



April 4, 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 April 4, 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 for March 21, 2023 regular meeting. (City Secretary)
 - B. Consider approval of a contract by and between the City of Nacogdoches and Schaumburg & Polk, Inc. for professional engineering services on the 2023 WWTP Clarifier Rehabilitation Project in a not-to-exceed amount of \$119,250.00 (Assistant Director of Public Works).
 - C. Consider ordinance amending Ordinance No. 1929-09-22 appropriating various amounts in accordance with budget adopted for ensuing fiscal year beginning

October 1, 2022 and ending September 30, 2023 (WWTP Clarifier Rehabilitation)
(Assistant Director of Public Works).

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. Receive annual report from the Nacogdoches County Exposition and Civic Center. (Anita Scott, Nacogdoches Expo and Civic Center Director)
 - B. Consider approval of a contract between the City of Nacogdoches and Thirkettle Corp dba Aqua-Metric Sales Co. for construction services for the Automated Meter Infrastructure System water meter and transmitter replacement project in an amount not to exceed \$5,209,100. (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 additional funds needed for the Automated Meter Infrastructure water meter and transmitter replacement program (Director of Finance)
 - D. 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)
 - E. Consider approval 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)
 - F. Hold a discussion and give staff direction regarding the fair housing analysis required for application to the 2023/2024 Community Development Block Grant. (Director of Finance)
7. EXECUTIVE SESSION: Executive Sessions are for City Council to receive information and deliberate on matters specified in Subchapter D of the Texas Open Meetings Act. Council may reconvene in open session to vote on the matter.
 - A. 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.
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 29, 2023 at 11 a.m. and remained posted until meeting convened.

Jan Vinson, City Secretary



City Council Meeting

Date: April 4, 2023

Agenda Item: 5.A.

PRESENTER: Jan Vinson, City Secretary

ITEM/SUBJECT: Consider approval of minutes for March 21, 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
936-559-2504

ATTACHMENTS: 1. Minutes



Regular Session
Nacogdoches City Council
March 21, 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, Amelia Fischer, Kathleen Belanger and Chad Huckaby.

1. Called to order at 5:32 p.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 March 7, 2023 regular meeting.
 - 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.
 - C. Consider approval of a contract between the City of Nacogdoches and Chastang Ford for the purchase of two fleet vehicles.
 - 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.
 - 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."
 - F. Consider approval of a resolution closing East Main Street for the annual Texas Blueberry Festival June 9-10, 2023.
 - G. Consider approval of a resolution closing East Main Street for the Old Town Rig Down Event taking place September 15-17, 2023.
 - H. Consider approval of a resolution closing East Main Street for the Dia de los Muertos Festival on November 4, 2023.
 - I. Consider approval of a resolution closing East Main Street for the annual Veterans Day Parade on November 11, 2023.
 - J. Consider approval of a resolution closing East Main Street for the annual Lighted Christmas Parade on December 2, 2023.

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

6. **REGULAR AGENDA:**

- 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

Minutes unofficial until approved by City Council

1200 feet south of Sir Galahad Drive along Post Oak Road. This request has been submitted by Tim Ward. Case File ZON2023-02.

Alaina Helton, City Planner, stated the surrounding property is zoned and developed as single family. This property's Planned Development was established several years ago and has expired. The property owner is planning to sell the property and is requesting it be changed to single family.

Notifications were sent to six citizens within the 200 foot notice area and twelve citizens in the 500 foot notice area. Two phone calls were received in support of this zone change.

Planning and Zoning Commission heard this request at their meeting on March 13, 2023 and unanimously recommended approval.

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

- B. Consider approval of a contract between the City of Nacogdoches and NewGen Strategies & Solutions, LLC for Utility Rate and Design Study.

Pam Curbow, Director of Finance, stated that NewGen Strategies & Solutions, LLC was the only response received from the formal RFP offered in December 2022. NewGen Strategies & Solutions, LLC also performed the City's rate study in 2014.

This contract covers the review of water, sewer and sanitation rates. Ms. Curbow discussed scope of services with a total cost of \$92,265.00.

City Council discussed the recommended frequency of rate studies, reviewing rates for customers outside the city limits, when the rate changes will take place and why the study was not included in the budget.

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

- 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.

Finance Director Pam Curbow explained that this budget amendment ordinance is to cover the cost of the rate study contract with NewGen Strategies & Solutions, LLC.

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

- 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.

Brian Bray, Community Services Director, stated the parking lot will be across Bois D'Arc from the Zion Hill Baptist Church. This parking lot will be eleven spaces with one being ADA accessible. Three bids were received with CoxJones being the lowest bidder at \$64,870.00. Unfortunately due to an error when entering budget there is only \$35,000 budgeted for construction of the parking lot.

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

- 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 Service Director Brian Bray stated that this budget amendment in the amount of \$29,870.00 will bring the total amount of funding for the parking lot to \$64,870.00.

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

- 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.

Mayor Mize pulled 6.F. because the contract is not complete.

- G. Consider adoption of a budget amendment ordinance in the amount of \$62,500 to contract with a firm to provide utility location services.

Mayor Mize pulled 6.G. as it is related to the previous item.

City Council convened into Executive Session at 5:56 p.m.

7. **EXECUTIVE SESSION:**

- 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 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.
- 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. City Council reconvened in regular session at 7:15 p.m. taking no action.

9. Adjourned 7:15 p.m.

Mayor Jimmy Mize
City Council
City of Nacogdoches

ATTEST:

Jan Vinson, City Secretary

PRESENTER: Case Opperman, Public Works Asst Director

ITEM/SUBJECT: Consider approval of a contract by and between the City of Nacogdoches and Schaumburg & Polk, Inc. for professional engineering services on the 2023 WWTP Clarifier Rehabilitation Project in a not-to-exceed amount of \$119,250.00 (Assistant Director of Public Works).

SUMMARY/BACKGROUND: Recently, Clarifier #4 at the Wastewater Treatment Plant (WWTP) failed requiring full rehabilitation to be put back online in the wastewater treatment process. Clarifiers allow solids to settle out and return to the treatment process resulting in clear water that is then sent through the remainder of the process for final treatment and outfall into the creek. Clarifier #4 is one of four clarifiers available for treatment and provides necessary redundancy in the process making its rehabilitation an urgent need. Clarifier #3 is also showing signs of impending issues and its rehabilitation will be needed in the near future, as well.

Schaumburg & Polk, Inc. (SPI) designed these treatment units originally and, due to the time-sensitive nature of bringing Clarifier #4 back up as soon as possible, SPI has been selected to design the rehabilitation of the clarifier. Having SPI design Clarifier #3 at the same time for future construction also offered a cost savings versus designing it at a later date.

SPI's design services on this project will include design of rehabilitation of Clarifiers #3 and #4, preparation of final design plans, details and specifications for bidding. These services will be provided for a lump sum of \$66,550. SPI will also provide bidding and construction phase services for Clarifier #4's rehabilitation including preparation of bid package, assistance in the bid process, periodic site visits during construction and other related construction administration on a time and materials basis not to exceed \$52,700. Total maximum authorization is \$119,250. Rehabilitation of Clarifier #3 will be constructed as necessary funds become available and after rehabilitation of Clarifier #4 is completed.

FINANCIAL:

Item is budgeted:

Account No.: 30.179.39

Account Name: *Utility Fund CIP*

Amount: \$120,000

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

Infrastructure

CITY CONTACT: Case Opperman, Assistant Director of Public Works
oppermanc@nactx.us
936-559-2515

ATTACHMENTS: 1. Contract

**CITY OF NACOGDOCHES
ARCHITECTURAL & ENGINEERING
PROFESSIONAL SERVICES CONTRACT**

This Contract is between the **City of Nacogdoches**, a Texas home-rule municipal corporation, (the “City”) and **Schaumburg & Polk, Inc.** (the “Consultant”), whereby the Consultant agrees to provide the City with certain professional services as described herein and the City agrees to pay the Consultant for those services.

**ARTICLE I
Scope of Services**

- 1.01 In consideration of the compensation stated in paragraph 2.01 below, the Consultant agrees to provide the City with the professional services as described in **Exhibit A**, the Scope of Services, which is incorporated herein by reference for all purposes, and which services may be more generally described as follows: **2023 WWTP Clarifier Rehabilitation Project** (the “Project”).

**ARTICLE II
Payment**

- 2.01 In consideration of the Consultant’s provision of the professional services in compliance with all terms and conditions of this Contract, the City shall pay the Consultant according to the terms set forth in **Exhibit B**. Except in the event of a duly authorized change order, approved by the City as provided in this Contract, the total cost of all professional services provided under this Contract may not exceed **One Hundred Nineteen Thousand Two Hundred Fifty and 00/100 Dollars (\$ 119,250.00)**.

**ARTICLE III
Time of Performance and Construction Cost**

- 3.01 The Consultant shall complete the professional services within the times set forth in **Exhibit B**. Consultant expressly agrees that such times are as expeditious as is prudent considering the ordinary professional skill and care of a competent engineer or architect.

- 3.02 **Time is of the essence of this Contract.** The Consultant shall be prepared to provide the professional services in the most expedient and efficient manner possible in order to complete the work by the times specified. Promptly after the execution of this Contract, the Consultant shall prepare and submit for the City to approve in writing, a detailed schedule for the performance of the Consultant's services to meet the City's project milestone dates which are included in this Contract. The Consultant's schedule shall include allowances for periods of time required for the City's review and for approval of submissions by authorities having jurisdiction over the Project. The schedule will also specify payment milestones associated with design tasks.
- 3.03 The Consultant's services consist of all of the services required to be performed by Consultant, Consultant's employees and Consultant's sub-consultants under the terms of this Contract. Such services include normal civil, structural, mechanical and electrical engineering services, plumbing, food service, acoustical and landscape services, and any other design services that are normally or customarily furnished and reasonably necessary for the Project. The Consultant shall contract and employ at its expense sub-consultants necessary for the design of the Project, and such sub-consultants shall be licensed as required by the State of Texas and approved in writing by the City.
- 3.04 The Consultant shall designate a principal of the firm reasonably satisfactory to the City who shall, for so long as acceptable to the City, be in charge of Consultant's services to be performed hereunder through to completion, and who shall be available for general consultation throughout the Project. Any replacement of that principal shall be approved in writing (which shall not be unreasonably withheld) by the City, prior to replacement.
- 3.05 Consultant shall be responsible for the coordination of all drawings and design documents relating to Consultant's design and used on the Project, regardless of whether such drawings and documents are prepared by Consultant. Consultant shall be responsible for the completeness and accuracy of all drawings and specifications submitted by or through Consultant and for its compliance with all applicable codes, ordinances, regulations, laws and statutes.
- 3.06 Consultant's evaluations of the City's project budget and the preliminary estimates of construction cost and detailed estimates of construction cost represent the Consultant's best judgment as a design professional familiar with the construction industry.

ARTICLE IV

Conceptual Design

- 4.01 Consultant shall meet with the City for the purpose of determining the nature of the Project. The Consultant shall inquire in writing as to the information it believes the City may have in its possession that is necessary for the Consultant's performance. The City shall provide the information within its possession that it can make available to the Consultant. The City shall designate a representative to act as the contact person on behalf of the City.

- 4.02 The Consultant shall determine the Project needs, including, but not limited to, tests, analyses, reports, site evaluations, surveys, comparisons with other municipal projects, review of budgetary constraints and other preliminary investigations necessary for the Project. Consultant shall verify the observable existing conditions of the Project and verify any existing as-built drawings. Consultant shall confirm that the Project can be designed and constructed within the time limits outlined in this Contract. Consultant shall prepare a detailed design phase schedule which includes all review and approval periods during the project phases from Conceptual Design to Construction, design development and construction document phases. Consultant shall confirm that the Project can be designed and constructed for the dollar amount of the Project budget, if applicable. Consultant shall generally review the City's available budget for the Project and provide an early opinion of the adequacy of funds for the intended scope of work.
- 4.03 The Consultant shall prepare a Conceptual Design that shall include preliminary schematic layouts, alternative ideas, surveys, sketches and exhibits demonstrating the considerations involved in the Project. The Conceptual Design shall contemplate compliance with all applicable laws, statutes, ordinances, codes and regulations. Upon the City's request, the Consultant shall meet with City staff and/or City Council to make a presentation of its report.

ARTICLE V

Preliminary Design

- 5.01 The City shall direct the Consultant to commence work on the Preliminary Design by sending to the Consultant a letter of authorization to begin work on the Preliminary Design pursuant to this Contract. Upon receipt of the letter of authorization to commence Preliminary Design, the Consultant shall meet with the City for the purpose of determining the extent of any revisions to the Conceptual Design.
- 5.02 The Consultant shall prepare the Preliminary Design of the Project, including, but not limited to, the preliminary drawings and specifications and other documents to fix and describe the size and character of the Project as to civil, architectural, structural, mechanical and electrical systems, materials and such other elements as may be appropriate. The Consultant shall submit to the City a detailed estimate of the construction costs of the Project, based on current area, volume, or other unit costs. This estimate shall also indicate costs for allowances, contingencies, fees, permits, and all other costs involved in constructing the Project and the time required for construction of the Project from commencement to final completion.
- 5.03 Upon completion of the Preliminary Design of the Project, the Consultant shall so notify the City. Upon request the Consultant shall provide a Preliminary Engineering Report and meet with the City staff and/or City Council to make a presentation of its Preliminary Design of the Project. The Consultant shall provide an explanation of the Preliminary Design and cost estimate and shall verify that, to the best of Consultant's belief, the Project requirements and construction can be completed within the Project budget and schedule.

ARTICLE VI

Final Design

- 6.01 The City shall direct the Consultant to commence work on the Final Design of the Project by sending to the Consultant a letter of authorization to begin work on the Final Design phase of the Project. Upon receipt of the Letter of Authorization to proceed with Final Design of the Project, the Consultant shall immediately prepare the Final Design, including, but not limited to, the bid documents, contract, drawings, and specifications, to fix and describe the size and character of the Project as to civil, structural, mechanical, and electrical systems, materials, and such other elements as may be appropriate. The Final Design of the Project shall comply with all applicable laws, statutes, ordinances, codes and regulations.
- 6.02 Notwithstanding the City's approval of the Final Design, the Consultant warrants that the Final Design will be sufficient and adequate to fulfill the purposes of the Project. Additionally, Consultant will provide technical criteria, written descriptions and design data for the City's use in filing applications for permits from other governmental authorities or entities. Consultant shall assist the City in the preparation of permits and consultations with other entities having jurisdiction over the Project.
- 6.03 The Consultant shall prepare and separately seal the special provisions, the technical specifications, and bid proposal form(s) in conformance with the City's current pre-approved, "Standard Form of Construction Agreement" for the construction contract between the City and the construction contractor. The Consultant hereby agrees that no changes, modifications, supplementations, alterations, or deletions will be made to the City's standard form without the prior written approval of the City.
- 6.04 The Consultant shall provide the City with complete construction design plans and contract documents sufficient to be advertised for bids by the City. The contract documents shall include the design and specifications and other changes that are required to fulfill the purpose of the Project. Upon completion of the Final Design of the Project, with the submission of the complete contract documents, and upon request of the City, the Consultant shall meet with City staff and/or the City Council to present the Final Design of the Project. The Consultant shall provide an explanation of the Final Design and cost estimate.

ARTICLE VII

Bid Preparations & Evaluation

- 7.01 The Consultant shall assist the City in advertising for and obtaining bids or negotiating proposals for the construction of the Project. Upon request, the Consultant shall meet with City staff and/or the City Council to present, and make recommendations on, the bids submitted for the construction of the Project.
- 7.02 The Consultant shall review the construction contractors' bids, including subcontractors, suppliers, and other persons required for completion of the Project. The Consultant shall

evaluate each bid and provide these evaluations to the City along with a recommendation on each bid. The Consultant shall also review the qualifications and references of the lowest responsible bidder. A written evaluation of the bids shall be provided to the City by Consultant and shall include any bidding irregularities subject to waiver. If the lowest bid for the construction of the Project exceeds the final cost estimate set forth in the Final Design of the Project, then the Consultant, at its sole cost and expense, shall revise the construction documents so that the total construction costs of the Project will not exceed the final cost estimate contained in the Final Design of the Project.

- 7.03 Where substitutions are requested by a construction contractor, the Consultant shall review the substitution requested and shall recommend approval or disapproval of such substitutions.

ARTICLE VIII

Construction Administration

- 8.01 The Consultant shall be a representative of, and shall advise and consult with, the City (1) during construction, and (2) at the City's direction from time to time during the correction or warranty period described in the construction contract. The Consultant shall have authority to act on behalf of the City only to the extent provided in this Contract unless modified by written instrument.
- 8.02 The Consultant shall make visits to the site, with a frequency appropriate to the scope of the Project, to inspect the progress and quality of the executed work of the construction contractor and its subcontractors and to determine if such work is proceeding in accordance with the contract documents. Consultant shall periodically review the as-built drawings for accuracy and completeness, and shall report its findings to the City.
- 8.03 Resident Project Representative (RPR): The Consultant shall provide the services of an RPR to support more frequent and extensive observations of the contractor's work. The presence of the RPR will not diminish the responsibilities of the Consultant's design professionals to provide site visits to monitor the progress of the project. Duties and responsibilities of the RPR include:
- a. The RPR will generally deal directly with the contractor and report to the Consultant, who in turn will report to the City. The RPR works under the direction of the Consultant. The RPR may communicate directly with the City, but only with the knowledge of the Consultant.
 - b. The RPR will not normally direct the work of the contractor but shall observe its compliance with the plans and specifications and report such directly to the Consultant. The RPR can communicate any concerns directly to the contractor, but all observed conditions will always be given to the Consultant as well.
 - c. If the RPR observes unsafe conditions, or other potentially hazardous conditions that might risk life and safety to anyone, he/she will immediately report such to the

contractor, Consultant and City. In such circumstances, the RPR will have the authority to stop the work of the contractor until the issue can be resolved.

- d. The RPR shall, on behalf of the Consultant, make and keep as-built drawings in the field to record any variances from the original designs shown in plans and specifications.
 - e. The RPR shall keep and maintain inspection reports for each day he/she is present on the project site. These reports shall be made available to the City at the end of the project. The daily reports shall include times of observations, activities observed, materials used or delivered to the job, problems encountered and solutions or adjustments made in the field.
 - f. The RPR shall review pay estimates from the contractor, on behalf of the Consultant, to verify the quantity and quality of work requested for payment. At no time will the RPR approve pay estimates, contract addendums, modifications, or change orders involving changes in the contract price.
 - g. The RPR shall be present to observe and witness all testing of on-site equipment and installed materials under the direction of the Consultant.
- 8.04 The Consultant shall keep the City informed of the progress and quality of the work through periodic project meetings and written monthly status reports. The Consultant shall employ the professional skill and care ordinarily provided by competent engineers or architects practicing in the same or similar locality and under the same or similar circumstances and professional license in discovering and promptly reporting to the City any defects or deficiencies in such work and shall disapprove or reject any work failing to conform to the contract documents.
- 8.05 The Consultant shall review and approve shop drawings and samples, the results of tests and inspections, and other data that each construction contractor or subcontractor is required to provide. The Consultant's review and approval shall include a determination of whether the work complies with all applicable laws, statutes, ordinances and codes and a determination of whether the work, when completed, will be in compliance with the requirements of the contract documents.
- 8.06 The Consultant shall determine the acceptability of substitute materials and equipment that may be proposed by construction contractors or subcontractors. The Consultant shall also receive and review maintenance and operating instruction manuals, schedules, guarantees, and certificates of inspection, which are to be assembled by the construction contractor in accordance with the contract documents.
- 8.07 The Consultant shall issue all instructions of the City to the construction contractor as well as interpretations and clarifications of the contract documents pertaining to the performance of the work. Consultant shall interpret the contract documents and judge the performance thereunder by the contractor constructing the Project, and Consultant shall,

within a reasonable time, render such interpretations and clarifications as it may deem necessary for the proper execution and progress of the work. Consultant shall receive no additional compensation for providing clarification of the drawings and specifications.

- 8.08 The Consultant shall review the amounts owing to the construction contractor and recommend to the City, in writing, payments to the construction contractor of such amounts. The Consultant's recommendation of payment, being based upon the Consultant's on-site inspections, observations, and its experience and qualifications as a design professional, shall constitute a recommendation by the Consultant to the City that the quality of such work is in accordance with the contract documents and that the work has progressed to the point reflected in Consultant's recommendation for payment.
- 8.09 Upon notification from the construction contractor that the Project is substantially complete, the Consultant shall conduct an inspection of the site to determine if the Project is substantially complete. The Consultant shall prepare a checklist of items that shall be completed prior to final acceptance. Upon notification by the construction contractor that the checklist items designated by the Consultant for completion have been completed, the Consultant shall inspect the Project to verify final completion.
- 8.10 The Consultant shall not be responsible for the work of the construction contractor or any of its subcontractors, except that the Consultant shall be responsible for the construction contractor's schedules or failure to carry out the work in accordance with the contract documents if such failures result from the Consultant's negligent acts or omissions. This provision shall not alter the Consultant's duties to the City arising from the performance of the Consultant's obligations under this Contract.
- 8.11 The Consultant shall conduct at least one on-site inspection during the warranty period and shall report to the City as to the continued acceptability of the work.
- 8.12 The Consultant shall recommend and prepare change orders, work directives and clarification notices on behalf of the City but shall not execute and issue such documents or otherwise alter the financial scope of the Project without an advance, written authorization from the City.
- 8.13 The Consultant shall perform all of its duties under this Article VIII so as to not cause any delay in the progress of construction of the Project.
- 8.14 The Consultant shall assist the construction contractor and City in obtaining a Certificate of Occupancy by accompanying governing officials during inspections of the Project if requested to do so by the City.

ARTICLE IX

Change Orders & Documents & Materials

- 9.01 No changes shall be made, nor will invoices for changes, alterations, modifications, deviations, or extra work or services be recognized or paid to Consultant except upon the

prior written order from authorized personnel of the City. The Consultant shall not execute change orders on behalf of the City or otherwise alter the financial scope of the Project, except upon the prior written approval from authorized personnel of the City.

9.02 a. When the original contract amount plus all change orders is less than \$50,000, the City Manager or his delegate 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 must approve such change order prior to commencement of the services or work.

b. When the original contract amount plus all change orders is equal to or greater than \$50,000, the City Manager or his delegate may approve the written change order. For such contracts, when a change order exceeds \$50,000, the City Council must approve such change order prior to commencement of the services or work.

c. **Any request by the Consultant for an increase in the Scope of Services and an increase in the amount listed in paragraph two of this Contract shall be made and approved by the City prior to the Consultant providing such services or the right to payment for such additional services shall be waived.** If there is a dispute between the Consultant and the City respecting any service provided or to be provided hereunder by the Consultant, including a dispute as to whether such service is additional to the Scope of Services included in this Contract, the Consultant agrees to continue providing on a timely basis all services to be provided by the Consultant hereunder, including any service as to which there is a dispute.

9.03 The Consultant shall furnish the City **Three (3)** sets of plans and specifications. It is hereby agreed that additional copies shall be provided to the City at the City's expense. The Consultant shall provide the City **One (1)** sets of reproducible, ~~mylar~~ record drawings that clearly show all the changes made during the construction process, based upon the marked-up prints, drawings, and other data furnished by the construction contractor to the Consultant. The Consultant shall provide copies of documents, computer files if available, surveys, notes, and tracings used or prepared by the Consultant. The foregoing documentation, the Consultant's work product, and other information in the Consultant's possession concerning the Project shall be the property of the City from the time of preparation. The Consultant shall furnish one set of digital files representing the final record drawings.

ARTICLE X

Warranty, Indemnification & Release

10.01 Pursuant to Section 271.904(d) of the Texas Local Government Code, the Consultant shall perform the services with the professional skill and care ordinarily provided by competent engineers or architects practicing under the same or similar circumstances and professional license and as expeditiously as is prudent considering the ordinary skill and care of a competent engineer or architect. The Consultant warrants that the information

provided by the Consultant, the design, the preparation of drawings, the designation or selection of materials and equipment, the selection and supervision of personnel, and the performance of all other services under this Contract are performed with the professional skill and care ordinarily provided by competent engineers or architects practicing in the same or similar circumstances and professional license. Approval of the City shall not constitute, or be deemed, a release of the responsibility and liability of the Consultant, its employees, agents, or associates for the exercise of skill and diligence to promote the accuracy and competency of their designs, information, plans, specifications or any other document, nor shall the City's approval be deemed to be the assumption of responsibility by the City for any defect or error in the aforesaid documents prepared by the Consultant, its employees, associates, agents, or subcontractors.

- 10.02 The Consultant shall promptly correct any defective designs or specifications furnished by the Consultant at no cost to the City. The City's approval, acceptance, use of, or payment for, all or any part of the Consultant's services hereunder or of the Project itself shall in no way alter the Consultant's obligations or the City's rights hereunder.
- 10.03 In all activities or services performed hereunder, the Consultant is an independent contractor and not an agent or employee of the City. The Consultant and its employees are not the agents, servants, or employees of the City. As an independent contractor, the Consultant shall be responsible for the professional services and the final work product contemplated under this Contract. Except for materials furnished by the City, the Consultant shall supply all materials, equipment, and labor required for the professional services to be provided under this Contract. The Consultant shall have ultimate control over the execution of the services it is to provide under this Contract. The Consultant shall have the sole obligation to employ, direct, control, supervise, manage, discharge, and compensate all of its employees or subcontractors, and the City shall have no control of or supervision over the employees of the Consultant or any of the Consultant's subcontractors.
- 10.04 The Consultant must at all times exercise reasonable precautions on behalf of, and be solely responsible for, the safety of its officers, employees, agents, subcontractors, licensees, and other persons, as well as its personal property, while in the vicinity of the Project or any of the work being done on or for the Project. It is expressly understood and agreed that the City shall not be liable or responsible for the negligence of the Consultant, its officers, employees, agents, subcontractors, invitees, licensees, and other persons.
- 10.05 INDEMNITY. THE CONSULTANT SHALL INDEMNIFY, DEFEND, AND HOLD HARMLESS THE CITY, ITS OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, ASSIGNEES AND/OR DESIGNEES (SEPARATELY AND COLLECTIVELY REFERRED TO IN THIS PARAGRAPH AS "INDEMNITEE"), FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS OR SUITS, AND ALL RELATED DAMAGES, COSTS, ATTORNEY FEES, AND EXPENSES CAUSED BY, ARISING OUT OF, OR RESULTING FROM ANY ACTS OF NEGLIGENCE, INTENTIONAL TORTS, WILFULL**

MISCONDUCT, PERSONAL INJURY OR DAMAGE TO PROPERTY AND OTHERWISE RELATED TO CONSULTANT'S PERFORMANCE, AND/OR FAILURES TO PAY A SUBCONTRACTOR OR SUPPLIER COMMITTED BY THE CONSULTANT OR ITS AGENTS, EMPLOYEES, SUB-CONTRACTORS, ORDER FULFILLERS, OR CONSULTANTS UNDER CONTRACT TO CONSULTANT, OR ANOTHER ENTITY OVER WHICH THE CONSULTANT EXERCISES CONTROL, OR SUPPLIERS OF SUBCONTRACTORS IN THE EXECUTION OR PERFORMANCE OF THE CONTRACT.

- 10.06 CONSULTANT SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS THE CITY FROM AND AGAINST ANY AND ALL CLAIMS, VIOLATIONS, MISAPPROPRIATIONS OR INFRINGEMENT OF ANY PATENT, TRADEMARK, COPYRIGHT, TRADE SECRET OR OTHER INTELLECTUAL PROPERTY RIGHTS AND/OR OTHER INTANGIBLE PROPERTY, PUBLICITY OR PRIVACY RIGHTS AND/OR IN CONNECTION WITH OR ARISING FROM: (1) THE PERFORMANCE OR ACTIONS OF CONSULTANT PURSUANT TO THIS CONTRACT; (2) ANY DELIVERABLE, WORK PRODUCT, CONFIGURED SERVICE OR OTHER SERVICE PROVIDED HEREUNDER; AND/OR THE CITY'S AND /OR CONSULTANT'S USE OF OR ACQUISITION OF ANY REQUESTED SERVICES OR OTHER ITEMS PROVIDED TO THE CITY BY CONSULTANT OR OTHERWISE TO WHICH THE CITY HAS ACCESS AS A RESULT OF CONSULTANT'S PERFORMANCE UNDER THE CONTRACT.**
- 10.07 CONSULTANT AND THE CITY AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM UNDER 10.05 OR 10.06. CONSULTANT SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE, INCLUDING ATTORNEYS' FEES. THE DEFENSE OF ANY LAWSUIT SHALL BE COORDINATED BY THE CONSULTANT WITH THE CITY ATTORNEY WHEN THE CITY IS NAMED DEFENDANT IN ANY LAWSUIT AND CONSULTANT MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE CITY ATTORNEY. IF THE CITY DETERMINES THAT A CONFLICT EXISTS BETWEEN ITS INTERESTS AND THOSE OF CONSULTANT OR IF THE CITY IS REQUIRED BY LAW TO SELECT SEPARATE COUNSEL, THE CITY WILL BE PERMITTED TO SELECT SEPARATE COUNSEL AND THE CONSULTANT WILL PAY ALL REASONABLE COSTS OF THE CITY'S COUNSEL.**
- 10.08 Release. The Consultant releases, relinquishes, and discharges the City, its officers, agents, employees, and volunteers from all claims, demands, and causes of action of every kind and character, including the cost of defense thereof, for any injury to, sickness or death of the Consultant or its employees and any loss of or damage to any property of the Consultant or its employees that is caused by or alleged to be caused by, arises out of, or is in connection with the Consultant's work to be performed hereunder. Both the City and the Consultant expressly intend that 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, sickness, death, loss, or damage suffered by the Consultant or its employees, but not otherwise, this release shall apply regardless of whether such loss, damage, injury, or death was caused in whole or in part by the City, any other party released hereunder, the Consultant, or any third party.

- 10.09 It is agreed with respect to any legal limitations now or hereafter in effect and affecting the validity or enforceability of the indemnification, release or other obligations under Paragraphs 10.05, 10.06, 10.07 and 10.08 such legal limitations are made a part of the obligations and shall operate to amend same to the minimum extent necessary to bring the provision(s) into conformity with the requirements of such limitations, and as so modified, the obligations set forth therein shall continue in full force and effect.

ARTICLE XI

Insurance

- 11.01 The Consultant 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 work hereunder by the Consultant, its agents, representatives, volunteers, employees or subcontractors. The policies, limits and endorsements required are as set forth on **Exhibit C**.

ARTICLE XII

Use of Drawings, Specifications and Other Documents

- 12.01 The drawings, specifications and other documents prepared by the Consultant and Consultant's sub-consultants for this Project shall become the property of the City whether the Project is completed or not. The City shall be furnished and permitted to retain reproducible copies and electronic versions of Consultant's drawings, specifications and other documents.
- 12.02 The documents prepared by Consultant may be used as a prototype for other facilities by the City. The City may elect to use the Consultant to perform the site adaptation and other architectural or engineering services involved in reuse of the prototype. If so, the Consultant is obligated to perform the work for an additional compensation that will fairly compensate the Consultant and its sub-consultants only for the additional work involved. It is reasonable to expect that the fair additional compensation will be significantly less than the fee provided for under this Contract. If the City elects to employ a different architect or engineer to perform the site adaptation and other architectural or engineering services involved in reuse of the prototype, that architect or engineer will be entitled to use Consultant's sub-consultants on the same basis that Consultant would have been entitled to use them for the work on the reuse of the prototype, and such architect or engineer will be entitled, to the extent allowed by law, to duplicate the design and review and refer to the construction documents, approved shop

drawings and calculations, and change order drawings in performing its work. The Consultant will not be responsible for errors and omissions of a subsequent architect or engineer. The Consultant shall commit its sub-consultants to the terms of this subparagraph. The provisions of this section shall survive termination of this Contract.

- 12.03 In the event of termination of this Contract for any reason, the City shall receive all original documents prepared to the date of termination and shall have the right to use those documents and any reproductions in any way necessary to complete the Project.
- 12.04 Only the details of the drawings relating to this Project may be used by the Consultant on other projects, but they shall not be used as a whole without written authorization by the City. The City-furnished forms, conditions, and other written documents shall not be used on other projects by the Consultant.

ARTICLE XIII

Termination

- 13.01 The City may terminate this Contract at any time upon **thirty (30)** calendar days' written notice. Upon the Consultant's receipt of such notice, the Consultant shall cease work immediately. To the extent of funds appropriated or otherwise legally available for such purposes, the Consultant shall be compensated only for the services satisfactorily performed prior to the termination date.
- 13.02 If, through any cause, the Consultant fails to fulfill its obligations under this Contract, or if the Consultant violates any of the agreements of this Contract, the City has the right to terminate this Contract by giving the Consultant **five (5)** calendar days written notice to the Consultant. The Consultant will be compensated for the services satisfactorily performed prior to the termination date.
- 13.03 No term or provision of this Contract shall be construed to relieve the Consultant of liability to the City for damages sustained by the City because of any breach of contract and/or negligence by the Consultant. The City may withhold payments to the Consultant for the purpose of setoff until the exact amount of damages due the City from the Consultant is determined and paid.

ARTICLE XIV

Miscellaneous Terms

- 14.01 This Contract has been made under and shall be governed by the laws of the State of Texas. The parties agree that performance and all matters related thereto shall be in Nacogdoches County, Texas.
- 14.02 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. Consultant agrees to cooperate and must provide the City and/or State Auditor with access to any information the City and/or State Auditor considers relevant to the investigation or audit. The Consultant agrees to refund to the City any overpayments disclosed by any such audit.

- 14.03 The Consultant shall retain all such records for a period of four (4) years after final payment on this Contract or until all audit and litigation matters that the City has brought to the attention of the Consultant are resolved, whichever is longer.
- 14.04 Consultant hereby assigns to the City any and all claims for overcharges associated with this Agreement which arise under the antitrust laws of the United States, 15 USCA Section 1 et seq., and/or which arise under the antitrust laws of the State of Texas, Business and Commerce Code Ann., Section 15.01, et seq.
- 14.05 Notices shall be mailed to the addresses designated herein or as may be designated in writing by the parties from time to time and shall be deemed received when sent postage prepaid U.S. Mail to the following addresses:

City of Nacogdoches
Attn: City Manager
202 East Pilar Street
P.O. Box 635030
Nacogdoches, Texas 75961

Consultant:
Schaumburg & Polk, Inc.
Attn: Jeremy Buechter, PE
320 S. Broadway, Suite 200
Tyler, Texas 75702

- 14.06 No waiver by either party hereto of any term or condition of this Contract shall be deemed or construed to be a waiver of any other term or condition or subsequent waiver of the same term or condition.
- 14.07 This Contract represents the entire and integrated agreement between the City and the Consultant 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.
- 14.08 This Contract and all rights and obligations contained herein may not be assigned by the Consultant without the prior written approval of the City.
- 14.09 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.

- 14.10 The Consultant, its agents, employees, and subcontractors must comply with all applicable federal and state laws, the charter and ordinances of the City of Nacogdoches, and with all applicable rules and regulations promulgated by local, state, and national boards, bureaus, and agencies. The Consultant must obtain all necessary permits and licenses required in completing the work and providing the services required by this Contract.
- 14.11 **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) **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>.
 - (e) **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.
 - (f) **Convictions.** Under Sections 2155.006, 2155.0061 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.

(g) **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.

(h) **Boycotts.** (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 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.*).

14.12 The parties acknowledge that they have read, understood, and intend to be bound by the terms and conditions of this Contract. If there is a conflict between a provision in any documents provided by Consultant made a part of this Contract and any other provision in this Contract, the latter controls.

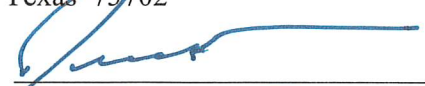
14.13 This Contract will be effective when signed by the last party whose signing makes the Contract fully executed. The parties may execute this Contract in duplicate originals, each of equal dignity.

14.14 **Notice of Indemnification.** City and Consultant hereby acknowledge and agree that this Contract contains certain indemnification obligations and covenants.

SCHAUMBURG & POLK, INC.

320 S. Broadway, Suite 200

Tyler, Texas 75702

By: 

Printed Name: JEREMY BUECHLER

Title: EX. VICE-PRESIDENT

Date: MARCH 22, 2023

Firm Registration No.: F-00520

CITY OF NACOGDOCHES

P. O. Box 635030

Nacogdoches, Texas 75963-5030

By: _____

Printed Name: _____

Title: City Manager

Date: _____

APPROVED AS TO CONTENT:

Director of Public Works

APPROVED AS TO FORM:

City Attorney

Exhibit A

Scope of Services

This project generally includes the design and construction for rehabilitating Clarifier #4 at the Nacogdoches WWTP. A design package for rehabilitating Clarifier #3 is also included.

BASIC SERVICES

- 1) Study & Report
 - a) No study and report phase is included with this Scope of Work.
- 2) Preliminary Design
 - a) Field data collection for design. Topographic and boundary survey are not anticipated and are excluded from this Scope of Work.
 - b) Prepare preliminary plans and specifications for rehabilitating Clarifier #4. The design will include replacing all of the clarifier mechanical equipment, replacing weirs & baffles, and rehabilitating the existing clarifier concrete. Incorporate a fresh water delivery system that reduces algae growth on the weirs.
 - c) Consider TCEQ regulatory requirements that may impact the design of the new clarifier components.
 - d) Consider and prequalify clarifier equipment suppliers so that the equipment package can have multiple bidders.
 - e) Provide updated opinion of probable construction cost.
 - f) Submit a 75% design for the City to review and have an in-person review meeting with the City.
- 3) Final Design
 - a) Address all City comments on the 75% design and prepare final signed and sealed plans and specifications for rehabilitation of Clarifier #4.
 - b) Electrical engineering is not included with this Scope of Work. New local clarifier panels will be provided by the equipment supplier and connected to the existing junction box mounted on the clarifier.
 - c) Include consideration of alternate bids for clarifier equipment/components.
 - d) Review final plans and specifications with City and revise as necessary to address any comments or questions.
 - e) Copy and modify the design of Clarifier #4 to create a separate bid package for Clarifier #3. This design will be completed and sealed for bidding at a different date.
- 4) Bidding Phase
 - a) Using City-provided contract documents, assist City with bidding project.
 - b) Fax advertisements directly to contractors to help advertise project.
 - c) Advertise in on-line planrooms and local newspapers. Advertising fees will be paid for by the City.

- d) Print and distribute Plans and Specs to responsive contractors.
 - e) Conduct bid opening, evaluate and tabulate bids, and recommend award to City.
- 5) Construction Phase
- a) Conduct a Pre-Construction Conference prior to commencement of Work at the Site.
 - b) Receive, review, and determine the acceptability of any and all schedules that Contractor is required to submit to Engineer, including Progress Schedule, Schedule of Submittals and Schedule of Values.
 - c) As appropriate, establish baselines and benchmarks for locating the work which in Engineer's judgment are necessary to enable Contractor to proceed.
 - d) Make visits to the Site at intervals appropriate to the various stages of construction, as Engineer deems necessary, to observe the progress and quality of the Contractor's executed Work.
 - e) Issue necessary clarifications and interpretations of the Contract Documents as appropriate to the orderly completion of the Contractor's work.
 - f) Recommend and prepare Change Orders and Work Change Directives to City, as appropriate.
 - g) Review and approve or take other appropriate action in respect to Shop Drawings and Samples and other data which Contractor is required to submit.
 - h) Evaluate and determine the acceptability of substitute or "or-equal" materials and equipment proposed by Contractor.
 - i) Require such special inspections or tests of Contractor's work as deemed reasonably necessary, and receive and review all certificates of inspections, tests, and approvals required by Laws and Regulations or the Contract Documents.
 - j) Process pay applications from Contractor.
 - k) In company with Owner and Contractor, conduct an inspection to determine if the Work is substantially complete. If Engineer considers the Work substantially complete, Engineer shall deliver a certificate of Substantial Completion to Owner and Contractor.
 - l) Conduct a final inspection to determine if the completed Work of Contractor is acceptable so that Engineer may recommend, in writing, final payment to Contractor.
 - m) Engineer shall assemble and provide a final set of as-built drawings based on Contractor's field plan set, Engineer's working plan set, and the Resident Representative's field set of plans. These plans will be provided to the Owner in both paper and digital format.

PROJECT DELIVERABLES

- 1) Preliminary Engineering Report including Options and Budgets
- 2) 75% Design Phase Plans, Specifications, Budgets
- 3) 90% Design Phase Plans, Specifications, Budgets
- 4) Final Signed and Sealed Plans and Specifications.

- 5) Final Budgets – Updated as required for City budgeting purposes.

RESPONSIBILITIES OF CITY

- 1) The City is responsible for any and all fees required for any permits and project advertising.
- 2) This proposal excludes boundary and topographic survey.

Exhibit B
Payment Terms and Schedule

Compensation for services shall be as outlined below:

Lump Sum Services

Design Phase: \$ 66,550.00

Time and Materials Services (hourly, rate schedule attached)

Bidding Phase: \$ 6,400.00

Construction Phase: \$ 46,300.00

Subtotal: \$ 52,700.00

Unless amended by a duly authorized written change order, the total payment for all invoices on this job, including both salary and non-salary expenses, shall not exceed the amount set forth in paragraph 2.01 of this Contract **(\$119,250.00)**. This amount shall be payable by the City pursuant to the schedule listed on the following pages and upon completion of the services and acceptance by the City. Bidding and Construction Phase services shall be billed monthly at rates set forth in this section accompanied by an explanation of charges, professional fees, services and expenses. The City will pay invoices according to its normal payment procedures.

**City of Nacogdoches
WWTP Clarifier #4 Rehab
Proposed Payment Schedule
Updated 3/13/2023**

See milestone deliverable/fee schedule below based on a total engineering fee of \$119,250.00 which includes design, bidding, and construction phase services.

Design Phase: \$66,550.00
Bidding Phase: \$6,400.00
Construction Phase: \$46,300.00
Total Contract amount: \$119,250.00

Project Milestone	Cumulative % of Contract Fee	Total Cumulative Fee Billed	Anticipated Milestone Dates
Execute Engineering Contract	5.58%	\$6,655.00	4/1/2023
75% Design Submission	41.86%	\$49,912.50	4/15/2023
100% S&S Design Submission	55.81%	\$66,550.00	5/1/2023
Conduct Bid Opening	61.17%	\$72,950.00	6/1/2023
Contractor Notice to Proceed issued	68.94%	\$82,210.00	7/15/2023
Clarifier Equipment Delivered to Site	80.59%	\$96,100.00	10/15/2023
Final Walkthrough Completed	96.12%	\$114,620.00	12/15/2023
Contract Closed Out	100.00%	\$119,250.00	1/15/2024
Project Total:	100.00%	\$119,250.00	1/15/2024

Exhibit C

Insurance Requirements

During the term of this Contract all Consultants' insurance policies shall meet the following requirements:

- I. Standard Insurance Policies Required:
 - A. Commercial General Liability
 - B. Business Automobile Liability
 - C. Workers' Compensation
 - D. Professional Liability

- II. For each of these policies, the Consultant's insurance coverage shall be primary insurance with respect to the City, its officials, agents, employees and volunteers. Any self-insurance or insurance policies maintained by the City, its officials, agents, employees or volunteers, shall be considered in excess of the Consultant's insurance and shall not contribute to it. No term or provision of the indemnification provided by the Consultant to the City pursuant to this Contract shall be construed or interpreted as limiting or otherwise affecting the terms of the insurance coverage. All Certificates of Insurance and endorsements shall be furnished to the City's Representative at the time of execution of this Contract, attached hereto as **Exhibit D**, and approved by the City before any letter of authorization to commence planning will issue or any work on the Project commences.

- III. General Requirements Applicable to All Policies
 - A. Only insurance carriers licensed and authorized to do business in the State of Texas will be accepted.
 - B. Deductibles shall be listed on the Certificate of Insurance.
 - C. "Claims made" policies will not be accepted, except for Professional Liability insurance.
 - D. Coverage shall not be suspended, voided, canceled, or reduced in coverage or in limits except after thirty (30) calendar days prior written notice has been given to the City of Nacogdoches.
 - E. The Certificates of Insurance shall be prepared and executed by the insurance company or its authorized agent on the most current State of Texas Department of Insurance-approved forms.
 - 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.

IV. Commercial (General) Liability requirements:

- A. Coverage shall be written by a carrier rated "A:VIII" or better in accordance with the current A. M. Best Key Rating Guide.
- B. Minimum Limit of \$1,000,000 per occurrence for bodily injury and property damage with a \$2,000,000 annual aggregate.
- C. No coverage shall be excluded from the standard policy without notification of individual exclusions being attached for review and acceptance.
- D. The coverage shall not exclude premises/operations; independent contracts, products/completed operations, contractual liability (insuring the indemnity provided herein), and where exposures exist, Explosion Collapse and Underground coverage.
- E. The City shall be included as an additional insured and the policy shall be endorsed to waive subrogation and to be primary and non-contributory.

V. Business Automobile Liability requirements:

- A. Coverage shall be written by a carrier rated "A:VIII" or better in accordance with the current A. M. Best Key Rating Guide.
- B. Minimum Combined Single Limit of \$1,000,000 per occurrence for bodily injury and property damage.
- C. The Business Auto Policy must show Symbol 1 in the Covered Autos portion of the liability section in Item 2 of the declarations page.
- D. The coverage shall include owned autos, leased or rented autos, non-owned autos, any autos and hired autos.

VI. The worker's compensation insurance requirements:

- 1. Employer's Liability shall be no less than the required statutory minimum limits for each accident, each disease and cover all employees of Consultant, the Consultant, and all employees of any and all subconsultants or subcontractors of Consultant providing services on the Project.
- 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.

VII. Professional Liability requirements:

- A. Coverage shall be written by a carrier rated "A:VIII" or better in accordance with the current A.M. Best Key Rating Guide.
- B. Minimum of \$1,000,000 per claim and \$2,000,000 aggregate, with a maximum deductible of \$100,000.00. Financial statements shall be furnished to the City of

- Nacogdoches when requested.
- C. Policy must include availability of a two-year extended reporting period.
- D. Retroactive date must be shown on certificate.

Exhibit D
Certificates of Insurance

ACORD™

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

04/12/2022

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

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

PRODUCER J. S. Edwards & Sherlock Insurance Agency, LLP P. O. Box 22237 Beaumont, TX 77720	CONTACT NAME: Pam Patten, ACSR	
	PHONE (A/C, No, Ext): 409 832-7736	FAX (A/C, No): 409-833-1721
E-MAIL ADDRESS: pam@edwardsandsherlock.com		
INSURED Schaumburg and Polk, Inc. 8865 College Street Beaumont, TX 77707	INSURER(S) AFFORDING COVERAGE	
	INSURER A : American Casualty Company of Reading, PA	NAIC # 20427
	INSURER B : Continental Insurance Company	35289
	INSURER C : Service Lloyds Insurance Co	43389
	INSURER D : Continental Casualty Company	20443
	INSURER E :	
INSURER F :		

COVERAGES

CERTIFICATE NUMBER:

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 SUBR INSR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☒ OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: ☒ POLICY ☐ PRO-JECT ☐ LOC OTHER:		4034942640	04/13/2022	04/13/2023	EACH OCCURRENCE \$1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$300,000 MED EXP (Any one person) \$15,000 PERSONAL & ADV INJURY \$1,000,000 GENERAL AGGREGATE \$2,000,000 PRODUCTS - COMP/OP AGG \$2,000,000 \$
D	AUTOMOBILE LIABILITY ☒ ANY AUTO OWNED AUTOS ONLY ☒ HIRED AUTOS ONLY ☐ SCHEDULED AUTOS NON-OWNED AUTOS ONLY		4034942833	04/13/2022	04/13/2023	COMBINED SINGLE LIMIT (Ea accident) \$1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
B	☒ UMBRELLA LIAB ☒ OCCUR ☐ EXCESS LIAB ☐ CLAIMS-MADE ☐ DED ☒ RETENTION \$10,000		4034942685	04/13/2022	04/13/2023	EACH OCCURRENCE \$2,000,000 AGGREGATE \$2,000,000 \$
C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? ☒ Y ☐ N (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	N/A	SLICWC0290002	04/13/2022	04/13/2023	☒ 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

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

CERTIFICATE HOLDER

CANCELLATION

SAMPLE SAMPLE
 SAMPLE SAMP
 SAMPLE SAMP
 SAMPLE SAMP
 SAMPLE SAMP
 SAMPLE SAMP

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

[Signature]

Client#: 161799

SCHAUPOL

ACORDTM**CERTIFICATE OF LIABILITY INSURANCE**

DATE (MM/DD/YYYY)

6/14/2022

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

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PRODUCER USI Southwest 9811 Katy Freeway, Suite 500 Houston, TX 77024 713 490-4600	CONTACT NAME: Callie Renaud	
	PHONE (A/C, No, Ext): 713 490-4600	FAX (A/C, No): 713-490-4700
	E-MAIL ADDRESS: callie.renaud@usi.com	
INSURED Schaumburg & Polk Inc. 8865 College Street Beaumont, TX 77707-2898	INSURER(S) AFFORDING COVERAGE	
	INSURER A: Arch Insurance Company	NAIC # 11150
	INSURER B:	
	INSURER C:	
	INSURER D:	
	INSURER E:	
INSURER F:		

COVERAGES **CERTIFICATE NUMBER:** **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 INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
	COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☐ OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: ☐ POLICY ☐ PRO-JECT ☐ LOC OTHER:						EACH OCCURRENCE \$ DAMAGE TO RENTED PREMISES (Ea occurrence) \$ MED EXP (Any one person) \$ PERSONAL & ADV INJURY \$ GENERAL AGGREGATE \$ PRODUCTS - COMP/OP AGG \$ \$
	AUTOMOBILE LIABILITY ☐ ANY AUTO OWNED AUTOS ONLY ☐ HIRED AUTOS ONLY ☐ SCHEDULED AUTOS ☐ NON-OWNED AUTOS ONLY						COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
	UMBRELLA LIAB ☐ OCCUR EXCESS LIAB ☐ CLAIMS-MADE DED RETENTION \$						EACH OCCURRENCE \$ AGGREGATE \$ \$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? ☐ Y/N (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below		N/A				PER STATUTE OTH-ER E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$
A	Professional Liability			PAAEP0149400	06/10/2022	06/10/2023	\$2,000,000 per claim \$2,000,000 annl aggr.

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

CERTIFICATE HOLDER**CANCELLATION**

Schaumburg & Polk, Inc.,
Consulting Engineers
8865 College Street
Beaumont, TX 77707

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

Anthony J. Davis

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PRESENTER: Case Opperman, Public Works Asst Director

ITEM/SUBJECT: Consider ordinance amending Ordinance No. 1929-09-22 appropriating various amounts in accordance with budget adopted for ensuing fiscal year beginning October 1, 2022 and ending September 30, 2023 (WWTP Clarifier Rehabilitation) (Assistant Director of Public Works).

SUMMARY/BACKGROUND: Recently, Clarifier #4 at the Wastewater Treatment Plant (WWTP) failed requiring full rehabilitation to be put back online in the wastewater treatment process. Clarifiers allow solids to settle out and return to the treatment process resulting in a clear water that is then sent through the remainder of the process for final treatment and outfall into the creek. Clarifier #4 is one of four clarifiers available for treatment and provides necessary redundancy in the process making its rehabilitation an urgent need. Clarifier #3 is also showing signs of impending issues and its rehabilitation will be needed in the near future, as well. Funds were not budgeted in the current fiscal year, so staff is requesting consideration of a budget amendment in the amount of \$120,000 to fund design, bidding and construction administration services by an engineering consultant for this project. This amount would be from available reserve funds in the Utility Fund.

FINANCIAL:

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

Account No.: 30 179.39

Account Name: *Utility Fund CIP*

Amount: \$120,000

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

Infrastructure

CITY CONTACT: Case Opperman, Assistant Director of Public Works
oppermanc@nactx.us
936-559-2515

ATTACHMENTS: 1. 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, clarifiers are an integral component in the wastewater treatment process; and

WHEREAS, Clarifier #4 has failed and is in need of rehabilitation; and

WHEREAS, Clarifier #4 is necessary for redundancy in the wastewater treatment process making its rehabilitation an urgent need; and

WHEREAS, Clarifier #3 is also showing signs of impending issues and its rehabilitation will also be needed in the near future; and

WHEREAS, funds were not budgeted in the current fiscal year for clarifier rehabilitation; and

WHEREAS, with the adoption of this ordinance, the City is authorized to utilize funds from Utility Fund reserves in the amount of \$120,000 for design, bidding and construction administration services by an engineering consultant; and

WHEREAS, with the adoption of this ordinance, the Public Works 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 capital outlays of the city government of the City of Nacogdoches as follows:

Fund	Dept	Acct.	Department	Description	Amt.
30		179.39	Utility Fund CIP	Clarifier Rebuild Engineering	\$120,000

PASSED AND APPROVED this the 4th day of April, 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: Anita Scott, Expo/Civic Center Director

ITEM/SUBJECT: Receive annual report from the Nacogdoches County Exposition and Civic Center. (Anita Scott, Nacogdoches Expo and Civic Center Director)

SUMMARY/BACKGROUND: The annual report summarizing activities over the past 12 month period as per the interlocal agreement between the City of Nacogdoches and the Nacogdoches County Exposition and Civic Center. The City of Nacogdoches pays Nacogdoches County Exposition and Civic Center \$95,000 annually from Municipal Hotel Occupancy Tax which shall be expended in a manner directly enhancing and promoting tourism and the convention and hotel industry.

The term of the agreement between the City of Nacogdoches and the Nacogdoches County Exposition and Civic Center automatically renews annually unless terminated by either party at least 90 days prior to the expiration. The agreement between the parties became effective on October 1, 2013.

FINANCIAL:

Item is budgeted:

Account No.: 18.49.630.70

Account Name: *Hotel Tax Fund Special Services*

Amount: \$95,000 annually

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

Not Applicable

CITY CONTACT: Keith Kiplinger, City Manager
kiplingerk@[nactx.us](mailto:kiplingerk@nactx.us)
936-559-2501

ATTACHMENTS:

1. PowerPoint Presentation
2. Economic Impact Summary 2021-2022



Partnering with the CVB and
Chamber of Commerce to
promote tourism and economic
growth in our community.

Team Expo



Anita Scott * Kent O'Neal * Brenda Gerht
* Darrel Hill * Brad Hale*

“The Nacogdoches County Exposition & Civic Center is committed to its mission of supporting Youth, Agriculture, and Community”

*Texas High School & JR High Rodeo Association

*Texas A&M Agrilife Extension Office Training & Meeting Facility

*State & Local Law Enforcement Training & Meeting Facility

*Multi-day events drawing huge attendance ~

Live Music Concerts, Vendor Shopping,
Community Events, Youth Rodeo Competitions
Pineywoods Fair and Nacogdoches Pro Rodeo

2021-2022 Events

Deep East Texas Workforce Solutions * Pineywoods Fair * Daily Sentinel Expo *
Pineywoods Oral Surgery Seminar * Koe Wetzel Concert * Election Polling Site*
Nacogdoches Sheriff's Office Training * Texas A & M Agrilife Pesticide Class * Solid
Foundation * Nacogdoches Police Department Citizen Academy Annual Banquet
Cody Johnson Concert * Holiday in the Pines * Badges, Bags & Bingo * Cushing ISD
Academic Banquet * Nacogdoches Brew Club * TX DOT Open Forum *
Nacogdoches County Area Go Texan Steak Dinner* Pineywoods Fair & Steer Show
Committee Meetings * LOVE INC –Chairished Blessing* FFA Greenhand Camp *
Motorhomes of Texas * Pineywoods Financial * East Texas Community Health
Services * Department Of Public Safety Training Class * Region V Jr. High Rodeo *
Paradigm Liaison Pipeline Safety * COVID Drive Thru Testing * Lonestar Little
Britches Youth Rodeo * LOVE INC-Christmas Blessings * Texas A&M Agrilife Hay
Show * State Swine Validations* * Pineywoods Fair & State Validation * Texas A&M
Forestry Department * Nacogdoches County Sheriff's Training * Pct. 21 Poll Location
* Pineywoods Youth Rodeo* G&S Gun Show x 5 * Shrine Circus * DoDat BBQ *
Military Vendor Show * East Texas Sportsman Club * Old Stone Fort Bike Ride *
District Court Jury Selection * Texas Dept. of Health & Human Services * Evans
United Spring Carnival* National Wild Turkey Federation* SFA Twirl-O-Jacks* *
Nacogdoches Senior Center-Dancing w/the Stars * Keep Nacogdoches Beautiful-
Tire Recycling * Ag Day for 4th Graders * Roselake Ranch Drill in the Pines* Calvary
Baptist Church- 1st Responders Appreciation Dinner * Region V High School Rodeo *
Texas A & M Broiler Symposium * AECOM/Oncor Public Meeting and several Private
Wedding Receptions & Events

BREAKING IT DOWN!



Est. \$2,241,351 Direct Business Sales

Est. \$3,123,226 Monies spent locally

One Day Events: 58
Two Day Events: 20

Two Day Events: 8
RV Spots: 609

Attracting an estimated 77,000 Visitors
630 Overnight Attendees * 266 Room
Demand 2,623 jobs supported

2021-2022 Events: 86



NACOGDOCHES COUNTY EXPOSITION & CIVIC CENTER

3805 NW Stallings Drive, Nacogdoches, TX 75964 * 936-564-0849

EVENT IMPACT SUMMARY – 2021-2022



Event Impact Summary 2021-2022- Nacogdoches County Exposition & Civic Center

Data Provided By: Destinations International Event Impact Calculator

Event Parameters		Key Results	
Event Name:	2021-2022 Fiscal Year	Business Sales (Direct):	\$2,241,351
Organization:	Nacogdoches County Expo & Civic Center	Business Sales (Total):	\$3,123,226
Event Type:	Youth Amateur - Meetings - Festivals	Jobs Supported (Direct):	2,379
Start Date:	10/1/2021	Jobs Supported (Total):	2,623
End Date:	9/30/2022	Local Taxes (Total):	\$41,637
Overnight Attendees:	630	Net Direct Tax ROI:	\$36,063
Day Attendees:	76927	Estimated Room Demand:	266

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MUST SIGN ARENA RIDER RELEASE FORM BEFORE RIDING - [CLICK HERE TO PRINT RELEASE FORM](#)

Contact Information:

Phone: (936) 564-0849
Fax: (936) 564-9228

Address:
3805 NW Stallings
Drive
Nacogdoches, Texas
75964

E-Mail:
nacexpo



NACOGDOCHES COUNTY
**EXPOSITION &
CIVIC CENTER**

Home
Welcome
Calendar
Rodeo

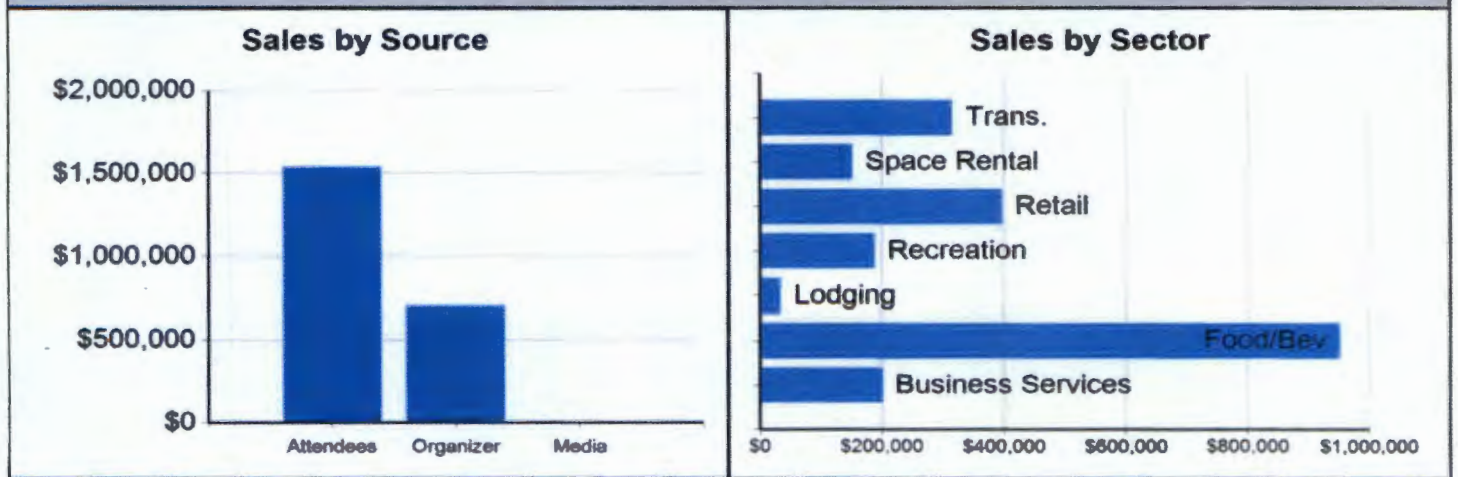


Event Impact Summary- 2021-2022

Destination International Event Impact Calculator: Nacogdoches County Exposition & Civic Center

Event Parameters		Key Results	
Event Name:	2021-2022 Fiscal Year	Business Sales (Direct):	\$2,241,351
Organization:	Nacogdoches County Expo & Civic Center	Business Sales (Total):	\$3,123,226
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Overnight Attendees:	630	Net Direct Tax ROI:	\$36,063
Day Attendees:	76927	Estimated Room Demand:	266

Direct Business Sales



Industry	Attendees	Organizer	Media/Sponsors	Total
Lodging	\$33,429	\$0	\$0	\$33,429
Transportation	\$306,429	\$8,519	\$1,196	\$316,144
Food & Beverage	\$611,141	\$340,890	\$0	\$952,031
Retail	\$398,099	\$0	\$0	\$398,099
Recreation	\$188,425	\$0	\$0	\$188,425
Space Rental	\$0	\$151,452	\$0	\$151,452
Business Services	\$0	\$201,097	\$675	\$201,772
TOTAL	\$1,537,523	\$701,958	\$1,871	\$2,241,351

2021-2022 Events by Length

1 Day Events: 58

2 Day Events: 8

3+ Day Events: 20

Total Events: 86

PRESENTER: Pam Curbow, Finance Director

ITEM/SUBJECT: Consider approval of a contract between the City of Nacogdoches and Thirkettle Corp dba Aqua-Metric Sales Co. for construction services for the Automated Meter Infrastructure System water meter and transmitter replacement project in an amount not to exceed \$5,209,100. (Director of Finance)

SUMMARY/BACKGROUND: The City installed the original Automated Meter Infrastructure (AMI) system in 2008. The meters and transmitters have a limited warranty period that has expired or is about to expire soon and the system must be replaced in order to maintain access to accurate and timely meter reads for billing purposes. Thirkettle Corp dba Aqua-Metric Sales Co. is the provider for our Sensus branded AMI system and they will complete the system-wide installation over a period of 500 calendar days. The contract covers the replacement and installation of 12,664 meters/transmitters (\$4,892,292) as well as an add-on service of Line Material Identification as required by new TCEQ rulings (\$189,960). There is also a supplemental quote that covers 347 meters/transmitters in the Central Heights area that can be included at a later date if the Angelina Neches River Authority (ANRA) chooses to have these meters replaced at their expense during the duration of this contract (\$126,842)

FINANCIAL:

Item is budgeted:

Account No.: 30.179.35

Account Name: *Utility Fund CIP AMI System*

Amount: \$4,772,000

**** Budget amendment is needed for contract amount in excess of original budget**

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

Infrastructure

CITY CONTACT: Pamela Curbow, Director of Finance
curbowp@nactx.us
936-559-2525

ATTACHMENTS: 1. Contract
2. 6B Contract AMI Powerpoint

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 Thirkettle Corporation dba Aqua-Metric Sales Company, a California corporation (the "Contractor"), for **Construction Services for City of Nacogdoches AMI (Automated Meter Infrastructure) System water meter and transmitter replacement** 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 to acquire, replace and install the AMI (Automated Meter Infrastructure) System water meter and transmitter as described in Exhibit E. 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 to acquire, replace and install the AMI (Automated Meter Infrastructure) System water meter and transmitter as described in Exhibit E. The term "Project" shall have like meaning. This Project includes the following: **Construction Services for City of Nacogdoches AMI (Automated Meter Infrastructure) System water meter and transmitter replacement 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
- 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. 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 written 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 (A through F) 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 **Five million two hundred nine thousand one hundred and 00/100 Dollars (\$5,209,100.00).**

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 reasonable and 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 use commercially reasonable best efforts 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, 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 as specified in the Contract Documents. Additional work, material, or equipment which may be needed to meet the intent of this Agreement shall be supplied by the Contractor *without* claim for additional payment, even though not specifically mentioned herein.

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, to the best of its ability, evaluated the City's request for work to be furnished and other Contract Documents as provided by the City, 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 a meter exchange 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.

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 attend meetings called by City's Representative upon twenty-four (24) hours written notice unless otherwise agreed in writing by the parties.
- (c) 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.
- (d) 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. All special handling equipment charges shall be at the Contractor's expense and reimbursable by the City. Further, Contractor shall include in its price for the Work, all labor, materials, and/or equipment required to protect the adjacent properties and/or structures from damage due to performance of the Work.

11.02. 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.

11.03. 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.

11.04. 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 may be entitled to either a reasonable 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.

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. Notwithstanding the generality of the foregoing, ancillary devices shall not include

miscellaneous material(s) including but not limited to pipe, fittings, or similar connectors; unless expressly provided within Contractor's price estimate. 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. Intentionally Omitted.

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'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.

14. REJECTED WORK

14.01. All work deemed not in conformity with this Agreement as reasonably 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. 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 shall remedy such work so that it shall be in full compliance with this Agreement within thirty (30) days, or another reasonable amount of time as necessary and agreed to by the Parties to correct the defective work, of written notice from the City's Representative (the "Correction Period"). 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 and in accordance with the Correction Period, 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. **Invoices.** The Contractor shall submit invoices for payment as provided for herein. The Contractor shall submit an invoice for the quantity of meters delivered for each delivery within thirty days of receipt of the meters at the designated storage point. The Contractor will submit a separate invoice no more than once a month for the number of installations and inspections actually performed and accepted by the City during the period time covered by the invoice. Contractor may assume an invoice has been accepted by the City if no written notice of a disputed invoice is furnished by the City within twenty-one (21) days after the City's receipt Contractor's invoice.

16.03. **Payments.** The City agrees to pay Contractor for the full performance of its obligations the amount set forth herein this Agreement subject to additions and deductions by duly authorized Change Order. The City agrees to issue payment to non-disputed invoices within thirty (30) days from the date of invoice. Notwithstanding, if the City fails to pay any invoice within thirty (30) days of the invoice date, Contractor may, at its reasonable discretion, withhold or suspend the services until the City has paid any past due invoiced amounts. Contractor reserves the right to issue late fees to the City for past due amounts at a maximum rate of 1% of the invoice amount for each additional day past due up to 15% of the invoice total. All pricing and payments shall be in US currency.

16.04. **Retainage.** From each approved invoice, 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 (if onsite and available), 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.** Intentionally Omitted.

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) Charges made for repairs to the Contractor's defective work or repairs made by the City to correct damage to other property.
- (h) 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 **500 calendar days** for the time within which it shall reach Substantial Completion of the Project after having delivered all product necessary to complete the work herein.

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, but not limited to subcontractor standdown compensation, contracted or broken lease fees, demobilization and remobilization fees, 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.

21.04. In the event of delays or suspension caused by the City, Contractor may, at its discretion and upon written notice to the City, elect to remove Contractor's assets including but not limited to personnel, subcontractors, equipment, storage and disposal facilities, product and materials from the Project worksite during such time of delay or suspension.

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 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, manufacturing and supply chain constraints or product availability, third-party transit carriers, 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

Intentionally Omitted.

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. 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 in conformance with this Agreement, the other Contract Documents, and recognized industry standards.

25.02. CONTRACTOR'S WARRANTY STANDARDS

(1) **DISCLAIMER. EXCEPT AS SPECIFICALLY SET FORTH IN THIS AGREEMENT, THE SERVICES AND SOFTWARE ARE PROVIDED BY CONTRACTOR ON AN "AS IS" AND "AS AVAILABLE" BASIS WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE; PROVIDED; HOWEVER ANY SUCH WARRANTIES RECEIVED BY CONTRACTOR FROM ITS SUPPLIERS SHALL BE PASSED ON TO THE CITY.**

- (2) Contractor warrants that the services provided by Contractor will be performed in a professional and workmanlike manner with a degree of care, skill and competence that is consistent with the then generally accepted industry standards reasonably expected of similar types of engagements and the deliverables herein this Agreement will substantially conform to the deliverables specified in the applicable Exhibits and Appendices hereto through the term of the Agreement.
- (3) Limitations. Unless otherwise expressly provided herein, neither Contractor nor any of its service providers, licensors, employees or agents warrant that the operation of the services will be uninterrupted or error free. Further, neither Contractor nor its suppliers, licensors, employees or agents will be responsible for (i) lost revenue, including revenue lost from third parties, persons, or entities, such as bills for electricity, lighting, gas, or water consumption; (ii) any In/Out Costs, where “In/Out Costs means any and all costs and expense incurred by the City in transporting goods between its warehouse and its end user’s premises and any and all costs and expenses incurred in installing, uninstalling, and removing goods; and (iii) any manual meter reading costs and expenses.
- (4) Contact. Contractor will serve as the primary contact for warranties described in this Agreement.
- (5) Standard Manufacturer Warranty. Standard manufacturer product warranties shall apply to all product(s) furnished under this Agreement. Contractor and/or their supplier agrees to provide a repaired or replacement meter free of charge, including no charge for freight delivery back to the the City for any meter returned within the warranty provisions.
- (6) Meter Services Warranty. Contractor warrants the quality of workmanship and services provided herein to be reasonably free from defects within twenty-four linear inches of the meter connection for a period of thirty (30) days from the date of meter exchange.
 - (a) Meter Services Warranty is only applicable to the services rendered during the time of meter exchange and only applicable if the failure is reasonably evident of a faulty meter exchange service provided by Contractor or its subcontractor.
 - (b) Contractor does not warrant defective product(s) or materials used to complete the meter exchange service. Such products will be subject to the manufacturer(s) product warranty guidelines. All product warranty concerns will be facilitated through Contractor with the appropriate product supplier(s) or manufacturer(s).
 - (c) Uncontrollable Conditions. Contractor does not warrant against damage(s) or defects resulting from tampering, vandalism, negligence, “Acts-of-God”, or any other act caused by a third-party and otherwise beyond Contractor’s reasonable control. Contractor will not be held responsible for any unauthorized repair(s) performed by the City, the City’s resident or business customer, or any third-party repair company.
 - (d) Pre-Existing Conditions. The City acknowledges Contractor is unable to determine pre-existing plumbing conditions including but not limited to any of the following scenarios within this paragraph. Contractor does not warrant against damage(s) caused to the service line or in-line fittings in which the worksite has a) pre-existing damage or leaks; b) the existing materials or service line is deteriorating or not in compliance with current local or state codes; c) water pressure; d) property owner activities that contribute to or in any way cause any damage or adverse conditions; or e) in any circumstance, galvanized service lines or fittings. The City

further acknowledges Contractor is unable to determine current operating conditions related to the service account, including but not limited to service line pipe condition; debris, sediment, corrosion, or hard water buildup; unstable or faulting plumbing connections or plumbing fixtures; irrigation systems; water filtration or softening systems; or appliances. Accordingly, Contractor does not warrant against damage(s) or defect(s) to the service line; plumbing or pipe; water softeners or water filtration systems; interior fixtures (e.g. faucets, showerheads, commodes, Sloan valves, etc.); appliances (e.g. water heaters, washer or dryer, refrigerator or freezer, televisions, etc.); irrigation systems; backflow preventers, pressure reducing valves, hose bibs, or any other appurtenances which rely on the utility services provided by the City.

- (e) The City shall notify Contractor of any warrantable concern(s) within five (5) business days of the City becoming aware of suspect failure.
- (f) Contractor reserves the right to inspect the project worksite prior to performing any work to determine the best course of action to correct the warranty concern. If such inspection is not indicative of Contractor's faulty workmanship, Contractor, at its sole discretion, may invoice the City for any time and expense incurred to inspect the worksite. Contractor will not be held responsible for any unauthorized repair(s) performed by the City, the City's resident or business customer, or any third-party repair company.

(7) **LIMITATIONS AND DISCLAIMERS OF LIABILITY. DISCLAIMER OF CERTAIN DAMAGES.** IN NO EVENT SHALL ANY PARTY HAVE ANY LIABILITY TO THE ANOTHER PARTY HERETO FOR ANY LOST PROFITS (WHETHER DIRECT OR INDIRECT), LOSS OF USE, COSTS OF COVER, OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES HOWEVER CAUSED AND, WHETHER IN CONTRACT, TORT, WARRANTY OR UNDER ANY OTHER THEORY OF LIABILITY, WHETHER OR NOT THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE.

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 thirty (30) days 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 thirty (30) days 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 thirty (30) calendar days or longer period of time as reasonably determined by the parties and 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 thirty (30) days after the installation or completion. The thirty (30) day 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 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. Notwithstanding, Contractor shall not be responsible for damages to property, personal injuries, and/or death due to failure of safety devices cause by vandalism, tamper, theft, unauthorized relocation or adjustment(s) to safety devices by a third-party other than Contractor.

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

Intentionally Omitted

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 NEGLIGENCE, GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF CONTRACTOR OR ITS SUPPLIERS OR SUBCONTRACTOR(S), UNLESS SUCH CLAIMS ARISE FROM OR ARE CAUSED BY, IN WHOLE OR IN PART, BY ONE OR MORE PRE-EXISTING CONDITIONS OR UNCONTROLLABLE CONDITIONS AS DEFINED WITHIN CONTRACTOR'S WARRANTY. THE FOREGOING INDEMNITY HOLD HARMLESS AND DEFENSE OBLIGATION OF CONTRACTOR SHALL NOT APPLY IF THE CLAIM IS CAUSED BY OR ARISES FROM, IN WHOLE OR IN PART, BY ONE OR MORE PRE-EXISTING CONDITIONS OR UNCONTROLLABLE CONDITIONS. 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 IF ANY LOSS INCURRED BY OR RENDERED AGAINST EITHER PARTY IS DETERMINED BY AN INDEPENDENT TRIBUNAL TO BE DUE TO THE NEGLIGENCE OR WILLFUL MISCONDUCT OF BOTH THE CITY AND THE CONTRACTOR, THEN THE PARTIES SHALL SHARE THE COSTS ATTRIBUTABLE TO SUCH LOSS (INCLUDING BUT NOT LIMITED TO THE COST OF DEFENSE THEROF) IN ACCORDANCE WITH THE PROPORTION OF EACH PARTY'S RELATIVE FAULT, AS DETERMINED BY THE INDEPENDENT TRIBUNAL. EACH PARTY SHALL GIVE THE OTHER NOTICE OF ANY LOSS TO WHICH THE PRECEDING SENTENCE APPLIES AND THE PARTIES SHALL COOPERATE IN THE DEFENSE THEREOF.

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 also be responsible for the removal of all related debris.
- (e) The Contractor shall also be responsible for subcontractors hired by it.
- (f) 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

When necessary, 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. Contractor may recover its reasonable cost(s) from the City to obtain certain permits and licenses when required.

36. ROYALTIES AND LICENSING FEES

When applicable, 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 and Contractor has failed to cure such breach or default within a reasonable allotment of time as agreed to by the parties hereto. 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 thirty (30) 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.

37.02 Contractor shall have the right to declare the City in breach of this Agreement in the event City has failed to fulfill its payment obligations to Contractor for the goods and services furnished and within the allotted time, terms, and conditions hereunder this Agreement and in accordance with Texas Government Code Chapter 2251.

38. TERMINATION FOR CAUSE

Without prejudice to any other legal or equitable right or remedy that the terminating party would otherwise possess hereunder or as a matter of law, the terminating party upon giving the non-terminating party thirty (30) 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 either party shall fail to remedy any default within thirty (30) calendar days, or longer period of time as reasonably necessary and agreed to by the parties hereto, after written notice thereof from non-breaching; 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.

38.08. If the City fails to fulfill its payment obligations to Contractor for the goods and services furnished and within the allotted time, terms, and conditions hereunder this Agreement and in accordance with Texas Government Code Chapter 2251.

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 goods provided or Work performed prior to and through the effective date of the termination 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. TERMINATION OF CONTRACT

40.01 In the event of termination for any reason, any goods returned to Contractor shall be in accordance with the return policies stated within the Aqua-Metric Sales Company General Terms of Sale made available at www.aqua-metric.com as well as all applicable early termination fee(s) in accordance with the Sensus Software-as-a-Service and Spectrum Lease Agreement.

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.

45. **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.

46. **EFFECTIVE DATE**

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

47. **OTHER TERMS**

47.01. **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.

47.02. **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.

47.03. **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.

47.04. **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.

47.05. **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.

47.06. **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.

47.07. **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.

47.08. **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.

47.09. **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.

47.10. 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.*).

47.11. **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.

47.12. **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.

47.13. **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.

47.14. **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.

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

THIRKETTLE CORPORATION,
dba Aqua-Metric Sales Company

CITY OF NACOGDOCHES

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

By: _____
City Manager
Date: _____

APPROVED AS TO FORM:

City Attorney
Date: _____

Exhibit A
DAVIS BACON WAGE RATES

General Decision Number: TX20230171 01/06/2023

Superseded General Decision Number: TX20220171

State: Texas

Construction Type: Building

County: Nacogdoches County in Texas.

BUILDING CONSTRUCTION PROJECTS (does not include single family homes or apartments up to and including 4 stories).

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

If the contract is entered into on or after January 30, 2022, or the contract is renewed or extended (e.g., an option is exercised) on or after January 30, 2022: 	. Executive Order 14026 generally applies to the contract. . The contractor must pay all covered workers at least \$16.20 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in 2023.
If the contract was awarded on or between January 1, 2015 and January 29, 2022, and the contract is not renewed or extended on or after January 30, 2022: 	. Executive Order 13658 generally applies to the contract. . The contractor must pay all covered workers at least \$12.15 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on that contract in 2023.

The applicable Executive Order minimum wage rate will be adjusted annually. If this contract is covered by one of the

Executive Orders and a classification considered necessary for performance of work on the contract does not appear on this wage determination, the contractor must still submit a conformance request.

Additional information on contractor requirements and worker protections under the Executive Orders is available at <http://www.dol.gov/whd/govcontracts>.

Modification Number	Publication Date
0	01/06/2023

ASBE0021-002 08/01/2017

	Rates	Fringes
ASBESTOS WORKER/HEAT & FROST INSULATOR.....	\$ 25.87	7.23

BOIL0587-003 01/01/2021

	Rates	Fringes
Boilermaker.....	\$ 29.47	24.10

IRON0084-010 06/01/2022

	Rates	Fringes
IRONWORKER, REINFORCING.....	\$ 26.76	7.88

LABO0154-022 05/01/2008

	Rates	Fringes
Laborers: (Mason Tender - Cement/Concrete).....	\$ 14.25 **	2.90

SUTX2009-058 04/20/2009

	Rates	Fringes
BRICKLAYER.....	\$ 20.00	0.00
CARPENTER, Includes Acoustical Ceiling Installation, and Hardwood Floor Installation.....	\$ 17.50	0.53
CEMENT MASON/CONCRETE FINISHER...	\$ 13.29 **	0.00
ELECTRICIAN.....	\$ 18.06	4.87

IRONWORKER, STRUCTURAL.....	\$ 15.48 **	0.00
LABORER: Common or General.....	\$ 9.85 **	0.28
LABORER: Landscape & Irrigation.....	\$ 8.50 **	0.22
LABORER: Mason Tender - Brick...	\$ 12.02 **	0.00
LABORER: Mortar Mixer.....	\$ 12.00 **	0.00
OPERATOR: Backhoe/Excavator/Trackhoe.....	\$ 11.00 **	0.00
OPERATOR: Bulldozer.....	\$ 13.00 **	0.31
OPERATOR: Crane.....	\$ 21.33	0.00
OPERATOR: Forklift.....	\$ 14.58 **	0.00
OPERATOR: Loader (Front End)....	\$ 10.54 **	0.00
PAINTER: Brush, Roller and Spray.....	\$ 13.50 **	0.00
PLUMBER.....	\$ 20.38	4.74
ROOFER.....	\$ 13.64 **	1.80
SHEET METAL WORKER.....	\$ 17.00	0.00
TILE SETTER.....	\$ 15.00 **	0.00
TRUCK DRIVER.....	\$ 10.13 **	0.38

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

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** Workers in this classification may be entitled to a higher minimum wage under Executive Order 14026 (\$16.20) or 13658 (\$12.15). Please see the Note at the top of the wage determination for more information.

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

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

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

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

Union Rate Identifiers

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

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

Survey Rate Identifiers

Classifications listed under the ""SU"" identifier indicate that no one rate prevailed for this classification in the survey and the published rate is derived by computing a weighted average

rate based on all the rates reported in the survey for that classification. As this weighted average rate includes all rates reported in the survey, it may include both union and non-union rates. Example: SULA2012-007 5/13/2014. SU indicates the rates are survey rates based on a weighted average calculation of rates and are not majority rates. LA indicates the State of Louisiana. 2012 is the year of survey on which these classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. 5/13/2014 indicates the survey completion date for the classifications and rates under that identifier.

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

Union Average Rate Identifiers

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

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

WAGE DETERMINATION APPEALS PROCESS

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

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

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

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

Branch of Construction Wage Determinations
Wage and Hour Division
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

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

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

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

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

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

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

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. 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.
- D. Upon request, certified copies of all insurance policies shall be furnished to the City of Nacogdoches.
- E. 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.
- F. Waiver of subrogation in a form at least as broad as ISO form 2404 shall be provided in favor of the City on all policies obtained by the Contractor in compliance with the terms of this Agreement.

III. Commercial General Liability

- A. General Liability insurance shall be written by a carrier with a "A:VIII" or better rating in accordance with the current Best Key Rating Guide.
- B. Limit of \$500,000.00 per occurrence for bodily injury and property damage with an annual aggregate limit of \$1,000,000.00 which limits shall be endorsed to be per Project.

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

IV. Business Automobile Liability

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

V. Excess Liability

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

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

VII. Workers Compensation Insurance

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

"A. Definitions:

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

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

Persons providing services on the project ("subcontractors" in § 406.096 [of the Texas Labor Code]) - includes all persons or entities performing all or part of the services the Contractor has

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

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

- (1) *provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, that meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all of its employees providing services on the project, for the duration of the project;*
 - (2) *provide to the Contractor, prior to that person beginning work on the project, a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the project, for the duration of the project;*
 - (3) *provide the Contractor, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project;*
 - (4) *obtain from each other person with whom it contracts, and provide to the Contractor:*
 - (a) *A certificate of coverage, prior to the other person beginning work on the project; and*
 - (b) *A new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the project;*
 - (5) *retain all required certificates of coverage on file for the duration of the project and for one year thereafter;*
 - (6) *notify the governmental entity in writing by certified mail or personal delivery, within 10 calendar days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project; and*
 - (7) *Contractually require each person with whom it contracts to perform as required by paragraphs (a) - (g), with the certificates of coverage to be provided to the person for whom they are providing services.*
- J. *By signing this contract, or providing, or causing to be provided a certificate of coverage, the Contractor is representing to the governmental entity that all employees of the Contractor who will provide services on the project will be covered by workers' compensation coverage for the duration of the project; that the coverage will be based on proper reporting of classification codes and payroll amounts; and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the Commission's Division of Self-Insurance Regulation. Providing false or misleading information may subject the Contractor to administrative penalties, criminal penalties, civil penalties, or other civil actions.*
- K. *The Contractor's failure to comply with any of these provisions is a breach of contract by the Contractor that entitles the governmental entity to declare the contract void if the Contractor does not remedy the breach within ten calendar days after receipt of notice of breach from the*

governmental entity.”

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

Exhibit C
PERFORMANCE AND PAYMENT BONDS

PERFORMANCE BOND

Project No. _____

THE STATE OF TEXAS

§

KNOW ALL MEN BY THESE PRESENTS:

THE COUNTY OF NACOGDOCHES

§

§

THAT WE, _____, as Principal, hereinafter called "Contractor" and the other subscriber hereto _____, as Surety, do hereby acknowledge ourselves to be held and firmly bound to the City of Nacogdoches, a municipal corporation, in the sum of _____ **and xx/100 (\$xxx,xxx.xx)** for the payment of which sum, well and truly to be made to the City of Nacogdoches and its successors, the said Contractor and Surety do bind themselves, their heirs, executors, administrators, successors, and assigns, jointly and severally.

THE CONDITIONS OF THIS OBLIGATION ARE SUCH THAT:

WHEREAS, the Contractor has on or about this day executed a Contract in writing with the City of Nacogdoches for **Construction Services for City of Nacogdoches AMI (Automated Meter Infrastructure) System water meter and transmitter replacement** all of such work to be done as set out in full in said Contract Documents therein referred to and adopted by the City Council, all of which are made a part of this instrument as fully and completely as if set out in full herein.

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

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

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

It is further expressly agreed and understood that the Contractor and Surety will fully indemnify and hold harmless the City of Nacogdoches from any liability, loss, cost, expense, or damage arising out of or in connection with the work done by the Contractor under the Contract. In the event that the City of Nacogdoches shall bring any suit or other proceeding at law on the Contract or this bond or both, the Contractor and Surety agree to pay to the City the actual amounts of attorneys' fees incurred by the city in connection with such suit.

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

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

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

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

(Name of Contractor)

By: _____
Name:
Title:

By: _____
Name:
Title:
Date:

ATTEST/WITNESS (SEAL)

(Full Name of Surety)

By: _____
Name:
Title:
Date:

(Address of Surety for Notice)

By: _____
Name:
Title:
Date:

REVIEWED:

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

City Attorney's Office

City Manager

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

TEXAS STATUTORY PAYMENT BOND

Project No. _____

THE STATE OF TEXAS

§
§

KNOW ALL MEN BY THESE PRESENTS:

THE COUNTY OF NACOGDOCHES

§

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

THE CONDITIONS OF THIS OBLIGATION ARE SUCH THAT:

WHEREAS, Principal has entered into a certain contract with the City of Nacogdoches, dated the _____ day of _____, 20____, for **Construction Services for City of Nacogdoches AMI (Automated Meter Infrastructure) System water meter and transmitter replacement** which contract is hereby referred to and made a part hereof as fully and to the same extent as if copied at length herein.

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

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

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

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

(Name of Contractor)

By: _____
Name:
Title:

By: _____
Name:
Title:
Date:

ATTEST/WITNESS (SEAL)

(Full Name of Surety)

By: _____
Name:
Title:
Date:

(Address of Surety for Notice)

By: _____
Name:
Title:
Date:

REVIEWED:

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

City Attorney's Office

City Manager

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

Exhibit D
CERTIFICATES OF INSURANCE AND ENDORSEMENTS

Exhibit E PLANS, SPECIFICATIONS AND DRAWINGS



Aqua-Metric Sales Company
16914 Alamo Parkway, Bldg. 2 | Selma, TX 78154
Phone: (210) 967-6300 | Facsimile: (210) 967-6303

March 21, 2023

Client: City of Nacogdoches, Texas
Attention: BD Rambin
Phone: (936) 559-2594
Email: rambinb@ci.nacogdoches.tx.us

Line No.	Item	Quantity	Unit	Extended
Meter Replacement Quote				
	5/8" x 3/4" SRII Meter TRPL 8 WHL USG	11,227		\$132.95
	1" SRII Meter TRPL 8 WHL USG	768		\$228.88
	1 1/2" OMNI R2 Meter TRPL 8 WHL USG	311		\$434.04
	2" OMNI R2 Meter TRPL 8 WHL USG	297		\$608.99
	2" OMNI T2 Turbo Meter TRPL 8 WHL USG	2		\$1,046.93
	3" OMNI C2 Compound Meter TRPL 8 WHL USG	6		\$1,885.00
	3" OMNI T2 Turbo Meter TRPL 8 WHL USG	1		\$1,304.65
	4" OMNI C2 Compound Meter TRPL 8 WHL USG	22		\$3,273.96
	4" OMNI T2 Turbo Meter TRPL 8 WHL USG	8		\$2,539.88
	6" OMNI C2 Compound Meter TRPL 8 WHL USG	15		\$5,655.00
	6" OMNI T2 Turbo Meter TRPL 8 WHL USG	5		\$4,572.61
	8" OMNI T2 Turbo Meter TRPL 8 WHL USG			\$7,760.03
	10" OMNI T2 Turbo Meter TRPL 8 WHL USG	2		\$10,117.51
	520M Single Port SmartPoint Radio Transmitter	12,664		\$120.50
	Field Deployment Management, Monthly Fee - Includes (1) week of on-site field deployment management per month with the remaining installation management to be performed remotely.	16		\$5,000.00
	NovusCenter WOMS: Setup Fee	1		\$7,500.00
	NovusCenter WOMS: Work-Order Data Fee	12,664		\$1.65
	NovusCenter WOMS: Data Review Fee	12,664		\$3.75
	5/8" x 3/4" Meter Replacement w/ SmartPoint Installation & Activation	11,227		\$50.68
	1" Meter Replacement w/ SmartPoint Installation & Activation	768		\$52.11
	1 1/2" Meter Replacement w/ SmartPoint Installation & Activation	311		\$242.11
	2" Meter Replacement w/ SmartPoint Installation & Activation	299		\$302.11
	3" Meter Replacement w/ SmartPoint Installation & Activation	7		\$483.36
	4" Meter Replacement w/ SmartPoint Installation & Activation	30		\$608.36
	6" Meter Replacement w/ SmartPoint Installation & Activation	20		\$870.86
	8" Meter Replacement w/ SmartPoint Installation & Activation			\$1,152.11
	10" Meter Replacement w/ SmartPoint Installation & Activation	1		\$1,877.11
	10" Meter Replacement w/ SmartPoint Installation & Activation at 12" Location	1		\$2,377.11
	Water Meter Box Adjustment, Removal, or Replacement	1,266		\$56.25
	Meter Resizing / Downsizing			
	Add-On: Line Material Identification	12,664		\$15.00
	- To be performed during meter exchange; - Limited to what is accessible inside of the meter box; - Does not include web testing.			
	Recommended Contingency Fund for Installation Incidentals	1		\$75,000.00
	Installation Incidental: Alternate: SmartPoint Installation and Activation Only - To be installed on existing water meter. - Price per Port			\$44.56
	Installation Incidental: In-Field Lid Modification, Plastic			\$5.00
	Installation Incidental: In-Field Lid Modification, Metal			\$15.00
	Installation Incidental: Water Meter Register Replacement			\$43.31
	Installation Incidental: Water Meter Register Resolution Reprogramming			\$18.75
	Installation Incidental: Curb Stop Replacement			\$93.75
	Installation Incidental: Meter Tail Replacement			\$31.25
	Installation Incidental: Meter Box Lid Replacement			\$3.75
	Installation Incidental: Replacement or Removal of Busing Adapter			\$2.50
	Installation Incidental: Meter Resetter / Riser Replacement			\$31.25
	Installation Incidental: Site Visit Fee			\$31.25
	Installation Incidental: Special Job Hourly Rate, Per Technician			\$100.00
	Installation Incidental: Meter Technician Daily Rate			\$1,000.00
	Subtotal:			\$5,055,251.48
	36-Month Performance and Payment Bond:			\$27,000.00
	Total:			\$5,082,251.48
Supplemental Exchange Quote				
	3/4" SL iPERL Meter TRPL 8 WHL USG	333		\$148.72
	1" iPERL Meter TRPL 8 WHL USG	7		\$230.77
	1 1/2" OMNI R2 Meter TRPL 8 WHL USG	1		\$434.04
	2" OMNI R2 Meter TRPL 8 WHL USG	5		\$608.99
	3" OMNI C2 Compound Meter TRPL 8 WHL USG	1		\$1,885.00
	520M Single Port SmartPoint Radio Transmitter	347		\$120.50
	NovusCenter WOMS: Work-Order Data Fee	347		\$1.65
	NovusCenter WOMS: Data Review Fee	347		\$3.75
	5/8" x 3/4" Meter Replacement w/ SmartPoint Installation & Activation	333		\$50.68



Aqua-Metric Sales Company
16914 Alamo Parkway, Bldg. 2 | Seims, TX 78134
Phone: (210) 967-6300 | Facsimile: (210) 967-6305

March 21, 2023

Client: City of Nacogdoches, Texas
Attention: BD Rambin
Phone: (936) 559-2594
Email: rambinb@ci.nacogdoches.tx.us

Line No.	Item	Quantity	Unit	Extended
	1" Meter Replacement w/ SmartPoint Installation & Activation	7	\$52.11	\$364.77
	1 1/2" Meter Replacement w/ SmartPoint Installation & Activation	1	\$242.11	\$242.11
	2" Meter Replacement w/ SmartPoint Installation & Activation	5	\$302.11	\$1,510.55
	3" Meter Replacement w/ SmartPoint Installation & Activation	1	\$483.36	\$483.36
	Water Meter Box Adjustment, Removal, or Replacement	35	\$56.25	\$1,968.75
	Add-On: Line Material Identification	347	\$15.00	\$5,205.00
	- To be performed during meter exchange;			
	- Limited to what is accessible inside of the meter box;			
	- Does not include web testing.			
			Total:	\$126,841.42

This quote for the product and services named above is subject to the following terms:

1. All quotes are subject to the Aqua-Metric Terms of Sale.
2. Quote is valid for thirty days.
3. If modifications in materials, labor, or processing are required to meet new regulations, the pricing submitted herein is subject to immediate change.
4. Freight allowed on single Sensus water products orders exceeding \$20,000.00.
5. Net Thirty Days to Pay
6. Returned product may be subject to a 25% restocking fee.
7. Sales Tax and/or Freight charges are not included.
8. Does not include third-party integration fees or charges to third-party annual fees.
9. Standard meter installation pricing shall encompass like-for-like meter exchange. Pricing is for labor only and not inclusive of any special parts or materials necessary to facilitate a successful exchange, including spacers to accommodate variances in lay length. City will be responsible for supplying any additional materials including but not limited to meter boxes, meter box lids, curb stops, meter couplings, meter riser/wetter, etc.; however Aqua-Metric can supply any additional materials at cost plus fifteen percent. Installation incidental labor pricing to be provided upon request.
10. Pricing is based on performing total meter installation services consecutively over a one-year period. Additional fees will apply for mobilization to and from the site to accommodate changes in the installation timeline.
11. An installation scope of work will be generated based on the Utility's preferred installation option. Any changes requested by the Utility which deviate from our standard scope of work document may incur additional fees.
12. Quote does not include product storage, trash containers, or recycling receptacles.
13. Quote does not reflect utilization of buy board or prevailing wage rates.
14. Quote does not include bonding.
15. Any additional items subject to time and material costs.
16. Pricing subject to change pending an installation scope of work agreement with the Utility.

Aqua-Metric Sales Co.

AMI System Replacement Contract

- City installed current AMI system in 2008
 - One of the first fixed base systems in Texas
- Funded by Revenue Bonds - \$5,400,000
 - Paid off in 7 years
- 2016 Rate Study included a replacement plan to set aside cash for replacement
- 12,664 meters/transmitters to be replaced
 - Only meters over 12 months old
- Original quote in April 2022 did not include replacement of large meters.
 - Unable to perform in-house as expected
 - 8-9% increase in meter/material cost in last 12 months

Aqua-Metric Sales Co.

AMI System Replacement Contract

- Meter Replacement Program
 - Meters under warranty for 5 years
 - Transmitters under warranty for 10 years (full) and additional 10 years (prorated)
 - Targeted year 15 to begin replacement
 - In-House replacement as needed

- History of Meter/Transmitter Failure & Replacement
 - 2018 – 315
 - 2019 – 450
 - 2020 – 632
 - 2021 – 610
 - 2022 – 830
 - 2023 – Currently 1,500 meters returning Zero reads

Aqua-Metric Sales Co.

AMI System Replacement Contract

- Optional Add-on – TCEQ Requirement
 - Lead and Copper Rule Revision (LCRR)
 - Service Line Inventory needed
 - Deadline of October 16, 2024
 - Additional \$189,960

- Optional Add-on – Central Heights Meters
 - 347 meters in area being acquired by ANRA
 - Cost for Replacement - \$126,845 to be paid by ANRA if desired
 - No Cost to City

- Total Contract amount
 - AMI Replacement - \$4,892,295
 - Optional TCEQ - \$189,960
 - Optional Central Heights - \$126,845



City Council Meeting

Date: April 4, 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 additional funds needed for the Automated Meter Infrastructure water meter and transmitter replacement program (Director of Finance)

SUMMARY/BACKGROUND: The original adopted budget for 2022-2023 included \$4,772,000 for the replacement of the City's Automated Meter Infrastructure (AMI) system. The contract covers the replacement and installation of 12,664 meters/transmitters (\$4,892,292) which will require an amendment of \$120,292. There is also an amendment required in the amount of \$189,960 to cover an add-on service of Line Material Identification as required by new Texas Commission on Environmental Quality rulings.

FINANCIAL:

Item is budgeted:

Account No.: 30.179.35

Account Name: *Utility Fund CIP AMI System*

Amount: \$4,772,000

** Budget amendment is needed for contract amount in excess of original budget - See attached

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

Infrastructure

CITY CONTACT: Pamela Curbow, Director of Finance
curbowp@nactx.us
936-559-2525

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 installed the original Automated Meter Infrastructure (AMI) system in 2008; and

WHEREAS, it is important to have AMI meters and radio transmitters replaced prior to the warranty period fully expiring; and

WHEREAS, the City Council previously approved \$4,772,000 for the replacement of the system wide Automated Meter Infrastructure (AMI) system in the budget for fiscal year beginning October 1, 2022 and ending September 30, 2023; and

WHEREAS, the market conditions have shown an increase in parts necessary for this project; and

WHEREAS, the Texas Commission on Environmental Quality issued a new directive to have all line materials at each meter connection inventoried which can be done by the AMI installers at a cost of \$189,960; and

WHEREAS, with the adoption of this ordinance, the Finance Department is authorized utilize available reserve funds in the Utility Fund and 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 and capital outlay of the city government of the City of Nacogdoches as follows:

Fund	Dept	Acct.	Department	Description	Amt.
30		179.35	Utility Fund CIP	Replace AMI System	\$120,292
30	75	630.70	Utility Fund NonDepartmental	Line Material ID per TCEQ Requirements	\$189,960

PASSED AND APPROVED this the 4th day of April, 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
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 after first 30 minutes of locating |
| • 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.

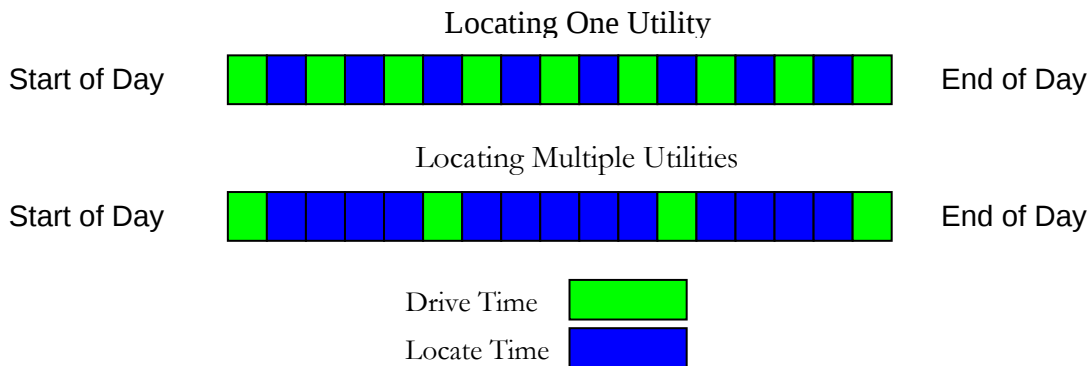
In addition to saving money on locating expense, City of Nacogdoches, TX will experience the added value of using our Professional Damage Prevention Services.

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 approval 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
bartletts@nactx.us
936-559-2522

ATTACHMENTS: 1. PowerPoint Presentation
2. Ordinance

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.

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 4th day of April, 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



City Council Meeting

Date: April 4, 2023

Agenda Item: 6.F.

PRESENTER: Pam Curbow, Finance Director

ITEM/SUBJECT: Hold a discussion and give staff direction regarding the fair housing analysis required for application to the 2023/2024 Community Development Block Grant. (Director of Finance)

SUMMARY/BACKGROUND: The Texas Department of Agriculture (TDA) offers funding sources through the Texas Community Development Block Grant (TxCDBG) Program to non-entitlement communities across Texas. The City of Nacogdoches is applying for a TxCDBG Application for Water Line Improvements on Martin Luther King Jr. Boulevard. To gain additional points in this application, the City can perform various efforts to promote Fair Housing within the City.

The City is working with GrantWorks, Inc. to complete these applications. GrantWorks, Inc. has completed a review of current housing stock and impediments to Fair Housing within the City utilizing available census data. This analysis provides recommendations regarding Fair Housing and should allow the City to gain the additional points related to the TxCDBG application being submitted by the City.

FINANCIAL:

No financial impact associated with this item

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

No financial impact associated with this item

CITY CONTACT: Pamela Curbow, Director of Finance
curbowp@nactx.us
936-559-2525

ATTACHMENTS:

1. Fair Housing Analysis
2. PowerPoint Presentation

Fair Housing Analysis

In conjunction with the acceptance of grant funds from the Texas Community Development Block Grant Program (TxCDBG) program of the U.S. Department of Housing and Urban Development (HUD), the City of Nacogdoches must affirmatively further fair housing (AFFH) and uphold the 1968 Fair Housing Act. The Fair Housing Act prohibits discrimination based on disability, familial status, race, color, religion, sex, or national origin. The *Fair Housing Data* table provides basic data on the availability of housing types to those protected classes. The following paragraphs discuss each protected group.

- **Disability:** According to the 2017-2021 American Community Survey (ACS), approximately 15.7% of residents in Nacogdoches (estimated 4,986 residents) have a disability;¹ this figure is higher than the state-wide average – 12.1% of all Texans. An estimated 42.5% of Nacogdoches residents with a disability are over 74 years old. It is not known how many single-family homes in Nacogdoches fully meet ADA accessibility standards.
- **Familial Status:** As measured by the number of bedrooms available, a variety of rental properties and homes for ownership are available to accommodate families, as well as single occupants.
- **Race & Ethnicity:** The minority population in the Nacogdoches is 38.7%, and 19.5% are Latino or Hispanic.

A large percentage of the Nacogdoches housing stock (approximately 41.0%) was built from 1970 to 1989. Only 1.4% of the total housing stock of Nacogdoches was built since 2014, or approximately 202 units.

Impediments to additional fair housing: As shown in the data, there are 1,493 number of vacant single-family houses, and a relatively small number of new house builds. Many residents are renters, not owners of the property they live in. There is not enough single family houses that are affordable to the residents of Nacogdoches. Additionally, Nacogdoches does have numerous LIHTC facilities however that account for approximately 7% of the housing in the city but it has not kept pace with general housing demands in a growing city.

- Nacogdoches may consider future grants that increase available low-income housing.
- Create a robust neighborhood revitalization program to address unique challenges and opportunities within each neighborhood including investment, amenities, connectivity, and

¹ In the 2017-2021 American Community Survey, individuals were classified as having a disability if they had hearing difficulty, vision difficulty, cognitive difficulty, ambulatory difficulty, self-care difficulty, and/or independent living difficulty.

other factors

- Create a list of developable parcels and work with local partners to promote housing opportunities to developers, builders, and home buyers regionally
- Explore city funding mechanisms to help address key issues and incentivize quality development and redevelopment
- Streamline the permitting process for new development
- Explore land banking and other strategies to help consolidate parcels
- Develop a pattern book that includes pre-approved designs that help maintain quality and neighborhood integrity
- Update standards to maintain quality development and neighborhood integrity
- Expand and improve code compliance/enforcement

Fair Housing Data

Total Population:	32,347	B01003
Total Housing:	14,468	H1
Average Household Size	2.3	HCT5

	Units	% of all Units in City	
Affordable and Subsidized Housing Units (Occupied and Vacant)			
Northway Landing	47	0.3%	
Independence Manor I	24	0.2%	
Independence Manor II	40	0.2%	
Pine Lake Estates	100	0.7%	
Eastwood Terrace Apartments	192	1.3%	
Cordova Rental Units	4	0%	
Commonwealth Apartments	70	0.4%	
Commonwealth Apartments II	54	0.3%	
Cypress Ridge	76	0.5%	
Cardinal Village	96	0.7%	
Spring Hill Apartments	200	1.3%	
Park Estates	36	0.2%	
Nacogdoches Senior Village	36	0.2%	
Vista Pines Apartments	76	0.5%	
Tower Village	36	0.2%	
Total MF Units	1,087	7%	
Other Housing Units (Occupied and Vacant)			
Single-family Rentals	7,277	50%	H4 2010
Single-family Owned	4,865	33%	
Single-family Vacant	1,493	10%	H5 2010
Total Units	14,722		

Housing by Race/Ethnicity (Census 2010)					HCT1 Census 2010
Characteristic	Owned		Rented		
	#	%	#	%	
Race					
White	3,268	38%	3,895	62%	
Black	893	27%	2,376	73%	
American Indian or Alaska Native	10	30%	24	70%	
Asian	71	38%	115	62%	
Other	1	14%	6	86%	
Two or More Races	34	26%	97	74%	
Native Hawaiian & Other Pacific Islander	0	0%	5	100%	
Ethnicity					
Hispanic or Latino	255	25%	759	75%	

Sources: Census 2010,

Fair Housing Analysis: Nacogdoches

Fair Housing Analysis

In conjunction with the acceptance of grant funds from the Texas Community Development Block Grant Program (TxCDBG) program of the U.S. Department of Housing and Urban Development (HUD), the City of Nacogdoches must affirmatively further fair housing (AFFH) and uphold the 1968 Fair Housing Act. The Fair Housing Act prohibits discrimination based on disability, familial status, race, color, religion, sex, or national origin. The *Fair Housing Data* table provides basic data on the availability of housing types to those protected classes. The following paragraphs discuss each protected group.

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Fair Housing Data

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Commonwealth Apartments II	54	0.30%
Cypress Ridge	76	0.50%
Cardinal Village	96	0.70%
Spring Hill Apartments	200	1.30%
Park Estates	36	0.20%
Nacogdoches Senior Village	36	0.20%
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Tower Village	36	0.20%
Total MF Units	1,087	7%

Fair Housing Data

<i>Other Housing Units (Occupied and Vacant)</i>		
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Impediments to Additional Fair Housing

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Fair Housing Data

Total Population: **32,347**

Total Housing: **14,468**

Average Household Size: **2.3**

Impediments to Additional Fair Housing

A decorative graphic consisting of two blue squares. One is a medium blue square located in the upper left, and the other is a darker blue square located below it and extending further to the left.

As shown in the data, there are 1,493 number of vacant single-family houses, and a relatively small number of new house builds. Many residents are renters, not owners of the property they live in. There is not enough single family houses that are affordable to the residents of Nacogdoches. Additionally, Nacogdoches does have numerous LIHTC facilities however that account for approximately 7% of the housing in the city but it has not kept pace with general housing demands in a growing city.

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: