vinson, City Secretary

Approved as to form: _____
Steven Kirkland, City Attorney

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

PRESENTER: Steve Bartlett, Public Works Director

ITEM/SUBJECT: Consider approval of a contract between the City of Nacogdoches and USIC Locating Services, LLC in an amount not to exceed \$125,000 to provide utility location services. (Director of Public Works)

SUMMARY/BACKGROUND: The City currently employs one technician who processes 811 calls to provide painted utility location markings in areas that are being excavated for construction activities. When we joined the 811 system, we were processing up to 120 requests a month. Typically, a locator can paint or mark up to 1500 feet of water and sewer lines per day.

In the last few months, we have been overwhelmed with 811 calls, mostly resulting from the activity of several fiber optic companies that are installing lines on nearly every roadway in the city. We are now receiving up to 420 calls a month, which is far beyond the capacity of our current staff. We have met with three of the primary fiber installers and they told us that they plan on ramping up their efforts over the coming months. We are expecting up to 600 requests per month for the extended future, possibly as long as 4 years. This volume will require 4 to 6 technicians plus a supervisor and an investigator. Only 2 of these positions are in the current budget and it is doubtful that we could even hire enough experienced people to meet this demand. We intend on filling and maintaining our current two staff positions (which are now vacant) using them to supervise the USIC work and investigate the daily accidental "strikes" where boring contractors have damaged our main lines or private service taps.

We are proposing to outsource our utility location work to USIC Locating Services, LLC. They are the primary locator for most of the other utilities and telecommunication providers in this area. They are already providing location services on each site where City staff are also marking water and sewer lines. USIC is part of an approved buying cooperative (Buy Board) which allows us to negotiate a contract directly with them if desired. Staff did identify one other location service provider whose rates were significantly higher than USIC.

The cost for each 811 ticket could cost as little as \$15 each, but an extended length utility request could cost \$150 or more. We are budgeting \$125,000 for the cost of a 12 month contract with USIC. This item is not budgeted and a budget amendment for the remainder of the fiscal year will be required, followed by a second amendment next year.

FINANCIAL:

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

Account No.: 30.37.630.70

Account Name: *Utility Construction*

Amount: \$125,000 (\$62,500 for current fiscal year by budget amendment)

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

Infrastructure

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

ATTACHMENTS:

1. Proposal
2. PowerPoint Presentation

City of Nacogdoches, TX

Request For Proposal

“Utility Locating & Marking Services”

March 1, 2023

Prepared By

USIC Locating Services, LLC
Tyler Smitson
Inside Sales Representative
317-810-4964



USIC PRICING PROPOSAL FOR CITY OF NACOGDOCHES, TX

Pricing

- | | |
|-------------------------------------|--|
| • Per One Call Ticket | \$15.00 |
| • Project | \$15.00 Per ¼ Hour <small>after first 30 minutes of locating</small> |
| • Business Hour Emergency Ticket | \$40.00 Flat Fee |
| • After Hour Emergency Ticket | \$40.00 Flat Fee |
| • Non-At Fault Damage Investigation | \$275.00 |

NOTE: USIC does not charge for any drive time

Pricing Definitions

Per One Call Ticket – All tickets received from State One Call.

Project Rate – If locating the water utility exceeds thirty minutes, the ticket will then be billed the proposed per ¼ hour Project Rate starting after the first thirty minutes of locating time.

Business Hour Emergency Ticket – Any Emergency Tickets that are received between the hours 7:00 A.M - 5:00 P.M, Monday – Friday. This fee is a flat fee and no hourly fees will be charged.

After Hour Emergency Ticket – Any After Hour Emergency Tickets that is received between the hours 5:00 P.M - 7:00 A.M, Monday – Friday, all day Saturday & Sunday including Holidays. This fee is a flat fee and no hourly fees will be charged.

Non-At Fault Damage Investigation – USIC will respond and investigate all damages to the City of Nacogdoches, TX utility. Should the final findings by both parties prove that USIC is clearly not the party causing the damage, USIC will be compensated \$275.00 for the time to perform the Damage Investigation and provide report to City of Nacogdoches, TX.

PLEASE NOTE: This fee is typically a roll through fee that City of Nacogdoches, TX can charge back to the damaging party.

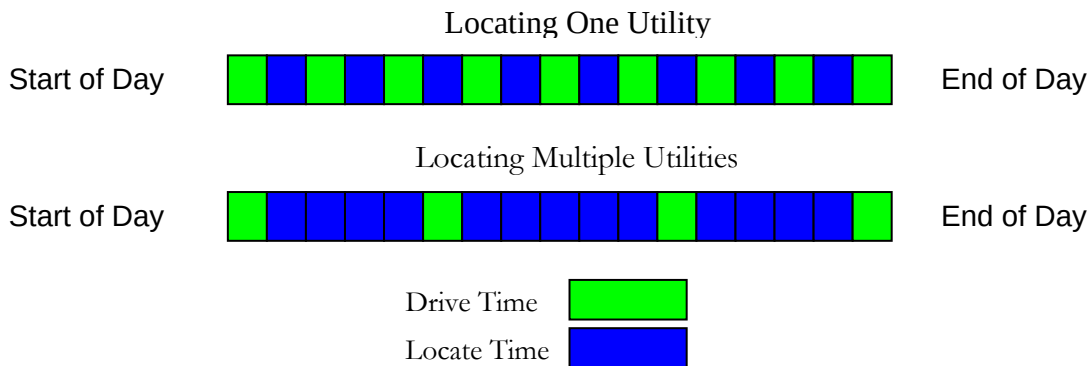
In addition to saving money on locating expense, City of Nacogdoches, TX will experience the added value of using our Professional Damage Prevention Services.

OUR VALUE PROPOSITION INCLUDES:

- Basic Economic Value Summary
- Risk Management Summary
- Advanced Technology Summary
- Professional Services Summary

BASIC ECONOMIC VALUE

- USIC currently visits every job site already for other utility clients creating *economies of scale that cannot be matched* internally or by any other vendor.



RISK MANAGEMENT

- USIC *investigates every damage occurrence. Reports Upon Request*
- USIC uses a CDI (Certified Damage Investigator) to investigate and prepare reports.
- Each report includes pre and post dig photos and all pertinent documentation.
All reports are prepared electronically and uploaded through wireless technology.
- All damage reports made available for use in claims recovery efforts
 - Damage reports enables you to recover all damage expense from either the locate vendor or from the excavator.

ADVANCED TECHNOLOGY

- USIC utilizes an in-house proprietary ‘real time’ ticket management system (TicketPro) that reflects 30 plus years of locating experience. The depth of TicketPro cannot be matched by any ‘off the shelf’ ticket management system.
- USIC technicians work their ticket load in a real time, paperless environment (creating even more labor related efficiencies).
- **City of Nacogdoches, TX will have direct, real time access** to our ticket management system (**Customer Portal**). City of Nacogdoches, TX will have ability to:

- View tickets as they come in from the State One Call service “Real-Time”
- Quickly identify when ticket is due and if completed, time it was completed and what was located.
- Query any ticket by ticket number
- View all post locate photos attributed to that located
- Additional information package available upon request.

PROFESSIONAL SERVICES

- City of Nacogdoches, TX increases labor support.
- City of Nacogdoches, TX increases labor management in terms of Supervisors, District Managers, Senior Directors and VP of Operations.
- Technician support also includes a Claims Manager, a Quality Manager, a HR Specialist and a Key Accounts Manager
- Accurate and timely locates to include pre-dig photographs to assist in damage recovery.
- USIC uses the latest technology and works ‘real time’ in a paperless environment to ensure data integrity.
- USIC encourages regular performance meetings with City of Nacogdoches, TX
- USIC is engaged nationally in the prominent industry association and legislation (to include the Common Ground Alliance (CGA) and National
- Utility Locating Contractors Association (NULCA). We also track and invest in the latest locating technology.
- USIC provides all labor and materials to include all after hours emergencies, weekends and holidays. We manage the work, you manage us.
- USIC provides City of Nacogdoches, TX all data and tools necessary to professionally manage their damage prevention program.

City of Nacogdoches, TX

In partnership with

USIC Locating Services, LLC

USIC LOCATION SERVICES, LLC

CONTRACT



- City currently a member of the 811 system
 - Previously 120 tickets/mo
 - Now 420 tickets/mo
 - Expected to rise to 600/mo next 4 years
 - Multiple fiber optic installers
-
- USIC is part of an approved buying cooperative (Buy Board) which allows us to negotiate a contract directly with them if desired.
-
- City Staff will oversee 4 to 6 USIC locators and investigate “strikes”
-
- 12 mo contract. Time and materials based

PRESENTER: Steve Bartlett, Public Works Director

ITEM/SUBJECT: Consider adoption of a budget amendment ordinance in the amount of \$62,500 to contract with a firm to provide utility location services. (Director of Public Works)

SUMMARY/BACKGROUND: In the last few months, staff has been overwhelmed with 811 calls (utility locates), mostly resulting from the activity of several fiber optic companies that are installing lines on nearly every roadway in the city. We are now receiving up to 420 calls a month, which is far beyond the capacity of our current staff. We are expecting up to 600 requests per month for the extended future, possibly as long as 4 years. This volume will require 4 to 6 technicians plus a supervisor and an investigator.

Staff is proposing to outsource our utility location work to a contract firm which will require a budget amendment. Funds are available in the Utility Reserves to support this request. This amendment will fund a contract through the end of the fiscal year, at which time a second budget amendment will be presented.

FINANCIAL:

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

Account No.: 30.37.630.70

Account Name: Utility Construction

Amount:\$62,500

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

Infrastructure

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

ATTACHMENTS:

1. Ordinance
2. PowerPoint Presentation

AN ORDINANCE AMENDING ORDINANCE NO. 1929-09-22 APPROPRIATING VARIOUS AMOUNTS IN ACCORDANCE WITH BUDGET ADOPTED FOR THE ENSUING FISCAL YEAR BEGINNING OCTOBER 1, 2022 AND ENDING SEPTEMBER 30, 2023.

WHEREAS, the City Council of the City of Nacogdoches, Texas has approved and adopted the budget for said city for the ensuing fiscal year beginning October 1, 2022 and ending September 30, 2023.

WHEREAS, the protection of our utility system is critical to the operation of the City; and

WHEREAS, locating and marking existing underground utilities prior to digging or other construction, is necessary to preserve the integrity of the water and sewer systems and is required by Texas Utilities Code Sec. 251.157; and

WHEREAS, the daily demand for locating city utilities has expanded significantly beyond the level that City staff can provide; and

WHEREAS, the need for utility location assistance from a contract vendor has become an urgent necessity; and

WHEREAS, with the adoption of this ordinance, the Utilities Construction Department is authorized to expend funds as needed.

NOW, THEREFORE BE IT ORDAINED by the City Council of the City of Nacogdoches that sums of money as herein set forth in said budget are hereby appropriated and amended for the payment of operations of the city government of the City of Nacogdoches as follows:

Fund	Dept	Acct.	Department	Description	Amt.
30	37	630.70	Utility Construction	Utility Location Services for fiscal year remaining	\$62,500

PASSED AND APPROVED this the 21st day of March, 2023.

Jimmy Mize, Mayor
City of Nacogdoches

ATTEST:

Approved as to Form:

Jan Vinson, City Secretary

Steven Kirkland, City Attorney

Approved as to content:

Pamela Curbow, Director of Finance

BUDGET AMENDMENT

UTILITY LOCATION SERVICES



Requesting a budget amendment for \$62,500 to fund a contract for contract Utility Location Services. The volume of required locations has risen four fold and additional assistance is needed immediately.



City Council Meeting

Date: March 21, 2023

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
kirklands@nactx.us
936-559-2503

ATTACHMENTS:

PRESENTER: Larissa Philpot, Economic Development Director

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

1. Discuss or deliberate regarding commercial or financial information the governmental body has received from business prospects that the governmental body seeks to have locate, stay, or expand in or near the territory of the governmental body and with which the governmental body is conducting economic development negotiations; and
2. Deliberate the offer of financial or other incentives to business prospects described by Subdivision 1 above.

SUMMARY/BACKGROUND:

FINANCIAL:

No financial impact associated with this item

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

Economic Development

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

ATTACHMENTS:



City Council Meeting

Date: March 21, 2023

Agenda Item: 7.C.

PRESENTER: Keith Kiplinger, Interim City Manager

ITEM/SUBJECT: Personnel Matters – Pursuant to Texas Government Code Section 551.074, deliberations regarding the appointment or employment of a public officer or employee. The subject of this executive session is Interim City Manager.

SUMMARY/BACKGROUND:

FINANCIAL:

No financial impact associated with this item

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

Not Applicable

CITY CONTACT: Keith Kiplinger, Interim City Manager
kiplingerk@nactx.us
936-559-2501

ATTACHMENTS: